

**ONSITE SOLAR POWER PURCHASE AGREEMENT  
WITH LEASE EXHIBIT**

## TABLE OF CONTENTS

	<u>Page</u>
<b>Article 1 <u>DEFINITIONS</u></b> .....	<b>1</b>
<b>Article 2 <u>INSTALLATION OF FACILITY; SALE OF ENERGY</u></b> .....	<b>5</b>
2.1 Installation.....	5
2.2 Sale of Energy Output.....	7
2.3 Energy Charge .....	7
2.4 Service Invoices.....	7
2.5 Payment.....	7
2.6 Taxes .....	7
2.7 Energy Output Level.....	8
<b>Article 3 <u>MAINTENANCE OF FACILITY; METERS</u></b> .....	<b>10</b>
3.1 Maintenance of Equipment.....	10
3.2 Metering .....	10
<b>Article 4 <u>REPRESENTATIONS AND WARRANTIES</u></b> .....	<b>11</b>
4.1 Mutual Representations. ....	11
4.2 Additional Customer Representations and Warranties.....	11
<b>Article 5 <u>ADDITIONAL AGREEMENTS</u></b> .....	<b>12</b>
5.1 Confidential Information .....	12
5.2 Publicity .....	12
5.3 Ownership of Environmental Attributes and Environmental Incentives.....	13
5.4 Impairment of Environmental Attributes and Environmental Incentives.....	13
5.5 Other Property Rights .....	13
5.6 Reduced Facility Operation. ....	13
5.7 Additional Customer Financial Information.....	13

5.8	Cash Deposit and Other Security .....	<b>Error! Bookmark not defined.</b>
<b>Article 6</b>	<b><u>DEFAULTS AND REMEDIES</u></b> .....	<b>14</b>
6.1	Supplier Defaults and Customer Remedies .....	14
6.2	Customer Defaults and Supplier Remedies .....	15
<b>Article 7</b>	<b><u>FORCE MAJEURE; DELIVERY EXCUSE</u></b> .....	<b>16</b>
7.1	Force Majeure .....	16
7.2	Delivery Excuse .....	17
<b>Article 8</b>	<b><u>INTENTIONALLY OMITTED</u></b> .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
<b>Article 9</b>	<b><u>TERM; TERMINATION</u></b> .....	<b>17</b>
9.1	Term and Termination .....	17
9.2	Effect of Termination.....	19
9.3	Customer’s Purchase of Facility .....	19
<b>Article 10</b>	<b><u>GENERAL PROVISIONS</u></b> .....	<b>20</b>
10.1	Notices .....	20
10.2	Successors and Assigns.....	20
10.3	Entire Agreement; Amendments.....	21
10.4	Interpretation.....	21
10.5	Waivers .....	21
10.6	Expenses .....	21
10.7	Partial Invalidity.....	21
10.8	Execution in Counterparts.....	22
10.9	Governing Law .....	22
10.10	Time .....	22
10.11	No Partnership .....	22
10.12	Limitation of Liability.....	22

10.13	Legal Effect of Contract.....	22
10.14	Facility Removal.....	22
10.15	Facility Records .....	22

EXHIBITS:

EXHIBIT A Facility Specific Information and Price

EXHIBIT B Onsite Solar Photovoltaic System Site Lease Agreement



## ONSITE SOLAR POWER PURCHASE AGREEMENT

This Onsite Solar Power Purchase Agreement (“Agreement”) is dated as of the date set forth on the signature page hereto (the “Effective Date”), and made by and between the customer on the signature page hereto (“Customer”), and Constellation Energy subsidiary on the signature page hereto (“Supplier”). Customer and Supplier are referred to herein each individually as a “Party” and collectively as the “Parties.”

### RECITALS:

A. Customer has requested Supplier, and Supplier has agreed to build, own, operate and maintain a grid-connected solar power facility as more specifically described herein including in Exhibit A, on a portion of Customer’s premises leased to Supplier pursuant to that certain Onsite Solar Photovoltaic System Site Lease Agreement between the Parties attached as Exhibit B (the “Lease”).

B. Subject to the terms and conditions set forth herein, Customer desires to purchase and Supplier desires to provide and sell Energy Output to Customer.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

### Article 1 DEFINITIONS

The following terms shall have the meanings specified or referred to herein:

“Affiliate” means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person.

