

TOWN OF EASTON

MASSACHUSETTS



REQUEST FOR PROPOSALS

PROPOSALS SHALL BE SUBMITTED
PRIOR TO 4:30 PM ON
October 31, 2011

FOR

LEASE OF REAL PROPERTY
FOR CONSTRUCTION, OPERATION & MAINTENANCE OF RENEWABLE ENERGY
FACILITIES

Large Scale Ground Mounted Solar Photovoltaic Installation

David A. Colton
Town Administrator/Chief Procurement Officer
Easton Town Offices
136 Elm Street
No. Easton, MA 02356

PART 1 – GENERAL PROPOSAL INFORMATION

1.1 Notice

The Town of Easton, acting through its Board of Selectmen, hereby seeks competitive bids for the lease of Town-owned real property to design, permit, construct, own and operate a commercial or utility class Large Scale Ground Mounted Solar Photovoltaic Installation (“Installation”) and associated equipment for the purpose of creating renewable electrical energy. The Town will consider an option to enter into a power purchase agreement to purchase energy created by the proposed Installation. The lease shall be for a maximum term of twenty (20) years.

The Request for Proposals is available via email from the Office of the Town Administrator / Chief Procurement Officer, David Colton. To be considered, proposals must be received before 4:30 PM on October 31, 2011, at which time all proposals will be opened in public and a Register of Proposals prepared. The Town of Easton reserves the right to reject any or all proposals. MGL Chapter 25A shall govern all procedures related to energy management services and the lease of the real property, as applicable.

The Town is seeking the most beneficial proposal combining highest annual lease payment and energy pricing discount, *or combination of both*, which provides the best overall value to the Town. The best value will be determined though a combination of the proposed lease payment and energy pricing as well as the proposer’s qualifications, experience, and financial capabilities as determined by the Town.

1.2 Invitation

The Town of Easton, Massachusetts seeks competitive proposals for the lease of certain Town-owned real property at the capped Landfill located at 114 Prospect Street, Easton, Massachusetts together with a non-exclusive easement for reasonable access for the purpose of designing, permitting, constructing, installing, owning, operating and maintaining a Large Scale Ground Mounted Solar Photovoltaic Installation and associated equipment (collectively hereinafter the “Installation”).

1.3 Proposal Submission Requirements

To be considered, a proposal must be received before 4:30 PM on October 31, 2011, by the office of the Town Administrator. Late proposals will be returned unopened. An original and three (3) copies of the Proposal shall be placed in a sealed envelope marked on the outside as “Request for Proposals: Lease of Real Property for Construction of Renewable Energy Facilities - Large Scale Ground Mounted Solar Photovoltaic Installation” and delivered to:

David Colton, Town Administrator/Chief Procurement Officer
Easton Town Offices
136 Elm Street
No. Easton, MA 02356

1.4 Schedule

Issue Request For Proposals	September 6, 2011
Preproposal Conference and Site Tour	September 19, 2011
Close solicitation	October 31, 2011
Board of Selectmen select Developer	November 14, 2011

1.5 Preproposal Conference and Site Tour

There will be one tour of available site to be held on September 19, 2011. The site tour will start at 10 A.M. and end no later than 12 P.M. Transportation will not be provided to the site. Vendors are encouraged, but are not required, to attend the tour of the site.

1.6 Addenda and Explanations

Explanations desired by a Vendor may be requested of the Town in writing no later than September 23, 2011 at 4:30P.M. (EST). If explanations are necessary, a reply shall be made in the form of an addendum. A copy of any and all addenda will be forwarded to all prospective vendors identified from the Vendor Contact Information Form.

Requests for clarification can be submitted to Brad Washburn, Planning Director, by fax at (508) 230-0609 or by email at bwashburn@easton.ma.us. The Town takes no responsibility for faxes or emails that are not received and suggests that those making the request confirm the receipt of any such request.

1.7 Amendment and/or Cancellation of the RFP

If this RFP requires an amendment, written notice of the amendment will be given to all prospective vendors identified from the Vendor Contact Information Form. Receipt of amendments must be acknowledged in writing by prospective vendors to Mr. David Colton, Town Administrator. Acknowledgment by facsimile or e-mail is permitted. The Town reserves the right to modify, amend or cancel this RFP if the Town determines, that it is in the best interest of the Town(s) to do so.

1.8 Disclosure of Proprietary or Confidential Information

Vendors must specifically identify those portions of their proposals, if any, which they deem contain confidential or proprietary information or trade secrets and must provide justification why such materials should not, upon request, be disclosed under a public records request, including the proper citations to the law supporting the exclusion from the mandatory disclosure under the Public Records Law of Massachusetts, M.G.L. Chapter 66.

1.9 Incurred Expenses

The Town is not responsible for any expenses that Vendors may incur in preparing and submitting proposals. All materials and documents submitted in response to this solicitation become the property of the Town and will not be returned.

1.10 Conditions

Each Vendor shall become fully acquainted with conditions relating to the scope and performance of the work under the contract. Vendors shall thoroughly examine and be familiar with the specifications.

The failure or omission of any Vendor to receive or examine the form, instrument, addendum, or other documents, or to be acquainted with existing conditions, shall in no way relieve the Vendor of any obligations with respect to this RFP or to the contract. The Town shall make all such documents available to Vendors upon request.

The Vendor shall make a determination as to conditions and shall assume all risk and responsibility and shall complete the work in and under conditions they may encounter or create, without extra cost to the Town.

1.11 Disqualification of Vendor

Although not intended to be an exhaustive list of causes for disqualification, any one or more of the following causes, among others, may be considered sufficient for the disqualification of a Vendor and the rejection of a bid:

- a) evidence of collusion among Vendors;
- b) questions of lack of competency as revealed by either experience or financial statements;
- c) default on a previous contract for failure to perform.

1.12 Withdrawal of Offer

At any time prior to the solicitation due date and time a Vendor may withdraw their proposal by submitting a written request signed by a duly authorized representative. Withdrawals may be submitted via postal mail or special delivery service (i.e. Fed Ex, UPS, etc.) with a return receipt or signature required to indicate receipt of the withdrawal request.

1.13 Licenses

If required by law for the operation of the business or work related to this RFP, the Vendor and all sub-contractors must possess at the time of submittal all valid certifications and/or licenses as required by federal, state, and local laws.

1.14 Security Deposit/Bid Bond

All proposals shall include a Security Deposit of five thousand dollars (\$5,000.00) in the form of a certified, cashier's or bank check. The Security Deposits shall be returned upon the execution of the lease by the Town and the successful proposer.

1.15 Nondiscrimination

The Selected Vendor shall not discriminate against any person because of race, gender, age, disability, ancestry, religion, national origin, sexual preference, veteran status, or political affiliation or belief.

1.16 Project Proposal

The proposal shall include the following:

- a) a letter of intent outlining the proposer's interest in this project and the qualifications of the proposer to perform the scope of services;
- b) a clearly defined plan of services for completion of the project including a description of the proposer's internal operations, its management systems, a list of personnel with an organizational chart, and the names and qualifications of all personnel who will be

assigned to the project. The plan of services shall include a description of the manner in which the proposer will fulfill the project, a schedule for completion of the scope of services with detailed timelines, a description of anticipated operation and maintenance services, and a discussion of financial capability to complete the project on schedule;

- c) resumes of the key individual(s) who will lead the project and listing of projects of similar nature performed by the proposer including contact names and current telephone numbers;
- d) signed disclosure of beneficial interests, non-collusion, and tax compliance certificate. (Form attached).
- e) Completed bid form, as described below.

1.17 Bid Form

The Proposer shall indicate the following on the Bid Form:

- a) the highest annual lease payment that the Proposer will pay the Town of Easton for the right to lease space at the project site to design, permit, construct, own, operate, and maintain the Installation and/or the energy price to the Town.
- b) the lowest cost of electrical energy (price/kWh) the Proposer is willing to provide the Town in a Power Purchase Agreement for a term of twenty (20) years and estimated annual energy production.
- c) the Proposer may also propose a lower energy cost in lieu of an annual lease payment.

1.18 Selection Methodology

The Town will review and rank the submitted proposals using the evaluation criteria found in Section 1.19. The Town reserves the right to award the contract to the developer with the most advantageous proposal, taking into consideration all project evaluation criteria as well as energy price and production capacity.

The opening of the sealed envelopes shall not be construed as an acceptance of the Vendor's qualifications. The Town reserves the right to determine the competence and responsibility of a Vendor from its knowledge of the Vendor's qualifications or from other sources.

1.19 Evaluation Criteria

Proposals will be evaluated according to the following criteria:

- a) Completeness: Proposal completeness and adherence to format. Substantial conformity with the specifications and other conditions set forth in the request for qualifications.
- b) Experience: The firm's experience in designing, financing constructing and operating the Installation including, references of other contracts performed by the qualified providers.
- c) Project Team: The experience and quality of project personnel and the commitment of them to the proposed project.
- d) Certification: Department of Capital Asset Management (DCAM) Certificate of Eligibility (DCAM Form CQ7) and Update Statement (DCAM Form CQ3)
- e) Means and Methods: Methodology, including measurement and verification strategy of determining electricity generation
- f) Schedule: Time specified in the proposal for the performance of the contract.
- g) Responsibility: Documentation evidencing that the Developer is responsible, demonstrably possessing the skill, ability and integrity necessary to faithfully perform the

work called for by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with the provisions of section 44D of chapter 149.

- h) Bid Amount: A purchase option which optimizes all available incentives and provides the greatest value to the Town including with the highest annual lease payment for the right to develop and operate an Installation on site.

PART 2 – SCOPE OF WORK

2.1 PROJECT SPECIFICATIONS

1. The Town will lease a parcel of land located at Assessor's Map 16R Lot 17, to a Large Scale Ground Mounted Solar Photovoltaic Installation energy developer ("developer" or "selected firm") for the purpose of constructing and operating the Installation. The parcel (Exhibit 1) includes approximately 8.2 acres of land; however, the amount leased will be determined in negotiation with the Selected Firm.
2. The developer shall attend periodic meetings to discuss the project, provide progress updates, and make presentations to boards and committees as required. Some meetings may be conducted outside of normal business hours. All travel and related expenses for this project are to be included in the Proposer's offer.
3. The Developer will be required to meet all local planning and zoning requirements (Exhibit 4) and will be responsible for all permits, taxes, and related costs.
4. Upon execution of the Net Metering Power Sales Agreement and Lease, the developer shall be required to post a bond or letter of credit with a minimum rating of "A-" with the Town in the amount of \$250,000.00 to ensure proper removal of the equipment in the event of default, bankruptcy or dissolution of the developer which causes the equipment to be abandoned for a period of more than six (6) months.
5. If applicable, Lease payments shall begin accruing upon the execution of the Net Metering Power Sales Agreement and Lease. A quarterly payment shall be made in advance of each quarter.
6. Concurrent with the filing of the building permit application, the Developer shall submit a report by a qualified professional engineer or other appropriate professional who shall certify the structural integrity of the proposed Installation.
7. The developer shall enter into an Net Metering Power Sales Agreement and Lease substantially in the form attached hereto as Exhibit 3 to the Town for a term up to 20-years. Said Agreement shall be for the lease of the Property and the provision of electricity as a result of the Installation.
8. The successful Developer will be required to indemnify and hold harmless the Town of Easton for any damage to life or property that may occur due to its negligence or that of its employees, contractors, subcontractors (if any) or agents. Further, the Developer will maintain commercial general liability insurance with limits of not less than two million dollars (\$2,000,000.00) per occurrence, four million dollars (\$4,000,000.00) in the aggregate, which policy will name the Town as an additional insured.
9. All contracts for construction of the Installation shall be provided to the Town prior to the issuance of the building permit. The Town reserves the right to request that said contracts be assignable in the event of dissolutionment of the Developer.
10. The work performed as a result of this RFP will be conducted on a capped landfill under the control of the Town of Easton but subject to DEP permits. In accordance with such permits, the Town must undertake periodic monitoring of the landfill. Any and all work

performed as a result of this RFP must accommodate all required testing including but not limited to access to all monitoring sites and wells.

11. The successful Developer will be required to file an application for BWP-SW36 Post Closure Use Major Modification for construction of the Installation on the landfill. The application and accompanying documents shall stipulate requirements for the repair and resoration of the landfill cap around the turbine foundation. These requirments, as well as any conditions set by DEP shall be the responsibility of the bidder.
12. The protection of the landfill cap is of the utmost importance to the Town. The Town is ultimately responsible for the integrity of the cap in accordance with DEP permits. Accordingly, the successful Developer will propose an Installation in which the individual components do not puncture the landfill cap.

2.1. Requirements

See Attachment 1.

- END -

BID FORM

(Please note that Sections A, B, and C are required. The Proposer may propose a reduced energy cost in Section C in lieu of an annual lease payment in Section A. The Proposer may also submit alternative cost/lease proposals. This Form and any attachments must be placed in a separate envelope from the Project Proposal and marked "Bid Form.")

- A. The undersigned proposes to lease town owned land (as described below) located at Assessor's Map 16R Lot 17, Easton, MA to construct, operate, and maintain a Large-Scale Ground-Mounted Solar Photovoltaic Installation and associated equipment (as described below) ("Installation") and pay the Town of Easton:

Annual lease payment of \$_____ per year.

This payment will be increased by _____% per year for a period of 20 years.

