

**SELECTMEN'S MEETING AGENDA\***

***Donn B. Griffin Room, Town Hall***

***732 Main Street, Harwich, MA***

***Regular Meeting 6:30 P.M.***

***Monday, October 7, 2019***

***\*As required by Open Meeting Law, you are hereby informed that the Town will be video and audio taping as well as live broadcasting this public meeting. In addition, anyone in the audience who plans to video or audio tape this meeting must notify the Chairman prior to the start of the meeting.***

**I. CALL TO ORDER**

**II. PLEDGE OF ALLEGIANCE**

**III. WEEKLY BRIEFING**

A. Sewerage Work Improvement Phase 2 – Contract #1 – Construction Schedule – Weekly Update

**IV. PUBLIC COMMENTS/ANNOUNCEMENTS**

**V. CONSENT AGENDA**

**VI. PUBLIC HEARINGS/PRESENTATIONS (Not earlier than 6:30 P.M.)**

**VII. NEW BUSINESS**

A. Annual Meetings with the Board:

1. Capital Outlay Committee

2. Historic District and Historical Commission

3. Planning Board

B. Vote to approve application for Lodging House or Innholders License for Sands Hospitality, Inc. – d/b/a Platinum Pebble Boutique Inn – Building, Health & Fire have approved

C. Approve the Administrator's recommendation to grant permission to NSTAR to install 55' of conduit and cable and one (1) handhold #72/H3A in Old Wharf Road – with a stipulation from the Highway Department "Old Wharf Road was recently resurfaced and is under a road cut moratorium until 2022, all work must be done in the soft shoulder only."

D. Vote to support Community Preservation Act funding for maintenance of town-owned conservation land in the amount of \$20,000

E. Vote to approve request for Lawrence E. Brophy, Member, Affordable Housing Trust to be allowed to participate remotely via Face Time for the Affordable Housing Trust meetings

F. The Traffic Safety Committee – New Traffic Calming Policy – First reading and Discussion

G. Vote to authorize the Town Administrator to execute all contracts as detailed in the 10/1/19 memo from the Cape & Vineyard Electric Cooperative relative to Harwich's Round 4 PV/Storage Projects

H. Discussion on disposition of land at former proposed pet burial ground

I. Procurement Update and Prioritization Discussion

J. DPW OSHA Compliance / Custodial Foreman - Discussion

**VIII. CONTRACTS**

A. Vote to Approve – Brooks Free Library AUX Equipment Controls - \$50,039.00

B. Vote to Approve – Brooks Free Library EMS Proposal - \$53,525.00

**IX. OLD BUSINESS**

**X. TOWN ADMINISTRATOR'S REPORTS**

A. Potential Re-Use of the Current East Harwich Fire Station

B. Departmental Reports

**XI. SELECTMEN'S REPORT**

**XII. ADJOURNMENT**

***\*Per the Attorney General's Office: The Board of Selectmen may hold an open session for topics not reasonably anticipated by the Chair 48 hours in advance of the meeting following "New Business." If you are deaf or hard of hearing or a person with a disability who requires an accommodation contact the Selectmen's Office at 508-430-7513.***

**Authorized Posting Officer:**

**Posted by:** \_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Patricia Macura, Admin. Secretary

**Date:** \_\_\_\_\_  
October 2, 2019

TOWN OF HARWICH, MASSACHUSETTS  
SEWERAGE WORKS IMPROVEMENTS PHASE 2 – CONTRACT #1  
SEWER PROJECT

CONSTRUCTION SCHEDULE – WEEKLY UPDATE

Date Submitted: October 2, 2019

**One Week Look Ahead (10/7-10/11)**

- Mainline Sewer Crew # 1
  - Continue Installation on Johanna's Path
  - Commence Installation on RT 39 ( Middle to end of the week tentative)  
\*\* Detour \*\*
- Mainline Sewer Crew # 2
  - Continue Installation on RT137  
\*\* Detour \*\*

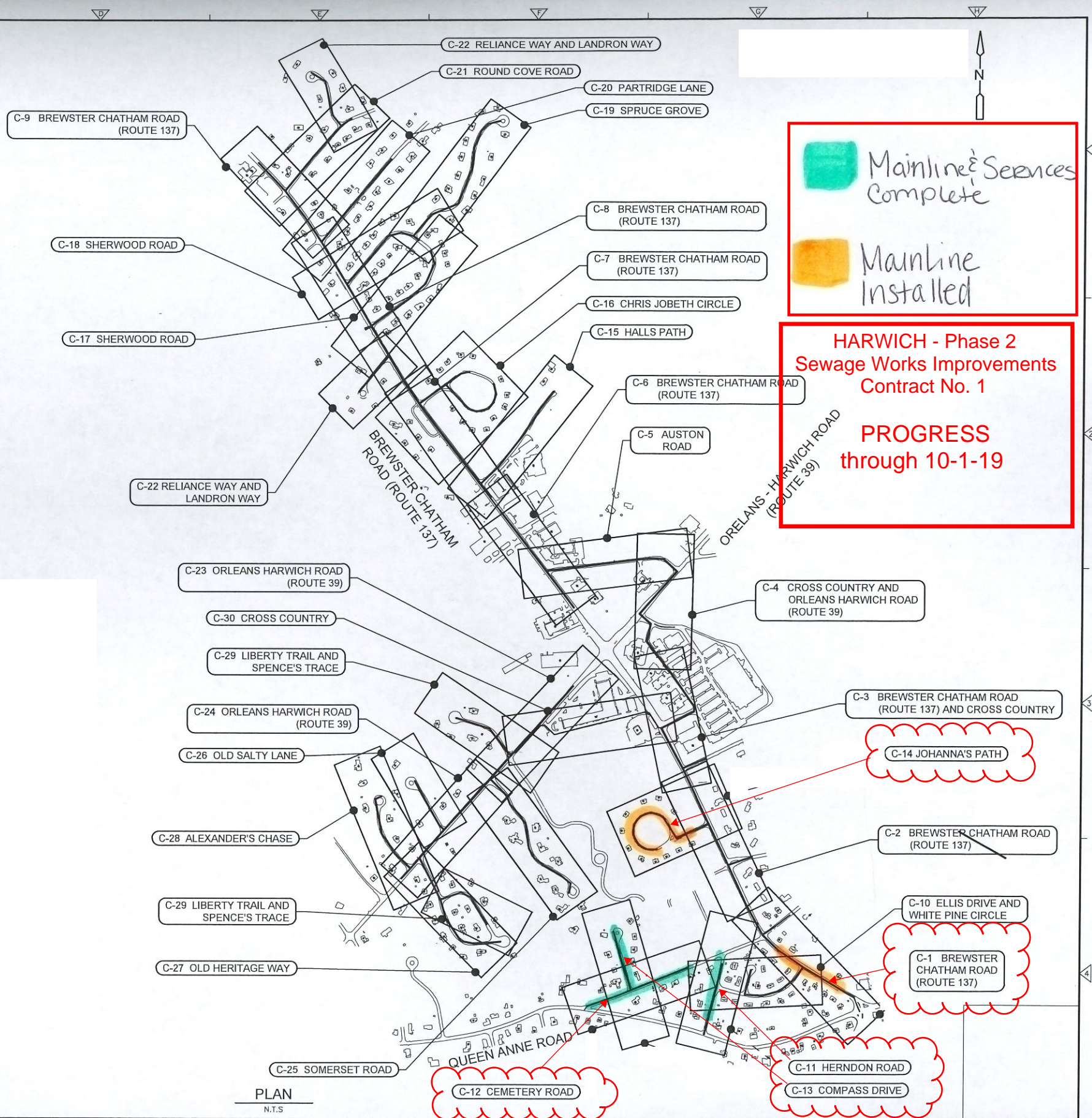
**Two Week Look Ahead (10/15-10/18) \*\* No Work 10/14\*\***

- Mainline Sewer Crew # 1
  - Continue Installation on RT 39  
\*\* Detour \*\*
- Mainline Sewer Crew # 2
  - Continue Installation on RT137  
\*\* Detour \*\*

**Three Week Look Ahead (10/21-10/25)**

- Mainline Sewer Crew # 1
  - Continue Installation on RT 39  
\*\* Detour \*\*
- Mainline Sewer Crew # 2
  - Continue Installation on RT137  
\*\* Detour \*\*

**Please note that this is a projected schedule and will be adjusted accordingly based on the Contractor's actual progress and the weather. On an as needed basis auxiliary crews will be performing testing, installing inverts, raising castings, paving , and performing general cleanup at various locations throughout the project area.**



C-22 RELIANCE WAY AND LANDRON WAY

C-21 ROUND COVE ROAD

C-20 PARTRIDGE LANE

C-19 SPRUCE GROVE

C-9 BREWSTER CHATHAM ROAD (ROUTE 137)

C-18 SHERWOOD ROAD

C-8 BREWSTER CHATHAM ROAD (ROUTE 137)

C-7 BREWSTER CHATHAM ROAD (ROUTE 137)

C-16 CHRIS JOBETH CIRCLE

C-17 SHERWOOD ROAD

C-15 HALLS PATH

C-6 BREWSTER CHATHAM ROAD (ROUTE 137)

C-5 AUSTON ROAD

C-22 RELIANCE WAY AND LANDRON WAY

C-23 ORLEANS HARWICH ROAD (ROUTE 39)

C-30 CROSS COUNTRY

C-29 LIBERTY TRAIL AND SPENCE'S TRACE

C-24 ORLEANS HARWICH ROAD (ROUTE 39)

C-26 OLD SALTY LANE

C-4 CROSS COUNTRY AND ORLEANS HARWICH ROAD (ROUTE 39)

C-3 BREWSTER CHATHAM ROAD (ROUTE 137) AND CROSS COUNTRY

C-14 JOHANNA'S PATH

C-28 ALEXANDER'S CHASE

C-2 BREWSTER CHATHAM ROAD (ROUTE 137)

C-29 LIBERTY TRAIL AND SPENCE'S TRACE

C-10 ELLIS DRIVE AND WHITE PINE CIRCLE

C-27 OLD HERITAGE WAY

C-1 BREWSTER CHATHAM ROAD (ROUTE 137)

C-25 SOMERSET ROAD

C-12 CEMETERY ROAD

C-11 HERNDON ROAD

C-13 COMPASS DRIVE

PLAN  
N.T.S

Mainline Services Complete  
Mainline Installed

HARWICH - Phase 2  
Sewage Works Improvements  
Contract No. 1  
PROGRESS  
through 10-1-19

## Capital Outlay Committee

Members: Rich Larios, Town Administrator (Chairman)  
Peter Wall, Town Administrator  
Angelo LaMantia, Finance Committee  
Joe McParland, Planning Board  
Bruce Nightingale, Board of Selectmen  
Noreen Donahue, Board of Selectmen  
Vacancy, Finance Committee

In 2019, Chris Harlow retired from the COC after many years of sharing his time and expertise with the Committee. Thanks Chris!

We want to thank our Town Administrator, Chris Clark and Finance Director, Carol Cappola for their continuous support and dedicated efforts to further the Committee's understanding of municipal finance and accounting during these difficult fiscal times.

## Changes in the New Plan

1. Departmental implementation of the "Capital Expenditure Request" form that allows for more accurate information for current and future years in the capital budgeting process began in August.
2. The Seven -Year Capital Plan shall start with the next fiscal year as its first year and six years thereafter (2021 – 2027).
3. The result will be our new Capital Plan, covering 2021- 2027, that will be delivered to the Town Administrator by December (by Town Charter). It is currently being worked on with input from various departments and committees and will be ready for submission later this year.
4. The Capital Plan will consider the Debt Service Requirements of the town. Debt for 2021 is approximately \$7.0M.
5. The Capital Plan will be presented to the Board of Selectmen by Capital Outlay Committee and the Town Administrator in January, 2020. The Plan may have changes prior to Town Meeting.

## Current and Planned Activities

1. Meet monthly and will do so even after the Capital Plan is submitted.
2. Be proactive and stay informed of the financial needs of our Town's departments.
3. Continue our site visits to see and better understand of departmental requests for dollars.
4. Better understand future costs through Departmental and Committees presentations.
5. Work with the CPC to understand requests and funding.
6. Be aware of big-dollar hits in an effort to keep the plan curve smooth, lessening the effect of the tax impact.
7. Identify Town assets in terms of possible sale or reuse.
8. Develop and champion efforts to better maintain our capital assets (in terms of life extension)
9. Better understand and analyze the extremely large amounts of capital required to be spent over the next decade and beyond.
10. Work with requestors and taxpayers to preserve the financial integrity of the Town of Harwich.

# PLANNING BOARD • 732 Main Street, Harwich, MA 02645

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*ph: 508-430-7511 fax: 508-430-4703*

October 7, 2019

To: Board of Selectmen  
From: Joseph McParland, Planning Board Chair  
Re: Annual Report to the Board of Selectmen

2019 has been one of the busiest years for the Planning Board in the past 10 years. As of the September 25, 2019, there have been the same number of application as were received in 2018. On behalf of the Board, I would like to acknowledge Charleen Greenhalgh, Town Planner, Elaine Banta, Planning Assistant and Katie Tenaglia, for their invaluable work for the Board.

The Board saw the departure Jim Joyce this summer, who will be sorely missed and also welcomed its newest members Bill Stoltz and Duncan Berry.

As of September 24<sup>th</sup>, the Board has held 18 meetings. There were 2 cases carried over from 2018 and 37 applications so far this year. The Board took the following actions:

- Endorsed 2 Approval Not Required Plans
- Approved 4 Definitive Subdivision Plans, with 3 pending
- Approved 3 Preliminary Subdivision Plans
- Approved 8 Use Special Permits
- Reviewed 10 Site Plan Special Permits & Use Special Permits, of those 6 were approved, 2 were withdrawn and 2 are pending
- Reviewed 4 Site Plans, of those 2 approved, 1 pending and 1 withdrawn
- Reviewed 4 Waiver of Site Plans, of these 2 approved and 2 withdrawn

The approved divisions of land have created 4 new building lots.

The Board also sponsored four (4) zoning amendments, including:

Accessory Apartments by-right  
Free-Standing Portable Signs  
Building Height within a Flood Zone for existing structures  
Relief for retaining walls as they pertain to septic systems.

All of the zoning amendments were approved by Town Meeting and the Attorney General.

As a result of a controversial case in West Harwich, the Board was asked by the Board of Selectmen to discuss and review the possibility of a District of Critical Planning Concern (DCPC) nomination for the Route 28 corridor, known as Captain's Row. The Board reviewed a draft prepared by Town Planner Greenhalgh and on September 10<sup>th</sup> the majority of the Board voted to recommend the nomination of the DCPC to the Board of Selectmen.

The Board anticipates beginning its review and discussing potential zoning amendments this month and will continue with this work.

The Board also supported the application for funding for CPC grants for the housing trust and coordinator and the acquisition of land for both affordable housing and open space.

Currently the Board has two opening for alternative members. Timely appointments are vital for the Planning Board to complete its charge and to continue to support and review multi-faceted projects during winter absences by members. At this time all Board Members are up to date on their ethics training.



OFFICE OF THE SELECTMEN  
732 MAIN ST., HARWICH, MA 02645  
508-430-7513

RECEIVED  
TREASURER/COLLECTOR  
SEP 26 2019  
Pm

**APPLICATION FOR LODGING HOUSE OR INNOLDERS LICENSE**

LICENSE APPLIED FOR: Lodging House  Innholders   
Fee: \$50 New application  Annual  # of rooms 8  
Renewal  Seasonal  Opening date 10-15-19

Business Name SANDS HOSPITALITY INC Phone 401-230-8850

Doing Business As (d/b/a) PLATINUM PEBBLE BOUTIQUE INN

Business Address 186 BELMONT RD W. HARWICH, MA

Mailing Address same

Winter Address & Phone same

Email Address sfoster99@gmail.com

Name of Owner SANDS HOSPITALITY INC.

(If corporation or partnership, list name, title and address of officers) address will be 186 Belmont Rd

Sharon Foster, President & Treasurer Shawn Guilmore, Vice President

Sharon Lee Yester, President 84-2142277  
Signature of applicant & title Federal I.D. #

**INNOLDERS ONLY** – List total number of seats in dining/lounge area. 8 OUTSIDE } Breakfast  
2 INSIDE } only.

Pursuant to MGL Ch. 62c, Sec. 49A, I certify under the penalties of perjury that to the best of my knowledge and belief I have filed all state tax returns and paid all state taxes required under law.

SANDS HOSPITALITY INC By Sharon Lee Yester  
Signature of individual or corporate name Corporate officer (if applicable)

**REGULATORY COMPLIANCE FORM**

The premises to be licensed as described herein have been inspected and found to be in compliance with applicable local codes and regulations, including zoning ordinances, health regulations and building and fire codes.

[Signature]  
Building Commissioner

[Signature]  
Board of Health

[Signature]  
Fire Department

Required signatures to be obtained by the applicant prior to submission of new applications.

**OFFICE OF THE TOWN ADMINISTRATOR**

Phone (508) 430-7513

Fax (508) 432-5039

Christopher Clark, *Town Administrator*  
Joseph Powers, *Assistant Town Administrator*

732 MAIN STREET, HARWICH, MA



# MEMO

TO: Board of Selectmen 

FROM: Christopher Clark, Town Administrator

RE: Utility Hearing October 2, 2019  
NSTAR Electric dba Eversource Electric  
Old Wharf Road

DATE: October 2, 2019

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A Utility Hearing was held on Tuesday, October 2, 2019 at 10:03 AM in Harwich Town Hall, at the request of NSTAR/Eversource for the purpose to install approximately 55' of conduit and cable and 1 handhold #72/H3A in Wharf Road, Harwich. Also requesting permission to locate underground cables, conduits and manholes, including the necessary sustaining and protecting fixtures, in under, along and across Old Wharf Road. However, NSTAR/Eversource has been notified that Old Wharf Road was recently resurfaced and is under a road cut moratorium until 2022, all work must be done in the soft shoulder and Jessica Elder, representative agreed.

Legal ads were published and notifications were given. There were no questions, concerns or objections. The Hearing was adjourned at 10:08 AM.

After careful review, I recommend that the Board approve Eversource Plan No. 23458474  
Dated August 31, 2019.



**MINUTES**  
**Utility Hearing – Old Wharf Road**  
**Wednesday, October 2, 2019**

THOSE IN ATTENDANCE: Christopher Clark, Town Administrator, Patti Macura, Administrative Secretary, Representative from Eversource; Jessica Elder via teleconference. There were no abutters.

The Town Administrator called the hearing to order at 10:03 A.M. and read the Utility Hearing Notice.

Jessica Elder confirmed the work to be performed by NSTAR Electric Company requesting permission to locate underground cables, conduits and manholes, including the necessary sustaining and protecting fixtures, in under, along and across the following public way or ways:

**Old WHARF ROAD, HARWICH**

**PROPOSED: Install 55' of conduit and cable and 1 handhold**  
**#72/H3A in town road**

Mr. Clark read a statement from Chris Nickerson, Highway Department; Old Wharf Road was recently resurfaced and is under a road cut moratorium until 2022, all work must be done in the soft shoulder only. Jessica Elder confirmed.

Legal ads were published and notifications were given. There were no abutters present. There were no objections to NSTAR/Eversource request.

There were no other questions, concerns or objections and the Hearing was adjourned at 10:07 AM. After careful review, I recommend that the Board approve Eversource Plan No. 23458472 Dated August 31, 2019.

The hearing was adjourned at 10: 08 A.M.

Submitted by:  
Patricia Macura  
Administrative Secretary

Attachments

**TOWN OF HARWICH**  
**NOTICE OF PUBLIC HEARING**  
*October 2, 2019*

Pursuant to M.G.L. Ch. 166, § 22, the Town Administrator will hold a Public Hearing at **10:00 AM on Wednesday, October 2, 2019** in the Harwich Administration Office, 732 Main Street, Harwich, MA in reference to the following matter:

A petition by NSTAR ELECTRIC COMPANY requesting permission to locate underground cables, conduits and manholes, including the necessary sustaining and protecting fixtures, in under, along and across the following public way or ways:

**OLD WHARF ROAD, HARWICH**

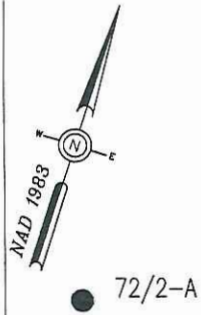
**PROPOSED: Install 55' of conduit and cable and 1 handhold  
#72/H3A in town road**

All abutters and other interested persons are invited to attend. For further information, please call the Town Administrator's Office at (508) 430-7513 or stop by Town Hall, 732 Main Street, Harwich where the information is on file.

Christopher Clark  
Town Administrator

Cape Cod Chronicle  
September 19, 2019

Plan to accompany petition of EVERSOURCE ENERGY  
 To install approximately 55'± of conduit in public road from  
 pole 72/3 to handhole 72/H3B via 72/H3A to provide electric  
 service for customer at 16 Old Wharf Road.



PARCEL ID: 16-L3-1-0  
 12 OLD WHARF RD  
 MORGAN, JANET K ET AL  
 JOZUS, CAROL K

PARCLE ID: 16-L3-2-0  
 16 OLD WHARF RD  
 MORGAN, JANET K ET AL  
 JOZUS, CAROL K



1-3" SCH 80  
 LF=20'±

APPROX. R.O.W.

OLD WHARF RD

EDGE OF ROAD

1-3" SCH 40  
 LF=35'±

EDGE OF ROAD

72/2

APPROX. 374'  
 TO JULIEN RD

72/3

72/H3A

72/H3

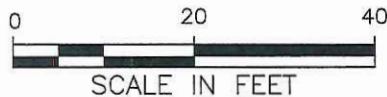
APPROX. R.O.W.

PARCEL ID: 16-X5-0  
 11 OLD WHARF RD  
 THE LOIS M YOUNG REV LIV TR AG

PARCEL ID: 16-X5-A-0  
 17 OLD WHARF RD  
 17 OLD WHARF RD NOMINEE TR

**LEGEND**

- ⊕ Proposed Hand Hole
- ⊕ Existing Hand Hole
- Proposed Conduit
- - Existing Conduit
- Existing Pole
- [M] Proposed Multitap
- [□] Proposed Manhole



BY YOUR USE OF THE INFORMATION CONTAINED IN THIS MAP, YOU AGREE THAT NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, IS GIVEN WITH RESPECT TO THE INFORMATION. NEITHER NSTAR ELECTRIC COMPANY, NSTAR GAS COMPANY NOR ITS PARENTS, AFFILIATES, OFFICERS, DIRECTORS, SHAREHOLDERS, EMPLOYEES OR AGENTS (COLLECTIVELY THE "NSTAR ENTITIES") SHALL BE LIABLE FOR ANY LOSS OR INJURY CAUSED IN WHOLE OR IN PART BY USE OF THIS INFORMATION OR IN RELIANCE UPON IT, TO THE MAXIMUM EXTENT ALLOWED BY LAW. YOU AGREE BY YOUR ACCEPTANCE OF THE INFORMATION TO RELEASE, INDEMNIFY AND HOLD THE NSTAR ENTITIES HARMLESS FROM ANY SUCH LOSS OR INJURY.

THE INFORMATION MAY NOT REPRESENT A SURVEY, MAY NOT BE THE MOST COMPLETE AND IS SUBJECT TO CHANGE WITHOUT NOTICE. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE INFORMATION, EITHER EXPRESSED OR IMPLIED. UNAUTHORIZED ATTEMPTS TO MODIFY THE INFORMATION OR USE THE INFORMATION FOR OTHER THAN ITS INTENDED PURPOSES ARE PROHIBITED.

**MASS. LAW**

REQUIRES 72 HOURS ADVANCE NOTICE TO UTILITY COMPANIES  
 BEFORE DIGGING BY ANYONE. CALL DIG-SAFE 1-888-344-7233

Plan # 2345847

Ward #

Work Order # 2345847

Surveyed by: -

Research by: PG

Plotted by: PG

Proposed Structures: TL

Approved: A DEBENEDICTIS

P#

**NSTAR EVERSOURCE**  
 ELECTRIC  
 d/b/a

1165 MASSACHUSETTS AVE. DORCHESTER, MASS. 02125

Plan of OLD WHARF ROAD

HARWICH PORT

Showing PROPOSED CONDUIT LOCATION

Scale 1"=20'

Date AUGUST 31, 2019

SHEET 1 of 1

**TOWN OF HARWICH  
NOTICE OF PUBLIC HEARING  
OCTOBER 2, 2019**

Pursuant to M.G.L. Ch. 166, § 22, the Town Administrator will hold a Public Hearing at 10:00 AM on Wednesday, October 2, 2019 in the Harwich Administration Office, 732 Main Street, Harwich, MA in reference to the following matter:

A petition by NSTAR ELECTRIC COMPANY requesting permission to locate underground cables, conduits and manholes, including the necessary sustaining and protecting fixtures, in under, along and across the following public way or ways:

**Old WHARF ROAD, HARWICH**

**PROPOSED: Install 55' of conduit and cable and 1 handhold #72/H3A in town road**

All abutters and other interested persons are invited to attend. For further information, please call the Town Administrator's Office at (508) 430-7513 or stop by Town Hall, 732 Main Street, Harwich where the information is on file.

Christopher Clark

The Cape Cod Chronicle  
Sept. 19, 2019

September 03, 2019

Town Administrators  
732 Main Street  
Harwich, MA 02653

Dear Board Members:

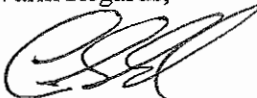
Enclosed is a petition to install approximately 55 +/- feet of conduit/cable under the public road and 1 handhole labeled 72/H3A in Old Wharf Road, Harwich.

This proposed location is necessary to provide electrical service to customer at 16 Old Wharf Road. This petition will require a notice to abutters and a hearing.

Will you please present this petition before the Board for customary action and approval?

If you have any questions, feel free to contact me at 508-790-9022 or the email address provided below.

Warm Regards,



Jessica Elder  
Right of Way Agent  
[Jessica.Elder@Eversource.com](mailto:Jessica.Elder@Eversource.com)  
NSTAR Electric  
d/b/a Eversource Energy

16-L3-1-0-R

ROBERT MICHAEL LLC  
9448 E HIDDEN SPUR TR  
SCOTTSDALE, AZ 85255

16-L3-2-0-R

MORGAN JANET K ET AL  
C/O JOZUS CAROL J  
30 MYRTLE RD  
PORTLAND, CT 06480

16-X5-0-R

YOUNG LOIS M TRS  
THE LOIS M YOUNG REV LIV TR AG  
11 OLD WHARF RD  
HARWICH PORT, MA 02646

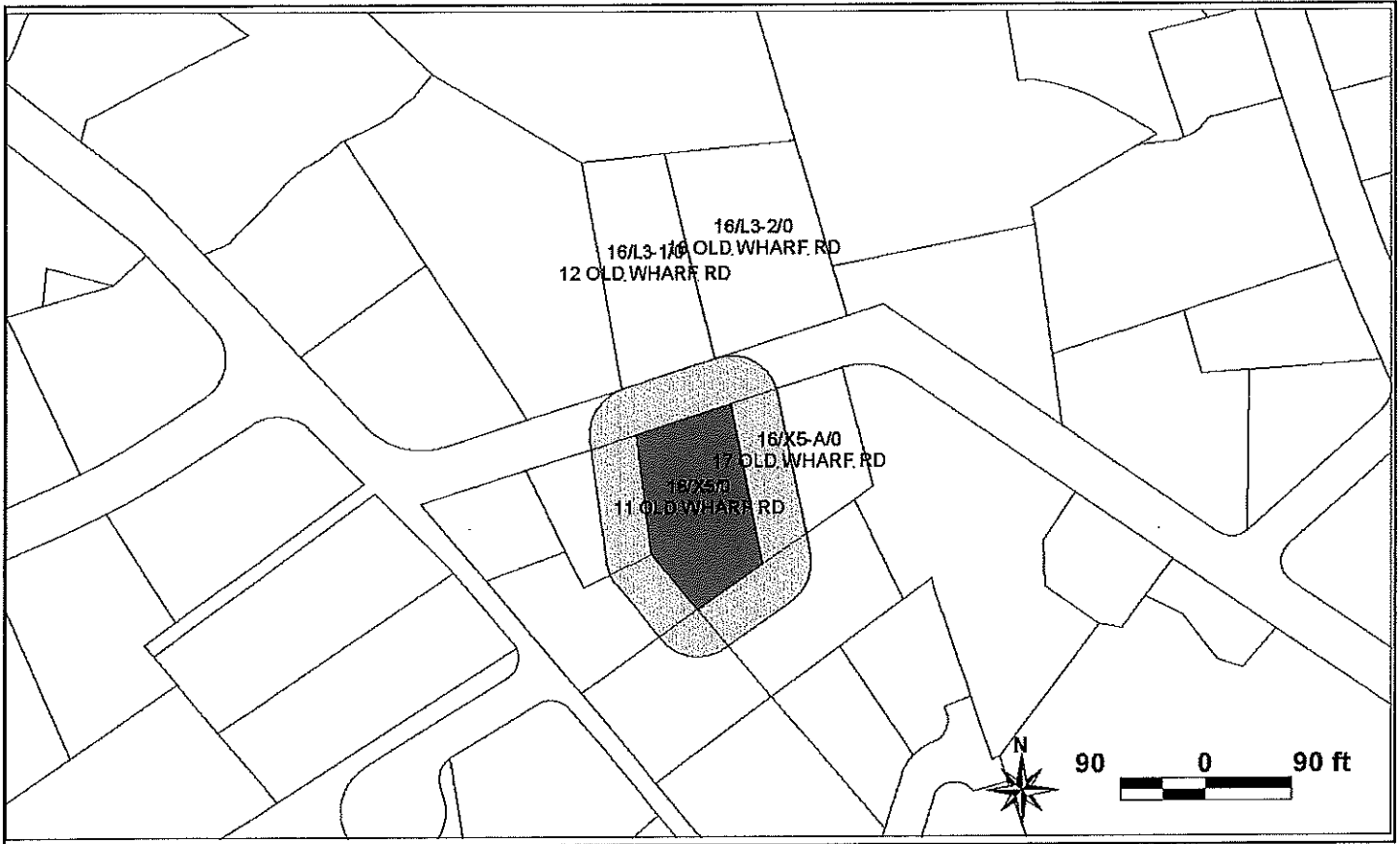
16-X5-A-0-R

WALTON WILLIAM H TR  
17 OLD WHARF RD NOMINEE TR  
PO BOX 775  
HARWICH PORT, MA 02646-0755



TOWN OF HARWICH, MA  
 BOARD OF ASSESSORS  
 732 Main Street, Harwich, MA 02645

Abutters List Within 50 feet of Parcel 16/X5/0



Key	Parcel ID	Owner	Location	Mailing Street	Mailing City	ST	ZipCd/Country
19696	16-L3-1-0-R	ROBERT MICHAEL LLC	12 OLD WHARF RD	9448 E HIDDEN SPUR TR	SCOTTSDALE	AZ	85255
17167	16-L3-2-0-R	MORGAN JANET K ET AL C/O JOZUS CAROL J	16 OLD WHARF RD	30 MYRTLE RD	PORTLAND	CT	06480
2771	16-X5-0-R	YOUNG LOIS M TRS THE LOIS M YOUNG REV LIV TR AG	11 OLD WHARF RD	11 OLD WHARF RD	HARWICH PORT	MA	02646
2767	16-X5-A-0-R	WALTON WILLIAM H TR 17 OLD WHARF RD NOMINEE TR	17 OLD WHARF RD	PO BOX 775	HARWICH PORT	MA	02646-0755

Application # \_\_\_\_\_

*For Administrative Use Only*

**TOWN OF HARWICH - COMMUNITY PRESERVATION COMMITTEE  
2019 CPA PROJECT FUNDING REQUEST APPLICATION  
FISCAL YEAR 2020-2021**

Submission Date: 9/20/2019

**APPLICANT INFORMATION**

**Applicant:** Amy Usowski, Conservation Administrator

Town Committee, Board or Organization: Conservation Commission

Legal Mailing Address: 732 Main Street, Harwich, MA 02645

Phone: 508-430-7538 Email Address: ausowski@town.harwich.ma.us

**Project Manager:** Amy Usowski, Conservation Administrator

Legal Mailing Address: : 732 Main Street, Harwich, MA 02645

Phone: 508-430-7538 Email Address: ausowski@town.harwich.ma.us

**Second Contact Person:** \_\_\_\_\_

Legal Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

**PROJECT INFORMATION**

PROJECT TITLE: Maintenance of Town-Owned Conservation Lands

PROJECT AMOUNT REQUESTED: \$ 20,000

PROJECT DESCRIPTION: The Town of Harwich has done a wonderful job of acquiring a large amount of land for conservation purposes. A challenge is properly caring for that land, while maintaining adequate public access. Many of our trailhead parking areas need new split rail fence to encompass them, such as the Route 39 side of Thompson's Field. Fencing can also be used to keep people and vehicles out of areas within our conservation lands where we do not want them, for both environmental protection and/or safety purposes. Our signage for various conservation parcels needs replacement, and additional signage needed on certain properties.

ESTIMATED START DATE: July 1, 2020

ESTIMATED COMPLETION DATE: June 30, 2021

**Three years from the release of funds (July 2020) funds may be rescinded automatically;  
waivers may be sought.**



## CPA CATEGORY

### APPLICANTS PLEASE TAKE NOTE \*\*please check boxes for all that apply\*\*

- Open Space:** This application is for the “acquisition, preservation, rehabilitation and/or preservation of open space”.
- Historic:** This application is for the “acquisition, preservation, rehabilitation and/or restoration of historic resources”. Please provide the date on which
- the HDHC received and endorsed this application.**  
**Community Housing:** This application is for the “acquisition, creation, preservation and/or support of community housing”.
- Recreation:** This application is for the “acquisition, creation, preservation, rehabilitation and/or restoration of land for recreational use”.

#### **How does this project fit into Harwich’s Local Comprehensive Plan and/or other Plan?**

The Local Comprehensive Plan speaks to the need to actively manage the open space that the Town owns. An objective of the LCP is to manage these lands efficiently.

The Open Space and Recreation Plan highlights the fact that the Town has done an excellent job in acquiring key pieces of land for Conservation purposes, but now the need is to maintain that land. One of the goals of the OSRP is to preserve and enhance properties that provide passive and active recreation opportunities. It is an objective in the plan to implement strategies to curb the inappropriate use of Conservation lands for dumping, off-road vehicles, vandalism, and other incompatible uses. Fencing, signage, cameras, etc will help curb these undesirable uses on our Conservation land.

#### **How does this project benefit the citizens of Harwich? If appropriate, has the application sought public opinion or input? If not, why?**

Adequately maintaining our Conservation lands provides safe, enjoyable places for passive outdoor recreation. A survey was completed in 2015 to support the 2017 Open Space and Recreation Plan. The highest need identified by the Community was for hiking trails. The Conservation Commission has care and custody of just under 1,000 acres of land, and many of these properties contain miles of trails. It takes a significant effort to maintain those trails. The Conservation Department has not formally requested public input, but public input is what is driving this application.

Please list other Commissions/Boards/Committees/Organizations that may have involvement, jurisdiction, partnering:

<u>Commissions/Boards/Committees/Organizations</u>	Please have them initial here after their review
Board of Selectmen	
Conservation Commission	<i>SPF</i>

Describe their response, or provided written comments/input:

Please see the attached letter – Appendix A

**PROJECT BUDGET:** Attach a dated and detailed line item project budget estimate for your funding request. If the request involves a Town-owned asset, provide the project’s projected operating expenses, including maintenance.

**COST ESTIMATE(S):** \$20,000

**LAND and/or BUILDING ACQUISITION PROJECTS:** The following **must** also be submitted, as applicable: Please find a Appendix B

- Surveys and/or plot plans for the property
- Appraisals and agreements, if available.
- Name of present owner and attach copy of deed conveying property unto present owner.
- Property address, Harwich Assessor’s property identification (Map#, Parcel #).
- For proposed Open Space land purchases, be prepared to discuss public access with the Committee.

\*\*\*\*\*

By signing below, the Applicant represents and warrants that all the information included is true and correct to the best of the signer’s knowledge and belief. Further, the Applicant acknowledges in the event that the Community Preservation Committee agrees to grant funds to Applicant (and subject to Town Meeting approval), this application together with any Terms and Conditions shall constitute a binding agreement, between the Applicant and the Community Preservation Committee. Further, Applicant acknowledges and agrees to execute any additional grant agreements should the Community Preservation Committee so request.

**ATTESTATION: I HEREBY ATTEST THAT THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE.**

**Signature - Chief Executive Officer or Board Chair**

**Title**

**Printed Name** \_\_\_\_\_

**Date** \_\_\_\_\_

**Signature - Chief Executive Officer or Board Chair**

**Title**

**Printed Name** \_\_\_\_\_

**Date** \_\_\_\_\_

## Patti Macura

---

**From:** Amy Usowski  
**Sent:** Thursday, September 26, 2019 11:34 AM  
**To:** Patti Macura  
**Subject:** bos meeting oct 7th  
**Attachments:** 20190926114311113.pdf

Hi Patti,

Can you please put "Request for BOS support for CPA funding for Maintenance of Town-Owned Conservation Land in the amount of \$20,000" on the October 7<sup>th</sup> BOS agenda? The Conservation Commission decided last night they wanted to go for some funding. I told them the deadline for CPA application was October 1, so I'll submit the application with only the conservation commission signature, and hopefully get the BOS to support it on the 7<sup>th</sup>. See attached. Thanks!

Amy Usowski  
Conservation Administrator  
Town of Harwich  
(508)430-7538

Lawrence Brophy  
PO Box 81  
S. Harwich, MA  
02661-0081

September 24, 2019

Larry Ballantine, Chair  
Board of Selectmen  
Town Hall  
Main Street  
Harwich, MA

Attn: Mr. Christopher Clark, Town Administrator

RE: Permission to Participate Remotely for the Affordable Housing Trust meetings

Dear Mr. Clark,

I would request you include this letter in the package for the Board of Selectmen and request I be allowed to participate remotely via Face Time with the Affordable Housing Trust. I will be at my winter home in Stuart, Florida from December 2019 through March 2020 and will attend remotely the meetings of the Affordable Housing Trust.

I thank you and the Board of Selectmen in advance of this privilege.

Sincerely,

Lawrence E. Brophy

Ms. J. Kavanaugh, Chair  
Board of Selectmen  
Town Hall  
Main Street  
Harwich, MA

Attn: Mr. Christopher Clark, Town Administrator

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I thank you and the Board of Selectmen in advance.

Sincerely,

Lawrence E. Brophy

## Patti Macura

---

**From:** Patti Macura  
**Sent:** Tuesday, September 24, 2019 4:19 PM  
**To:** Larry Ballantine; Christopher Clark; Joe Powers  
**Subject:** FW: Permission to Participate Remotely for the AHT Meetings.  
**Attachments:** AHT - Remote Participation 2019-2020.docx

Please advise

*Patricia Macura  
Selectmen/Administrator's Office  
Town of Harwich  
[pmacura@town.harwich.ma.us](mailto:pmacura@town.harwich.ma.us)  
508-430-7513 x3319*

---

**From:** Charleen Greenhalgh  
**Sent:** Tuesday, September 24, 2019 3:38 PM  
**To:** Patti Macura <[pmacura@town.harwich.ma.us](mailto:pmacura@town.harwich.ma.us)>; Christopher Clark <[cclark@town.harwich.ma.us](mailto:cclark@town.harwich.ma.us)>  
**Cc:** Pelinda (pelinda@capecdp.org) <[pelinda@capecdp.org](mailto:pelinda@capecdp.org)>; Larry Brophy ([broph1234@yahoo.com](mailto:broph1234@yahoo.com)) <[broph1234@yahoo.com](mailto:broph1234@yahoo.com)>  
**Subject:** FW: Permission to Participate Remotely for the AHT Meetings.

**Per the email below. Please place this on the next available Board of Selectmen Agenda for their consideration.**

Thanks

Charleen

**From:** Larry Brophy [<mailto:broph1234@yahoo.com>]  
**Sent:** September 24, 2019 2:53 PM  
**To:** Pelinda Deegan <[pdeegan@PDFDCAD.NET](mailto:pdeegan@PDFDCAD.NET)>  
**Cc:** Charleen Greenhalgh <[cgreenhalgh@town.harwich.ma.us](mailto:cgreenhalgh@town.harwich.ma.us)>  
**Subject:** Permission to Participate Remotely for the AHT Meetings.

Pelinda,

Would you forward this to the Administrators Office so it may be included in the next Selectmen's Package. I think Sandy Robinson has retired so would you get this to the person who does the Selectmen's Agendas.

Thanks, Larry

---

Lawrence Brophy  
PO Box 81  
S. Harwich, MA  
02661-0081

September 24, 2019

## Patti Macura

---

**From:** Larry Ballantine  
**Sent:** Thursday, September 26, 2019 3:52 PM  
**To:** Patti Macura; Christopher Clark; Joe Powers; Charleen Greenhalgh; broph1234@yahoo.com  
**Subject:** Re: Permission to Participate Remotely for the AHT Meetings.

Charleen & Larry, I missed this. Patti, please add to Oct 7 agenda.

Thanks,

Larry

---

**From:** Patti Macura  
**Sent:** Tuesday, September 24, 2019 4:20:28 PM  
**To:** Larry Ballantine; Christopher Clark; Joe Powers  
**Subject:** FW: Permission to Participate Remotely for the AHT Meetings.

Please advise

*Patricia Macura*  
*Selectmen/Administrator's Office*  
*Town of Harwich*  
[pmacura@town.harwich.ma.us](mailto:pmacura@town.harwich.ma.us)  
508-430-7513 x3319

---

**From:** Charleen Greenhalgh  
**Sent:** Tuesday, September 24, 2019 3:38 PM  
**To:** Patti Macura <pmacura@town.harwich.ma.us>; Christopher Clark <cclark@town.harwich.ma.us>  
**Cc:** Pelinda (pelinda@capecdp.org) <pelinda@capecdp.org>; Larry Brophy (broph1234@yahoo.com) <broph1234@yahoo.com>  
**Subject:** FW: Permission to Participate Remotely for the AHT Meetings.

**Per the email below. Please place this on the next available Board of Selectmen Agenda for their consideration.**

Thanks

Charleen

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**Sent:** September 24, 2019 2:53 PM  
**To:** Pelinda Deegan <pdeegan@PDFDCAD.NET>  
**Cc:** Charleen Greenhalgh <cgreenhalgh@town.harwich.ma.us>  
**Subject:** Permission to Participate Remotely for the AHT Meetings.

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Lawrence Brophy  
PO Box 81  
S. Harwich, MA  
02661-0081  
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Board of Selectmen  
Town Hall  
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I thank you and the Board of Selectmen in advance.

Sincerely,

Lawrence E. Brophy

TOWN OF HARWICH  
PROCEDURE FOR REMOTE PARTICIPATION

Remote Meeting Participation is authorized by amended Open Meeting Law regulation and is available to all municipal Boards, Committees and Commissions in accordance with the Attorney General's CMR 29.10 issued on November 11, 2011 (see attached) and approved by a vote of the Board of Selectmen on December 12, 2011. The Board of Selectmen on January 9, 2012 further adopted these local procedures for remote participation so long as a quorum of the body, including the chair or, in the chair's absence, the person authorized to chair the meeting, shall be physically present at the meeting location.

- 1) The Town of Harwich will limit remote participation to audio communication only.
- 2) A member of a Board, Committee or Commission who cannot attend a meeting for one or more of the five permissible reasons, must notify the chair/ acting chair that they qualify for and wish to participate remotely, or acting chair if the chair is seeking remote participation, and the chair /acting chair shall notify the Information Technology Director for set up of the tele-conference machine in a meeting room with a phone jack at least 24 hours prior to the scheduled meeting. (A cell phone with speaker phone or voice skype is an acceptable alternative technology but must be clearly audible to one another).
- 3) Chair or Acting Chair shall identify for the record any or all remote participants at the start of the meeting.
- 4) To assure accurate votes taken during the meeting, the Chair shall specifically ask for the remote participant's vote.
- 5) The meeting minutes shall reflect the member who participated by remote access.
- 6) Members are allowed to participate remotely up to three times per calendar year. If circumstances warrant an extension longer than three remote participations per year, the Board of Selectmen must vote to grant such extension.
- 7) Remote participation shall be limited to two (2) members at any meeting.
- 8) Cost of remote participation shall be borne by the remotely participating member.

The five permissible reasons allowed for remote participation are:

- 1) Personal illness;
- 2) Personal disability;
- 3) Emergency;
- 4) Military service; or
- 5) Geographic distance

Adopted at a Public Meeting of the Board of Selectmen on January 9, 2012.

## **Patti Macura**

---

**From:** maccebula1@verizon.net  
**Sent:** Thursday, September 26, 2019 4:20 PM  
**To:** Patti Macura  
**Cc:** jbeltis@comcast.net  
**Subject:** Traffic Safety Committee  
**Attachments:** Harwich traffic\_calming\_policy draft 090619.docx

Hi Patti

At the September 18, 2019 The Traffic Safety Committee voted unanimously to recommend the attached procedure to the Board of Selectmen for their consideration and adoption.

Please advise Chair Beltis when this is placed on the BOS agenda.

Many thanks

Linda Cebula  
Clerk for Traffic Safety Committee

# TRAFFIC CALMING POLICY TOWN OF HARWICH, MA

DRAFT DATE: September 6, 2019  
*Adopted by the Board of Selectmen \_\_\_\_\_*

## I. PURPOSE

This policy has been developed in order to establish a structured process and consistent criteria through which the Town can respond to and address residents' requests for traffic calming measures on Town maintained road. All requests shall be evaluated on a case-by-case basis to determine whether traffic calming in the requested location is warranted.

## II. INTRODUCTION

"Traffic calming" measures are physical road design elements intended to reduce vehicle speeds and improve driver attentiveness. The Institute of Traffic Engineers defines traffic calming as, "the combination of mostly physical measures that reduce the negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized users." When used in the appropriate settings, the reduction in vehicle speeds obtained through traffic measures reduces both the frequency and severity of collisions and improves the safety of both pedestrians and bicyclists.

Put simply, traffic calming is building and redesigning roadways with certain features and characteristics to induce drivers to slow down and pay more attention to their surroundings.

Speed bumps and/or humps are prohibited on town roads. The 2018 International Fire Code (IFC) Section 503.4.1 states that traffic calming measures placed on fire apparatus access roads "shall be prohibited unless approved by the fire code official." For private roads, residents are encouraged to contact the Fire Chief for review and assessment

## III. HOW IS TRAFFIC CALMING ACHIEVED?

Successful traffic calming requires a comprehensive approach that does not rely on any single solution (e.g. speed humps) or strategy. While there are various techniques available, a sound approach revolves around **Education, Enforcement, and Engineering**.

**Education:** Informs motorists how they can ease traffic impact through behavioral changes, and advises them about traffic management activities and opportunities for involvement.

**Enforcement:** Engages the Harwich Police Department to focus traffic and speed enforcement efforts in areas of particular concern.

**Engineering:** Combines physical measures to reduce the negative impact of motor vehicles, alter driver behavior, and improve conditions for pedestrian and non-motorized street traffic.

See Description of Traffic Calming Measures Appendix A for a more detailed discussion of traffic calming measures.

#### IV. PROCESS FOR INITIATING A TRAFFIC CALMING REQUEST

For Harwich, the Traffic Calming Policy is designed to provide a strong, consistent framework to guide traffic calming efforts, and to ensure:

- A formal and consistent process for evaluation requests for traffic calming
- A formal and consistent process for evaluating the efficiency of traffic calming efforts
- Maximum community awareness and support for traffic calming
- A clear funding strategy to implement recommended traffic calming measures

**Application:** An application shall be made to the Town of Harwich Department of Public Works (DPW). Please see Appendix B.

**Local Review Process.** The application shall be reviewed by the DPW, the Harwich Police, Fire and the Town Engineer. DPW will formally notify the applicant(s) and Traffic Safety Committee of the decision within 45 (forty-five) days.

The following process will be followed when considering requests for developing, designing, and implementing traffic calming measures on Harwich roadways.

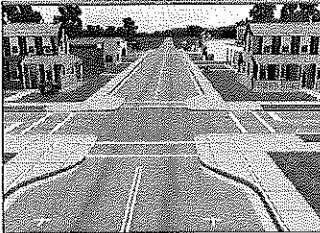




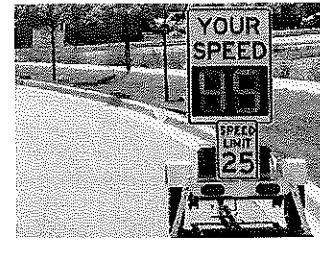
**For Local Roads:** For requests for traffic calming on Town roads, the DPW will make a decision as to whether the application is appropriate after reviewing recommendations and comments from the Police, Fire and Town Engineer and after reviewing the criteria outlined under “Traffic Study”, herein.

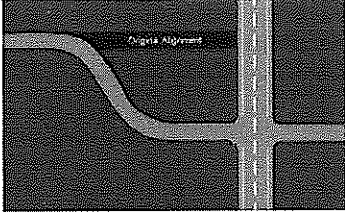

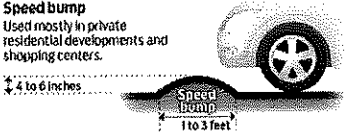
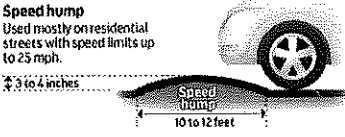
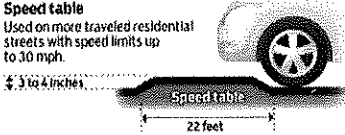
**For State Roads:** For requests for traffic calming on State Roads under the jurisdiction of MassDOT, the DPW will make a decision as to whether the application is appropriate after reviewing recommendations and comments from the Police, Fire and Town Engineer and after reviewing the criteria outlined under “Traffic Study”, below. The DPW may then make a request to MassDOT on behalf of the applicant.

**Traffic Study:** A traffic study *may* be required to assist in determining if the criteria are satisfied for the installation of traffic calming measures at a particular location. The components of a traffic engineering study will vary by location, but may include consideration of:

- Speed and volume on the street(s) involved
- Accident data reports, and other relevant reports
- Existing sidewalk network and ramps
- Adequacy of sight distances (absence of sight obstructions)
- Street characteristics including grade, curvature, pavement widths, number of vehicle and bicycle lanes
- Location of adjacent curb-cuts
- On-street parking
- Street lighting
- Location of drainage structures
- Traffic signal progression
- Other field observations, as needed

**Appendix A: Description of Traffic-Calming Measures**

<b>Devices &amp; Techniques</b>	<b>Descriptions</b>	<b>Photos</b>
<b>Bulbouts/Neckdowns/Chokers</b>	Curb extensions at intersections that reduce curb-to-curb roadway travel lane widths.	
<b>Center Islands</b>	Raised islands located along the centerline of a roadway that narrow the width at that location.	
<b>Chicanes/Lateral Shifts</b>	Curb extensions that alternate from one side of the roadway to the other, forming s-shaped curves.	
<b>Diverter</b>	Barriers placed diagonally across an intersection, blocking certain movements.	
<b>Education</b>	Instructions given to the residents on safe on-street vehicle travel.	
<b>Police Enforcement</b>	Involve employing the services of law enforcement agencies to impose the local safe vehicle laws, including those for posted speeds and traffic signal/signs.	

<p><b>Realigned Intersections</b></p>	<p>Changes in alignments that convert T-intersections with straight approaches into curving roadways meeting at right angles.</p>	
<p><b>Roundabouts</b></p>	<p>Barriers placed in the middle of an intersection, directing all traffic in the same direction.</p>	
<p><b>Speed Bumps</b></p>	<p>A ridge or bump set in a road surface, typically at intervals, to control the speed of vehicles.</p>	<p><b>Speed bump</b> Used mostly in private residential developments and shopping centers.</p> <p>4 to 6 inches</p> <p>1 to 3 feet</p> 
<p><b>Speed Humps</b></p>	<p>Rounded raised pavement devices placed across roadways to slow and/or discourage traffic.</p>	<p><b>Speed hump</b> Used mostly on residential streets with speed limits up to 25 mph.</p> <p>3 to 4 inches</p> <p>10 to 12 feet</p> 
<p><b>Speed Tables/ Textured Pavement/ Raised Crossings</b></p>	<p>Flat-topped speed humps often constructed with a brick or other textured material to slow traffic.</p>	<p><b>Speed table</b> Used on more traveled residential streets with speed limits up to 30 mph.</p> <p>3 to 4 inches</p> <p>22 feet</p> 



## Appendix B – TRAFFIC CALMING APPLICATION FORM

This form is used to request traffic calming measures on a Town maintained street or to request the Town make a request to MassDOT jurisdiction streets/roads. When this form is submitted, Town staff will evaluate the request to determine if the application is acceptable and make sure that the location is a Town maintained street. After the initial evaluation Town staff will explain how residents may put together a petition to promote community involvement in regard to the potential traffic calming measure. **Application to be submitted to the Harwich DPW, Highway & Maintenance, 273 Queen Anne Road, PO Box 1543, Harwich, MA 02645, with a copy to the Traffic Safety Committee, 732 Main Street, Harwich, MA 02645.**

### **Contact Information**

Name (please print) \_\_\_\_\_

Mailing Address \_\_\_\_\_

Phone Number \_\_\_\_\_ Email \_\_\_\_\_

### **Description of Request:**

Please describe the requested traffic calming location. Attach a map or picture if necessary: \_\_\_\_\_

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Please describe the nature of the neighborhood traffic and why it may be beneficial to institute traffic calming measures (attach additional sheet if necessary): \_\_\_\_\_

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Appendix B – NEIGHBORHOOD PETITION FORM (page 1)

Traffic Calming

Please fill out this form and return with attached sheets to: **Harwich DPW, Highway & Maintenance, 273 Queen Anne Road, PO Box 1543, Harwich, MA 02645, with a copy to the Traffic Safety Committee, 732 Main Street, Harwich, MA 02645.**

THE UNDERSIGNED AGREE TO THE FOLLOWING:

- i. All persons signing this petition do hereby certify that they own property or reside within the following area: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- ii. All persons signing this petition do hereby agree to the following problem in the defined area:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. All persons signing this petition do hereby agree that the following contact person(s) represents the neighborhood in matters pertaining to items 1 and 2 above:

Name of key contact person #1 (please print) \_\_\_\_\_

Legal Mailing Address \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

Name of key contact person #2 (optional) (please print) \_\_\_\_\_

Legal Mailing Address \_\_\_\_\_

Phone: \_\_\_\_\_ email: \_\_\_\_\_

*Please attach additional pages if necessary to discuss the request.*

Date Submitted: \_\_\_\_\_





## HARWICH BOARD OF SELECTMEN POLICY DEVELOPMENT

It is the intent of the Board of Selectmen to develop policies and put them in writing so that they may serve as guidelines and goals for the successful and efficient functioning of the town government.

The Board considers policy development its chief function, along with providing the wherewithal such as personnel, buildings, material, and equipment of the successful administration, application, and execution of its policies.

It is the Board's intention that its policies serve as sources of information and guidance for all people who are interested in, or connected with government of the Town.

Changes in needs, conditions, purposes and objectives will require revisions, deletions, and additions to the policies of present and future Boards. The Board will welcome suggestions for ongoing policy development.

### PRELIMINARY DEVELOPMENT OF POLICIES

Proposals regarding town government policies and operations may originate at any of several sources; a taxpayer, an employee, a member of the Board, the Town Administrator, a member of another board or committee, a consultant, a civic group, etc.

A careful and orderly process shall be used in examining such proposals prior to action upon them by the Board.

Final action on such proposals, whatever their source, shall be by the Board in accord with its policy on policy adoption. The Board shall take action on matters with due consideration for the recommendations presented to the Board by the Town Administrator, the relevant department head or committee.

### POLICY ADOPTION

Adoption of new policies or changing existing policies is solely the responsibility of the Board.

Policies and policy revisions introduced shall not be adopted until a subsequent meeting. Thus, time shall be given to permit further study and also to give opportunity to interested parties to react. However, temporary approval may be granted by the Board in lieu of formal policy to meet emergency conditions or special events which will take place before formal action can be taken. Such temporary approval shall be by unanimous vote at a public meeting. In all other cases, the First Reading and Second Reading procedures shall be followed as noted herein.

#### First Reading

The First Reading is a general and wide-ranging discussion of the principles and scope of a draft policy brought before the Board of Selectmen. During the course of the first reading, the scope and purpose of a policy are the subject of debate. This stage is intended to serve as a detailed examination of the proposed policy and an opportunity for the Board members to offer possible amendments for consideration by the entire Board.

Any member of the Board may propose an amendment to the measure and may further respond to improvements suggested during the first reading debate, or to arguments submitted by outside parties. At the conclusion of the first reading, the Board of Selectmen may vote that the policy be forwarded to the second reading stage or to refer the matter to another venue for consideration prior to advancement.

### Second Reading

Generally, the Second Reading brings a refined version of a policy before the Board for final consideration. The Second Reading is intended as a final discussion on the overall content of the amended policy.

During the course of the second reading, discussion and debate are limited only to minor amendments to individual clauses within a given policy and not, as noted above, the overall scope and purpose of the policy. If new amendments and clauses to a proposed policy are discussed and voted on, and if the overall scope and purpose of the policy have significantly changed as determined by a majority of the Board of Selectmen, the proposed policy may be reverted back to the First Reading stage for additional consideration. Any member of the Board of Selectmen may ask to vote whether or not a significant number of changes have occurred to warrant sending a proposed policy back to the First Reading stage. However; should any changes to the Second Reading document be made and so voted for inclusion by the Board, the final language should normally be referred to a subsequent meeting for a formal vote.

At the conclusion of discussion, and if no significant amendments have occurred which would otherwise preclude the proposed policy from being considered, the Board of Selectmen take a final vote on the proposed policy.

### ADMINISTRATION IN POLICY ABSENCE

In cases when action must be taken within the town government where the Board has provided no guides for administrative action, the Town Administrator shall have the power to act.

His/her decisions, however, shall be subject to review by the Board at its next regular meeting. It shall be the duty of the Town Administrator to inform the board promptly of such action and of the need for policy.

### SUSPENSION OF POLICIES

The operation of any section or sections of Board policies not established by law or contract may be temporarily suspended by a unanimous vote of the Board members present at any regular or special meeting.

HARWICH BOARD OF SELECTMEN  
Harwich, Massachusetts

ADOPTED: September 12, 2005  
AMENDED: N/A



# Cape & Vineyard Electric Cooperative, Inc.

23H2 White's Path, Suite 2, South Yarmouth, MA 02664  
774-722-1812 www.cvecinc.org

10.1.19

## Harwich: Report on Round 4 PV/Storage Projects

The Town of Harwich participated in the Cape & Vineyard Electric Cooperative's (CVEC) Round 4 Solar PV solicitation process for roof mounted, ground mounted, and solar canopies, with or without a battery storage option. As part of this solicitation effort, approximately 20 project sites on Cape Cod and Martha's Vineyard were offered to solar developers for PV/Storage development. Harwich offered five sites for potential projects.

Note that for those projects involving a land lease for ground mounted solar or solar canopies, Town Meeting authorization for leases was previously received. For roof mounted solar, the Board of Selectmen have authorized leasing the space as per statute.