“Applicable Law” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules regulations, orders, interpretations, permits, judgments, decrees, injunctions, writs and orders of any Governmental Authority that apply to any one or both of the Parties or the terms thereof.

“Business Day” means a weekday which is not a statutory legal holiday.

“Closing Date” has the meaning set forth in Section 9.3(a).

“Commencement Date” means the date on which the Facility commences Commercial Operation (as set forth in a notice from Supplier to Customer).

“Commercial Operation” means the condition existing when (i) the Facility is mechanically complete and operating as specified in Exhibit A, and (ii) energy is being delivered through the Facility’s meter and to the Premises’ electrical system.

“Costs” has the meaning set forth in Section 6.2(b)(i).

“Cross Default” means a default under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount in excess of twenty-five million dollars (\$25,000,000) with respect to Customer which results in such indebtedness becoming immediately due and payable.

“Customer” means the Person identified as the “Customer” in the first paragraph of this Agreement, and the successors and permitted assigns of such Person.

“Customer Default” has the meaning set forth in Section 6.2(a).

“Customer Facilities” has the meaning set forth in Section 5.6.

“Customer Group Member” means Customer, its successors and permitted assigns, its officers, directors, employees and agents, and its Affiliates and their respective successors and permitted assigns.

“Delivery Excuse” has the meaning set forth in Section 7.2(b).

“Discount Rate” has the meaning set forth in Section 6.2(b)(ii).

“Effective Date” has the meaning set forth in the preamble hereto.

“Electricity Delivery Point” means the point in the Premises at which electric power is to be received by the Customer as described in Exhibit A.

“Energy Charge” has the meaning set forth in Section 2.3.

“Energy Output” means the total quantity of all actual net energy generated by the Facility (measured in kWh) and delivered in accordance with this Agreement to the Electricity Delivery Point, in any given period of time.

“Environmental Attribute” means an aspect, claim, characteristic or benefit associated with the generation of a quantity of electricity by the Facility, other than the electric energy produced, and that is capable of being measured, verified or calculated. An Environmental Attribute may include one or more of the following identified with a particular kilowatt hour of generation by the Facility: avoided NO<sub>x</sub>, SO<sub>x</sub>, Hg, CO<sub>2</sub> or other greenhouse gas emissions, avoided water use, or any other avoided emission or environmental impact, as otherwise defined under an applicable program, or as agreed upon by the Parties. Environmental Attributes do not include Tax Benefits and do not include Massachusetts Net Excess Generation (NEG) Credits generated by operation of the Facility, to the benefit of which Credits Customer shall be entitled.

“Environmental Incentives” means all rights, credits, rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and other emission allowances), whether arising under federal, state or local law,

international treaty, trade association membership or the like, arising from the Environmental Attributes of the Facility or the Energy Output or otherwise from the development or installation of the Facility or the production, sale, purchase, consumption or use of the Energy Output. Without limiting the forgoing, “Environmental Incentives” includes green tags, renewable energy credits, tradable renewable certificates and portfolio energy credits. Environmental Incentives do not include Tax Benefits and do not include Massachusetts Net Excess Generation (NEG) Credits generated by operation of the Facility, to the benefit of which Credits Customer shall be entitled.

“Event of Default” means a Customer Default and/or a Supplier Default.

“Facility” has the meaning set forth in Exhibit A.

“Financing Party” has the meaning set forth in Section 10.2(a)(ii).

“Force Majeure Event” means any act, event, cause or condition that is beyond the reasonable control of the Party hereto which is affected thereby, that is not caused by such Party’s fault or negligence, and that by the exercise of reasonable diligence such Party is unable to overcome or prevent, including, but not limited to: acts of God, war, civil commotion, embargoes, strikes, epidemic, fires, cyclones, droughts or floods, emergencies (other than those caused by the negligence or willful misconduct of the Party claiming the Force Majeure Event).

“Gains” has the meaning set forth in Section 6.2(b)(ii).

“Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under Applicable Laws, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Initial Term” has the meaning set forth in Section 9.1(a).

“Lease” has the meaning set forth in Recital A hereto.

“Letter of Credit” means one or more irrevocable, transferable standby letters of credit issued by either a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a credit rating of at least “A-” from S&P or “A3” from Moody’s, in a form acceptable to the Supplier.

“LIBOR” means the London Interbank Offered Rate, as published by the British Bankers’ Association on the last Business Day of the preceding Month, as the same may change from time to time.