- B. The undersigned proposes to construct and operate the following:

Proposed Installation*:_____

Nameplate capacity (kW)_____

Estimated average annual energy production _____(MWh/year)

Guaranteed annual energy production _____ (kWh/year)

**The Proponent shall provide the following basic hardware information in the proposal and a schematic showing the placement of the hardware on the site.*

The information is to include:

Panels:

- *Manufacturer*
- *Model number*
- *Module wattage*
- *Panel count*
- *Array tilt*
- *Warranty information*

Inverters:

- *Manufacturer*
- *Model number*
- *Number and size to be installed*
- *String size and quantity*
- *Warranty information*

Mounting system:

- *Specify system of array anchoring/ballasting. The mounting system must not puncture the landfill cap.*

The Proponent is to provide a target schedule using Day 0 as day contract/easement is signed and completing the following:

<i>Contract signature date</i>	<i>0</i>
<i>Permitting begins</i>	<i>0 + _____ days</i>
<i>Final design plans complete</i>	<i>0 + _____ days</i>
<i>Equipment ordered</i>	<i>0 + _____ days</i>
<i>Construction begins</i>	<i>0 + _____ days</i>
<i>Electrical generation begins</i>	<i>0 + _____ days</i>

C. Power Purchase Agreement

Bidder offers to sell the Town energy from the Installation over a term of twenty (20) years, at the following rate:

Year 1 _____ \$/kWh

Annual Escalation _____ % per year

Name of Vendor: _____

Description of Proposed Lease Area:

The Town will lease a parcel of land located at Assessor's Map 16R Lot 17 (the "Parcel"), to a solar energy developer ("Developer" or "Selected Firm") for the purpose of constructing and operating a Large-Scale Ground-Mounted Solar Photovoltaic Installation. The Parcel includes approximately 8.2 acres of land; however, the amount leased will be determined through negotiation with the Selected Firm.

CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this Certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity or group of individuals.

Signature

Date

+++++

CERTIFICATION AS TO COMPLIANCE WITH TAX LAWS

I, the duly authorized representative of _____ certify under the pains and penalties of perjury that said _____ has complied with all laws of the Commonwealth of Massachusetts relating to taxes.

Signature

Date

+++++

DISCLOSURE OF BENEFICIAL INTERESTS

The undersigned certifies under penalties of perjury that this proposal for a Large Scale Ground Mounted Solar Photovoltaic Installation has been made and submitted with the below as required by Chapter 7, Section 40J of the General Laws of Massachusetts. The following names and addresses represent all persons who have or will have a direct or indirect beneficial interest in parcel _____ if the Town of Easton offers to lease a portion of the parcel to the undersigned:

Name

Address

Signature

Date

REQUIREMENTS

1. General

The Town of Easton seeks the installation of a modern, cost-effective, Large-Scale Photovoltaic Ground-Mounted Solar Facility.

The contractor performing the work will be required to adhere to a ground pressure performance standard in order to ensure that the crane and all other construction equipment do not exert ground pressures that would induce localized settlement within the construction area.

1. Other Required Items

- a) Evidence of bond capability of at least the value of construction from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570. Please provide the cost or fee your firm will charge for the performance and payment bonds as a percentage of the construction costs.
- b) Form of legal entity and year entity was established.
- c) Describe any changes in ownership status over the past ten (10) years.
- d) Other entity names, if any.
- e) Ultimate parent company, if applicable.
- f) Federal Tax Identification Number for Developer
- g) Financial Statements. Please submit a detailed financial report prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the Developer. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding three years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10-K along with, as applicable, detailed unaudited statements for the Submitting Entity. Non-public entities may attach either unaudited financial statements or copies of tax forms and schedules that are filed with the Internal Revenue Service where applicable.
- h) Performance Guarantee. Describe the form of guarantee that the Developer will be providing in respect of the Project, and its associated cost. If a corporate guarantee backstop by a parent company or credit enhancement by a financial institution is anticipated, please provide a letter from the parent company or financial institution, indicating that such credit enhancement is available, the terms of such credit enhancement and the credit rating of the guarantor.
- i) Lawsuits and Disputes. Discuss whether your firm has ever been involved in a lawsuit or dispute regarding a contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit or litigation. Further, please discuss whether your firm has been barred from providing performance contracting or other services in any states.

2. General Reputation and Performance Capabilities

- a) Describe the general reputation and performance capabilities of the firm and explain how these characteristics translate to optimizing results for the Awarding Authority.
- b) Provide the number of years Developer has been engaged in providing like services.
- c) Describe the experience the Developer has had with municipalities, particularly in the Northeast and specifically in Massachusetts. Developer shall demonstrate by example its experience constructing and operating Large Scale Photovoltaic Ground Mounted Solar Facility similar to the facility included in this RFP. Please list at least five (5) examples of similar projects in the Northeast, and if possible, specifically in Massachusetts.
- d) Provide the number of projects and aggregate dollar value of projects implemented by Developer each year for the past five (5) years, including the value of the guarantees related to such projects and any shortfall in savings related to such projects.
- e) Provide the number of full-time personnel employed by the Developer. Please segment the data, as appropriate, into categories of personnel providing services, Operations/Maintenance Services and Equipment Installation Services.
- f) Provide the number of full-time personnel located in any applicable local or branch office to be utilized for the (Awarding Authority)'s project, and the site address of that local or branch office.

3. Experience and Project References

- a) Fully describe five (5) contracts that Developer has implemented within the last five (5) years. Provide a table summarizing Developer's projects and indicate the services performed in connection with each. A table similar to the following would be preferred:

<u>Project name/ type of property</u>	<u>Yr</u>	<u>Location</u>	<u>Services</u>						
			<u>Study</u>	<u>Financ'g</u>	<u>Constr.</u>	<u>Monitor</u>	<u>G'tees</u>	<u>Technology</u>	<u>Other</u>

- b) Identify similar projects in type, size or scope to the facility described in this RFP.
- c) Identify projects that have been managed by individuals who Developer anticipates will be assigned to this project. Discuss the level of technical/economic expertise of the staff. Provide resumes of the project team members and indicate which branch office each project team member is assigned. For each project team personnel, please list the current projects such employee is currently involved with and the status of the project. Please provide an organizational chart.

- d) Provide detailed project information for all five (5) including: customer name, project dates, total project cost at proposal stage, total final project cost, projected annual electricity generation, actual realized annual cost savings to date, and any annual savings shortfalls. Developer must also indicate whether the project was completed on schedule and on budget, and if not, explain the reasons for such delay or budget noncompliance.

Project name/type of property
Brief description of property
Years started and ended
Location
Total installed project costs
Source of funds
Services provided
Performance guarantee model
Owner
Designer or Engineer
Electric generation units and dollars for each project
Actual savings or shortfalls in generation and dollars for years to date
Developer's comments and other pertinent information
Owner's contact(s) name, address and telephone number

- e) Provide a strategy for measuring and verifying electricity generation.

Provide references for the Developer and references for each key person proposed in the submittal to be part of the project team, including the proposed role for each such individual. Please include the names, addresses, email addresses and telephone numbers for reference. It is understood that the Town may contact any or all references provided regarding the project and personnel performance as part of the RFP submittal review process.

5. Construction and Commissioning

- a) State Developer's proposed construction schedule.
- b) Discuss Developer's project management protocols to ensure schedule adherence, including willingness to post liquidated damages for delays and performance shortfalls.
- c) Describe Developer's reporting and client liaison protocols to be employed throughout the construction process.
- d) Discuss the role Developer takes in managing and supervising subcontractors, including but not limited to the work performed during occupied and unoccupied times.
- e) Describe Developer's approach to handling construction debris, recycling, and disposition.
- f) For any design work conducted by third-party experts, please identify whether Developer takes engineering risk including stamping engineering submittals.

The Selected Firm shall be responsible for completing an application for Building, Electrical and Interconnection as required. The successful bidder shall be responsible for complying with all conditions set in all permit approvals. This includes the Department of Environmental Protection permit(s) which describe protection of the landfill cap. The Selected Firm will be responsible for

obtaining a building permit, electrical permit, and any permits necessary for completion of the project that have not already been obtained by the Town. The Selected Firm is responsible for ensuring that the construction and operation of the Installation shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, environmental, electrical, communications, and zoning requirements.

6. Methodology of Determining and Guaranteeing Electricity Generation

M.G.L. c.25A, §11C requires that methods for monitoring, measurement, and verification of guaranteed electricity generation shall conform to the most recent Performance Measurement & Verification Protocol (IPMVP) and standards established by the Federal Energy Management Program of the U.S. Department of Energy.

Describe in detail the firm's methodology for monitoring, measuring and verifying electricity generation and explain how this approach will minimize risk and maximize return for the Town over the course of up to 20 years.

7. Power Generation

- a) Describe Developer's experience in analysis, design, installation and follow-up services of power generation facilities.
- b) Describe size and type of system, economic and physical connection with the grid, cogeneration and other pertinent information, installation requirements, fuel proposed and commodity agreements, if any, regulatory parameters which may impact the system or which, if changed, could impact the system, follow-up services and other pertinent information.
- c) Provide specifications for equipment and materials proposed including brand, model numbers, manufacturer's specification sheets, warranties and related information.
- d) Describe the potential for a web based interactive component of the electric generation.

8. Service and Maintenance

In your responses to the following, include a description of Developer's experience with ensuring that equipment warranties and maintenance records are maintained and the requirements of the performance guarantee for generation is met.

- a) Describe Developer's capability to provide ongoing service and maintenance.
- b) Provide the numbers of accessible truck based service and maintenance professionals and describe their level of training and experience.

ELECTRICITY DATA

Energy consumption data required under 225 CMR 10.03(1)(a)(6):
[insert energy consumption data]

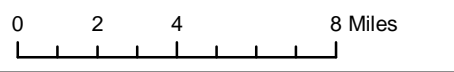
EXHIBIT 1

Site Location Map



Site Location Map: Town of Easton Closed Landfill

Assessor's Parcel: 16R-17
Address: 114 Prospect Street



This GIS map was created using various sources and is meant for reference and illustrative purposes. This map is not a substitute for more precise engineering and surveying processes.


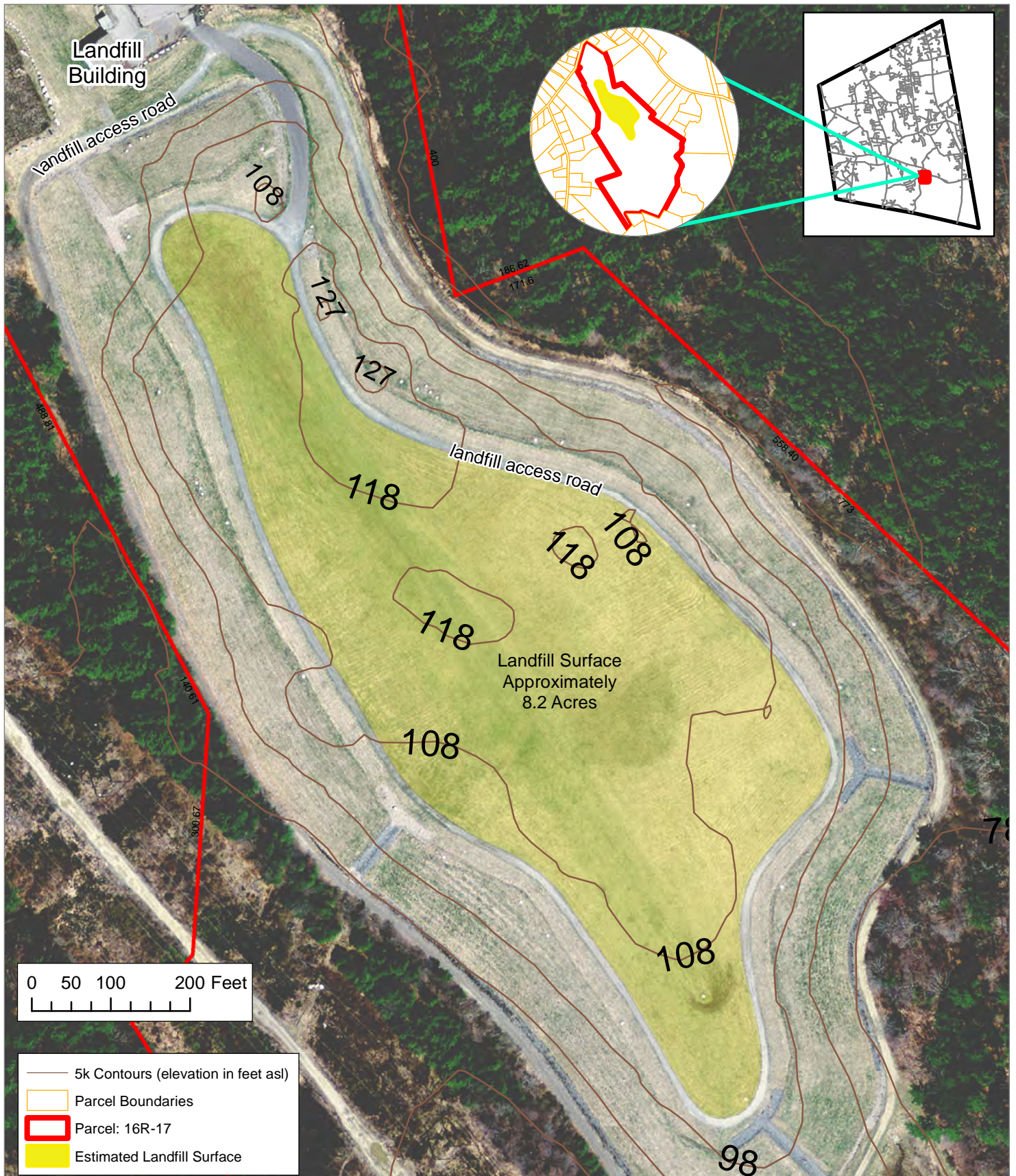
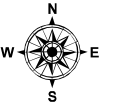
 Parcel: 16R-17

EXHIBIT 2

Allowable Area for Installation Construction



Allowable Area For Installation Construction: Town of Easton Closed Landfill



This GIS map was created using various sources and is meant for reference and illustrative purposes. This map is not a substitute for more precise engineering and surveying processes.