RFP responses were received in the Spring of 2019 and evaluated by CVEC and the towns' representatives, Sean Libby and Roman Greer. Based upon this evaluation process, awards were made to Con Edison Solutions and Greenskies, as these vendors offered the best overall project development, and best overall financial benefit to the Town. Subsequent to this award, a significant amount of time has been spent by CVEC drafting, negotiating and finalizing contracts related to this award.

The following chart outlines the selections identifying the PV/Storage projects and the selected vendors:

PROJECT	Harwich As of Right Site: Community Solar Option	Harwich Community Center: power to feed the facility	Harwich Cranberry Valley Cart Barn: power to feed the golf carts	Cranberry Valley Ground Mount: power to feed the maintenance facility building	Harwich Safety Station: power to feed the facility

Vendor	ConEd	ConEd	Greenskies	Greenskies	ConEd
Battery to be Included	NO	NO	YES	YES	NO
FORM OF PV INSTALLATION	Ground Mount with LEASE	Solar CANOPY	ROOF Mount	GROUND Mount	Solar CANOPY
Nameplate Size: in Kilowatts	1310	360	30	252	210
BID Price with projects in Block 4	Lease payment of \$112,685 per year	PPA Fee of \$0.054 per kilowatt hour	PPA Fee of \$0.102 per kilowatt hour	PPA Fee of \$0.083 per kilowatt hour	PPA Fee of \$0.016 per kilowatt hour

The proposed batteries are to be lithium ion systems intended to extend off-grid resiliency for the facilities as well as to eliminate current demand charges imposed by the utility for high peak power surge demand.

With the exception of the As of Right PV project, which entails an annual rent payment, all projects' power will offset host facilities' needs to pull equivalent power from the grid. With grid-based estimated electric costs currently at \$0.20 per kilowatt, offsetting grid power would save the town \$0.20 per kWh used, minus the Power Purchase Fee and the CVEC Operational Adder of \$0.005. In the least favorable PPA Fee scenario, the Cart Barn, the savings per kWh is estimated at \$0.20 - \$0.102 - \$0.005, equaling savings of \$0.09 per kilowatt hour.

It is critical to note that the above calculation is dependent on the Power Purchase Cost (PPA) Fees' and Lease payment's finalization, which are dependent on where in the Solar Massachusetts Renewable Target (SMART) program Block the projects land, as well as the outcome of the Eversource Interconnection Study. Either of these results could have financial implications that would render the projects no longer financially viable. Only by submitting the projects to both Eversource and the state's SMART program can the outcome be determined. The submissions are competitive, so CVEC is working extremely hard to get the projects' contracts executed asap. It is critical that the submissions to Eversource and the SMART program go forward immediately. Note that all contracts carry the caveat allowing termination of all executed agreements if the Eversource or SMART results are disappointing.

Currently, CVEC has delivered all projects' final contract agreements to the Town of Harwich, which include (per project): 1) a Power Purchase Agreement between CVEC and the developer; 2) a Lease Agreement for the Ground Mount/Solar Canopy or Roof Mount solar array between the developer and the Town and 4) an Inter-governmental Net Energy Power Sales Agreement between CVEC and the Town. In the case of the Harwich As-of-Right PV project, a Lease without a PPA has been delivered for execution, along with the CVEC Services Agreement which will allow CVEC to remain as the project representative when dealing with the developer and the utility.

It is CVEC's understanding that the Board of Selectmen will be required to vote to approve the Leases and the IGA agreements, at which time CVEC can finalize the PPA with the developer. CVEC proposes the following motion:

"Move to approve the Town Administrator authorization to execute all contracts as detailed in the 10.1.19 CVEC memo for town participation in the CVEC Round 4 PV/Storage Initiative".

CVEC looks forward to bringing the Harwich projects to realization so the Town can increase the ongoing savings from renewables through CVEC.





**NET ENERGY POWER PURCHASE AGREEMENT**  
**FOR SOLAR PHOTOVOLTAIC SYSTEM**  
**BETWEEN THE**  
**CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.**  
**AND**  
**CED CAPE SOLAR, LLC**

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**[HOST]**

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**SPECIMEN NET ENERGY POWER PURCHASE AGREEMENT  
FOR SOLAR PHOTOVOLTAIC SYSTEM  
BETWEEN THE  
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.  
AND  
CED CAPE SOLAR, LLC**

THIS NET ENERGY POWER PURCHASE AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM (“Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_ (the “Effective Date”), by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Buyer”) and CED Cape Solar, LLC, a Delaware limited liability company (“Developer”). Buyer and Developer are in some cases hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, Developer and the [MUNICIPALITY] (“Host”), a member of Buyer, have entered into a Lease Agreement dated \_\_\_\_\_ (“Lease”) for Developer to develop a roof mounted, ground mounted, or solar canopy [TO BE SELECTED PER APPROPRIATE PROJECT] solar photovoltaic system, which may or may not include an accompanying battery energy storage system (“PV System”) located on Host’s property (the “Premises”), as more particularly described in Exhibit A attached hereto;

WHEREAS, on behalf of the Host, Buyer issued a request for proposals for the PV System (the “RFP”);

WHEREAS, Developer is in the business of designing, procuring, installing, testing, commissioning, owning, operating and maintaining solar power electric generation facilities and battery energy storage systems;

WHEREAS, Developer proposes, pursuant to the Lease, to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises;

WHEREAS, Developer desires to sell to Buyer, and Buyer desires to purchase from Developer, all of the Net Energy (as defined herein) generated by the PV System, and otherwise in accordance with the terms of this Agreement; and

WHEREAS, Buyer desires, to the extent permitted by law, to sell the Net Energy generated by the PV System during the Term for the benefit of Host, pursuant to an Intergovernmental Net Energy Power Sales Agreement (“Inter-Governmental PSA”), and to other Cooperative Members (as defined herein).

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Buyer and Developer agree as follows:

## ARTICLE I: DEFINED TERMS; RULES OF INTERPRETATION

### 1.1 Defined Terms

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context.

Words defined in this Article I that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**“Affiliate”** means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

**“Agreement”** means this Net Energy Power Purchase Agreement for Solar Photovoltaic System, including all Exhibits, attachments, and schedules hereto and any amendments or addenda.

**“Alternative On-bill Credit”** means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2.

**“Alternative On-bill Generation Unit”** has the meaning as set forth in in 225 CMR 20.02.

**“Annual System Degradation Factor”** means the factor expressed in percent by which the Guaranteed Annual Energy Output of the PV System shall decrease from one Contract Year to the next Contract Year as set forth in Exhibit C. In the case of added battery storage, Annual System Degradation Factor shall also mean the factor expressed in percent by which the battery system shall decrease in power availability from one year to the next.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the selling and purchasing of power therefrom.

**“Appraised Value”** means the fair market value assigned to the PV System, as determined by the Independent Appraiser using customary and accepted appraisal methods in the energy and solar electricity industry, and to any emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements in connection with the PV System to which Developer is a party and which are assignable to Buyer, but not including this Agreement or the Lease.

**“Bankrupt”** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other

relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Battery Energy Storage System”** means battery or batteries and necessary equipment and controls to extend the power available to the host facility when installed in conjunction with a renewable energy resource and/or the grid.

**“Business Day”** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Buyer”** has the meaning set forth in the introductory paragraph of this Agreement.

**“Buyer Event of Default”** has the meaning set forth in Section 9.1.

**“Commercial Operation”** means that the PV System is ready for regular, daily operation, has undergone testing as provided in the Common Technical Specifications attached as Exhibit E to the Lease, is in compliance with Applicable Legal Requirements in all material respects (including, but not limited to, a grant of permission to operate from the Distribution Company, and completion of all final inspections), and is capable of producing Energy and delivering it to the Point of Delivery and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E to the Lease, are complete and provided to Host and, as applicable, CVEC.

**“Commercial Operation Date”** means the first day on which the PV System is ready for Commercial Operation, as certified in writing by Developer to Buyer in the Notice of Commercial Operation.

**“Commercially Reasonable”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics, and regulations.

**“Common Technical Specifications”** means those technical specifications and requirements for the PV System, contained in Exhibit E to the Lease.



**“Contract Year”** means the consecutive 12-month period commencing on the Commercial Operation Date.

**“Construction Commencement Date”** has the meaning set forth in the Lease.

**“Cooperative Member(s)”** means any municipality, county or political subdivision thereof, or body politic, that has duly joined Buyer as a cooperative member.

**“Developer”** has the meaning set forth in the Preamble.

**“Developer Event of Default”** has the meaning set forth in Section 9.2.

**“Distribution Company”** means Eversource Electric Company or any successor thereto.

**“Distribution Company System”** means the electric distribution system operated and maintained by the Distribution Company.

**“DOER”** means the Massachusetts Department of Energy Resources.

**“Effective Date”** is the date first set forth in the introductory paragraph of this Agreement.

**“Energy”** means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment tax credits under Section 48 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

**“Environmental Attributes”** means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or any expansion, reenactment, extension or replacement thereof that may come into effect in the future (except Shared Environmental Attributes), including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) Class I Renewable Generation Attributes (as such term is defined at 225 C.M.R. 14.02) or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iii) tax credits, incentives or depreciation allowances established under any federal or state law, (iv) energy investment tax credits under section 48 of the Internal Revenue Code of 1986, as amended, (v) incentives under the Solar Massachusetts Renewable (SMART) Program as provided in 225 CMR 20.00, and (vi) other allowances however named or referenced, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Net Energy generated by the PV System during the Term and in which Developer has good and valid title. Environmental Attributes shall not include net metering credits, or any capacity credits for the PV System, including credits or payments related to the Forward Capacity Market or Shared Environmental Attributes.

**“Financier”** means any individual or entity providing money or extending credit for the PV System to Developer for: (1) the construction, term or permanent financing of the PV System; (2) a tax equity investment made in part in an expectation of an allocation of tax and other benefits;

or (3) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

**“Financing Agreement”** means any credit agreement, reimbursement agreement, note purchase agreement, trust indenture, lease agreement or other document (and any documents relating to or ancillary to the foregoing documents) identified from time to time in writing by Developer to Buyer as a “Financing Agreement” under which Developer or any Affiliate of Developer obtains financing that is secured by all or substantially all of the assets of Developer (including any credit enhancement for any bonds) for the acquisition, development, construction, modification, repair or operation of the PV System or any refinancing thereof or any equity take-out financing for costs incurred for any of the foregoing purposes.

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under the Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in the Agreement to the contrary, *Force Majeure* shall not mean:

- (a) Ordinary inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Any nonpayment under this Agreement or any third party agreement.
- (e) Economic hardship of either Party.

**“Forward Capacity Market”** means the locational capacity market in which ISO New England projects needs of the power system three years in advance and holds an annual auction to purchase power resources to satisfy the New England region future electricity demand needs.

**“Good Engineering Practice”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including the Buyer in its regulatory capacity but not as Party to this Agreement.

**“Governmental Charges”** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, including but not limited to Monthly Minimum Reliability Contributions, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Distribution Company, or other similar entity, on or with respect to the Net Energy or this Agreement.

**“Guaranteed Annual Energy Output”** means the minimum amount of Net Energy that is guaranteed by the Developer to be generated by the PV System in a Contract Year, as set forth in Exhibit C.

**“Host”** has the meaning set forth in the Recitals.

**“Independent Appraiser”** means an individual who is a member of an accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the Appraised Value of solar photovoltaic generating facilities of the size and age and with the operational characteristics of the PV System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Host, any Cooperative Member, Buyer, Developer or any Affiliate of Developer.

**“Interconnection Agreement”** means the Interconnection Service Agreement and any exhibits thereto, entered into with the Distribution Company which authorizes the interconnection of the PV System with the Distribution Company System, which confirms the eligibility of the PV System for treatment as a Solar Net Metering Facility and which specifies whether any Net Excess Generation (as defined in the Tariffs) shall be subject to allocation or cash-out.

**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host Town and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

**“Inter-Governmental PSA”** means the Inter-Governmental Net Energy Power Sales Agreement for the PV System entered into between Buyer and Host.

**“ISO”** means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement

dated as of February 1, 2005) and the Interim Independent System Operator Agreement as both Agreements are amended, superseded or restated from time to time.

**“kWh”** means kilowatt hour.

**“Lease”** has the meaning set forth in the Recitals to this Agreement.

**“Metering Device(s)”** means any and all revenue quality meters installed by Developer, Buyer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale to Buyer.

**“Monthly Minimum Reliability Contribution”** has the meaning set forth in G.L. c. 164, §139(j) and 220 CMR 18.10, as approved by the Department of Public Utilities in the Distribution Company’s tariff.

**“Net Energy”** means the actual and verifiable amount of Energy generated by the PV System and delivered to Buyer at the Point of Delivery or allocated to Buyer in excess of any Energy consumed by the PV System (including transformers) as metered in kWh at the Developer’s Metering Device, and in conformance with Applicable Legal Requirements and the Tariffs.

**“Net Energy Price”** means the amount paid by Buyer to Developer for each kWh of Net Energy and capacity sold by Developer to Buyer pursuant to this Agreement, as set forth in Exhibit C attached hereto.

**“Net Metered Generation Unit”** has the meaning set forth in 225 CMR 20.02.

**“Net Metering”** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s Tariffs.

**“Net Metering Credit”** has the meaning set forth in 220 C.M.R. 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

**“Notice of Commercial Operation”** has the meaning set forth in Section 4.2.F. of this Agreement.

**“Notice of Permits and Interconnection Costs”** means the written notice from Developer to Buyer that Developer has obtained all final permits or required approvals (excepting an interconnection agreement) required to construct the PV System and identifying all Distribution Company estimated infrastructure upgrade costs associated with interconnection of the PV System, as evidenced in writing by the Distribution Company.

**“Outside Construction Commencement Date”** means the later of ninety (90) days after the Effective Date or ninety (90) days after the Developer’s application has been accepted by the SMART Program.

**“Outside Commercial Operation Date”** means the later of one-hundred eighty (180) days from the Effective Date or one-hundred eighty (180) days after the Developer’s application has been accepted by the SMART Program.

**“Person”** means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

**“Point of Delivery”** means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

**“Premises”** has the meaning set forth in the Recitals to this Agreement, and is the area in which Host has assigned to Developer the necessary rights to design, procure, install, test, commission, own, operate, maintain and remove the PV System, as further identified in Exhibit A.

**“Prime Rate”** means the rate published from time to time in the “Money Rates” section of The Wall Street Journal, as the prime-lending rate. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

**“Production Shortfall”** means the amount, expressed in kWh, by which the actual amount of Net Energy generated by the PV System in any Contract Year is less than the Guaranteed Annual Energy Output for that Contract Year.

**“Purchase Price”** has the meaning ascribed to it in Section 13.3 of this Agreement.

**“PV System”** means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy sold and purchased under this Agreement, as further identified in Exhibit B, attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

**“PV System Assets”** means each and all of the assets of which the PV System is comprised, including Developer’s solar energy panels, mounting systems, canopies, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

**“PV System Loss”** means loss, theft, damage or destruction of the PV System or any portion thereof, or any other occurrence or event that prevents or limits the PV System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or *Force Majeure*).

**“RFP”** has the meaning set forth in the Recitals hereto.

**“Shared Environmental Attribute”** means any credit, benefit, reduction, offset, financial incentive or other beneficial allowance that may come into effect in the future (except any expansion,

reenactment, extension or replacement of any credit, benefit, reduction, offset, financial incentive or other beneficial allowance that is in effect as of the Effective Date).

“**SMART Program**” means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

“**SMART Tariff**” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Solar Net Metering Facility**” has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

“**Solar Tariff Generation Unit**” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Solar Incentive Payment**” has the meaning set forth in 225 CMR 20.08.

“**Term**” has the meaning set forth in Section 3.2 herein.

“**Termination Date**” means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

## **ARTICLE II: OBLIGATION TO MODIFY AGREEMENT**

Upon implementation, after the Effective Date, by the Massachusetts Department of Public Utilities, the DOER, or other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the anticipated economic benefits of the Parties, in particular (i) any Applicable Legal Requirement regarding Net Metering, or (ii) any rule or regulation amending 225 CMR 14.00 (Renewable Energy Portfolio Standard) or 225 CMR 20.00 (Solar Massachusetts Renewable Target (SMART) Program), the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

## **ARTICLE III: TERM**

### **3.1 Conditions Precedent.**

The obligations of the Buyer and Developer under this Agreement shall be conditioned upon the following requirements:

A. execution by Developer and Host of the Lease as of or of even date with the Effective Date of this Agreement.

B. execution by Buyer and Host of the Inter-Governmental PSA as of even date with the Effective Date of this Agreement.

### 3.2 Term

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall remain in effect until the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date or such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

### 3.3 Early Termination.

A. Early Termination. Either Party may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(i) in the event that Developer has not prepared for submission to the Distribution Company a complete interconnection application seeking authorization to construct and interconnect the PV System to the Distribution Company System within forty-five (45) days of the Effective Date;

(ii) in the event that the Lease has been terminated for cause;

(iii) in the event the Buyer determines, in its sole and absolute discretion, that the PV System will not be eligible for Net Metering Credits or Alternative On-Bill Credits. This right of termination exists for fifteen (15) days upon Buyer’s receipt of the Notice of Permits and Interconnection Costs but may be waived in Buyer’s sole discretion to accommodate Developer’s construction schedule;

(iv) in the event that Developer has not entered into a binding purchase order for the major components of the PV System, including the PV panels, racking system, inverters, transformers, and, when applicable, Battery Energy Storage System within thirty (30) days after receipt of a fully executed Interconnection Agreement;

(v) in the event that during the interconnection process the Distribution Company imposes a cost for utility upgrades necessary to interconnect the PV System in excess of \$10,000, and the Parties are not able to reach agreement within sixty (60) days of Developer’s receipt of such notice from the Distribution Company on how such cost will be allocated among the Parties. The Parties agree that for each \$10,000 in excess of the initial threshold of a cost of \$10,000 for utility upgrades to be paid solely by the Developer, the Developer may increase the Net Energy Price by an amount per kWh as specified in Exhibit C and Buyer shall determine in its sole discretion whether to accept such increase in Net Energy Price, in which case this condition shall be deemed satisfied;

(vi) in the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Buyer, in each of its reasonable discretion, is not finalized and

executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, provided, however, that Buyer will extend the deadline for compliance with this subsection in thirty (30) day increments, upon Buyer's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement, and further that said deadline will be automatically extended to the extent that achievement of the same is delayed while awaiting utility action;

B. Buyer's Right to Terminate Other Agreements with Developer. Buyer shall have the right, but not the obligation, to terminate any one or more of each net energy power purchase agreements it may have with Developer, or any Affiliate of Developer ("Additional PPA"), prior to the Commercial Operation Date of such Additional PPA, in the event that prior to the Commercial Operation Date, the Developer, as a result of gross negligence or willful misconduct, has failed to fully comply with all Applicable Legal Requirements.

C. Notice/Waiver. Either Party may waive any condition precedent applicable to it. The Party proposing to terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be commercially reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement the Parties shall have no further obligations hereunder except those of the Developer in subsection D. below and those which survive expiration or termination of this Agreement.

D. Buyer's Remedy Upon Early Termination. In the event this Agreement is terminated pursuant to Section 3.3:

(i) Upon early termination due to fault of Developer, Developer shall pay to Buyer within thirty (30) days of the Termination Date a sum of \$2,500 to cover Buyer's cost to procure another developer to design, procure, install, test, commission, own, operate and maintain a solar PV System, provided that if such payment is timely received, Developer shall have no further liability under this Agreement, except for any obligations that survive termination.

(ii) In the event this Agreement is terminated pursuant to Section 3.3.A(i), 3.3.A(ii) (if the termination for cause is the fault of the Developer), 3.3.A(iii) (if the fault of the Developer), 3.3.A(iv), 3.3.A(v), or 3.3.A(vi), then Developer shall assign, at no cost to Developer, permits that run with the Premises to Buyer or Host after consultation with each. In addition to these remedies, regardless of which early termination sections in Section 3.3 apply, the Buyer may purchase any drawings, designs, samples, applications, reports or approvals prepared and/or obtained by Developer as of the Termination Date for development of the PV System for cost plus twelve percent (12%); provided, however, that in the event of any assignment or purchase under this provision, any permits, drawings, designs, samples, applications, reports or approvals shall be provided without warranty of any kind and the use of such assigned or purchased permits, drawings, designs, samples, applications, reports or approvals shall be at Buyer's sole risk.



(iii) In the event that this Agreement is terminated before the Developer receives Interconnection approval, not due to default by Buyer, then in addition to other remedies available under this Agreement, the Developer shall provide the Buyer with the Interconnection Study and the Host and CVEC shall agree to forego Liquidated Damages under this Agreement and the Lease. In the event the Interconnection Study is provided pursuant to this provision, such Interconnection Study shall be provided without warranty of any kind and the use of such Interconnection Study shall be at Buyer's sole risk.

#### **ARTICLE IV: OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL**

##### **4.1 Ownership of the PV System.**

A. Title. Subject to the rights provided to Buyer and Host pursuant to Article XIII (PV System Purchase and Sale Options) and other terms hereof and the Lease, the PV System and all alterations, additions, improvements or installations made thereto by Developer and all Developer property used in connection with the installation, operation and maintenance of the PV System is, and shall remain, the personal property of Developer.

B. Security Interests in PV System. Except as otherwise provided herein, Buyer acknowledges and agrees that Developer may grant or cause to be granted to a Financier a security interest in the PV System and in Developer's rights to payment under the Agreement.

C. No Expenditures. Developer and Buyer acknowledge and agree that Buyer shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair, or removal of the PV System.

##### **4.2 Construction of PV System by Developer**

A. Construction. Developer shall, at its sole cost and expense, (i) design, construct, operate, and maintain the PV System in accordance with Applicable Legal Requirements, in good condition and repair in accordance with applicable contractor warranties or guarantees, manufacturer's warranties, instructions and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E to the Lease, applicable requirements of the insurance policies maintained by Buyer, Host and Developer with respect to the PV System, and the terms of this Agreement, and (ii) monitor the PV System performance with respect to any PV System malfunction causing a material unanticipated loss of Net Energy such that the same will be discovered and rectified in accordance with Good Engineering Practice. The PV System will, when completed, comply with all Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit E of the Lease, except as waived thereunder.

B. Governmental Approvals. Except as otherwise specified herein, the Developer shall be responsible at its sole cost for designing, financing, procuring, installing, testing, commissioning, operating and maintaining the PV System and obtaining all approvals and permits required under the Applicable Legal Requirements for Developer's use of the Premises and for the PV System from any Governmental Authority having jurisdiction in the matter. Developer will

promptly inform Buyer of all significant developments relating to the issuance of such approvals or permits.

C. Ownership of Drawings, Reports and Other Materials. All drawings, reports and materials prepared by the Developer in the performance of this Agreement shall, upon reasonable request, be made available to Buyer.

D. Reporting.

(i) Ten (10) days prior to the first anniversary of the Commercial Operation Date, and every year thereafter on the same date, and upon the reasonable request of Buyer, Developer shall provide Buyer with an electronic report of the energy generation from the PV System, consistent with the letter and intent of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines.

(ii) Developer shall provide Buyer access to the PV System's data acquisition system required by Section B.13 of the Common Technical Specifications set forth in Exhibit E to the Lease. If a Battery Energy Storage System is included in the PV System, Developer shall provide Buyer access to the Battery Energy Storage System's data acquisition system and operational controls required by Section B.14 of the Common Technical Specifications set forth in Exhibit E to the Lease.

E. Interconnection with Distribution Company System. Except as otherwise provided herein, Developer will obtain at its sole cost all approvals and agreements required for Developer's interconnection of the PV System to the Distribution Company System. Developer will promptly inform Buyer of all significant developments relating to such interconnection matters. If any material changes in plans and/or specifications to the PV System are required by the Distribution Company, then Developer shall submit such changes, if any to Buyer for its approval, which shall not be unreasonably withheld. Developer will provide Buyer a copy of the Permission to Operate in electronic format.

F. Notice of Commercial Operation. Subject to the provisions of this Agreement, Developer shall notify and represent to Buyer when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to Buyer the Commercial Operation Date.

G. Record Plans. Within ninety (90) days following the issuance of the Notice of Commercial Operation, Developer shall prepare and deliver to Buyer detailed record plans accurately depicting the PV System and, if applicable, the Battery Energy Storage System including, without limitation, interconnection applications and utility agreements, all wiring, lines, conduits, piping, other structures or equipment and, for any Battery Energy Storage System, the software controls manual.

#### 4.3 Duty to Maintain

##### A. Maintenance; Repairs.

(i) Developer shall take good care of the PV System, conduct all required maintenance and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the PV System in first class order, repair and condition, in accordance with Applicable Legal Requirements and Good Engineering Practice (“Developer’s Maintenance Obligations”).

(ii) Buyer shall have no duty or liability to Developer with respect to the maintenance, repair or security of the PV System.

B. Alterations. Developer shall have the right from time to time both before and after the Commercial Operation of the PV System and at Developer’s sole cost and expense to make additions, alterations and changes, structural or otherwise to the PV System, subject, however, in all cases to the following:

(i) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration pursuant to this Section, a “Substantial Alteration”) except after prior written notice to and consent from Buyer, which consent shall not be unreasonably withheld;

(ii) No later than completion of any alteration or Substantial Alteration, Developer will provide Buyer with complete copies of all final plans and specifications therefor not previously provided; and

(iii) No alteration shall be made that conflicts with the Host’s existing and future uses enumerated in Exhibit D to the Lease.

C. Operations Manual. Developer shall deliver to Buyer an operations, maintenance and parts manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit E of the Lease.

D. Compliance with Laws; Professional Standards. Developer, at Developer’s sole expense, shall diligently and fully comply with all Applicable Legal Requirements (including, but not limited to, any and all applicable local, state and federal wage laws). In addition, Developer shall ensure that the PV System is operated and maintained in accordance with Good Engineering Practice. In the case of Battery Energy Storage System, a fire prevention plan will be approved by local fire chief.

#### 4.4 Late Completion and Developer Payments.

Late Completion. In the event that Developer fails to achieve Commercial Operation by the Outside Commercial Operation Date, Developer shall pay to Buyer liquidated damages (“Delay Liquidated Damages”). Delay Liquidated Damages shall be the product of: (i) the

estimated daily energy output from the PV System (kWh) for each day the PV System fails to achieve the following milestones; and (ii) the difference between the average applicable all-inclusive electricity price charged by the Distribution Company at the Premises and the Net Energy Price for such estimated daily energy output, as set forth in Exhibit C. Delay Liquidated Damages may be assessed upon written notice at the discretion of Buyer.

Notwithstanding the foregoing, Developer shall not be responsible for Delay Liquidated Damages unless such delay is solely due to causes within Developer's control, and shall exclude, without limitation, delays due to Buyer's failure to perform its obligations hereunder, delays caused by buyer or the utility, delays in receiving approvals from Governmental Authorities and events of Force Majeure. Developer shall not be responsible for Delay Liquidated Damages in the event that Developer cannot satisfy the Outside Commercial Operation Date milestone because Developer lacks a permit, approval or Interconnection Agreement necessary to commence construction and/or Commercial Operation of the PV System, and Developer is utilizing Commercially Reasonable efforts to secure such permit, approval or Interconnection Agreement. The Parties recognize the delays, expense and difficulties involved in proving the actual losses or damages in a judicial or other proceeding, and agree that the Delay Liquidated Damages are reasonable compensation to Buyer. Delay Liquidated Damages owed to Host shall be resolved between Buyer and Host through the Inter-Governmental Agreement.

## **ARTICLE V: PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES**

### **5.1 Purchase and Sale of Net Energy**

A. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Developer shall make available to Buyer, and Buyer shall take delivery of at the Point of Delivery, all of the Net Energy generated by the PV System.

B. In the event that the System is qualified as a Solar Tariff Generation Unit under the SMART Program, the Distribution Company may elect to retain demand resource payments on account of the System's participation in the ISO Forward Capacity Market. In the event that the System is not qualified as a Solar Tariff Generation Unit under the SMART Program, or payments from the ISO Forward Capacity Market are not retained by the Distribution Company, the Buyer shall be entitled to receive demand resource payments from the ISO Forward Capacity Market associated with the Net Energy.

C. In the event that the System is qualified as a Solar Tariff Generation Unit under the SMART Program and the project qualifies to receive Solar Incentive Payments, the value of the Solar Incentive Payments will be attributed to the Buyer. If the Distribution Company remits Solar Incentive Payments to the Developer, the value of the Solar Incentive Payments will be accredited to the benefit of Buyer.

D. To the extent permitted by law, Host or Buyer, on behalf of Host, shall obtain Net Metering or Alternative On-bill Credits for the Net Energy in accordance with Schedule Z of the interconnection application filed by Developer with the Distribution Company on Host or Buyer's behalf, and Host or Buyer shall have the right to reallocate in accordance with Schedule Z such

credits to the Host, in accordance with the Inter-Governmental PSA, or to other governmental entities.

## 5.2 Price for Net Energy

A. Buyer shall pay Developer for the Net Energy, as metered at the Metering Device(s), at the applicable Net Energy Price. The payment made by Buyer to Developer shall equal the Net Energy for the relevant period multiplied by the Net Energy Price for such period.

B. Adjustments to Net Energy Price. In all cases, any adjustments in the Net Energy Price shall be made to the nearest hundredth of a cent.

## 5.3 Title and Risk of Loss of Net Energy

Title to and risk of loss of the Net Energy will pass from Developer to Buyer at the Point of Delivery. Developer warrants that it will deliver the Net Energy to Buyer at the Point of Delivery free and clear of all liens, security interests, claims, and other encumbrances.

## 5.4 Net Metering

If the PV System is a Net Metered Generation Unit, s, each of Developer and Buyer agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering as a Solar Net Metering Facility, pursuant to M.G.L. c. 164, §§138 – 140, 220 CMR 18.00, and the Tariffs, as may be amended from time to time by a Governmental Authority. Buyer and Developer acknowledge and agree that Buyer or Host (if so designated by Buyer) shall act as the Host Customer, as defined in 220 CMR 18.02 of the Distribution Company's Net Metering Tariff, M.D.P.U. No. 163, for the PV System. To the extent that the Distribution Company elects not to purchase Net Metering Credits from Buyer, Buyer shall assign the Net Metering Credits to Host and/or other governmental entities.

## 5.5 Governmental Charges.

A. Developer is responsible for local, state and federal income taxes attributable to Developer for income received under this Agreement.

B. Developer is responsible for all real and personal property taxes, assessments, use taxes and all other charges and fees assessed against the PV System. The Parties acknowledge and agree that within thirty (30) days of Developer's payment of such charges and fees, Developer will invoice Buyer for the same, and Buyer will have ninety (90) days to reimburse Developer for such charges and fees.

C. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Net Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

## 5.6 Guaranteed Annual Energy Output.

A. Developer guarantees that the PV System will produce the Guaranteed Annual Energy Output in each Contract Year, as adjusted by the Annual System Degradation Factor. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Guaranteed Annual Energy Output shall be decreased by the Annual System Degradation Factor, as shown on Exhibit C.

B. In the event that a Production Shortfall exists in any Contract Year, the Developer shall owe Buyer a sum equal to the product of (i) the average applicable all-inclusive rate charged by the Distribution Company in any Contract Year for Energy at the Premises minus the applicable Net Energy Price; and (ii) the Production Shortfall. Buyer may elect to set-off payments due and owing under Section 5.2(a) against the Production Shortfall damages payable to Buyer under this Section 5.6(b) for the first two (2) billing cycles of the subsequent Contract Year. In the event that any damages remain payable to Buyer after the second billing cycle, Developer shall pay Buyer the remaining amounts due within thirty (30) days of the end of the second billing cycle.

## **ARTICLE VI: ENVIRONMENTAL ATTRIBUTES**

### 6.1 Title to Environmental Attributes

All Environmental Attributes relating to the PV System or the Net Energy will be and remain property of Developer. Developer shall have all right, title, and interest in and to any and all Environmental Attributes, and Buyer shall have no right, title or interest in or to any such Environmental Attributes. The Parties shall use Commercially Reasonable efforts to modify the terms hereof with the mutual intent to allocate the value of any Shared Environmental Attributes between each other on a 50/50 basis.

### 6.2 Reporting of Environmental Attributes

Developer shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Net Energy. Except as set forth in Section 6.1, Buyer shall not report to any Person that any Environmental Attributes relating to the Net Energy belong to any Person other than Developer.

## **ARTICLE VII: METERING DEVICE(S) AND METERING; BILLING**

### 7.1 Metering Equipment

The Parties acknowledge and agree that Developer shall provide, install, own, operate and maintain the Metering Device(s), except for the Metering Device owned and installed by the Distribution Company. Developer shall maintain and test the Metering Device(s) in accordance with Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit E to the Lease.

### 7.2 Measurements

Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer. Developer shall maintain and test its Metering Device(s) generally in accordance with the same terms and conditions applicable to Metering Device(s) installed for the purpose of delivering Energy to the Distribution Company and the calculation of Net Metering Credits, but in any event no less than every two (2) years. Developer shall bear the cost of the testing of its Metering Device(s) and the preparation of test reports, as provided for in Section 7.3(d) below.

### 7.3 Testing and Correcting.

A. Once per calendar year, Buyer may request a test of the Developer's Metering Device(s). Following any meter test, if the Developer's Metering Device(s) is found to be accurate or inaccurate within  $\pm 2\%$ , then Buyer shall bear the costs of the meter test and reconciliation. If the Developer's Metering Device(s) is found to be inaccurate by more than  $\pm 2\%$ , or if the Metering Device(s) is for any reason out of service or fails to register, then Developer shall bear the costs of the meter test and reconciliation.

B. If a Developer's Metering Device(s) is found to be inaccurate by  $\pm 2\%$  or less, any previous recordings of the Metering Device(s) shall be deemed accurate. If a Developer Metering Device(s) is found to be inaccurate by more than  $\pm 2\%$  or if such Metering Device(s) is for any reason out of service or fails to register, then: (i) Developer shall promptly cause the Metering Device(s) found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy; (ii) Developer shall send an invoice to Buyer the following month estimating the correct amounts of Net Energy delivered or allocated during the periods affected by such inaccuracy, service outage or failure to register; and (iii) Developer shall estimate the correct amount of Net Energy in accordance with Good Engineering Practice and as practicable based on the kWh generated during the affected period. If as a result of such adjustment the quantity of Net Energy for any period is decreased, Developer shall reimburse Buyer for the amount paid by Buyer in consideration for that Net Energy. If as a result of such adjustment the quantity of Net Energy for any period is increased, Buyer shall pay for the additional Net Energy. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures shall not be subject to any interest charge in favor of Buyer or Developer.

C. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Developer to verify the accuracy of the measurements and recordings of the Developer's Metering Device(s). Developer shall provide at least twenty (20) days prior written notice to Buyer of the date upon which any such test is to occur. Developer shall prepare a written report setting forth the results of each such test, and shall provide Buyer with copies of such written report not later than thirty (30) days after completion of such test.

D. In the event that there is a discrepancy between the Net Energy generated by the PV System as reported by the Developer's and Distribution Company's Metering Devices, Developer and Buyer will use good faith efforts to investigate and remedy such discrepancy in consult with Distribution Company. In the event of a discrepancy in which the Developer's Metering Device reports greater Net Energy than the Distribution Company's Metering Device,

Buyer shall only be required to pay Developer under this Agreement for the amount of Net Energy reported by Distribution Company's Metering Device. Developer shall credit Buyer in the subsequent month's invoice for any amounts paid by Buyer in a prior month or months for Net Energy reported by Developer's Metering Device in excess of the Net Energy reported by Distribution Company's Metering Device.

#### 7.4 Billing

On or before the tenth (10<sup>th</sup>) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Developer shall calculate the amount due and payable to Developer pursuant to Exhibit C, with respect to the immediately preceding month, and shall forward to Buyer an invoice, identifying PV System production data from the Developer's Metering Device, and including such calculation, with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures, if applicable.

#### 7.5 Payment

Within twenty-one (21) days of the receipt of Developer's invoice pursuant to Section 7.4 (Billing), Buyer shall pay Developer any amounts due and payable hereunder for Net Energy delivered during the prior month, for which Developer has submitted an invoice to Buyer pursuant to Section 7.4 (Billing). All such invoices shall be paid by mutually agreeable method(s), to the account designated by Developer. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures pursuant to this Section 7.5 shall not be subject to any interest charge in favor of Buyer or Developer.

#### 7.6 Dispute

If a Party, in good faith, disputes an invoice, as described in this Article VII, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within twenty-one (21) days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article VII, the Parties shall follow the procedure set forth in Article XIV (Dispute Resolution).

#### 7.7 Records and Audits

Each Party will keep, for a period not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party



may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such transactions during such other Party's normal business hours.

## **ARTICLE VIII: LOSS, DAMAGE OR DESTRUCTION OF PV SYSTEM; FORCE MAJEURE**

### **8.1 PV System Loss.**

A. Developer shall bear the risk of any PV System Loss, except to the extent such PV System Loss results from the negligence or noncompliance of Host or Host's agents, representatives, customers, vendors, employees, or contractors.

B. In the event of any PV System Loss that, in the reasonable judgment of Developer, results in less than total damage, destruction or loss of the PV System (in other words, less than 50% of the PV System is damaged, destroyed, or lost), this Agreement shall remain in full force and effect and Developer has the option, at Developer's absolute and sole discretion and sole cost and expense, to repair or replace the PV System as quickly as practicable. In the event of any PV System Loss that, in the reasonable judgment of Developer, results in total damage, destruction or loss of the PV System (in other words, 50% or more of the PV System is damaged, destroyed, or lost), Developer may, in Developer's sole discretion, terminate this Agreement, in whole or in part, without any liability to Developer as a result of such termination. Developer shall be entitled to all proceeds of insurance with respect to the PV System in connection with any PV System Loss, provided however, proceeds paid on account of damage to the Premises shall be paid to the Host.

In the event that Developer elects to repair or replace the PV System pursuant to this Section 8.1(B), Developer shall not be responsible for any Production Shortfall that occurs during the repair/replacement period except to the extent the damage, destruction or loss is due to acts or omissions of Developer.

If Developer elects not to repair or replace all or part of the portion of the PV System affected by the PV System Loss, the Expected Annual Energy Output shall be recalculated on a pro-rata basis based on remaining system size (by way of example, if there is a 200 kW loss from a 2,000 kW system, the Guaranteed Annual Output shall be reduced by a fraction equal to the lost kW capacity divided by the original capacity, i.e.  $200 \text{ kW} / 2000 \text{ kW}$ ). In the event the PV System Loss is due to the acts or omissions of Developer, Developer shall pay Buyer an amount equal to the net present value of the Foregone Buyer Benefit, using a discount factor of 8%, such amount not to exceed the replacement value of the part of the PV System affected by the PV System Loss. Foregone Buyer Benefit is defined as (i) in the Contract Year of occurrence, the difference between the G1 rate (or such other rate for the Premises' electric account of the Distribution Company's tariff) in the Contract Year of occurrence of the partial PV System Loss and the Net Energy Price, multiplied by the Expected Annual Output adjusted for the Annual System Degradation Factor and (ii) for the remainder of the Term the G1 rate (or such other rate for the Premises' electric account of the Distribution Company's tariff) is assumed to increase by 3% per year.

For the avoidance of doubt, the Foregone Buyer Benefit shall not be paid to the extent the damage, destruction or loss is due to Force Majeure, casualty or condemnation.

For the avoidance of doubt, payment in respect of the Foregone Buyer Benefit must be paid to the Buyer, so long as (a) Developer elects in its discretion not to repair or replace all or part of the affected portion of the PV System, (b) the PV System Loss was caused by the acts or omissions of Developer, (c) the condition of the Premises may be made suitable for construction, operation, maintenance, and interconnection of the PV System, as reasonably determined by Developer, (d) the Lease remains in full force and effect.

8.2 Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure for a consecutive period of six (6) calendar months or longer, the non-Claiming Party may terminate this Agreement, in whole or in part, without any liability to the Claiming Party as a result of such termination.

8.3 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Party affected by Force Majeure will use Commercially Reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Notwithstanding the foregoing, however, Developer shall not owe any Developer Termination Payment if the damage, destruction or loss is due to actions of Host or is caused by an event at the Premises (such as a fire at the Premises) not caused by Developer.

## **ARTICLE IX: DEFAULT; TERMINATION; REMEDIES**

### 9.1 Events of Default by Buyer.

The following shall each constitute an event of default by Buyer (“Buyer Event of Default”):

A. Buyer breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Developer of the breach;

B. Buyer fails to make any payment due under this Agreement within forty-five (45) Business Days after such payment is due unless such payment is contested by Buyer;

C. Developer terminates the Lease on account of an Event of Default by Host thereunder;

D. If any material representation or warranty made by Buyer in Article X (Representations and Warranties; Buyer Acknowledgement) of this Agreement proves 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 or warranty correct and not misleading within ten (10) Business Days of written notice from the other Party;

E. Buyer becomes Bankrupt.

## 9.2 Events of Default by Developer

The following shall each constitute an event of default by Developer (“Developer Event of Default”):

A. Developer breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Buyer of the breach; provided, however, that Developer shall have an additional reasonable period of time thereafter if Developer uses Commercially Reasonable effort to cure such Developer Event of Default during the initial thirty (30) days after notice as aforesaid and Developer provides reasonable written assurances that it will continue to use Commercially Reasonable efforts to cure within such a reasonable period of time thereafter not to exceed an additional ninety (90) days.

B. Developer fails to make any payment due under this Agreement, including but not limited to, amounts payable to Buyer for any Production Shortfall pursuant to Section 5.6(b) and Indemnification pursuant to Section 11.2 within forty-five (45) Business Days after such payment is due unless such payment is contested or a right of set-off has been claimed by Developer;

C. If any material representation or warranty made by Developer in Article X (Representations and Warranties; Buyer Acknowledgement) of this Agreement proves 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 or warranty correct and not misleading within ten (10) Business Days of written notice from the other Party;

D. Developer becomes Bankrupt;

E. Host terminates the Lease on account of an Event of Default by Developer thereunder;

F. Failure by the Developer to commence construction of the PV System on or before the Outside Construction Commencement Date, or achieve Commercial Operation of the PV System on or before the Outside Commercial Operation Date, unless such failure is caused by Force Majeure, delays caused by Buyer or Host, material breach by Buyer or Host of its obligations under this Agreement or the Lease, delays in receiving approvals from Governmental Authorities or delays caused by the Distribution Company, provided, however, that in the event Developer is paying Delay Liquidated Damages, failure to achieve Commercial Operation by the Outside Commercial Operation shall not be considered a Developer Event of Default as long as Developer continues to pay such Delay Liquidated Damages until Developer has been paying Delay Liquidated Damages for a period of 12 months;

G. For reasons other than *Force Majeure* or acts or omissions of the Buyer or the Host or the utility, Developer is unable to provide Net Energy to Buyer for ninety (90) consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date

and prior to the expiration of this Agreement, provided, however, that Developer shall have thirty (30) days to cure such default if Developer is using Commercially Reasonable efforts to cure such Developer Event of Default during the original one hundred twenty (120) day period;

H. Developer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Developer under this Agreement; or

I. Any other material breach of this Agreement not specifically enumerated above, and such breach is not cured within thirty (30) Business Days after notification by Buyer of the breach; provided, however, that Developer shall have an additional reasonable period of time thereafter not to exceed thirty (30) Business Days to cure such breach if Developer uses Commercially Reasonable efforts to cure such default during the initial thirty (30) days after notice as aforesaid and Developer provides reasonable written assurances that it will be able to cure such default within such a reasonable period of time thereafter not to exceed thirty (30) Business Days.

### 9.3 Remedies

#### A. Buyer Event of Default.

(i) In the event of an uncured Buyer Event of Default, not excused by Force Majeure, Developer agrees to give written notice to Host and Host shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Host shall have an additional reasonable period of time thereafter to cure the Buyer Event of Default if Host uses Commercially Reasonable efforts to cure such Buyer Event of Default during the initial sixty (60) days after notice aforesaid, and Host provides reasonable written assurances that it will be able to cure such Buyer Event of Default within such a reasonable period of time thereafter.

(ii) In the event that Host elects not to step in or fails to cure such Buyer Event of Default, Developer shall be entitled to terminate this Agreement and the Lease and shall also be entitled, but not required, to terminate and collect damages from the Buyer, which damages shall include, but not be limited to, the value of anticipated future net revenues, including revenues attributable to Environmental Attributes, through the end of the Term if payments had continued under this Agreement absent the Buyer Event of Default.

(iii) In the event of an uncured Buyer Event of Default, remedies may include an assignment of this PPA to Host consistent with Section 6.2(f) of the Inter-Governmental Agreement.

#### B. Developer Event of Default.

(i) Financier Step-In. Buyer agrees to give written notice to any Financier (of which Buyer has written notice) upon a Developer Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional reasonable period of time thereafter not to exceed thirty (30) days to cure the Developer Event of Default if Financier uses Commercially Reasonable efforts to cure such Developer Event of Default during the initial sixty (60) days after notice

aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Developer Event of Default within such a reasonable period of time thereafter not to exceed an additional thirty (30) days.

(ii) Buyer Termination; PV System Purchase Rights. In the event that Financier elects not to step-in or fails to cure pursuant to sub-Section (i) above, or Buyer has no written notice of a Financier, Buyer shall have the right, but not the obligation, to:

- 1) terminate this Agreement upon thirty (30) days notice and recover monetary damages from Developer or seek specific performance.
- 2) purchase the PV System pursuant to Article XIII (PV System Purchase and Sale Options) provided that Buyer shall be entitled to offset the Purchase Price of the PV System determined in accordance with Article XIII against the amount of monetary damages due and owing Buyer pursuant to this Section 9.3. Buyer may assign its Purchase Option under this sub-Section to Host.

#### 9.4 Closeout Setoffs

The non-defaulting party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the defaulting party under this Agreement, any amounts due and owing to the defaulting party under this Agreement.

#### 9.5 Unpaid Obligations

The non-defaulting party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the defaulting party shall in all events remain liable to the non-defaulting party for any amount payable by the defaulting party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

#### 9.6 Force Majeure

If by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination

notice setting forth the Termination Date. In the Event of Termination under this Section 9.6, Financier shall have step-in rights as provided in Section 16.2.

## **ARTICLE X: REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT**

### **10.1 Representations and Warranties by Buyer**

As of the Effective Date, Buyer represents and warrants to Developer as follows:

A. Buyer has full legal capacity to enter into this Agreement and to perform all obligations hereunder;

B. The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer;

C. Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations under this Agreement;

D. None of the documents or other written or other information furnished by or on behalf of Buyer to Developer or their agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

E. Buyer represents and warrants that this Agreement has been presented to the Host and that the final form of this Agreement will be included as an exhibit to the Lease and the Inter-Governmental PSA, and further that the Inter-Governmental PSA is in full force and effect.

### **10.2 Representations and Warranties by Developer**

As of the Effective Date, Developer represents and warrants to Buyer as follows:

A. Developer has full legal capacity to enter into this Agreement and to perform all its obligations hereunder;

B. The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;

C. Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would

materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement;

D. None of the documents or other written or other information furnished by or on behalf of Developer to Buyer or its agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

E. Developer acknowledges, agrees, and intends for purposes of "safe harbor" under the Bankruptcy Code that, without limitation, as applicable: (i) the transactions pursuant to this Agreement constitute "forward contracts" within the meaning of the Bankruptcy Code or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party under this Agreement with respect to forward contracts constitute "settlement payments" and/or "margin payments" within the meaning of the Bankruptcy Code; and (iii) all transfers of performance assurance by one Party to another Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code.

## **ARTICLE XI: INDEMNIFICATION AND INSURANCE**

### **11.1 Insurance**

The Developer shall comply with the Insurance requirements in the Lease, including Exhibit C thereto.

### **11.2 Indemnification by Developer**

Without duplication of any amounts paid to Buyer pursuant to Section 9.3 or any other provision of this Agreement setting an amount of Liquidated Damages or otherwise calculating an amount owed hereunder, which other provision shall provide the sole and exclusive amount due with respect thereto and subject to Article XII, Developer shall indemnify, defend and hold harmless the Buyer, Host and other Cooperative Members and other participating governmental parties (collectively "Buyer Indemnified Parties" and singularly "Buyer Indemnified Party") and each Buyer Indemnified Party's directors, officers, employees, agents, representatives and independent contractors, from and against any and all (a) costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties, in each case, arising out of (i) bodily injury, death or property damage or any other claims by third parties and (ii) property damage incurred and (b) lien claims by subcontractors or suppliers or sub-subcontractors and sub-suppliers, to the extent, in the case of subclauses (a) and (b), arising, directly or indirectly, from or in connection with (A) any material breach by Developer of its obligations, covenants, representations or warranties contained in this Agreement, (B) Developer's actions or omissions taken or made in connection with Developer's performance of this Agreement, except for actions or omissions required by this Agreement and in accordance with the Common Technical Specifications set forth in Exhibit E to the Lease and which is in accordance with Good Engineering Practices; (C) any claims arising from or based on the violation by Developer or its agents of Applicable Legal Requirements and orders.

### 11.3 Notice of Indemnification Claims

If a Buyer Indemnified Party seeks indemnification pursuant to this Article XI, the Buyer Indemnified Party shall notify Developer of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. The Developer further agrees, if requested by the Buyer Indemnified Party, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article XI. Upon written acknowledgment by Developer that it will assume the defense and indemnification of such claim, the Developer may assert any defenses which are or would otherwise be available to Buyer Indemnified Party.

## **ARTICLE XII: REMEDIES; LIMITATIONS**

The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement.

**UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

## **ARTICLE XIII: SYSTEM PURCHASE AND SALE OPTIONS**

### 13.1 Grant of Purchase Option

As set forth in the Lease, Developer has granted to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Agreement (the "Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (a) upon the tenth (10<sup>th</sup>), twelfth (12<sup>th</sup>), or fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date of this Agreement, (b) upon a Developer Event of Default pursuant to Section 9.3 and the expiration of any cure right with respect thereto, or (c) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article XIII.

### 13.2 Timing of Purchase Option.



A. If the Host declines the Purchase Option or otherwise fails to send the Host Purchase Option Notice within sixty (60) Business Days prior to (tenth (10<sup>th</sup>), twelfth (12<sup>th</sup>), or fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date of this Agreement, or the date of its Termination, the Buyer shall have thirty (30) Business Days thereafter to provide written notice to Developer of its intent to exercise the Purchase Option (“Initial Host Purchase Option Notice”) pending completion of due diligence. Promptly following receipt of a Purchase Option Notice from Host or Buyer, as the case may be, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host, or the Buyer, as the case may be, the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, for its inspection during normal business hours.

B. Buyer or Host, as the case may be, shall have twenty five (25) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

C. Determination of Purchase Price. The purchase price shall be the higher of the Buyer Purchase Payment in Exhibit C, or the Appraised Value of the PV System as determined by the Independent Appraiser (“Purchase Price”). If the Purchase Option arises out of a Developer Event of Default, the Purchase Price shall be the Appraised Value.

D. Independent Appraiser. Within twenty five (25) Business Days of Developer’s receipt of Purchase Option Notice, Developer and Buyer or Host, as the case may be, shall each propose an Independent Appraiser. If Developer and Buyer or Host do not agree and appoint an Independent Appraiser within such twenty five (25) Business Day period, then at the end of such twenty five (25) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party’s notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Developer and Buyer or Host. Such selection shall be final and binding on Developer and Buyer or Host.

E. PV System Records and Inspection. The Developer shall make the PV System and records related thereto available to the Independent Appraiser. Similarly, the Buyer or Host shall make available to the Independent Appraiser the results of its inspection, review of records and other due diligence. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value (the “Preliminary Determination”).

F. Preliminary and Final Appraisal Determinations. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Developer and Buyer and/or Host, together with all supporting documentation that details the calculation of the Preliminary Determination. Developer and Buyer and/or Host shall each have the right to object to the Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days of receipt of the objecting Party’s objections, the selected Independent Appraiser shall issue its final determination (the “Final Determination”) to Developer and Buyer and/or Host, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into

account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Appraised Value by the selected Independent Appraiser shall be final and binding on the Parties.

G. Appraisal Costs. Developer and Buyer or Host, as the case may be, shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s), unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser.

### 13.3 Final Purchase Option Notice

Within ten (10) Business Days of the Final Determination, the Buyer or Host shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with Section 13.2 (“Final Buyer Purchase Option Notice” or “Final Host Purchase Option Notice”). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable. If the Buyer’s or Host’s Purchase Option has arisen on account of a Developer Event of Default and Termination of the Agreement therefor under Section 9.2, the Developer Termination Payment shall be deducted from the Purchase Price.

### 13.4 Transfer Date

The closing of any sale of the PV System (the “Transfer Date”) pursuant to this Article XIII will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 9.3. This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

### 13.5 Terms of PV System Purchase

On the Transfer Date (a) Developer shall surrender and transfer to Buyer or Host, as the case may be, all of Developer’s right, title and interest in and to the PV System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) Buyer or Host, as the case may be, shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in Buyer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Buyer or Host. The purchase shall be on an “as is,” “where is” basis without warranty of any kind.

## **ARTICLE XIV: DISPUTE RESOLUTION**

### 14.1 Dispute Resolution

Unless otherwise expressly provided for in the Agreement, the dispute resolution procedures of this Article XIV shall be the exclusive mechanism to resolve disputes arising under the Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding the Agreement. Any dispute that arises under or with respect to the Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties may agree to mediation and choose a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties may request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be courts in and for Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of the Agreement.

#### 14.2 Stay of Termination

During informal negotiations and mediation pursuant to Section 14.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 14.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 14.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

### **ARTICLE XV: NOTICES**

All notices, demands, requests, consents or other communications required or permitted to be given or made under the Agreement shall be in writing and addressed to the following:

If to Buyer: Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
Attn: Liz Argo, Manager  
Tel: (774) 722-1812  
Email: [largo@cvecinc.org](mailto:largo@cvecinc.org)

with a copy to:

Kevin D. Batt  
Jessica A. Wall  
ANDERSON & KREIGER LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109  
t: 617-621-6514  
f: 617-621-6614

If to Developer:

CED Cape Solar, LLC  
c/o Con Edison Clean Energy Businesses, Inc  
100 Summit Lake Drive, Suite 210  
Valhalla, NY 10595  
Attention: Managing Director, Behind-the-Meter Solar

with a copy to:

CED Cape Solar, LLC  
c/o Con Edison Clean Energy Businesses, Inc  
100 Summit Lake Drive, Suite 210  
Valhalla, NY 10595  
Attention: General Counsel

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the Agreement; (b) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the Agreement; or (c) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the Agreement. Either Party may change its address and contact person for the purposes of this Article XV by giving notice thereof in the manner required herein.

## **ARTICLE XVI: ASSIGNMENT; BINDING EFFECT; FINANCIER PROVISIONS**

### **16.1 Assignment; Binding Effect.**

A. Developer shall not, without the prior written consent of Buyer, which consent will not be unreasonably withheld, conditioned or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void; provided, however, that Developer may, with prior notice to Buyer, assign, pledge or transfer all or any part of, or any right or obligation under this Agreement for security purposes in connection with any financing or other financial arrangements regarding the PV System (each, a “Permitted Transfer”); *provided further, however*, that Developer shall continue to be responsible and liable for its obligations under this Agreement, unless an assignee in a Permitted Transfer assumes all of Developer’s obligations under this Agreement in writing. Developer shall deliver notice of any Permitted

Transfer to Buyer or Host in writing as soon as reasonably practicable. Developer shall reimburse Buyer for its reasonable attorneys' fees related to review and approval of assignments, and such reasonable attorneys' fees as may be incurred by Host.

B. With prior notice to Developer, Buyer shall have the right to assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, to the Host without the consent of the Developer. Buyer shall not otherwise assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement unless the proposed assignee has equal financial capability as Buyer to perform under this Agreement and Buyer has provided prior notice to Developer, and provided that no such assignment will impair Developer's right and title to Environmental Attributes pursuant to Section 6.1.

C. Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

## 16.2 Financier Provisions

A. Any Person or entity that has entered into a loan agreement, credit agreement, reimbursement agreement, note purchase agreement or other document (and any documents relating to or ancillary to the foregoing documents) identified from time to time in writing by Developer to Buyer as a "Financing Agreement" under which Developer obtains financing whether or not secured by all or substantially all of the assets comprising the PV System shall, for so long as the Financing Agreement is in existence and until any lien thereof has been extinguished, be entitled to the protections set forth herein. No Financing Agreement shall encumber or affect in any way the interest of Buyer or Host in and to the Premises, or Buyer's or Host's rights under this Agreement. Buyer shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System.

B. Pursuant to the provisions of this Section 16.2 and subject to Section 9.3(a) (Financier Step-in), Financier shall have the right: (i) to assign the Financing Agreement; (ii) to enforce its lien by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; and (iv) to sell the PV System and rights under this Agreement and any other contracts dealing with the sale of Net Energy or Environmental Attributes from the PV System to a third party. Buyer's consent shall not be required for the Financier's acquisition of the PV System pursuant to this Agreement, except as provided in sub-Section (c) below.

C. Upon the Financier's acquisition of the PV System, Financier shall have the right to sell or assign said acquired PV System, provided Financier and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Buyer, such approval not to be unreasonably conditioned, withheld or delayed provided that such assignee provides satisfactory evidence of its financial and technical capability to perform the Developer's obligations under this Agreement; (ii) any such assignee shall assume all of Developer's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this

Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

## **ARTICLE XVII: MISCELLANEOUS**

### **17.1 Entire Agreement; Amendments; Binding Effect**

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

### **17.2 Expenses**

Each Party hereto shall pay all expenses incurred by it in connection with its entering into the Agreement, including, without limitation, all attorneys' fees and expenses.

### **17.3 No Joint Venture**

Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

### **17.4 Joint Work Product**

This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

### **17.5 Waiver**

No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of the Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

### **17.6 Severability**

If any section, phrase or portion of the Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of the Agreement and the benefits to the Parties are not substantially impaired.

#### 17.7 Further Assurances

From time to time and at any time at and after the execution of the Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the Agreement.

#### 17.8 Survival

Termination of the Agreement for any reason shall not relieve Developer or Buyer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article XI (Indemnification and Insurance) and Article XIV (Dispute Resolution), which shall survive the expiration or termination of the Agreement.

#### 17.9 Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Buyer as public cooperative or to the Host as municipal entity.

#### 17.10 Counterparts; Scanned Copy

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

#### 17.11 Nondiscrimination

Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises.

Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

17.12 No Limitation of Regulatory Authority

The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host or Buyer to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host, or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

17.13 Special Terms and Conditions

Developer understands and agrees that this Agreement is Buyer's standard form for energy management services and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

17.14 Eligibility for Net Metering Credits or Alternative On-bill Credits. If the PV System qualifies as a Net Metered Generation Unit, Developer shall assist Buyer and/or Host if designated as Host Customer, in applying for, and performing all activities necessary and support Buyer's efforts to reserve and maintain an assurance of Net Metering under the System of Assurance. Developer shall work in good faith with Buyer and Host to prepare the Application for a Cap Allocation (as such terms are defined in the System of Assurance) to be signed by the "Host Customer," and any amendments thereto. Developer shall pay application and reservation fees required to receive a Cap Allocation. Alternatively, if the PV System qualifies as an Alternative On-bill Generation Unit, Developer shall assist Buyer and/or Host to enroll for receipt of Alternative On-bill Credits.

17.15 Third Party Beneficiary

The Parties agree that Host shall be third party beneficiary to this Agreement.