“Losses” has the meaning set forth in Section 6.2(b)(ii).

“Make-Whole Payment” has the meaning set forth in Section 7.2(c).

“Month” means a calendar month.

“Permitted Transferee” means an Affiliate of Supplier or any other Person who (i) agrees in writing to assume, and does assume, all of the obligations of Supplier under this Agreement; (ii) who is technically and financially capable of performing such obligations, and has a technical and financial capability to do so that, at minimum, equals the capability of the Supplier; and (iii) who Supplier represents and warrants, in writing, is technically and financially capable of performing such obligations.

“Person” means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or governmental authority or regulatory body.

“Premises” has the meaning set forth in Exhibit A.

“Prudent Industry Practices” means any of the practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the United States that, at a particular time, in the exercise of reasonable judgment in light of the location, size and technology of the Facility, and in light of the facts known or that should reasonably have been known at the time the decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts conform to operation and maintenance standards recommended by the Facility’s equipment suppliers and manufacturers and Applicable Law. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather to those practices, methods and acts generally accepted or approved by a significant portion of the electric power generation industry in the relevant region, during the relevant time period, as described in the immediately preceding sentence. Such practices shall in no event be less than the standard of reasonable care applicable to the solar industry(ies) in which Supplier is a participant and the activities contemplated in this Agreement are a part.

“Renewal Term” has the meaning set forth in Section 9.1(a).

“Reporting Rights” means the right of Supplier to report to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Supplier owns the Environmental Attributes and the Environmental Incentives associated with the Energy Output.

“Supplier” means the Person identified as the “Supplier” in the first paragraph of this Agreement, and the successors and permitted assigns of such Person.

“Supplier Default” has the meaning set forth in Section 6.1(a)

“Supplier Group Member” means Supplier, its successors and permitted assigns, its officers, directors, employees and agents, and its Affiliates and their respective successors and permitted assigns.

“Tax” and “Taxes” means any present or future tax (including but not limited to all sales and use taxes, and any applicable real property and personal property taxes), levy, impost, duty, charge, assessment or fee of any nature (including but not limited to interest, penalties and additions thereto) that is imposed by any federal, state or local taxing authority on the generation, sale, delivery or consumption of Energy Output or Supplier’s operations in respect thereof, or any payments made by Customer under this Agreement, including but not limited to all property taxes assessed on Supplier and excluding taxes on the income of Supplier.

“Tax Benefits” means renewable energy-related tax benefits, including but not limited to all rights to claim federal income tax credits under sections 45 or 48 of the Code (or a cash grant in lieu thereof, including but not limited to the grant provided by section 1603 of the American Recovery and Reinvestment Tax Act of 2009), or any similar or successor provision of the Internal Revenue Code of 1986, as amended, and all other federal, state and local tax benefits arising from the ownership of the Facility. Tax Benefits do not include Massachusetts Net Excess Generation (NEG) Credits generated by operation of the Facility, to the benefit of which Credits Customer shall be entitled.

“Termination Payment” has the meaning set forth in Section 6.2(b)(i).

“Term” means the Initial Term and any Renewal Terms.

Article 2  
INSTALLATION OF FACILITY;  
SALE OF ENERGY

2.1 Installation.

(A) The Facility, as more specifically described in Exhibit A, will be engineered, designed, constructed, operated, monitored and maintained by Supplier in accordance with Applicable Law, all applicable local, state and federal laws and regulations (including, as applicable, but not limited to, any public bid and prevailing wage laws), permits and governmental approvals (including, but not limited to, applicable permits and approvals of the Massachusetts Department of Environmental Protection and Norfolk Board of Health), any required utility authorizations and agreements, all applicable standards of care, and Prudent Industry Practices. All design services shall, at minimum, be performed in accordance with the reasonable standard of care implied by law, and all construction work shall be performed in no less than a good and workmanlike manner and shall be new and free of defects. Supplier is solely responsible for keeping the Facility reasonably safe and secure, and shall, at its sole cost, install a 7 foot high chain link fence around the solar array, five lights, and two to three cameras.