EXHIBIT 3

Draft Power Purchase Agreement & Lease

NET METERING POWER SALES AGREEMENT

This Net Metering Power Sales Agreement ("**Agreement**") is entered into this ____ day of _____, 20__ (the "**Effective Date**") and is by and between _____, as seller ("**Seller**"), and the Town of Easton, a municipal corporation having its principal office at 136 Elm Street, North Easton, Massachusetts, as buyer ("**Buyer**"). In this Agreement, Seller and Buyer are sometimes referred to individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, Buyer owns the real Property located at _____, Easton, Massachusetts (the "**Property**");

WHEREAS, Buyer desires to purchase solar-generated electricity for use by Buyer, and proposes to lease a portion of the Property (the "**Premises**") to facilitate the development and operation of a solar power electric generation facility ("the Solar Energy Facility");

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar power electric generation facilities;

WHEREAS, Seller proposes to finance, install, own, operate and maintain the Solar Energy Facility on the Premises;

WHEREAS, Buyer proposes to lease to Seller the Premises to allow Seller to construct, operate, maintain and remove the Solar Energy Facility on the Premises; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, all of the Net Energy generated by the Solar Energy Facility during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

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

ARTICLE 1 DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, 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.

"Affiliate" means, with respect to Seller, (i) each Person that, directly or indirectly, controls or is controlled by or is under common control with Seller; (ii) any Person that beneficially owns or holds ten percent (10%) or more of any class or voting securities of Seller or ten percent (10%) or more of the equity interest in Seller; or (iii) any Person of which Seller beneficially owns or holds ten percent (10%) or more of the equity interest. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of Seller, whether through the ownership of voting securities or by

ATTACHMENT D1

contract or otherwise.

"Applicable Legal Requirements" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party's rights and obligations hereunder, including, without limitation, the construction, operation, ownership, maintenance, repair, decommissioning and removal of the Solar Energy Facility, as well as the selling and purchasing of power from the Solar Energy Facility.

"Appraised Value" means the fair market value assigned to the Solar Energy Facility, the Environmental Attributes, and any other power sales agreements, emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements to which Seller is a party and which are not subject to contractual limitations on assignment or which may reasonably arise from the ownership and operation of the Solar Energy Facility, as determined by the Independent Appraiser (collectively, the **"Assets"**).

"Assets" has the meaning set forth in the definition of Appraised Value.

"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 Date" means the date on which the results of testing indicate that the Photovoltaic Energy Facility is capable of generating electric energy for four (4) continuous hours, using such instruments and meters as have been installed for such purposes, and the interconnection to the local electrical grid and all review and approvals have been provided by the applicable local electric utility, the applicable local electric utility has provided Seller with permission to operate the Photovoltaic Energy Facility and Seller has provided written notice to Buyer to that effect, but in no event later than the Commercial Operation Deadline.

"Commercial Operation Deadline" means the date which is three hundred and sixty-five (365) days after the Effective Date of this Agreement provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure, breach of this Agreement by Buyer, occurring after the Effective Date and prior to the Commercial Operation Date.

"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 to accomplish the desired result consistent with reliability, safety, expedition, project economics and applicable law and regulations in the southern New England region. The term "Commercially Reasonable" 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.

"Confidential Information" means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party, and is designated as

"confidential" by such Party. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party; and (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations. In connection with the above, the Parties acknowledge that notwithstanding the above, Buyer is a public entity which is subject to certain public records disclosure statutes and regulations.

"Contract Year" means the consecutive 12-month period commencing on the Full Operations Date.

"Effective Date" means the date set forth in the introductory paragraph of this Agreement.

"Environmental Attributes" has the meaning set forth in Section 4.6.

"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 capacity credits, credits for Environmental Attributes, or any investment or production tax credits available under federal or state law, including but not limited to Section 45 of the Internal Revenue Code, or otherwise, to the extent that the Solar Energy Facility receives or is entitled to receive any such credits.

"Energy Retail Rate" shall mean that price which the Buyer would pay to the local electric distribution company without the benefit of Net Metering or a long term or bulk contract..

"Event of Default" means any event of default as defined in Article VIII of this Agreement.

"Financier" means any individual or entity providing money or extending credit to Seller for the purpose of procuring, constructing, owning, operating, maintaining, repairing, decommissioning or removing the Solar Energy Facility, including, but not limited to: (i) the construction, term or permanent financing of the Solar Energy Facility; or (ii) investment capital, working capital or other ordinary business requirements for the Solar Energy Facility (including the maintenance, repair, replacement or improvement of the Solar Energy Facility); or (iii) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Solar Energy Facility. Financier shall include any entity through which Seller has a lien in connection with the Solar Energy Facility. "Financier" shall not include common trade creditors of Seller.

"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; high winds, hurricanes or tornados (but not the lack of sun); 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, provided, however, that any such

discretionary acts, failures to act or orders of any kind by Buyer may not be asserted as an event of *Force Majeure* by Buyer; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it 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. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

"Governmental Authority" means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth or real estate or personal property taxes, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, local electric distribution company, or other similar entity, on or with respect to the Net Energy generated by the Solar Energy Facility.

"Guaranteed Annual Electric Output" means the minimum amount of Net Energy that is guaranteed by Seller to be generated by the Solar Energy Facility for sale and delivery to Buyer in any Contract Year, as set forth in Exhibit C.

"Host Customer Costs" shall mean the cost of performing all of the Host Customer's obligations under the Interconnection Agreement or the Tariff, such as those pertaining to the provision of insurance, and the reading or testing of meters, but specifically excluding all costs associated with the design, construction, or installation of facilities or metering devices necessary for interconnecting the Installation to the National Grid electric power system (via the Host Customer), or any upgrade of to the Western Massachusetts Electric Company ("National Grid") electric power system that is necessary for the delivery of Net Energy to the National Grid electric power system.

"Independent Appraiser" means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the Appraised Value of solar energy generating facilities of the size and age and with the operational characteristics of the Solar Energy Facility. 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, Seller, any Affiliate of Seller, or Buyer.

"Interconnection Agreement" shall mean the Interconnection Service Agreement entered into with National Grid which authorizes the interconnection of the Solar Energy Facility with the local electric distribution system of National Grid, which confirms the eligibility of Solar Energy Facility for treatment as a Class III Municipal Solar Net Metering Facility, and which specifies whether any Net Excess Generation (as defined in the Tariff) shall be subject to allocation or cash-out.

"Interest Rate" means .05% fixed interest rate per month Interest shall be calculated daily on

the basis of a year of three hundred sixty five (365) days and the actual number of days for which such interest is due.

"ISO-NE" means the 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 amended, superseded or restated from time to time.

"kW" means Kilowatt.

"kWh" means Kilowatt hour.

"Lease" means the Site Lease Agreement executed between the Parties of even date herewith, as such Lease may be amended from time to time.

"Metering Device" means any and all revenue quality meters installed by Seller or National Grid after the Point of Delivery necessary or appropriate for the delivery of Energy into the National Grid local electric distribution system and (except for the Net Metering Device) the calculation of Net Metering Credits.

"MW" means Megawatt.

"MWh" means Megawatt hour.

"National Grid" means, the local electric distribution company for Buyer, or its successor.

"NEPOOL" means the New England Power Pool and any successor organization.

"Net Energy" means the actual and verifiable amount of Energy generated by the Solar Energy Facility and delivered to Buyer at the Point of Delivery in excess of any Energy consumed by the Solar Energy Facility, as metered in kilowatt-hours (kWh) at the Net Metering Device, and that conforms to Applicable Legal Requirements and the Tariff.

"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, § § 13 8 — 140 and 220 C.M.R. § 18.00, as may be amended from time to time by a Governmental Authority.

"Net Metering Credits" shall have the meaning set forth in 220 C.M.R. § 18.00, as implemented by the Tariff

"Net Metering Device" means any and all revenue quality meters installed by Seller at or before the Point of Delivery necessary or appropriate for the registration, recording, and transmission of information regarding the amount of Net Energy generated by the Solar Energy Facility and delivered to the Point of Delivery for sale to Buyer.

"Parties" means Buyer and Seller, and their respective successors and permitted

assignees.

"Party" means Buyer or Seller, and their respective successors and permitted assignees.

"Permits" means all federal, state and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the Solar Energy Facility, including, but not limited to, a special permit for a Solar Energy Conversion System under the Easton Zoning Bylaw and construction related permits.

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

"Point of Delivery" means the point of delivery for Net Energy from Seller to Buyer, as further set forth on Exhibit C.

"Premises" shall have the meaning set forth in the Lease, and as set forth in Exhibit A.

"Production Shortfall" means the amount, expressed in kWh, by which the actual amount of Net Energy generated by the Solar Energy Facility and sold to Buyer in any Contract Year is less than the Guaranteed Annual Electric Output for that Contract Year.

"Solar Energy Facility" means the solar power electrical generation facility to be constructed owned, operated and maintained by Seller, with specifications for an aggregate nameplate capacity of approximately one and one half (1.5) to two (2.0) MW, together with all appurtenant facilities, including, but not limited to, the Net Metering Device, Metering Device and any interconnection facilities, and transformers required to interconnect the Solar Energy Facility to the Point of Delivery and the National Grid local electric distribution system, and any and all Substantial Alterations, additions, replacements or modifications thereto, all to be located on or adjacent to the Premises and as further set forth in Exhibit B.

"Solar Net Metering Facility" shall have the meaning set forth in 220 C.M.R. § 18.00.

"Substantial Alteration" has the meaning set forth in the Lease.

"Tariff" means the National Grid tariffs M.D.P.U. No. 1176 and M.D.P.U. No. 1177 for interconnection for distributed generation and net metering services, as approved in DPU Docket 09-72, and any subsequent amendments and approvals thereto.

ARTICLE 2 TERM

2.1 Term.

a. The term of this Agreement (the **"Term"**) shall commence on the date so noted above Effective Date, and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20th) anniversary of the Effective Date (the **"Termination Date"**), or (ii) such date as of which this

Agreement may be earlier terminated pursuant to the provisions hereof.

b. Subject to the right granted herein to Buyer to purchase the Solar Energy Facility, and provided that this Agreement has not been earlier terminated pursuant to the provisions herein, either Party may request to extend the Term of this Agreement for up to two additional consecutive terms of five (5) years upon the expiration of the then Term by giving the other Party at least two hundred seventy (270) days prior written notice of its desire to extend the Term along with the proposed pricing terms for Net Energy during such 5-year extension. The Parties will negotiate in good faith the pricing terms for any such extension. Any extension of the Term of this Agreement shall occur only pursuant to a mutual written agreement of the Parties.

c. In the event that the Parties are not able to agree on the pricing terms for an extension of this Agreement pursuant to subparagraph (b) above at least one hundred and eighty (180) days prior to the end of the Term, Seller shall have the right (in its sole discretion) to solicit offers to enter into one or more agreements to sell Net Energy from the Solar Energy Facility to one or more third parties upon the end of the Term, subject to the following.

i. Promptly after receipt of an acceptable offer from one or more third parties, but in no event later than thirty (30) days prior to the end of the Term, Seller shall provide notice of the bona fide offers and related pricing terms that Seller has received from third parties, and shall provide Buyer with the right to extend the term of this Agreement on the most favorable pricing term that has been offered by a third party.

ii. Within thirty (30) days of receipt of such notice pursuant to subparagraph (i) above, Buyer shall notify Seller as to whether Buyer intends to exercise its right to extend pursuant to subparagraph (i) above.

1. In the event that Buyer elects to exercise such right, the Parties shall enter into a written agreement that extends the Term of this Agreement on such pricing term.

2. In the event that Buyer declines to exercise such right, this Agreement shall terminate at the end of the Term, and Buyer shall reasonably cooperate with Seller to allow Seller to interconnect directly with National Grid or another Host Customer, in Seller's sole discretion and at Seller's sole cost.

2.2. Early Termination. Either Party may terminate this Agreement without penalty or any liability to the other Party prior to the achievement of the Commercial Operation Date, or up until _____, whichever period is earlier, as specified below:

a. in the event that Seller has not obtained all required Permits or third party approvals required for the lawful construction, ownership and operation of the Solar Energy Facility, provided, however, Buyer shall not have the right to terminate this Agreement if any final Permit or third party approval necessary for the construction, financing, or operation of the Solar Energy Facility has not been obtained due to a legal challenge, and Seller is using and continues to use Commercially Reasonable efforts to obtain such final, non-appealable Permits or third party approvals;

b. in the event that the Interconnection Agreement, in form and substance satisfactory to Seller and Buyer, in each of its reasonable discretion, is not finalized and executed within a commercially

reasonable time after submission of the interconnection application,;

c. in the event that the Seller is unable to secure, at reasonable cost to Seller, all required interconnection arrangements with National Grid, including any final acceptance and authorizations as may be required from ISO-NE and National Grid to interconnect the Solar Energy Facility with the transmission facilities owned by National Grid.

d. except as set forth below, in the event that Seller has not entered into a binding purchase order for the Solar Energy Facility within _____.

In the case of termination pursuant to any of subsections (a) through (d) above, the terminating Party shall give the other Party thirty (30) days prior written notice of its intent to terminate within thirty (30) days after the occurrence of the applicable deadline. In the event that a Party fails to provide such notice, the Party shall be deemed to have waived its right to terminate under the applicable subsection in question. Notwithstanding any other provision of this Agreement, the Parties acknowledge and agree that the deadlines set forth above may be extended for a period of time that is mutually agreed upon in writing.

ARTICLE 3 FACILITY OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL

3.1 Title. Except as otherwise set forth in this Agreement or the Interconnection Agreement, as between the Parties during the Term of this Agreement, title to all equipment, Permits, authorizations, Energy, Environmental Attributes, and tax benefits associated with the Solar Energy Facility shall be with Seller.

3.2 Lease. Seller shall construct, operate, maintain, repair and remove the Solar Energy Facility on the Premises pursuant to and in conformance with the Lease.