*[Signature page to follow.]*



IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**BUYER:**

Cape & Vineyard Electric Cooperative, Inc.

By: \_\_\_\_\_  
Name:  
Title: Clerk

By: \_\_\_\_\_  
Name:  
Title: President

23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
(774) 722-1812 (voice)

**DEVELOPER**

By: \_\_\_\_\_  
Name:  
Title:

List of Exhibits to Agreement

- Exhibit A: Description of the Premises
- Exhibit B: Description of PV System
- Exhibit C: Net Energy Price Provisions
- Exhibit D: Special Terms and Conditions Applicable to this Net Energy Power Purchase Agreement

## **EXHIBIT A**

### **DESCRIPTION OF THE PREMISES**

**Address:**

[TO BE ADDED]

**Legal Description:**

\_\_\_\_\_ of \_\_\_\_\_, located at the above address, as illustrated in the Site Plan shown in Exhibit A-1. The PV System on the attached Sketch Plan is identified by the area where the solar panels and Battery Energy Storage System are located, as such Sketch Plan may be amended or revised from time to time.

The Premises shall further include all necessary electrical and other utility sources, together with the non-exclusive right of ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the right to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.

## **EXHIBIT A-1**

### **SITE PLAN**



**EXHIBIT B**

**DESCRIPTION OF THE PV SYSTEM**

PV SYSTEM:

Module Manufacturer: \_\_\_\_\_

Nameplate Capacity: \_\_\_\_\_

Approximate Annual Energy Production:

\_\_\_\_\_ kWh

Location: \_\_\_\_\_

Mounting Systems: \_\_\_\_\_

Preliminary Specifications:

\_\_\_\_\_

Battery Manufacturer: \_\_\_\_\_

BESS Nameplate Capacity in kilowatts for four  
hour duration:

\_\_\_\_\_ kW for four hours

Location: \_\_\_\_\_

PV SYSTEM ASSETS:

Mounting System \_\_\_\_\_

Inverters: \_\_\_\_\_

Related Equipment: \_\_\_\_\_

Electric Lines: \_\_\_\_\_

**\*\* Final system size will be determined once final field layout and structural analysis has been completed.**

**EXHIBIT C<sup>1</sup>**

**NET ENERGY PRICE PROVISIONS**

EXPECTED ANNUAL ENERGY OUTPUT	_____ kWh/year
GUARANTEED ANNUAL ENERGY OUTPUT	_____ kWh/year <sup>2</sup>
ANNUAL PV SYSTEM DEGRADATION FACTOR	_____ % per year
ANNUAL BATTERY ENERGY STORAGE SYSTEM DEGRADATION FACTOR (if applicable)	_____ % per year
NET ENERGY PRICE	\$ _____ per kWh
NET ENERGY PRICE W. BATTERY (if applicable)	\$ _____ per kWh
ADDED NET ENERGY PRICE FOR EACH \$10,000 OF UTILITY UPGRADE COSTS (IN EXCESS OF INITIAL \$10,000)	\$ _____ per kWh
DISTRIBUTION COMPANY	Eversource Electric Company
PROPOSED BUYER PURCHASE PAYMENT FOR THE PV SYSTEM <sup>3</sup>	\$ _____ Contract Year 10
	\$ _____ Contract Year 12
	\$ _____ Contract Year 15
	\$ _____ Contract Year 20

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<sup>1</sup>In the event that the final field layout and/or structural analysis performed by Developer results in a substantial and material change to the PV System Size identified in Exhibit B, hereto, Developer and Buyer agree to negotiate in good faith an amendment to this Exhibit C.

<sup>2</sup>The only allowable adjustment to the Guaranteed Annual Output is the Annual System Degradation Factor.

<sup>3</sup>In accordance with Article XIII, the Purchase Price shall be the greater of the Fair Market Value and the Buyer Purchase Payment for the PV System.

**EXHIBIT D**

**SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS AGREEMENT**

**NET ENERGY POWER PURCHASE AGREEMENT  
FOR SOLAR PHOTOVOLTAIC SYSTEM  
BETWEEN THE  
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.  
AND  
GREENSKIES DEVELOPMENT COMPANY LLC**

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**[HOST]**

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**NET ENERGY POWER PURCHASE AGREEMENT  
FOR SOLAR PHOTOVOLTAIC SYSTEM  
BETWEEN THE  
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.  
AND  
GREENSKIES DEVELOPMENT COMPANY LLC**

THIS NET ENERGY POWER PURCHASE AGREEMENT FOR SOLAR PHOTOVOLTAIC SYSTEM (“Agreement”) is made and entered into as of this \_\_\_ day of \_\_\_\_\_ (the “Effective Date”), by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Buyer”) and GREENSKIES DEVELOPMENT COMPANY LLC, a Connecticut limited liability company with a business address at 180 Johnson St., Middletown, CT 06457 (“Developer”). Buyer and Developer are in some cases hereinafter referred to individually as a “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, Developer and the [MUNICIPALITY] (“Host”), a member of Buyer, have entered into a Lease Agreement dated \_\_\_\_\_ (“Lease”) for Developer to develop a roof mounted, ground mounted, or solar canopy [TO BE SELECTED PER APPROPRIATE PROJECT] solar photovoltaic system, which may or may not include an accompanying battery energy storage system (“PV System”) located on Host’s property (the “Premises”), as more particularly described in Exhibit A attached hereto;

WHEREAS, on behalf of the Host, Buyer issued a request for proposals for the PV System (the “RFP”);

WHEREAS, Developer is in the business of designing, procuring, installing, testing, commissioning, owning, operating and maintaining solar power electric generation facilities and battery energy storage systems;

WHEREAS, Developer proposes, pursuant to the Lease, to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises;

WHEREAS, Developer desires to sell to Buyer, and Buyer desires to purchase from Developer, all of the Net Energy (as defined herein) generated by the PV System, and otherwise in accordance with the terms of this Agreement; and

WHEREAS, Buyer desires, to the extent permitted by law, to sell the Net Energy generated by the PV System during the Term for the benefit of Host, pursuant to an Intergovernmental Net Energy Power Sales Agreement (“Inter-Governmental PSA”), and to other Cooperative Members (as defined herein).

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Buyer and Developer agree as follows:

## ARTICLE I: DEFINED TERMS; RULES OF INTERPRETATION

### 1.1 Defined Terms

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context.

Words defined in this Article I that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**“Affiliate”** means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

**“Agreement”** means this Net Energy Power Purchase Agreement for Solar Photovoltaic System, including all Exhibits, attachments, and schedules hereto and any amendments or addenda.

**“Alternative On-bill Credit”** means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2.

**“Alternative On-bill Generation Unit”** has the meaning as set forth in in 225 CMR 20.02.

**“Annual System Degradation Factor”** means the factor expressed in percent by which the Guaranteed Annual Energy Output of the PV System shall decrease from one Contract Year to the next Contract Year as set forth in Exhibit C. In the case of added battery storage, Annual System Degradation Factor shall also mean the factor expressed in percent by which the battery system shall decrease in power availability from one year to the next.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the selling and purchasing of power therefrom.

**“Appraised Value”** means the fair market value assigned to the PV System, as determined by the Independent Appraiser using customary and accepted appraisal methods in the energy and solar electricity industry, and to any emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements in connection with the PV System to which Developer is a party and which are assignable to Buyer, but not including this Agreement or the Lease.

**“Bankrupt”** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other

relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**"Battery Energy Storage System"** means battery or batteries and necessary equipment and controls to extend the power available to the host facility when installed in conjunction with a renewable energy resource and/or the grid.

**"Business Day"** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**"Buyer"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Buyer Event of Default"** has the meaning set forth in Section 9.1.

**"Commercial Operation"** means that the PV System is ready for regular, daily operation, has undergone testing as provided in the Common Technical Specifications attached as Exhibit E to the Lease, is in compliance with Applicable Legal Requirements in all material respects (including, but not limited to, a grant of permission to operate from the Distribution Company, and completion of all final inspections), and is capable of producing Energy and delivering it to the Point of Delivery and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E to the Lease, are complete and provided to Host and, as applicable, CVEC.

**"Commercial Operation Date"** means the first day on which the PV System is ready for Commercial Operation, as certified in writing by Developer to Buyer in the Notice of Commercial Operation.

**"Commercially Reasonable"** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics, and regulations.

**"Common Technical Specifications"** means those technical specifications and requirements for the PV System, contained in Exhibit E to the Lease.

**“Contract Year”** means the consecutive 12-month period commencing on the Commercial Operation Date.

**“Construction Commencement Date”** has the meaning set forth in the Lease.

**“Cooperative Member(s)”** means any municipality, county or political subdivision thereof, or body politic, that has duly joined Buyer as a cooperative member.

**“Developer”** has the meaning set forth in the Preamble.

**“Developer Event of Default”** has the meaning set forth in Section 9.2.

**“Distribution Company”** means Eversource Electric Company or any successor thereto.

**“Distribution Company System”** means the electric distribution system operated and maintained by the Distribution Company.

**“DOER”** means the Massachusetts Department of Energy Resources.

**“Effective Date”** is the date first set forth in the introductory paragraph of this Agreement.

**“Energy”** means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment tax credits under Section 48 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

**“Environmental Attributes”** means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or any expansion, reenactment, extension or replacement thereof that may come into effect in the future (except Shared Environmental Attributes), including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) Class I Renewable Generation Attributes (as such term is defined at 225 C.M.R. 14.02) or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iii) tax credits, incentives or depreciation allowances established under any federal or state law, (iv) energy investment tax credits under section 48 of the Internal Revenue Code of 1986, as amended, (v) incentives under the Solar Massachusetts Renewable (SMART) Program as provided in 225 CMR 20.00, and (vi) other allowances however named or referenced, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Net Energy generated by the PV System during the Term and in which Developer has good and valid title. Environmental Attributes shall not include net metering credits, or any capacity credits for the PV System, including credits or payments related to the Forward Capacity Market or Shared Environmental Attributes.

**“Financier”** means any individual or entity providing money or extending credit for the PV System to Developer for: (1) the construction, term or permanent financing of the PV System; (2) a tax equity investment made in part in an expectation of an allocation of tax and other benefits;

or (3) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

**“Financing Agreement”** means any credit agreement, reimbursement agreement, note purchase agreement, trust indenture, lease agreement or other document (and any documents relating to or ancillary to the foregoing documents) identified from time to time in writing by Developer to Buyer as a “Financing Agreement” under which Developer or any Affiliate of Developer obtains financing that is secured by all or substantially all of the assets of Developer (including any credit enhancement for any bonds) for the acquisition, development, construction, modification, repair or operation of the PV System or any refinancing thereof or any equity take-out financing for costs incurred for any of the foregoing purposes.

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under the Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in the Agreement to the contrary, *Force Majeure* shall not mean:

- (a) Ordinary inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Any nonpayment under this Agreement or any third party agreement.
- (e) Economic hardship of either Party.

**“Forward Capacity Market”** means the locational capacity market in which ISO New England projects needs of the power system three years in advance and holds an annual auction to purchase power resources to satisfy the New England region future electricity demand needs.

**“Good Engineering Practice”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including the Buyer in its regulatory capacity but not as Party to this Agreement.

**“Governmental Charges”** means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, including but not limited to Monthly Minimum Reliability Contributions, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Distribution Company, or other similar entity, on or with respect to the Net Energy or this Agreement.

**“Guaranteed Annual Energy Output”** means the minimum amount of Net Energy that is guaranteed by the Developer to be generated by the PV System in a Contract Year, as set forth in Exhibit C.

**“Host”** has the meaning set forth in the Recitals.

**“Independent Appraiser”** means an individual who is a member of an accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the Appraised Value of solar photovoltaic generating facilities of the size and age and with the operational characteristics of the PV System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Host, any Cooperative Member, Buyer, Developer or any Affiliate of Developer.

**“Interconnection Agreement”** means the Interconnection Service Agreement and any exhibits thereto, entered into with the Distribution Company which authorizes the interconnection of the PV System with the Distribution Company System, which confirms the eligibility of the PV System for treatment as a Solar Net Metering Facility and which specifies whether any Net Excess Generation (as defined in the Tariffs) shall be subject to allocation or cash-out.

**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host Town and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

**“Inter-Governmental PSA”** means the Inter-Governmental Net Energy Power Sales Agreement for the PV System entered into between Buyer and Host.

**“ISO”** means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement



dated as of February 1, 2005) and the Interim Independent System Operator Agreement as both Agreements are amended, superseded or restated from time to time.

**“kWh”** means kilowatt hour.

**“Lease”** has the meaning set forth in the Recitals to this Agreement.

**“Metering Device(s)”** means any and all revenue quality meters installed by Developer, Buyer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale to Buyer.

**“Monthly Minimum Reliability Contribution”** has the meaning set forth in G.L. c. 164, §139(j) and 220 CMR 18.10, as approved by the Department of Public Utilities in the Distribution Company’s tariff.

**“Net Energy”** means the actual and verifiable amount of Energy generated by the PV System and delivered to Buyer at the Point of Delivery or allocated to Buyer in excess of any Energy consumed by the PV System (including transformers) as metered in kWh at the Developer’s Metering Device, and in conformance with Applicable Legal Requirements and the Tariffs.

**“Net Energy Price”** means the amount paid by Buyer to Developer for each kWh of Net Energy and capacity sold by Developer to Buyer pursuant to this Agreement, as set forth in Exhibit C attached hereto.

**“Net Metered Generation Unit”** has the meaning set forth in 225 CMR 20.02.

**“Net Metering”** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s Tariffs.

**“Net Metering Credit”** has the meaning set forth in 220 C.M.R. 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

**“Notice of Commercial Operation”** has the meaning set forth in Section 4.2.F. of this Agreement.

**“Notice of Permits and Interconnection Costs”** means the written notice from Developer to Buyer that Developer has obtained all final permits or required approvals (excepting an interconnection agreement) required to construct the PV System and identifying all Distribution Company estimated infrastructure upgrade costs associated with interconnection of the PV System, as evidenced in writing by the Distribution Company.

**“Outside Construction Commencement Date”** means the later of ninety (90) days after the Effective Date or ninety (90) days after the Developer’s application has been accepted by the SMART Program.

**“Outside Commercial Operation Date”** means the later of one-hundred eighty (180) days from the Effective Date or one-hundred eighty (180) days after the Developer’s application has been accepted by the SMART Program.

**“Person”** means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

**“Point of Delivery”** means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

**“Premises”** has the meaning set forth in the Recitals to this Agreement, and is the area in which Host has assigned to Developer the necessary rights to design, procure, install, test, commission, own, operate, maintain and remove the PV System, as further identified in Exhibit A.

**“Prime Rate”** means the rate published from time to time in the “Money Rates” section of The Wall Street Journal, as the prime-lending rate. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

**“Production Shortfall”** means the amount, expressed in kWh, by which the actual amount of Net Energy generated by the PV System in any Contract Year is less than the Guaranteed Annual Energy Output for that Contract Year.

**“Purchase Price”** has the meaning ascribed to it in Section 13.3 of this Agreement.

**“PV System”** means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy sold and purchased under this Agreement, as further identified in Exhibit B, attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

**“PV System Assets”** means each and all of the assets of which the PV System is comprised, including Developer’s solar energy panels, mounting systems, canopies, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

**“PV System Loss”** means loss, theft, damage or destruction of the PV System or any portion thereof, or any other occurrence or event that prevents or limits the PV System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or *Force Majeure*).

**“RFP”** has the meaning set forth in the Recitals hereto.

**“Shared Environmental Attribute”** means any credit, benefit, reduction, offset, financial incentive or other beneficial allowance that may come into effect in the future (except any expansion,

reenactment, extension or replacement of any credit, benefit, reduction, offset, financial incentive or other beneficial allowance that is in effect as of the Effective Date).

“**SMART Program**” means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

“**SMART Tariff**” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Solar Net Metering Facility**” has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

“**Solar Tariff Generation Unit**” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Term**” has the meaning set forth in Section 3.2 herein.

“**Termination Date**” means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

## **ARTICLE II: OBLIGATION TO MODIFY AGREEMENT**

Upon implementation, after the Effective Date, by the Massachusetts Department of Public Utilities, the DOER, or other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the anticipated economic benefits of the Parties, in particular (i) any Applicable Legal Requirement regarding Net Metering, or (ii) any rule or regulation amending 225 CMR 14.00 (Renewable Energy Portfolio Standard) or 225 CMR 20.00 (Solar Massachusetts Renewable Target (SMART) Program), the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

## **ARTICLE III: TERM**

### **3.1 Conditions Precedent.**

The obligations of the Buyer and Developer under this Agreement shall be conditioned upon the following requirements:

A. execution by Developer and Host of the Lease as of or of even date with the Effective Date of this Agreement.

B. execution by Buyer and Host of the Inter-Governmental PSA as of even date with the Effective Date of this Agreement.

### 3.2 Term

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall remain in effect until the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date or such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

### 3.3 Early Termination.

A. Early Termination. Either Party may terminate this Agreement prior to the achievement of the Commercial Operation Date as specified below:

(i) in the event that Developer has not prepared for submission to the Distribution Company a complete interconnection application seeking authorization to construct and interconnect the PV System to the Distribution Company System within forty-five (45) days of the Effective Date;

(ii) in the event that the Lease has been terminated for cause;

(iii) in the event the Buyer determines, in its sole and reasonable discretion, that the PV System will not be eligible for Net Metering Credits or Alternative On-Bill Credits. This right of termination exists for fifteen (15) days upon Buyer’s receipt of the Notice of Permits and Interconnection Costs but may be waived in Buyer’s sole discretion to accommodate Seller’s construction schedule;

(iv) in the event that Developer has not entered into a binding purchase order for the major components of the PV System, including the PV panels, racking system, inverters, transformers, and, when applicable, Battery Energy Storage System within thirty (30) days after receipt of a fully executed Interconnection Agreement;

(v) in the event that during the interconnection process the Distribution Company imposes a cost for utility upgrades necessary to interconnect the PV System in excess of \$10,000, and the Parties are not able to reach agreement within sixty (60) days of Developer’s receipt of such notice from the Distribution Company on how such cost will be allocated among the Parties. The Parties agree that for each \$10,000 in excess of the initial threshold of a cost of \$10,000 for utility upgrades to be paid solely by the Developer, the Developer may increase the Net Energy Price by an amount per kWh as specified in Exhibit C and Buyer shall determine in its sole discretion whether to accept such increase in Net Energy Price, in which case this condition shall be deemed satisfied;

(vi) in the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Buyer, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Developer’s submission of the interconnection application, provided, however, that Buyer will extend the deadline for compliance with this

subsection in thirty (30) day increments, upon Buyer's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement, and further that said deadline will be automatically extended to the extent that achievement of the same is delayed while awaiting utility action.

B. Buyer's Right to Terminate Other Agreements with Developer. Buyer shall have the right, but not the obligation, to terminate any one or more of each net energy power purchase agreements it may have with Developer, or any Affiliate of Developer ("Additional PPA"), prior to the Commercial Operation Date of such Additional PPA, in the event that prior to the Commercial Operation Date, the Developer, as a result of gross negligence or willful misconduct, has failed to fully comply with all Applicable Legal Requirements.

C. Notice/Waiver. Either Party may waive any condition precedent applicable to it. The Party proposing to terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be commercially reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement the Parties shall have no further obligations hereunder except those of the Developer in subsection D. below and those which survive expiration or termination of this Agreement.

D. Buyer's Remedy Upon Early Termination. In the event this Agreement is terminated pursuant to Section 3.3(A)(i), 3.3(A)(ii), or 3.3(A)(iv):

(i) Upon early termination, Developer shall pay to Buyer within thirty (30) days of the Termination Date a sum of \$2,500 to cover Buyer's cost to procure another developer to design, procure, install, test, commission, own, operate and maintain a solar PV System, provided that if such payment is timely received, Developer shall have no further liability under this Agreement, except for any obligations that survive termination.

(ii) Buyer shall be entitled to all drawings, designs, permits, samples, applications, reports and approvals prepared and/or obtained by Developer as of the Termination Date for development of the PV System.

#### **ARTICLE IV: OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL**

##### **4.1 Ownership of the PV System.**

A. Title. Subject to the rights provided to Buyer and Host pursuant to Article XIII (PV System Purchase and Sale Options) and other terms hereof and the Lease, the PV System and all alterations, additions, improvements or installations made thereto by Developer and all Developer property used in connection with the installation, operation and maintenance of the PV System is, and shall remain, the personal property of Developer.

B. Security Interests in PV System. Except as otherwise provided herein, Buyer acknowledges and agrees that Developer may grant or cause to be granted to a Financier a security interest in the PV System and in Developer's rights to payment under the Agreement.

C. No Expenditures. Developer and Buyer acknowledge and agree that Buyer shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair, or removal of the PV System.

#### 4.2 Construction of PV System by Developer

A. Construction. Developer shall, at its sole cost and expense, (i) design, construct, operate, and maintain the PV System in accordance with Applicable Legal Requirements, in good condition and repair in accordance with applicable contractor warranties or guarantees, manufacturer's warranties, instructions and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E to the Lease, applicable requirements of the insurance policies maintained by Buyer, Host and Developer with respect to the PV System, and the terms of this Agreement, and (ii) monitor the PV System performance with respect to any PV System malfunction causing a material unanticipated loss of Net Energy such that the same will be discovered and rectified in accordance with Good Engineering Practice. The PV System will, when completed, comply with all Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit E of the Lease, except as waived thereunder.

B. Governmental Approvals. Except as otherwise specified herein, the Developer shall be responsible at its sole cost for designing, financing, procuring, installing, testing, commissioning, operating and maintaining the PV System and obtaining all approvals and permits required under the Applicable Legal Requirements for Developer's use of the Premises and for the PV System from any Governmental Authority having jurisdiction in the matter. Developer will promptly inform Buyer of all significant developments relating to the issuance of such approvals or permits.

C. Ownership of Drawings, Reports and Other Materials. All drawings, reports and materials prepared by the Developer in the performance of this Agreement shall, upon reasonable request, be made available to Buyer.

D. Reporting.

(i) Ten (10) days prior to the first anniversary of the Commercial Operation Date, and every year thereafter on the same date, and upon the reasonable request of Buyer, Developer shall provide Buyer with an electronic report of the energy generation from the PV System, consistent with the letter and intent of the U.S. Department of Energy, Federal Energy Management Measurement and Verification Guidelines.

(ii) Developer shall provide Buyer access to the PV System's data acquisition system required by Section B.13 of the Common Technical Specifications set forth in Exhibit E to the Lease. If a Battery Energy Storage System is included in the PV System, Developer shall provide Buyer access to the Battery Energy Storage System's data acquisition system and

operational controls required by Section B.14 of the Common Technical Specifications set forth in Exhibit E to the Lease.

E. Interconnection with Distribution Company System. Except as otherwise provided herein, Developer will obtain at its sole cost all approvals and agreements required for Developer's interconnection of the PV System to the Distribution Company System. Developer will promptly inform Buyer of all significant developments relating to such interconnection matters. If any material changes in plans and/or specifications to the PV System are required by the Distribution Company, then Developer shall submit such changes, if any to Buyer for its approval, which shall not be unreasonably withheld. Developer will provide Buyer a copy of the Permission to Operate in electronic format.

F. Notice of Commercial Operation. Subject to the provisions of this Agreement, Developer shall notify and represent to Buyer when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to Buyer the Commercial Operation Date.

G. Record Plans. Within ninety (90) days following the issuance of the Notice of Commercial Operation, Developer shall prepare and deliver to Buyer detailed record plans accurately depicting the PV System and, if applicable, the Battery Energy Storage System including, without limitation, interconnection applications and utility agreements, all wiring, lines, conduits, piping, other structures or equipment and, for any Battery Energy Storage System, the software controls manual.

#### 4.3 Duty to Maintain

##### A. Maintenance; Repairs.

(i) Developer shall take good care of the PV System, conduct all required maintenance and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the PV System in first class order, repair and condition, in accordance with Applicable Legal Requirements and Good Engineering Practice ("Developer's Maintenance Obligations").

(ii) Buyer shall have no duty or liability to Developer with respect to the maintenance, repair or security of the PV System.

B. Alterations. Developer shall have the right from time to time both before and after the Commercial Operation of the PV System and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise to the PV System, subject, however, in all cases to the following:

(i) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration pursuant to this Section, a "Substantial Alteration") except after prior written notice to and consent from Buyer, which consent shall not be unreasonably withheld;

(ii) No later than completion of any alteration or Substantial Alteration, Developer will provide Buyer with complete copies of all final plans and specifications therefor not previously provided; and

(iii) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibit D to the Lease.

C. Operations Manual. Developer shall deliver to Buyer an operations, maintenance and parts manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit E of the Lease.

D. Compliance with Laws; Professional Standards. Developer, at Developer's sole expense, shall diligently and fully comply with all Applicable Legal Requirements (including, but not limited to, any and all applicable local, state and federal wage laws). In addition, Developer shall ensure that the PV System is operated and maintained in accordance with Good Engineering Practice. In the case of Battery Energy Storage System, a fire prevention plan will be approved by local fire chief.

#### 4.4 Late Completion and Developer Payments.

Late Completion. If commencement of construction does not occur on or before the Outside Construction Commencement Date and/or Commercial Operation Date does not occur on or before the Outside Commercial Operation Date for any reason other than Buyer's failure to perform its obligations hereunder or Force Majeure, Developer shall pay to Buyer liquidated damages ("Delay Liquidated Damages").

Delay Liquidated Damages shall be the product of: (i) the estimated daily energy output from the PV System (kWh) for each day the PV System fails to achieve the following milestones; and (ii) the difference between the average applicable all-inclusive electricity price charged by the Distribution Company at the Premises and the Net Energy Price for such estimated daily energy output, as set forth in Exhibit C. Delay Liquidated Damages may be assessed upon written notice at the discretion of Buyer for the following:

- a. In the event that Developer fails to submit project interconnection application within twenty (20) days of execution of this Agreement.
- b. In the event that Developer fails to submit a Statement of Qualification Application to the SMART Program within twenty (20) days of receipt of Interconnection Approval and Lease execution, whichever is later.
- c. In the event that Developer fails to commence construction by the Outside Construction Commencement Date.
- b. In the event that Developer fails to commence Commercial Operation by the Outside Commercial Operation Date.

Notwithstanding the foregoing, Developer shall not be responsible for Delay Liquidated Damages in the event that Developer cannot satisfy the Outside Construction Commencement



Date and/or Outside Commercial Operation Date milestone because Developer lacks a permit, approval or Interconnection Agreement necessary to commence construction and/or Commercial Operation of the PV System, and Developer is utilizing Commercially Reasonable efforts to secure such permit, approval or Interconnection Agreement. The Parties recognize the delays, expense and difficulties involved in proving the actual losses or damages in a judicial or other proceeding, and agree that the Delay Liquidated Damages are reasonable compensation to Buyer. Any Delay Liquidated Damages owed to Host shall be resolved between Buyer and Host through the Inter-Governmental Agreement.

## **ARTICLE V: PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES**

### **5.1 Purchase and Sale of Net Energy**

A. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Developer shall make available to Buyer, and Buyer shall take delivery of at the Point of Delivery, all of the Net Energy generated by the PV System.

B. In the event that the System is qualified as a Solar Tariff Generation Unit under the SMART Program, the Distribution Company may elect to retain demand resource payments on account of the System's participation in the ISO Forward Capacity Market. In the event that the System is not qualified as a Solar Tariff Generation Unit under the SMART Program, or payments from the ISO Forward Capacity Market are not retained by the Distribution Company, the Buyer shall be entitled to receive demand resource payments from the ISO Forward Capacity Market associated with the Net Energy.

C. To the extent permitted by law, Host or Buyer, on behalf of Host, shall obtain Net Metering or Alternative On-bill Credits for the Net Energy in accordance with Schedule Z of the interconnection application filed by Developer with the Distribution Company on Host or Buyer's behalf, and Host or Buyer shall have the right to reallocate in accordance with Schedule Z such credits to the Host, in accordance with the Inter-Governmental PSA, or to other governmental entities.

### **5.2 Price for Net Energy**

A. Buyer shall pay Developer for the Net Energy, as metered at the Metering Device(s), at the applicable Net Energy Price. The payment made by Buyer to Developer shall equal the Net Energy for the relevant period multiplied by the Net Energy Price for such period.

B. Adjustments to Net Energy Price. In all cases, any adjustments in the Net Energy Price shall be made to the nearest hundredth of a cent.

### **5.3 Title and Risk of Loss of Net Energy**

Title to and risk of loss of the Net Energy will pass from Developer to Buyer at the Point of Delivery. Developer warrants that it will deliver the Net Energy to Buyer at the Point of Delivery free and clear of all liens, security interests, claims, and other encumbrances.

#### 5.4 Net Metering

If the PV System is a Net Metered Generation Unit, each of Developer and Buyer agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering as a Solar Net Metering Facility, pursuant to M.G.L. c. 164, §§138 – 140, 220 CMR 18.00, and the Tariffs, as may be amended from time to time by a Governmental Authority. Buyer and Developer acknowledge and agree that Buyer or Host (if so designated by Buyer) shall act as the Host Customer, as defined in 220 CMR 18.02 of the Distribution Company's Net Metering Tariff, M.D.P.U. No. 163, for the PV System. To the extent that the Distribution Company elects not to purchase Net Metering Credits from Buyer, Buyer shall assign the Net Metering Credits to Host and/or other governmental entities.

#### 5.5 Governmental Charges.

A. Developer is responsible for local, state and federal income taxes attributable to Developer for income received under this Agreement.

B. Developer is responsible for all real and personal property taxes, assessments, use taxes and all other charges and fees assessed against the PV System. The Parties acknowledge and agree that within thirty (30) days of Developer's payment of such charges and fees, Developer will invoice Buyer for the same, and Buyer will have ninety (90) days to reimburse Developer for such charges and fees.

C. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Net Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

#### 5.6 Guaranteed Annual Energy Output.

A. Developer guarantees that the PV System will produce the Guaranteed Annual Energy Output in each Contract Year, as adjusted by the Annual System Degradation Factor. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Guaranteed Annual Energy Output shall be decreased by the Annual System Degradation Factor, as shown on Exhibit C.

B. In the event that a Production Shortfall exists in any Contract Year, the Developer shall owe Buyer a sum equal to the product of (i) the average applicable all-inclusive rate charged by the Distribution Company in any Contract Year for Energy at the Premises minus the applicable Net Energy Price; and (ii) the Production Shortfall. Buyer may elect to set-off payments due and owing under Section 5.2(a) against the Production Shortfall damages payable to Buyer under this Section 5.6(b) for the first two (2) billing cycles of the subsequent Contract Year. In the event that any damages remain payable to Buyer after the second billing cycle, Developer shall pay Buyer the remaining amounts due within thirty (30) days of the end of the second billing cycle.

## **ARTICLE VI: ENVIRONMENTAL ATTRIBUTES**

### 6.1 Title to Environmental Attributes

All Environmental Attributes relating to the PV System or the Net Energy will be and remain property of Developer. Developer shall have all right, title, and interest in and to any and all Environmental Attributes, and Buyer shall have no right, title or interest in or to any such Environmental Attributes. The Parties shall use Commercially Reasonable efforts to modify the terms hereof with the mutual intent to allocate the value of any Shared Environmental Attributes between each other on a 50/50 basis.

### 6.2 Reporting of Environmental Attributes

Developer shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Net Energy. Except as set forth in Section 6.1, Buyer shall not report to any Person that any Environmental Attributes relating to the Net Energy belong to any Person other than Developer.

## **ARTICLE VII: METERING DEVICE(S) AND METERING; BILLING**

### 7.1 Metering Equipment

The Parties acknowledge and agree that Developer shall provide, install, own, operate and maintain the Metering Device(s), except for the Metering Device owned and installed by the Distribution Company. Developer shall maintain and test the Metering Device(s) in accordance with Applicable Legal Requirements and the Common Technical Specifications set forth in Exhibit E to the Lease.

### 7.2 Measurements

Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer. Developer shall maintain and test its Metering Device(s) generally in accordance with the same terms and conditions applicable to Metering Device(s) installed for the purpose of delivering Energy to the Distribution Company and the calculation of Net Metering Credits, but in any event no less than every two (2) years. Developer shall bear the cost of the testing of its Metering Device(s) and the preparation of test reports, as provided for in Section 7.3(d) below.

### 7.3 Testing and Correcting.

A. Once per calendar year, Buyer may request a test of the Developer's Metering Device(s). Following any meter test, if the Developer's Metering Device(s) is found to be accurate or inaccurate within  $\pm 2\%$ , then Buyer shall bear the costs of the meter test and reconciliation. If the Developer's Metering Device(s) is found to be inaccurate by more than  $\pm 2\%$ , or if the Metering Device(s) is for any reason out of service or fails to register, then Developer shall bear the costs of the meter test and reconciliation.

B. If a Developer's Metering Device(s) is found to be inaccurate by  $\pm 2\%$  or less, any previous recordings of the Metering Device(s) shall be deemed accurate. If a Developer Metering Device(s) is found to be inaccurate by more than  $\pm 2\%$  or if such Metering Device(s) is for any reason out of service or fails to register, then: (i) Developer shall promptly cause the Metering Device(s) found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy; (ii) Developer shall send an invoice to Buyer the following month estimating the correct amounts of Net Energy delivered or allocated during the periods affected by such inaccuracy, service outage or failure to register; and (iii) Developer shall estimate the correct amount of Net Energy in accordance with Good Engineering Practice and as practicable based on the kWh generated during the affected period. If as a result of such adjustment the quantity of Net Energy for any period is decreased, Developer shall reimburse Buyer for the amount paid by Buyer in consideration for that Net Energy. If as a result of such adjustment the quantity of Net Energy for any period is increased, Buyer shall pay for the additional Net Energy. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures shall not be subject to any interest charge in favor of Buyer or Developer.

C. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Developer to verify the accuracy of the measurements and recordings of the Developer's Metering Device(s). Developer shall provide at least twenty (20) days prior written notice to Buyer of the date upon which any such test is to occur. Developer shall prepare a written report setting forth the results of each such test, and shall provide Buyer with copies of such written report not later than thirty (30) days after completion of such test.

D. In the event that there is a discrepancy between the Net Energy generated by the PV System as reported by the Developer's and Distribution Company's Metering Devices, Developer and Buyer will use good faith efforts to investigate and remedy such discrepancy in consult with Distribution Company. In the event of a discrepancy in which the Developer's Metering Device reports greater Net Energy than the Distribution Company's Metering Device, Buyer shall only be required to pay Developer under this Agreement for the amount of Net Energy reported by Distribution Company's Metering Device. Developer shall credit Buyer in the subsequent month's invoice for any amounts paid by Buyer in a prior month or months for Net Energy reported by Developer's Metering Device in excess of the Net Energy reported by Distribution Company's Metering Device.

#### 7.4 Billing

On or before the tenth (10<sup>th</sup>) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Developer shall calculate the amount due and payable to Developer pursuant to Exhibit C, with respect to the immediately preceding month, and shall forward to Buyer an invoice, identifying PV System production data from the Developer's Metering Device, and including such calculation, with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures, if applicable.

## 7.5 Payment

Within twenty-one (21) days of the receipt of Developer's invoice pursuant to Section 7.4 (Billing), Buyer shall pay Developer any amounts due and payable hereunder for Net Energy delivered during the prior month, for which Developer has submitted an invoice to Buyer pursuant to Section 7.4 (Billing). All such invoices shall be paid by mutually agreeable method(s), to the account designated by Developer. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures pursuant to this Section 7.5 shall not be subject to any interest charge in favor of Buyer or Developer.

## 7.6 Dispute

If a Party, in good faith, disputes an invoice, as described in this Article VII, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within twenty-one (21) days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article VII, the Parties shall follow the procedure set forth in Article XIV (Dispute Resolution).

## 7.7 Records and Audits

Each Party will keep, for a period not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to such transactions during such other Party's normal business hours.

## **ARTICLE VIII: LOSS, DAMAGE OR DESTRUCTION OF PV SYSTEM; FORCE MAJEURE**

### 8.1 PV System Loss.

A. Developer shall bear the risk of any PV System Loss, except to the extent such PV System Loss results from the negligence or noncompliance of Host or Host's agents, representatives, customers, vendors, employees, or contractors.

B. In the event of any PV System Loss that, in the reasonable judgment of Developer, results in less than total damage, destruction or loss of the PV System, this Agreement shall remain in full force and effect and Developer has the option, at Developer's absolute and sole discretion and sole cost and expense, to repair or replace the PV System as quickly as practicable. Developer shall be entitled to all proceeds of insurance with respect to the PV System in connection with any PV System Loss. If Developer elects not to repair or replace the portion of the PV System affected by the PV System Loss, the Expected Annual Energy Output shall be recalculated using PV Watts or a similar software program and the Guaranteed Annual Energy Output shall be adjusted

accordingly (by way of example, if there is a 200 kW loss from a 2,000 kW system, the Guaranteed Annual Output shall be reduced by a fraction equal to the lost kW capacity divided by the original capacity, i.e. 200 kW / 2000kW). Developer shall, however, pay Buyer an amount equal to the net present value of the Foregone Buyer Benefit, using a discount factor of 8%, such amount not to exceed the replacement value of the part of the PV System affected by the PV System Loss. Foregone Buyer Benefit is defined as (i) in the Contract Year of occurrence, the difference between the G1 rate (or such other rate for the Premises' electric account of the Distribution Company's tariff) in the Contract Year of occurrence of the partial PV System Loss and the Net Energy Price, multiplied by the Expected Annual Output adjusted for the Annual System Degradation Factor and (ii) for the remainder of the Term the G1 rate (or such other rate for the Premises' electric account of the Distribution Company's tariff) is assumed to increase by 3% per year. In the event that Developer elects to repair or replace the PV System pursuant to this Section 8.1(B), Developer shall be responsible for any Production Shortfall that occurs during the repair/replacement period.

C. In the event of any PV System Loss that, in the reasonable judgment of Developer, results in total damage, destruction or loss of the PV System, Developer shall, within twenty (20) Business Days following the occurrence of such PV System Loss, notify Buyer whether Developer is willing to repair or replace the PV System. In the event that Developer notifies Buyer that Developer has opted not to repair or replace the PV System, this Agreement will terminate automatically effective upon the receipt of such notice of termination, and Developer shall be entitled to all proceeds of insurance with respect to the PV System in connection with such PV System Loss, provided however, proceeds paid on account of damage to the Premises shall be paid to Host.

8.2 Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure for a consecutive period of six (6) calendar months or longer, the non-Claiming Party may terminate this Agreement, in whole or in part, without any liability to the Claiming Party as a result of such termination.

8.3 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Party affected by Force Majeure will use Commercially Reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure. Notwithstanding the foregoing, however, Developer shall not owe any Developer Termination Payment if the damage, destruction or loss is due to actions of Host or is caused by an event at the Premises (such as a fire at the Premises) not caused by Developer.

## ARTICLE IX: DEFAULT; TERMINATION; REMEDIES

### 9.1 Events of Default by Buyer.

The following shall each constitute an event of default by Buyer (“Buyer Event of Default”):

A. Buyer breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Developer of the breach;

B. Buyer fails to make any payment due under this Agreement within forty-five (45) Business Days after such payment is due unless such payment is contested by Buyer;

C. If any material representation or warranty made by Buyer in Article X (Representations and Warranties; Buyer Acknowledgement) of this Agreement proves 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 or warranty correct and not misleading within ten (10) Business Days of written notice from the other Party;

D. Buyer becomes Bankrupt.

### 9.2 Events of Default by Developer

The following shall each constitute an event of default by Developer (“Developer Event of Default”):

A. Developer breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within sixty (60) Business Days after notification by Buyer of the breach; provided, however, that Developer shall have an additional reasonable period of time thereafter if Developer uses Commercially Reasonable effort to cure such Developer Event of Default during the initial sixty (60) days after notice as aforesaid and Developer provides reasonable written assurances that it will continue to use Commercially Reasonable efforts to cure within such a reasonable period of time thereafter not to exceed an additional sixty (60) days.

B. Developer fails to make any payment due under this Agreement, including but not limited to, amounts payable to Buyer for any Production Shortfall pursuant to Section 5.6(b) and Indemnification pursuant to Section 11.2 within forty-five (45) Business Days after such payment is due unless such payment is contested or a right of set-off has been claimed by Developer;

C. If any material representation or warranty made by Developer in Article X (Representations and Warranties; Buyer Acknowledgement) of this Agreement proves 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 or warranty correct and not misleading within ten (10) Business Days of written notice from the other Party;

D. Developer becomes Bankrupt;

E. Host terminates the Lease on account of an Event of Default by Developer thereunder;

F. Failure by the Developer to commence construction of the PV System on or before the Outside Construction Commencement Date, or achieve Commercial Operation of the PV System on or before the Outside Commercial Operation Date, unless such failure is caused by Force Majeure, material breach by Host of its obligations under the Lease or delay in interconnection approval caused by the Distribution Company;

G. For any reason other than an event of *Force Majeure*, Developer is unable to provide Net Energy to Buyer for ninety (90) consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to the expiration of this Agreement, provided, however, that Developer shall have thirty (30) days to cure such default if Developer is using Commercially Reasonable efforts to cure such Developer Event of Default during the original one hundred twenty (120) day period;

H. Developer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Developer under this Agreement; or

I. Any other material breach of this Agreement not specifically enumerated above, and such breach is not cured within thirty (30) Business Days after notification by Buyer of the breach; provided, however, that Developer shall have an additional reasonable period of time thereafter not to exceed thirty (30) Business Days to cure such breach if Developer uses Commercially Reasonable efforts to cure such default during the initial thirty (30) days after notice as aforesaid and Developer provides reasonable written assurances that it will be able to cure such default within such a reasonable period of time thereafter not to exceed thirty (30) Business Days.

### 9.3 Remedies

#### A. Buyer Event of Default.

(i) In the event of an uncured Buyer Event of Default, not excused by Force Majeure, Developer agrees to give written notice to Host and Host shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Host shall have an additional reasonable period of time thereafter to cure the Buyer Event of Default if Host uses Commercially Reasonable efforts to cure such Buyer Event of Default during the initial sixty (60) days after notice aforesaid, and Host provides reasonable written assurances that it will be able to cure such Buyer Event of Default within such a reasonable period of time thereafter.

(ii) In the event that Host elects not to step in or fails to cure such Buyer Event of Default, Developer shall be entitled to terminate this Agreement and the Lease and shall also be entitled, but not required, to terminate and collect damages from the Buyer, which damages shall include, but not be limited to, the value of anticipated future net revenues, including revenues attributable to Environmental Attributes, through the end of the Term if payments had continued under this Agreement absent the Buyer Event of Default.



B. Developer Event of Default.

(i) Financier Step-In. Buyer agrees to give written notice to any Financier (of which Buyer has written notice) upon a Developer Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional reasonable period of time thereafter not to exceed thirty (30) days to cure the Developer Event of Default if Financier uses Commercially Reasonable efforts to cure such Developer Event of Default during the initial sixty (60) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Developer Event of Default within such a reasonable period of time thereafter not to exceed an additional thirty (30) days.

(ii) Buyer Termination; PV System Purchase Rights. In the event that Financier elects not to step-in or fails to cure pursuant to sub-Section (i) above, or Buyer has no written notice of a Financier, Buyer shall have the right, but not the obligation, to:

- 1) terminate this Agreement upon thirty (30) days notice and recover monetary damages from Developer or seek specific performance.
- 2) purchase the PV System pursuant to Article XIII (PV System Purchase and Sale Options) provided that Buyer shall be entitled to offset the Purchase Price of the PV System determined in accordance with Article XIII against the amount of monetary damages due and owing Buyer pursuant to this Section 9.3. Buyer may assign its Purchase Option under this sub-Section to Host.

9.4 Closeout Setoffs

The non-defaulting party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the defaulting party under this Agreement, any amounts due and owing to the defaulting party under this Agreement.

9.5 Unpaid Obligations

The non-defaulting party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the defaulting party shall in all events remain liable to the non-defaulting party for any amount payable by the defaulting party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

9.6 Force Majeure

If by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration

than is required by the *Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date. In the Event of Termination under this Section 9.6, Financier shall have step-in rights as provided in Section 16.2.

## **ARTICLE X: REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT**

### **10.1 Representations and Warranties by Buyer**

As of the Effective Date, Buyer represents and warrants to Developer as follows:

A. Buyer has full legal capacity to enter into this Agreement and to perform all obligations hereunder;

B. The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer;

C. Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations under this Agreement;

D. None of the documents or other written or other information furnished by or on behalf of Buyer to Developer or their agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

E. Buyer represents and warrants that this Agreement has been presented to the Host and that the final form of this Agreement will be included as an exhibit to the Lease and the Inter-Governmental PSA, and further that the Inter-Governmental PSA is in full force and effect.

### **10.2 Representations and Warranties by Developer**

As of the Effective Date, Developer represents and warrants to Buyer as follows:

A. Developer has full legal capacity to enter into this Agreement and to perform all its obligations hereunder;

B. The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;

C. Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement;

D. None of the documents or other written or other information furnished by or on behalf of Developer to Buyer or its agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading; and

E. Developer acknowledges, agrees, and intends for purposes of "safe harbor" under the Bankruptcy Code that, without limitation, as applicable: (i) the transactions pursuant to this Agreement constitute "forward contracts" within the meaning of the Bankruptcy Code or a "swap agreement" within the meaning of the Bankruptcy Code; (ii) all payments made or to be made by one Party to the other Party under this Agreement with respect to forward contracts constitute "settlement payments" and/or "margin payments" within the meaning of the Bankruptcy Code; and (iii) all transfers of performance assurance by one Party to another Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code.

## **ARTICLE XI: INDEMNIFICATION AND INSURANCE**

### **11.1 Insurance**

The Developer shall comply with the Insurance requirements in the Lease, including Exhibit C thereto.

### **11.2 Indemnification by Developer**

Without duplication of any amounts paid to Buyer pursuant to Section 9.3 or any other provision of this Agreement setting an amount of Liquidated Damages or otherwise calculating an amount owed hereunder, which other provision shall provide the sole and exclusive amount due with respect thereto and subject to Article XII, Developer shall indemnify, defend and hold harmless the Buyer, Host and other Cooperative Members and other participating governmental parties (collectively "Buyer Indemnified Parties" and singularly "Buyer Indemnified Party") and each Buyer Indemnified Party's directors, officers, employees, agents, representatives and independent contractors, from and against any and all (a) costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action, suits or judgments, incurred by, on behalf of or involving any one of the foregoing parties, in each case, arising out of (i) bodily injury, death or property damage or any other claims by third parties and (ii) property damage incurred and (b) lien claims by subcontractors or suppliers or sub-subcontractors and sub-suppliers, to the extent, in the case of subclauses (a) and (b), arising, directly or indirectly, from or in connection with (A) any material breach by Developer of its obligations, covenants, representations or warranties contained

in this Agreement, (B) Developer's actions or omissions taken or made in connection with Developer's performance of this Agreement, except for actions or omissions required by this Agreement and in accordance with the Common Technical Specifications set forth in Exhibit E to the Lease and which is in accordance with Good Engineering Practices; (C) any claims arising from or based on the violation by Developer or its agents of Applicable Legal Requirements and orders. The foregoing notwithstanding, if the damages are adjudicated to be caused by the negligence, recklessness, or intentional act of Buyer or any Buyer Indemnified Party, Developer shall have no obligation to indemnify Buyer. The Host's and Buyer's liability hereunder shall be limited by applicable protections and immunities, including but not limited to Chapter 258 of the Massachusetts General Laws.

### 11.3 Notice of Indemnification Claims

If a Buyer Indemnified Party seeks indemnification pursuant to this Article XI, the Buyer Indemnified Party shall notify Developer of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. The Developer further agrees, if requested by the Buyer Indemnified Party, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article XI. Upon written acknowledgment by Developer that it will assume the defense and indemnification of such claim, the Developer may assert any defenses which are or would otherwise be available to Buyer Indemnified Party.

## **ARTICLE XII: REMEDIES; LIMITATIONS**

The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the Parties reserve and shall have all rights and remedies available to each of them at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement.

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

## ARTICLE XIII: SYSTEM PURCHASE AND SALE OPTIONS

### 13.1 Grant of Purchase Option

As set forth in the Lease, Developer has granted to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Agreement (the "Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (a) upon the tenth (10<sup>th</sup>), twelfth (12<sup>th</sup>), or fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date of this Agreement, (b) upon a Developer Event of Default pursuant to Section 9.3 and the expiration of any cure right with respect thereto, or (c) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article XIII.

### 13.2 Timing of Purchase Option.

A. If the Host declines the Purchase Option or otherwise fails to send the Host Purchase Option Notice within sixty (60) Business Days prior to (tenth (10<sup>th</sup>), twelfth (12<sup>th</sup>), or fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date of this Agreement, or the date of its Termination, the Buyer shall have thirty (30) Business Days thereafter to provide written notice to Developer of its intent to exercise the Purchase Option ("Initial Host Purchase Option Notice") pending completion of due diligence. Promptly following receipt of a Purchase Option Notice from Host or Buyer, as the case may be, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host, or the Buyer, as the case may be, the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, for its inspection during normal business hours.

B. Buyer or Host, as the case may be, shall have twenty five (25) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

C. Determination of Purchase Price. The purchase price shall be the higher of the Buyer Purchase Payment in Exhibit C, or the Appraised Value of the PV System, as determined by the Independent Appraiser ("Purchase Price"). If the Purchase Option arises out of a Developer Event of Default, the Purchase Price shall be the Appraised Value.

D. Independent Appraiser. Within fifteen (15) Business Days of Developer's receipt of Purchase Option Notice, Developer and Buyer or Host, as the case may be, shall each propose an Independent Appraiser. If Developer and Buyer or Host do not agree and appoint an Independent Appraiser within such fifteen (15) Business Day period, then at the end of such fifteen (15) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Developer and Buyer or Host. Such selection shall be final and binding on Developer and Buyer or Host.

E. PV System Records and Inspection. The Developer shall make the PV System and records related thereto available to the Independent Appraiser. Similarly, the Buyer or Host shall make available to the Independent Appraiser the results of its inspection, review of records and

other due diligence. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value (the “Preliminary Determination”).

F. Preliminary and Final Appraisal Determinations. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Developer and Buyer and/or Host, together with all supporting documentation that details the calculation of the Preliminary Determination. Developer and Buyer and/or Host shall each have the right to object to the Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days of receipt of the objecting Party’s objections, the selected Independent Appraiser shall issue its final determination (the “Final Determination”) to Developer and Buyer and/or Host, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Appraised Value by the selected Independent Appraiser shall be final and binding on the Parties.

G. Appraisal Costs. Developer and Buyer or Host, as the case may be, shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s), unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser.

### 13.3 Final Purchase Option Notice

Within ten (10) Business Days of the Final Determination, the Buyer or Host shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with Section 13.2 (“Final Buyer Purchase Option Notice” or “Final Host Purchase Option Notice”). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable. If the Buyer’s or Host’s Purchase Option has arisen on account of a Developer Event of Default and Termination of the Agreement therefor under Section 9.2, the Developer Termination Payment shall be deducted from the Purchase Price.

### 13.4 Transfer Date

The closing of any sale of the PV System (the “Transfer Date”) pursuant to this Article XIII will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 9.3. This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

### 13.5 Terms of PV System Purchase

On the Transfer Date (a) Developer shall surrender and transfer to Buyer or Host, as the case may be, all of Developer’s right, title and interest in and to the PV System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) Buyer or Host, as the case may be, shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising

from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in Buyer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Buyer or Host. The purchase shall be on an “as is,” “where is” basis without warranty of any kind.

## **ARTICLE XIV: DISPUTE RESOLUTION**

### **14.1 Dispute Resolution**

Unless otherwise expressly provided for in the Agreement, the dispute resolution procedures of this Article XIV shall be the exclusive mechanism to resolve disputes arising under the Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding the Agreement. Any dispute that arises under or with respect to the Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties may agree to mediation and choose a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties may request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be courts in and for Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of the Agreement.

### **14.2 Stay of Termination**

During informal negotiations and mediation pursuant to Section 14.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 14.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to

the procedure set forth in Section 14.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

#### **ARTICLE XV: NOTICES**

All notices, demands, requests, consents or other communications required or permitted to be given or made under the Agreement shall be in writing and addressed to the following:

If to Buyer: Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
Attn: Liz Argo, Manager  
Tel: (774) 722-1812  
Email: largo@cvecinc.org

with a copy to:

Kevin D. Batt  
Jessica A. Wall  
ANDERSON & KREIGER LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, MA 02109  
t: 617-621-6514  
f: 617-621-6614

If to Developer:

Greenskies Development Company LLC  
Attention: Legal Department  
180 Johnson St.  
Middletown, CT 06457

with a copy to:

[DEVELOPER'S COUNSEL]

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the Agreement; (b) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the Agreement; or (c) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the Agreement. Either Party may change its address and contact person for the purposes of this Article XV by giving notice thereof in the manner required herein.



## ARTICLE XVI: ASSIGNMENT; BINDING EFFECT; FINANCIER PROVISIONS

### 16.1 Assignment; Binding Effect.

A. Developer shall not, without the prior written consent of Buyer, which consent will not be unreasonably withheld, conditioned or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void; provided, however, that Developer may, with prior notice to Buyer, assign, pledge or transfer all or any part of, or any right or obligation under this Agreement for security purposes in connection with any financing or other financial arrangements regarding the PV System (each, a “Permitted Transfer”); *provided further, however*, that Developer shall continue to be responsible and liable for its obligations under this Agreement, unless an assignee in a Permitted Transfer assumes all of Developer’s obligations under this Agreement in writing. Developer shall deliver notice of any Permitted Transfer to Buyer or Host in writing as soon as reasonably practicable. Developer shall reimburse Buyer for its reasonable attorneys’ fees related to review and approval of assignments, and such reasonable attorneys’ fees as may be incurred by Host. If Developer assigns, subcontracts, sublets or delegates its rights, privileges or obligations under this Agreement, Developer shall reimburse Buyer and Host for reasonable attorneys’ fees for costs incurred concerning such change in interest, up to an amount of \$1,500 per each assignment.

B. With prior notice to Developer, Buyer shall have the right to assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, to the Host without the consent of the Developer. Buyer shall not otherwise assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement unless the proposed assignee has equal financial capability as Buyer to perform under this Agreement and Buyer has provided prior notice to Developer, and provided that no such assignment will impair Developer’s right and title to Environmental Attributes pursuant to Section 6.1.

C. Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

### 16.2 Financier Provisions

A. Any Person or entity that has entered into a loan agreement, credit agreement, reimbursement agreement, note purchase agreement or other document (and any documents relating to or ancillary to the foregoing documents) identified from time to time in writing by Developer to Buyer as a “Financing Agreement” under which Developer obtains financing whether or not secured by all or substantially all of the assets comprising the PV System shall, for so long as the Financing Agreement is in existence and until any lien thereof has been extinguished, be entitled to the protections set forth herein. No Financing Agreement shall encumber or affect in any way the interest of Buyer or Host in and to the Premises, or Buyer’s or Host’s rights under this Agreement. Buyer shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System.

B. Pursuant to the provisions of this Section 16.2 and subject to Section 9.3(a) (Financier Step-in), Financier shall have the right: (i) to assign the Financing Agreement; (ii) to enforce its lien by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; and (iv) to sell the PV System and rights under this Agreement and any other contracts dealing with the sale of Net Energy or Environmental Attributes from the PV System to a third party. Buyer's consent shall not be required for the Financier's acquisition of the PV System pursuant to this Agreement, except as provided in sub-Section (c) below.

C. Upon the Financier's acquisition of the PV System, Financier shall have the right to sell or assign said acquired PV System, provided Financier and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Buyer, such approval not to be unreasonably conditioned, withheld or delayed provided that such assignee provides satisfactory evidence of its financial and technical capability to perform the Developer's obligations under this Agreement; (ii) any such assignee shall assume all of Developer's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

## **ARTICLE XVII: MISCELLANEOUS**

### **17.1 Entire Agreement; Amendments; Binding Effect**

This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

### **17.2 Expenses**

Each Party hereto shall pay all expenses incurred by it in connection with its entering into the Agreement, including, without limitation, all attorneys' fees and expenses.

### **17.3 No Joint Venture**

Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

### **17.4 Joint Work Product**

This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

#### 17.5 Waiver

No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of the Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of the Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

#### 17.6 Severability

If any section, phrase or portion of the Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of the Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of the Agreement and the benefits to the Parties are not substantially impaired.

#### 17.7 Further Assurances

From time to time and at any time at and after the execution of the Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the Agreement.

#### 17.8 Survival

Termination of the Agreement for any reason shall not relieve Developer or Buyer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article XI (Indemnification and Insurance) and Article XIV (Dispute Resolution), which shall survive the expiration or termination of the Agreement.

#### 17.9 Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Buyer as public cooperative or to the Host as municipal entity.

#### 17.10 Counterparts; Scanned Copy

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

#### 17.11 Nondiscrimination

Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

#### 17.12 No Limitation of Regulatory Authority

The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host or Buyer to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host, or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

#### 17.13 Special Terms and Conditions

Developer understands and agrees that this Agreement is Buyer's standard form for energy management services and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

17.14 Eligibility for Net Metering Credits or Alternative On-bill Credits. If the PV System qualifies as a Net Metered Generation Unit, Developer shall assist Buyer and/or Host if designated as Host Customer, in applying for, and performing all activities necessary and support Buyer's efforts to reserve and maintain an assurance of Net Metering under the System of Assurance. Developer shall work in good faith with Buyer and Host to prepare the Application for a Cap Allocation (as such terms are defined in the System of Assurance) to be signed by the "Host Customer," and any amendments thereto. Developer shall pay application and reservation fees required to receive a Cap Allocation. Alternatively, if the PV System qualifies as an Alternative On-bill Generation Unit, Developer shall assist Buyer and/or Host to enroll for receipt of Alternative On-bill Credits.

17.15 Third Party Beneficiary

The Parties agree that Host shall be third party beneficiary to this Agreement.

*[Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**BUYER:**

Cape & Vineyard Electric Cooperative, Inc.

By: \_\_\_\_\_ By: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: Clerk Title: President

23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
(774) 722-1812 (voice)

**DEVELOPER**

By: \_\_\_\_\_  
Name:  
Title:

List of Exhibits to Agreement

- Exhibit A: Description of the Premises
- Exhibit B: Description of PV System
- Exhibit C: Net Energy Price Provisions
- Exhibit D: Special Terms and Conditions Applicable to this Net Energy Power Purchase Agreement

## EXHIBIT A

### DESCRIPTION OF THE PREMISES

**Address:**

[TO BE ADDED]

**Legal Description:**

\_\_\_\_\_ of \_\_\_\_\_, located at the above address, as illustrated in the Sketch Plan entitled “\_\_\_\_\_” dated \_\_\_\_\_. The PV System on the attached Sketch Plan is identified by the area where the solar panels and Battery Energy Storage System are located, as such Sketch Plan may be amended or revised from time to time.

The Premises shall further include all necessary electrical and other utility sources, together with the non-exclusive right of ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the right to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.

**EXHIBIT B**

**DESCRIPTION OF THE PV SYSTEM**

PV SYSTEM:

Module Manufacturer: \_\_\_\_\_

Nameplate Capacity: \_\_\_\_\_

Approximate Annual Energy Production:

\_\_\_\_\_ kWh

Location: \_\_\_\_\_

Mounting Systems: \_\_\_\_\_

Preliminary Specifications:

\_\_\_\_\_

Battery Manufacturer: \_\_\_\_\_

BESS Nameplate Capacity in kilowatts for four  
hour duration:

\_\_\_\_\_ kW for four hours

Location: \_\_\_\_\_

PV SYSTEM ASSETS:

Mounting System \_\_\_\_\_

Inverters: \_\_\_\_\_

Related Equipment: \_\_\_\_\_

Electric Lines: \_\_\_\_\_

**\*\* Final system size will be determined once final field layout and structural analysis has been completed.**



**EXHIBIT C<sup>1</sup>**

**NET ENERGY PRICE PROVISIONS**

EXPECTED ANNUAL ENERGY OUTPUT \_\_\_\_\_ kWh/year

GUARANTEED ANNUAL ENERGY OUTPUT \_\_\_\_\_ kWh/year<sup>2</sup>

ANNUAL PV SYSTEM DEGRADATION FACTOR \_\_0.5\_\_% per year

ANNUAL BATTERY ENERGY STORAGE SYSTEM DEGRADATION FACTOR (if applicable) \_\_2\_\_% per year

NET ENERGY PRICE \$ \_\_\_\_\_ per kWh

NET ENERGY PRICE W. BATTERY (if applicable) \$ \_\_\_\_\_ per kWh

ADDED NET ENERGY PRICE FOR EACH \$10,000 OF UTILITY UPGRADE COSTS (IN EXCESS OF INITIAL \$10,000) \$ \_\_\_\_\_ per kWh

DISTRIBUTION COMPANY Eversource Electric Company

PROPOSED BUYER PURCHASE PAYMENT FOR THE PV SYSTEM<sup>3</sup>

\$ _____	Contract Year 10
\$ _____	Contract Year 12
\$ _____	Contract Year 15
\$ _____	Contract Year 20

DELAY LIQUIDATED DAMAGES \$ \_\_\_\_\_/day

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<sup>1</sup>In the event that the final field layout and/or structural analysis performed by Developer results in a substantial and material change to the PV System Size identified in Exhibit B, hereto, Developer and Buyer agree to negotiate in good faith an amendment to this Exhibit C.

<sup>2</sup>The only allowable adjustment to the Guaranteed Annual Output is the Annual System Degradation Factor.

<sup>3</sup>In accordance with Article XIII, the Purchase Price shall be the greater of the Fair Market Value and the Buyer Purchase Payment for the PV System.

**EXHIBIT D**

**SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS AGREEMENT**

**LEASE AGREEMENT**  
**FOR**  
**GROUND MOUNTED AND CANOPY SOLAR PHOTOVOLTAIC ENERGY FACILITY**  
**BETWEEN**  
**CED CAPE SOLAR, LLC**  
**AND**  
**[HOST MUNICIPALITY]**

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**LEASE AGREEMENT FOR  
GROUND MOUNTED AND CANOPY SOLAR PHOTOVOLTAIC ENERGY FACILITY  
BETWEEN  
CED CAPE SOLAR, LLC  
AND  
HOST MUNICIPALITY**

This Lease Agreement (the “Agreement”) is entered into this \_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”) and is by and between CED Cape Solar, LLC, a limited liability company, with a business address at 100 Summit Lake Drive, Suite 210, Valhalla, New York, 10595, (“Developer”), and the [MUNICIPALITY], Massachusetts with an address of \_\_\_\_\_ (“Host”).

**RECITALS**

(a) Host wishes to lease an area of ground space described in Exhibit A (the “Premises”), which is a part of the Property located at \_\_\_\_\_, MA to the Developer to allow it to design, procure, install, test, commission, own, operate and maintain a solar photovoltaic system which may or may not include a battery energy storage system (“PV System”), as defined in Article I (Definitions), on the Premises for beneficial public purposes;

(b) Developer wishes to lease the Premises in order to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises for beneficial public purposes, subject to the terms and restrictions set forth in this Agreement;

(c) Developer has also entered into a Power Purchase Agreement (“PPA”) with the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation with an address at 23H2 White’s Path, Suite 2, South Yarmouth, MA 02664 (“CVEC”) pursuant to which Developer will sell the Net Energy generated by the PV System to CVEC; and

(d) CVEC has entered an Intergovernmental Power Sales Agreement (Intergovernmental PSA) with the Host to sell to the Host an allocated share of the Net Energy purchased by CVEC from the Developer under the PPA.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows.

**ARTICLE I: DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**“Additional Exceptions”** has the meaning set forth in Exhibit A-1 hereto.

**“Affiliate”** means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

**“Alternative On-bill Credit”** means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2..

**“Alternative On-bill Generation Unit”** has the meaning as set forth in in 225 CMR 20.02.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

**“Bankrupt”** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Business Day”** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Commercial Operation”** means that the PV System is ready for regular, daily operation, has undergone testing and met Commissioning Requirements as set forth in the Common Technical Specifications, Exhibit E, has been accepted by Developer and Host (and to



the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects, including all final inspections, is capable of producing Energy and delivering it to the Point of Delivery, and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E, are complete and provided to Host.

**“Commercial Operation Date”** means the date that the Developer certifies in a written notice to the Host that Commercial Operation has been achieved in accordance with Section 5.19, subject to the approval of the Host and CVEC, such approval not to be unreasonably withheld.

**“Commercially Reasonable”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and regulations.

**“Construction Commencement Date”** means the date that the Developer has secured all required permits and approvals from Governmental Authorities and the Distribution Company under Applicable Legal Requirements and has mobilized to commence work at the Premises, as certified in writing to the Host and CVEC.

**“Contract Year”** means the consecutive 12-month period commencing on the Commercial Operation Date.

**“Distribution Company”** means Eversource Electric Company or any successor thereto.

**“Distribution Company System”** means the electric distribution system operated and maintained by the Distribution Company.

**“Effective Date”** means the date set forth in the introductory paragraph of this Agreement.

**“Energy”** means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

**“Environmental Claim”** means causes of action, claims, fines, penalties, damages, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements arising from activities conducted on or in connection with the Work which arise, or are alleged to have arisen, out of any (a) violation of any applicable Environmental Law, (b) action by a Governmental Authority for enforcement, cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law, or (c) compensation, or injunctive relief resulting from injuries to persons or property due to (i) an alleged violation of any Environmental Law or (ii) any release of Hazardous Material.

**“Environmental Law”** means any and all existing and future Applicable Legal Requirements relating to human health, human safety or the environment .

**“Event of Default”** means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

**“Event of Termination”** means any event of termination as defined in Section 8.1 of this Agreement.

**“Financier”** means any individual or entity providing money or extending credit for the PV System to Developer for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; extreme winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, Force Majeure shall not mean:

- A. Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- B. Unavailability of sun.
- C. Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of Force Majeure.
- D. Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Developer shall be able to assert Host’s governmental actions on Permits for the PV System as an event of Force Majeure.
- E. Any nonpayment under this Agreement or any third party agreement.
- F. Economic hardship of either Party.

**“Good Engineering Practice”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project

economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including Host in its regulatory capacity but excluding Host as Lessor under this Agreement.

**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host Town and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

**“Inter-Governmental PSA”** has the meaning set forth in the recitals, a form of which is attached hereto as Exhibit G.

**“Leasehold Mortgage”** has the meaning set forth in Section 11.4.

**“Metering Device(s)”** means any and all revenue quality meters installed by Developer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale to CVEC and/or Host.

**“Monthly Minimum Reliability Contribution”** has the meaning set forth in G. L. c. 164, §139(j) and 220 CMR 18.10, as approved by the Department of Public Utilities in the Distribution Company’s tariff.

**“Net Energy”** means the actual and verifiable amount of Energy generated by the PV System and delivered to CVEC at the Point of Delivery pursuant to the PPA in excess of any Energy consumed by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements and the Tariffs.

**“Net Metered Generation Unit”** has the meaning set forth in 225 CMR 20.02. **“Net Metering”** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a Net Metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§ 138 – 140

and 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company's Tariffs.

**"Net Metering Credits"** has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

**"Outside Construction Commencement Date"** means the later of ninety (90) days after the Effective Date or ninety (90) days after the Developer's application has been accepted by the SMART Program.

**"Outside Commercial Operation Date"** means the later of one-hundred eighty (180) days from the Effective Date or one-hundred eighty (180) days after the Developer's application has been accepted by the SMART Program.

**"Parties"** means Host and Developer collectively, and their respective successors and permitted assignees.

**"Party"** means Host or Developer individually, and their respective successors and permitted assignees.

**"Permits"** means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

**"Permitted Use"** means the use, occupation, and enjoyment of the Premises by Developer to design, procure, install, test, commission, own, operate, maintain, expand and remove the PV System, all of which are designed and intended for the purpose of producing solar-generated electricity in accordance with Applicable Legal Requirements.

**"Person"** means an individual, partnership, corporation (including a business trust),, limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

**"Point of Delivery"** means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

**"PPA"** has the meaning set forth in the Recitals, a form of which is set forth in Exhibit F, hereto.

**"Premises"** means the site for PV System installation and operation owned by Host located at the Property, which is more specifically identified in Exhibit A to this Agreement.

**"Property"** means the real property owned by the Host upon which the Premises is located.

**“PV System”** means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy sold and purchased under the PPA as further identified in Exhibit B attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

**“PV System Assets”** means each and all of the assets of which the PV System is comprised, including the solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

**“SMART Program”** means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

**“SMART Tariff”** has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

**“Solar Net Metering Facility”** has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

**“Solar Tariff Generation Unit”** has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

**“Term”** has the meaning set forth in Section 3.1.

**“Termination Date”** means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

## **ARTICLE II: LEASE OF PREMISES**

### **2.1 Leased Premises.**

(a) Host, in consideration of the covenants and agreements on the part of the Developer, hereby leases to Developer, and Developer accepts and takes from Host, the possession, use, enjoyment, and control of the Premises (as described in Exhibits A and A-1) for the sole and exclusive purpose of conducting the Permitted Use, as set forth below, subject to the conditions in this Agreement and the Host’s reserved uses as set forth in Article X (Quiet Enjoyment).

(b) As shown in Exhibit A, Host also grants to Developer a non-exclusive license for reasonable pedestrian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance of electric lines, cables, conduits and related equipment necessary to operate the PV System and interconnect the PV

System to the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility.

(c) Host also grants Developer the exclusive right to receive sunlight at the Premises during every hour of each day that sunlight reasonably could be received by the PV System, and Host shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System.

(d) To the extent requested by Developer and reasonably necessary, and subject to Applicable Legal Requirements and available space, as determined in Host's sole discretion, Host shall provide necessary space on the Property at locations and for such time as specified by Host (such locations, the "Construction Laydown Area") for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Developer shall not obstruct access to the Property, or interfere with or disrupt Host's use thereof or operations therein. Following temporary use thereof, the Developer shall immediately restore the Construction Laydown Area and such other areas of the Property used by the Developer, but not included in the Premises, to their condition prior to Developer's use.

(e) The Premises are demised subject to the following:

(i) any encumbrances shown on the survey of the Premises;

(ii) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A-1;

(iii) present and future zoning laws, ordinances, bylaws, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises for the Permitted Use;

(iv) the condition and state of repair of the Premises as the same may be on the Effective Date;

(v) all electric and telecommunication cable or wireless services charges, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the construction and operation of the PV System or any appurtenant facilities or improvements associated with the Permitted Use;

(f) full compliance by the Developer with all Applicable Legal Requirements;

and

(g) Host's reserved uses, as provided in Article X (Quiet Enjoyment) and set forth in the Additional Exceptions, attached hereto as Exhibit A-1, or Special Terms and Conditions, attached hereto as Exhibit D.

**2.2 As-Is Condition of the Premises.** Developer accepts the Premises in the condition or state in which the Premises now are without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Premises or any part thereof may be put, subject, however, to such representations and warranties specifically provided herein and subject, further, to Developer's right to terminate this Agreement for failure of conditions precedent to construction set forth in Section 5.2.

**2.3 Ownership of the PV System.** Except as otherwise provided herein, prior to and during the Term, Host shall have no ownership interest in the PV System, except for any ownership interest Host may have by exercising its purchase option in accordance with Section 8.12 or by virtue of being a CVEC Member in the event that CVEC exercises its purchase option under the PPA or in accordance with Section 8.11 or Section 8.12.

**2.4 Net Lease.** Except as expressly set forth herein, the Parties acknowledge and agree that Host shall not be required prior to or during the Term to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, installation, operation, maintenance, repair reconstruction or removal of the PV System, subject to the Additional Exceptions set forth in Exhibit A-1.

**2.5 Purpose.** The Premises shall be used for the sole and exclusive purpose of conducting the Permitted Use. Except with the prior express written consent of Host Town, Developer shall not use the Premises for any use other than the Permitted Use.

**2.6 Subordination.** Developer acknowledges and understands that this Agreement and all rights of Developer are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions, permits, or other matters of record and all existing agreements of the Host with respect to the Premises. Developer acknowledges and understands that the Host reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere with Developer's use of the Premises and the operation of the PV System. Host shall provide Developer with reasonable notice in the event that Host grants such additional rights on the Premises to a third party. Notwithstanding any term to the contrary contained herein, Host shall provide Developer with a commercially reasonable Subordination, Non-Disturbance and Attornment Agreement for any and all existing and future mortgagees and tenants of the Property.

**2.7 No Interference.** Developer shall operate, maintain and repair the PV System in a manner that will not obstruct or interfere with other uses of the Property, as identified in Exhibit A-1 to this Lease. In the event interference occurs, Developer agrees to take all commercially reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Host.

Host may make alterations to the Premises that do not materially interfere with or substantially impair the installation and operation of the PV System. The Developer acknowledges and agrees that Host may have continued operation or maintenance responsibilities at the Premises to be conducted at the sole expense of the Host, and Developer will use its best efforts to cooperate with Host's prosecution and completion of such work.

**2.8 Use of the Premises.** Developer and its subcontractors, agents, consultants, and representatives shall have reasonable access at all reasonable times, subject to any Special Conditions in Exhibit D (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the PV System, and to any documents, materials and records of Host relating to the Premises that Developer reasonably requests in conjunction with these activities. Developer shall provide Host with reasonable notice of all activities conducted by or on behalf of Developer on the Premises relating to the PV System. During any such activities, Developer, and its subcontractors, agents, consultants and representatives shall comply with Host's reasonable safety and security procedures (as may be promulgated from time to time) and Developer and its subcontractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Host's activities.

**2.9 Notice of Lease.** Developer shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and Host shall provide Commercially Reasonable assistance as necessary for Developer to do so, with the applicable land registry that in each case includes all information as may be required pursuant to M.G.L. c. 183, §4 with respect to the real property rights described in the Lease, as applicable. Developer shall be responsible for all reasonable documented costs of recording the Notice of Lease in a form attached hereto as Exhibit H.

### **ARTICLE III: TERM**

**3.1 Term.** The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements, for one five (5) year period, with such modifications to the provisions hereto as may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

**3.2 Holdover.** If Developer or any party claiming by, through or under Developer, retains possession of the Premises or any part thereof for longer than one hundred twenty (120) days after the expiration or earlier termination of this Lease, then Host may, at its option, serve written notice upon Developer that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in



this Lease. Developer shall also pay to Landlord all damages sustained by Host resulting from retention of such possession by Developer including but not limited to court costs and attorney's fees. Developer hereby agrees that the provisions of this Section shall not constitute a waiver by Host of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Host's right to terminate this Lease for Developer's breach of the Lease. For greater clarity, the 120-day period mentioned in this section is the period afforded to Developer for removal of the System pursuant to Section 8.9 of this Agreement.

#### **ARTICLE IV: RENT**

**4.1 Rent.** Commencing on the Commercial Operation Date until the end of the Term, Developer shall pay to Host an annual rental payment in the amount of \$1.00 on or before the fifteenth (15th) day of each January during the Term. The amount of the annual rent payment shall be pro-rated for the first and last calendar years of Commercial Operation. If Developer shall fail to pay Host any sum required to be paid by Developer to Host within ten (10) Business Days after such payment is due, interest on the unpaid amount shall accrue at the Interest Rate from and including the date such payment is due but excluding the date the payment is received.

**4.2 Taxes.** Developer shall be responsible for and pay all ad valorem real and personal property taxes, if any, assessed by the local Governmental Authority, with respect to the leasehold or the PV System, as may be further set forth in Exhibit D (Special Terms and Conditions).

**4.3 Monthly Minimum Reliability Contribution.** Host, shall be responsible to pay any Monthly Minimum Reliability Contribution charged or assessed to Host by the Distribution Company.

#### **ARTICLE V: DESIGN, INSTALLATION AND OPERATION OF PV SYSTEM**

**5.1 General Description.** Except as otherwise specified herein, the PV System shall consist of the equipment and property described in Exhibit B.

**5.2 Conditions Precedent to Commencement of Construction.** The right to and obligation of Developer to commence construction of the PV System on the Premises is subject to the fulfillment or waiver by the applicable Party of each of the following conditions precedent:

(a) Developer shall have obtained financing on terms acceptable to Developer in its sole discretion. For the purposes of this subparagraph, financing may include debt financing, equity financing, tax equity financing, loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the construction and operation of the PV System;

(b) Developer shall have obtained all permits, licenses and other approvals required by Applicable Legal Requirements and from the Distribution Company for construction, installation and operation of the PV System, and agree to follow the requirements of Section 5.3, below (Governmental Permits);

(c) Developer shall have determined that no features of the Premises will substantially impair the installation and operation of the PV System, and that the Premises has sufficient space to accommodate the installation, operation and maintenance of the PV System along with the operation and maintenance of existing facilities;

(d) Developer shall have determined that it is feasible to make related improvements as necessary on the Premises to install, operate, and interconnect the PV System to existing infrastructure, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any required upgrades, but that this condition may be satisfied if either Party agrees to implement any necessary upgrades at its own cost, or if the Parties agree to share the costs of such upgrades;

(e) Distribution Company requires material changes in plans and/or specifications to the PV System or its interconnection, which require additional costs or fees, in excess of \$10,000, which in Developer's sole discretion are unreasonable, except if Host or CVEC agrees to pay for such Distribution Company mandated costs;

(f) In the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Buyer, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, provided, however, that Buyer will extend the deadline for compliance with this subsection in thirty (30) day increments, upon Buyer's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement;

(g) Host and Developer have determined that the PPA shall be in full effect and not have been terminated on account of failure of conditions precedent included therein.

(h) Host has determined that the Inter-Governmental PSA shall be in full effect and not have been terminated on account of failure of conditions precedent included therein;

(i) Host, in its regulatory capacity as a Governmental Authority, and Developer shall have reached agreement on the liability of Developer for ad valorem property taxes, if any are to be assessed, and have entered into a structured tax agreement with respect thereto; and

(j) Host shall have approved the final design of the PV System and its integration into the Host's Property, in accordance with Section 5.4 hereof.

Either Party may waive any condition precedent to be achieved by the other Party. The Party proposing to terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be commercially reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement.

**5.3 Governmental Permits.** Developer shall obtain at its sole cost all Permits required for Developer's use of the Premises, the Permitted Use, and the PV System from any and all Governmental Authorities having jurisdiction in the matter. Developer shall promptly inform Host of all significant developments relating to the issuance of such Permits. Host shall reasonably cooperate with Developer in procuring such Permits. If any changes in plans and/or specifications for the Project are required by any Governmental Authority, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld.

**5.4 Design and Installation.** Developer shall design the PV System in accordance with Good Engineering Practice, shall consult with and receive input from Host with respect to integration of the PV System with the Host's facilities and submit the final design for Host's and CVEC's approval, not to be unreasonably withheld or delayed. Developer shall furnish all supplies, materials, labor, tools, equipment and other services necessary for installation of the PV System. As soon as practicable after the Effective Date, Developer shall provide Host and CVEC an updated schedule for design, permitting, equipment procurement, commencement of construction and commissioning of the PV System, indicating milestones and durations of activities. Developer shall commence construction of the PV System by the Outside Construction Commencement Date and will proceed diligently and continuously thereafter until completion, but in no event shall the installation be completed later than one hundred eighty (180) days from the Commercial Operation Date. Developer shall install the PV System in accordance with Good Engineering Practice, all Applicable Legal Requirements, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E, applicable requirements of the insurance policies maintained by Host with respect to the PV System, and the terms of this Agreement.

**5.5 Interconnection with Electric Distribution Grid.** Developer shall obtain at its sole cost all Permits and agreements required for Developer's interconnection of the PV System to the electric distribution grid maintained by the Distribution Company. Developer shall promptly inform Host and CVEC of all significant developments relating to such interconnection matters. Host shall provide Developer with such information as Developer may reasonably request in connection with Developer's procurement of such Permits and agreements. If any material changes in plans and/or specifications to the PV System are required by the applicable electric distribution company, then Developer shall submit such changes, if any, to Host and CVEC for their approval, which shall not be unreasonably withheld.

**5.6 Access to and Use of the Premises.** During construction and the operation of the PV System, including, but not limited to, all pre-construction activities, Developer and its contractors or agents shall have access to the Premises in accordance with Exhibit D (Special Terms and Conditions).

**5.7 Plans and Specifications.** Installation of the PV System shall be completed in accordance to plans approved by Host and CVEC, which approval shall not be unreasonably withheld. Prior to the Commercial Operation Date, Developer shall provide Host and CVEC with documentation as set forth in the Common Technical Specifications, Exhibit E, including as-built plans, permission to Operate from local distribution company, and specifications of the PV System installed on the Premises which show the actual location of the PV System.

**5.8 Maintenance Responsibilities.** Developer shall properly maintain the PV System, conduct all required maintenance, and make all repairs thereto in accordance with Good Engineering Practice. Developer shall take all measures necessary to maximize production of the PV System throughout the Term. Such obligations shall include, but not be limited to, maintaining the PV System in a condition of Commercial Operation, and taking all actions necessary to comply with the Applicable Legal Requirements. The Developer shall deliver a maintenance report annually to the Host and CVEC. Developer shall be responsible for all costs related to the PV System, including, but not limited to, those costs necessary to construct, operate, maintain, repair, and remove the PV System.

**5.9 Manufacturer and Installer Warranties.** Developer shall ensure that each manufacturer and each installer of equipment and parts comprising the PV System provides a warranty as further described in the Common Technical Specifications attached hereto as Exhibit E. Such warranties shall run to the benefit of the Host.

**5.10 Use of Installation and/or Maintenance Subcontractors.** Developer may use qualified subcontractors to install and/or maintain the PV System, provided that Developer shall at all times remain fully responsible for the acts and omissions of such subcontractors. Installation and maintenance subcontractors shall be required to meet the insurance requirements set forth in Exhibit C, provided, however, that satisfaction of such requirements shall not relieve Developer of its responsibilities for such subcontractors as set forth in this Section 5.10.

**5.11 Alterations.** Developer shall have the right from time to time both before and after the completion of the PV System and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the PV System, subject, however, in all cases to the following:

(a) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration, a "Substantial Alteration");

(b) No Substantial Alteration shall be commenced except after prior written notice to and consent from Host, which consent shall not be unreasonably withheld;

(c) Any alteration or Substantial Alteration shall be made with reasonable dispatch, in accordance with Good Engineering Practice, and in compliance with all Applicable Legal Requirements; and

(d) No later than completion of any alteration or Substantial Alteration, Developer will provide Host with complete copies of all final plans and specifications therefor not previously provided; and

(e) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibits A-1 and D to this Lease.

**5.12 Host Cooperation.** Host shall have the following duties under this Agreement:

(a) to act expeditiously, and in good faith in supporting application for and facilitating any Permits necessary for the construction and operation of the PV System. Notwithstanding anything to the contrary herein, the execution of this Lease does not authorize a waiver of any permit or approval the Developer may require from the Host acting in its regulatory capacity, nor require the Host, acting in its regulatory capacity, to expedite its review of the Developer's Permit application in the Host's normal course of business;

(b) to cooperate with Developer to the extent reasonable and appropriate given the particular use of the Property on issues regarding access, construction, on-site electrical metering and consumption, and interconnection.

**5.13 Emergencies.** The Parties agree that Host shall have the right, but not the obligation, to respond to any emergency or equipment failure involving the PV System if necessary to protect the Property, including the Premises, or to protect public health or safety, and to effectuate any necessary repairs or take corrective action.

**5.14 Damage.** Any damage done to the Premises or other property not belonging to Developer during installation or during operations which is directly caused by Developer shall be repaired at Developer's expense as soon as practicable, but no later than thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

**5.15 Payment and Performance Bonds.** Prior to the Commencement Construction Date, the Developer shall provide Host with a performance bond from an issuer with a Best's rating of not less than "A", and from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570, in a form reasonably acceptable to Host (the "Performance Bond"), which Performance Bond shall be in an amount sufficient to secure 100% of Developer's obligations with respect to the construction of the PV System under this Agreement or, prior to completion of construction and commissioning of the System. The Performance Bond shall name Host as obligee. The Performance Bond shall remain in effect until sixty (60) days after delivery by Developer to Host of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by Host, (b) Host has provided notice to Developer of a dispute regarding the completion of the PV System in

accordance with the provisions of this Agreement, in which case the Performance Bond shall remain in effect until the resolution of such dispute, (c) Host provides the issuer of the Performance Bond written notice authorizing the expiration of the Performance Bond, or (d) this Agreement is terminated pursuant to the provisions hereof and Developer has fulfilled its removal and restoration obligations under this Agreement. In addition, at least fifteen (15) days prior to the Construction Commencement Date, Developer shall provide Host with a payment bond from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to Host (the "Payment Bond"). The Payment Bond shall name Host as obligee. The Payment Bond shall be released upon the later of: (a) receipt by Host of satisfactory evidence that all subcontractors, laborers, have been paid in full; or (b) the Commercial Operation Date.

**5.16 Mechanics Liens.** Developer shall not file any mechanics liens against Host for its work performed in accordance with this Agreement and this requirement shall flow down to all of Developer's contractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the PV System, Developer, within ten (10) days after notice to Developer of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Developer shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Host may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Host and costs and expenses, including court costs and attorney's fees reasonably incurred by Host in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Host's making of the payment of the cost and expenses, shall be paid by Developer to Host within ten (10) Business Days of Host's invoice therefor.

**5.17 Utilities.** Developer shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all electricity consumed by the Developer in accordance with the Permitted Use. Host shall have no duty or liability to Developer with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by Host, or any third party, nor shall Host have any liability to Developer (including, without limitation, liability for lost revenue) arising from Host's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Developer desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Host, Developer may do so at Developer's expense subject to the approval of Host and CVEC, which shall not be unreasonably withheld.

**5.18 Operations and Maintenance Manual; Training.** Prior to the Commercial Operation Date, the Developer shall deliver a set each to Host and CVEC an operations, maintenance manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit E. In addition, Developer will train Host's representative(s), including employees or contractors of Host on emergency preparedness and response, as well as basic principles of operation and maintenance of the PV System. Developer shall also provide an online portal or other tool sufficient to allow the Host to monitor activity at the PV System

without operation of the PV System. Notwithstanding the foregoing, Host shall have no right to perform any maintenance or repair on the PV System without Developer's prior written consent, except in the case of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons.

**5.19 Notice of Commercial Operation.** Subject to the provisions of this Agreement, Developer shall notify and represent to Host and CVEC when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to Host and CVEC the Commercial Operation Date.

**5.20 Late Completion.** If Commercial Operation does not occur on or before the Outside Commercial Operation Date, Developer will be obligated to pay Delay Liquidated Damages. These Delay Liquidated Damages owed to Host shall be addressed between CVEC and Host pursuant to the Inter-Governmental Agreement. Notwithstanding the foregoing, Developer shall not be responsible for Delay Liquidated Damages, in the event that Developer cannot satisfy the Outside Construction Commencement Date and/or Outside Commercial Operation Date milestone due to delays caused by the Host, CVEC, the local electric utility, governmental authorities or an event of Force Majeure and the Developer is utilizing Commercially Reasonable efforts to overcome such delays. The Parties recognize the delays, expense and difficulties involved in proving the actual losses or damages in a judicial or other proceeding, and agree that the Delay Liquidated Damages are reasonable compensation to Host. Payment of Delay Liquidated Damages shall not preclude Host from seeking other damages at law or equity to which it may be entitled as a result of Developer's failure to commence construction on or before the Outside Construction Commencement Date and/or Commercial Operation on or before the Outside Commercial Operation Date.

**5.21 Maintenance; Repairs.**

(a) Developer shall take good care of the Premises and the PV System, conduct all required maintenance and make all repairs to the PV System, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep Premises and the PV System in first class order and condition, and in compliance with all Applicable Legal Requirements and Good Engineering Practice.

(b) Host shall have no duty or liability to Developer with respect to the maintenance and repair of the PV System.

(c) Any damage caused by Developer or its subcontractors to the Premises or other property not belonging to Developer or its subcontractors shall be repaired at Developer's expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

(d) Host shall maintain the Property in good repair that is sufficient to support operation of the PV System. However, nothing in this Agreement shall limit Host's ability to maintain the Property in a reasonable manner consistent with Host's current and past practices,

the Additional Exceptions set forth in Exhibit A-1, and any other conditions imposed by a Governmental Authority that are applicable to the Premises.

**5.22 Host's Maintenance.** Developer acknowledges that Host may need to temporarily remove or relocate all or a portion of the PV System in order to perform routine or necessary maintenance. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Developer shall be solely responsible):

(a) Host will provide Developer with at least thirty (30) days prior written notice of its intent to temporarily relocate (except in the case of an Emergency, in which case notice shall be given as soon as practical and may be after some emergency response work has occurred);

(b) In such notice, Host will certify that Host's requested removal or relocation of the PV System is required to perform routine or necessary maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency response work has occurred) and Developer will have no obligation to temporarily remove or relocate all or a portion of the PV System unless the Host provides such certification;

(c) Host will be responsible for any and all actual, documented, reasonable costs incurred in the relocation of all or a portion of the PV System to and from the temporary location, including any temporary storage costs;

(d) any such relocation shall be performed by Developer (except that, in the case of an Emergency, Host may perform such activities as are reasonably necessary in light of such Emergency);

(e) Host may not request more than one relocation per Contract Year; and

(f) in the event that a temporary relocation, which is not an "Emergency", is for longer than 30 days or if there has already been at least one relocation during the Term, Host, shall promptly pay Developer for any lost revenue during the relocation accrued after the first 30 days of the first relocation (for the first 30 days of any first relocation during the Term, Host shall not be responsible for any lost revenue to Developer).

Such lost revenue shall be based on Net Energy that would have been produced during the time period of the relocation as estimated by PVWatts Calculator, or similar recognized method using accurate data inputs for the parameters of the PV System and its location. Host agrees to work in good faith to minimize the timing of a temporary removal or relocation of the PV System. For purposes of this Section 5.22, "Emergency" shall mean any *Force Majeure* event, condition or circumstance at or affecting the Premises that would, in the reasonable opinion of Host, materially and substantially harm life or property on the Premises without immediate preventative or remedial action. The Host shall not be responsible in any way for lost revenue that is the result of an Emergency.



**5.23 Project Relocation.** Host may request to move the PV System to another location on the Property or to another site owned by Host, but any such relocation shall be subject to the approval of Developer and Financing Party, not to be unreasonably withheld provided the alternate location or site structurally supports the PV System and the PV System is capable of generating substantially equivalent amounts of electric energy when installed at the alternate site. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the PV System but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Developer in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs.

In addition, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the PV System when such relocated PV System is reinstalled at a new location (the “Relocation Event”), Host will pay Developer an amount equal to the sum of (i) payments that Host would have made to Developer hereunder for electric energy that would have been produced by the PV System following the Relocation Event; (ii) revenues that Developer would have received with respect to the PV System under applicable solar programs and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes that Developer would have received with respect to electric energy that would have been produced by the PV System following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the PV System in the same period in the previous Contract Year, unless Developer and Host mutually agree to an alternative methodology.

**5.24 No Voiding of Existing Warranties.** Developer shall ensure that the PV System is designed and constructed so that no existing warranties that apply to the Premises, set forth in **Exhibit XXX**, are voided because of the installation of the PV System. Developer shall consult, as may be necessary, with any company that has provided such warranty.

**5.25 Use of Hazardous Materials Prohibited.** Developer shall not use at nor transport to the Property, including the Premises, any hazardous materials, including any substances defined, classified, or otherwise denominated as a “hazardous substance”, “toxic substance”, “hazardous material”, “hazardous waste”, “hazardous pollutant”, “toxic pollutant” or oil by the Applicable Legal Requirements. The Developer shall fully indemnify the Host for any release of hazardous materials at the Property caused by the Developer including all court costs, attorney’s fees, damages and liabilities as a result thereof.

## **ARTICLE VI: DEVELOPER’S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS**

**6.1 Developer’s Representations and Warranties.** As of the Effective Date of this Agreement, Developer represents and warrants to Host as follows:

- (a) Developer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;
- (c) Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement; and
- (d) None of the documents or other written or other information furnished by or on behalf of Developer to Host or its agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

**6.2 Developer's Covenants.** In addition to the other covenants set forth in this Agreement, Developer covenants to Host as follows:

- (a) Developer shall promptly inform Host and CVEC of the occurrence of any event that may reasonably be expected to materially affect the operation of the PV System or the performance of Developer's obligations under this Agreement (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on Developer or Host); and
- (b) Developer shall provide Host or CVEC such other information as Host or CVEC may reasonably request in order to review Developer's compliance with the terms of this Agreement.

## **ARTICLE VII: HOST'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS**

**7.1 Host's Representations and Warranties.** As of the Effective Date of this Agreement, Host represents and warrants the following to Developer:

- (a) Host has full legal capacity to enter into this Agreement;
- (b) Host has the power to perform all of its obligations hereunder and the right to grant Developer rights provided under this Lease;
- (c) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Host has full authority to do so and to fully bind Host;

(d) Host knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Host or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Host's ability to carry out its obligations under this Agreement; and

(e) Host agrees that it has read and fully understands the form of PPA (attached as Exhibit E to this Agreement), including all rights granted to CVEC thereunder; and

(f) Host warrants that it holds sufficient title in the Premises to authorize the completion of activities in this RFP, except those listed in the Additional Exceptions set forth in Exhibit A-1.

**7.2 Host's Covenants.** In addition to the other covenants set forth in this Agreement, Host covenants to Developer that throughout the Term and any extensions thereof, Host shall not interfere or allow a third party to interfere with the sun affecting the PV System. Host shall not construct or permit to be constructed any structure on the Property that could adversely affect insolation levels at the Premises, permit the growth of foliage that could adversely affect insolation levels at the Premises, or directly emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Premises. If Host becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Host shall advise Developer of such information and reasonably cooperate with Developer in measures to preserve average levels of insolation at the Premises as they existed on the date of execution of this Agreement. Host will not conduct activities on, in or about the Property that have a reasonable likelihood of causing material damage or impairment to the PV System or otherwise materially adversely affecting the PV System or operation thereof.

For ground mounted systems, Developer shall take all reasonable actions to prevent any parties from accessing the Premises other than Developer, Host, and each of their respective employees, invitees, agents and representatives, including fencing, security cameras, and other appropriate security measures. For solar canopy systems, Host shall implement reasonable measures to prevent any unauthorized parties accessing the Premises, theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the PV System.

## **ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES; PURCHASE OPTIONS**

**8.1 Termination.** Subject to Section 8.4 (Force Majeure), this Agreement shall not be subject to termination, except for the following Events of Termination:

(a) Any applicable party may terminate this Agreement prior to the Construction Commencement Date for failure to achieve a condition precedent to construction, pursuant to Section 5.2.

(b) The non-defaulting party may terminate this Agreement in the event a material Event of Default pursuant to Section 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer) prevents operation of the PV System for twelve (12) months, except with respect to Force Majeure events.

(c) Host may terminate this Agreement in the event that Commercial Operation is not achieved by the Outside Commercial Operation Date unless such failure to achieve Commercial Operation is due to delays caused by the Host, CVEC, the local electric utility, governmental authorities or an event of Force Majeure.

(d) Host may terminate this Agreement upon ten (10) Business Days written notice to the Developer, in the event that Developer's material breach of this Agreement, including but not limited to its negligent failure to install and maintain the PV System, causes damage to the Premises or its occupants, and such damage is not cured within cure periods set forth in Section 8.3.

(e) Host may terminate this Agreement upon five (5) Business Days written notice, in the event Developer fails to cure an Event of Default under Section 8.3(c);

(f) Either Party may terminate this Agreement in the event that the PPA is terminated, except to the extent (i) the PPA is terminated due to CVEC's or Host's exercise of its Purchase Option (as defined therein), or (ii) that Host is prohibited for terminating this Agreement in the event the PPA is terminated due to a default by CVEC.

**8.2 Events of Default by Host.** The following shall each constitute an Event of Default by Host:

(a) Host breaches any material obligation under this Agreement, and fails to cure such breach within sixty (60) Business Days after notification by Developer of the breach.

(b) If any material representation or warranty made by Host in Article VII of this Agreement (Host's Representations, Warranties, and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Developer, and Host does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Developer.

(c) Host fails to carry out its obligations and duties pursuant to Article X (Quiet Enjoyment).

(d) Any other material breach of this Agreement, or the Intergovernmental Power Sale Agreement, which proves to have a material adverse effect on the Developer, not specifically enumerated above.

Events of Default in this Section 8.2 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

**8.3 Events of Default by Developer.** It shall constitute an Event of Default by Developer if Developer:

(a) breaches any material obligation under this Agreement that proves to have a material adverse effect on Host and fails to cure the breach within thirty (30) days after notification by Host of the breach; provided, however, no Event of Default shall occur if the nature of such breach is such that it cannot reasonably be cured within thirty (30) days and Developer commences remedying the breach within said thirty (30) day period and actually remedies the breach with ninety (90) days after notification by Host of the breach;

(b) makes any material representation or warranty made by Developer in Article VI (Developer's Representations, Warranties and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Host, and Developer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Host.

(c) fails to provide or maintain in full force and effect any required insurance or bond or other surety, if such failure is not remedied within five (5) Business Days after receipt of written notice from the Host, or the occurrence of a default by the insurer of such Developer under any insurance policy provided hereunder;

**8.4 Force Majeure.** Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Host) and 8.3 (Events of Default by Developer), if by reason of Force Majeure either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date. In the Event of Termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

**8.5 Remedies.**

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer), as applicable, the non-defaulting Party may seek specific performance and/or monetary damages.

(b) The non-defaulting Party may terminate this Agreement subject to the limitations and under the provisions of Section 8.1.

(c) In the event of a Default by Host requiring the permanent removal of the PV System from the Premises, and provided that the Host designates an alternative location at which the PV System is able to produce substantially equivalent amounts of Electricity, the Developer shall mitigate any damages by removing, storing and re-installing the PV System at the alternative location, all such costs to be borne by Host as damages. In the event PV System is unable to produce substantially equivalent amounts of Electricity at the alternative location, but the Host agrees to compensate the Developer for lost revenues during the Term of the Agreement on account of such reduced capacity, the Developer shall mitigate the Host's damages as provided herein by removing, storing and re-installing the PV System at the alternative location.

(d) In the event of a default by Developer, Host may elect, but is not required to, purchase the PV System pursuant to Section 8.12 of this Agreement (Purchase Option), subject to any prior right of CVEC to purchase the PV System, provided that Host shall be entitled to offset the Purchase Price of the PV System determined in accordance with Article XIII against the amount of monetary damages due and owing Host pursuant to this Section 8.5. Upon Host's tender of the Purchase Price as offset by the amount of its monetary damages,, should Developer fail to execute such necessary documents to convey its rights and interest to the PV System, the PV System shall be deemed abandoned and Host may retain the PV System as its property or may, subject to any right of CVEC to acquire the PV System pursuant to Section 9.3 of the Net Energy Power Purchase Agreement, proceed to remove the PV System in accordance with Section 8.9 of this Agreement (Abandonment of PV System).

For breach of any provision for which an express remedy, other than termination, or express measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

#### **8.6 Step-in Rights of Financier.**

(a) Host agrees to give written notices to any Financier, of which Host has written notice, upon the occurrence of any Event of Default hereunder, the failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, or an Event of Termination on account of Force Majeure, and Financier shall have a period of thirty (30) days after receipt of notice of failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed an additional ninety (90) days, to cure the Event of Default or Event of Termination on account of Force Majeure if Financier uses Commercially Reasonable efforts to cure such Event of Default or Event of Termination during the initial ninety (90) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such a reasonable period of time thereafter.

(b) Host agrees that, prior to termination pursuant to Section 8.1 (Termination), Host shall give written notice to any Financier of which Host has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such Event of Termination.

(c) Host also agrees that, in the event that Host terminates this Agreement pursuant to Section 8.1 (Termination), and Financier agrees in writing to assume all liabilities and obligations of the Developer, then a new agreement shall be executed by Host with Financier to assume the Developer's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Financier or extend or expand Host's obligations hereunder.

## **8.7 Damage or Destruction of PV System.**

(a) Developer shall bear the risk of loss to the PV System (including casualty, condemnation or Force Majeure), except to the extent that such loss results from the gross negligence of the Host or Host's agents, representative, customers, vendors, employees, or contractors.

(b) In the event of any PV System loss, Developer shall, at its sole cost and expense either (i) repair or replace the PV System, or (ii) elect to terminate this Agreement in which case Developer shall remove the PV System and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date in accordance with Section 8.8 (Site Restoration).

(c) In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects not to repair or replace the Premises, the Developer shall be limited to recovery of proceeds from its insurance coverage. In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects to repair or replace the Premises, the Developer may exercise either of its options under Section 8.7(b).

**8.8 Site Restoration.** On the Termination Date, Developer shall peaceably and quietly leave, surrender and yield up unto Host the Leased Premises, provided however that following the Termination Date of this Agreement, Developer shall have one hundred twenty (120) days to remove the PV System from the Leased Premises, and to restore the Leased Premises to the condition that existed as of the Effective Date, reasonable wear and tear excepted, or such additional time as may be necessary after Host or CVEC have declined to exercise a Purchase Option pursuant to this Lease and the PPA.

**8.9 Abandonment of PV System.** Notwithstanding anything to the contrary contained in this Agreement, any waiver in whole or in part of the requirement to remove the PV System shall require the written approval of Host. Any of the PV System left on the Premises after the passage of one hundred twenty (120) days after the Termination Date shall be deemed abandoned. Host shall provide written notice to the Developer within thirty (30) days of the expiration of such one hundred twenty (120) day period, of its election to retain all or any of the PV System as its property, or dispose of all or any of the PV System in such reasonable manner as Host may see fit and at Developer's sole cost; provided, however, that Host's election to retain the PV System as its property shall relieve Developer from any liability for its failure to remove such PV System; and provided further, however, that the foregoing shall not apply to any of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure or the negligent acts or omissions of Host (in which in either case the time period for removal shall be extended on a day for day basis).

**8.10 Decommissioning Assurance.** Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount specified in Exhibit D, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Depending on the circumstances, and subject to Host's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of Developer's failure to comply with its PV System removal and Premises restoration obligations under the Agreement.

**8.11 Purchase Option.**

(a) **Grant of Purchase Option to Host.** For and in consideration of the agreement of Host to enter into this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Developer hereby grants to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Lease and the PPA (the "Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (a) upon the tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date of this Agreement, (b) upon a Developer Event of Default pursuant to Section 9.3 and the expiration of any cure right with respect thereto, or (c) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article.



(b) Timing of Purchase Option. If the Host declines the Purchase Option or otherwise fails to send its Host Purchase Option Notice within sixty (60) Business Days prior to tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date under the PPA, or the date of its Termination, then the Buyer shall have thirty (30) Business Days thereafter to provide written notice to Developer of its intent to exercise the Purchase Option (“Buyer Purchase Option Notice”) pending completion of due diligence. Promptly following receipt of a Purchase Option Notice from Host or Buyer, as the case may be, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host, or the Buyer, as the case may be, the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, for its inspection during normal business hours.

(c) Inspection. Buyer or Host, as the case may be, shall have fifteen (15) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

(d) Determination of Purchase Price. The purchase price shall be the higher of the Buyer Purchase Payment in Exhibit C, or the Appraised Value of the PV System, as determined by the Independent Appraiser (“Purchase Price”). If the Purchase Option arises out of a Developer Event of Default, the Purchase Price shall be the Appraised Value.

(e) Independent Appraiser. Within fifteen (15) Business Days of Developer’s receipt of Purchase Option Notice, Developer and Buyer or Host, as the case may be, shall each propose an Independent Appraiser. If Developer and Buyer or Host do not agree and appoint an Independent Appraiser within such fifteen (15) Business Day period, then at the end of such fifteen (15) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party’s notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Developer and Buyer or Host. Such selection shall be final and binding on Developer and Buyer or Host.

(f) PV System Records and Inspection. The Developer shall make the PV System and records related thereto available to the Independent Appraiser. Similarly, the Buyer or Host shall make available to the Independent Appraiser the results of its inspection, review of records and other due diligence. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value (the “Preliminary Determination”).

(g) Preliminary and Final Appraisal Determinations. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Developer and Buyer and/or Host, together with all supporting documentation that details the calculation of the Preliminary Determination. Developer and Buyer and/or Host shall each have the right to object to the Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days of

receipt of the objecting Party's objections, the selected Independent Appraiser shall issue its final determination (the "Final Determination") to Developer and Buyer and/or Host, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Appraised Value by the selected Independent Appraiser shall be final and binding on the Parties.

(h) Appraisal Costs. Developer and Buyer or Host, as the case may be, shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s), unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser.

(i) Final Purchase Option Notice. Within ten (10) Business Days of the Final Determination, the Buyer or Host shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with Section 13.2 ("Final Buyer Purchase Option Notice" or "Final Host Purchase Option Notice"). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable. If the Buyer's or Host's Purchase Option has arisen on account of a Developer Event of Default and Termination of the Agreement therefor under Section 9.2, the Developer Termination Payment shall be deducted from the Purchase Price.

(j) Transfer Date. The closing of any sale of the PV System (the "Transfer Date") pursuant to this Article will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 8.11(i). This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

(k) Terms of PV System Purchase. On the Transfer Date (a) Developer shall surrender and transfer to Buyer or Host, as the case may be, all of Developer's right, title and interest in and to the PV System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) Buyer or Host, as the case may be, shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in Buyer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Buyer or Host. The purchase shall be on an "as is," "where is" basis without warranty of any kind.

(1) Acknowledgement of CVEC's Purchase Option. In the event that CVEC exercises its Purchase Option under this Lease and the PPA, this Agreement shall be amended to substitute CVEC for the Host and shall continue in full force and effect.

## **ARTICLE IX: INDEMNIFICATION; INSURANCE**

**9.1 Developer Indemnification of Host.** To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Host, CVEC and all of their officers, employees, boards, commissions, and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind ("**Losses**"), including any Environmental Claim, from or to third parties which arise out of the performance of Developer's work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions, including failure to comply with the provisions of this Agreement, of the Developer, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts Developer is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Host, but the Developer's obligation to pay Losses shall be reduced in proportion to the percentage by which the Host's negligent or intentional acts, errors or omissions caused the Losses.

9.2 To the extent permitted by law, Host shall indemnify and hold harmless Developer from and against any and all Losses from or to third parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Host, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of Developer, but the Host's obligation to pay Losses shall be reduced in proportion to the percentage by which the Developer's negligent or intentional acts, errors or omissions caused the Losses. Notwithstanding any other provision in this Agreement, the Host's and CVEC's liability hereunder shall be limited by the protections and immunities afforded by and to the amount set forth in Chapter 258 of the Massachusetts General Laws.

9.3 The Parties agree to comply with the insurance obligations allocated to them in Exhibit C hereto.

9.4 The provisions of Section 9.1 and 9.2 shall survive the expiration or earlier termination of the Agreement.

## **ARTICLE X: QUIET ENJOYMENT**

**10.1 Quiet Enjoyment.** Host covenants that Developer shall quietly have and enjoy the Premises throughout the Term and any extensions thereof. Host warrants and agrees that, throughout the Term and any extensions thereof:

(a) the Premises shall be dedicated to Developer's use for conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the PV System, except as provided for in Section 10.2 and subject to the Additional Exceptions set forth in Exhibit A-1 and Special Conditions in Exhibit D;

(b) any other uses of the Premises by Host or any third party pursuant to Section 10.2 and the Additional Exceptions set forth in Exhibit A-1 shall not unreasonably interfere with the Permitted Use and the operational and solar requirements of the PV System;

(c) Host shall maintain or obtain any agreements, contracts, consents, Permits, approvals, or other instruments or permissions necessary for Developer to have the quiet enjoyment of its rights under this Agreement; and

(d) Host shall, in good faith, use its best efforts to protect Developer's quiet enjoyment of its rights hereunder, including, without limitation, defending against a third party claim that would materially interfere with Developer's rights under this Article X.

Subject to the specific provisions of this Agreement permitting the same, Host shall have the right to enter upon the Premises at any time for any purpose and no such entry that complies with the provisions of this Agreement permitting the same shall be considered a breach of the covenant of quiet enjoyment.

**10.2 Host's Reserved Uses.** Except as specifically set forth in the Additional Exceptions contained in Exhibit A-1, Host shall not itself conduct any other use, nor shall Host allow any third party to conduct any other use, on the Premises.

## **ARTICLE XI: ASSIGNMENT AND MORTGAGE**

### **11.1 Assignment.**

(a) Developer Assignment. Except as otherwise provided by this Agreement, Developer shall not assign, subcontract, sublet or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Host, provided that prior notice to or consent of Host shall not be required: (i) for an assignment or transfer by Developer to any of its other individual members; and (ii) for a collateral assignment by Developer to any Financier, subject to the terms and conditions of this Article XI. For assignments requiring Host's approval, approval may be denied in the reasonable discretion of Host if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning Developer. Notwithstanding the foregoing, Host may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Developer. Developer's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. If Developer assigns, sublets or delegates its rights, privileges or obligations under this Agreement, Developer shall reimburse CVEC and Host for their reasonable attorneys' fees related to review and approval of assignments.

(b) **Host Assignment.** Host shall not assign this Agreement without the prior consent of Developer, such consent not to be unreasonably withheld, provided, however, that any such assignment shall be made subject to the terms and provisions of this Agreement. Host shall promptly provide Developer a copy of the assignment document following any assignment.

The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto. Notice of any permitted assignment shall be provided to the other Party as soon as practicable.

**11.2 Financing by Leasehold Mortgage.** Host is cognizant of the need of Developer to finance its interest in the Premises and the PV System thereon, and therefore specifically agrees, subject to Section 8.6, without any further request for prior consent to permit Developer to mortgage, assign or transfer its interest in the Premises for the purpose of obtaining financing, which shall include equity and/or debt, provided:

(a) The term of such mortgage, assignment or transfer shall not exceed the Term; and

(b) Developer shall give Host and CVEC notice of the existence of any mortgage, assignment or transfer, together with the name and address of the mortgagee, assignee or transferee, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer.

**11.3 Financing by Leasehold Mortgage Release of Developer.** Developer shall be relieved from its obligations under this Agreement in whole or in part, as the case may be:

(a) by any whole or partial disposition of Developer's interest in this Agreement in compliance with Section 11.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by the terms of this Agreement, unless the Parties agree otherwise, and except as otherwise provided by the terms of any assignment or transfer; and

(b) in the event of any foreclosure by a Financier, in which case the Financier shall substitute for the Developer for purposes of this Agreement.

Absent express written consent of Host, the execution of a mortgage or any assignment from a Financier to another Financier shall not relieve Developer from its obligations under this Agreement.

**11.4 Financier Provisions.** Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or in any PV System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Host or Host's fee interest in and to the Premises, or Host's rights under this

Agreement. Host shall promptly execute any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendment does not materially change the terms of this Agreement.

(a) Financier's Right to Possession, Acquire and Assign. Pursuant to the provisions of this Section 11.4 and subject to Section 8.6, a Financier shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold estate by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; (iv) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure; and (v) to sell the PV System and rights under the PPA and any other contracts dealing with the sale of Net Energy or renewable energy certificates from the PV System to a third party. Host's consent shall not be required for the Financier's acquisition of the encumbered leasehold estate created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

(b) Upon the Financier's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Financier shall have the right to sell or assign said acquired leasehold estate, provided Financier and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Host, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of Developer's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

(c) Notice of Default; Opportunity to Cure. The Financier shall be entitled to receive simultaneous notice of any default by Developer, provided that such Financier shall have first delivered to Host notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by state laws, rules, regulations, Developer's procedures, and the provisions of this Agreement. If any notice shall be given of the default of Developer and Developer has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice that Developer has failed to cure such default and such Financier shall be entitled to cure any such default pursuant to the terms of Section 8.6. The Financier may take possession of the Premises and the PV System, and operate the PV System if necessary, pursuant to Section 8.6.

## ARTICLE XII: DISPUTE RESOLUTION

**12.1 Dispute Resolution.** Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the

subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties so agree, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be the courts for and in Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

## **12.2 Stay of Termination.**

(a) During informal negotiations and mediation pursuant to Section 12.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 12.1 are pending, the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 12.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) During the Term of the PPA (as defined therein), if there is any lawsuit pending between Developer and CVEC, Host shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Host may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by Host at any time for any reason.

## **ARTICLE XIII: MISCELLANEOUS**

**13.1 Construction; Obligation to Modify Agreement.** Upon implementation by the Department of Public Utilities, Department of Energy Resources, or other Governmental

Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the economic benefits anticipated by either Party, in particular any rule or regulation regarding Net Metering, the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

**13.2 Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Host:

[TOWN MANAGER OR ADMINISTRATOR]

If to Developer:

[PROPOSED DEVELOPER]

If to CVEC: Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
Attn: Liz Argo, Manager  
Tel: (774) 722-1812  
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

**13.3 Entire Agreement; Amendments; Binding Effect.** This Agreement and the PPA and Inter-Governmental PSA constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.



**13.4 Expenses.** Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

**13.5 No Joint Venture.** Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

**13.6 Joint Work Product.** This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

**13.7 Waiver.** No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

**13.8 Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Buyer as public cooperative or to the Host as municipal entity.

**13.9 Nondiscrimination.** Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

**13.10 Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

**13.11 Further Assurances.** From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

**13.12 Survival.** Termination of this Agreement for any reason shall not relieve Host or Developer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Sections 9.1 and 9.2 (Indemnification) and XII (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

**13.13 Counterparts; Scanned Copy.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

**13.14 CVEC as Third Party Beneficiary.** The Parties agree that CVEC shall be a third party beneficiary of this Agreement.

**13.15 Special Terms and Conditions.** Host understands and agrees that this Agreement is CVEC's standard form lease agreement for project development and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

**13.16 No Limitation of Regulatory Authority.** The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

*[Signature page to follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**DEVELOPER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HOST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

List of Exhibits to this Agreement

Exhibit A – Description of Premises

Exhibit A-1 – Additional Exceptions

Exhibit B – Description of PV System

Exhibit C – Insurance Requirements

Exhibit D – Special Terms and Conditions

Exhibit E – Common Technical Specifications

Exhibit F – Power Purchase Agreement between Developer and CVEC

Exhibit G – Inter-Governmental Power Sales Agreement (Inter-Governmental PSA) between  
CVEC and Host

## EXHIBIT A

### DESCRIPTION OF PREMISES

**Address:**

[SITE]

**Legal Description:**

Ground or solar canopy space \_\_\_\_\_, located at the above address, as illustrated in the Sketch Plan entitled “\_\_\_\_\_” dated \_\_\_\_\_. The ground or solar canopy space on the attached Sketch Plan is identified by the area where the solar panels are located, as such Sketch Plan may be amended or revised from time to time.

**Description of the Premises:**

The Premises shall further include all necessary electrical and other utility sources, together with the non-exclusive right of ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the right to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.

**EXHIBIT A-1**

**ADDITIONAL EXCEPTIONS**

A. Developer's use of the Premises shall be subject to the following:

Host's Reserved Uses of the Premises:

**[LIST]**

**EXHIBIT B**

**DESCRIPTION OF PV SYSTEM**

PV SYSTEM:

Module Manufacturer: \_\_\_\_\_

Nameplate Capacity: \_\_\_\_\_

Approximate Annual Energy Production:  
\_\_\_\_\_ kWh

Location: \_\_\_\_\_

Preliminary Specifications:  
\_\_\_\_\_

Battery Manufacturer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BESS Nameplate Capacity in kilowatts for four  
hour duration:  
\_\_\_\_\_ kW for \_\_\_\_\_ four hours

Location: \_\_\_\_\_

Mounting Systems: \_\_\_\_\_

PV SYSTEM ASSETS:

Inverters: \_\_\_\_\_

Related Equipment: \_\_\_\_\_

Electric Lines: \_\_\_\_\_

## EXHIBIT C

### INSURANCE REQUIREMENTS

A. Developer's insurance obligations. Developer shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Developer shall provide Host with evidence, reasonably satisfactory to the Host, of its insurance hereunder, upon request.

1. ***Comprehensive commercial general liability insurance*** of at least \$2,000,000 combined single limit. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Excess liability*** coverage of at least \$10,000,000.

3. ***Additional insurance requirements.*** All insurance maintained by Developer shall:

a. include as additional insured the Host for obligations arising out of this Agreement. The policies shall be endorsed to require that such additional insureds receive at least thirty (30) days' notice of cancellation or non-renewal. Additionally, the Developer shall be required to provide notice to the Host of any cancellation or non-renewal at least thirty (30) days in advance of said cancellation or non-renewal.

b. the insurance may be provided on a claims-made basis.

c. in the event such insurance is cancelled or non-renewed, Developer agrees to provide a 36 month discovery period endorsement for obligations under this Agreement.

d. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.

e. The insurance shall include blanket contractual liability coverage, including coverage for this Agreement.

B. Host's insurance obligations. Host shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Host shall provide Developer with evidence, reasonably satisfactory to the Developer, of its insurance hereunder, upon request.

1. ***Commercial general liability insurance*** written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations liability, and broad form general liability, with limits of not less than \$3,000,000 combined single limit and annual aggregate. This limit



requirement may be may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Property insurance*** on the Premises with a waiver of subrogation rights against the Developer.

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS**  
**LEASE AGREEMENT**

## EXHIBIT E

### COMMON TECHNICAL SPECIFICATIONS

This Exhibit describes the technical specifications and requirements that are common to all the PV Systems. These common technical specifications are those that each PV System must meet or exceed. These specifications and requirements are not intended to be all-encompassing, nor are they intended to override Good Engineering Practice or Applicable laws and code requirements. The Developer is responsible for conformance to all relevant, prevailing codes, and the codes take precedence over these Technical Specifications. Site-specific conditions and/or local regulations may require additional specifications and requirements not included in this Exhibit.

#### A. Design

##### 1. Design Life and Estimated Production Requirements

- a. Each PV System shall have a service life of twenty (20) years at rated load.
- b. The PV System must be designed so that the estimated annual energy output for the PV System, based on actual site-specific shading, azimuth, and inclination is at least 80% of the default optimal output for a fixed PV System of the same capacity in Boston as estimated by PVWATTS Version 1. PVWATTS Version 1 is available at the following website:  
<http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Massachusetts/>

##### 2. Additional Design Requirements - Stamped affidavits or drawings are required for the electrical and structural components of the installation.

- a. The electrical design of the PV System must be performed by a Professional Engineer (“PE”) licensed in the Commonwealth of Massachusetts.
- b. The structural design of the PV System requires a stamped affidavit from a Massachusetts-licensed PE confirming that the underlying structure or bearing stratum, is adequate to withstand the static and dynamic loads of the PV System. The analysis must include all mounted portions of the PV System, including modules, racks, ballast, and other related components. The analysis must also include all mount securing portions of the PV System, including any anchors and penetrating devices.