3.3 Construction, Maintenance, and Monitoring of Solar Energy Facility. Seller, at its sole cost and expense shall:

a. design, finance and procure the Solar Energy Facility in an expeditious manner with due regard for Buyer's desire and need to purchase any energy produced thereby as soon as possible but in any event by _____;

b. apply for, diligently pursue, pay for, and negotiate to final form the Interconnection Agreement. Notwithstanding the foregoing, the Seller shall at all times and in good faith work with the Buyer to assure Buyer that the terms of the Interconnection Agreement are reasonably satisfactory to the Buyer. Seller acknowledges that it understands that the Buyer prefers that National Grid provide remuneration to the Buyer in the form of cash over credits to the extent allowed by law;

c. design, construct, own, operate and maintain (except when otherwise expressly required by National Grid) the Metering Device, Net Metering Device, and other facilities or equipment, and procure and maintain all insurance, required by National Grid under the Interconnection Agreement or otherwise;

d. construct, own, operate, and maintain the Solar Energy Facility in good condition and repair, all in accordance with Applicable Legal Requirements and industry standards, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, applicable requirements of the insurance policies maintained by Seller with respect to the Solar Energy Facility as set forth in the Lease, and the terms of this Agreement; and

e. monitor the Solar Energy Facility performance to ensure that any malfunction causing a material loss of Energy production will be promptly discovered and rectified in accordance with industry standards.

3.4 Operations Manual; Training. On the Commercial Operations Date, Seller shall deliver to Buyer an operations, maintenance and parts manual covering the Solar Energy Facility. In addition, Seller will train Buyer's representative(s) on business-as-usual monitoring operations of the Solar Energy Facility and on emergency preparedness and response. Notwithstanding the foregoing, Buyer shall have no right to perform any maintenance or repair on the Solar Energy Facility without Seller's prior written consent, except in the case of an emergency where immediate action on the part of Buyer is reasonably necessary for safety reasons or as otherwise permitted under the Lease, *provided, however*, Buyer's representatives shall at all times comply with all safety and other operating procedures reasonably established by Seller and all Applicable Legal Requirements.

3.5 Notice of Commercial Operation Date. Subject to the provisions of this Agreement, Seller shall notify Buyer when the Solar Energy Facility has achieved the Commercial Operation Date.

3.6 Removal of Solar Energy Facility. Except as otherwise provided herein, Seller shall, within ninety (90) days following the end of the Term and at Seller's sole cost and expense, remove the Solar Energy Facility from the Premises and restore the Premises to its original condition, normal wear and tear excluded. On or before the Commercial Operation Date Seller shall provide a form of security reasonably acceptable to Seller and Buyer, to secure the removal of the System at the end of this Agreement in the event the Seller does not comply with the provisions hereof.

ARTICLE 4

PURCHASE AND SALE OF NET ENERGY

4.1 Sale and Purchase of Net Energy. Commencing on the Commercial Operations Date, Seller agrees to sell and deliver, and Buyer agrees to purchase and accept, at the Point of Delivery one hundred percent (100%) of the Net Energy generated by the Solar Energy Facility.

4.2 Price. Buyer shall pay Seller for the Net Energy sold and delivered, as metered at the Net Metering Device at or before the Point of Delivery, at the applicable Net Energy Price, as set forth in Exhibit C. After the first five (5) years of the Term, if because of regulatory changes or a change in law (i) the value of the Net Metering Credits credited to Buyer by the Local Electric Utility as result of the electricity generated by the System decreases below the Electricity Price provided in Exhibit C of this Agreement, such that the projected cumulative difference between the aggregate value of the Net Metering Credits and the aggregate value of the monthly payments made by Buyer pursuant to the Electricity Price provided in Exhibit C, as measured on a (2) two-year, cumulative basis is material, as measured in relation to total value of the projected monthly payments over the subsequent two (2) years of the Term, or whatever time period is then remaining in the Term, then the Parties, upon Seller's receipt

of written notice from Buyer, shall engage in good faith negotiations to modify the Electricity Price provided in Exhibit C of this Agreement, along with any other modifications to the Agreement to which the Parties may mutually agree. Within thirty (30) days of Seller's receipt of Buyer's written notice, each Party shall submit to the other Party its proposal to modify the terms and conditions of the Agreement, and to the extent required, the Lease. If the Parties cannot come to an agreement regarding such modifications within ninety (90) days of Seller's receipt of Buyer's written notice, then the matter shall be resolved pursuant to the dispute resolution procedures set forth in Section 14.5, provided, however, that the Parties hereby acknowledge and agree that the intent of the Parties is to amend the Agreement and to the extent required, the Lease, and for the Agreement and the Lease to continue in effect until the expiration of the Term and that the arbitrator(s) will render its decision in a manner which implements the intent of the Parties.

4.3 Title and Risk of Loss of Net Energy. Title to and risk of loss of the Net Energy will pass from Seller to Buyer at the Point of Delivery. Seller 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.

4.4 Governmental Charges.

- a. Seller is responsible for local, state and federal income taxes attributable to Seller for income received under this Agreement.
- b. Seller is responsible for any personal property taxes attributable to its ownership of the personal property associated with the Solar Energy Facility.
- c. Seller is responsible for any Governmental Charges attributable to the sale of Net Energy to Buyer, irrespective of whether imposed before, upon or after the delivery of Net Energy to Buyer at the Point of Delivery.
- d. 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 therefore, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

4.5 Guaranteed Annual Electric Output.

- a. Seller guarantees that the Solar Energy Facility will produce the Guaranteed Annual Electric Output in each Contract Year.
- b. In the event that a Production Shortfall exists in any Contract Year, unless excused by Force Majeure, Seller shall pay to Buyer, within thirty (30) days of the end of such Contract Year, the Production Shortfall Charge set forth in Exhibit C for each kWh of such Production Shortfall.

4.6 Environmental Credits and Value. The Agreement shall not include any rights, title or interest in any environmental offsets or allowances, renewable production or investment tax credits, or environmental attributes, value or credits of any kind or nature, earned by or attributable to (A) the Solar Energy Facility and (B) the Energy, including, without limitation, those resulting from or associated with the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of

1990), renewable energy certificates ("**RECs**") (or associated GIS Certificates), or any other state or federal acts, laws or regulations that provide offsets, allowances, or credits related to energy or emissions (collectively, the "**Environmental Attributes**"). RECs represent the environmental and other non-energy attributes, value and credits of any kind and nature associated with one (1) megawatt hour (MWh) of generation eligible for compliance against the Renewable Energy Portfolio Standard, 225 CMR 14.00, including, but not limited to, any and all pollution offsets or allowances and regulatory compliance rights. Buyer may not, under the Agreement or otherwise, make any claim of title to any RECs or the corresponding energy in regards to a renewable portfolio standard, emission offset or other environmental disclosure or similar regulatory requirement. To the extent any tax, RECs, Environmental Attributes or other such credits are allocated to Buyer by operation of law or regulation, Buyer shall cooperate fully with Seller to disclaim any rights to such credits and attributes and to assign or allocate all such tax, RECs, Environmental Attributes or other such credits, and the value thereof to Seller, without cost to Seller.

4.7 Net Metering Credits. Except as otherwise set forth in this Agreement and the Tariff, all interest in and title to any and all Net Metering Credits generated or created during the Term in connection with the operation of the Solar Energy Facility and the delivery of Net Energy to Buyer, together with the right to allocate such Net Metering Credits or receive cash payments in connection with the surrender or transfer of such Net Metering Credits, shall rest solely with Buyer.

ARTICLE 5 METERING AND BILLING

5.1 Billing. On or before the tenth (10th) 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 for the Net Energy produced and delivered to Buyer pursuant to Exhibit C, with respect to the immediately preceding month, and shall forward to Buyer an invoice, 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-NE rules, policies and procedures and other Applicable Legal Requirements.

5.2 Payment. On or before the thirtieth (30th) day after Buyer receives an invoice from Seller, Buyer shall pay Seller for all amounts due for Net Energy delivered during the preceding month to Buyer. All such invoices shall be paid by a mutually agreeable method to the account designated by Seller. Amounts due as a result of any billing adjustment made in accordance with ISO-NE rules, policies and procedures shall not be subject to any interest charge in favor of Buyer or Seller. Any payment not made within the time limits specified herein shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by Seller. Such interest shall accrue at an annual rate equal to the Interest Rate.

5.3 Metering Equipment. Seller shall provide, install, own, operate and maintain the Net Metering Device. Seller shall maintain and test the Net Metering Device generally in accordance with the same terms and conditions applicable to the Metering Device installed for the purpose of delivering Energy to National Grid and the calculation of Net Metering Credits, but in any event on no less than an annual basis.

a. Readings of the Net Metering Device shall be conclusive as to the amount of Net Energy delivered to Buyer; provided, that if the Net Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Net Energy shall be determined in the following sequence:

- (i) by estimating by reference to quantities measured during periods of similar conditions when the Net Metering Device was registering accurately; or
- (ii) if no reliable information exists as to the period of time during which such Net Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction was equal to (x) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (y) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Net Metering Device through the date of the adjustments, provided, however, that, in the case of clause (y), the period covered by the correction shall not exceed six months.

b. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Seller to verify the accuracy of the measurements and recordings of the Net Metering Device. Seller shall provide at least twenty (20) days prior written notice to Buyer of the date upon which any such test is to occur. Seller 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. Seller shall bear the cost of the annual testing of the Net Metering Device and the preparation of the Net Metering Device test reports.

c. The following steps shall be taken to resolve any disputes regarding the accuracy of the Net Metering Device:

i. If either Party disputes the accuracy or condition of any of the Net Metering Device, such Party shall so advise the other Party in writing.

ii. Seller shall, within fifteen (15) days after receiving such notice from Buyer, or Buyer shall, within such time after having received such notice from Seller, advise the other Party in writing as to its position concerning the accuracy of such Net Metering Device and state reasons for taking such position.

iii. If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause such Net Metering Device to be tested.

iv. If a Net Metering Device is found to be inaccurate by not more than 2%, any previous recordings of the Net Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Net Metering Device shall bear the cost of inspection and testing of the Net Metering Device.

v. If a Net Metering Device is found to be inaccurate by more than 2% or if such Net Metering Device is for any reason out of service or fails to register, then (a) Seller shall promptly cause the Net Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (b) the Parties shall estimate the correct amounts of Net Energy delivered during the periods affected by such inaccuracy, service outage or failure to register, and (c) Seller shall bear the cost of inspection and testing of the Net Metering Device. If as a result of such adjustment the quantity of Electricity for any period is decreased (such quantity, the "*Net Energy Deficiency Quantity*"), Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Net Energy Deficiency Quantity. If as a result of such adjustment the quantity of Net Energy for any period is increased (such quantity, the "*Net Energy Surplus Quantity*"), Buyer shall pay for the Net Energy Surplus Quantity.

5.4 Records and Audits. Seller will keep, for a period of not less than two (2) 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 Buyer may, at its sole cost and expense, and upon reasonable notice to Seller, examine Seller's records pertaining to such transactions during Seller's normal business hours.

5.5 Dispute.

a. If a Party, in good faith, disputes an invoice as provided in this Agreement, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay the undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate per annum, from and including the due date through and including the date such payment is actually received by Seller. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate per annum. 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 Section, the Parties shall follow the procedure set forth in Section 14.5.

b. In the event of a dispute with National Grid with regard to Buyer's monthly electrical bills or the calculation of Net Metering Credits, Buyer and Seller each agree to take all Commercially Reasonable measures with respect to which it has legal capacity to facilitate and expedite resolution of such a dispute and to act at all times during such review within its legal capacity.

ARTICLE 6 OBLIGATIONS OF THE PARTIES

6.1 Net Metering.

a. Each Party's obligations under this Agreement are subject to the Solar Energy Facility qualifying for Net Metering as a Solar Net Metering Facility, subject to the provisions of M.G.L. c. 164, §§ 138 -- 140 and 220 C.M.R. § 18.00 and the Tariff.

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 Solar Energy Facility to be eligible for and participate in Net Metering.

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 and ensure that the Solar Energy Facility is eligible for Net Metering.

6.2 Seller's Obligations.

a. Commencing with the Commercial Operations Date, Seller shall procure and maintain in full force and effect a maintenance and repair agreement for the Solar Energy Facility with the Solar Energy Facility manufacturer for a period of at least two years, which agreement shall be subject to the approval of Buyer, such approval not to be unreasonably conditioned, withheld or delayed. Upon expiration of the maintenance and repair agreement for the Solar Energy Facility with the Solar Energy Facility manufacturer, Seller shall maintain in full force and effect a maintenance and repair agreement for the Solar Energy Facility, either with a qualified third party or through the use of its own personnel, which agreement shall be subject to the approval of Buyer, such approval not to be unreasonably conditioned, withheld or delayed.

b. 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 of Seller (and in the form required) by any Governmental Authority, NEPOOL, ISO-NE, National Grid, or as may be reasonably required by Buyer.

c. Seller shall provide Buyer with a monthly e-mail report, as soon as practicable after the end of each month regarding the progress with respect to the permitting, financing, construction, and operations of the Solar Energy Facility or other data concerning the Solar Energy Facility as Buyer may, from time to time, reasonably request.

d. Commencing with the Commercial Operations Date, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Solar Energy Facility may be mechanically inoperable for more than a 24-hour period.

e. Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements, and construct, operate, maintain and decommission the Solar Energy Facility in full accordance with Applicable Legal Requirements.

f. Seller shall comply with the provisions of the Lease.

g. Seller shall comply, and shall require its employees to comply, with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable state statutes and regulations affecting job safety.

h. Seller shall use Commercially Reasonable efforts to obtain at its sole cost all approvals and agreements required for Seller's interconnection of the Solar Energy Facility to Buyer's equipment and to assist Buyer in obtaining the approvals and agreements necessary for Buyer to connect its equipment to the local electric distribution grid maintained by National Grid. Seller will promptly inform Buyer of all significant developments relating to such interconnection matters. Buyer will cooperate fully with Seller on all such matters and shall provide Seller with such information as Seller may reasonably request in connection with Seller's procurement of, and Seller's assistance in procurement of, such approvals and agreements. If any material changes in plans and/or specifications to the Solar Energy Facility or the interconnection of Buyer's facilities are required by the applicable electric distribution

company, then Seller shall submit such changes, if any, to Buyer for its approval, which shall not be unreasonably conditioned, withheld or delayed. Seller recognizes and acknowledges that it is Buyer's preference to be paid in cash/check from National Grid.

i. Seller shall be responsible for any and all costs associated with the interconnection agreement including studies, fees, charges and the like as more fully set forth in section 3.3 hereof.