#### B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. If the Developer determines the use of galvanized structural steel is warranted, the extent of Developer’s use of such material shall be clearly outlined in the Developer’s Proposal. All materials

subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. Bare copper conductors exposed to free air shall be tin-plated. Alternative materials must be approved by the Host and CVEC.

## **2. Inverters**

- a. Inverter efficiency shall be equal to or greater than 93%.
- b. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- c. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
- d. Each inverter shall include:
  - i. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
  - ii. Ground fault protection.
  - iii. NEMA 2R rating for interior electrical room location or NEMA 3R for any exterior locations.
- e. The inverter(s) must have secure, weatherproof housing in the exterior installation.
- f. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
- g. The inverter(s) must be located to provide adequate air flow for cooling.
- h. Lightning protection must be provided for the inverter(s) housing.

**3. Batteries** – The battery energy storage system will be DC coupled and meet all NEC requirements.

**4. Combiner & Junction Boxes** - Combiner boxes and junction boxes which are located outdoors shall have the following characteristics: NEMA 4X enclosure, 600 VDC, and listed by a nationally recognized testing laboratory. All PV System output circuits shall be protected by lightning arrestors of the appropriate voltage rating.

**5. DC Disconnect Switches** - The DC disconnect(s) shall be 600 VDC, heavy-duty safety switch and be listed by a nationally recognized testing laboratory. Where

located outdoors, disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.

6. **AC Disconnects** - All AC disconnects shall be rated to interrupt the necessary voltage and current for the application and be listed by a nationally recognized testing laboratory. Where located outdoors disconnects shall be NEMA 3R. The AC disconnect shall be appropriately located per the utility's requirements and its location shall be noted on the one-line electrical drawing.
7. **Interconnection Circuit Breaker** - The Developer shall provide the appropriate size, make, and model circuit breaker for the specified AC interconnection switchgear that is suitable for back feed in accordance with NEC 690.64.
8. **Wiring and Conduit**
  - a. All system wiring shall be of an MEC approved wiring method. All conductors shall have a temperature rating of 90 degrees C or lower.
  - b. All conductors shall be copper, sized appropriately to minimize line losses.
  - c. All conduits used in interior building applications shall be electro metallic tubing ("EMT").
  - d. All exterior conduits shall be hot dipped galvanized EMT with weather tight compression fittings and expansion joints as required.
  - e. Expansion fittings shall be used in conduit runs in compliance with MEC article 300.7. A value of 144°F (80°C) shall be used for the maximum change in temperature (delta T) in the calculation of conduit expansion.
  - f. All conduits shall be bonded at each end using listed bonding bushings.
  - g. Where conduit is attached to roofs, fully flashed, non ferrous stanchions shall allow for expansion and contraction. For roof-mounted conditions, conduits shall be supported at a height greater than 3.5 inches by fully flashed, non ferrous stanchions. Manufacturer's approved surface applied stanchions shall be used on membrane roofs.
  - h. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
  - i. Exposed cables shall be listed as sunlight resistant and have a temperature rating of 90°C. These conductors shall be properly secured and well supported. Conductors are not permitted to be resting on the abrasive surfaces such as asphalt shingles.

- j. All wiring and conductors installed in subsurface applications shall be housed in utility grade PVC conduit(s) sufficiently covered and include trench warning identification. Spare conduits shall also be installed with a volumetric capacity of at least 25% of the original service. In the event subsurface conduits are exposed to vehicular traffic, concrete encasement shall be included.

**9. PV System Grounding** - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.

**10. PV Array**

a. PV Modules

- i. Modules shall be UL 1703 listed.

b. Mounting Systems

- i. In all installations, the mounting system shall promote ambient air circulation beneath and above modules to enhance efficiency. The lower edge of the panels on the mounting should be designed to eliminate power production losses from snow coverage and provide a comfortable working height for maintenance.
- ii. Modules shall be individually removable for maintenance and repair.
- iii. The mounting system, regardless of application, shall be designed to meet or exceed requirements of all applicable state and local building codes, including wind speed, snow and seismic load requirements. The Developer shall describe and document the wind and snow loads that the PV System is designed to withstand.
- iv. For ballasted roof mounted systems, the Developer shall provide a manufacturer's comprehensive designed system. The Professional Engineer responsible for this portion of work shall also be licensed in the state of Massachusetts.
- v. In the event an existing lightning protection system is modified or augmented, the Developer is responsible for UL recertification.
- vi. Each module row or column must be separated to minimize shadowing effects on other modules. The spacing between modules shall be noted on the PV layout drawing.

- vii. For all PV Systems with roof penetration points through previously warranted roofs, the Developer is responsible that roof warranty is not voided

## **11. Installation Requirements**

- a. The output of the PV inverter(s) shall not interfere with or damage the function of existing Building electrical distribution systems. All serviceable components must be “accessible” as defined by the MEC article 100. The installation shall comply with all applicable federal, state and local building codes including the latest Massachusetts Electrical Code. The Developer shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Developer shall coordinate with the Host to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to the Host for interconnection of PV System output or if the switchgear is to be turned off.
- b. The PV System electrical work must be performed by individuals licensed in Massachusetts.
- c. The PV System must be installed according to the manufacturer’s instructions and in compliance with all applicable codes and standards.
- d. The Developer is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any Net Metering or Alternative On-bill Credit arrangement requested by CVEC or the Host. An application must be submitted to the local electric utility, with or without Schedule Z as appropriate, to start the formal interconnection process, and sufficient lead time should be allowed to successfully achieve interconnection under the local electric utility interconnection standards. All PV Systems must have an appropriate electric utility interconnection agreement in place at the time of interconnection to the utility grid.
- e. All pertinent permits and inspections must be obtained and copies kept on file as may be required by local codes and/or state law.
- f. All PV Systems shall include appropriate surge arresters or other means to protect the PV System components from lightning and other surge events. It is the responsibility of the Developer to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

## **12. PV System Warranty Requirements**

- a. Developer Warranty. All PV Systems must have a minimum five (5) year labor warranty provided by the Developer to protect the Host against defective
- E-5

workmanship, PV System or component breakdown, or degradation in electrical output of more than fifteen percent from their originally rated electrical output during the warranty period. The warranty must cover the PV System, including PV modules (panels) and inverter(s), racking, conduit run, and components, and provide for no-cost repair or replacement of the PV System, components, including any associated labor during the warranty period.

- b. **Manufacturer Warranty.** All major equipment must meet the following minimum manufacturer warranties:
  - i. **Photovoltaic Module:** Minimum of one (1) year product warranty from date of sale to first consumer purchaser for product workmanship and materials, plus a minimum performance warranty of twenty (20) years within which time the module will produce, under standard test conditions, a minimum of 80% of the product's minimum rated power at time of sale.
  - ii. **Inverters:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
  - iii. **Batteries:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
  - iv. **Revenue grade production meters:** Minimum of two (2) years following the effective commercial operation date that the meter system will be free from all defects in design, materials and workmanship. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the Host.
  - v. **Mounting equipment:** The Developer shall obtain from the mounting system manufacturer(s) a warranty that the mounting system(s) will be free from all defects in design, materials and workmanship for a period of ten (10) years following the effective commercial operation date. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the Host.

**13. Electricity Production Meter Requirements** - All PV Systems must have a dedicated revenue grade production meter that:

- a. is readily accessible and easily understood by the Host;
- b. records the PV System's AC output as measured on the AC side of the PV System's isolation transformer;
- c. shall be separate from the local utility billing meter and shall not interfere with utility billing or net metering;



- d. must be a standard utility “revenue quality” meter that conforms to applicable American National Standards Institute (“ANSI”) C-12 standards and shall be installed on the AC output side of the PV System’s inverter or isolation transformer; and
- e. shall have a visible display of cumulative energy produced by the PV System and be available for periodic testing and/or re-calibration, if necessary.

**14. Automated Reporting** - All PV Systems must include an automated reporting system, i.e. Data Acquisition System (“DAS”) which will report to the Massachusetts Renewable Energy Trust (“MRET”) Production Tracking System (“PTS”) and detail view be accessible to CVEC and Host. In addition, the public will have access to a Public View from the DAS. Where Battery Energy Storage System is proposed, automated and manual system controls must be provided which will be accessible to CVEC and Host offsite through high speed internet online access.

## **C. Commissioning Requirements**

- 1. Commissioning Procedure** - At a minimum, the Developer’s sample testing and commissioning plan shall cover:
  - a. measurement and recording of voltage-open-circuit of every source circuit;
  - b. performance of inverter startup tests as specified by the inverter manufacturer in the inverter operation manual;
  - c. measurement of AC power and comparison to predicted power based upon estimated irradiance level;
  - d. performance of loss of grid test and verification of five minute delay upon restoration of the grid; and
  - e. measurement and recording of  $I_{mp}$  of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
- 2.** The Developer shall verify that the data acquisition/display system and, where applicable, the Battery Energy Storage System controls, are functioning properly, comparing independent measurements to data acquisition display and able to switch Battery Energy Storage System configurations and operations.
- 3.** The Developer shall correct, at no additional cost to the Host, any deficiencies uncovered by the testing prior to commissioning of the PV System.

## **D. Training Requirements**

The Developer shall train the Host or staff at the Premises on basic principles of operation, maintenance requirements, on-line data monitoring and system controls, and safety issues that are specific to the PV System installed (including points of contact in emergency situations). An operations manual to accompany the training will be delivered to the Host and to CVEC.

## **E. Documentation Requirements**

- 1. Documentation** – The Developer shall prepare an Operations and Maintenance manual for the PV System. In addition, the Contractor shall provide CVEC and the Host each with one (1) printed copy and one (1) digital copies on CD of the information listed below.
- 2.** The documentation shall include:
  - a. A complete set of all approved shop drawings, a list of equipment and products used, and product literature. The list of equipment shall include the manufacturer, brand name, model (if applicable), equipment components, recommended maintenance procedures for each piece of equipment, approximate amount of product installed and materials contained in the product.
  - b. Record drawings showing, to scale, the location of all arrays, locations of major equipment, including combiner box clusters, all underground and major conduit runs, grounding electrodes and specific locations to building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.
  - c. The Permission to Operate provided by the Local Distribution Company.
  - d. Trouble shooting guidelines.
  - e. PV System maintenance schedule and procedures.
  - f. Contact information for technical assistance and parts ordering.
  - g. Records of all warranties and serial numbers of all warranted equipment.

**EXHIBIT F**

**POWER PURCHASE AGREEMENT  
BETWEEN DEVELOPER AND CVEC**

**EXHIBIT G**  
**INTERGOVERNMENTAL POWER SALES AGREEMENT**  
**BETWEEN CVEC AND HOST**

**SPECIMEN LEASE AGREEMENT**  
**FOR**  
**GROUND MOUNTED AND CANOPY SOLAR PHOTOVOLTAIC ENERGY FACILITY**  
**BETWEEN**  
**GREENSKIES DEVELOPMENT COMPANY LLC**  
**AND**  
**[HOST MUNICIPALITY]**

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**LEASE AGREEMENT FOR  
GROUND MOUNTED AND CANOPY SOLAR PHOTOVOLTAIC ENERGY FACILITY  
BETWEEN  
PROPOSED SOLAR DEVELOPER  
AND  
HOST MUNICIPALITY**

This Lease Agreement (the “Agreement”) is entered into this \_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”) and is by and between Greenskies Development Company LLC, a Connecticut limited liability company with a business address at 180 Johnson St., Middletown, CT 06457 (“Developer”), and the [MUNICIPALITY], Massachusetts with an address of \_\_\_\_\_ (“Host”).

**RECITALS**

(a) Host wishes to lease an area of ground space described in Exhibit A (the “Premises”), which is a part of the Property located at \_\_\_\_\_, MA to the Developer to allow it to design, procure, install, test, commission, own, operate and maintain a solar photovoltaic system which may or may not include a battery energy storage system (“PV System”), as defined in Article I (Definitions), on the Premises for beneficial public purposes;

(b) Developer wishes to lease the Premises in order to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises for beneficial public purposes, subject to the terms and restrictions set forth in this Agreement;

(c) Developer has also entered into a Power Purchase Agreement (“PPA”) with the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation with an address at 23H2 White’s Path, Suite 2, South Yarmouth, MA 02664 (“CVEC”) pursuant to which Developer will sell the Net Energy generated by the PV System to CVEC; and

(d) CVEC has entered an Intergovernmental Power Sales Agreement (Intergovernmental PSA) with the Host to sell to the Host an allocated share of the Net Energy purchased by CVEC from the Developer under the PPA.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows.

**ARTICLE I: DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**“Additional Exceptions”** has the meaning set forth in Exhibit A-1 hereto.

**“Affiliate”** means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

**“Alternative On-bill Credit”** means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2..

**“Alternative On-bill Generation Unit”** has the meaning as set forth in in 225 CMR 20.02.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

**“Bankrupt”** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Business Day”** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Commercial Operation”** means that the PV System is ready for regular, daily operation, has undergone testing and met Commissioning Requirements as set forth in the Common Technical Specifications, Exhibit E, has been accepted by Developer and Host (and to

the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects, including all final inspections, is capable of producing Energy and delivering it to the Point of Delivery, and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E, are complete and provided to Host.

**“Commercial Operation Date”** means the date that the Developer certifies in a written notice to the Host that Commercial Operation has been achieved in accordance with Section 5.19, subject to the approval of the Host and CVEC, such approval not to be unreasonably withheld.

**“Commercially Reasonable”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and regulations.

**“Construction Commencement Date”** means the date that the Developer has secured all required permits and approvals from Governmental Authorities and the Distribution Company under Applicable Legal Requirements and has mobilized to commence work at the Premises, as certified in writing to the Host and CVEC.

**“Contract Year”** means the consecutive 12-month period commencing on the Commercial Operation Date.

**“Distribution Company”** means Eversource Electric Company or any successor thereto.

**“Distribution Company System”** means the electric distribution system operated and maintained by the Distribution Company.

**“Effective Date”** means the date set forth in the introductory paragraph of this Agreement.

**“Energy”** means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

**“Environmental Claim”** means causes of action, claims, fines, penalties, damages, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements arising from activities conducted on or in connection with the Work which arise, or are alleged to have arisen, out of any (a) violation of any applicable Environmental Law, (b) action by a Governmental Authority for enforcement, cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law, or (c) compensation, or injunctive relief resulting from injuries to persons or property due to (i) an alleged violation of any Environmental Law or (ii) any release of Hazardous Material.

**“Environmental Law”** means any and all existing and future Applicable Legal Requirements relating to human health, human safety or the environment .

**“Event of Default”** means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

**“Event of Termination”** means any event of termination as defined in Section 8.1 of this Agreement.

**“Financier”** means any individual or entity providing money or extending credit for the PV System to Developer for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; extreme winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, Force Majeure shall not mean:

- A. Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- B. Unavailability of sun.
- C. Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of Force Majeure.
- D. Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Developer shall be able to assert Host’s governmental actions on Permits for the PV System as an event of Force Majeure.
- E. Any nonpayment under this Agreement or any third party agreement.
- F. Economic hardship of either Party.

**“Good Engineering Practice”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project

economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including Host in its regulatory capacity but excluding Host as Lessor under this Agreement.

**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host Town and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

**“Inter-Governmental PSA”** has the meaning set forth in the recitals, a form of which is attached hereto as Exhibit G.

**“Leasehold Mortgage”** has the meaning set forth in Section 11.4.

**“Metering Device(s)”** means any and all revenue quality meters installed by Developer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale to CVEC and/or Host.

**“Monthly Minimum Reliability Contribution”** has the meaning set forth in G. L. c. 164, §139(j) and 220 CMR 18.10, as approved by the Department of Public Utilities in the Distribution Company’s tariff.

**“Net Energy”** means the actual and verifiable amount of Energy generated by the PV System and delivered to CVEC at the Point of Delivery pursuant to the PPA in excess of any Energy consumed by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements and the Tariffs.

**“Net Metered Generation Unit”** has the meaning set forth in 225 CMR 20.02. **“Net Metering”** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a Net Metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§ 138 – 140

and 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company's Tariffs.

**"Net Metering Credits"** has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

**"Outside Construction Commencement Date"** means the later of ninety (90) days after the Effective Date or ninety (90) days after the Developer's application has been accepted by the SMART Program as may be adjusted in accordance with the terms of the PPA as defined herein.

**"Outside Commercial Operation Date"** means the later of one-hundred eighty (180) days from the Effective Date or one-hundred eighty (180) days after the Developer's application has been accepted by the SMART Program as may be adjusted in accordance with the terms of the PPA as defined herein.

**"Parties"** means Host and Developer collectively, and their respective successors and permitted assignees.

**"Party"** means Host or Developer individually, and their respective successors and permitted assignees.

**"Permits"** means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

**"Permitted Use"** means the use, occupation, and enjoyment of the Premises by Developer to design, procure, install, test, commission, own, operate, maintain, expand and remove the PV System, all of which are designed and intended for the purpose of producing solar-generated electricity in accordance with Applicable Legal Requirements.

**"Person"** means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

**"Point of Delivery"** means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

**"PPA"** has the meaning set forth in the Recitals, a form of which is set forth in Exhibit F, hereto.

**"Premises"** means the site for PV System installation and operation owned by Host located at the Property, which is more specifically identified in Exhibit A to this Agreement.

**"Property"** means the real property owned by the Host upon which the Premises is located.

**“PV System”** means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy sold and purchased under the PPA as further identified in Exhibit B attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

**“PV System Assets”** means each and all of the assets of which the PV System is comprised, including the solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

**“SMART Program”** means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

**“SMART Tariff”** has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

**“Solar Net Metering Facility”** has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

**“Solar Tariff Generation Unit”** has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

**“Term”** has the meaning set forth in Section 3.1.

**“Termination Date”** means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

## **ARTICLE II: LEASE OF PREMISES**

### **2.1 Leased Premises.**

(a) Host, in consideration of the covenants and agreements on the part of the Developer, hereby leases to Developer, and Developer accepts and takes from Host, the possession, use, enjoyment, and control of the Premises (as described in Exhibits A and A-1) for the sole and exclusive purpose of conducting the Permitted Use, as set forth below, subject to the conditions in this Agreement and the Host’s reserved uses as set forth in Article X (Quiet Enjoyment).

(b) As shown in Exhibit A, Host also grants to Developer a non-exclusive license for reasonable pedestrian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance of electric lines, cables, conduits and related equipment necessary to operate the PV System and interconnect the PV

System to the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility.

(c) Host also grants Developer the exclusive right to receive sunlight at the Premises during every hour of each day that sunlight reasonably could be received by the PV System, and Host shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System.

(d) To the extent requested by Developer and reasonably necessary, and subject to Applicable Legal Requirements and available space, as determined in Host's sole discretion, Host shall provide necessary space on the Property at locations and for such time as specified by Host (such locations, the "Construction Laydown Area") for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Developer shall not obstruct access to the Property, or interfere with or disrupt Host's use thereof or operations therein. Following temporary use thereof, the Developer shall immediately restore the Construction Laydown Area and such other areas of the Property used by the Developer, but not included in the Premises, to their condition prior to Developer's use.

(e) The Premises are demised subject to the following:

(i) any encumbrances shown on the survey of the Premises;

(ii) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A-1;

(iii) present and future zoning laws, ordinances, bylaws, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises for the Permitted Use;

(iv) the condition and state of repair of the Premises as the same may be on the Effective Date;

(v) all electric and telecommunication cable or wireless services charges, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the construction and operation of the PV System or any appurtenant facilities or improvements associated with the Permitted Use;

(f) full compliance by the Developer with all Applicable Legal Requirements;

and



(g) Host's reserved uses, as provided in Article X (Quiet Enjoyment) and set forth in the Additional Exceptions, attached hereto as Exhibit A-1, or Special Terms and Conditions, attached hereto as Exhibit D.

**2.2 As-Is Condition of the Premises.** Developer accepts the Premises in the condition or state in which the Premises now are without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, as to the nature, condition or usability thereof or the use or uses to which the Premises or any part thereof may be put, subject to Developer's right to terminate this Agreement for failure of conditions precedent to construction set forth in Section 5.2.

**2.3 Ownership of the PV System.** Except as otherwise provided herein, prior to and during the Term, Host shall have no ownership interest in the PV System, except for any ownership interest Host may have by exercising its purchase option in accordance with Section 8.12 or by virtue of being a CVEC Member in the event that CVEC exercises its purchase option under the PPA or in accordance with Section 8.11 or Section 8.12.

**2.4 Net Lease.** Except as expressly set forth herein, the Parties acknowledge and agree that Host shall not be required prior to or during the Term to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, installation, operation, maintenance, repair reconstruction or removal of the PV System, subject to the Additional Exceptions set forth in Exhibit A-1.

**2.5 Purpose.** The Premises shall be used for the sole and exclusive purpose of conducting the Permitted Use. Except with the prior express written consent of Host Town, Developer shall not use the Premises for any use other than the Permitted Use.

**2.6 Subordination.** Developer acknowledges and understands that this Agreement and all rights of Developer are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions, permits, or other matters of record and all existing agreements of the Host with respect to the Premises. Developer acknowledges and understands that the Host reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere with Developer's use of the Premises and the operation of the PV System. Host shall provide Developer with reasonable notice in the event that Host grants such additional rights on the Premises to a third party. Notwithstanding any term to the contrary contained herein, Host shall provide Developer with a commercially reasonable Subordination, Non-Disturbance and Attornment Agreement for any and all existing and future mortgagees and tenants of the Property.

**2.7 No Interference.** Developer shall operate, maintain and repair the PV System in a manner that will not unreasonably obstruct or interfere with other uses of the Property, as identified in Exhibit A-1 to this Lease. In the event interference occurs, Developer agrees to take all commercially reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Host.

Host may make alterations to the Premises that do not substantially impair the installation and operation of the PV System. The Developer acknowledges and agrees that Host may have continued operation or maintenance responsibilities at the Premises to be conducted at the sole expense of the Host, and Developer will use its best efforts to cooperate with Host's prosecution and completion of such work.

**2.8 Use of the Premises.** Developer and its subcontractors, agents, consultants, and representatives shall have reasonable access at all reasonable times, subject to any Special Conditions in Exhibit D (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the PV System, and to any documents, materials and records of Host relating to the Premises that Developer reasonably requests in conjunction with these activities. Developer shall provide Host with reasonable notice of all activities conducted by or on behalf of Developer on the Premises relating to the PV System. During any such activities, Developer, and its subcontractors, agents, consultants and representatives shall comply with Host's reasonable safety and security procedures (as may be promulgated from time to time) and Developer and its subcontractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Host's activities.

**2.9 Notice of Lease.** Developer shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and Host shall provide Commercially Reasonable assistance as necessary for Developer to do so, with the applicable land registry that in each case includes all information as may be required pursuant to M.G.L. c. 183, §4 with respect to the real property rights described in the Lease, as applicable. Developer shall be responsible for all reasonable documented costs of recording the Notice of Lease in a form attached hereto as Exhibit H.

### **ARTICLE III: TERM**

**3.1 Term.** The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements, for one five (5) year period, with such modifications to the provisions hereto as may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

**3.2 Holdover.** If Developer or any party claiming by, through or under Developer, retains possession of the Premises or any part thereof for longer than one hundred twenty (120) days after the expiration or earlier termination of this Lease, then Host may, at its option, serve written notice upon Developer that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in

this Lease. Developer shall also pay to Landlord all damages sustained by Host resulting from retention of such possession by Developer including but not limited to court costs and attorney's fees. Developer hereby agrees that the provisions of this Section shall not constitute a waiver by Host of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Host's right to terminate this Lease for Developer's breach of the Lease. For greater clarity, the 120-day period mentioned in this section is the period afforded to Developer for removal of the System pursuant to Section 8.9 of this Agreement.

#### **ARTICLE IV: RENT**

**4.1 Rent.** Commencing on the Commercial Operation Date until the end of the Term, Developer shall pay to Host an annual rental payment in the amount of \$1.00 on or before the fifteenth (15th) day of each January during the Term. The amount of the annual rent payment shall be pro-rated for the first and last calendar years of Commercial Operation. If Developer shall fail to pay Host any sum required to be paid by Developer to Host within ten (10) Business Days after such payment is due, interest on the unpaid amount shall accrue at the Interest Rate from and including the date such payment is due but excluding the date the payment is received.

**4.2 Taxes.** Developer shall be responsible for and pay all ad valorem real and personal property taxes, if any, assessed by the local Governmental Authority, with respect to the leasehold or the PV System, as may be further set forth in Exhibit D (Special Terms and Conditions).

**4.3 Monthly Minimum Reliability Contribution.** Host, shall be responsible to pay any Monthly Minimum Reliability Contribution charged or assessed to Host by the Distribution Company.

#### **ARTICLE V: DESIGN, INSTALLATION AND OPERATION OF PV SYSTEM**

**5.1 General Description.** Except as otherwise specified herein, the PV System shall consist of the equipment and property described in Exhibit B.

**5.2 Conditions Precedent to Commencement of Construction.** The right to and obligation of Developer to commence construction of the PV System on the Premises is subject to the fulfillment or waiver by the applicable Party of each of the following conditions precedent:

(a) Developer shall have obtained financing on terms acceptable to Developer in its sole discretion. For the purposes of this subparagraph, financing may include debt financing, equity financing, tax equity financing, loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the construction and operation of the PV System;

(b) Developer shall have obtained all permits, licenses and other approvals required by Applicable Legal Requirements and from the Distribution Company for construction, installation and operation of the PV System, and agree to follow the requirements of Section 5.3, below (Governmental Permits);

(c) Developer shall have determined that no features of the Premises will substantially impair the installation and operation of the PV System, and that the Premises has sufficient space to accommodate the installation, operation and maintenance of the PV System along with the operation and maintenance of existing facilities;

(d) Developer shall have determined that it is feasible to make related improvements as necessary on the Premises to install, operate, and interconnect the PV System to existing infrastructure, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any required upgrades, but that this condition may be satisfied if either Party agrees to implement any necessary upgrades at its own cost, or if the Parties agree to share the costs of such upgrades;

(e) Distribution Company requires material changes in plans and/or specifications to the PV System or its interconnection, which require additional costs or fees, in excess of \$10,000, which in Developer's sole discretion are unreasonable, except if Host or CVEC agrees to pay for such Distribution Company mandated costs;

(f) In the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Buyer, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, provided, however, that Buyer will extend the deadline for compliance with this subsection in thirty (30) day increments, upon Buyer's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement;

(g) Host and Developer have determined that the PPA shall be in full effect and not have been terminated on account of failure of conditions precedent included therein.

(h) Host has determined that the Inter-Governmental PSA shall be in full effect and not have been terminated on account of failure of conditions precedent included therein;

(i) Host, in its regulatory capacity as a Governmental Authority, and Developer shall have reached agreement on the liability of Developer for ad valorem property taxes, if any are to be assessed, and have entered into a structured tax agreement with respect thereto; and

(j) Host shall have approved the final design of the PV System and its integration into the Host's Property, in accordance with Section 5.4 hereof.

Either Party may waive any condition precedent to be achieved by the other Party. The Party proposing to terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be commercially reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement.

**5.3 Governmental Permits.** Developer shall obtain at its sole cost all Permits required for Developer's use of the Premises, the Permitted Use, and the PV System from any and all Governmental Authorities having jurisdiction in the matter. Developer shall promptly inform Host of all significant developments relating to the issuance of such Permits. Host shall reasonably cooperate with Developer in procuring such Permits. If any changes in plans and/or specifications for the Project are required by any Governmental Authority, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld.

**5.4 Design and Installation.** Developer shall design the PV System in accordance with Good Engineering Practice, shall consult with and receive input from Host with respect to integration of the PV System with the Host's facilities and submit the final design for Host's and CVEC's approval, not to be unreasonably withheld or delayed. Developer shall furnish all supplies, materials, labor, tools, equipment and other services necessary for installation of the PV System. As soon as practicable after the Effective Date, Developer shall provide Host and CVEC an updated schedule for design, permitting, equipment procurement, commencement of construction and commissioning of the PV System, indicating milestones and durations of activities. Developer shall commence construction of the PV System no later than ninety (90) days from the Effective Date (the "Outside Construction Commencement Date") and will proceed diligently and continuously thereafter until completion, but in no event shall the installation be completed later than one hundred eighty (180) days from the Commercial Operation Date. Developer shall install the PV System in accordance with Good Engineering Practice, all Applicable Legal Requirements, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E, applicable requirements of the insurance policies maintained by Host with respect to the PV System, and the terms of this Agreement.

**5.5 Interconnection with Electric Distribution Grid.** Developer shall obtain at its sole cost all Permits and agreements required for Developer's interconnection of the PV System to the electric distribution grid maintained by the Distribution Company. Developer shall promptly inform Host and CVEC of all significant developments relating to such interconnection matters. Host shall provide Developer with such information as Developer may reasonably request in connection with Developer's procurement of such Permits and agreements. If any material changes in plans and/or specifications to the PV System are required by the applicable

electric distribution company, then Developer shall submit such changes, if any, to Host and CVEC for their approval, which shall not be unreasonably withheld.

**5.6 Access to and Use of the Premises.** During construction and the operation of the PV System, including, but not limited to, all pre-construction activities, Developer and its contractors or agents shall have access to the Premises in accordance with Exhibit D (Special Terms and Conditions).

**5.7 Plans and Specifications.** Installation of the PV System shall be completed in accordance to plans approved by Host and CVEC, which approval shall not be unreasonably withheld. Prior to the Commercial Operation Date, Developer shall provide Host and CVEC with documentation as set forth in the Common Technical Specifications, Exhibit E, including as-built plans, permission to Operate from local distribution company, and specifications of the PV System installed on the Premises which show the actual location of the PV System.

**5.8 Maintenance Responsibilities.** Developer shall properly maintain the PV System, conduct all required maintenance, and make all repairs thereto in accordance with Good Engineering Practice. Developer shall take all measures necessary to maximize production of the PV System throughout the Term. Such obligations shall include, but not be limited to, maintaining the PV System in a condition of Commercial Operation, and taking all actions necessary to comply with the Applicable Legal Requirements. The Developer shall deliver a maintenance report annually to the Host and CVEC. Developer shall be responsible for all costs related to the PV System, including, but not limited to, those costs necessary to construct, operate, maintain, repair, and remove the PV System.

**5.9 Manufacturer and Installer Warranties.** Developer shall ensure that each manufacturer and each installer of equipment and parts comprising the PV System provides a warranty as further described in the Common Technical Specifications attached hereto as Exhibit E. Such warranties shall run to the benefit of the Host.

**5.10 Use of Installation and/or Maintenance Subcontractors.** Developer may use qualified subcontractors to install and/or maintain the PV System, provided that Developer shall at all times remain fully responsible for the acts and omissions of such subcontractors. Installation and maintenance subcontractors shall be required to meet the insurance requirements set forth in Exhibit C, provided, however, that satisfaction of such requirements shall not relieve Developer of its responsibilities for such subcontractors as set forth in this Section 5.10.

**5.11 Alterations.** Developer shall have the right from time to time both before and after the completion of the PV System and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the PV System, subject, however, in all cases to the following:

(a) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration, a "Substantial Alteration");

(b) No Substantial Alteration shall be commenced except after prior written notice to and consent from Host, which consent shall not be unreasonably withheld;

(c) Any alteration or Substantial Alteration shall be made with reasonable dispatch, in accordance with Good Engineering Practice, and in compliance with all Applicable Legal Requirements; and

(d) No later than completion of any alteration or Substantial Alteration, Developer will provide Host with complete copies of all final plans and specifications therefor not previously provided; and

(e) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibits A-1 and D to this Lease.

**5.12 Host Cooperation.** Host shall have the following duties under this Agreement:

(a) to act expeditiously, and in good faith in supporting application for and facilitating any Permits necessary for the construction and operation of the PV System. Notwithstanding anything to the contrary herein, the execution of this Lease does not authorize a waiver of any permit or approval the Developer may require from the Host acting in its regulatory capacity, nor require the Host, acting in its regulatory capacity, to expedite its review of the Developer's Permit application in the Host's normal course of business;

(b) to cooperate with Developer to the extent reasonable and appropriate given the particular use of the Property on issues regarding access, construction, on-site electrical metering and consumption, and interconnection.

**5.13 Emergencies.** The Parties agree that Host shall have the right, but not the obligation, to respond to any emergency or equipment failure involving the PV System if necessary to protect the Property, including the Premises, or to protect public health or safety, and to effectuate any necessary repairs or take corrective action.

**5.14 Damage.** Any damage done to the Premises or other property not belonging to Developer during installation or during operations which is directly caused by Developer shall be repaired at Developer's expense as soon as practicable, but no later than thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

**5.15 Payment and Performance Bonds.** Prior to the Commencement Construction Date, the Developer and/or Developer's contractor and/or sub-contractor shall provide Host with a performance bond from an issuer with a Best's rating of not less than "A", and from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570, in a form reasonably acceptable to Host (the "Performance Bond"), which Performance Bond shall be in an amount sufficient to secure 100% of Developer's obligations with respect to the construction of the PV System under this Agreement or, prior to completion of construction and commissioning of the System. The Performance

Bond shall name Host as obligee. The Performance Bond shall remain in effect until sixty (60) days after delivery by Developer to Host of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by Host, (b) Host has provided notice to Developer of a dispute regarding the completion of the PV System in accordance with the provisions of this Agreement, in which case the Performance Bond shall remain in effect until the resolution of such dispute, (c) Host provides the issuer of the Performance Bond written notice authorizing the expiration of the Performance Bond, or (d) this Agreement is terminated pursuant to the provisions hereof and Developer has fulfilled its removal and restoration obligations under this Agreement. In addition, at least fifteen (15) days prior to the Construction Commencement Date, Developer shall provide Host with a payment bond from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to Host (the "Payment Bond"). The Payment Bond shall name Host as obligee. The Payment Bond shall be released upon the later of: (a) receipt by Host of satisfactory evidence that all subcontractors, laborers, have been paid in full; or (b) the Commercial Operation Date.

**5.16 Mechanics Liens.** Developer shall not file any mechanics liens against Host for its work performed in accordance with this Agreement and this requirement shall flow down to all of Developer's contractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the PV System, Developer, within ten (10) days after notice to Developer of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Developer shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Host may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Host and costs and expenses, including court costs and attorney's fees reasonably incurred by Host in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Host's making of the payment of the cost and expenses, shall be paid by Developer to Host within ten (10) Business Days of Host's invoice therefor.

**5.17 Utilities.** Developer shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all electricity consumed by the Developer in accordance with the Permitted Use. Host shall have no duty or liability to Developer with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by Host, or any third party, nor shall Host have any liability to Developer (including, without limitation, liability for lost revenue) arising from Host's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Developer desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Host, Developer may do so at Developer's expense subject to the approval of Host and CVEC, which shall not be unreasonably withheld.

**5.18 Operations and Maintenance Manual; Training.** Prior to the Commercial Operation Date, the Developer shall deliver a set each to Host and CVEC an operations, maintenance and parts manual covering the PV System in accordance with the Common



Technical Specifications set forth in Exhibit E. In addition, Developer will train Host's representative(s), including employees or contractors of Host on basic principles of operation, maintenance and monitoring of the PV System and on emergency preparedness and response. Notwithstanding the foregoing, Host shall have no right to perform any maintenance or repair on the PV System without Developer's prior written consent, except in the case of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons.

**5.19 Notice of Commercial Operation.** Subject to the provisions of this Agreement, Developer shall notify and represent to Host and CVEC when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to Host and CVEC the Commercial Operation Date.

**5.20 Late Completion.** If the commencement of construction does not occur on or before the Outside Construction Commencement Date and/or Commercial Operation does not occur on or before the Outside Commercial Operation Date for any reason other than Host's failure to perform its obligations hereunder, any Delay Liquidated Damages owed to Host shall be addressed between CVEC and the Host pursuant to the Inter-Governmental Agreement.

**5.21 Maintenance; Repairs.**

(a) Developer shall take good care of the Premises and the PV System, conduct all required maintenance and make all repairs to the PV System, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep Premises and the PV System in first class order and condition, and in compliance with all Applicable Legal Requirements and Good Engineering Practice.

(b) Host shall have no duty or liability to Developer with respect to the maintenance and repair of the PV System.

(c) Any damage caused by Developer or its subcontractors to the Premises or other property not belonging to Developer or its subcontractors shall be repaired at Developer's expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

(d) Nothing in this Agreement shall limit Host's ability to maintain the Premises in a reasonable manner consistent with Host's current and past practices, the Additional Exceptions set forth in Exhibit A-1, and any other conditions imposed by a Governmental Authority that are applicable to the Premises.

**5.22 Host's Maintenance.** Developer acknowledges that Host may need to temporarily remove or relocate all or a portion of the PV System in order to perform routine or necessary maintenance. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Developer shall be solely responsible):

(a) Host will provide Developer with at least thirty (30) days prior written notice of its intent to temporarily relocate (except in the case of an Emergency, in which case

notice shall be given as soon as practical and may be after some emergency response work has occurred);

(b) In such notice, Host will certify that Host's requested removal or relocation of the PV System is required to perform routine or necessary maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency response work has occurred) and Developer will have no obligation to temporarily remove or relocate all or a portion of the PV System unless the Host provides such certification;

(c) Host will be responsible for any and all actual, documented, reasonable costs incurred in the relocation of all or a portion of the PV System to and from the temporary location, including any temporary storage costs;

(d) any such relocation shall be performed by Developer (except that, in the case of an Emergency, Host may perform such activities as are reasonably necessary in light of such Emergency);

(e) Host may not request more than one relocation per Contract Year; and

(f) in the event that a temporary relocation, which is not an "Emergency", is for longer than 240 daylight hours or if there has already been at least one relocation during the Term, Host, shall promptly pay Developer for any lost revenue during the relocation accrued after the first 240 daylight hours of the first relocation (for the first 240 daylight hours of any first relocation during the Term, Host shall not be responsible for any lost revenue to Developer).

Such lost revenue shall be based on Net Energy that would have been produced during the time period of the relocation as estimated by PVWatts Calculator, or similar recognized method using accurate data inputs for the parameters of the PV System and its location. Host agrees to work in good faith to minimize the timing of a temporary removal or relocation of the PV System. For purposes of this Section 5.22, "Emergency" shall mean any *Force Majeure* event, condition or circumstance at or affecting the Premises that would, in the reasonable opinion of Host, materially and substantially harm life or property on the Premises without immediate preventative or remedial action. The Host shall not be responsible in any way for lost revenue that is the result of an Emergency.

**5.23 Project Relocation.** Host may request to move the PV System to another location on the Property or to another site owned by Host, but any such relocation shall be subject to the approval of Developer and Financing Party, not to be unreasonably withheld provided the alternate location or site structurally supports the PV System and the PV System is capable of generating substantially equivalent amounts of electric energy when installed at the alternate site. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the PV System but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Developer in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs.

In addition, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the PV System when such relocated PV System is reinstalled at a new location (the "Relocation Event"), Host will pay Developer an amount equal to the sum of (i) payments that Host would have made to Developer hereunder for electric energy that would have been produced by the PV System following the Relocation Event; (ii) revenues that Developer would have received with respect to the PV System under applicable solar programs and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes that Developer would have received with respect to electric energy that would have been produced by the PV System following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the PV System in the same period in the previous Contract Year, unless Developer and Host mutually agree to an alternative methodology.

**5.24 No Voiding of Existing Warranties.** Developer shall ensure that the PV System is designed and constructed so that no existing warranties that apply to the Premises are voided because of the installation of the PV System. Developer shall consult, as may be necessary, with any company that has provided such warranty.

**5.25 Use of Hazardous Materials Prohibited.** Developer shall not use at nor transport to the Property, including the Premises, any hazardous materials, including any substances defined, classified, or otherwise denominated as a "hazardous substance", "toxic substance", "hazardous material", "hazardous waste", "hazardous pollutant", "toxic pollutant" or oil by the Applicable Legal Requirements. The Developer shall fully indemnify the Host for any release of hazardous materials at the Property caused by the Developer including all court costs, attorney's fees, damages and liabilities as a result thereof.

## **ARTICLE VI: DEVELOPER'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS**

**6.1 Developer's Representations and Warranties.** As of the Effective Date of this Agreement, Developer represents and warrants to Host as follows:

- (a) Developer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;
- (c) Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement; and

(d) None of the documents or other written or other information furnished by or on behalf of Developer to Host or its agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

**6.2 Developer's Covenants.** In addition to the other covenants set forth in this Agreement, Developer covenants to Host as follows:

(a) Developer shall promptly inform Host and CVEC of the occurrence of any event that may reasonably be expected to materially affect the operation of the PV System or the performance of Developer's obligations under this Agreement (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on Developer or Host); and

(b) Developer shall provide Host or CVEC such other information as Host or CVEC may reasonably request in order to review Developer's compliance with the terms of this Agreement.

## **ARTICLE VII: HOST'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS**

**7.1 Host's Representations and Warranties.** As of the Effective Date of this Agreement, Host represents and warrants the following to Developer:

(a) Host has full legal capacity to enter into this Agreement;

(b) Host has the power to perform all of its obligations hereunder and the right to grant Developer rights provided under this Lease;

(c) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Host has full authority to do so and to fully bind Host;

(d) Host knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Host or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Host's ability to carry out its obligations under this Agreement; and

(e) Host agrees that it has read and fully understands the form of PPA (attached as Exhibit E to this Agreement), including all rights granted to CVEC thereunder; and

(f) Host warrants that it holds sufficient title in the Premises to authorize the completion of activities in this RFP, except those listed in the Additional Exceptions set forth in Exhibit A-1.

**7.2 Host's Covenants.** In addition to the other covenants set forth in this Agreement, Host covenants to Developer that throughout the Term and any extensions thereof, Host shall not interfere or allow a third party to interfere with the sun affecting the PV System.

**ARTICLE VIII: ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES;  
PURCHASE OPTIONS**

**8.1 Termination.** Subject to Section 8.4 (Force Majeure), this Agreement shall not be subject to termination, except for the following Events of Termination:

(a) Any applicable party may terminate this Agreement prior to the Construction Commencement Date for failure to achieve a condition precedent to construction, pursuant to Section 5.2.

(b) The non-defaulting party may terminate this Agreement in the event a material Event of Default pursuant to Section 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer) prevents operation of the PV System for twelve (12) months, except with respect to Force Majeure events.

(c) Host may terminate this Agreement in the event that Commercial Operation is not achieved by the Outside Commercial Operation Date unless the Developer cannot satisfy the Outside Commercial Operation Date milestone because Developer lacks a permit, approval or Interconnection Agreement necessary to commence Commercial Operation of the PV System, and Developer is utilizing Commercially Reasonable efforts to secure such permit, approval or Interconnection Agreement, because of Force Majeure as provided in Section 8.4, or because of Host's failure to comply with its obligations under this Agreement.

(d) Host may terminate this Agreement upon ten (10) Business Days written notice to the Developer, in the event that Developer's material breach of this Agreement, including but not limited to its negligent failure to install and maintain the PV System, causes damage to the Premises or its occupants, and such damage is not cured within cure periods set forth in Section 8.3.

(e) Host may terminate this Agreement upon five (5) Business Days written notice, in the event Developer fails to cure an Event of Default under Section 8.3(c);

(f) Either Party may terminate this Agreement in the event that the PPA is terminated, except to the extent (i) the PPA is terminated due to CVEC's or Host's exercise of its Purchase Option (as defined therein), or (ii) that Host is prohibited for terminating this Agreement in the event the PPA is terminated due to a default by CVEC.

**8.2 Events of Default by Host.** The following shall each constitute an Event of Default by Host:

(a) Host breaches any material obligation under this Agreement, and fails to cure such breach within sixty (60) Business Days after notification by Developer of the breach.

(b) If any material representation or warranty made by Host in Article VII of this Agreement (Host's Representations, Warranties, and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Developer, and Host does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Developer.

(c) Host fails to carry out its obligations and duties pursuant to Article X (Quiet Enjoyment).

(d) Any other material breach of this Agreement, or the Intergovernmental Power Sale Agreement, which proves to have a material adverse effect on the Developer, not specifically enumerated above.

Events of Default in this Section 8.2 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

**8.3 Events of Default by Developer.** It shall constitute an Event of Default by Developer if Developer:

(a) breaches any material obligation under this Agreement that proves to have a material adverse effect on Host and fails to cure the breach within thirty (30) days after notification by Host of the breach; provided, however, no Event of Default shall occur if the nature of such breach is such that it cannot reasonably be cured within thirty (30) days and Developer commences remedying the breach within said thirty (30) day period and actually remedies the breach with ninety (90) days after notification by Host of the breach;

(b) makes any material representation or warranty made by Developer in Article VI (Developer's Representations, Warranties and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Host, and Developer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Host.

(c) fails to provide or maintain in full force and effect any required insurance or bond or other surety, if such failure is not remedied within five (5) Business Days after receipt of written notice from the Host, or the occurrence of a default by the insurer of such Developer under any insurance policy provided hereunder;

**8.4 Force Majeure.** Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Host) and 8.3 (Events of Default by Developer), if by reason of Force Majeure either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (c) no obligations

of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date. In the Event of Termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

## **8.5 Remedies.**

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer), as applicable, the non-defaulting Party may seek specific performance and/or monetary damages.

(b) The non-defaulting Party may terminate this Agreement subject to the limitations and under the provisions of Section 8.1.

(c) In the event of a Default by Host requiring the permanent removal of the PV System from the Premises, and provided that the Host designates an alternative location at which the PV System is able to produce substantially equivalent amounts of Electricity, the Developer shall mitigate any damages by removing, storing and re-installing the PV System at the alternative location, all such costs to be borne by Host as damages. In the event PV System is unable to produce substantially equivalent amounts of Electricity at the alternative location, but the Host agrees to compensate the Developer for lost revenues during the Term of the Agreement on account of such reduced capacity, the Developer shall mitigate the Host's damages as provided herein by removing, storing and re-installing the PV System at the alternative location.

(d) In the event of a default by Developer, Host may elect, but is not required to, purchase the PV System pursuant to Section 8.12 of this Agreement (Purchase Option), subject to any prior right of CVEC to purchase the PV System, provided that Host shall be entitled to offset the Purchase Price of the PV System determined in accordance with Article XIII against the amount of monetary damages due and owing Host pursuant to this Section 8.5. Upon Host's tender of the Purchase Price as offset by the amount of its monetary damages,, should Developer fail to execute such necessary documents to convey its rights and interest to the PV System, the PV System shall be deemed abandoned and Host may retain the PV System as its property or may, subject to any right of CVEC to acquire the PV System pursuant to Section 9.3 of the Net Energy Power Purchase Agreement, proceed to remove the PV System in accordance with Section 8.9 of this Agreement (Abandonment of PV System).

For breach of any provision for which an express remedy, other than termination, or express measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of

damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

**8.6 Step-in Rights of Financier.**

(a) Host agrees to give written notices to any Financier, of which Host has written notice, upon the occurrence of any Event of Default hereunder, the failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, or an Event of Termination on account of Force Majeure, and Financier shall have a period of thirty (30) days after receipt of notice of failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed an additional ninety (90) days, to cure the Event of Default or Event of Termination on account of Force Majeure if Financier uses Commercially Reasonable efforts to cure such Event of Default or Event of Termination during the initial ninety (90) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such a reasonable period of time thereafter.

(b) Host agrees that, prior to termination pursuant to Section 8.1 (Termination), Host shall give written notice to any Financier of which Host has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such Event of Termination.

(c) Host also agrees that, in the event that Host terminates this Agreement pursuant to Section 8.1 (Termination), and Financier agrees in writing to assume all liabilities and obligations of the Developer, then a new agreement shall be executed by Host with Financier to assume the Developer's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Financier or extend or expand Host's obligations hereunder.

**8.7 Damage or Destruction of PV System.**

(a) Developer shall bear the risk of loss to the PV System (including casualty, condemnation or Force Majeure), except to the extent that such loss results from the gross



negligence of the Host or Host's agents, representative, customers, vendors, employees, or contractors.

(b) In the event of any PV System loss, Developer shall, at its sole cost and expense either (i) repair or replace the PV System, or (ii) elect to terminate this Agreement in which case Developer shall remove the PV System and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date in accordance with Section 8.8 (Site Restoration).

(c) In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects not to repair or replace the Premises, the Developer shall be limited to recovery of proceeds from its insurance coverage. In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects to repair or replace the Premises, the Developer may exercise either of its options under Section 8.7(b).

**8.8 Site Restoration.** On the Termination Date, Developer shall peaceably and quietly leave, surrender and yield up unto Host the Leased Premises, provided however that following the Termination Date of this Agreement, Developer shall have one hundred twenty (120) days to remove the PV System from the Leased Premises, and to restore the Leased Premises to the condition that existed as of the Effective Date, reasonable wear and tear excepted, or such additional time as may be necessary after Host or CVEC have declined to exercise a Purchase Option pursuant to this Lease and the PPA.

**8.9 Abandonment of PV System.** Notwithstanding anything to the contrary contained in this Agreement, any waiver in whole or in part of the requirement to remove the PV System shall require the written approval of Host. Any of the PV System left on the Premises after the passage of one hundred twenty (120) days after the Termination Date shall be deemed abandoned. Host shall provide written notice to the Developer within thirty (30) days of the expiration of such one hundred twenty (120) day period, of its election to retain all or any of the PV System as its property, or dispose of all or any of the PV System in such reasonable manner as Host may see fit and at Developer's sole cost; provided, however, that Host's election to retain the PV System as its property shall relieve Developer from any liability for its failure to remove such PV System; and provided further, however, that the foregoing shall not apply to any of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure or the negligent acts or omissions of Host (in which in either case the time period for removal shall be extended on a day for day basis).

**8.10 Decommissioning Assurance.** Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount specified in Exhibit D, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Depending on the circumstances, and subject to Host's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial

assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of Developer's failure to comply with its PV System removal and Premises restoration obligations under the Agreement.

### **8.11 Purchase Option.**

(a) Grant of Purchase Option to Host. For and in consideration of the agreement of Host to enter into this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Developer hereby grants to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Lease and the PPA (the "Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (a) upon the tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date of this Agreement, (b) upon a Developer Event of Default pursuant to Section 9.3 and the expiration of any cure right with respect thereto, or (c) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article.

(b) Timing of Purchase Option. If the Host declines the Purchase Option or otherwise fails to send its Host Purchase Option Notice within sixty (60) Business Days prior to tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date under the PPA, or the date of its Termination, then the Buyer shall have thirty (30) Business Days thereafter to provide written notice to Developer of its intent to exercise the Purchase Option ("Buyer Purchase Option Notice") pending completion of due diligence. Promptly following receipt of a Purchase Option Notice from Host or Buyer, as the case may be, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host, or the Buyer, as the case may be, the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, for its inspection during normal business hours.

(c) Inspection. Buyer or Host, as the case may be, shall have fifteen (15) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

(d) Determination of Purchase Price. The purchase price shall be the higher of the Buyer Purchase Payment in Exhibit C, or the Appraised Value of the PV System, as determined by the Independent Appraiser ("Purchase Price"). If the Purchase Option arises out of a Developer Event of Default, the Purchase Price shall be the Appraised Value.

(e) Independent Appraiser. Within fifteen (15) Business Days of Developer's receipt of Purchase Option Notice, Developer and Buyer or Host, as the case may be, shall each propose an Independent Appraiser. If Developer and Buyer or Host do not agree and appoint an Independent Appraiser within such fifteen (15) Business Day period, then at the end of such fifteen (15) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent

Appraiser) to perform the valuation and provide notice thereof to Developer and Buyer or Host. Such selection shall be final and binding on Developer and Buyer or Host.

(f) PV System Records and Inspection. The Developer shall make the PV System and records related thereto available to the Independent Appraiser. Similarly, the Buyer or Host shall make available to the Independent Appraiser the results of its inspection, review of records and other due diligence. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value (the “Preliminary Determination”).

(g) Preliminary and Final Appraisal Determinations. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Developer and Buyer and/or Host, together with all supporting documentation that details the calculation of the Preliminary Determination. Developer and Buyer and/or Host shall each have the right to object to the Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days of receipt of the objecting Party’s objections, the selected Independent Appraiser shall issue its final determination (the “Final Determination”) to Developer and Buyer and/or Host, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Appraised Value by the selected Independent Appraiser shall be final and binding on the Parties.

(h) Appraisal Costs. Developer and Buyer or Host, as the case may be, shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s), unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser.

(i) Final Purchase Option Notice. Within ten (10) Business Days of the Final Determination, the Buyer or Host shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with Section 13.2 (“Final Buyer Purchase Option Notice” or “Final Host Purchase Option Notice”). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable. If the Buyer’s or Host’s Purchase Option has arisen on account of a Developer Event of Default and Termination of the Agreement therefor under Section 9.2, the Developer Termination Payment shall be deducted from the Purchase Price.

(j) Transfer Date. The closing of any sale of the PV System (the “Transfer Date”) pursuant to this Article will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 8.11(i). This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

(k) Terms of PV System Purchase. On the Transfer Date (a) Developer shall surrender and transfer to Buyer or Host, as the case may be, all of Developer's right, title and interest in and to the PV System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) Buyer or Host, as the case may be, shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in Buyer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Buyer or Host. The purchase shall be on an "as is," "where is" basis without warranty of any kind.

(l) Acknowledgement of CVEC's Purchase Option. In the event that CVEC exercises its Purchase Option under this Lease and the PPA, this Agreement shall be amended to substitute CVEC for the Host and shall continue in full force and effect.

## ARTICLE IX: INDEMNIFICATION; INSURANCE

**9.1 Developer Indemnification of Host.** To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Host, CVEC and all of their officers, employees, boards, commissions, and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind ("**Losses**"), including any Environmental Claim, from or to third parties which arise out of the performance of Developer's work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions, including failure to comply with the provisions of this Agreement, of the Developer, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts Developer is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Host, but the Developer's obligation to pay Losses shall be reduced in proportion to the percentage by which the Host's negligent or intentional acts, errors or omissions caused the Losses.

**9.2 Host Indemnification of Developer.** To the extent permitted by law, Host shall indemnify and hold harmless Developer from and against any and all Losses from or to third parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Host, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any

negligent or intentional acts, errors or omissions of Developer, but the Host's obligation to pay Losses shall be reduced in proportion to the percentage by which the Developer's negligent or intentional acts, errors or omissions caused the Losses. Notwithstanding any other provision in this Agreement, the Host's and CVEC's liability hereunder shall be limited by the protections and immunities afforded by and to the amount set forth in Chapter 258 of the Massachusetts General Laws.

9.3 The Parties agree to comply with the insurance obligations allocated to them in Exhibit C hereto.

9.4 The provisions of Section 9.1 and 9.2 shall survive the expiration or earlier termination of the Agreement.

## **ARTICLE X: QUIET ENJOYMENT**

**10.1 Quiet Enjoyment.** Host covenants that Developer shall quietly have and enjoy the Premises throughout the Term and any extensions thereof. Host warrants and agrees that, throughout the Term and any extensions thereof:

(a) the Premises shall be dedicated to Developer's use for conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the PV System, except as provided for in Section 10.2 and subject to the Additional Exceptions set forth in Exhibit A-1 and Special Conditions in Exhibit D;

(b) any other uses of the Premises by Host or any third party pursuant to Section 10.2 and the Additional Exceptions set forth in Exhibit A-1 shall not unreasonably interfere with the Permitted Use and the operational and solar requirements of the PV System;

(c) Host shall maintain or obtain any agreements, contracts, consents, Permits, approvals, or other instruments or permissions necessary for Developer to have the quiet enjoyment of its rights under this Agreement; and

(d) Host shall, in good faith, use its best efforts to protect Developer's quiet enjoyment of its rights hereunder, including, without limitation, defending against a third party claim that would materially interfere with Developer's rights under this Article X.

Subject to the specific provisions of this Agreement permitting the same, Host shall have the right to enter upon the Premises at any time for any purpose and no such entry that complies with the provisions of this Agreement permitting the same shall be considered a breach of the covenant of quiet enjoyment.

**10.2 Host's Reserved Uses.** Except as specifically set forth in the Additional Exceptions contained in Exhibit A-1, Host shall not itself conduct any other use, nor shall Host allow any third party to conduct any other use, on the Premises.

## ARTICLE XI: ASSIGNMENT AND MORTGAGE

### 11.1 Assignment.

A. Developer Assignment. Except as otherwise provided by this Agreement, Developer shall not assign, subcontract, sublet or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Host, provided that prior notice to or consent of Host shall not be required: (i) for an assignment or transfer by Developer to any of its other individual members; and (ii) for a collateral assignment by Developer to any Financier, subject to the terms and conditions of this Article XI. For assignments requiring Host's approval, approval may be denied in the reasonable discretion of Host if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning Developer. Notwithstanding the foregoing, Host may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Developer. Developer's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Developer shall reimburse Host for its reasonable attorneys' fees related to review and approval of assignments. If Developer assigns, subcontracts, sublets or delegates its rights, privileges or obligations under this Agreement, Developer shall reimburse Host for reasonable attorneys' fees for costs incurred concerning such change in interest, up to an amount of \$1,500 per each assignment. Any assignment of both this Agreement and any other agreement between the Parties, including but not limited to the Power Purchase Agreement, that are done contemporaneously shall be subject to a total cap of \$1,500.00.

(a) Host Assignment. Host shall not assign this Agreement without the prior consent of Developer, such consent not to be unreasonably withheld, provided, however, that any such assignment shall be made subject to the terms and provisions of this Agreement. Host shall promptly provide Developer a copy of the assignment document following any assignment.

The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto. Notice of any permitted assignment shall be provided to the other Party as soon as practicable.

**11.2 Financing by Leasehold Mortgage.** Host is cognizant of the need of Developer to finance its interest in the Premises and the PV System thereon, and therefore specifically agrees, subject to Section 8.6, without any further request for prior consent to permit Developer to mortgage, assign or transfer its interest in the Premises for the purpose of obtaining financing, which shall include equity and/or debt, provided:

(a) The term of such mortgage, assignment or transfer shall not exceed the Term; and

(b) Developer shall give Host and CVEC notice of the existence of any mortgage, assignment or transfer, together with the name and address of the mortgagee, assignee or transferee, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer.

**11.3 Financing by Leasehold Mortgage Release of Developer.** Developer shall be relieved from its obligations under this Agreement in whole or in part, as the case may be:

(a) by any whole or partial disposition of Developer's interest in this Agreement in compliance with Section 11.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by the terms of this Agreement, unless the Parties agree otherwise, and except as otherwise provided by the terms of any assignment or transfer; and

(b) in the event of any foreclosure by a Financier, in which case the Financier shall substitute for the Developer for purposes of this Agreement.

Absent express written consent of Host, the execution of a mortgage or any assignment from a Financier to another Financier shall not relieve Developer from its obligations under this Agreement.

**11.4 Financier Provisions.** Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or in any PV System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Host or Host's fee interest in and to the Premises, or Host's rights under this Agreement. Host shall promptly execute any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendment does not materially change the terms of this Agreement.

(a) Financier's Right to Possession, Acquire and Assign. Pursuant to the provisions of this Section 11.4 and subject to Section 8.6, a Financier shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold estate by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; (iv) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure; and (v) to sell the PV System and rights under the PPA and any other contracts dealing with the sale of Net Energy or renewable energy certificates from the PV System to a third party. Host's consent shall not be required for the Financier's acquisition of the encumbered leasehold estate created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

(b) Upon the Financier's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Financier shall have the right to sell or assign said acquired leasehold estate, provided Financier and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Host, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of Developer's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this

Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

(c) Notice of Default; Opportunity to Cure. The Financier shall be entitled to receive simultaneous notice of any default by Developer, provided that such Financier shall have first delivered to Host notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by state laws, rules, regulations, Developer's procedures, and the provisions of this Agreement. If any notice shall be given of the default of Developer and Developer has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice that Developer has failed to cure such default and such Financier shall be entitled to cure any such default pursuant to the terms of Section 8.6. The Financier may take possession of the Premises and the PV System, and operate the PV System if necessary, pursuant to Section 8.6.

## **ARTICLE XII: DISPUTE RESOLUTION**

**12.1 Dispute Resolution.** Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties so agree, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be the courts for and in Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

### **12.2 Stay of Termination.**

(a) During informal negotiations and mediation pursuant to Section 12.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such



informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 12.1 are pending, the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 12.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) During the Term of the PPA (as defined therein), if there is any lawsuit pending between Developer and CVEC, Host shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Host may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by Host at any time for any reason.

### ARTICLE XIII: MISCELLANEOUS

**13.1 Construction; Obligation to Modify Agreement.** Upon implementation by the Department of Public Utilities, Department of Energy Resources, or other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the economic benefits anticipated by either Party, in particular any rule or regulation regarding Net Metering, the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

**13.2 Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Host:

[TOWN MANAGER OR ADMINISTRATOR]

If to Developer:

Greenskies Development Company LLC  
Attention: Legal Department  
180 Johnson St.  
Middletown, CT 06457

If to CVEC: Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path, Suite 2

South Yarmouth, MA 02664  
Attn: Liz Argo, Manager  
Tel: (774) 722-1812  
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

**13.3 Entire Agreement; Amendments; Binding Effect.** This Agreement and the PPA and Inter-Governmental PSA constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**13.4 Expenses.** Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

**13.5 No Joint Venture.** Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

**13.6 Joint Work Product.** This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

**13.7 Waiver.** No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

**13.8 Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance

with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Buyer as public cooperative or to the Host as municipal entity.

**13.9 Nondiscrimination.** Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

**13.10 Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

**13.11 Further Assurances.** From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

**13.12 Survival.** Termination of this Agreement for any reason shall not relieve Host or Developer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Sections 9.1 and 9.2 (Indemnification) and XII (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

**13.13 Counterparts; Scanned Copy.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

**13.14 CVEC as Third Party Beneficiary.** The Parties agree that CVEC shall be a third party beneficiary of this Agreement.

**13.15 Special Terms and Conditions.** Host understands and agrees that this Agreement is CVEC's standard form lease agreement for project development and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

**13.16 No Limitation of Regulatory Authority.** The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

*[Signature page to follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**DEVELOPER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HOST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

List of Exhibits to this Agreement

Exhibit A – Description of Premises

Exhibit A-1 – Additional Exceptions

Exhibit B – Description of PV System

Exhibit C – Insurance Requirements

Exhibit D – Special Terms and Conditions

Exhibit E – Common Technical Specifications

Exhibit F – Power Purchase Agreement between Developer and CVEC

Exhibit G – Inter-Governmental Power Sales Agreement (Inter-Governmental PSA) between  
CVEC and Host

## EXHIBIT A

### DESCRIPTION OF PREMISES

**Address:**

[SITE]

**Legal Description:**

Ground or solar canopy space \_\_\_\_\_, located at the above address, as illustrated in the Sketch Plan entitled “\_\_\_\_\_” dated \_\_\_\_\_. The ground or solar canopy space on the attached Sketch Plan is identified by the area where the solar panels and, when applicable battery(s) are located, as such Sketch Plan may be amended or revised from time to time.

**Description of the Premises:**

The Premises shall further include all necessary electrical and other utility sources, together with the non-exclusive right of ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the right to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.

**EXHIBIT A-1**

**ADDITIONAL EXCEPTIONS**

A. Developer's use of the Premises shall be subject to the following:

Host's Reserved Uses of the Premises:

**[LIST]**



**EXHIBIT B**

**DESCRIPTION OF PV SYSTEM**

PV SYSTEM:

Module Manufacturer: \_\_\_\_\_

Nameplate Capacity: \_\_\_\_\_

Approximate Annual Energy Production:  
\_\_\_\_\_ kWh

Location: \_\_\_\_\_

Preliminary Specifications:  
\_\_\_\_\_

Battery Manufacturer \_\_\_\_\_

BESS Nameplate Capacity in kilowatts for four  
hour duration:  
\_\_\_\_\_ kW for four hours

Location: \_\_\_\_\_

Mounting Systems: \_\_\_\_\_

PV SYSTEM ASSETS:

Inverters: \_\_\_\_\_

Related Equipment: \_\_\_\_\_

Electric Lines: \_\_\_\_\_

## EXHIBIT C

### INSURANCE REQUIREMENTS

A. Developer's insurance obligations. Developer shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Developer shall provide Host with evidence, reasonably satisfactory to the Host, of its insurance hereunder, upon request.

1. ***Comprehensive commercial general liability insurance*** of at least \$2,000,000 combined single limit. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Excess liability*** coverage of at least \$10,000,000.

3. ***Additional insurance requirements.*** All insurance maintained by Developer shall:

a. include as additional insured the Host for obligations arising out of this Agreement. The policies shall be endorsed to require that such additional insureds receive at least thirty (30) days' notice of cancellation or non-renewal. Additionally, the Developer shall be required to provide notice to the Host of any cancellation or non-renewal at least thirty (30) days in advance of said cancellation or non-renewal.

b. the insurance may be provided on a claims-made basis.

c. in the event such insurance is cancelled or non-renewed, Developer agrees to provide a 36 month discovery period endorsement for obligations under this Agreement.

d. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.

e. The insurance shall include blanket contractual liability coverage, including coverage for this Agreement.

B. Host's insurance obligations. Host shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Host shall provide Developer with evidence, reasonably satisfactory to the Developer, of its insurance hereunder, upon request.

1. ***Commercial general liability insurance*** written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations liability, and broad form general liability, with limits of not less than \$3,000,000 combined single limit and annual aggregate. This limit

requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Property insurance*** on the Premises with a waiver of subrogation rights against the Developer.

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS**  
**LEASE AGREEMENT**

## EXHIBIT E

### COMMON TECHNICAL SPECIFICATIONS

This Exhibit describes the technical specifications and requirements that are common to all the PV Systems. These common technical specifications are those that each PV System must meet or exceed. These specifications and requirements are not intended to be all-encompassing, nor are they intended to override Good Engineering Practice or Applicable laws and code requirements. The Developer is responsible for conformance to all relevant, prevailing codes, and the codes take precedence over these Technical Specifications. Site-specific conditions and/or local regulations may require additional specifications and requirements not included in this Exhibit.

#### A. Design

##### 1. Design Life and Estimated Production Requirements

- a. Each PV System shall have a service life of twenty (20) years at rated load.
- b. The PV System must be designed so that the estimated annual energy output for the PV System, based on actual site-specific shading, azimuth, and inclination is at least 80% of the default optimal output for a fixed PV System of the same capacity in Boston as estimated by PVWATTS Version 1. PVWATTS Version 1 is available at the following website:  
<http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Massachusetts/>

##### 2. Additional Design Requirements - Stamped affidavits or drawings are required for the electrical and structural components of the installation.

- a. The electrical design of the PV System must be performed by a Professional Engineer (“PE”) licensed in the Commonwealth of Massachusetts.
- b. The structural design of the PV System requires a stamped affidavit from a Massachusetts-licensed PE confirming that the underlying structure or bearing stratum, is adequate to withstand the static and dynamic loads of the PV System. The analysis must include all mounted portions of the PV System, including modules, racks, ballast, and other related components. The analysis must also include all mount securing portions of the PV System, including any anchors and penetrating devices.

#### B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. If the Developer determines the use of galvanized structural steel is warranted, the extent of Developer’s use of such material shall be clearly outlined in the Developer’s Proposal. All materials

subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. Bare copper conductors exposed to free air shall be tin-plated. Alternative materials must be approved by the Host and CVEC.

## 2. **Inverters**

- a. Inverter efficiency shall be equal to or greater than 93%.
- b. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- c. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
- d. Each inverter shall include:
  - i. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
  - ii. Ground fault protection.
  - iii. NEMA 2R rating for interior electrical room location or NEMA 3R for any exterior locations.
- e. The inverter(s) must have secure, weatherproof housing in the exterior installation.
- f. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
- g. The inverter(s) must be located to provide adequate air flow for cooling.
- h. Lightning protection must be provided for the inverter(s) housing.

3. **Batteries** – The battery energy storage system will be DC coupled and meet all NEC requirements.

4. **Combiner & Junction Boxes** - Combiner boxes and junction boxes which are located outdoors shall have the following characteristics: NEMA 4X enclosure, 600 VDC, and listed by a nationally recognized testing laboratory. All PV System output circuits shall be protected by lightning arrestors of the appropriate voltage rating.

5. **DC Disconnect Switches** - The DC disconnect(s) shall be 600 VDC, heavy-duty safety switch and be listed by a nationally recognized testing laboratory. Where

located outdoors, disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.

6. **AC Disconnects** - All AC disconnects shall be rated to interrupt the necessary voltage and current for the application and be listed by a nationally recognized testing laboratory. Where located outdoors disconnects shall be NEMA 3R. The AC disconnect shall be appropriately located per the utility's requirements and its location shall be noted on the one-line electrical drawing.
7. **Interconnection Circuit Breaker** - The Developer shall provide the appropriate size, make, and model circuit breaker for the specified AC interconnection switchgear that is suitable for back feed in accordance with NEC 690.64.
8. **Wiring and Conduit**
  - a. All system wiring shall be of an MEC approved wiring method. All conductors shall have a temperature rating of 90 degrees C or lower.
  - b. All conductors shall be copper, sized appropriately to minimize line losses.
  - c. All conduits used in interior building applications shall be electro metallic tubing ("EMT").
  - d. All exterior conduits shall be hot dipped galvanized EMT with weather tight compression fittings and expansion joints as required.
  - e. Expansion fittings shall be used in conduit runs in compliance with MEC article 300.7. A value of 144°F (80°C) shall be used for the maximum change in temperature (delta T) in the calculation of conduit expansion.
  - f. All conduits shall be bonded at each end using listed bonding bushings.
  - g. Where conduit is attached to roofs, fully flashed, non ferrous stanchions shall allow for expansion and contraction. For roof-mounted conditions, conduits shall be supported at a height greater than 3.5 inches by fully flashed, non ferrous stanchions. Manufacturer's approved surface applied stanchions shall be used on membrane roofs.
  - h. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
  - i. Exposed cables shall be listed as sunlight resistant and have a temperature rating of 90°C. These conductors shall be properly secured and well supported. Conductors are not permitted to be resting on the abrasive surfaces such as asphalt shingles.

- j. All wiring and conductors installed in subsurface applications shall be housed in utility grade PVC conduit(s) sufficiently covered and include trench warning identification. Spare conduits shall also be installed with a volumetric capacity of at least 25% of the original service. In the event subsurface conduits are exposed to vehicular traffic, concrete encasement shall be included.

**9. PV System Grounding** - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.

**10. PV Array**

a. PV Modules

- i. Modules shall be UL 1703 listed.

b. Mounting Systems

- i. In all installations, the mounting system shall promote ambient air circulation beneath and above modules to enhance efficiency. The lower edge of the panels on the mounting should be designed to eliminate power production losses from snow coverage and provide a comfortable working height for maintenance.
- ii. Modules shall be individually removable for maintenance and repair.
- iii. The mounting system, regardless of application, shall be designed to meet or exceed requirements of all applicable state and local building codes, including wind speed, snow and seismic load requirements. The Developer shall describe and document the wind and snow loads that the PV System is designed to withstand.
- iv. For ballasted roof mounted systems, the Developer shall provide a manufacturer's comprehensive designed system. The Professional Engineer responsible for this portion of work shall also be licensed in the state of Massachusetts.
- v. In the event an existing lightning protection system is modified or augmented, the Developer is responsible for UL recertification.
- vi. Each module row or column must be separated to minimize shadowing effects on other modules. The spacing between modules shall be noted on the PV layout drawing.



- vii. For all PV Systems with roof penetration points through previously warranted roofs, the Developer is responsible that roof warranty is not voided

## **11. Installation Requirements**

- a. The output of the PV inverter(s) shall not interfere with or damage the function of existing Building electrical distribution systems. All serviceable components must be “accessible” as defined by the MEC article 100. The installation shall comply with all applicable federal, state and local building codes including the latest Massachusetts Electrical Code. The Developer shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Developer shall coordinate with the Host to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to the Host for interconnection of PV System output or if the switchgear is to be turned off.
- b. The PV System electrical work must be performed by individuals licensed in Massachusetts.
- c. The PV System must be installed according to the manufacturer’s instructions and in compliance with all applicable codes and standards.
- d. The Developer is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any Net Metering or Alternative On-bill Credit arrangement requested by CVEC or the Host. An application must be submitted to the local electric utility, with or without Schedule Z as appropriate, to start the formal interconnection process, and sufficient lead time should be allowed to successfully achieve interconnection under the local electric utility interconnection standards. All PV Systems must have an appropriate electric utility interconnection agreement in place at the time of interconnection to the utility grid.
- e. All pertinent permits and inspections must be obtained and copies kept on file as may be required by local codes and/or state law.
- f. All PV Systems shall include appropriate surge arresters or other means to protect the PV System components from lightning and other surge events. It is the responsibility of the Developer to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

## **12. PV System Warranty Requirements**

- a. Developer Warranty. All PV Systems must have a minimum five (5) year labor warranty provided by the Developer to protect the Host against defective
- E-5

workmanship, PV System or component breakdown, or degradation in electrical output of more than fifteen percent from their originally rated electrical output during the warranty period. The warranty must cover the PV System, including PV modules (panels) and inverter(s), racking, conduit run, and components, and provide for no-cost repair or replacement of the PV System, components, including any associated labor during the warranty period.

- b. **Manufacturer Warranty.** All major equipment must meet the following minimum manufacturer warranties:
  - i. **Photovoltaic Module:** Minimum of one (1) year product warranty from date of sale to first consumer purchaser for product workmanship and materials, plus a minimum performance warranty of twenty (20) years within which time the module will produce, under standard test conditions, a minimum of 80% of the product's minimum rated power at time of sale.
  - ii. **Inverters:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
  - iii. **Batteries:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
  - iv. **Revenue grade production meters:** Minimum of two (2) years following the effective commercial operation date that the meter system will be free from all defects in design, materials and workmanship. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the Host.
  - v. **Mounting equipment:** The Developer shall obtain from the mounting system manufacturer(s) a warranty that the mounting system(s) will be free from all defects in design, materials and workmanship for a period of ten (10) years following the effective commercial operation date. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the Host.

**13. Electricity Production Meter Requirements** - All PV Systems must have a dedicated revenue grade production meter that:

- a. is readily accessible and easily understood by the Host;
- b. records the PV System's AC output as measured on the AC side of the PV System's isolation transformer;
- c. shall be separate from the local utility billing meter and shall not interfere with utility billing or net metering;

- d. must be a standard utility “revenue quality” meter that conforms to applicable American National Standards Institute (“ANSI”) C-12 standards and shall be installed on the AC output side of the PV System’s inverter or isolation transformer; and
- e. shall have a visible display of cumulative energy produced by the PV System and be available for periodic testing and/or re-calibration, if necessary.

**14. Automated Reporting** - All PV Systems must include an automated reporting system, i.e. Data Acquisition System (“DAS”) which will report to the Massachusetts Renewable Energy Trust (“MRET”) Production Tracking System (“PTS”) and detail view be accessible to CVEC and Host. In addition, the public will have access to a Public View from the DAS. Where Battery Energy Storage System is proposed, automated and manual system controls must be provided which will be accessible to CVEC and Host offsite through high speed internet online access.

## **C. Commissioning Requirements**

- 1. Commissioning Procedure** - At a minimum, the Developer’s sample testing and commissioning plan shall cover:
  - a. measurement and recording of voltage-open-circuit of every source circuit;
  - b. performance of inverter startup tests as specified by the inverter manufacturer in the inverter operation manual;
  - c. measurement of AC power and comparison to predicted power based upon estimated irradiance level;
  - d. performance of loss of grid test and verification of five minute delay upon restoration of the grid; and
  - e. measurement and recording of  $I_{mp}$  of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
- 2.** The Developer shall verify that the data acquisition/display system and, where applicable, the Battery Energy Storage System controls, are functioning properly, comparing independent measurements to data acquisition display and able to switch Battery Energy Storage System configurations and operations.
- 3.** The Developer shall correct, at no additional cost to the Host, any deficiencies uncovered by the testing prior to commissioning of the PV System.

## **D. Training Requirements**

The Developer shall train the Host or staff at the Premises on basic principles of operation, maintenance requirements, on-line data monitoring and system controls, and safety issues that are specific to the PV System installed (including points of contact in emergency situations). An operations manual to accompany the training will be delivered to the Host and to CVEC.

## **E. Documentation Requirements**

- 1. Documentation** – The Developer shall prepare an Operations and Maintenance manual for the PV System. In addition, the Contractor shall provide CVEC and the Host each with one (1) printed copy and one (1) digital copies on CD of the information listed below.
- 2.** The documentation shall include:
  - a. A complete set of all approved shop drawings, a list of equipment and products used, and product literature. The list of equipment shall include the manufacturer, brand name, model (if applicable), equipment components, recommended maintenance procedures for each piece of equipment, approximate amount of product installed and materials contained in the product.
  - b. Record drawings showing, to scale, the location of all arrays, locations of major equipment, including combiner box clusters, all underground and major conduit runs, grounding electrodes and specific locations to building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.
  - c. The Permission to Operate provided by the Local Distribution Company.
  - d. Trouble shooting guidelines.
  - e. PV System maintenance schedule and procedures.
  - f. Contact information for technical assistance and parts ordering.
  - g. Records of all warranties and serial numbers of all warranted equipment.

**EXHIBIT F**

**POWER PURCHASE AGREEMENT  
BETWEEN DEVELOPER AND CVEC**

**EXHIBIT G**  
**INTERGOVERNMENTAL POWER SALES AGREEMENT**  
**BETWEEN CVEC AND HOST**

**INTER-GOVERNMENTAL SERVICES AGREEMENT**

**BETWEEN**

**THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.**

**AND**

**TOWN OF HARWICH**

**FOR MANAGEMENT OF SOLAR PHOTOVOLTAIC ENERGY FACILITIES**

**LOCATED AT HARWICH AS-OF-RIGHT PHOTOVOLTAIC SITE**

September \_\_\_\_, 2019

**INTER-GOVERNMENTAL SERVICES AGREEMENT  
BETWEEN  
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.  
AND  
TOWN OF HARWICH, MASSACHUSETTS**

This Inter-Governmental Services Agreement (“Agreement”) is entered into this \_\_ day of September, 2019 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“CVEC”), and the Town of Harwich, Massachusetts (“Town”). CVEC and the Town may be referred to as “Party” and collectively as the “Parties.”

**RECITALS**

WHEREAS, the Town is a member of CVEC;

WHEREAS, at the Town’s request, CVEC issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility (“PV System”) to be located on property owned by the Town and leased to the Developer;

WHEREAS, pursuant to the RFP, Town has entered into a lease agreement (“Lease”), attached as Exhibit A, with the Developer to develop the PV System, specifically a ground mount PV System at 205 Queen Anne Road, Harwich, MA (the “Premises”), to be owned by the Developer and to be operated by the Developer on space leased by the Town to the Developer; and

WHEREAS, per the Town’s request, CVEC will perform financial and operations management services on the Town’s behalf for the PV System, including the tasks listed below.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, CVEC and Town agree as follows:

**ARTICLE I: SCOPE OF WORK**

**1.1** Conditions Precedent. The obligations of the Town and CVEC under this Agreement shall be conditioned upon execution by Developer and Town of the Lease as of or of even date with the Effective Date of this Agreement.

**1.2** Scope of Work. CVEC shall serve as the Town’s representative and complete the following tasks in the Lease on behalf of the Town:

(a) Represent the Town’s interests with the Developer and the utility and facilitate PV System commissioning;



- (b) Represent the Town's interests concerning PV System design and construction;
- (c) Perform inspections, or arrange for inspections, of the PV System as necessary or requested by the Town;
- (d) Notify the Town of its maintenance obligations with respect to the PV System under the Lease and update the Town on compliance with same;
- (e) Monitor Developer's compliance with maintenance obligations under the Lease;
- (f) Monitor Developer's compliance with the federal, state, and local permit and regulatory requirements identified in the Lease, exclusive of tax issues;
- (g) Ensure that Developer provides for Decommissioning Assurance per the terms of the Lease;
- (h) Facilitate the Town's decision making steps concerning the Town's Purchase Option, as set forth in the Lease;
- (i) Maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, or as may be reasonably required by Town;
- (j) Keep full and accurate records of all costs, fees, charges and other amounts incurred by CVEC under this Agreement, and maintain such records for inspection by the Town for a period of three years after termination of this Agreement;
- (k) Provide Town with access to information regarding the operations of the PV System or other data concerning the PV System; and
- (l) Notify Town as soon as practicable when CVEC becomes aware that the PV System may be mechanically inoperable for more than a seven (7) day period.

The Town's obligations in the Lease not specifically tasked to CVEC herein shall remain the sole responsibility of the Town.

**1.3 Town's Informational Obligations.** The Town shall provide to CVEC all information necessary for CVEC to fulfill the Scope of Work set forth in Section 1.2, including making Town administrative staff available as necessary or appropriate.

## **ARTICLE II: COMPENSATION FOR CVEC'S SERVICES**

**2.1 Payment to CVEC and Billing.** CVEC estimates that completion of the Scope of Work set forth in Article I will require approximately 25 hours of CVEC's time on an annual basis. For 25 hours of time per year, the Town shall pay to CVEC \$3125. CVEC shall invoice the Town annually on the project's commercial operations anniversary, and Town shall pay CVEC within thirty (30) days of the receipt of CVEC's invoice.

### ARTICLE III: TERM

**3.1** Term. The term of this Agreement (the “Term”) commences on the Effective Date and continues for a period of twelve (12) months unless terminated earlier by either Party pursuant to Section 4.1. The Town may, in its sole discretion, elect to renew this Agreement for up to nine (9) additional 12-month terms, with amendments to Exhibit A (Lease), including pricing terms and scope of services, as the Parties may agree to in writing. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

### ARTICLE IV: NONPERFORMANCE; TERMINATION; REMEDIES

#### **4.1** Nonperformance.

(a) In the event that CVEC fails to perform any part of the Scope of Work set forth in Section 1.2 of this Agreement, the Town may provide written notice to CVEC of such nonperformance, which CVEC may then within ten (10) business days cure the nonperformance or produce a plan acceptable to the Town (in its reasonable discretion) to cure the nonperformance. In the event that CVEC fails to cure the nonperformance or to agree with the Town on a plan to cure the nonperformance within that timeframe, the Town may (i) remove such task(s) from CVEC’s Scope of Work and take over such responsibility or responsibilities, with compensation to CVEC reduced accordingly, or (ii) terminate this Agreement upon ten (10) days’ written notice to CVEC. In taking over, the Town shall have the right, for completing the services, to have access to any database and materials of CVEC. CVEC shall not be held liable for nonperformance of any part of the Scope of Work if the reason for such nonperformance is lack of adequate or accurate information or resources from the Town.

(b) In the event that the Town fails to provide information to CVEC in accordance with Section 1.3 or to compensate CVEC in accordance with Section 2.1, CVEC may provide written notice to the Town of such noncompliance, which the Town may then within ten (10) business days cure the noncompliance or produce a plan acceptable to the other Party (in its reasonable discretion) to cure the noncompliance. In the event that the Town fails to cure the noncompliance, CVEC may terminate this Agreement upon ten (10) days’ written notice to the Town, with interest on any amounts due and owing related to the nonperformance or breach.

**4.2** Termination. In addition to the termination provisions for nonperformance set forth in Section 4.1, this Agreement shall be subject to termination by either Party for (a) Force Majeure (as defined in the Lease), or (b) in the event that the Lease is terminated, except to the extent the Lease is terminated due to CVEC’s or Town’s exercise of their Purchase Options (as defined therein).

**4.3** Remedies. Each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to any nonperformance or breach by the other Party under this Agreement, subject to any limitations set forth in this Agreement.

**4.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

## **ARTICLE V: DISPUTE RESOLUTION**

**5.1 Dispute Resolution.** Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 5.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm.

## **ARTICLE VI: MISCELLANEOUS**

**6.1 Modification.** This Agreement may be modified only by a written amendment signed by both Parties hereto. In the event of a regulatory or legal change related to net metering that materially impacts this Agreement, the Parties shall use good faith efforts to modify this Agreement to comply with such regulatory or legal change, subject to termination rights in this Agreement.

**6.2 Interpretation.** When used in this Agreement, terms shall have the meanings defined in Exhibit A (Lease), unless otherwise provided. Words not defined herein shall be given their common and ordinary meanings.

**6.3 Construction.** The Parties acknowledge that inconsistencies may exist between this Agreement and the Lease between the Town and the Developer, and that CVEC and the Town will use their best efforts to construe this Agreement harmoniously with that Lease.

**6.4 No Assignment Without Permission.** The Parties agree that each shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of the other Party, such consent not to be unreasonably withheld.

**6.5 Notices.**¶All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Town:

[TOWN MANAGER OR ADMINISTRATOR]

If to CVEC:

Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path  
South Yarmouth, MA 02664  
Attn: Liz Argo, Manager  
Tel: (774) 722-1812  
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

**6.6 Entire Agreement; Binding Effect.**¶ This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**6.7 Expenses.**¶ Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

**6.8 No Joint Venture.**¶ Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

**6.9 Joint Work Product.**¶ This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

**6.10 Waiver.**¶ No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder

by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

**6.11 Governing Law.**¶ This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law. The Parties agree that Barnstable County Superior Court, Massachusetts shall have jurisdiction over any litigation entered into hereunder.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the CVEC as public cooperative or to the Town as municipal entity.

**6.12 Nondiscrimination.**¶ The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

**6.13 Severability.**¶ If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

**6.14 Further Assurances.**¶ From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

**6.15 Survival.**¶ Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 5 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

**6.16 Counterparts; Scanned Copy.**¶ This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to

produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

**6.17 No Limitation of Regulatory Authority.** ¶The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

**6.18 Notice.**

All correspondence and notices between Town and CVEC shall be directed to the following:

If to Town:

[FILL IN]  
Town Manager  
Town of Harwich  
[ADDRESS AND CONTACT INFO]

If to CVEC:

Liz Argo  
Manager  
Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
774-722-1812 (phone)  
largo@cvecinc.org

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Notices may also be sent by electronic mail message and shall be deemed properly served when the sending Party receives a confirmation that the message has been completely transmitted without error (out-of-office auto-responses shall not comply), provided that messages transmitted on any day that is not a Business Day, or after 5:00 p.m. local time (at the location of the receiving Party) on a Business Day, shall be deemed given on the next Business Day following the day on which the sending Party receives a confirmation that the message has been completely transmitted without error. The Parties are responsible for maintaining current and complete

contact information; any Party may change its contact person and the contact information provided above by giving written notice thereof.

**6.19 G.L. c. 40 §4A.** The Parties acknowledge and agree that this Agreement is an inter-governmental agreement entered into in accordance with G.L. c. 40 §4A. The Parties shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received under this Agreement and undertake regular audits of such records.

**6.20 Ownership of Documents and Work Product.** In the event of termination of this Agreement, all documents, data, spreadsheets, databases, and information of any kind developed by CVEC, as well as all results or products of the services provided by CVEC pursuant to this Agreement or the Statement of Work in the Peregrine Agreement related to this Agreement shall be the sole property of the Town, and upon request of the Town shall be returned to the Town.

*[Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**CVEC**

Cape & Vineyard Electric Cooperative, Inc.

By: \_\_\_\_\_  
Name:  
Title: Clerk

By: \_\_\_\_\_  
Name:  
Title: President

23H2 White's Path  
Suite 2  
South Yarmouth, MA 02664  
(774) 722 -1812 (voice)

**TOWN**

[MUNICIPALITY]

By: \_\_\_\_\_

Name:

Title:

[CONTACT INFORMATION]

List of Exhibits to Agreement

Exhibit A – Lease between Town and Developer (including related exhibits)



**EXHIBIT A**

**[LEASE BETWEEN TOWN AND DEVELOPER]**

**SPECIMEN INTER-GOVERNMENTAL NET ENERGY POWER SALES  
AGREEMENT**

**BETWEEN**

**THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.**

**AND**

**[MUNICIPALITY]**

**FOR ROOF MOUNTED, GROUND MOUNTED, AND SOLAR CANOPY  
SOLAR PHOTOVOLTAIC ENERGY FACILITIES**

\_\_\_\_\_, 2019

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**SPECIMEN INTER-GOVERNMENTAL NET ENERGY POWER SALES  
AGREEMENT  
BETWEEN  
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.  
AND  
[MUNICIPALITY]**

This Inter-Governmental Net Energy Power Sales Agreement (“Agreement” or “Inter-Governmental PSA”) is entered into this \_\_\_ day of \_\_\_\_\_, 2019 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Seller”), and [MUNICIPALITY] (“Buyer”).

**RECITALS**

A. Whereas, at Buyer’s request, Seller issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility with or without a battery energy storage system (“PV System”) (defined herein and further identified in Exhibit B) to be located on property owned by the Buyer and leased to the Developer;

B. Whereas, pursuant to the RFP, Buyer has entered into a lease agreement (“Lease”) with the Developer to develop the PV System, specifically a roof mount, ground mount, or solar canopy PV System [TO BE SELECTED PER PROJECT] at \_\_\_\_\_, MA (the “Premises”), owned by the Buyer;

C. Whereas, Seller has entered into a Power Purchase Agreement (“PPA”) with Developer pursuant to which Seller will purchase Net Energy (as defined herein) generated by the PV System and in turn sell an allocated share of that Net Energy to Buyer, pursuant to this Agreement;

D. Whereas, Buyer desires to purchase the Net Energy generated by the PV System from Seller to reduce its electric load and to obtain Net Metering Credits to apply against electric bills; and

E. Whereas, Seller, to the extent permitted by law, will net meter the Net Energy generated by the PV System for the benefit of Buyer.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, Seller and Buyer agree as follows:

**ARTICLE I:DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words

defined in this Article I that are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

**“Alternative On-bill Credit”** means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2..

**“Alternative On-bill Generation Unit”** has the meaning as set forth in in 225 CMR 20.02.

**“Battery Energy Storage System”** means battery or batteries and necessary controls to extend the power available to the host facility when installed in conjunction with a renewable energy resource and/or the grid.

**“Business Day”** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Commercial Operation”** means that the PV System is ready for regular, daily operation, has undergone testing as provided in the PPA, has been accepted by Seller and Buyer (and to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects (including, but not limited to, a grant of permission to operate from the Distribution Company, and completion of all final inspections), and is capable of producing Energy and delivering it to the Point of Delivery.

**“Commercial Operation Date”** means the first day on which the PV System is ready for Commercial Operation, as certified in writing by Developer to Seller in the Notice of Commercial Operation.

**“Commercially Reasonable”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics, and regulations.

**“Cooperative Member”** means any municipality, county or political subdivision thereof, or other body politic, that has duly joined Seller as a cooperative member. Although



Buyer is a Cooperative member, Buyer shall be excluded from this definition under this Agreement.

**“Developer”** means the Lessee under the Lease who will develop the PV System and then sell the Net Energy to the Seller pursuant to the PPA.

**“Distribution Company”** means Eversource Electric Company or any successor thereto.

**“Distribution Company System”** means the electric distribution system operated and maintained by the Distribution Company.

**“DOER”** means the Massachusetts Department of Energy Resources.

**“Effective Date”** means the date set forth in the introductory paragraph of this Agreement.

**“Energy”** means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include Environmental Attributes.

**“Environmental Attributes”** means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or any expansion, reenactment, extension or replacement thereof that may come into effect in the future (except Shared Environmental Attributes), including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) Renewable Energy Credits or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iii) tax credits, incentives or depreciation allowances established under any federal or state law, (iv) energy investment tax credits under section 48 of the Internal Revenue Code of 1986, as amended, (v) incentives under the Solar Massachusetts Renewable Target (SMART) Program as provided in 225 CMR 20.00, and (vi) other allowances however named or referenced, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Net Energy generated by the PV System during the Term and in which Developer has good and valid title. Environmental Attributes shall not include net metering credits, or any capacity credits for the PV System, including credits or payments related to the Forward Capacity Market or Shared Environmental Attributes.

**“Event of Default”** means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

**“Event of Termination”** means any event of termination as defined in Section 8.1 of this Agreement.

**“Financier”** means any individual or entity providing money or extending credit for the PV System to Seller or Developer for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Seller or Developer.

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, *Force Majeure* shall not mean:

- (a) Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Cooperative shall be able to assert Host Town’s governmental actions on Permits for the PV System as an event of *Force Majeure*.
- (e) Any nonpayment under this Agreement or any third party agreement.
- (f) Economic hardship of either Party.

**“Forward Capacity Market”** means the locational capacity market in which ISO New England projects needs of the power system three years in advance and holds an annual auction to purchase power resources to satisfy the New England region future electricity demand needs.

**“Good Engineering Practice”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others,

but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, excluding Seller and any Cooperative Members, including, without limitation, Buyer, unless acting in their regulatory authority.

**“Host Customer”** has the meaning set forth in 220 CMR 18.02.

**“ISO”** means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as those Agreements are amended, superseded or restated from time to time.

**“kW”** means Kilowatt.

**“kWh”** means Kilowatt hour.

**“Lease”** has the meaning set forth in the Recitals.

**“Metering Device(s)”** means any and all revenue quality meters installed by Developer, Seller or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Delivery Point for sale to Seller and/or Buyer.

**“Municipal Load”** means Buyer’s total annual energy usage as determined on the Effective Date of this Agreement, as specified in Exhibit C.

**“MW”** means Megawatt.

**“MWh”** means Megawatt hour.

**“NEPOOL”** means the New England Power Pool and any successor organization.

**“Net Energy”** means the actual and verifiable amount of Energy generated by the PV System and delivered to Buyer at the Point of Delivery or allocated to Buyer in excess of any Energy consumed by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements.

**“Net Metered Generation Unit”** has the meaning set forth in 225 CMR 20.02.

**“Net Metering”** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s tariffs.

**“Net Metering Credits”** shall have the meaning set forth in 220 C.M.R. 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

**“Parties”** means Buyer and Seller collectively, and their respective successors and permitted assignees.

**“Party”** means Buyer or Seller individually, and their respective successors and permitted assignees.

**“Permits”** means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

**“Person”** means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

**“Point of Delivery”** means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A to the Lease.

**“PPA”** means the Net Energy Power Purchase Agreement between Seller and Developer, a form of which is attached hereto as Exhibit D.

**“Prime Rate”** means the rate published from time to time in the “Money Rates” section of *The Wall Street Journal*, as the prime-lending rate. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

**“PV System”** means the solar electric generating facility, including but not limited to the PV System Assets, which produces the Net Energy sold and purchased under this Agreement, as further identified in Exhibit B attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

**“PV System Assets”** means each and all of the assets of which the PV System is comprised, including the solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, Metering Devices, and other tangible and intangible assets, permits,

property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

**“SMART Program”** means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

**“SMART Tariff”** has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

**“Solar Net Metering Facility”** has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

**“Solar Tariff Generation Unit”** has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

**“Term”** has the meaning set forth in Article IV (Term).

**“Termination Date”** means the earlier to occur of: (a) the last day of the Term; or (b) the date of termination.

## **ARTICLE II: CONSTRUCTION; OBLIGATION TO MODIFY AGREEMENT**

### **2.1 Construction**

The Parties acknowledge that inconsistencies may exist between this Agreement, the PPA and the Lease and that the Parties will use their best efforts to construe all agreements harmoniously.

### **2.2 Obligation to Modify**

Upon implementation by the Massachusetts Department of Public Utilities, DOER, or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding Net Metering, or any rule or regulation amending 225 CMR 14.00 (Renewable Energy Portfolio Standard) or 225 CMR 20.00 (Solar Massachusetts Renewable Target (SMART) Program), the Parties shall be obligated to amend this Agreement to conform to such rule(s), order(s) and/or regulation(s) to the extent that such amendments are Commercially Reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

## **ARTICLE III: PURCHASE AND SALE**

### **3.1 Conditions Precedent**

The obligations of the Buyer and Seller under this Agreement shall be conditioned upon the following requirements:

(a) execution by Developer and Host of the Lease as of or of even date with the Effective Date of this Agreement.

(b) execution by Developer and Buyer of the PPA as of or of even date with the Effective Date of this Agreement.

### **3.2 Sale and Purchase**

Buyer shall purchase and Seller shall sell the Net Energy pursuant to the terms and conditions set forth in Exhibit A.

### **3.3 ISO Forward Capacity Market.**

Seller shall retain the right to all ISO Forward Capacity Market Demand Resource credits or payments associated with the Net Energy.

### **3.4 Take-or-Pay for Net Energy Delivered to Point of Delivery**

Subject to Section 8.3 (Events of Default by Seller) and Section 8.4 (*Force Majeure*), if Buyer fails to take Net Energy allocated to Buyer or made available to Buyer at the Delivery Point that Buyer is required to purchase under the terms of this Agreement, then Buyer shall pay to Seller on a monthly basis the price of the Net Energy as specified in Exhibit A upon thirty (30) days prior written notice by Seller. Seller shall have no duty to mitigate any charges under this Section. Disputes regarding compensation under this provision shall be subject to Article X (Dispute Resolution). Buyer shall not enter into any other energy agreements, other than with the Seller, that would result in any reduction in the total number of kWh that are allocated to Buyer under this Agreement. Pursuant to M.G.L. c. 40, §4A, the obligation of the Buyer to purchase the Net Energy as required under the terms of this Agreement in any contract year shall not be subject to appropriation and the Buyer shall not be exempt from liability pursuant to M.G.L. c. 44, §31.

### **3.5 Environmental Credits and Value**

The Net Energy to which Buyer is entitled shall not include any Environmental Attributes. Buyer may not, under this Agreement, make any claims whatsoever with respect to any Environmental Attributes or the corresponding Energy in regards to a renewable portfolio standard, emission offset or other environmental, disclosure or similar regulatory requirement.

### **3.6 Net Metering and Alternative On-bill Credits**

Seller and Buyer acknowledge and agree that for purposes of complying with the regulations at 220 C.M.R. 18.07(2), Buyer shall: (i) sign the Interconnection Agreement as Host Customer (as such term is defined in 220 C.M.R. 18.02); and (ii) designate Seller as its agent for purposes of communications and interactions with the Distribution Company as necessary to carry out the terms of this Agreement, the Lease and the PPA.

(a) Allocation of Net Metering and Alternative On-bill Credits.

(i) Buyer with Seller's and Developer's assistance, shall: (i) designate on Schedule Z to the Interconnection Agreement Buyer's accounts for which Buyer desires to allocate its share of the Net Metering and Alternative On-bill Credits generated or created during the Term in connection with the operation of the PV System; and (ii) at Seller's direction, designate on Schedule Z the accounts of other Cooperative Members or governmental entities to receive Net Metering Credits generated or created during the Term in connection with the operation of the PV System in excess of Buyer's Municipal Load (as such term is defined in the Inter-Governmental PDA). Buyer acknowledges that for purposes of allocating Net Metering Credits, in Buyer's role as Host Customer, it shall have no interest in and title to any Net Metering and Alternative On-bill Credits generated in connection with the operation of the PV System in excess of Buyer's Municipal Load.

(ii) Seller and Buyer acknowledge and agree that in accordance with the Distribution Company tariffs, the Host Customer may amend Schedule Z of the tariffs two (2) times per calendar year, or as otherwise agreed to by the Distribution Company. Buyer and Seller will use Commercially Reasonable efforts to request that the Distribution Company amend the Schedule Z to address any changes in the identified electric accounts. Buyer shall report to Seller as soon as reasonably possible in advance of any anticipated material change in Buyer's electric accounts that would require an amendment to the Schedule Z.

(b) Purchase of Net Metering Credits by Distribution Company.

In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Buyer's designees, Buyer shall assign to Seller the right to receive such payment. Seller shall allocate to Buyer and any other purchaser of Net Metering Credits associated with the Net Energy of the PV System their respective shares of the Net Metering Credit value as paid to Seller by the Distribution Company pursuant to Buyer's assignment of such payment right.

Seller and Buyer acknowledge and agree to request on Schedule Z of the Distribution Company tariffs that the Distribution Company purchase Net Metering Credits from the Host Customer in connection with the operation of the PV System. In the event that the Distribution Company does not agree to such request and instead elects to allocate Net Metering Credits to the Host Customer or its designees, Seller and Buyer agree to use their best efforts to amend Exhibit

A to conform to Section 3.4(a) and the original intent and economic effect of this Agreement in a timely fashion. Regardless of whether Buyer receives an allocation of Net Metering Credits or whether Buyer receives a payment for its share of the value of the Net Metering Credits purchased by the Distribution Company, Buyer must pay the price for each kWh of electric power set forth in Exhibit A.

**3.7** Maximum Financial Liability of the Parties Pursuant to M.G.L. c. 40, Section 4A

This Agreement is not intended to impose any financial liabilities on the Parties other than as expressly set forth herein.

**ARTICLE IV: TERM**

**4.1** Term

The term of this Agreement (the “Term”) commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the “Termination Date”) or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

**ARTICLE V: METERING AND BILLING**

**5.1** Billing

On or before the fifteenth (15<sup>th</sup>) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Seller shall calculate the amount due and payable to Seller pursuant to Exhibit A, with respect to the immediately preceding month, and shall forward to Buyer two invoices. One invoice will be for the Net Energy payment. The second invoice will be for payment of the Operational Costs Adder and any other direct costs incurred by Seller in connection with the PV System as set forth in Section (b)(i) of Exhibit A. Each invoice shall include a calculation with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Each invoice shall also contain instructions for payment in accordance with Section 5.2 (Payment) of this Agreement.

**5.2** Payment

Buyer shall pay Seller, within thirty (30) days of the receipt of Seller’s invoice pursuant to Section 5.1 (Billing).



### **5.3 Metering Equipment and Testing**

Developer and the Distribution Company shall provide, install, own, operate and maintain the Metering Device(s). Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer. In accordance with the PPA, Developer shall maintain and test the Metering Device(s). At Buyer's request, Seller shall exercise its rights under the PPA to ensure that the Metering Devices are tested and are accurately measuring the Net Energy of the System.

### **5.4 Dispute**

If a Party, in good faith, disputes a payment or calculation of Buyer's share of Net Metering Credits, as described in this Article V, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within twenty-one (21) Business Days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article V, the Parties shall follow the procedure set forth in Article X (Dispute Resolution). Buyer and Seller hereby acknowledge and agree that during the Term of the PPA (as defined therein), Seller will rely on the information in the invoices provided to Seller by Developer pursuant to Section 7.4 (Billing) of the PPA in the preparation of its invoices sent to Buyer under this Article V, and that the dispute provision in the PPA will govern the dispute of invoices under this Article V. Buyer and Seller further acknowledge and agree that upon such time as Seller is the owner of the PV System, the dispute provisions of this Section 5.4 shall control the dispute of Seller's invoices to Buyer under this Article V.

## **ARTICLE VI:PARTIES' OBLIGATIONS**

### **6.1 Seller's Obligations**

- (a) Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required (and in the form required) by any Governmental Authority, NEPOOL, ISO, or as may be reasonably required by Buyer.
- (b) For the duration of the Term, Seller shall provide Buyer with access to information regarding the operations of the PV System or other data concerning the PV System.

(c) For the duration of the Term, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Facility may be mechanically inoperable for more than a seven (7) day period.

## **6.2 Buyer's Obligations**

(a) Buyer shall be responsible for any present and future taxes, fees and levies, if any, imposed on or associated with the Energy at and from the Delivery Point. Seller shall receive the benefit of any allowances or other credits related to the PV System to the extent provided in the PPA, and except as expressly provided to Buyer under this Agreement. During such time as Developer is owner and operator of the PV System, Buyer shall reimburse Seller for any Governmental Charges paid by Seller to Developer pursuant to the PPA Agreement.

(b) Buyer shall not be required to enter into collateral assignments of this Agreement except as provided by this Section 6.2(b). Subject to the terms and conditions of this Agreement, Buyer shall, upon prior written request by Seller or Developer, execute a consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form acceptable to Buyer, provided (i) Seller shall reimburse Buyer for all reasonable expenses and attorneys' fees incurred by Buyer in connection therewith, and (ii) that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

(c) Buyer further acknowledges that the Financier(s) may have other or further requests with respect to the assignment of this Agreement and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith. Upon Buyer's written request after execution of any such consent and agreement or assignment, Seller shall reimburse Buyer for any reasonable attorney's fees and expenses associated therewith.

(d) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendments do not change the substance and underlying agreement of the terms originally a part hereof.

(e) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any Permit, license or similar authorization necessary for the PV System, including, without limitation, assisting Seller with the Interconnection Agreement required by the Distribution Company for Net Metering, in particular Schedule Z, but Buyer acting in its regulatory capacity shall not be required under

this subsection to provide approvals or permits to Developer other than in the regular course of exercising its regulatory power.

- (f) Buyer agrees that it will accept an assignment from Seller of the PPA in the event that Seller ceases its operations, or otherwise if the Parties mutually agree that it is in the best interests of both Parties for Buyer to assume the obligations of Seller to purchase Net Energy pursuant to the PPA.

### **6.3 Net Metering or Alternative On-bill Credits**

- (a) Each Party's obligations under this Agreement are subject to the PV System qualifying for Net Metering as a Solar Net Metering Facility or for Alternative On-bill Credits as an Alternative On-bill Generation Unit
- (b) Subject to the provisions of this Agreement, each of Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering or receiving Alternative On-bill Credits
- (c) So long as any such amendment will materially benefit a Party without material detriment to the other Party, the Parties commit to each other in good faith to make Commercially Reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering or Alternative On-bill Credits and ensure that the PV System is eligible for Net Metering or Alternative On-bill Credits.

## **ARTICLE VII: REPRESENTATIONS AND WARRANTIES**

### **7.1 Seller's Representations and Warranties**

As of the Effective Date of this Agreement, Seller represents and warrants to Buyer as follows:

- (a) Seller has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Seller has full authority to do so and to fully bind Seller; and
- (c) Seller knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Seller's ability to carry out its obligations under this Agreement.

## 7.2 Buyer's Representations and Warranties

As of the Effective Date of this Agreement, Buyer represents and warrants to Seller as follows:

- (a) Buyer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer; and
- (c) Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations under this Agreement.
- (d) Buyer agrees that it has read and fully understands the form of PPA (attached as Exhibit D to this Agreement), including, without limitation, the price paid for Net Energy to Developer thereunder.

## **ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES**

### 8.1 Termination

Subject to Section 8.4 (*Force Majeure*), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Either Party may terminate this Agreement in the event that an incurable material Event of Default by Developer under the Lease or the PPA that prevents operation of the PV System for twelve (12) months, except with respect to *Force Majeure* events.
- (b) Seller may terminate this Agreement if there is an Event of Default by Buyer pursuant to Section 8.2.
- (c) Either party may terminate this Agreement in the event that the Developer defaults under the Lease, either party may terminate this Agreement, and may exercise any other remedy provided for in this Agreement or otherwise allowed by law.
- (d) Seller may terminate this Agreement in the event that the PPA is terminated by either Seller or Developer, except to the extent the PPA is terminated due to Seller's or Buyer's exercise of their Purchase Options (as defined therein).

## **8.2** Events of Default by Buyer

The following shall each constitute an Event of Default by Buyer:

- (a) Buyer breaches any non-monetary material obligation under this Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Seller of the breach.
- (b) Buyer fails to make any payment due under this Agreement within forty-five (45) Business Days after such payment is due unless such payment is contested.
- (c) If any material representation or warranty made by Buyer in Article VII (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Seller and Buyer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from the Seller.
- (d) Any breach by Buyer pursuant to any of the provisions in Section 3.3 (Take-or-Pay for Energy Delivered to Point of Delivery).
- (e) Any other material breach of this Agreement not specifically enumerated above.

Events of Default in this Section 8.2 are subject to, among other things, specific performance and monetary damages pursuant to Section 8.5 (Remedies).

## **8.3** Events of Default by Seller

It shall constitute an Event of Default by Seller if Seller breaches any material obligation under this Agreement that proves to have a material adverse effect on Buyer and fails to cure the breach within thirty (30) Business Days after notification by Buyer of the breach. Events of Default in this Section 8.3 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

## **8.4** Force Majeure

Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Buyer) and 8.3 (Events of Default by Seller), if by reason of *Force Majeure* either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the

*Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date, provided, however, that the other Party may not terminate this Agreement if the non-performing Party is using Commercially Reasonable efforts to cure the Event of Termination and the non-performing Party provides reasonable written assurances that it will be able to cure such Event of Termination within an additional one hundred eighty (180) days. In the event of termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

### **8.5** Remedies.

(a) Subject to the limitations set forth in Section 8.5(c) below, in the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Buyer) or 8.3 (Events of Default by Seller), as applicable, the non-defaulting Party may seek, among other things, specific performance and/or monetary damages pursuant to this Section 8.5.

(b) In the case of a payment default by Buyer hereunder, Seller shall have the obligation, during any cure or waiver period provided to Buyer, to sell Net Energy to any other party on Commercially Reasonable terms to mitigate its losses.

(c) In the case of a payment default by Buyer hereunder, Seller's monetary damages shall be the difference between the price under this Agreement and the price at which Seller sells the Buyer's share of the Net Energy on Commercially Reasonable terms to mitigate its losses plus any costs of arranging for such resale. Provided, however, that if the price at which Seller sells the Buyer's share of the Net Energy to mitigate its losses is greater than the price under this Agreement, Seller's monetary damages shall be reasonable costs, including any costs of arranging for such resale, incurred by Seller.

(d) Both Parties agree that they have a duty to use Commercially Reasonable efforts to mitigate damages that may be incurred as a result of the other Party's performance or non-performance under the Agreement.

(e) After the Termination Date of this Agreement, Buyer shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the Termination Date. After the Termination Date, this Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the PV System, subject to Section 11.10 (Survival).

- (f) Buyer may not enforce any remedies against Developer under the PPA, except as otherwise provided therein. Seller agrees to enforce any and all remedies against the Developer under the PPA.

For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON STATUTE, TORT, CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

#### **8.6 Step-in Rights of Financier**

(a) Buyer is cognizant of the need of Developer to finance its interest in the PV System. Pursuant to Sections 6.2 (Buyer's Obligations), and 9.1(a) (Seller Assignment), Buyer agrees without any further request for prior consent to permit Developer to mortgage, assign or transfer this Agreement for the purpose of obtaining financing of the PV System, provided: (i) the term of such mortgage, assignment or transfer shall not exceed the Term hereof; (ii) Seller shall give Buyer notice of the name and address of Financier, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer; and (iii) that the existence of such mortgage, assignment or transfer, or any foreclosure by any Financier, shall not relieve Seller from any liability or responsibility for the performance of its obligations under this Agreement.

(b) Buyer agrees to give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed one hundred eighty (180) days, to cure the Event of Default if Financier uses Commercially Reasonable efforts to cure such Event of Default during the initial sixty (60) days after notice aforesaid, and

Financier provides reasonable written assurances that it will be able to cure such Event of Default within such reasonable period of time thereafter.

(c) Buyer agrees that, prior to termination pursuant to Section 8.1 (Termination), Buyer shall give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional one hundred eighty (180) days to cure the Event of Termination if Financier uses Commercially Reasonable efforts to cure such Event of Termination during the initial one hundred eighty (180) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Termination within the additional one hundred eighty (180) days.

(d) Buyer also agrees that, in the event that Buyer terminates this Agreement pursuant to Section 8.1 (Termination), then the Buyer shall assume the obligations of the Seller in the PPA or a new agreement shall be executed by Buyer with Developer or Financier, as the case may be, to assume Seller's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Developer or Financier.

## **8.7** Purchase Options

Seller agrees and understands that Buyer shall have the right to purchase the PV System from Developer pursuant to Article 13 of the PPA and Article VIII of the Lease. Buyer agrees and understands that if Buyer does not exercise its option to purchase the PV System in accordance with Article 13 of the PPA and Article VIII of the Lease, then Seller may exercise its purchase option under such provisions.

## **8.8** Effect of Purchase Options on this Agreement

In the event that Buyer exercises its right to purchase the PV System from Developer in accordance with the terms of the PPA and the Lease, then this Agreement shall terminate. In the event that Seller exercises its right to purchase the PV System from Developer in accordance with the terms of the PPA and the Lease, then this Agreement shall continue in full force and effect.



## **ARTICLE IX:ASSIGNMENT**

### **9.1 No Assignment Without Permission**

Subject to the following, the rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto:

(a) Seller Assignment. Seller may assign, subcontract or delegate all or a portion of its rights, privileges or obligations under this Agreement to any Person, subject to the prior written approval of Buyer, such consent not to be unreasonably withheld; provided that prior notice to or consent of Buyer shall not be required: (i) for an assignment by Seller to any of Seller's individual other Cooperative Members or individual members of the Cape Light Compact; and (ii) for a collateral assignment by Seller to any Financier, subject to the terms and conditions of Sections 6.2(b), 6.2(c) and 8.6.

(b) Buyer Assignment. Buyer shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Seller, such consent not to be unreasonably withheld.

Notice of any assignment that does not require prior written approval shall be provided to the other Party as soon as practicable. If a Party fails to obtain prior written approval of the non-assigning Party to the extent required for an assignment under this Section 9.1, such assignment is voidable by such non-assigning Party.

## **ARTICLE X:DISPUTE RESOLUTION**

### **10.1 Dispute Resolution**

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article X shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties agree to mediation, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the

Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be courts in and for Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

**10.2 Stay of Termination.**

(a) During informal negotiations and mediation pursuant to Section 10.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 10.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 10.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) During the Term of the PPA (as defined therein), if there is any lawsuit pending between Seller and Developer, Buyer shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Buyer may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by the Seller at any time by any reason.

**ARTICLE XI: MISCELLANEOUS**

**11.1 Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Buyer:

[TOWN MANAGER OR ADMINISTRATOR]

If to Seller:

Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path  
South Yarmouth, MA 02664  
Attn: Liz Argo, Manager

Tel: (774) 722-1812  
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

**11.2 Entire Agreement; Amendments; Binding Effect.** This Agreement and the PPA and Lease constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**11.3 Expenses.** Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

**11.4 No Joint Venture.** Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

**11.5 Joint Work Product.** This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

**11.6 Waiver.** No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

**11.7 Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Seller as public cooperative or to the Buyer as municipal entity.

**11.8 Nondiscrimination.** The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

**11.9 Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

**11.10 Further Assurances.** From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

**11.11 Survival.** Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 10 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

**11.12 Counterparts; Scanned Copy.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

**11.13 Developer as Third Party Beneficiary.** The Parties agree that the Developer shall be a third party beneficiary of this Agreement.

**11.14 No Limitation of Regulatory Authority.** The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

*[Signature page to follow.]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**SELLER**

Cape & Vineyard Electric Cooperative, Inc.

By: \_\_\_\_\_  
Name:  
Title: Clerk

By: \_\_\_\_\_  
Name:  
Title: President

23H2 White's Path  
Suite 2  
South Yarmouth, MA 02664  
(774) 722 -1812 (voice)

**BUYER**

[MUNICIPALITY]

By: \_\_\_\_\_

Name:

Title:

[CONTACT INFORMATION]

List of Exhibits to Agreement

- Exhibit A – Prices and Terms
- Exhibit B – Description of the PV System
- Exhibit C – Special Terms and Conditions
- Exhibit D – Form of PPA

## EXHIBIT A

### PRICES AND TERMS

- (a) The Term for provision of Energy under this Agreement shall begin on the Effective Date and shall continue until the end of the twentieth (20<sup>th</sup>) year after the Effective Date unless otherwise terminated or extended in accordance with its terms.
- (b) (i) While the Developer owns the PV System, Buyer shall pay Seller the price paid by Seller to Developer under the PPA plus an operational cost adder as identified on Exhibit C.
- (ii) Alternatively, in the event that Seller exercises its purchase option and takes ownership of the PV System, the price shall be as follows: For the first year or any portion thereof following the date on which Seller takes ownership of the PV System, Buyer shall pay Seller a price to be determined for each kWh of electric power as delivered or allocated to Buyer from the PV System pursuant to Buyer's percentage share as determined in (d) below.
- (c) This price does not include any applicable taxes.
- (d) Buyer's percentage share of the Net Energy generated by the PV System shall be 100%. In the event the Distribution Company allocates rather than purchases Net Metering Credits, and the Net Energy projected to be produced in the PV System's first year of operation is greater than the Buyer's Municipal Load as determined on the Effective Date of this Agreement, Seller shall use Commercially Reasonable efforts to reallocate any excess Net Energy to other Cooperative Members or governmental entities on a pro rata basis.
- (e) The Net Energy generated by the PV System shall be purchased by Buyer subject to Net Metering or Alternative On-bill Credits (as defined in the Agreement), the applicable rules and regulations promulgated by the Department of Public Utilities, and the Distribution Company's Tariffs (as defined in the Agreement).
- (f) In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Buyer's designees, Buyer shall assign to Seller the right to receive such payment. Seller shall allocate to Buyer and any other purchaser of Net Metering Credits associated with the Net Energy of the PV System their respective shares of the Net Metering Credit value as paid to Seller by the Distribution Company.
- (g) In the event that Developer pays Seller damages for a Production Shortfall pursuant to the PPA (as such term is defined in the PPA), Delay Liquidated Damages pursuant to PPA (as such term is defined in the PPA), upon Seller termination for a Developer event of default pursuant to the PPA, Seller shall, within a reasonable period

of time after receiving such payment from Developer, allocate such payment to Buyer under the same formula for allocating Net Energy produced by the PV System.



**EXHIBIT B**

**DESCRIPTION OF PV SYSTEM**

PV SYSTEM:

Module Manufacturer: \_\_\_\_\_

Nameplate Capacity: \_\_\_\_\_

Approximate Annual Energy Production:

\_\_\_\_\_ kWh

Location: \_\_\_\_\_

Preliminary Specifications:

Battery Manufacturer: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

BESS Nameplate Capacity in kilowatts per hour:  
\_\_\_\_\_ kW for \_\_\_\_\_ hours

Location: \_\_\_\_\_

Mounting Systems: \_\_\_\_\_

PV SYSTEM ASSETS:

Inverters: \_\_\_\_\_

Related Equipment: \_\_\_\_\_

Electric Lines: \_\_\_\_\_

*\*Final system size will be determined once final field layout and structural analysis has been completed*

## EXHIBIT C

### SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS INTER-GOVERNMENTAL NET METERED POWER PURCHASE AGREEMENT

1. Operational Costs Adder.

Seller shall be entitled to recover its operational costs for its services in managing this Agreement and any other Net Metered Power Sales Agreement entered into pursuant to Seller's Request for Proposals ("RFP") for the Lease and the PPA.