6.3 Buyer's Obligations.

a. Buyer shall act as the Host Customer, as defined in 220 C.M.R. § 18.02, for the Solar Energy Facility. To the extent that National Grid elects not to purchase Net Metering Credits from Buyer, Buyer shall be responsible for allocating Net Metering Credits to Buyer's designees. Except in the case of the termination of this Agreement on account of a default by Buyer, Seller shall have no claim on, or responsibility regarding, such Net Metering Credits.

c. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

d. Buyer shall comply with the provisions of the Lease.

e. Buyer shall reasonably cooperate with Seller so that Seller can meet its obligations under this Agreement and under the Lease. Buyer agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all local permits, if any, and approvals necessary for the design, construction, engineering, operations, maintenance and deconstruction of the Solar Energy Facility and to act at all times during such review within its legal capacity. This provision is not intended to and shall not be construed to imply that Buyer's Board of Selectmen has the authority to direct the outcome of any application submitted to any independent local permit issuing authority nor that Buyer's Board of Selectmen has the independent or concurrent authority to issue any permits or other such approvals for the Solar Energy Facility. The Parties agree that, in the event either Party is sued by a third-party in connection with any Permit, approval or any other matter related to the Solar Energy Facility, this Agreement or the Lease, the defending Party will immediately notify and consult with the other Party. The Parties further agree that they will work together in good faith to expeditiously defend such action and shall coordinate their defense efforts subject to any restrictions imposed by Applicable Legal Requirements.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties by Seller. As of the Effective Date, Seller represents and warrants to Buyer as follows.

a. Seller is a _____, duly organized, validly existing, and in good standing under the laws of _____.

b. Seller has full legal capacity to enter into and perform this Agreement.

c. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of Seller has full authority to do so and to fully bind Seller.

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d. To Seller's knowledge, there are 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 the Agreement or Seller's ability to carry out its obligations under this Agreement.

e. To Seller's knowledge, none of the documents or other written or other information furnished by or on behalf of Seller to Buyer or Buyer's 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.

7.2 Representations by Buyer. Buyer represents to Seller as follows.

a. Buyer is a municipal corporation having its principal office 136 Elm Street, North Easton, Massachusetts.

b. Buyer has full legal capacity to enter into and perform this Agreement.

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

d. To Buyer's knowledge, there are 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 the Agreement or Buyer's ability to carry out its obligations under this Agreement.

e. None of the documents or other written or other information furnished by or on behalf of Buyer to Seller or Seller's 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.

ARTICLE 8
TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer.

a. Buyer fails to make any material payment due under this Agreement within sixty (60) days after such payment is due unless the specific amount of the payment not made is being contested.

b. Buyer fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of sixty (60) days after receipt of written notice thereof from Seller to Buyer; provided that if Buyer proceeds with due diligence during such sixty (60) day period to cure such breach and is unable by reason of the nature of the work involved using Commercially Reasonable efforts to cure the same within the said sixty (60) days, Buyer's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Fraud or intentional misrepresentation by Buyer with respect to any of the covenants or agreements of this Agreement.

d. Buyer has an Event of Default which results in termination under the Lease.

e. Buyer materially breaches its obligations under this Agreement.

8.2 Events of Default by Seller. The following shall each constitute an Event of Default by Seller.

a. Seller fails to make any material payment due under this Agreement or the Lease within thirty (30) days after such payment is due unless the specific amount of the payment not made is being contested.

b. Seller fails to perform or comply with any material covenant or agreement set forth in this Agreement or Lease and such failure continues for a period of thirty (30) days after receipt of written notice thereof from Buyer to Seller; provided that if Seller proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using Commercially Reasonable efforts to cure the same within the said thirty (30) days, Seller's time to do so shall be extended by the time reasonably necessary to cure the same.

c. Fraud or intentional misrepresentation by Seller with respect to any of the covenants or agreements of this Agreement.

d. Seller has an Event of Default which results in termination under the Lease.

e. Seller materially breaches its obligations under this Agreement.

f. Seller:

(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.

8.3 Force Majeure.

a. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to *carry out*, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) 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 (iv) 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.

b. If an event of *Force Majeure* affecting either Party continues for a period of one hundred eighty (180) days or longer, the performing Party may treat such an event as an Event of Default and may terminate this Agreement.

8.4 Termination for Default.

a. Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) Business Days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

b. In the event this Agreement is terminated as a result of an Event of Default of Seller:

i. Provided that Buyer has not provided Seller notice of a request for an Appraisal pursuant to Section 11.2, (x) 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 effective date of termination; and (y) Seller shall remove the Solar Energy Facility from the Premises in accordance with the provisions of the Lease.

ii. Provided that Buyer has provided Seller notice of a request for an Appraisal pursuant to Section 11.2, Buyer shall continue to purchase Net Energy and to make payments therefor under the Agreement until Buyer either exercises its right to purchase the Solar Energy Facility and related assets for the Purchase Price or notifies Seller that it will not provide Seller with an Exercise Notice pursuant to Section 11.7, in which case Seller shall thereafter remove the Solar Energy Facility from the Premises in accordance with the provisions of the Lease.

iii. Except in the case of termination due to an event of *Force Majeure*, Seller shall pay to Buyer, within thirty (30) days of the Termination Date, the Special Termination Damages amount (in lieu of any other damages related to purchasing replacement power, "cost of cover" damages, or Production Shortfall Charges set forth in Exhibit C)

c. In the event this Agreement is terminated as a result of an Event of Default of Buyer:

i. Seller shall have no further obligation to sell and deliver Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the effective date of termination, and Buyer shall have no further obligation to purchase, receive or otherwise Net Meter any Net Energy from or on behalf of Seller; and

ii. Seller shall have the right, but not the obligation, to continue to maintain the Solar Energy Facility pursuant to the provisions of the Lease, and to enter into a power supply agreement with a third party, for the remainder of the then effective Term of the Lease. Upon the expiration of such term, the provisions of the Lease, including but not limited to Section 3.1(c) thereof, shall apply with respect to any proposal to extend the term thereof. In the event that Seller elects to continue operations of the Solar Energy Facility pursuant to the preceding sentence, Buyer shall reasonably cooperate with Seller to allow Seller to interconnect directly with National Grid or another Host Customer, in Seller's sole discretion and at Seller's sole cost, and Buyer shall promptly transfer to Seller any Net Metering Credits that are generated after the effective date of termination and are paid or credited to Buyer by National Grid.

ARTICLE 9 REMEDIES AND LIMITATION OF LIABILITY

9.1 **Remedies.** Subject to the limitations set forth in this Agreement (including, but not limited to, Sections 4.5(b), 8.4(b)(iii), and 9.4), Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or nonperformance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of the other Party's non-performance under this Agreement.

9.2 **Limitation of Liability.** **NEITHER PARTY SHALL BE LIABLE TO THE OTHER 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.**

9.3 Waivers.

a. No Implied Waivers - Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's agent. Consent or approval of Seller or Buyer to any act or matter must be in writing and shall apply only with respect to the particular act or matter in which such consent or approval is given and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. Seller or Buyer may restrain any breach or threatened breach of any covenant or agreement herein contained, but the mention herein of any particular remedy shall not preclude either Seller or Buyer from any other remedy it might have, either in law or in equity. The failure of Seller or Buyer to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of Seller or Buyer herein specified or any other right or remedy that Seller or Buyer may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

9.4 Failure to Achieve Commercial Operations. Seller anticipates that it will achieve full commercial operations on or before _____, 20____, unless another date is mutually agreed upon by the parties in writing. In the event that Seller fails to obtain Commercial Operations on or before _____, 20____ (except to the extent such failure is excused by an event of *Force Majeure*, an appeal of a Permit, or upon the exercise of the early termination rights of the parties pursuant to Section 2.2 of this Agreement, and unless this Agreement has not been terminated by Buyer or Seller pursuant to Section 2.2) Seller shall pay to the Buyer an amount equal to seven hundred fifty (\$750.00) dollars per day, as liquidated damages and not as a penalty, until such Commercial Operations Date is achieved.

ARTICLE 10 ASSIGNMENT, SUBLETTING, MORTGAGE

10.1 Prior Written Consent.

Seller shall not assign or in any manner transfer this Agreement or any part thereof without the prior written consent of Buyer, which consent may not be unreasonably conditioned, withheld or delayed, except Seller may assign this Agreement to an Affiliate of Seller or a purchaser of all or substantially all of the Seller's assets used in connection with performing this Agreement, upon a showing of the proposed assignee's technical and financial capability to fulfill the requirements of Seller under this Agreement, as determined by Buyer in its reasonable discretion. Transfer of any ownership interests in Seller to an investor for purposes of allowing such investor to claim certain tax benefits (a "Tax Investor") available from the Solar Energy Facility and sold by Seller pursuant to which such Tax Investor shall not have ordinary control over the management and operations of Seller (and further transfers of such ownership interests by such Tax Investors) shall not be treated as an assignment of the Agreement for purposes of

any such consent requirement. Notwithstanding the foregoing, Seller may transfer, sell, pledge, encumber or assign the Solar Energy Facility, this Agreement or the accounts, revenues or proceeds under the Agreement as security for the project financing associated with the Solar Energy Facility. In connection with any assignment made for such financing, at the request of Seller, Buyer shall execute a consent to assignment in form and substance reasonably satisfactory to Buyer and the Financiers that incorporates terms and conditions customary in a project finance transaction of this type subject to review and approval by the Buyer which said approval shall not be unreasonably withheld.

10.2 Release of Seller. Seller shall be relieved from its obligations under this Agreement:

a. by any whole disposition of Seller's interest in this Agreement in compliance with Section 10.1, 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 Financier(s), in which case Financier(s) shall substitute for Seller for purposes of this Agreement.

Absent express written consent of Buyer, the execution of a security interest in this Agreement or the Solar Energy Facility, or any assignment from a Financier to another Financier, shall not relieve Seller from its obligations under this Agreement.

ARTICLE 11

SOLAR ENERGY FACILITY PURCHASE AND SALE OPTIONS

11.1 Grant of Purchase Option. Seller hereby grants Buyer the right and option to purchase all of Seller's right, title and interest in and to the Assets on the terms set forth in this Article. (the "**Purchase Option**").

11.2 Buyer Request for Appraisal of Solar Energy Facility Value. Provided that Buyer is not in default under this Agreement, upon the earlier of (a) one hundred eighty (180) days prior to the end of the Initial Term or any Extension Term, but not earlier than sixty (60) months after the Commercial Operation Date or the placed in service date as determined under United States Department of the Treasury and Internal Revenue Service (IRS) guidelines and regulations or (b) an Event of Default of Seller, Buyer shall have the right to exercise the Purchase Option by providing a notice to Seller requiring a determination of the Purchase Price as set forth below.

11.3 Selection of Independent Appraiser. Within fifteen (15) days of Seller's receipt of a notice provided under Section 11.2, Seller and Buyer shall each propose an Independent Appraiser. If Seller and Buyer do not agree upon the appointment of an Independent Appraiser within such fifteen (15) day period, then at the end of such fifteen (15) day period, two proposed Independent Appraisers shall, within ten (10) 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 Seller and Buyer. Such selection shall be final and binding on Seller and Buyer.

11.4 Determination of Purchase Price.

a. The selected Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Appraised Value in accordance with Section 11.5 (the "**Preliminary Determination**").

b. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Seller and Buyer, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Buyer shall each have the right to object to the Preliminary Determination within twenty (20) days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within fifteen (15) days after the expiration of such twenty (20) day period, the selected Independent Appraiser shall issue its final determination (the "**Final Determination**") to Seller and Buyer, 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 selected Independent Appraiser shall be final and binding on the Parties.

c. The Final Determination of appraised value shall be determined by the Independent Appraiser through a methodology designed to determine fair market value of the Solar Energy Facility in compliance with United States Department of the Treasury and Internal Revenue Service (IRS) guidelines and regulations and with the requirements set forth by the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Report.

11.5 Calculation of Purchase Price. The purchase price (the "**Purchase Price**") payable by Buyer for the Assets shall be equal to the Appraised Value as determined by the Independent Appraiser in its Final Determination.

11.6 Costs and Expenses of Independent Appraiser. Seller and Buyer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

11.7 Exercise of Purchase Option.

a. Buyer shall have ninety (90) days from the date of the Final Determination (such period, the "**Exercise Period**"), to exercise the Purchase Option, at the Purchase Price set forth in the Final Determination. Buyer must exercise its Purchase Option during the Exercise Period by providing a notice (an "**Exercise Notice**") to Seller. Once Buyer delivers its Exercise Notice to Seller, such exercise shall be irrevocable.

b. Promptly following receipt of Buyer's notice pursuant to Section 11.2, Seller shall make the Assets, including records relating to the operations, maintenance, and warranty repairs, available to Buyer for its inspection during normal business hours.

11.8 Terms of Asset Purchase. On the Transfer Date (a) Seller shall surrender and transfer to Buyer all of Seller's right, title and interest in and to the Assets, and shall retain all liabilities arising from or related to the Assets prior to the Transfer Date, (b) Buyer shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the Assets 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 Assets, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the

Assets 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 Assets to Buyer.