The operational adder for Buyer pursuant to Section (b)(i) of Exhibit A shall be \$0.005. Commencing on the first anniversary of the Commercial Operation date of the PV System, and on each anniversary date thereafter, the operational adder shall be increased by the percentage that the United States Department of Labor Bureau of Labor Statistics Consumer Price Index For All Urban Consumers (All Items Index for Boston-Brockton-Nashua) ("CPI-U") for the month in which such anniversary occurs exceeds the corresponding CPI-U for the month in which the Commercial Operation date of the PV System occurs. If the manner in which the CPI-U is determined is substantially revised or the CPI-U shall become unavailable, Seller and Buyer agree to cooperate to determine an acceptable, comparable alternative index upon which to base the increase in the operational adder.

2. Municipal Load. The Municipal Load of Buyer is approximately \_\_\_\_\_ kWh.

**EXHIBIT D**

**FORM OF POWER PURCHASE AGREEMENT**

Please see attached.

DRAFT

**LEASE AGREEMENT**  
**FOR**  
**SOLAR CANOPY PHOTOVOLTAIC ENERGY FACILITY WITH BATTERY**  
**STORAGE**  
**BETWEEN**  
**CED CAPE SOLAR, LLC**  
**AND**  
**TOWN OF HARWICH, MASSACHUSETTS**

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**LEASE AGREEMENT FOR**  
**GROUND MOUNTED PHOTOVOLTAIC ENERGY FACILITY**  
**BETWEEN**  
**CED CAPE SOLAR, LLC**  
**AND**  
**TOWN OF HARWICH, MASSACHUSETTS**

**STANDARD TERMS AND CONDITIONS**

This Lease Agreement (the “Agreement” or “Lease”) is entered into this \_\_\_day of \_\_\_\_\_, 2019 (the “Effective Date”) and is by and between CED Cape Solar, LLC, a limited liability company, with a business address of 100 Summit Lake Drive, Suite 210, Valhalla, New York 10595 (“Developer”), and the Town of Harwich, Massachusetts, Massachusetts municipal entity with an address of 732 Main St, Harwich Center, MA 02645 (“Host”).

**RECITALS**

(a) Host wishes to lease an area of ground space described in Exhibit A (the “Premises”), which is a part of the Property located at 1000 Freemans Way, Brewster, MA 02631 to the Developer to allow it to design, procure, install, test, commission, own, operate and maintain a solar canopy photovoltaic system and battery energy storage system (“PV System”), as defined in Article I (Definitions), on the Premises for beneficial public purposes;

(b) Developer wishes to lease the Premises in order to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises for beneficial public purposes, subject to the terms and restrictions set forth in this Agreement; and

(c) Host has entered into a Services Agreement with the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation with an address at 23H2 White’s Path, Suite 2, South Yarmouth, MA 02664 (“CVEC”) pursuant to which CVEC will provide consultation, management and oversight concerning the PV System on behalf of the Host, as set forth in that Services Agreement and as set forth in this Agreement.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows.

**ARTICLE I: DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.



**“Additional Exceptions”** has the meaning set forth in Exhibit A-1 hereto.

**“Affiliate”** means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

**“Alternative On-bill Credit”** means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2.

**“Alternative On-bill Generation Unit”** has the meaning as set forth in in 225 CMR 20.02.

**“Applicable Legal Requirements”** means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

**“Bankrupt”** means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**“Business Day”** means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

**“Commercial Operation”** means that the PV System is ready for regular, daily operation, has undergone testing and met Commissioning Requirements as set forth in the Common Technical Specifications, Exhibit E, has been accepted by Developer and Host (and to the extent required, the Distribution Company), is in compliance with Applicable Legal

Requirements in all respects, including all final inspections, is capable of producing Energy and delivering it to the Point of Delivery, and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E, are complete and provided to Host.

**“Commercial Operation Date”** means the date that the Developer certifies in a written notice to the Host that Commercial Operation has been achieved in accordance with Section 5.19, subject to the approval of the Host, such approval not to be unreasonably withheld.

**“Commercially Reasonable”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and regulations.

**“Construction Commencement Date”** means the date that the Developer has secured all required permits and approvals from Governmental Authorities and the Distribution Company under Applicable Legal Requirements and has mobilized to commence work at the Premises, as certified in writing to the Host and CVEC.

**“Contract Year”** means the consecutive 12-month period commencing on the Commercial Operation Date.

**“Distribution Company”** means Eversource Electric Company or any successor thereto.

**“Distribution Company System”** means the electric distribution system operated and maintained by the Distribution Company.

**“Effective Date”** means the date set forth in the introductory paragraph of this Agreement.

**“Energy”** means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

**“Environmental Claim”** means causes of action, claims, fines, penalties, damages, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements arising from activities conducted on or in connection with the Work which arise, or are alleged to have arisen, out of any (a) violation of any applicable Environmental Law, (b) action by a Governmental Authority for enforcement, cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law, or (c) compensation, or injunctive relief resulting from injuries to persons or property due to (i) an alleged violation of any Environmental Law or (ii) any release of Hazardous Material.

**“Environmental Law”** means any and all existing and future Applicable Legal Requirements relating to human health, human safety or the environment.

**“Event of Default”** means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

**“Event of Termination”** means any event of termination as defined in Section 8.1 of this Agreement.

**“Financier”** means any individual or entity providing money or extending credit for the PV System to Developer for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

**“Force Majeure”** means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; extreme winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, Force Majeure shall not mean:

- A. Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- B. Unavailability of sun.
- C. Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of Force Majeure.
- D. Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Developer shall be able to assert Host’s governmental actions on Permits for the PV System as an event of Force Majeure.
- E. Any nonpayment under this Agreement or any third party agreement.
- F. Economic hardship of either Party.

**“Good Engineering Practice”** means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including Host in its regulatory capacity but excluding Host as Lessor under this Agreement.

**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host Town and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

**“Leasehold Mortgage”** has the meaning set forth in Section 11.4.

**“Metering Device(s)”** means any and all revenue quality meters installed by Developer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale.

**“Monthly Minimum Reliability Contribution”** has the meaning set forth in G. L. c. 164, §139(j) and 220 CMR 18.10, as approved by the Department of Public Utilities in the Distribution Company’s tariff.

**“Net Energy”** means the actual and verifiable amount of Energy generated by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements and the Tariffs.

**“Net Metered Generation Unit”** has the meaning set forth in 225 CMR 20.02.

**“Net Metering”** means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a Net Metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§ 138 – 140 and 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s Tariffs.

**“Net Metering Credits”** has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

**“Outside Construction Commencement Date”** means the later of ninety (90) days after the Effective Date or ninety (90) days after the Developer’s application has been accepted by the SMART Program.

**“Outside Commercial Operation Date”** means the later of one-hundred eighty (180) days from the Effective Date or one-hundred eighty (180) days after the Developer’s application has been accepted by the SMART Program.

**“Parties”** means Host and Developer collectively, and their respective successors and permitted assignees.

**“Party”** means Host or Developer individually, and their respective successors and permitted assignees.

**“Permits”** means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

**“Permitted Use”** means the use, occupation, and enjoyment of the Premises by Developer to design, procure, install, test, commission, own, operate, maintain, expand and remove the PV System, all of which are designed and intended for the purpose of producing solar-generated electricity in accordance with Applicable Legal Requirements.

**“Person”** means an individual, partnership, corporation (including a business trust),, limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

**“Point of Delivery”** means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

**“Premises”** means the site for PV System installation and operation owned by Host located at the Property, which is more specifically identified in Exhibit A to this Agreement.

**“Property”** means the real property owned by the Host upon which the Premises is located.

**“PV System”** means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy as further identified in Exhibit B attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

**“PV System Assets”** means each and all of the assets of which the PV System is comprised, including the solar energy panels, mounting systems, carports, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

**“Services Agreement”** has the meaning set forth in the recitals, a form of which is attached hereto as Exhibit G.

“**SMART Program**” means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

“**SMART Tariff**” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Solar Net Metering Facility**” has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

“**Solar Tariff Generation Unit**” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Term**” has the meaning set forth in Section 3.1.

“**Termination Date**” means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

## **ARTICLE II: LEASE OF PREMISES**

### **2.1 Leased Premises.**

(a) Host, in consideration of the covenants and agreements on the part of the Developer, hereby leases to Developer, and Developer accepts and takes from Host, the possession, use, enjoyment, and control of the Premises (as described in Exhibits A and A-1) for the sole and exclusive purpose of conducting the Permitted Use, as set forth below, subject to the conditions in this Agreement and the Host’s reserved uses as set forth in Article X (Quiet Enjoyment).

(b) As shown in Exhibit A, Host also grants to Developer a non-exclusive license for reasonable pedestrian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance of electric lines, cables, conduits and related equipment necessary to operate the PV System and interconnect the PV System to the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility.

(c) Host also grants Developer the exclusive right to receive sunlight at the Premises during every hour of each day that sunlight reasonably could be received by the PV System, and Host shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System.

(d) To the extent requested by Developer and reasonably necessary, and subject to Applicable Legal Requirements and available space, as determined in Host’s sole discretion, Host shall provide necessary space on the Property at locations and for such time as specified by Host (such locations, the “Construction Laydown Area”) for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Developer shall not obstruct access to

the Property, or interfere with or disrupt Host's use thereof or operations therein. Following temporary use thereof, the Developer shall immediately restore the Construction Laydown Area and such other areas of the Property used by the Developer, but not included in the Premises, to their condition prior to Developer's use.

(e) The Premises are demised subject to the following:

(i) any encumbrances shown on the survey of the Premises;

(ii) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A-1;

(iii) present and future zoning laws, ordinances, bylaws, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises for the Permitted Use;

(iv) the condition and state of repair of the Premises as the same may be on the Effective Date;

(v) all electric and telecommunication cable or wireless services charges, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the construction and operation of the PV System or any appurtenant facilities or improvements associated with the Permitted Use;

(f) full compliance by the Developer with all Applicable Legal Requirements;

and

(g) Host's reserved uses, as provided in Article X (Quiet Enjoyment) and set forth in the Additional Exceptions, attached hereto as Exhibit A-1, or Special Terms and Conditions, attached hereto as Exhibit D.

**2.2 As-Is Condition of the Premises.** Developer accepts the Premises in the condition or state in which the Premises now are without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Premises or any part thereof may be put, subject, however, to such representations and warranties specifically provided herein and subject, further, to Developer's right to terminate this Agreement for failure of conditions precedent to construction set forth in Section 5.2.

**2.3 Ownership of the PV System.** Except as otherwise provided herein, prior to and during the Term, Host shall have no ownership interest in the PV System, except for any ownership interest Host may have by exercising its purchase option in accordance with Section 8.11 or by virtue of being a CVEC Member in the event that CVEC exercises its purchase option in accordance with Section 8.11. Developer and Host acknowledge and agree that Host shall not be required to make any expenditure, incur any obligation, or incur any

liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair, or removal of the PV System.

**2.4 Net Lease.** Except as expressly set forth herein, the Parties acknowledge and agree that Host shall not be required prior to or during the Term to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, installation, operation, maintenance, repair reconstruction or removal of the PV System, subject to the Additional Exceptions set forth in Exhibit A-1.

**2.5 Purpose.** The Premises shall be used for the sole and exclusive purpose of conducting the Permitted Use. Except with the prior express written consent of Host Town, Developer shall not use the Premises for any use other than the Permitted Use.

**2.6 Subordination.** Developer acknowledges and understands that this Agreement and all rights of Developer are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions, permits, or other matters of record and all existing agreements of the Host with respect to the Premises. Developer acknowledges and understands that the Host reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere with Developer's use of the Premises and the operation of the PV System. Host shall provide Developer with reasonable notice in the event that Host grants such additional rights on the Premises to a third party. Notwithstanding any term to the contrary contained herein, Host shall provide Developer with a commercially reasonable Subordination, Non-Disturbance and Attornment Agreement for any and all existing and future mortgagees and tenants of the Property.

**2.7 No Interference.** Developer shall operate, maintain and repair the PV System in a manner that will not obstruct or interfere with other uses of the Property, as identified in Exhibit A-1 to this Lease. In the event interference occurs, Developer agrees to take all commercially reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Host.

Host may make alterations to the Premises that do not materially interfere with or substantially impair the installation and operation of the PV System. The Developer acknowledges and agrees that Host may have continued operation or maintenance responsibilities at the Premises to be conducted at the sole expense of the Host, and Developer will use its best efforts to cooperate with Host's prosecution and completion of such work.

**2.8 Use of the Premises.** Developer and its subcontractors, agents, consultants, and representatives shall have reasonable access at all reasonable times, subject to any Special Conditions in Exhibit D (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the PV System, and to any documents, materials and records of Host relating to the Premises that Developer reasonably requests in conjunction with these activities. Developer shall provide Host with reasonable notice of all activities conducted by or on behalf of Developer on the Premises relating to the PV System. During any such activities, Developer, and its subcontractors, agents, consultants and representatives shall comply with Host's reasonable safety and security procedures (as may be promulgated from time to time) and Developer and its



subcontractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Host's activities.

**2.9 Notice of Lease.** Developer shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and Host shall provide Commercially Reasonable assistance as necessary for Developer to do so, with the applicable land registry that in each case includes all information as may be required pursuant to M.G.L. c. 183, §4 with respect to the real property rights described in the Lease, as applicable. Developer shall be responsible for all reasonable documented costs of recording the Notice of Lease in a form attached hereto as Exhibit H.

### **ARTICLE III: TERM**

**3.1 Term.** The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements, for one five (5) year period, with such modifications to the provisions hereto as may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

**3.2 Holdover.** If Developer or any party claiming by, through or under Developer, retains possession of the Premises or any part thereof for longer than one hundred twenty (120) days after the expiration or earlier termination of this Lease, then Host may, at its option, serve written notice upon Developer that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Developer shall also pay to Landlord all damages sustained by Host resulting from retention of such possession by Developer including but not limited to court costs and attorney's fees. Developer hereby agrees that the provisions of this Section shall not constitute a waiver by Host of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Host's right to terminate this Lease for Developer's breach of the Lease. For greater clarity, the 120-day period mentioned in this section is the period afforded to Developer for removal of the PV System pursuant to Section 8.9 of this Agreement.

### **ARTICLE IV: RENT**

**4.1 Rent.** Commencing on the Commercial Operation Date until the end of the Term, Developer shall pay to Host an annual rental payment in the amount set forth in Exhibit A-2, to be paid to the Town on a lump sum basis beginning on or before the Commercial Operation Date and on each anniversary of the Commercial Operation Date until the end of the Term. The amount of the rent payment shall be pro-rated for the last calendar year of Commercial Operation. If Developer shall fail to pay Host any sum required to be paid by Developer to Host within ten (10) Business Days after such payment is due, interest on the unpaid amount shall

accrue at the Interest Rate from and including the date such payment is due but excluding the date the payment is received.

**4.2 Taxes.** Developer shall be responsible for and pay to the local Governmental Authority all ad valorem real and personal property taxes, if any, assessed by the local Governmental Authority, with respect to the leasehold or the PV System, as may be further set forth in Exhibit D (Special Terms and Conditions). The Parties acknowledge and agree that within thirty (30) days of Developer's payment of such charges and fees to the Host, the Host will have ninety (90) days to reimburse Developer for such charges and fees. In the event any of the sales of Net Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

**4.3 Monthly Minimum Reliability Contribution.** Developer shall be responsible to pay any Monthly Minimum Reliability Contribution charged or assessed to Host by the Distribution Company.

## **ARTICLE V: DESIGN, INSTALLATION AND OPERATION OF PV SYSTEM**

**5.1 General Description.** Except as otherwise specified herein, the PV System shall consist of the equipment and property described in Exhibit B.

**5.2 Conditions Precedent to Commencement of Construction.** The right to and obligation of Developer to commence construction of the PV System on the Premises is subject to the fulfillment or waiver by the applicable Party of each of the following conditions precedent:

(a) Developer shall have obtained financing on terms acceptable to Developer in its sole discretion. For the purposes of this subparagraph, financing may include debt financing, equity financing, tax equity financing, loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the construction and operation of the PV System;

(b) Developer shall have obtained all permits, licenses and other approvals required by Applicable Legal Requirements and from the Distribution Company for construction, installation and operation of the PV System, and agree to follow the requirements of Section 5.3, below (Governmental Permits);

(c) Developer shall have determined that no features of the Premises will substantially impair the installation and operation of the PV System, and that the Premises has sufficient space to accommodate the installation, operation and maintenance of the PV System along with the operation and maintenance of existing facilities;

(d) Developer shall have determined that it is feasible to make related improvements as necessary on the Premises to install, operate, and interconnect the PV System to existing infrastructure, it being acknowledged by both Parties that neither Party shall be under

any obligation to pay for any required upgrades, but that this condition may be satisfied if either Party agrees to implement any necessary upgrades at its own cost, or if the Parties agree to share the costs of such upgrades;

(e) Distribution Company requires material changes in plans and/or specifications to the PV System or its interconnection, which require additional costs or fees, in excess of \$10,000, which in Developer's sole discretion are unreasonable, except if Host agrees to pay for such Distribution Company mandated costs;

(f) In the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Buyer, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, provided, however, that Buyer will extend the deadline for compliance with this subsection in thirty (30) day increments, upon Buyer's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement;

(g) Host, in its regulatory capacity as a Governmental Authority, and Developer shall have reached agreement on the liability of Developer for ad valorem property taxes, if any are to be assessed, and have entered into a structured tax agreement with respect thereto; and

(h) Host shall have approved the final design of the PV System and its integration into the Host's Property, in accordance with Section 5.4 hereof.

Either Party may waive any condition precedent to be achieved by the other Party. The Party proposing to terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be commercially reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement.

**5.3 Governmental Permits.** Developer shall obtain at its sole cost all Permits required for Developer's use of the Premises, the Permitted Use, and the PV System from any and all Governmental Authorities having jurisdiction in the matter. Developer shall promptly inform Host of all significant developments relating to the issuance of such Permits. Host shall reasonably cooperate with Developer in procuring such Permits. If any changes in plans and/or specifications for the Project are required by any Governmental Authority, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld.

**5.4 Design and Installation.** Developer shall design the PV System in accordance with Good Engineering Practice, shall consult with and receive input from Host with respect to integration of the PV System with the Host's facilities and submit the final design for Host's approval, not to be unreasonably withheld or delayed, with a copy to CVEC. In the case of a

Battery Energy Storage System, Developer shall submit a fire prevention plan to Host's fire chief and obtain his or her approval. Developer shall furnish all supplies, materials, labor, tools, equipment and other services necessary for installation of the PV System. As soon as practicable after the Effective Date, Developer shall provide Host and CVEC an updated schedule for design, permitting, equipment procurement, commencement of construction and commissioning of the PV System, indicating milestones and durations of activities. Developer shall commence construction of the PV System no later than the Outside Construction Commencement Date and will proceed diligently and continuously thereafter until completion, but in no event shall the installation be completed later than one hundred eighty (180) days from the Commercial Operation Date. Developer shall install the PV System in accordance with Good Engineering Practice, all Applicable Legal Requirements, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E, applicable requirements of the insurance policies maintained by Host with respect to the PV System, and the terms of this Agreement.

**5.5 Interconnection with Electric Distribution Grid.** Developer shall obtain at its sole cost all Permits and agreements required for Developer's interconnection of the PV System to the electric distribution grid maintained by the Distribution Company. Developer shall promptly inform Host and CVEC of all significant developments relating to such interconnection matters. Host shall provide Developer with such information as Developer may reasonably request in connection with Developer's procurement of such Permits and agreements. If any material changes in plans and/or specifications to the PV System are required by the applicable electric distribution company, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld, with a copy to CVEC.

**5.6 Access to and Use of the Premises.** During construction and the operation of the PV System, including, but not limited to, all pre-construction activities, Developer and its contractors or agents shall have access to the Premises in accordance with Exhibit D (Special Terms and Conditions).

**5.7 Plans and Specifications.** Installation of the PV System shall be completed in accordance to plans approved by Host, which approval shall not be unreasonably withheld, with a copy to CVEC. Prior to the Commercial Operation Date, Developer shall provide Host and CVEC with documentation as set forth in the Common Technical Specifications, Exhibit E, including as-built plans, permission to Operate from local distribution company, and specifications of the PV System installed on the Premises which show the actual location of the PV System.

**5.8 Maintenance Responsibilities.** Developer shall properly maintain the PV System, conduct all required maintenance, and make all repairs thereto in accordance with Good Engineering Practice. Developer shall take all measures necessary to maximize production of the PV System throughout the Term. Such obligations shall include, but not be limited to, maintaining the PV System in a condition of Commercial Operation, and taking all actions necessary to comply with the Applicable Legal Requirements. The Developer shall deliver a maintenance report annually to the Host and CVEC. Developer shall be responsible for all costs related to the PV System, including, but not limited to, those costs necessary to construct,

operate, maintain, repair, and remove the PV System. Host shall have no duty or liability to Developer with respect to maintenance, repair or security of the PV System.

**5.9 Manufacturer and Installer Warranties.** Developer shall ensure that each manufacturer and each installer of equipment and parts comprising the PV System provides a warranty as further described in the Common Technical Specifications attached hereto as Exhibit E. Such warranties shall run to the benefit of the Host.

**5.10 Use of Installation and/or Maintenance Subcontractors.** Developer may use qualified subcontractors to install and/or maintain the PV System, provided that Developer shall at all times remain fully responsible for the acts and omissions of such subcontractors. Installation and maintenance subcontractors shall be required to meet the insurance requirements set forth in Exhibit C, provided, however, that satisfaction of such requirements shall not relieve Developer of its responsibilities for such subcontractors as set forth in this Section 5.10.

**5.11 Alterations.** Developer shall have the right from time to time both before and after the completion of the PV System and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the PV System, subject, however, in all cases to the following:

(a) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration, a "Substantial Alteration");

(b) No Substantial Alteration shall be commenced except after prior written notice to and consent from Host, which consent shall not be unreasonably withheld;

(c) Any alteration or Substantial Alteration shall be made with reasonable dispatch, in accordance with Good Engineering Practice, and in compliance with all Applicable Legal Requirements; and

(d) No later than completion of any alteration or Substantial Alteration, Developer will provide Host with complete copies of all final plans and specifications therefor not previously provided; and

(e) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibits A-1 and D to this Lease.

**5.12 Host Cooperation.** Host shall have the following duties under this Agreement:

(a) to act expeditiously, and in good faith in supporting application for and facilitating any Permits necessary for the construction and operation of the PV System. Notwithstanding anything to the contrary herein, the execution of this Lease does not authorize a waiver of any permit or approval the Developer may require from the Host acting in its regulatory capacity, nor require the Host, acting in its regulatory capacity, to expedite its review of the Developer's Permit application in the Host's normal course of business;

(b) to cooperate with Developer to the extent reasonable and appropriate given the particular use of the Property on issues regarding access, construction, on-site electrical metering and consumption, and interconnection.

**5.13 Emergencies.** The Parties agree that Host shall have the right, but not the obligation, to respond to any emergency or equipment failure involving the PV System if necessary to protect the Property, including the Premises, or to protect public health or safety, and to effectuate any necessary repairs or take corrective action.

**5.14 Damage.** Any damage done to the Premises or other property not belonging to Developer during installation or during operations which is directly caused by Developer shall be repaired at Developer's expense as soon as practicable, but no later than thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

**5.15 Payment and Performance Bonds.** Prior to the Commencement Construction Date, the Developer shall provide Host with a performance bond from an issuer with a Best's rating of not less than "A", and from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570, in a form reasonably acceptable to Host (the "Performance Bond"), which Performance Bond shall be in an amount sufficient to secure 100% of Developer's obligations with respect to the construction of the PV System under this Agreement or, prior to completion of construction and commissioning of the System. The Performance Bond shall name Host as obligee. The Performance Bond shall remain in effect until sixty (60) days after delivery by Developer to Host of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by Host, (b) Host has provided notice to Developer of a dispute regarding the completion of the PV System in accordance with the provisions of this Agreement, in which case the Performance Bond shall remain in effect until the resolution of such dispute, (c) Host provides the issuer of the Performance Bond written notice authorizing the expiration of the Performance Bond, or (d) this Agreement is terminated pursuant to the provisions hereof and Developer has fulfilled its removal and restoration obligations under this Agreement. In addition, at least fifteen (15) days prior to the Construction Commencement Date, Developer shall provide Host with a payment bond from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to Host (the "Payment Bond"). The Payment Bond shall name Host as obligee. The Payment Bond shall be released upon the later of: (a) receipt by Host of satisfactory evidence that all subcontractors, laborers, have been paid in full; or (b) the Commercial Operation Date.

**5.16 Mechanics Liens.** Developer shall not file any mechanics liens against Host for its work performed in accordance with this Agreement and this requirement shall flow down to all of Developer's contractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the PV System, Developer, within ten (10) days after notice to Developer of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Developer shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Host may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Host and costs and expenses, including

court costs and attorney's fees reasonably incurred by Host in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Host's making of the payment of the cost and expenses, shall be paid by Developer to Host within ten (10) Business Days of Host's invoice therefor.

**5.17 Utilities.** Developer shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all electricity consumed by the Developer in accordance with the Permitted Use. Host shall have no duty or liability to Developer with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by Host, or any third party, nor shall Host have any liability to Developer (including, without limitation, liability for lost revenue) arising from Host's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Developer desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Host, Developer may do so at Developer's expense subject to notice to CVEC and the Host and the approval of Host, which shall not be unreasonably withheld.

**5.18 Operations and Maintenance Manual; Training.** Prior to the Commercial Operation Date, the Developer shall deliver a set each to Host and CVEC an operations and maintenance manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit E. In addition, Developer will train Host's representative(s), including employees or contractors of Host on emergency preparedness and response, as well as basic principles of operation and maintenance of the PV System. Developer shall also provide an online portal or other tool sufficient to allow the Host to monitor activity at the PV System without operation of PV System. Notwithstanding the foregoing, Host shall have no right to perform any maintenance or repair on the PV System without Developer's prior written consent, except in the case of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons.

**5.19 Notice of Commercial Operation.** Subject to the provisions of this Agreement, Developer shall notify and represent to Host and CVEC when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to Host and CVEC the Commercial Operation Date.

**5.20 Late Completion.** If the commencement of construction does not occur on or before the Outside Construction Commencement Date and/or Commercial Operation does not occur on or before the Outside Commercial Operation Date for any reason other than Host's failure to perform its obligations hereunder, Developer shall pay to Host all lost rent revenue (prorated by day) for the duration between: (a) the Outside Construction Commencement Date and the date of actual Construction Commencement Date; (b) the Developer's anticipated Commercial Operation date, and the date of actual Commercial Operation; or (c) if the actual Construction Commencement Date or Commercial Operation Date are not achieved, such Delay Liquidated Damages shall continue until termination of this Agreement. ("Delay Liquidated Damages").

Notwithstanding the foregoing, Developer shall not be responsible for Delay Liquidated Damages in the event that Developer cannot satisfy the Outside Construction Commencement Date and/or Outside Commercial Operation Date milestone due to delays caused by the Host, CVEC, the local electric utility, governmental authorities or an event of Force Majeure and the Developer is utilizing Commercially Reasonable efforts to overcome such delays. The Parties recognize the delays, expense and difficulties involved in proving the actual losses or damages in a judicial or other proceeding, and agree that the Delay Liquidated Damages are reasonable compensation to Host. Payment of Delay Liquidated Damages shall not preclude Host from seeking other damages at law or equity to which it may be entitled as a result of Developer's failure to commence construction on or before the Outside Construction Commencement Date and/or Commercial Operation on or before the Outside Commercial Operation Date.

#### **5.21 Maintenance; Repairs.**

(a) Developer shall take good care of the Premises and the PV System, conduct all required maintenance and make all repairs to the PV System, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep Premises and the PV System in first class order and condition, and in compliance with all Applicable Legal Requirements and Good Engineering Practice.

(b) Host shall have no duty or liability to Developer with respect to the maintenance and repair of the PV System.

(c) Any damage caused by Developer or its subcontractors to the Premises or other property not belonging to Developer or its subcontractors shall be repaired at Developer's expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

(d) Host shall maintain the Property in good repair that is sufficient to support operation of the PV System. However, nothing in this Agreement shall limit Host's ability to maintain the Property in a reasonable manner consistent with Host's current and past practices, the Additional Exceptions set forth in Exhibit A-1, and any other conditions imposed by a Governmental Authority that are applicable to the Premises.

**5.22 Host's Maintenance.** Developer acknowledges that Host may need to temporarily remove or relocate all or a portion of the PV System in order to perform routine or necessary maintenance. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Developer shall be solely responsible):

(a) Host will provide Developer with at least thirty (30) days prior written notice of its intent to temporarily relocate (except in the case of an Emergency, in which case notice shall be given as soon as practical and may be after some emergency response work has occurred);

(b) In such notice, Host will certify that Host's requested removal or relocation of the PV System is required to perform routine or necessary maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency



response work has occurred) and Developer will have no obligation to temporarily remove or relocate all or a portion of the PV System unless the Host provides such certification;

(c) Host will be responsible for any and all actual, documented, reasonable costs incurred in the relocation of all or a portion of the PV System to and from the temporary location, including any temporary storage costs;

(d) any such relocation shall be performed by Developer (except that, in the case of an Emergency, Host may perform such activities as are reasonably necessary in light of such Emergency);

(e) Host may not request more than one relocation per Contract Year; and

(f) in the event that a temporary relocation, which is not an “Emergency”, is for longer than 30 days or if there has already been at least one relocation during the Term, Host, shall promptly pay Developer for any lost revenue during the relocation accrued after the first 30 days of the first relocation (for the first 30 days of any first relocation during the Term, Host shall not be responsible for any lost revenue to Developer).

Such lost revenue shall be based on Net Energy that would have been produced during the time period of the relocation as estimated by PVWatts Calculator, or similar recognized method using accurate data inputs for the parameters of the PV System and its location. Host agrees to work in good faith to minimize the timing of a temporary removal or relocation of the PV System. For purposes of this Section 5.22, “Emergency” shall mean any *Force Majeure* event, condition or circumstance at or affecting the Premises that would, in the reasonable opinion of Host, materially and substantially harm life or property on the Premises without immediate preventative or remedial action. The Host shall not be responsible in any way for lost revenue that is the result of an Emergency.

**5.23 Project Relocation.** Host may request to move the PV System to another location on the Property or to another site owned by Host, but any such relocation shall be subject to the approval of Developer and Financing Party, not to be unreasonably withheld provided the alternate location or site structurally supports the PV System and the PV System is capable of generating substantially equivalent amounts of electric energy when installed at the alternate site. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the PV System but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Developer in connection with the new location. Host shall pay all costs associated with the removal and relocation of the Project, including installation and testing costs and interconnection costs.

In addition, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the PV System when such relocated PV System is reinstalled at a new location (the “Relocation Event”), Host will pay Developer an amount equal to the sum of (i) payments that Host would have made to Developer hereunder for electric energy that would have been produced by the PV System following the Relocation Event; (ii) revenues that Developer would have received with respect to the PV System under applicable solar

programs and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes that Developer would have received with respect to electric energy that would have been produced by the PV System following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the PV System in the same period in the previous Contract Year, unless Developer and Host mutually agree to an alternative methodology.

**5.24 No Voiding of Existing Warranties.** Developer shall ensure that the PV System is designed and constructed so that no existing warranties that apply to the Premises, as set forth in Exhibit A-3, are voided because of the installation of the PV System. Developer shall consult, as may be necessary, with any company that has provided such warranty.

**5.25 Use of Hazardous Materials Prohibited.** Developer shall not use at nor transport to the Property, including the Premises, any hazardous materials, including any substances defined, classified, or otherwise denominated as a “hazardous substance”, “toxic substance”, “hazardous material”, “hazardous waste”, “hazardous pollutant”, “toxic pollutant” or oil by the Applicable Legal Requirements. The Developer shall fully indemnify the Host for any release of hazardous materials at the Property caused by the Developer including all court costs, attorney’s fees, damages and liabilities as a result thereof.

## **ARTICLE VI: DEVELOPER’S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS**

**6.1 Developer’s Representations and Warranties.** As of the Effective Date of this Agreement, Developer represents and warrants to Host as follows:

- (a) Developer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;
- (c) Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer’s ability to carry out its obligations under this Agreement; and
- (d) None of the documents or other written or other information furnished by or on behalf of Developer to Host or its agents pursuant to this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

**6.2 Developer’s Covenants.** In addition to the other covenants set forth in this Agreement, Developer covenants to Host as follows:

(a) Developer shall promptly inform Host and CVEC of the occurrence of any event that may reasonably be expected to materially affect the operation of the PV System or the performance of Developer's obligations under this Agreement (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on Developer or Host); and

(b) Developer shall provide Host or CVEC such other information as Host or CVEC may reasonably request in order to review Developer's compliance with the terms of this Agreement.

## **ARTICLE VII: HOST'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS**

**7.1 Host's Representations and Warranties.** As of the Effective Date of this Agreement, Host represents and warrants the following to Developer:

(a) Host has full legal capacity to enter into this Agreement;

(b) Host has the power to perform all of its obligations hereunder and the right to grant Developer rights provided under this Lease;

(c) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Host has full authority to do so and to fully bind Host;

(d) Host knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Host or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Host's ability to carry out its obligations under this Agreement; and

(e) Host warrants that it holds sufficient title in the Premises to authorize the completion of activities in this Lease, except those listed in the Additional Exceptions set forth in Exhibit A-1.

**7.2 Host's Covenants.** In addition to the other covenants set forth in this Agreement, Host covenants to Developer that throughout the Term and any extensions thereof, Host shall not interfere or allow a third party to interfere with the sun affecting the PV System. Host shall not construct or permit to be constructed any structure on the Property that could adversely affect insolation levels at the Premises, permit the growth of foliage that could adversely affect insolation levels at the Premises, or directly emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation on the Premises. If Host becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Host shall advise Developer of such information and reasonably cooperate with Developer in measures to preserve average levels of insolation at the Premises as they existed on the date of execution of this Agreement. Host will not conduct activities on, in or about the Property that have a reasonable likelihood of causing

material damage or impairment to the PV System or otherwise materially adversely affecting the PV System or operation thereof.

Developer shall take all reasonable actions to prevent any parties from accessing the Premises other than Developer, Host, and each of their respective employees, invitees, agents and representatives, including fencing, security cameras, and other appropriate security measures.

## **ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES; PURCHASE OPTIONS**

**8.1 Termination.** Subject to Section 8.4 (Force Majeure), this Agreement shall not be subject to termination, except for the following Events of Termination:

(a) Any applicable party may terminate this Agreement prior to the Construction Commencement Date for failure to achieve a condition precedent to construction, pursuant to Section 5.2.

(b) The non-defaulting party may terminate this Agreement in the event a material Event of Default pursuant to Section 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer) prevents operation of the PV System for twelve (12) months, except with respect to Force Majeure events.

(c) Host may terminate this Agreement in the event that Commercial Operation is not achieved by the Outside Commercial Operation Date unless such failure to achieve Commercial Operation is due to delays caused by the Host, CVEC, the local electric utility, governmental authorities or an event of Force Majeure.

(d) Host may terminate this Agreement upon ten (10) Business Days written notice to the Developer, in the event that Developer's material breach of this Agreement, including but not limited to its negligent failure to install and maintain the PV System, causes damage to the Premises or its occupants, and such damage is not cured within cure periods set forth in Section 8.3.

(e) Host may terminate this Agreement upon five (5) Business Days written notice, in the event Developer fails to cure an Event of Default under Section 8.3(c);

(f) Either Party may terminate this Agreement if Host exercises its Purchase Option or if CVEC exercises its Purchase Option, consistent with the terms of Section 8.11.

**8.2 Events of Default by Host.** The following shall each constitute an Event of Default by Host:

(a) Host breaches any material obligation under this Agreement, and fails to cure such breach within sixty (60) Business Days after notification by Developer of the breach.

(b) If any material representation or warranty made by Host in Article VII of this Agreement (Host's Representations, Warranties, and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect

on the Developer, and Host does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Developer.

(c) Host fails to carry out its obligations and duties pursuant to Article X (Quiet Enjoyment).

(d) Any other material breach of this Agreement, or the Intergovernmental Power Sale Agreement, which proves to have a material adverse effect on the Developer, not specifically enumerated above.

Events of Default in this Section 8.2 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

**8.3 Events of Default by Developer.** It shall constitute an Event of Default by Developer if Developer:

(a) breaches any material obligation under this Agreement that proves to have a material adverse effect on Host and fails to cure the breach within thirty (30) days after notification by Host of the breach; provided, however, no Event of Default shall occur if the nature of such breach is such that it cannot reasonably be cured within thirty (30) days and Developer commences remedying the breach within said thirty (30) day period and actually remedies the breach with ninety (90) days after notification by Host of the breach;

(b) makes any material representation or warranty made by Developer in Article VI (Developer's Representations, Warranties and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Host, and Developer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Host; or

(c) fails to provide or maintain in full force and effect any required insurance or bond or other surety, if such failure is not remedied within five (5) Business Days after receipt of written notice from the Host, or the occurrence of a default by the insurer of such Developer under any insurance policy provided hereunder.

**8.4 Force Majeure.** Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Host) and 8.3 (Events of Default by Developer), if by reason of Force Majeure either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an

Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date. In the Event of Termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

## **8.5 Remedies.**

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer), as applicable, the non-defaulting Party may seek specific performance and/or monetary damages.

(b) The non-defaulting Party may terminate this Agreement subject to the limitations and under the provisions of Section 8.1.

(c) In the event of a Default by Host requiring the permanent removal of the PV System from the Premises, and provided that the Host designates an alternative location at which the PV System is able to produce substantially equivalent amounts of Electricity, the Developer shall mitigate any damages by removing, storing and re-installing the PV System at the alternative location, all such costs to be borne by Host as damages. In the event PV System is unable to produce substantially equivalent amounts of Electricity at the alternative location, but the Host agrees to compensate the Developer for lost revenues during the Term of the Agreement on account of such reduced capacity, the Developer shall mitigate the Host's damages as provided herein by removing, storing and re-installing the PV System at the alternative location.

(d) In the event of a default by Developer and consistent with the terms of Section 8.11 of this Agreement (Purchase Option), (i) Host may elect, but is not required to, purchase the PV System, and (ii) CVEC may elect, but is not required to, purchase the PV System, provided that Host or CVEC shall be entitled to offset the Purchase Price of the PV System determined in accordance with Article XIII against the amount of monetary damages due and owing Host or CVEC pursuant to this Section 8.5. Upon Host's or CVEC's tender of the Purchase Price as offset by the amount of its monetary damages, should Developer fail to execute such necessary documents to convey its rights and interest to the PV System, the PV System shall be deemed abandoned and Host or CVEC may retain the PV System as its property or may proceed to remove the PV System in accordance with Section 8.9 of this Agreement (Abandonment of PV System).

For breach of any provision for which an express remedy, other than termination, or express measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

**NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE**

**DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

**8.6 Step-in Rights of Financier.**

(a) Host agrees to give written notices to any Financier, of which Host has written notice, upon the occurrence of any Event of Default hereunder, the failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, or an Event of Termination on account of Force Majeure, and Financier shall have a period of thirty (30) days after receipt of notice of failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed an additional ninety (90) days, to cure the Event of Default or Event of Termination on account of Force Majeure if Financier uses Commercially Reasonable efforts to cure such Event of Default or Event of Termination during the initial ninety (90) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such a reasonable period of time thereafter.

(b) Host agrees that, prior to termination pursuant to Section 8.1 (Termination), Host shall give written notice to any Financier of which Host has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such Event of Termination.

(c) Host also agrees that, in the event that Host terminates this Agreement pursuant to Section 8.1 (Termination), and Financier agrees in writing to assume all liabilities and obligations of the Developer, then a new agreement shall be executed by Host with Financier to assume the Developer's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Financier or extend or expand Host's obligations hereunder.

**8.7 Damage or Destruction of PV System.**

(a) Developer shall bear the risk of loss to the PV System (including casualty, condemnation or Force Majeure), except to the extent that such loss results from the gross negligence of the Host or Host's agents, representative, customers, vendors, employees, or contractors.

(b) In the event of any PV System loss, Developer shall, at its sole cost and expense either (i) repair or replace the PV System, or (ii) elect to terminate this Agreement in which case Developer shall remove the PV System and promptly restore the Premises to

substantially the same condition as existed prior to the Effective Date in accordance with Section 8.8 (Site Restoration).

(c) In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects not to repair or replace the Premises, the Developer shall be limited to recovery of proceeds from its insurance coverage. In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects to repair or replace the Premises, the Developer may exercise either of its options under Section 8.7(b).

**8.8 Site Restoration.** On the Termination Date, Developer shall peaceably and quietly leave, surrender and yield up unto Host the Leased Premises, provided however that following the Termination Date of this Agreement, Developer shall have one hundred twenty (120) days to remove the PV System from the Leased Premises, and to restore the Leased Premises to the condition that existed as of the Effective Date, reasonable wear and tear excepted, or such additional time as may be necessary after Host or CVEC have declined to exercise a Purchase Option pursuant to this Lease.

**8.9 Abandonment of PV System.** Notwithstanding anything to the contrary contained in this Agreement, any waiver in whole or in part of the requirement to remove the PV System shall require the written approval of Host. Any of the PV System left on the Premises after the passage of one hundred twenty (120) days after the Termination Date shall be deemed abandoned. Host shall provide written notice to the Developer within thirty (30) days of the expiration of such one hundred twenty (120) day period, of its election to retain all or any of the PV System as its property, or dispose of all or any of the PV System in such reasonable manner as Host may see fit and at Developer's sole cost; provided, however, that Host's election to retain the PV System as its property shall relieve Developer from any liability for its failure to remove such PV System; and provided further, however, that the foregoing shall not apply to any of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure or the negligent acts or omissions of Host (in which in either case the time period for removal shall be extended on a day for day basis).

**8.10 Decommissioning Assurance.** Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount specified in Exhibit D, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Depending on the circumstances, and subject to Host's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of Developer's failure to comply with its PV System removal and Premises restoration obligations under the Agreement.

**8.11 Purchase Options.**

(a) **Grant of Purchase Option to Host.** For and in consideration of the agreement of Host to enter into this Lease, and other good and valuable consideration, the receipt



and sufficiency of which are hereby acknowledged by the Parties, Developer hereby grants to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System (including solar generation incentives) and the Environmental Attributes on the terms set forth in this Lease (the "Host Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (a) upon the tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date of this Agreement, (b) upon a Developer Event of Default pursuant to Section 9.3 and the expiration of any cure right with respect thereto, or (c) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article.

(b) Grant of Purchase Option to CVEC. For and in consideration of the agreement of Host to enter into this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, in the instance in which the Host has not exercised its Purchase Option under this Lease pursuant to Section 8.11(a), Developer hereby grants to CVEC the right and option to purchase all of Developer's right, title and interest in and to the PV System (including solar generation incentives) and the Environmental Attributes on the terms set forth in this Lease (the "CVEC Purchase Option"). CVEC, in its sole discretion, shall have the right to exercise the Purchase Option: (a) subject to the timing limitations in Section 8.11(c); (b) upon a Developer Event of Default pursuant to Section 9.3 and the expiration of any cure right with respect thereto, or (c) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article.

(c) Timing of Purchase Option. If the Host declines the Purchase Option or otherwise fails to send its Host Purchase Option Notice within sixty (60) Business Days prior to tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date, or the date of its Termination, then the CVEC shall have thirty (30) Business Days thereafter to provide written notice to Developer of its intent to exercise the Purchase Option ("CVEC Purchase Option Notice") pending completion of due diligence. Promptly following receipt of a Purchase Option Notice from Host, or CVEC, as the case may be, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host, or the CVEC, as the case may be, the PV System and all Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, for its inspection during normal business hours.

(d) Inspection. CVEC or Host, as the case may be, shall have fifteen (15) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

(e) Determination of Purchase Price. The purchase price shall be the Appraised Value of the PV System, including but not limited to its physical assets, as determined by the Independent Appraiser ("Purchase Price").

(f) Independent Appraiser. Within fifteen (15) Business Days of Developer's receipt of Purchase Option Notice, Developer and Host shall each propose an Independent Appraiser. If Developer and Host do not agree and appoint an Independent Appraiser within such fifteen (15) Business Day period, then at the end of such fifteen (15) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers

originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Developer and Host. Such selection shall be final and binding on Developer and Host.

(g) PV System Records and Inspection. The Developer shall make the PV System and records related thereto available to the Independent Appraiser. Similarly, the Buyer or Host shall make available to the Independent Appraiser the results of its inspection, review of records and other due diligence. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value (the “Preliminary Determination”).

(h) Preliminary and Final Appraisal Determinations. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Developer and Host or CVEC, together with all supporting documentation that details the calculation of the Preliminary Determination. Developer and Host or CVEC shall each have the right to object to the Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days of receipt of the objecting Party’s objections, the selected Independent Appraiser shall issue its final determination (the “Final Determination”) to Developer and Host or CVEC, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Appraised Value by the selected Independent Appraiser shall be final and binding on the Parties.

(i) Appraisal Costs. Developer and Host or CVEC, as the case may be, shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s), unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser.

(j) Final Purchase Option Notice. Within ten (10) Business Days of the Final Determination, Host or CVEC shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with Section 13.2 (“Final Buyer Purchase Option Notice” or “Final Host Purchase Option Notice”). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable. If the Host’s Purchase Option or CVEC’s Purchase Option has arisen on account of a Developer Event of Default and Termination of the Agreement therefor under Section 9.2, the Developer Termination Payment shall be deducted from the Purchase Price.

(k) Transfer Date. The closing of any sale of the PV System (the “Transfer Date”) pursuant to this Article will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 8.11(i). This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

(l) Terms of PV System Purchase. On the Transfer Date (a) Developer shall surrender and transfer to Host or CVEC, as the case may be, all of Developer's right, title and interest in and to the PV System (including solar generation incentives), and the Environmental Attributes, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes prior to the Transfer Date, (b) CVEC or Host, as the case may be, shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes in Host, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Host. The purchase shall be on an "as is," "where is" basis without warranty of any kind.

If Host or CVEC exercises their respective Purchase Options, then the Host or CVEC will assume responsibilities under agreements with energy generation customers existing as of the Transfer Date, until the termination date of such agreements. As set forth in Section 11.1(a), Developer shall include in any such agreements with energy generation customers a right of Developer to assign such contracts to Host or CVEC. Monthly Minimum Reliability Contribution assessments shall be assumed by the entity that has exercised the Purchase Option.

(m) Acknowledgement of CVEC's Purchase Option. In the event that CVEC exercises its Purchase Option under this Lease and the PPA, this Agreement shall be amended to substitute CVEC for the Host and shall continue in full force and effect.

## **ARTICLE IX: INDEMNIFICATION; INSURANCE**

**9.1 Developer Indemnification of Host.** To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Host, CVEC and all of their officers, employees, boards, commissions, and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind ("*Losses*"), including any Environmental Claim, from or to third parties which arise out of the performance of Developer's work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions, including failure to comply with the provisions of this Agreement, of the Developer, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts Developer is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Host, but the Developer's obligation to pay Losses shall be reduced in proportion to the percentage by which the Host's negligent or intentional acts, errors or omissions caused the Losses.

**9.2 Host Indemnification of Developer.** To the extent permitted by law, Host shall indemnify and hold harmless Developer from and against any and all Losses from or to third

parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Host, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of Developer, but the Host's obligation to pay Losses shall be reduced in proportion to the percentage by which the Developer's negligent or intentional acts, errors or omissions caused the Losses. Notwithstanding any other provision in this Agreement, the Host's liability hereunder shall be limited by the protections and immunities afforded by and to the amount set forth in Chapter 258 of the Massachusetts General Laws.

9.3 The Parties agree to comply with the insurance obligations allocated to them in Exhibit C hereto.

9.4 The provisions of Section 9.1 and 9.2 shall survive the expiration or earlier termination of the Agreement.

## **ARTICLE X: QUIET ENJOYMENT**

**10.1 Quiet Enjoyment.** Host covenants that Developer shall quietly have and enjoy the Premises throughout the Term and any extensions thereof. Host warrants and agrees that, throughout the Term and any extensions thereof:

(a) the Premises shall be dedicated to Developer's use for conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the PV System, except as provided for in Section 10.2 and subject to the Additional Exceptions set forth in Exhibit A-1 and Special Conditions in Exhibit D;

(b) any other uses of the Premises by Host or any third party pursuant to Section 10.2 and the Additional Exceptions set forth in Exhibit A-1 shall not unreasonably interfere with the Permitted Use and the operational and solar requirements of the PV System;

(c) Host shall maintain or obtain any agreements, contracts, consents, Permits, approvals, or other instruments or permissions necessary for Developer to have the quiet enjoyment of its rights under this Agreement; and

(d) Host shall, in good faith, use its best efforts to protect Developer's quiet enjoyment of its rights hereunder, including, without limitation, defending against a third party claim that would materially interfere with Developer's rights under this Article X.

Subject to the specific provisions of this Agreement permitting the same, Host shall have the right to enter upon the Premises at any time for any purpose and no such entry that complies with the provisions of this Agreement permitting the same shall be considered a breach of the covenant of quiet enjoyment.

**10.2 Host's Reserved Uses.** Except as specifically set forth in the Additional Exceptions contained in Exhibit A-1, Host shall not itself conduct any other use, nor shall Host allow any third party to conduct any other use, on the Premises.

## ARTICLE XI: ASSIGNMENT AND MORTGAGE

### 11.1 Assignment.

(a) Developer Assignment. Except as otherwise provided by this Agreement, Developer shall not assign, subcontract, sublet or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Host, provided that prior notice to or consent of Host shall not be required: (i) for an assignment or transfer by Developer to any of its other individual members; and (ii) for a collateral assignment by Developer to any Financier, subject to the terms and conditions of this Article XI. For assignments requiring Host's approval, approval may be denied in the reasonable discretion of Host if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning Developer. Notwithstanding the foregoing, Host may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Developer. Developer's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. If Developer assigns, subcontracts, sublets or delegates its rights, privileges or obligations under this Agreement, Developer shall reimburse Host for its reasonable attorneys' fees related to review and approval of assignments.

(b) Host Assignment. Host shall not assign this Agreement without the prior consent of Developer, such consent not to be unreasonably withheld, provided, however, that any such assignment shall be made subject to the terms and provisions of this Agreement. Host shall promptly provide Developer a copy of the assignment document following any assignment.

The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto. Notice of any permitted assignment shall be provided to the other Party as soon as practicable.

**11.2 Financing by Leasehold Mortgage.** Host is cognizant of the need of Developer to finance its interest in the Premises and the PV System thereon, and therefore specifically agrees, subject to Section 8.6, without any further request for prior consent to permit Developer to mortgage, assign or transfer its interest in the Premises for the purpose of obtaining financing, which shall include equity and/or debt, provided:

(a) The term of such mortgage, assignment or transfer shall not exceed the Term; and

(b) Developer shall give Host and CVEC notice of the existence of any mortgage, assignment or transfer, together with the name and address of the mortgagee, assignee or transferee, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer.

**11.3 Financing by Leasehold Mortgage Release of Developer.** Developer shall be relieved from its obligations under this Agreement in whole or in part, as the case may be:

(a) by any whole or partial disposition of Developer's interest in this Agreement in compliance with Section 11.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees

to be bound by the terms of this Agreement, unless the Parties agree otherwise, and except as otherwise provided by the terms of any assignment or transfer; and

(b) in the event of any foreclosure by a Financier, in which case the Financier shall substitute for the Developer for purposes of this Agreement.

Absent express written consent of Host, the execution of a mortgage or any assignment from a Financier to another Financier shall not relieve Developer from its obligations under this Agreement.

**11.4 Financier Provisions.** Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or in any PV System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a “Leasehold Mortgage”) shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Host or Host’s fee interest in and to the Premises, or Host’s rights under this Agreement. Host shall promptly execute any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendment does not materially change the terms of this Agreement.

(a) Financier’s Right to Possession, Acquire and Assign. Pursuant to the provisions of this Section 11.4 and subject to Section 8.6, a Financier shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold estate by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; (iv) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure; and (v) to sell the PV System and rights under any contracts dealing with the sale of Net Energy or renewable energy certificates from the PV System to a third party. Host’s consent shall not be required for the Financier’s acquisition of the encumbered leasehold estate created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

(b) Upon the Financier’s acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Financier shall have the right to sell or assign said acquired leasehold estate, provided Financier and proposed assignee (as applicable) shall first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Host, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of Developer’s obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements.

(c) Notice of Default; Opportunity to Cure. The Financier shall be entitled to receive simultaneous notice of any default by Developer, provided that such Financier shall have first delivered to Host notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by state laws, rules, regulations, Developer’s procedures, and the provisions of this

Agreement. If any notice shall be given of the default of Developer and Developer has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice that Developer has failed to cure such default and such Financier shall be entitled to cure any such default pursuant to the terms of Section 8.6. The Financier may take possession of the Premises and the PV System, and operate the PV System if necessary, pursuant to Section 8.6.

## **ARTICLE XII: DISPUTE RESOLUTION**

**12.1 Dispute Resolution.** Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties so agree, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be the courts for and in Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

### **12.2 Stay of Termination.**

(a) During informal negotiations and mediation pursuant to Section 12.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 12.1 are pending, the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 12.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Host may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by Host at any time for any reason.

### ARTICLE XIII: MISCELLANEOUS

**13.1 Construction; Obligation to Modify Agreement.** Upon implementation by the Department of Public Utilities, Department of Energy Resources, or other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the economic benefits anticipated by either Party, in particular any rule or regulation regarding Net Metering, the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

**13.2 Notices.** All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Host:

Peter Lombardi  
Town Administrator  
Town of Brewster  
2198 Main St Brewster, MA 02631  
Phone 508-896-3701  
Email: plombardi@brewster-ma.gov

If to Developer:

CED Cape Solar, LLC  
100 Summit Lake Drive  
Suite 201  
Valhalla, New York 10595

If to CVEC: Cape & Vineyard Electric Cooperative, Inc.  
23H2 White's Path, Suite 2  
South Yarmouth, MA 02664  
Attn: Liz Argo, Manager  
Tel: (774) 722-1812  
Email: largo@cvecinc.org



Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

**13.3 Entire Agreement; Amendments; Binding Effect.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

**13.4 Expenses.** Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

**13.5 No Joint Venture.** Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

**13.6 Joint Work Product.** This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

**13.7 Waiver.** No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

**13.8 Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Buyer as public cooperative or to the Host as municipal entity.

**13.9 Nondiscrimination.** Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

**13.10 Severability.** If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

**13.11 Further Assurances.** From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

**13.12 Survival.** Termination of this Agreement for any reason shall not relieve Host or Developer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Sections 9.1 and 9.2 (Indemnification) and XII (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

**13.13 Counterparts; Scanned Copy.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

**13.14 Special Terms and Conditions.** This Agreement is a standard form lease agreement for project development and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict

between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

**13.15 No Limitation of Regulatory Authority.** The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

*[Signature page to follow]*

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

**DEVELOPER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**HOST:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

List of Exhibits to this Agreement

Exhibit A – Description of Premises

Exhibit A-1 – Additional Exceptions

Exhibit A-2 – Rent

Exhibit A-3 – Warranties

Exhibit B – Description of PV System

Exhibit C – Insurance Requirements

Exhibit D – Special Terms and Conditions

Exhibit E – Common Technical Specifications

Exhibit F – Services Agreement between CVEC and Host

**EXHIBIT A**

**DESCRIPTION OF PREMISES**

**Address:**

[ADD HARWICH SITE DETAILS]

**Legal Description:**

[ADD HARWICH DETAILS], located at the above address, as illustrated in the Sketch Plan entitled “\_\_\_\_\_” dated \_\_\_\_\_, as such Sketch Plan may be amended or revised from time to time.

**Description of the Premises:**

The Premises shall further include all necessary electrical and other utility sources, together with the non-exclusive right of ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the right to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.

**EXHIBIT A-1**

**ADDITIONAL EXCEPTIONS**

A. Developer's use of the Premises shall be subject to the following:

Host's Reserved Uses of the Premises:

**[LIST]**

**EXHIBIT A-2**

**RENT**

As described in Section 4.1 of this Agreement, the annual rent payment shall be \$\_\_\_\_\_.



**EXHIBIT A-3**

**WARRANTIES**

As described in Section 5.24, the applicable warranties to the Premises are as follows:

**EXHIBIT B**

**DESCRIPTION OF PV SYSTEM**

PV SYSTEM:

Module Manufacturer: \_\_\_\_\_

Nameplate Capacity: \_\_\_\_\_

Approximate Annual Energy Production:  
\_\_\_\_\_ kWh

Location: \_\_\_\_\_

Preliminary Specifications:  
\_\_\_\_\_

Battery Manufacturer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BESS Nameplate Capacity in kilowatts per hour:  
\_\_\_\_\_ kW for \_\_\_\_\_ hours

Location: \_\_\_\_\_

Mounting Systems: \_\_\_\_\_

PV SYSTEM ASSETS:

Inverters: \_\_\_\_\_

Related Equipment: \_\_\_\_\_

Electric Lines: \_\_\_\_\_

## EXHIBIT C

### INSURANCE REQUIREMENTS

A. Developer's insurance obligations. Developer shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Developer shall provide Host with evidence, reasonably satisfactory to the Host, of its insurance hereunder, upon request.

1. ***Comprehensive commercial general liability insurance*** of at least \$2,000,000 combined single limit. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Excess liability*** coverage of at least \$10,000,000.

3. ***Additional insurance requirements.*** All insurance maintained by Developer shall:

a. include as additional insured the Host for obligations arising out of this Agreement. The policies shall be endorsed to require that such additional insureds receive at least thirty (30) days' notice of cancellation or non-renewal. Additionally, the Developer shall be required to provide notice to the Host of any cancellation or non-renewal at least thirty (30) days in advance of said cancellation or non-renewal.

b. the insurance may be provided on a claims-made basis.

c. in the event such insurance is cancelled or non-renewed, Developer agrees to provide a 36 month discovery period endorsement for obligations under this Agreement.

d. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.

e. The insurance shall include blanket contractual liability coverage, including coverage for this Agreement.

B. Host's insurance obligations. Host shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Host shall provide Developer with evidence, reasonably satisfactory to the Developer, of its insurance hereunder, upon request.

1. ***Commercial general liability insurance*** written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations liability, and broad form general liability, with limits of not less than \$3,000,000 combined single limit and annual aggregate. This limit

requirement may be may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Property insurance*** on the Premises with a waiver of subrogation rights against the Developer.

**EXHIBIT D**  
**SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS**  
**LEASE AGREEMENT**

## EXHIBIT E

### COMMON TECHNICAL SPECIFICATIONS

This Exhibit describes the technical specifications and requirements that are common to all the PV Systems. These common technical specifications are those that each PV System must meet or exceed. These specifications and requirements are not intended to be all-encompassing, nor are they intended to override Good Engineering Practice or Applicable laws and code requirements. The Developer is responsible for conformance to all relevant, prevailing codes, and the codes take precedence over these Technical Specifications. Site-specific conditions and/or local regulations may require additional specifications and requirements not included in this Exhibit.

#### A. Design

##### 1. Design Life and Estimated Production Requirements

- a. Each PV System shall have a service life of twenty (20) years at rated load.
- b. The PV System must be designed so that the estimated annual energy output for the PV System, based on actual site-specific shading, azimuth, and inclination is at least 80% of the default optimal output for a fixed PV System of the same capacity in Boston as estimated by PVWATTS Version 1. PVWATTS Version 1 is available at the following website:  
<http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Massachusetts/>

##### 2. Additional Design Requirements - Stamped affidavits or drawings are required for the electrical and structural components of the installation.