11.9 Transfer Date. The closing of any sale of the Assets (the "*Transfer Date*") pursuant to this Section 11.9 will occur no later than thirty (30) days following the date of the Exercise Notice.

ARTICLE 12

INDEMNIFICATION

12.1 Indemnification of Buyer. Seller shall indemnify and save harmless Buyer and each of its officials, employees, agents, and assigns (the "*Buyer Indemnified Parties*") from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees, that may be imposed upon or incurred by or asserted against any Buyer Indemnified Party by reason of any of the following occurrences during the Term.

- a. Any breach by Seller of its obligations, covenants, representations or warranties contained in this Agreement or made pursuant thereto.
- b. Any negligence on the part of Seller or any of its agents, contractors, servants, employees, subtenants, licensees or invitees in connection with this Agreement or the Solar Energy Facility.
- c. Any failure on the part of Seller or any of its agents, contractors, servants, employees, subtenants, licensees or invitees to fully comply with any Applicable Legal Requirements,

In case any action or proceeding is brought against any Buyer Indemnified Party by reason of any such claim, Seller, upon written notice from Buyer, shall defend such action or proceeding at Seller's expense to the reasonable satisfaction of Buyer.

ARTICLE 13

INSURANCE AND PAYMENT GUARANTEE

13.1 Insurance. The Insurance provisions in the Lease are hereby incorporated by reference.

ARTICLE 14

MISCELLANEOUS

14.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; email (with confirmation by the other party) or facsimile transmission. The communications shall be sent to the following addresses:

If to Buyer:

David Colton
Town Administrator/Chief Procurement Officer
Town Administrator
Easton Town Offices
136 Elm Street
No. Easton, MA 02356
Email:

with a copy to:

Lisa L. Mead
Town Counsel
Blatman Bobrowski & Mead, LLC
30 Green Street
Newburyport MA 01950
Phone Number: _978 463 7700
Email: Lisa@bbmatlaw.com

If to Seller:

with a copy to:

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

14.2 Confidentiality. To the extent permitted by law, except as provided in this Section 14.2, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Agreement, without the other Party's prior express written consent.

a. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents and employees who have a need to

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know related to this Agreement.

b. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing Party shall notify the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain. .

c. In connection with the above, the Parties acknowledge that Buyer is a public entity that is subject to certain public records disclosure statutes and regulations.

14.3 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 will be deemed separate, severable and independent and the remainder of this 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 this Agreement and the benefits to the Parties are not substantially impaired. Provided further, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

14.4 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 and all actions shall be brought in Plymouth County.

14.5 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 14.5 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.

a. 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.

b. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute 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 Boston, Massachusetts office of J*A*M*S 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 all Parties.

c. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be Plymouth County Superior Court, Massachusetts. Each Party hereby consents to the jurisdiction of such court, and to service of process in the Commonwealth of Massachusetts in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

d. 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.

14.6 Entire Agreement. This Agreement, together with its exhibits and the Lease, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof and, with the exception of the Lease to which Seller and Buyer are Parties, supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

14.7 Headings and Captions. The headings and captions in this Agreement are intended for reference only, do not form a part of this Agreement, and will not be considered in construing this Agreement.

14.8 Singular and Plural, Gender. If two or more persons, firms, corporations or other entities constitute either Seller or Buyer, the word "Seller" or the word "Buyer" shall be construed as if it reads "Sellers" or "Buyers" and the pronouns "it," "he," and "him" appearing in this Agreement shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

14.9 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any 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 Seller and Buyer hereunder are individual and neither collective nor joint in nature.

14.10 Joint Workproduct. 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.

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

14.12 No Broker. Seller and Buyer each represents and warrants to the other that it has dealt with no broker in connection with the consummation of this Agreement, and in the event of any brokerage claims against Seller or Buyer predicated upon prior dealings with the other Party, the Party purported to have used the broker agrees to defend the same.

14.13 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

14.14 Nondiscrimination. Seller agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, (a) discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Seller, or (b) deny any person access to the Solar Energy Facility or to any activities or programs carried out in connection with the Solar Energy Facility. Seller shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

14.15 Counterparts. 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 agreement.

14.16 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 the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

14.17 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a Commercially Reasonable manner.

14.18 Site Lease. The Parties agree that this Agreement shall take effect and the obligations of the Parties shall arise only upon simultaneous execution by the Parties of the Lease of even date herewith.

14.19 Survival. The provisions of Sections 4.4 (Governmental Charges), 4.6 (Environmental Credits and Value), 5.4 (Records and Audits), 5.5 (Dispute), 9. 1(Remedies), 9.2 (Limitation of Liability), and 9.3 (Waivers), and Articles 11 (Solar Energy Facility Purchase and Sale Options), 12 (Indemnification) and 14 (Miscellaneous), shall survive the expiration or earlier termination of this Agreement for a period of three (3) years, provided, however, Seller's rights and obligations under Sections 4.4 (Governmental Charges) and 4.6 (Environmental Credits and Value) shall terminate as of the Transfer Date if Buyer exercises its option to purchase the Assets.

14.20 Obligation to Modify Agreement Pursuant to Rules and Regulations under the Green Communities Act or other Actions by Governmental Authority. Upon implementation by the Massachusetts Department of Public Utilities, Massachusetts Department of Energy Resources or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding the provision of or eligibility for Net Metering, the Parties shall negotiate in good faith, shall amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

14.21 No Limitation of Regulatory Authority. The Parties acknowledge and agree that Buyer is a municipal entity; and that nothing in this Agreement or the Lease shall be deemed to be an agreement by Buyer to issue or cause the issuance of any approval, authorization, or permit, or to limit or otherwise affect the ability of Buyer or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

14.22 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This provision is not intended to limit the rights of a Leasehold Mortgagee under the Lease.

[Signature page to follow.]

BUYER

Town Administrator

559600.1

List of Exhibits to Agreement

Exhibit A — Description of the Premises

Exhibit B — Description of Solar Energy Facility

Exhibit C — Net Energy Price and Terms

Exhibit D — Solar Lease Provisions

DRAFT EMSA RENEWABLES

EXHIBIT A

DESCRIPTION OF THE PREMISES

Address:

Legal Description:

Description of the Premises (as further shown on the attached plan drawing):

EXHIBIT B

DESCRIPTION OF THE SOLAR ENERGY FACILITY

Solar Energy Facility Manufacturer

Nameplate Capacity

Approximately _____ kW

Estimated Annual Energy Production

_____ kWh/year

Preliminary Specifications:

See attached

DRAFT EMSA RENEWABLES

EXHIBIT C

NET ENERGY PRICE AND TERMS

GUARANTEED ANNUAL ELECTRIC
OUTPUT _____ kWh/year

ANNUAL SYSTEM DEGRADATION
FACTOR _____% per year

ELECTRICITY PRICE \$_____ per kWh during the first Contract
Year of the Term

ELECTRIC PRICE INCREASE
FACTOR _____% per year

MAXIMUM ELECTRICITY PRICE _____% of Energy Retail Rate

PRODUCTION SHORTFALL
CHARGE \$_____ per kWh

DECOMMISSIONING ASSURANCE
AMOUNT \$250,000.00

NAMEPLATE CAPACITY Approximately _____ kW

EXHIBIT D: SOLAR LEASE PROVISIONS

The terms and conditions of the Net Metering Power Sales Agreement (“Agreement”) are by this reference incorporated herein as though fully set forth in the Lease Agreement and all capitalized terms not otherwise defined herein shall have the same definition as set forth in the Agreement. In the event of any discrepancy between the terms of the Agreement and the terms of this Lease, the terms of the Agreement shall govern this Lease, unless expressly provided otherwise herein.

The parties agree as follows:

1. LEASE OF PROPERTY.

(a) Landlord (shall refer to the “Town of Easton” or “Buyer”) hereby leases to Tenant (shall refer to as “_____” or “Seller”) a portion of the Property containing _____ square feet more or less as shown on a plan entitled “_____” and attached hereto as Attachment 1, together with the non-exclusive right for ingress and egress for the purpose of installation and maintenance of a Solar Energy Conversion Facility (hereinafter the “System” or “Solar Energy Facility”), which land, structures and access are collectively referred to hereinafter as the “Solar Premises” or “Premises”.

(b) Landlord also grants to the Tenant the right and sufficient space for the installation and maintenance of wires, cables, conduits and pipes and utilities necessary for the construction, use and maintenance of the System as shown on Attachment 1.

2. PERMITTED USE.

(a) Tenant may erect and maintain on the Property improvements, personal property, and facilities, including, but not limited to System(s), appurtenances, and any other equipment and related facilities necessary for the generation of electrical energy. In accordance with Tenant’s response to the Town of Easton, “[insert title of RFP]”; such use includes the right to test, survey and check title on the Property and any other items necessary to the successful and secure operation of the System. Landlord and Tenant agree that Exhibit 1 shows the initial location of the System by Tenant and that it does not limit Tenant’s rights under this paragraph. Landlord’s execution of this Agreement will signify Landlord’s approval of Exhibit 1. Tenant has the right to install [insert equipment to be installed], and other related solar energy conversion equipment and to make improvements, alterations, or additions on the Premises appropriate for Tenant’s use with Landlord’s written approval (“**Tenant Changes**”). Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the System on the Property. Tenant has the right to modify, supplement, replace, and/or upgrade the equipment at any time during the term of this Agreement. Tenant will be allowed, subject to approval by Landlord, which approval will not be unreasonably withheld, to make such alterations to the Property as are required to accomplish Tenant’s Changes or to insure that Tenant’s System complies with all applicable federal, state or local laws, rules or regulations, permits, and approvals. Tenant shall not use the Property for any other purpose without the written consent of

the Landlord.

(b) Construction Standards. Any and all improvements to be constructed, erected or maintained on or at the Property shall be constructed, erected and maintained in accordance with plans and specifications submitted to and approved by the Landlord and in accordance with local building permits. The Tenant's construction, operation and maintenance of any and all improvements on or at the Property shall at all times comply with all applicable federal, state, and local laws (including the local Zoning By-law), rules and regulations as they may be enacted or amended from time to time. The Tenant will be responsible for obtaining, at its sole cost and expense, all approvals, and permits necessary for the construction of any and all improvements on or at the Property, and the operation and maintenance of said improvements and the Property, including, without limitation, special permits and variances required by local authorities, and approvals and authorizations required by the state and federal authorities, if any, including but not limited to permits from the Commonwealth of Massachusetts Department of Environmental Protection relative to construction on a landfill.

(c) Construction Costs. The Tenant will pay all costs and expenses incurred in connection with the design, construction, maintenance and operation of the System and any and all related improvements on or at the Property, including utility connections and the cost of electricity and other utilities the Tenant consumes in its construction, maintenance and operational activities at the rate charged by the servicing utility company, for which the Tenant will make payments directly to said company. The Tenant shall perform all construction, maintenance and operations activities on or at the Property in compliance with all applicable laws, ordinances, codes and regulations, as the same may be administered by authorized governmental officials. Notwithstanding the foregoing, in connection with constructing the System, the Tenant will incur directly or indirectly a variety of site development costs including, but not limited to, costs of labor, materials, contractors and subcontractors, costs relative to plan generation, survey costs, costs of disposal, costs of construction of the System, costs of bringing utilities service to the site, and other costs (collectively "**Site Development Costs**").

(d) Removal: The Tenant shall be responsible for removal of all above ground portions of the System in accordance with this Agreement.

(e) Capacity of System: Tenant shall design the System to comply with specifications included in the Request for Proposals, or as otherwise agreed to in writing, by the Landlord, which is incorporated herein by reference.

(f) Title to System. Subject to the rights provided to Landlord pursuant to other terms hereof, the System and all alterations, additions, improvements or installations made thereto by Tenant and all Tenant property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Tenant ("**Tenant Property**"). In no event shall any Tenant Property be deemed a fixture, nor shall Landlord, nor anyone claiming by, through or under Landlord (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Tenant Property at any time except as otherwise provided herein. Landlord shall have no development or other interest in the System or any System Assets or other equipment or personal property of Tenant installed on the Premises, and Tenant may remove all or any portion of the System or any System Assets at any

time and from time to time as further provided in the Agreement. Without limiting the generality of the foregoing, Landlord hereby waives any statutory or common law lien that it might otherwise have in or to the System and other System Assets or any portion thereof.

(g) **Security Interests in System.** Except as otherwise provided herein and in the Agreement, Landlord acknowledges and agrees that Tenant may grant or cause to be granted to a lender a security interest in the System(s) and in Tenant's rights to payment under the Agreement, and Landlord expressly disclaims and waives any rights in the System at law or in equity pursuant to this lease. Any security interest shall be subordinate to the interest of the Landlord in the Premises and subject to the terms and conditions of this Agreement.

(h) **No Additional Use.** Except with the prior express written consent of Landlord, Tenant shall not use the Premises for any use other than the installation, operation, maintenance, repair and removal of the System.

3. TERM.

(a) The lease term will be twenty (20) years ("**Initial Term**"), commencing upon the Effective Date of this Lease Agreement. The term will terminate on the last day of the month in which the twentieth annual anniversary of the Effective Date.

(b) This Agreement may be renewed for 2 additional 5-year Terms (the "**Extension Terms**") at the sole option of the Landlord, unless the Tenant notifies the Landlord in writing of Tenant's intention not to renew this Agreement at least 180 days prior to the expiration of the Initial Term.

4. RENT.

Beginning on the Effective Date, Tenant will pay the Landlord an annual rental payment in the amount of \$_____ with an annual escalation of ____% (hereinafter "Rent").

5. APPROVALS.

(a) Landlord agrees that Tenant's ability to use the Property is contingent upon its suitability for Tenant's intended use and Tenant's ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary by Tenant for its use of the Property, including a Site Plan Approval Permit and construction permits (collectively referred to as "**Governmental Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Governmental Approvals for Tenant's use under this Agreement and agrees to reasonably assist Tenant with such applications, except with respect to local permits and/or approvals where Landlord's assistance may constitute a conflict of interest.

(b) Tenant has the right to obtain a title report or commitment for a leasehold title policy from a title insurance company of its choice and to have the Property surveyed by a surveyor of its choice, all at Tenant's sole cost and expense.

(c) Tenant may also obtain, at Tenant's sole cost and expense, soil boring, percolation, engineering procedures, environmental investigation or other tests or reports ("**Tests**") on, over, and under the Property, necessary to determine if the Tenant's use of the Property will be compatible with Tenant's engineering specifications, system, design, operations or Governmental Approvals. Tenant will indemnify Landlord against all costs (including reasonable attorney's fees), claims, and damages relating to the conducting of said tests and inspections, excepting requirements contained within applicable environmental reporting guidelines and any resulting remediation required of Landlord. Tenant shall restore the Premises to the same condition as it existed prior to the Tenant having conducted the Tests.

6. TERMINATION.

This Agreement may be terminated, by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Agreement after the applicable cure periods. In the event of termination of this Agreement due to default after the applicable cure periods, the defaulting Party agrees to pay the non-defaulting Party the early termination fee as set forth on Attachment 2. Such early termination fee shall be in addition to any other remedies as may be available at law or in equity or as otherwise provided in this Agreement.

7. INSURANCE.

(a) The Tenant shall carry during the term of this Lease and any extension or renewal thereof workers' compensation insurance as required by Massachusetts law and employer's liability insurance in the amount of not less than five hundred thousand dollars (\$500,000.00).

(b) The Tenant shall carry during the term of this Lease and any extension or renewal thereof commercial general liability insurance in the amount of not less than one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate and automobile liability insurance with a combined single limit of one million dollars (\$1,000,000.00) covering all leased, owned, non-owned and hired vehicles.

(c) The Tenant shall carry during the term of this Lease and any extension or renewal thereof pollution liability insurance in the amount of not less than one million dollars (\$1,000,000.00) per occurrence and five million dollars (\$5,000,000.00) general aggregate. Commercial general liability insurance shall include contractual liability insurance. Each policy of commercial general liability insurance, automobile liability insurance, and pollution liability insurance shall name the Town of Easton as an additional insured. All certificates and policies shall contain the following provision:

"Notwithstanding any other provision herein, should any of the above policies be cancelled or materially amended before the expiration date thereof, the Tenant shall immediately notify the Town Administrator, 136 Elm Street, No. Easton, Massachusetts. Tenant shall forthwith, but at least within five (5) business days of notice of cancellation secure replacement and retroactive insurance coverage in compliance with the requirements of this Agreement and provide notice of same to the Town Administrator, 136 Elm

Street, No. Easton, Massachusetts.”

(d) The Tenant shall provide to the Landlord current certificates of insurance from the insurance carrier for each such policy of insurance stating the limits of liability and the expiration date of the policy. Renewal Certificates shall be filed with the Town at least 10 days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Town upon the execution of this Agreement, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Lease and shall state that such insurance is as required by this Lease. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Contract and shall be grounds for immediate termination. Said insurance shall include: Workers Compensation/Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the “MIIA” or “ACORD” Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverage's shall be maintained without interruption from date of the Lease until date of final payment and termination of any coverage required to be maintained after payment.

(e) The Tenant shall obtain and maintain during the term of this Contract the insurance coverage in companies licensed to do business in the Commonwealth of Massachusetts and acceptable to the Landlord.

8. INTERFERENCE.

(a) Landlord will not grant, after the date of this Agreement, a lease, license or any other right to any third party for use of the Property or Premises, if such use may in any way adversely affect or interfere with Tenant's System. Landlord will notify Tenant and receive Tenant's written approval, which approval shall not be unreasonably withheld, prior to granting any third party the right to access or use the Property or Premises which will interfere with Tenant's operation of the Systems or the electrical generation system or diminish the superiority of Tenant's accessibility to light. Nothing contained herein will restrict Tenant nor its successors and assigns from installing and modifying its equipment.

(b) Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property or Premises in any way which interferes with the operations of Tenant or the rights of Tenant under this Agreement. Landlord will cause such interference to cease upon not more than forty-eight (48) hour notice from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Agreement, to elect to enjoin such interference or to terminate the Agreement upon notice to Landlord.

9. INDEMNIFICATION.

(a) Tenant agrees to protect, defend, indemnify, and hold harmless Landlord, officers, agents and employees, from and against any damages, liability, claims, or causes of action, proceedings, demands, losses, costs, expenses and judgments of every nature and description (including attorney's fees) in favor of any party that may arise in whole or in part or of or in connection with, or arising directly out of Tenants, its employees, agents, subcontractors, material men, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and their actions or failure to act under this Agreement, or resulting from negligence or any willful act or omission by the Tenant, its subcontractors, agents or employees, except to the extent attributable to the gross negligence or intentional act or omission of Landlord, its employees agents or independent contractors. Tenant agrees to investigate and defend against any such liability, claims, or causes of action in favor of any party, arising directly out Tenant's actions or failure to act under this Agreement or resulting from the negligence or any willful act or omission by Tenant, its subcontractors, agents or employees. Tenant agrees to investigate and defend against any such liability, claims, or causes of action at its sole expense.

(b) The provisions of this Paragraph will survive the expiration or termination of this Agreement.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents:

(i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license, unencumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, agreements of record or not of record, which would adversely affect Tenant's use and enjoyment of the Property under this Agreement;

(ii) its execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and

(iii) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use best efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

11. ENVIRONMENTAL.

(a) Landlord and Tenant agree that each will be responsible for compliance with any and all environmental, hazardous material and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) Tenant agrees to hold harmless and indemnify Landlord from and to assume all duties, responsibilities, and liabilities at its sole cost and expense, for all duties, responsibilities and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to:

(i) Tenant's failure to comply with any environmental, hazardous material or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, and

(ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the activities conducted by the Tenant on the Property, unless the environmental conditions are caused by the Landlord or third party.

(c) The indemnifications of this Paragraph specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remedial, removal or restoration work required by any governmental authority. The provisions of this Paragraph will survive the expiration or termination of this Agreement.

12. ACCESS.

At all times throughout the term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four hour, seven day access to and over the Property for the installation, maintenance and operation of the System and any utilities serving the Property. In the event any public utility is unable to use the access provided to Tenant, the Landlord hereby agrees to grant an additional access either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant.

13. REMOVAL.

All portions of the System brought onto the Property by Tenant will be and remain Tenant's personal property and, at Tenant's option, until the expiration of the Agreement. Landlord covenants and agrees that no part of the System constructed, erected or placed on the Property by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Property will be and remain the property of the Tenant and may be removed by Tenant at any time during the Term and shall be removed by the

Tenant at the end of the Term unless the parties agree otherwise in writing as an amendment hereto.

14. MAINTENANCE, UTILITIES.

(a) Tenant will keep and maintain the Property in good condition, reasonable wear and tear and damage from the elements excepted.

(b) Tenant will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Property. Landlord will cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement:

(i) non-payment of Rent if such rent remains unpaid for more than thirty (30) days after receipt of written notice of such failure to pay from Landlord; or

(ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure.

No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term or condition under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity.

(c) Cures - Rights, Costs and Damages. If Tenant shall default in the performance of any material covenant, term, provision, limitation, or condition contained in this lease beyond the expiration of all applicable notice and grace periods (hereafter, collectively, a "**Triggering Event**"), Landlord, without being under any obligation to do so and without waiving such default, may remedy such other default for the account of Tenant, immediately upon notice in the case of emergency or if necessary to protect public health or safety, or to avoid forfeiture of a

material right, or in any other case only provided Tenant shall fail to remedy such default within thirty (30) days, or such longer period as may be required due to the nature of such default (provided Tenant has commenced and is diligently prosecuting a cure), after Landlord notifies Tenant in writing of Landlord's intention to remedy such other default. All costs reasonably incurred by Landlord to remedy such default (including, without limitation, all reasonable attorney's fees), shall be at the expense of Tenant.

(d) Step-in Rights/Step-out. Regardless of whether Landlord exercises its rights pursuant to the terms of this Agreement, Landlord shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements, to take possession of the System and to operate the System upon the occurrence of a Triggering Event until Tenant demonstrates to the reasonable satisfaction of Landlord that the events giving rise to the Triggering Event have been cured, and that Tenant has taken all reasonably necessary steps to ensure that such events shall not re-occur. Landlord shall not be liable to Tenant for any damages, losses or claims sustained by or made against Tenant as a result of Landlord's exercise of possession and operational control of the System except to the extent such damages, losses or claims result from the negligence or willful misconduct of Landlord.

16. CONSTRUCTION AND OPERATION OF PERMITTED USE

(a) General Description. Except as otherwise specified herein, the System shall consist solely of the improvements described in Attachment of the Agreement.

(b) Construction Commences Promptly. Tenant shall commence the construction of the System promptly following the Effective Date and will proceed diligently and continuously thereafter until completion, subject to a Force Majeure Event.

(c) Completion Requirements. Tenant will arrange for the construction of the System in a good, careful, proper and workmanlike manner in accordance with good engineering practices, the Request for Proposals which resulted in the Agreement, and with all Applicable Legal Requirements. The System will, when completed, comply with all Applicable Legal Requirements and the Request for Proposals.

(d) Compliance with DEP Landfill Permits. Tenant shall ensure that construction of the System complies with all Department of Environmental Protection permit(s) related to the protection of the landfill cap. Tenant shall indemnify and hold the Landlord harmless for any damage, caused to the landfill, including the landfill cap, as a result of the installation of the system and any fines imposed as a result of such damage. In the event of such damage, the Tenant shall repair, to Department of Environmental Protection standards, any and all portions of the landfill or the landfill cap at its sole cost and expense in a prompt and timely fashion. The Tenant shall pay the Landlord a sum, not to exceed \$25,000, to allow the Landlord to hire a Peer Review Engineer to represent the interests of the Landlord during construction of the Solar Energy Facility and associated appurtenances to assure that no damage is done to the landfill cap. No building or foundation permit shall issue until such time as said peer review funds are placed in escrow with the Landlord.

(e) Interconnection with Electric Distribution Grid. Tenant will obtain at its sole cost all approvals and agreements required for Tenant's interconnection of the System to the LDC System. Tenant will promptly inform Landlord of all significant developments related to such interconnection matters.

(f) As-Built Plans. Within ninety (90) days following the issuance of the Notice of Commercial Operation, Tenant shall prepare and deliver to Landlord detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

(g) Inspection and Entry. During the course of construction and completion of the System and any substantial alteration thereto, Tenant shall maintain all plans, shop drawings, and specifications relating to such construction which Landlord, its agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the agreements contained or referenced in this lease. Landlord may, upon reasonable prior notice to Tenant, enter upon the Lease Area and inspect the System for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this lease, all without hindrance or molestation from Tenant.

(h) From time to time the Landlord or its agents will need to access the Premises to perform monitoring requirements for regulatory compliance activities as required by DEP. the Landlord shall provide no less than 48 hours notice to the Tenant of its need for access. Tenant shall not unreasonably deny access by the Landlord for said Landlord for said monitoring activities.

17. ASSIGNMENT/SUBLEASE.

Tenant shall not assign, sublet or otherwise transfer or encumber all or any part of Tenant's interest in this Agreement without the prior written consent of the Landlord, which consent shall not be unreasonably conditioned, withheld or delayed.

18. NOTICES.

(a) All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notice will be addressed to the parties at the addresses set forth above. Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

(b) Notice shall be made to the following:

Landlord: David Colton

Town Administrator/Chief Procurement Officer

Town Administrator

ATTACHMENT D43

Easton Town Offices
136 Elm Street
No. Easton, MA 02356
Email:

with a copy to:

Lisa L. Mead
Town Counsel
Blatman Bobrowski & Mead, LLC
30 Green Street
Newburyport MA 01950
Phone Number: _978 463 7700
Email: Lisa@bbmatlaw.com

Tenant:

with a copy to:

19. SEVERABILITY.

If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) days prior written notice to the other party hereto.

20. CONDEMNATION.

In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Property unsuitable for Tenant, this Agreement will terminate

ATTACHMENT D44

as of the date the title vests in the condemning authority. The parties will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property, which for Tenant will include, where applicable, the value of its System, moving expenses, prepaid rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent.

21. CASUALTY.

Landlord will provide notice to Tenant of any casualty affecting the Property within forty-eight (48) hours of the casualty. If any part of the System or Property is damaged by fire or other casualty so as to render the Property unsuitable, in Tenant's sole determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such notice. Upon such termination, Tenant will be entitled to collect all insurance proceeds payable to Tenant on account thereof and to be reimbursed for any prepaid Rent. Tenant shall provide notice to Landlord of any release by Tenant or observed by Tenant of oil and/or hazardous materials on the Property within twenty-four (24) hours of such release.

22. LIENS.

(a) Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the System or any portion thereof. The System shall be deemed personal property for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord hereby consents to Tenant's right to remove all or any portion of the System if it vacates the Property.

(b) Mechanic's Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien upon the Premises or the System or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Premises whereby the estate, rights and interests of Landlord in the Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this lease.

(c) If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or the System, Tenant, within ten (10) days after notice to Tenant 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 Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord 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 Landlord and costs and expenses reasonably incurred by Landlord in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Landlord's making of the payment of the cost and expenses, shall be paid by Tenant to Landlord within ten (10) Business Days of Landlord's invoice therefor.

(d) Landlord shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System or any interest therein.

23. PERFORMANCE, PAYMENT, AND REMOVAL BONDS

(a) Prior to the start of any site preparation, installation and construction work performed on the Property, the Tenant shall ensure the posting of a performance and labor and materials payment bond equal to 100% of the cost of construction of improvements to the Property naming the Landlord as a protected party, and to provide appropriate insurance during construction and thereafter so as to protect its interests and those of the Landlord.