- a. The electrical design of the PV System must be performed by a Professional Engineer (“PE”) licensed in the Commonwealth of Massachusetts.
- b. The structural design of the PV System requires a stamped affidavit from a Massachusetts-licensed PE confirming that the underlying structure or bearing stratum, is adequate to withstand the static and dynamic loads of the PV System. The analysis must include all mounted portions of the PV System, including modules, racks, ballast, and other related components. The analysis must also include all mount securing portions of the PV System, including any anchors and penetrating devices.

#### B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. If the Developer determines the use of galvanized structural steel is warranted, the extent of Developer’s use of such material shall be clearly outlined in the Developer’s Proposal. All materials

subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. Bare copper conductors exposed to free air shall be tin-plated. Alternative materials must be approved by the Host and CVEC.

## 2. **Inverters**

- a. Inverter efficiency shall be equal to or greater than 93%.
- b. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- c. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
- d. Each inverter shall include:
  - i. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
  - ii. Ground fault protection.
  - iii. NEMA 2R rating for interior electrical room location or NEMA 3R for any exterior locations.
- e. The inverter(s) must have secure, weatherproof housing in the exterior installation.
- f. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
- g. The inverter(s) must be located to provide adequate air flow for cooling.
- h. Lightning protection must be provided for the inverter(s) housing.

3. **Batteries** – The battery energy storage system will be DC coupled and meet all NEC requirements.

4. **Combiner & Junction Boxes** - Combiner boxes and junction boxes which are located outdoors shall have the following characteristics: NEMA 4X enclosure, 600 VDC, and listed by a nationally recognized testing laboratory. All PV System output circuits shall be protected by lightning arrestors of the appropriate voltage rating.

5. **DC Disconnect Switches** - The DC disconnect(s) shall be 600 VDC, heavy-duty safety switch and be listed by a nationally recognized testing laboratory. Where

located outdoors, disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.

6. **AC Disconnects** - All AC disconnects shall be rated to interrupt the necessary voltage and current for the application and be listed by a nationally recognized testing laboratory. Where located outdoors disconnects shall be NEMA 3R. The AC disconnect shall be appropriately located per the utility's requirements and its location shall be noted on the one-line electrical drawing.
7. **Interconnection Circuit Breaker** - The Developer shall provide the appropriate size, make, and model circuit breaker for the specified AC interconnection switchgear that is suitable for back feed in accordance with NEC 690.64.
8. **Wiring and Conduit**
  - a. All system wiring shall be of an MEC approved wiring method. All conductors shall have a temperature rating of 90 degrees C or lower.
  - b. All conductors shall be copper, sized appropriately to minimize line losses.
  - c. All conduits used in interior building applications shall be electro metallic tubing ("EMT").
  - d. All exterior conduits shall be hot dipped galvanized EMT with weather tight compression fittings and expansion joints as required.
  - e. Expansion fittings shall be used in conduit runs in compliance with MEC article 300.7. A value of 144°F (80°C) shall be used for the maximum change in temperature (delta T) in the calculation of conduit expansion.
  - f. All conduits shall be bonded at each end using listed bonding bushings.
  - g. Where conduit is attached to roofs, fully flashed, non ferrous stanchions shall allow for expansion and contraction. For roof-mounted conditions, conduits shall be supported at a height greater than 3.5 inches by fully flashed, non ferrous stanchions. Manufacturer's approved surface applied stanchions shall be used on membrane roofs.
  - h. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
  - i. Exposed cables shall be listed as sunlight resistant and have a temperature rating of 90°C. These conductors shall be properly secured and well supported. Conductors are not permitted to be resting on the abrasive surfaces such as asphalt shingles.



- j. All wiring and conductors installed in subsurface applications shall be housed in utility grade PVC conduit(s) sufficiently covered and include trench warning identification. Spare conduits shall also be installed with a volumetric capacity of at least 25% of the original service. In the event subsurface conduits are exposed to vehicular traffic, concrete encasement shall be included.

**9. PV System Grounding** - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.

**10. PV Array**

a. PV Modules

- i. Modules shall be UL 1703 listed.

b. Mounting Systems

- i. In all installations, the mounting system shall promote ambient air circulation beneath and above modules to enhance efficiency. The lower edge of the panels on the mounting should be designed to eliminate power production losses from snow coverage and provide a comfortable working height for maintenance.
- ii. Modules shall be individually removable for maintenance and repair.
- iii. The mounting system, regardless of application, shall be designed to meet or exceed requirements of all applicable state and local building codes, including wind speed, snow and seismic load requirements. The Developer shall describe and document the wind and snow loads that the PV System is designed to withstand.
- iv. For ballasted roof mounted systems, the Developer shall provide a manufacturer's comprehensive designed system. The Professional Engineer responsible for this portion of work shall also be licensed in the state of Massachusetts.
- v. In the event an existing lightning protection system is modified or augmented, the Developer is responsible for UL recertification.
- vi. Each module row or column must be separated to minimize shadowing effects on other modules. The spacing between modules shall be noted on the PV layout drawing.

- vii. For all PV Systems with roof penetration points through previously warranted roofs, the Developer is responsible that roof warranty is not voided

## **11. Installation Requirements**

- a. The output of the PV inverter(s) shall not interfere with or damage the function of existing Building electrical distribution systems. All serviceable components must be “accessible” as defined by the MEC article 100. The installation shall comply with all applicable federal, state and local building codes including the latest Massachusetts Electrical Code. The Developer shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Developer shall coordinate with the Host to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to the Host for interconnection of PV System output or if the switchgear is to be turned off.
- b. The PV System electrical work must be performed by individuals licensed in Massachusetts.
- c. The PV System must be installed according to the manufacturer’s instructions and in compliance with all applicable codes and standards.
- d. The Developer is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any Net Metering or Alternative On-bill Credit arrangement requested by CVEC or the Host. An application must be submitted to the local electric utility, with or without Schedule Z as appropriate, to start the formal interconnection process, and sufficient lead time should be allowed to successfully achieve interconnection under the local electric utility interconnection standards. All PV Systems must have an appropriate electric utility interconnection agreement in place at the time of interconnection to the utility grid.
- e. All pertinent permits and inspections must be obtained and copies kept on file as may be required by local codes and/or state law.
- f. All PV Systems shall include appropriate surge arresters or other means to protect the PV System components from lightning and other surge events. It is the responsibility of the Developer to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

## **12. PV System Warranty Requirements**

- a. Developer Warranty. All PV Systems must have a minimum five (5) year labor warranty provided by the Developer to protect the Host against defective
- E-5

workmanship, PV System or component breakdown, or degradation in electrical output of more than fifteen percent from their originally rated electrical output during the warranty period. The warranty must cover the PV System, including PV modules (panels) and inverter(s), racking, conduit run, and components, and provide for no-cost repair or replacement of the PV System, components, including any associated labor during the warranty period.

- b. **Manufacturer Warranty.** All major equipment must meet the following minimum manufacturer warranties:
  - i. **Photovoltaic Module:** Minimum of one (1) year product warranty from date of sale to first consumer purchaser for product workmanship and materials, plus a minimum performance warranty of twenty (20) years within which time the module will produce, under standard test conditions, a minimum of 80% of the product's minimum rated power at time of sale.
  - ii. **Inverters:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
  - iii. **Batteries:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
  - iv. **Revenue grade production meters:** Minimum of two (2) years following the effective commercial operation date that the meter system will be free from all defects in design, materials and workmanship. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the Host.
  - v. **Mounting equipment:** The Developer shall obtain from the mounting system manufacturer(s) a warranty that the mounting system(s) will be free from all defects in design, materials and workmanship for a period of ten (10) years following the effective commercial operation date. Such warranty, containing no exclusions or limitations, shall be in a form acceptable to, and for the benefit of, the Host.

**13. Electricity Production Meter Requirements** - All PV Systems must have a dedicated revenue grade production meter that:

- a. is readily accessible and easily understood by the Host;
- b. records the PV System's AC output as measured on the AC side of the PV System's isolation transformer;
- c. shall be separate from the local utility billing meter and shall not interfere with utility billing or net metering;

- d. must be a standard utility “revenue quality” meter that conforms to applicable American National Standards Institute (“ANSI”) C-12 standards and shall be installed on the AC output side of the PV System’s inverter or isolation transformer; and
- e. shall have a visible display of cumulative energy produced by the PV System and be available for periodic testing and/or re-calibration, if necessary.

**14. Automated Reporting** - All PV Systems must include an automated reporting system, i.e. Data Acquisition System (“DAS”) which will report to the Massachusetts Renewable Energy Trust (“MRET”) Production Tracking System (“PTS”) and detail view be accessible to CVEC and Host. In addition, the public will have access to a Public View from the DAS. Where Battery Energy Storage System is proposed, automated and manual system controls must be provided which will be accessible to CVEC and Host offsite through high speed internet online access.

## **C. Commissioning Requirements**

- 1. Commissioning Procedure** - At a minimum, the Developer’s sample testing and commissioning plan shall cover:
  - a. measurement and recording of voltage-open-circuit of every source circuit;
  - b. performance of inverter startup tests as specified by the inverter manufacturer in the inverter operation manual;
  - c. measurement of AC power and comparison to predicted power based upon estimated irradiance level;
  - d. performance of loss of grid test and verification of five minute delay upon restoration of the grid; and
  - e. measurement and recording of  $I_{mp}$  of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
- 2.** The Developer shall verify that the data acquisition/display system and, where applicable, the Battery Energy Storage System controls, are functioning properly, comparing independent measurements to data acquisition display and able to switch Battery Energy Storage System configurations and operations.
- 3.** The Developer shall correct, at no additional cost to the Host, any deficiencies uncovered by the testing prior to commissioning of the PV System.

## **D. Training Requirements**

The Developer shall train the Host or staff at the Premises on basic principles of operation, maintenance requirements, on-line data monitoring and system controls, and safety issues that are specific to the PV System installed (including points of contact in emergency situations). An operations manual to accompany the training will be delivered to the Host and to CVEC.

## **E. Documentation Requirements**

- 1. Documentation** – The Developer shall prepare an Operations and Maintenance manual for the PV System. In addition, the Contractor shall provide CVEC and the Host each with one (1) printed copy and one (1) digital copies on CD of the information listed below.
- 2.** The documentation shall include:
  - a. A complete set of all approved shop drawings, a list of equipment and products used, and product literature. The list of equipment shall include the manufacturer, brand name, model (if applicable), equipment components, recommended maintenance procedures for each piece of equipment, approximate amount of product installed and materials contained in the product.
  - b. Record drawings showing, to scale, the location of all arrays, locations of major equipment, including combiner box clusters, all underground and major conduit runs, grounding electrodes and specific locations to building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.
  - c. The Permission to Operate provided by the Local Distribution Company.
  - d. Trouble shooting guidelines.
  - e. PV System maintenance schedule and procedures.
  - f. Contact information for technical assistance and parts ordering.
  - g. Records of all warranties and serial numbers of all warranted equipment.

**EXHIBIT F**

**[Reserved]**

**EXHIBIT G**

**SERVICES AGREEMENT BETWEEN CVEC AND HOST**

PROJECT DESCRIPTION	STAFF LEAD	FY	FUNDING SOURCE	ALLOCATED AMOUNT	ESTIMATED COST	ACTUAL COST	PROCUREMENT PROCEDURE	STATUS	STATUS DATE	PRIORITY	TARGET DATE
Brooks Park Expansion/Improvement Phase 5 - Engineering	Beebe, E.	2019	ATM'18; Art. 54 CPC	\$43,500.00	\$43,500.00			IN PROCESS	September 26, 2019		
Brooks Park Expansion/Improvement Phase 5 -Materials	Beebe, E.	2019	ATM'18; Art. 54 CPC	\$165,000.00	\$165,000.00			ON HOLD	October 2, 2019		
Brooks Park Expansion/Improvement Phase 5 - Installation	Beebe, E.	2019	ATM'18; Art. 54 CPC	\$125,000.00	\$125,000.00			ON HOLD	October 2, 2019		
Depot St. North Bicycle Crossing System	Ryder, G.	2020	ATM'19; Art. 40 CPC	\$27,000.00	\$27,000.00			IN PROCESS	September 5, 2019		
Lifeguard Stands (various locations - 11)	Beebe, E.	2020	ATM'19; Art. 40 CPC	\$37,950.00	\$37,950.00			NO INFORMATION PROVIDED	October 2, 2019		
Sand Pond Restroom Project	Beebe, E.	2020	ATM'19; Art. 43	\$125,000.00	\$125,000.00			NO INFORMATION PROVIDED	October 3, 2019		
Replace scoreboard, install safety netting at Whitehouse Field	Beebe, E.	2020	ATM'19; Art. 44	\$5,000.00	\$5,000.00			NO INFORMATION PROVIDED	October 3, 2019		
DPW Vehicle Maintenance Mobile Lift	Edson, K.	2020	ATM'19; Art. 21	\$90,475.00	\$90,475.00			IN PROCESS	September 3, 2019		
DPW C&D Trailers (2)	Edson, K.	2020	ATM'19; Art. 19	\$150,000.00	\$150,000.00			IN PROCESS	September 3, 2019		
DPW PUP Trailer	Edson, K.	2020	ATM'19; Art. 19	\$40,000.00	\$40,000.00			IN PROCESS	September 3, 2019		
DPW Sweeper Body/Pony Motor	Edson, K.	2020	ATM'19; Art. 19	\$125,000.00	\$125,000.00			IN PROCESS	September 3, 2019		
DPW One (1) Ton Dump Truck	Edson, K.	2020	ATM'19; Art. 19	\$80,000.00	\$80,000.00			IN PROCESS	September 3, 2019		
Water Department Truck	Edson, K.	2020	ATM'19; Art. 18	\$76,551.00	\$76,551.00			IN PROCESS	September 3, 2019		
CVGC Mowing Equipment (lease)	Fernandez, S.				\$427,056.00		Exempt - State Contract	ONGOING	October 2, 2019		
CVGC Bunker Repairs	Fernandez, S.	2020	ATM'19; Art. 30 (Capital)	\$75,000.00	\$75,000.00			IN PROCESS	October 1, 2019		
CVGC Land Reclamation, Major Tree Removal	Fernandez, S.	2020	ATM'19; Art. 29 (Capital)	\$35,000.00	\$35,000.00			NO INFORMATION PROVIDED	October 2, 2019		
CVGC Single Mower Replacement	Fernandez, S.	2019	Encumbered		\$15,000.00		Quotes	ONGOING	October 2, 2019		
CVGC Cart Barn Electric Golf Cart Charging Installation	Fernandez, S.	2018	ATM'17; Art. 18	\$48,265.00	\$48,265.00			IN PROCESS	June 11, 2019		
CVGC Reskinning Maintenance Building	Fernandez, S.	2018	ATM'17; Art. 18	\$150,000.00	\$150,000.00			IN PROCESS	June 11, 2019		
Cemetery Arboretum Project - Mapping & Software	Kelley, R.	2020	ATM'19; Art. 32 (Revolving)	\$30,110.00	\$90,000.00		Quotes	ON HOLD	July 8, 2019		
Fire Department Emergency Response Equipment	LeBlanc, D.		FEMA Grant & ATM'19; Art. 11	\$93,773.00	\$67,773.00			IN PROCESS	October 2, 2019		
Kronos Time	LeBlanc, D.						Sole Source	COMPLETED	October 1, 2019		
Fire Station #2 Vehicle Exhaust System	LeBlanc, D.	2019	ATM'18; Art. 24	\$45,000.00	\$45,000.00	\$24,108.00	IFB - MGL, c. 149	COMPLETED	July 23, 2019		
RISE Engineering - Brooks Free Library Pump Motor Drive	Libby, S.	2020	MGL, c.25A	\$31,500.40	\$31,500.40	\$3,364.35	Exempt - Contract	COMPLETED	September 23, 2019		
RISE Engineering - Brooks Free Library Boiler Replacement	Libby, S.	2020	MGL, c.25A	\$80,800.00	\$80,800.00	\$3,364.35	Exempt - Contract	COMPLETED	September 23, 2019		
RISE Engineering - Brooks Free Library AUX Equipment Controls	Libby, S.	2020	MGL, c.25A	\$50,039.00	\$50,039.00	\$3,364.35	Exempt - Contract	TO BOS	October 7, 2019		
RISE Engineering - Brooks Free Library Energy Management System	Libby, S.	2020	MGL, c.25A	\$53,525.00	\$53,525.00	\$3,364.35	Exempt - Contract	TO BOS	October 7, 2019		
CDA Newsletter FY '20	Mitchell, E.	2020	FY'20 Operating Budget	\$8,920.00	\$8,920.00		State Contract - OFF44	OUT FOR BID	October 7, 2019		
Lower County Road Patching	Nickerson, C.	2020	MGL, c.90	\$120,000.00	\$120,000.00			IN PROCESS	October 2, 2019		
Ch. 90 Catch Basin Drainage	Nickerson, C.	2020	MGL, c.90		\$237,500.00		IFB	OUT FOR BID	October 4, 2019		
Community Center Vault Construction	Powers, J.							ON HOLD	August 23, 2019		
Monomoy RMS Snow Plowing	Powers, J.							ON HOLD	August 6, 2019		
Hinckley Pond Alum Testing/Treatment	Proft, H.	2019	ATM'18; Art. 57 CPC	\$575,000.00	\$575,000.00		IFB - MGL c.30, §39M	COMPLETED	September 9, 2019		
Allen Harbor Rehabilitation Project	Rendon, J.			\$57,000.00	\$57,000.00	\$57,000.00	Exempt - Engineering	COUNSEL REVIEW	October 2, 2019		
Survey Services	Ryder, G.	2020	FY'20 Operating Budget	\$20,000.00	\$20,000.00		Exempt - Qualifications	ON HOLD	October 2, 2019		
Sewer Message Boards	Ryder, G.							NO INFORMATION PROVIDED	October 3, 2019		
Brooks Academy Museum -Item 1: Engineering Study	Spitz, D.	2020	ATM'19; Art. 41 CPC	\$30,000.00	\$30,000.00			IN PROCESS	October 2, 2019		
Brooks Academy Museum -Item 2: Foundation Repairs	Spitz, D.	2020	ATM'19; Art. 41 CPC	\$50,000.00	\$50,000.00			ON HOLD	October 2, 2019		
Brooks Academy Museum - Item 2: Restore/Preserve Envelope	Spitz, D.	2020	ATM'19; Art. 41 CPC	\$50,000.00	\$50,000.00			ON HOLD	October 2, 2019		
Fire Station #2 Furniture	Tyldesley, S.	2019	ATM'18; Art. 24	\$45,000.00	\$6,900.00	\$6,395.10	Sound business practice	COMPLETED	August 20, 2019		
Fire Station #2 Furnishings	Tyldesley, S.	2019	ATM'18; Art. 24	\$45,000.00	\$30,492.00	\$26,227.13	Contract - MGL, c.30b	COMPLETED	September 23, 2019		
Fire Station #2 Network Peripherals	Tyldesley, S.	2019	ATM'18; Art. 24					NO INFORMATION PROVIDED	October 3, 2019		
Fire Station #2 Security Systems	Tyldesley, S.	2019	ATM'18; Art. 24	\$100,000.00	\$100,000.00	\$85,000.00	State Contract -ITC71	COMPLETED	June 17, 2019		
				ALLOCATED	ESTIMATED	ACTUAL					
				\$2,884,408.40	\$3,405,246.40	\$212,187.63					





# TOWN OF HARWICH

## DEPARTMENT OF PUBLIC WORKS


273 Queen Anne Road • P.O. Box 1543 • Harwich, MA 02645

Telephone (508) 430-7555

Fax (508) 430-7598

### MEMORANDUM

**TO:** Board of Selectmen

**FROM:** Lincoln S. Hooper, Director 

**DATE:** September 16, 2019

**RE:** Discussion Regarding DPW OSHA Compliance / Custodial Foreman

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I am writing the Board to request your consideration in creating a Custodial Foreman position in the DPW during the FY 21 budget deliberations. I make this request for several reasons, with OSHA compliance and worker safety being the primary driver. On March 9, 2018, Governor Baker signed a bill to amend MGL 149 Sec 6 ½, which places public sector workers under the same standards that private sector workers have been under since 1970. The Department of Labor Standards (DLS) is now charged with enforcement of the new standards. Enactment of the law was postponed twice, but was fully adopted on February 1, 2019.

Although I have always pursued safety trainings for staff and myself (started in 1995), the new model being promulgated by DLS is to create a sustainable safety management control structure within our current public works organization. In light of this goal, I committed the Harwich DPW to two tasks: We joined the Barnstable County Roundtable Pilot Project, a group of 4 or 5 other towns supported by DLS, Department of Industrial Accidents (DIA) and MIIA, tasked with developing innovative and progressive ways to enhance worker safety. In addition, I had 5 of the DPW's managers (including myself) complete the OSHA 30-hour General Industry Safety and Health training, which provides a lifetime supervisory level credential and card. This class essentially taught us how much we don't know. That is, the course covers a wide variety of safety topics that provide a basic understanding of the proper workplace safety methodology, but does not qualify anyone as a competent person (trainer).

Sean Libby, Facility Maintenance Manager, served 30 years in the Navy and understands safety better than anyone in the DPW. Unfortunately, he does not have enough time in his schedule to work on safety issues. Sean estimates that he spends approximately 30% of his time managing the custodial unit that serves several Town buildings. If we were able to hire a Custodial Foreman, Sean has committed to working on safety issues 1.5 days per week. Initially his time would be spent administratively developing Job Hazard

Assessments (JHAs), Standard Operating Procedures (SOPs) and cultivating our Safety Committee. Later his time would be spent developing a safety culture within the DPW by holding toolbox talks, training employees and conducting shop and worksite inspections. The ultimate goal is to develop a culture of safety into all of the DPW's work activities to ensure that every employee goes home at the end of their shift in one piece.

A Custodial Foreman would have additional benefits to the Town: First and foremost, since we have been unable to attract Substitute Custodians, we end up backfilling shifts when Custodians are out due to vacations, illnesses or sicknesses with overtime. In FY 19, we spent \$20,532 on overtime for the Custodial unit on a budget of \$10,977. A Custodial Foreman would be able to fill those shifts and reduce the associated overtime. Further, a Custodial Foreman would be able to flex their shifts, assist in areas that have gone underserved and perform spot inspections to ensure standards are being met. Although that position would report directly to Mr. Libby, it would take all aspects of managing 6 Custodians (i.e. scheduling, complaints, ordering supplies, etc.) off his plate and allow him to focus more of his time on DPW safety.

Finally, I would like the Board to know that I requested this same position last year that was removed during the budget process. At that time, I knew the amendment to the OSHA law was coming, but had no idea of the real impact it would have on the DPW. Having completed the 30-hour OSHA class and participating in the Roundtable exercises has reinforced the importance of this position for me. The cost of a Custodial Foreman would be \$66k plus associated benefits. If our effort to address safety in a meaningful way prevents a serious accident, I feel the position has paid for itself.

Thank you for your consideration in this matter.

Cc: Chris Clark, Town Administrator

**Efficiency Energized.**



## **Harwich Brooks Library AUX Equipment Controls Proposal**

**Date:** 8/28/2019

**Customer:** Town of Harwich

**ATTN:** Mr. Sean Libby

**Address:** 739 Main St, Harwich, MA 02645

NOTE: THIS CONTRACT MAY BE WITHDRAWN BY  
RISE IF NOT EXECUTED WITHIN 30 DAYS

AUTHORIZED SIGNATURE

DATE

  
\_\_\_\_\_

8/28/2019  
\_\_\_\_\_

# Energy Conservation Measure Proposal

## Reduction of Electric usage by installing High Efficiency Boilers

RISE Engineering is proposing to install and furnish DDC controls for auxiliary HVAC equipment for zone control at Harwich Brooks Library.

### SCOPE OF WORK

- VAV BOXES (18)
  - Demo existing controls
  - Furnish and install DDC controller with actuator
  - Furnish and install space temperature sensor
- FAN COIL UNITS (2)
  - Demo existing controls except control valves (to be re-used)
  - Furnish and install DDC controller in enclosure
  - Furnish and install space temperature sensor
- FIN TUBE RADIATION (14)
  - Demo existing controls except control valves (to be re-used)
  - Wire all (14) existing control valves to a VAV DDC in the same zone
- OVERALL
- Run new BACnet MS/TP communication wire to all new DDC controllers.
- Provide remotely accessible web-based graphics.

### Notes and Clarifications:

- All work performed during normal working hours.
- Town of Harwich permits and inspections included.
- Prevailing wage rates and certified payroll included.

Total Installed Cost	\$ 50,039
Cape Light Compact	\$ (2,790)
Add'l Cape Light Compact ECM Package Incentive*	\$ (29,658)
Net Cost To Customer	\$ 17,591

\*Please note that the additional CLC incentive is contingent upon moving forward with the Pump and fan VFD projects

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1. Upon execution of this contract RISE Engineering will require a 30% down payment and balance upon invoicing.

2. Any defect in materials, design, or installation found within one (1) year of installation date will be remedied without charge and within a reasonable period of time.
3. All work to be completed in a workmanlike manner according to standard practices.
4. Contract cost includes any permit(s) required by law for this installation. Prior to, or during installation, RISE Engineering (at its sole discretion) may choose not to proceed further with the installation for reasons relative to Safety or discovery of unforeseen conditions
5. Any change from the above specifications involving extra costs will be executed only on written orders, and will become an extra charge over and above the contract amount.
6. In the absence of alternate arrangements, disposal of disabled materials is the responsibility of the Customer.
7. This contract is subject to Utility company approval of any Utility program incentives incorporated herein. All applicable Utility program incentives shall be assigned to RISE ENGINEERING.
8. Pricing is valid for 30 days from above date.

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Acceptance of Contract – The above prices, Specifications and conditions are satisfactory and are the work as specified. Payments will be hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

**DATE OF ACCEPTANCE** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_

## CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT made this 25<sup>th</sup> day of September in the year Two Thousand and nineteen, between Rise Engineering, with a usual place of business at 1341 Elmwood Ave, Cranston, RI 02910, hereinafter called the CONTRACTOR, and the Town of Harwich, acting by its Board of Selectmen, with a usual place of business at 732 Street, Harwich, MA, hereinafter called the OWNER.

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the Harwich Brooks Library Auxiliary Equipment Controls Project, in strict accordance with the Contract Documents and all related Drawings and Specifications. The said Documents, Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. Contract Price

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of Seventeen Thousand Five Hundred Ninety One Dollars.

3. Commencement and Completion of Work and Liquidated Damages

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before April 1 2020.

- A. Definition of Term: The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- B. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the

completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

- C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.
- D. Liquidated Damages: It is expressly agreed between the Contractor and the Owner that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Owner, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Owner the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates. The amount of liquidated damages shall be 1% of the project per day.

4. Performance of the Work

- A. Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
- B. Responsibility for the Work: (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.  
  
(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.
- C. Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the

Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

- D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- (4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- G. Drawings, Specifications and Submittals:
- (1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.



(2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

- H. Protection of the Work and Owner's Property: The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.
- I. Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.
- J. Warranty: The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such

endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. Affirmative Action/Equal Employment Opportunity

The Contractor is directed to comply with all applicable State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

6. Site Information Not Guaranteed; Contractor's Investigation

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There is not a project architect-engineer for this project who is. Except as otherwise indicated in the Contract Documents, the Architect/Engineer shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to the Architect/Engineer. Except as otherwise provided, the Architect/Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Architect/Engineer shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

Within fifteen (15) days after receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall have fifteen (15) days to make payment for:

- A. The work performed during the preceding month.
- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:
  - 1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
  - 2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.
  - 3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.

- D. After the receipt of a periodic estimate requesting final payment and within sixty-five (65) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
  2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

If the Owner fails to make payment as herein provided, there shall be added to each such payment, daily interest at the rate of 3 percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston, commencing on the first day after said payment is due, and continuing until the payment is delivered or mailed to the Contractor; provided that no interest shall be due, in any event, on the amount of a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate by the Owner as provided in the first paragraph of this Article. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:
- (a) Unit bid prices previously approved.
  - (b) An agreed lump sum.

- (c) The actual cost of:
  - (1) Labor.
  - (2) Materials entering permanently into the work.
  - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.
  - (4) Power and consumable supplies for the operation of power equipment.
  - (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

- F. Claims for Additional Costs: If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Town on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the Town or otherwise, except as and to the extent expressly provided under G.L. c.30, §39O in the case of written orders by the Town. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.

10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

~~Invitation to Bid~~  
~~Instructions to Bidders~~  
This Contract Form  
~~Bid Form~~  
~~Performance Bond~~

~~Labor & Materials Payment Bond~~  
~~Non-Collusion Certificate~~  
Tax Compliance Certificate  
~~Clerk's Certificate of Corporate Vote~~  
Certificate of Insurance  
~~General Conditions~~  
~~Supplementary General Conditions~~  
General Requirements  
~~Specifications and Addenda~~  
~~Contract Drawings~~  
Schedule of Prevailing Wages  
(Strike out any inapplicable item)

12. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

13. Indemnification

The Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

- 14.1.1 claims under workers' or workmen's compensation, disability benefit and other applicable employee benefit acts;
- 14.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- 14.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- 14.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

- 14.1.5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- 14.1.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- 14.1.7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The limits of liability for coverage required under the preceding paragraph shall be as Specified herein.

- 14.2.1 General Liability of at least \$1,000,000 Occurrence/\$2,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 14.2.2 Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 14.2.3 Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000.
- 14.2.4 Builders' Risk Property Coverage for the full insurable value. It should include "All Risk" insurance for physical loss or damage including theft.
- 14.2.5 Property Coverage for materials and supplies being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 14.2.6 Umbrella Liability of at least \$10,000,000/occurrence, \$10,000,000/aggregate. The Municipality should be named as an "Additional Insured".
- 14.2.7 Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$2,000,000/occurrence, \$5,000,000 aggregate.

Except for Workmen's Compensation, all liability coverage shall name the Town as an additional insured and shall provide for 30 days prior written notice to the Town of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. Royalties and Patents: The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.
- B. Assignment: The Contractor shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the Owner.
- C. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
- D. By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.



[Remainder of page intentionally blank.]

AGREED:

**TOWN OF HARWICH, MASSACHUSETTS**  
(Owner)

By its Board of Selectmen over \$25,000

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTRACTOR: RISE ENGINEERING

By *M. S. Tetreault*

MICHAEL S TETREAULT  
(Name)

CONTROLLER  
(Title)

1341 ELMWOOD AVE.  
(Address)

CRANSTON, RI 02910  
(City and State)

By its Town Administrator under \$25,000

---

In accordance with G.L. c.44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefore and that the Town Administrator has been authorized to execute the contract and approve all requisitions and change orders.

By \_\_\_\_\_  
(Owner's Accountant)

\_\_\_\_\_  
(Name)

By Town Administrator and Chief Procurement Officer

\_\_\_\_\_

CERTIFICATE OF VOTE

(to be filed if Contractor is a Corporation)

I, \_\_\_\_\_, hereby certify that I am the duly qualified  
(Secretary of the Corporation)

and acting Secretary of \_\_\_\_\_ and I further certify that a meeting of the

(Name of Corporation)

Directors of said Company, duly called and held on \_\_\_\_\_, at which  
(Date of Meeting)

all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: \_\_\_\_\_  
(Secretary of Corporation)

A True Copy:

Attest: \_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_  
(Date)

**CERTIFICATIONS REQUIRED BY LAW  
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must **COMPLETE** and **SIGN** the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

**TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

**NON-COLLUSION**

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

**PUBLIC CONTRACTOR DEBARMENT**

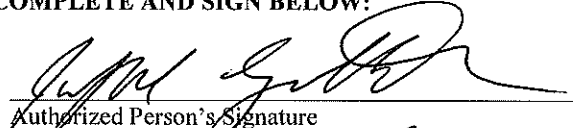
The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

**OSHA TRAINING**

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
- (2) All employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

**COMPLETE AND SIGN BELOW:**

  
Authorized Person's Signature

9-25-2019  
Date

JEAN-PAUL VANDERUTTE, DIRECTOR OF ENGINEERING  
Print Name & Title of Signatory

RISE ENGINEERING, a division of Thielsch Engineering, Inc.  
Name of Contractor



## Harwich Brooks Library EMS Proposal

**Date:** 8/28/2019

**Customer:** Town of Harwich

**ATTN:** Mr. Sean Libby

**Address:** 739 Main St, Harwich, MA 02645

NOTE: THIS CONTRACT MAY BE WITHDRAWN BY  
RISE IF NOT EXECUTED WITHIN 30 DAYS

AUTHORIZED SIGNATURE

DATE

  
\_\_\_\_\_

8/28/2019  
\_\_\_\_\_

# Energy Conservation Measure Proposal

## Reduction of Electric and Gas usage by Implementing DDC Controls

RISE Engineering is proposing to install and furnish a new DDC energy management system to control the buildings main HVAC equipment. The system will implement night setback, demand control ventilation and dual enthalpy controls.

### SCOPE OF WORK

- HW SYSTEM
  - Integrate the boiler through its communication card.
  - Integrate HW pump DDC via BACnet.
- CHW SYSTEM
  - Furnish and install Carrier driver and integrate the Aqua Snap chiller.
  - Integrate CHW pump DDC via BACnet.
- AIR HANDLING UNITS
  - Furnish and install DDC Controls for the two Air Handling Units. We shall provide
  - new temperature sensors and re-use existing electronic actuators/end-devices.
  - Provide humidity sensors for dual enthalpy control
  - Provide duct CO2 sensors for demand control ventilation
- OVERALL
  - Run new BACnet communication wire to controllers listed above.
  - Provide Talon Network Manager with remotely accessible web-based graphics.

### Notes and Clarifications:

- All work performed during normal working hours.
- Town of Harwich permits and inspections included.
- Prevailing wage rates and certified payroll included.

Total Installed Cost	\$ 53,525
Cape Light Compact	\$ (10,955)
National Grid	\$ (6,094)
Net Cost To Customer	\$ 36,476

1. Upon execution of this contract RISE Engineering will require a 30% down payment and balance upon invoicing.
2. Any defect in materials, design, or installation found within one (1) year of installation date will be remedied without charge and within a reasonable period of time.
3. All work to be completed in a workmanlike manner according to standard practices.
4. Contract cost includes any permit(s) required by law for this installation. Prior to, or during installation, RISE Engineering (at its sole discretion ) may choose not to proceed further with the installation for reasons relative to Safety or discovery of unforeseen conditions
5. Any change from the above specifications involving extra costs will be executed only on written orders, and will become an extra charge over and above the contract amount.
6. In the absence of alternate arrangements, disposal of disabled materials is the responsibility of the Customer.

- 7. This contract is subject to Utility company approval of any Utility program incentives incorporated herein. All applicable Utility program incentives shall be assigned to RISE ENGINEERING.
- 8. Pricing is valid for 30 days from above date.

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Acceptance of Contract – The above prices, Specifications and conditions are satisfactory and are the work as specified. Payments will be hereby accepted. You are authorized to do the work as specified. Payments will be made as outlined above.

**DATE OF ACCEPTANCE** \_\_\_\_\_

**SIGNATURE** \_\_\_\_\_





## CONSTRUCTION CONTRACT AGREEMENT

THIS AGREEMENT made this 25<sup>th</sup> day of September in the year Two Thousand and nineteen, between Rise Engineering, with a usual place of business at 1341 Elmwood Ave, Cranston, RI 02910, hereinafter called the CONTRACTOR, and the Town of Harwich, acting by its Board of Selectmen, with a usual place of business at 732 Street, Harwich, MA, hereinafter called the OWNER.

The CONTRACTOR and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Contractor shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as the Harwich Brooks Library EMS Project, in strict accordance with the Contract Documents and all related Drawings and Specifications. The said Documents, Specifications, Drawings and any GENERAL SUPPLEMENTARY CONDITIONS are incorporated herein by reference and are made a part of this Agreement.

2. Contract Price

The Owner shall pay the Contractor for the performance of this Agreement, subject to additions and deductions provided herein, in current funds, the sum of Thirty Six Thousand Four Hundred Seventy Six Dollars.

3. Commencement and Completion of Work and Liquidated Damages

It is agreed that time is of the essence of this Agreement. The Contractor shall commence and prosecute the work under this Agreement upon execution hereof and shall complete the work on or before April 1 2020.

- A. Definition of Term: The Term "Substantial completion" shall mean the date certified by the Owner when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the project, or designated portion(s) thereof, for the use for which it is intended.
- B. Time as Essential Condition: It is understood and agreed that the commencement of and substantial completion of the work are essential conditions of this Agreement. It is further agreed that time is of the essence for each and every portion of the Contract Documents wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under the Contract Documents any additional time is allowed for the completion of any work, the new time fixed by such extension shall be of the essence of this Agreement. It is understood and agreed that the times for the

completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

- C. Progress and Completion: Contractor shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure Substantial Completion within the stipulated number of calendar days.
- D. Liquidated Damages: It is expressly agreed between the Contractor and the Owner that the Contractor will be responsible for all damages which may arise due to the Contractor's failure to substantially complete the work within the above specified time. If the Contractor shall neglect, fail or refuse to complete the work within the specified number of days, or any extension thereof authorized by the Owner, Contractor agrees, as a part of the consideration for the execution of this Contract by the Owner, to pay the Owner the amount specified herein, not as a penalty, but as liquidated damages for such breach of contract as hereinafter set forth, for each and every calendar day, excluding Saturdays, Sundays and legal Holidays, that the Contractor shall be in default of Substantial completion after the date specified in the Agreement. Due to the impracticability and extreme difficulty of fixing and ascertaining the actual damages the Owner would in such event sustain, said amount is agreed to be the amount of damages which the Owner would sustain, and said amount shall be retained from time to time by the Owner from current periodic estimates. The amount of liquidated damages shall be 1% of the project per day.

4. Performance of the Work

- A. Direction of the Work: The Contractor shall supervise and direct the Work, using his best skills and attention which shall not be less than such state of skill and attention generally rendered by the contracting profession for projects similar to the Project in scope, difficulty and location. The Contractor shall maintain adequate supervisory personnel at the project site during the performance of the Work. He shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Agreement.
- B. Responsibility for the Work: (1) The Contractor shall be responsible to the Owner for the acts and omissions of his employees, Subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor. This obligation shall also extend to the presence on the Site of suppliers of materials or equipment, their employees, contractors, and agents engaged in the work.  
  
(2) The Contractor shall not be relieved from his obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor.
- C. Permits and Fees: Unless otherwise expressly provided, the Contractor shall secure and pay for all permits and fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the

Agreement and which are legally required at the time the bids are received, and the same shall at all times be the property of the Owner and shall be delivered to the Owner upon completion of the Project.

- D. Notices, Compliance With Laws: (1) The Contractor shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work. The Contractor shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Contractor all orders and requirements known to the Owner of any public authority particular to this Agreement.
- (2) If the Contractor observes that any of the Contract Documents are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification.
- (3) If the Contractor performs any Work which he knows or should know is contrary to such laws, ordinances, rules and regulations, and without such notice to the Owner, he shall assume full responsibility therefor and shall bear all costs attributable thereto.
- (4) In the performance of the Work, the Contractor shall comply with all applicable federal, state and local laws and regulations including those relating to workplace and employee safety. The Contractor shall notify the Owner immediately of any conditions at the place of the work which violate said laws and regulations and shall take prompt action to correct and eliminate any such violations.
- E. Project Superintendent: The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during the progress of the Work. The superintendent shall represent the Contractor and all communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be so confirmed on written request in each case.
- F. Progress Schedule: The Contractor, immediately after being awarded the Contract, shall prepare and submit for the Owner's information an estimated progress schedule for the Work. The progress schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.
- G. Drawings, Specifications and Submittals:
- (1) The Contractor shall maintain at the site for the Owner one record copy of all Drawings, Specifications, Addenda, Change Orders and other Modifications, and "As-Built" Drawings and Specifications in good order and marked currently to record all changes made during construction, and approved Shop Drawings, Product Data and Samples. These shall be delivered to the Owner upon completion of the Work.

(2) By approving and submitting Shop Drawings, Product Data and Samples, the Contractor represents that he has determined and verified all materials, field measurements, and field construction criteria related thereto, or will do so, and that he has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(3) The Contractor shall not be relieved of responsibility for any deviation from the requirements of the Contract Documents by the Owner's approval of Shop Drawings, Product Data or Samples unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submission and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Owner's approval thereof.

(4) The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data or Samples, to revisions other than those requested by the Owner on previous submittals.

(5) No portion of the Work requiring submission of a Shop Drawing, Product Data or Sample shall be commenced until the submittal has been approved by the Owner. All such portions of the Work shall be in accordance with approved submittals.

- H. Protection of the Work and Owner's Property: The Contractor shall at all times safely guard the Owner's property from injury or loss in connection with this Agreement. He shall at all times safely guard and protect his own work, and that of adjacent property from damage. The Contractor shall replace or make good any such damage, loss or injury. The Contractor shall clean the work area and restore it to its original condition upon completion of the work.
- I. Quality of the Work: The Contractor shall perform the work in a good, workmanlike manner. The Contractor hereby guarantees that the entire work constructed by him under the Agreement will meet fully all requirements thereof as to quality of workmanship and materials. The Contractor hereby agrees to make at his own expense any repairs or replacements made necessary by defects in materials or workmanship supplied to him that become evident within one (1) year after the date of the final payment, and to restore to full compliance with the requirements set forth herein any part of the work constructed hereunder, which during said one (1) year period is found to be deficient with respect to any provisions of the Contract Documents. The Contractor also agrees to hold the Owner harmless from claims of any kind arising from damage due to said defects. The Contractor shall make all repairs and replacements promptly upon receipt of written orders for same from the Owner. If the Contractor fails to make the repairs and replacements promptly, the Owner may do the work and the Contractor shall be liable to the Owner for the cost thereof.
- J. Warranty: The Contractor guarantees to Owner that all materials incorporated into the work will be new unless otherwise specified or agreed. Prior to final payment, the Contractor shall deliver to the Owner all manufacturers' warranties, together with such

endorsements or assignments as are necessary to ensure to the Owner the full rights and benefits of such warranties.

5. Affirmative Action/Equal Employment Opportunity

The Contractor is directed to comply with all applicable State Laws, Ordinances, Bylaws, and rules and regulations regarding affirmative action/equal employment opportunity requirements. Failure of the Contractor to comply with any such law, rule or regulation shall constitute grounds for the Owner to terminate the Agreement.

6. Site Information Not Guaranteed; Contractor's Investigation

All information given in the Contract Documents relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from the best sources at present available to the Owner. All such information is furnished only for the information and convenience of the Contractor and is not guaranteed.

It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures encountered during construction will be the same as those indicated in the Contract Documents.

Contractor has familiarized himself with the nature and extent of the Contract Documents, work, locality, and with all local conditions and federal, state, and local laws, rules, ordinances, and regulations that in any manner may affect costs, progress, or performance of the work. Contractor has made, or has caused to be made, examinations, investigations, and tests and studies of such reports and related data in addition to those referred to in the paragraph above as he deems necessary for the performance of the work at the Contract Price, within the Contract Time, and in accordance with the other Terms and Conditions of the Contract Documents; and no additional examinations, tests, investigations, reports, and similar data are or will be required by the Contractor for such purposes.

Contractor has correlated the results of all such observations, examinations, investigations, tests, reports, and data with the Contract Documents. Contractor has given the Owner written notice of all conflicts, errors, or discrepancies that he has discovered in the Contract Documents, and the resolution thereof by the Owner is acceptable to the Contractor.

It is further agreed and understood that the Contractor shall not use or be entitled to use any of the information made available to him or obtained in any examination made by him in any manner as a basis of or ground for any claim or demand against the Owner, arising from or by reason of any variance which may exist between the information made available and the actual subsurface conditions or other conditions or structures actually encountered during the construction work, except as may otherwise be expressly provided for in the Contract Documents.

7. Project Architect or Engineer

There is not a project architect-engineer for this project who is. Except as otherwise indicated in the Contract Documents, the Architect/Engineer shall be a representative of the Owner and the Contractor shall direct all communications, questions and comments on the work and the performance thereof to the Architect/Engineer. Except as otherwise provided, the Architect/Engineer shall have all the authority of the Owner set forth in the Contract Documents. In general, the Architect/Engineer shall have the authority to review the performance of the work, reject work which is defective or otherwise does not comply with the Contract Documents and to order the Contractor to remedy defective work and take such actions which are necessary to make the work conform to the Contract Documents.

8. Wage Rates

Prevailing Wage Rates as determined by the Commissioner of the Department of Labor and Workforce Development under the provisions of Massachusetts General Laws, Chapter 149, Section 26 to 27G, as amended, apply to this project. It is the responsibility of the Contractor to provide the Town with certified payrolls and to comply with all requirements of the above-cited statutes.

The schedules of prevailing wage rates are included in the Contract Documents.

9. Payments to the Contractor

Within fifteen (15) days after receipt from the Contractor of a proper and satisfactory periodic estimate requesting payment of the amount due for the preceding month, the Owner shall have fifteen (15) days to make payment for:

- A. The work performed during the preceding month.
- B. The materials not incorporated in the Work but delivered and suitably stored at the site (or at some location agreed upon in writing) to which the Contractor has title, or to which a Subcontractor has title and has authorized the Contractor to transfer title to the Owner.
- C. Less the following retention items:
  - 1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor.
  - 2. A retention for direct payments to Subcontractors, if any, based on demands for same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws.
  - 3. A retention not exceeding five percent (5%) of the approved amount of the periodic payment.

- D. After the receipt of a periodic estimate requesting final payment and within sixty-five (65) days after the Contractor fully completes the Work, or substantially completes the Work so that the value of the Work remaining to be done is, on the estimate of the Owner, less than 1% of the original Contract Price, or substantially completes the Work and the Owner takes possession or occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the Contract less:
1. A retention based on an estimate of the fair value of the Owner's claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work.
  2. A retention for direct payments to Subcontractors, if any, based on demands of same in accordance with the provisions of Section 39F of Chapter 30 of the General Laws, or based on the record of payments by the Contractor to the Subcontractors under this Contract if such record of payment indicates that the Contractor has not paid Subcontractors as provided in Section 39F of Chapter 30 of the General Laws.

If the Owner fails to make payment as herein provided, there shall be added to each such payment, daily interest at the rate of 3 percentage points above the rediscount rate than charged by the Federal Reserve Bank of Boston, commencing on the first day after said payment is due, and continuing until the payment is delivered or mailed to the Contractor; provided that no interest shall be due, in any event, on the amount of a periodic estimate for final payment until fifteen (15) days after receipt of such a periodic estimate by the Owner as provided in the first paragraph of this Article. The Contractor agrees to pay to each subcontractor a portion of any such interest paid in accordance with the amount due each subcontractor.

The Owner may make changes in any periodic estimate submitted by the Contractor and the payment due on said periodic estimate shall be computed in accordance with the changes so made, and such changes and any requirements for a corrected periodic estimate shall not affect the due date for the periodic payment or the date for the commencement of interest charges on the amount of the periodic payment computed in accordance with the changes made, as provided herein; provided further, that the Owner may, within seven (7) days after receipt, return to the Contractor for correction, any periodic estimate which is not in acceptable form or which contains computations not arithmetically correct, and in that event, the date of receipt of such periodic estimate shall be the date of receipt of the corrected periodic estimate in proper form and with arithmetically correct computations. The date of receipt of a periodic estimate received on a Saturday shall be the first working day thereafter.

- E. Changes in the Work: No changes in the work covered by the approved Contract Documents shall be made without prior written approval of the Owner. Charges or credits for the work covered by the approved change shall be determined by one or more, or a combination of the following methods:
- (a) Unit bid prices previously approved.
  - (b) An agreed lump sum.

- (c) The actual cost of:
  - (1) Labor.
  - (2) Materials entering permanently into the work.
  - (3) The ownership or rental cost of construction equipment during the time of use on the extra work.
  - (4) Power and consumable supplies for the operation of power equipment.
  - (5) Wages to be paid.

To the cost under (c) there shall be added a fixed fee to be agreed upon but not to exceed fifteen percent (15%) of the actual cost of work. The fee shall be compensation to cover the cost of supervision, overhead, bond, profit and any other general expenses.

- F. **Claims for Additional Costs:** If the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty days after the occurrence of the event giving rise to such claim. This notice shall be given by the Contractor before proceeding to execute the Work, except in an emergency endangering life or property. No such claim shall be valid unless so made. Any change in the Contract Sum resulting from such claim shall be authorized by Change Order.

The Contractor hereby agrees that the Contractor shall have no claim for damages of any kind against the Town on account of any delay in the commencement or performance of the work and/or any hindrance, delay or suspension of any portion of the work including, but not limited to, any claims or damages on account of having to perform out of sequence work, claims for damages on account of loss of production or other interference with the work whether such delay is caused by the Town or otherwise, except as and to the extent expressly provided under G.L. c.30, §390 in the case of written orders by the Town. The Contractor acknowledges that the Contractor's sole remedy for any such claim will be an extension of time as provided herein.

10. Final Payment, Effect

The acceptance of final payment by the Contractor shall constitute a waiver of all claims by the Contractor arising under the Agreement.

11. Contract Documents

The Contract Documents consist of the following, together with this Agreement:

~~Invitation to Bid~~  
~~Instructions to Bidders~~  
This Contract Form  
~~Bid Form~~  
~~Performance Bond~~



~~Labor & Materials Payment Bond~~  
~~Non-Collusion Certificate~~  
Tax Compliance Certificate  
~~Clerk's Certificate of Corporate Vote~~  
Certificate of Insurance  
~~General Conditions~~  
~~Supplementary General Conditions~~  
General Requirements  
~~Specifications and Addenda~~  
~~Contract Drawings~~  
Schedule of Prevailing Wages  
(Strike out any inapplicable item)

12. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

13. Indemnification

The Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the acts, errors, or omissions of the Contractor or his employees, agents, subcontractors or representatives.

14. Insurance

The Contractor shall purchase and maintain such insurance as will protect both the Owner and the Contractor from claims which may arise under the Agreement, including operations performed for the named insured by independent contractors and general inspection thereof by the named insured. In addition, the Contractor shall require its subcontractors to maintain such insurance. Coverage shall be provided for:

- 14.1.1 claims under workers' or workmen's compensation, disability benefit and other applicable employee benefit acts;
- 14.1.2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- 14.1.3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- 14.1.4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the Contractor, or (2) by any other person;

- 14.1.5 claims for damages, including damages to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and
- 14.1.6 claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- 14.1.7 claims involving contractual liability applicable to the Contractor's obligations under Article 13.

The limits of liability for coverage required under the preceding paragraph shall be as Specified herein.

- 14.2.1 General Liability of at least \$1,000,000 Occurrence/\$2,000,000 General Aggregate. The Municipality should be named as an "Additional Insured". Products and Completed Operations should be maintained for up to 3 years after the completion of the project.
- 14.2.2 Automobile Liability (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Municipality should be named as an "Additional Insured".
- 14.2.3 Workers' Compensation Insurance as required by law. Include Employers Liability Part B with a limit of \$1,000,000.
- 14.2.4 Builders' Risk Property Coverage for the full insurable value. It should include "All Risk" insurance for physical loss or damage including theft.
- 14.2.5 Property Coverage for materials and supplies being transported by the contractor, as the Town's Property Contract provides coverage for personal property within 1000 feet of the premises.
- 14.2.6 Umbrella Liability of at least \$10,000,000/occurrence, \$10,000,000/aggregate. The Municipality should be named as an "Additional Insured".
- 14.2.7 Architects and Engineers Professional Liability (applicable for any architects or engineers involved in the project) of at least \$2,000,000/occurrence, \$5,000,000 aggregate.

Except for Workmen's Compensation, all liability coverage shall name the Town as an additional insured and shall provide for 30 days prior written notice to the Town of any modification or termination of coverage provided thereby. The Contractor shall provide the Owner with appropriate certificate(s) of insurance evidencing compliance with this provision prior to the commencement of any work under this Agreement.

15. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

16. Termination

- A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.
- B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Contractor. In the event that the Agreement is terminated pursuant to this subparagraph, the Contractor shall be reimbursed in accordance with the Contract Documents for all Work performed up to the termination date, and for all materials or equipment not incorporated in the Work, but delivered and suitably stored at the site. Payment for material or equipment stored at the site shall be conditioned upon submission by the Contractor of bills of sale or such other evidence as is satisfactory to Owner to establish the Owner's title to such material or equipment or otherwise protect the Owner's interests.

17. Miscellaneous

- A. **Royalties and Patents:** The Contractor shall pay all royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified; but if the Contractor believes or has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner, and thereafter the Owner insists on the use of the design, process or products specified.
- B. **Assignment:** The Contractor shall not assign or transfer any of its rights, duties or obligations under this Agreement without the written approval of the Owner.
- C. **Governing Law:** This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.
- D. By its signature hereon, the Contractor certifies, under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

[Remainder of page intentionally blank.]

AGREED:

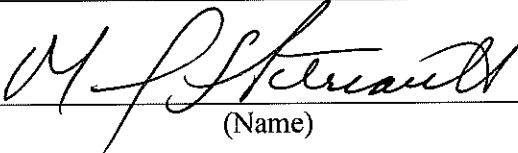
**TOWN OF HARWICH, MASSACHUSETTS**  
(Owner)

By its Board of Selectmen over \$25,000

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CONTRACTOR: RISE ENGINEERING

By MICHAEL STETREAU

  
\_\_\_\_\_  
(Name)

CONTROLLER  
\_\_\_\_\_  
(Title)

1341 ELMWOOD AVE  
\_\_\_\_\_  
(Address)

CRANSTON, RI 02910  
\_\_\_\_\_  
(City and State)

By its Town Administrator under \$25,000

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In accordance with G.L. c.44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefore and that the Town Administrator has been authorized to execute the contract and approve all requisitions and change orders.

By \_\_\_\_\_  
(Owner's Accountant)

\_\_\_\_\_  
(Name)

By Town Administrator and Chief Procurement Officer

\_\_\_\_\_

CERTIFICATE OF VOTE

(to be filed if Contractor is a Corporation)

I, \_\_\_\_\_, hereby certify that I am the duly qualified  
(Secretary of the Corporation)

and acting Secretary of \_\_\_\_\_ and I further certify that a meeting of the

(Name of Corporation)

Directors of said Company, duly called and held on \_\_\_\_\_, at which  
(Date of Meeting)

all Directors were present and voting, the following vote was unanimously passed:

VOTED: To authorize and empower

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Anyone acting singly, to execute Forms of General Bid, Contracts or Bonds on behalf of the Corporation.

I further certify that the above vote is still in effect and has not been changed or modified in any respect.

By: \_\_\_\_\_  
(Secretary of Corporation)

A True Copy:

Attest: \_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_  
(Date)

**CERTIFICATIONS REQUIRED BY LAW  
FOR PUBLIC CONSTRUCTION CONTRACTS**

You must **COMPLETE** and **SIGN** the following certifications. You must also print, at the bottom of this page, the name of the contractor for whom these certifications are submitted.

**TAX COMPLIANCE**

Pursuant to Chapter 62C of the Massachusetts General Laws, Section 49A(b), I, the undersigned, authorized signatory for the below named contractor, do hereby certify under the pains and penalties of perjury that said contractor has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

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**NON-COLLUSION**

The undersigned certifies under the penalties of perjury that this bid is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this subsection the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.

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**PUBLIC CONTRACTOR DEBARMENT**

The undersigned certifies under penalty of perjury that the below named contractor is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

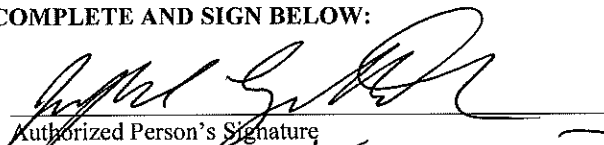
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**OSHA TRAINING**

Pursuant to G.L. c. 30, §39S, the Contractor hereby certifies under penalties of perjury as follows:

- (1) Contractor is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed in the work;
- (2) All employees to be employed at the worksite will have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work and they shall furnish documentation of successful completion of said course with the first certified payroll report for each employee; and
- (3) All employees to be employed in the work subject to this contract have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration.

**COMPLETE AND SIGN BELOW:**

  
Authorized Person's Signature

9-25-2019  
Date

JEAN-PAUL VANDEPOTTE, DIRECTOR OF ENGINEERING  
Print Name & Title of Signatory

RISE ENGINEERING, a division of Thielsch Engineering, Inc.  
Name of Contractor



## Patti Macura

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**From:** Christopher Clark  
**Sent:** Wednesday, October 02, 2019 9:17 AM  
**To:** Gail Sluis  
**Cc:** toneill@oneilandassoc.com; rich400east@gmail.com; Larry Ballantine; Ed McManus; Patti Macura; Joe Powers  
**Subject:** RE: 400 East re Firehouse Lease

Hi Gail,

I just wanted to follow up with you on your request. Selectmen McManus has informed me of your interest in this site. I have had discussions with the Chair of the Board of Selectmen Larry Ballantine. I believe that he will schedule the item for discussion. State Law has a process that the Town will need to follow if the Board wants to convert the use from Town use to Lease. The current plan is to demolish the building as part of the Fire Station 2 project. We can put that on hold while the Board of Selectmen decide if they want to keep the building and then if they want to lease it out. State Law requires if the building is leased for a competitive process to be used. This is referred to as a Request for Proposals or Invitation for Bid. If the Board decides to sell the land, the additional step of Town Meeting action will also be needed to dispose of the property. If you visit our website you can sign up for Selectmen Agendas to be sent to you automatically and you can attend. We generally post on Thursday for a Monday night meeting.

If you have any questions or concerns, please do not hesitate to contact me at the office 508.430.7513 or via cell at 774.437.2054.

Chris Clark  
Town Administrator  
-----Original Message-----

From: Gail Sluis [mailto:gobsus@comcast.net]  
Sent: Monday, September 16, 2019 10:49 AM  
To: Christopher Clark <cclark@town.harwich.ma.us>  
Cc: toneill@oneilandassoc.com; rich400east@gmail.com  
Subject: 400 East re Firehouse Lease

Good morning Christopher

Allow me to introduce myself. I'm Gail Sluis, principle owner of the 400 East Restaurant in East Harwich. It has recently come to our attention that there is the possibility of a town lease on the old firehouse in East Harwich and accompanying land after the sewer line and utilities companies are done renting the space. It is of great interest to us as we currently have another 5 years on our lease in the plaza. Understanding the utilities will have the lease for the next 2-3 years that gives us ample time to design our vision and start construction when their lease is through.

I'm in touch with a couple of surveyors and engineers. Trying to nail them down to come walk the property with me and determine if we will have enough space for the building and parking. We ideally would like to move our current business to that location when our lease is up but if the lot cannot handle the capacity we are looking for (seating 120-150) then we would still be interested in pursuing the lease from the town perhaps creating a smaller venue... an off shoot of our current business. Music, bar, outdoor space, indoor space for dining and smaller gatherings. We have even talked about the possibility of a brewery.

We would appreciate the opportunity to be considered for this lease and I will do my best to try to get a surveyor and engineer out there ASAP to ensure that our vision is doable.

Thank you for your time. Looking forward to hearing from you.

Sincerely  
Gail Sluis