(b) On or before the Commercial Operations Date the Tenant shall provide to the Landlord a form of security reasonably acceptable to Landlord and Tenant to ensure the decommissioning of the system, in the amount of \$250,000.00. Failure of the Tenant to so provide shall be deemed an event of Default hereunder and under the Agreement.

24. MISCELLANEOUS.

(a) Amendment; Waiver. This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach of a similar or different matter.

(b) Short Form Lease. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease. Either party may record this memorandum at any time, in its absolute discretion.

(c) Bind And Benefit. The terms and conditions contained in this Agreement will run with the Property and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) Entire Agreement. This Agreement and the exhibits attached constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements.

(e) Governing Law / Forum. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without regard to conflicts of law. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth, Plymouth County or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties.

(f) Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply:

(i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof;

(ii) use of the term “including” will be interpreted to mean “including but not limited to”;

(iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed;

(iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement;

(v) use of the terms “termination” or “expiration” are interchangeable; and

(vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) Estoppels. Either party will, at any time upon fifteen (15) days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrance of the Property. Failure to deliver such a statement within such time will be conclusive upon the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's rent has been paid in advance.

(h) No Option. The submission of this Agreement for examination or consideration does not constitute a reservation of or option for the Property. This Agreement will become effective as an Agreement only upon the legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

List of Exhibits to Agreement

Attachment 1 — Description of the Premises –

Attachment 2 – Termination Payment Schedule

Landlord

By: _____
_____, Selectman

By: _____
_____, Selectman

By: _____, Selectman

By: _____
_____, Selectman

By: _____
_____, Selectman

By: _____
_____, Esq.
Town Counsel

Tenant

By: _____

Name: _____

Title: _____

Date: _____

559600.1

ATTACHMENT 1

Description of the Premises

DRAFT EMSA RENEWABLES

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ATTACHMENT 2 *TERMINATION PAYMENT SCHEDULE*

Early Termination Occurs in Year:	Early Termination Fee (including costs of removal)	Early Termination Fee (excluding costs of removal)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
At expiration	\$0	\$0

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EXHIBIT 4

Easton Zoning By Law Article 7-18

7-18 LARGE-SCALE GROUND MOUNTED SOLAR PHOTOVOLTAIC INSTALLATIONS

A. Purpose

The purpose of this bylaw is to facilitate the creation of new Large-Scale Ground-Mounted Solar Photovoltaic Installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on environmental, scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations. The provisions set forth in this section shall apply to the construction, operation, repair, and/or removal of Large-Scale Ground-Mounted Solar Photovoltaic Installations greater than 250 kW on at least 5 acres of land. Any installation qualifying as a Large-Scale Ground-Mounted Solar Photovoltaic Installation shall require Site Plan Review in accordance with Section 7-10 of the Zoning Bylaws of the Town of Easton.

B. Definitions

Building Inspector:

The Inspector of Buildings, charged with the enforcement of the zoning ordinance.

Building Permit:

A construction permit issued by an authorized Building Inspector which provides evidence that the project is consistent with the state and federal building codes as well as local Zoning Bylaws, including those governing ground-mounted large-scale solar installations.

Designated Location:

The Large-Scale Ground-Mounted Solar Photovoltaic Overlay District, as designated by the Town of Easton, is shown on the Official Zoning Map, dated May 16, 2011, in accordance with Massachusetts General Laws Chapter 40A. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Easton Town Clerk.

Large-Scale Ground-Mounted Solar Photovoltaic Installation:

A solar system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity greater than 250 kW and occupies more than 5 acres of land.

On-Site Solar Installation

A solar installation that is constructed at a location where other uses of the underlying property occur.

Rated Nameplate Capacity

The maximum rated output of electric power production of the Electric system in Alternating Current (AC) or Direct Current (DC).

Site Plan Review

Review by the Planning Board to determine conformance with Section 7-10 of the Zoning Bylaw.

Site Plan Review Authority

For purposes of this bylaw, the Planning Board is the Site Plan Review Authority.

Solar Photovoltaic Array

An arrangement of solar photovoltaic panels.

Zoning Enforcement Authority

The Building Inspector is charged with enforcing the zoning ordinances or bylaws.

C. Overlay District**1. Establishment**

The Large-Scale Ground-Mounted Solar Photovoltaic Installation Overlay District, hereinafter referred to as the “SPOD”, is an overlay district that is superimposed over the underlying zoning districts, as shown on the Zoning Map as set forth on the map entitled “Large-Scale Ground-Mounted Solar Photovoltaic Installation Zoning Map,” dated May 16, 2011, attached hereto as Appendix B. This map is hereby made a part of the Zoning Bylaw and is on file in the Office of the Town Clerk.

2. Applicability

- a. This section applies to Large-Scale Ground-Mounted Solar Photovoltaic Installations greater than 250 kW that occupy no less than 5 acres of land proposed to be constructed in Easton. This Section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment. Such facilities located in the SPOD are subject to Site Plan Review and the Standards and Requirements contained herein. Site Plan Review will be required if there are any physical modifications that materially alter the type, configuration, or size of these installations or related equipment.
- b. Municipal facilities owned, operated by, or developed for and on behalf of the Town of Easton are allowed as-of-right without Site Plan Review, but must meet the other requirements of this Section.
- c. Smaller scale ground- or building-mounted solar electric installations which are an accessory structure to an existing residential or non-residential use do not need to comply with this Section, but require a building permit and must comply with the other provisions of Easton's Zoning Bylaws as applicable.

D. General Requirements for all Large-Scale Ground-Mounted Solar Photovoltaic Installations

The following requirements are common to all solar installations to be sited in designated locations.

1. Compliance with Laws, Ordinances and Regulations

The construction and operation of all Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar installation shall be constructed in accordance with the State Building Code.

2. Building Permit and Building Inspection

No Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

3. Fees

The application for a building permit for a Large-Scale Ground-Mounted Solar Photovoltaic Installations must be accompanied by the fee required for a Building Permit [and Special Permit] and as required by Site Plan Review Section 7-10.

E. Site Plan Review

Large-Scale Ground-Mounted Solar Photovoltaic Installations shall undergo Site Plan Review in accordance with Section 7-10 of this bylaw by the Planning Board prior to construction, installation or modification as provided in this Section and shall also meet the requirements of this section. Municipal facilities are not subject to Site Plan Review, but must meet other requirements of this Section including but not limited to the Design and Performance Standards.

1. General

All plans and maps shall be prepared, stamped and signed by a Professional Engineer licensed to practice in Massachusetts.

2. Required Documents

The project applicant shall provide the following documents in addition to or in coordination with those required for Site Plan Review.

- a. Site Plan. The Site Plan must include the following:
 - (i) Property lines and physical features, including roads and topography, for the project site.
 - (ii) Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures including their height.
 - (iii) Locations of wetlands, Priority Habitat Areas defined by the Natural Heritage & Endangered Species Program (NHESP).
 - (iv) Locations of Floodplains or inundation areas for moderate or high hazard dams.

- (v) Locations of Priority Heritage Landscapes and local or National Historic Districts.
 - (vi) A list of any hazardous materials proposed to be located on the site in excess of household quantities and a plan to prevent their release to the environment as appropriate.
 - (vii) Blueprints or drawings of the solar installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures.
 - (viii) One or three line electrical diagram detailing the solar installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices.
 - (ix) Documentation of the major system components to be used, including the electric generating components, transmission systems, mounting system, inverter, etc.
 - (x) Name, address, and contact information for proposed system installer.
 - (xi) Name, address, phone number and signature of the project applicant, as well as all co-applicants or property owners, if any.
 - (xii) The name, contact information and signature of any agents representing the project applicant.
 - (xiii) Fire protection measures.
 - (xiv) Storm drainage, including means of ultimate disposal and calculations.
 - (xv) Existing trees 10" caliper or better and existing tree/shrub masses; proposed planting, landscaping, and screening.
 - (xvi) Certified list of abutters.
- b. Site Control. The project applicant shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar installation.

- c. Operation and Maintenance Plan. The project applicant shall submit a plan for the operation and maintenance of the Large-Scale Ground-Mounted Solar Photovoltaic Installation, which shall include measures for maintaining safe access to the installation, stormwater management (consistent with DEP's Stormwater Regulations and the Town of Easton's Stormwater Regulations) and vegetation controls, as well as general procedures for operational maintenance of the installation.
- d. Zoning. Zoning District designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose).
- e. Insurance. The project applicant shall provide proof of liability insurance.
- f. Financial Surety. Applicants of Large-Scale Ground-Mounted Solar Photovoltaic Installation projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Planning Board, but in no event to exceed more than 125 percent (125%) of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project applicant and the Town. Such surety will not be required for municipal facilities. The project applicant shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

F. Utility Notification

No Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be constructed until evidence has been given to the Planning Board that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

G. Dimensional Requirements

1. Setbacks

For Large-Scale Ground-Mounted Solar Photovoltaic Installations, front, side and rear setbacks shall be as follows.

- a. Front yard: The front yard depth shall be at least 100 feet.
- b. Side yard. Each side yard shall have a depth of at least 75 feet; provided, however, that where the lot abuts a Residential district, the side yard shall not be less than 100 feet.
- c. Rear yard. The rear yard depth shall not be less than 75 feet; provided, however, that where the lot abuts a Residential district, the rear yard shall not be less than 100 feet.

Every abutting property shall be visually screened from the project through any one or combination of the following location, distance, plantings, existing vegetation and fencing. Said screening is not required to exceed 6 feet in height and the Applicant shall demonstrate that the proposal provides visual screening.

2. Appurtenant Structures

All appurtenant structures to Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be subject to reasonable regulations adopted by the Planning and Zoning Board after a public hearing concerning the bulk and height of structures, lot area, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be screened from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

H. Design and Performance Standards

1. Lighting

Lighting of Large-Scale Ground-Mounted Solar Installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be shielded from abutting properties. Lighting of the Large-Scale Ground-Mounted Solar Photovoltaic Installations shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

2. Signage

Signs on Large-Scale Ground-Mounted Solar Photovoltaic Installations shall comply with Section 10 of the Zoning Bylaws. A sign consistent with the Town's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number. Large-Scale Ground-Mounted Solar Photovoltaic Installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar installation.

3. Utility Connections

Electrical transformers or other utility interconnections shall be constructed as required by the utility provider and may be above ground only if necessary. Reasonable efforts shall be made to place all utility connections from the Large-Scale Ground-Mounted Solar Photovoltaic Installation underground (if feasible), depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider.

4. Roads

Access roads shall be constructed to minimize grading, removal of stone walls or street trees and minimize impacts to environmental or historic resources.

5. Control of Vegetation

Herbicides may not be used to control vegetation at the Large-Scale Ground-Mounted Solar Photovoltaic Installation. Mowing or the use of pervious pavers or geotextile materials underneath the solar array is a possible alternative.

6. Hazardous Materials

Hazardous materials stored, used, or generated on site shall not exceed the amount for a Very Small Quantity Generator of Hazardous Waste as defined by the DEP pursuant to Mass DEP regulations 310 CMR 30.000 and shall meet all requirements of the DEP including storage of hazardous materials in a building with an impervious floor that is not adjacent to any floor drains to prevent discharge to the outdoor environment. If hazardous materials are utilized within the solar equipment then impervious containment areas capable of controlling any release to the environment and to prevent potential contamination of groundwater are required.

I. Safety and Environmental Standards

1. Emergency Services

The Large-Scale Ground-Mounted Solar Photovoltaic Installation owner or operator shall provide a copy of the project summary, electrical schematic, and Site Plan to the local Fire Chief, Highway Superintendent, and Emergency Management Director. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan including the training of any municipal first responders. All means of shutting down the Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

2. Land Clearing, Soil Erosion and Habitat Impacts

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the Large-Scale Ground-Mounted Solar Photovoltaic Installation or otherwise prescribed by applicable laws, regulations, and bylaws.

J. Monitoring, Maintenance and Reporting

1. Solar Installation Conditions

The Large-Scale Ground-Mounted Solar Photovoltaic Installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be

maintained to a level acceptable to the local Fire Chief and Emergency Management Director. The owner or operator shall be responsible for the cost of maintaining the solar installation and any access road(s).

2. Modifications

All material modifications to a Large-Scale Ground-Mounted Solar Photovoltaic Installation made after issuance of the required building permit shall require approval by the Planning Board.

3. Annual Reporting

The owner or operator of the installation shall submit an Annual Report demonstrating and certifying compliance with the Operation and Maintenance Plan (see Section 14-5-2(c)) and the requirements of this bylaw and their approved site plan including control of vegetation, noise standards, and adequacy of road access. The annual report shall also provide information on the maintenance completed during the course of the year and the amount of electricity generated by the facility. The report shall be submitted to the Board of Selectmen, Planning Board, Fire Chief, Emergency Management Director, Building Inspector, Board of Health and Conservation Commission (if Wetlands Permit was issued) no later than 45 days after the end of the calendar year.

K. Abandonment or Decommissioning

1. Removal Requirements

Any Large-Scale Ground-Mounted Solar Photovoltaic Installation which has reached the end of its useful life or has been abandoned consistent with Section 7-18(K)(2) shall be removed. The owner or operator shall physically remove the installation no more than 180 days after the date of discontinued operations. The owner or operator shall notify the Planning Board by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- a. Physical removal of all Large-Scale Ground-Mounted Solar Photovoltaic Installations, structures, equipment, security barriers and transmission lines from the site.

- b. Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- c. Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

2. Abandonment

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the Large-Scale Ground-Mounted Solar Photovoltaic Installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Planning Board. If the owner or operator of the Large-Scale Ground-Mounted Solar Photovoltaic Installation fails to remove the installation in accordance with the requirements of this section within 180 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation at the owner's expense.

3. Financial Surety

Applicants shall submit documentation of financial surety that satisfies Section 7-18(E)(2)(f).