(B) Notwithstanding anything to the contrary herein, Supplier shall pay any and all costs and expenses arising out of the engineering, designing, constructing, operating, maintaining, monitoring, permitting, and “interconnection” of the Facility. Customer shall be responsible to perform or cause to be performed, at Customer’s cost, tree-clearing, stump removal, grubbing, and reasonable grading of an approximately four-acre area located in an area that is generally East and adjacent to the landfill and which will subsequently be more



specifically identified by agreement of the parties ("Site Work"), but Supplier shall be responsible to perform or cause to be performed, and for the costs of, any and all engineering, permitting and staking that may be required for the Site Work. The parties shall cooperate in the scheduling and coordination of the Site Work with the other work to be undertaken by Supplier under this Agreement. Subject to a Force Majeure Event or Delivery Excuse, Supplier shall prosecute all work and services with all reasonable diligence and without unreasonable delay or interruption.

(C) Notwithstanding anything to the contrary herein, at least 30 days before commencing installation of the Facility and any improvements at or to the Premises, Supplier shall furnish a copy of all design plans and specifications for such installation or improvements to Customer for Customer's approval, which approval shall not be unreasonably withheld, conditioned or delayed. This review is in addition to, and not a limitation of, any regulatory review or process required by Applicable Law. In addition, Supplier's parent company Constellation Energy Projects & Services Group, Inc., on behalf of itself and its successors, hereby agrees to guarantee 100 percent of the Supplier's cost of the installation of the Facility as provided in Section 2.1, the maintenance of the Facility as provided in Section 3.1, the payment of all laborers and suppliers involved in the installation of the Facility, and the removal of the Facility upon the expiration or termination of this Agreement as provided in Section 9.2(c). Supplier hereby represents and warrants that its parent company has the financial capability of making and fulfilling the aforesaid guaranty.

(D) Notwithstanding anything to the contrary herein or in the Lease, Supplier understands and agrees that the granting of any leasehold interest and easements, which have not been granted by prior vote of Norfolk Town Meeting, shall be subject to such a vote and approval by the Norfolk Board of Selectmen.

(E) Supplier shall provide Customer reasonable notice of the progress of the installation of the Facility and shall provide reasonable notice to Customer of the Commencement Date.

(F) Promptly following the execution of this Agreement, Supplier shall commence pre-installation activities relating to the Facility, which shall include, without limitation, the following:

(i) obtain: (1) financing for installation of the Facility; and (2) the appropriate state specific credits and incentives for operation of the Facility;

(ii) obtain all permits, contracts, and agreements required for installation of the Facility;

(iii) obtain all necessary authority from all applicable Governmental Authorities for the operation of the Facility and the sale and delivery of Energy Output to Customer; and

(iv) effect the execution of all agreements required for interconnection of the Facility with the utility serving the Premises.

2.2 Sale of Energy Output. Commencing on the Commencement Date, Supplier agrees to sell Energy Output, and Customer agrees to purchase Energy Output, with the characteristics described in Exhibit A hereto, regardless of Customer's load usage.

2.3 Energy Charge. In consideration of Supplier's undertakings hereunder, Customer shall pay to Supplier an amount (the "Energy Charge") equal to the Energy Output times the Energy Purchase Price set forth on Exhibit A. Other than the annual percentage increase indicated in Exhibit A, the Energy Purchase Price shall not be increased without Customer's written consent.

2.4 Service Invoices. Supplier shall deliver to Customer an invoice by the fifteenth (15<sup>th</sup>) day of each Month, commencing with the Month following the Month in which the Commencement Date occurs, stating the Energy Output delivered to Customer during the preceding Month and calculating (i) the Energy Charge therefor, (ii) any other amounts then owing by Customer under this Agreement, and (iii) containing such other information as Customer may reasonably require.

2.5 Payment. Payment of each invoice shall be due in full, on or before the thirtieth (30th) day following the date of receipt of each invoice. Customer shall make each payment invoiced by Supplier when due, regardless of whether Customer disputes the amount of such invoice and without setoff of any amounts owing or claimed to be owing to Customer by Supplier. In addition to any actions that Supplier is permitted to take during the continuance of a Customer Default, whether at law or in equity or otherwise, a service charge shall be imposed if payment of an invoice is not received within thirty-five (35) days after such invoice is received by Customer. Such service charge shall be equal to one percent (1.0%) per Month, or the maximum legal rate, whichever is less, on the unpaid balance of such invoice for the period from the date of such invoice through and including the date of payment thereof. Customer may notify Supplier of any suspected error in any invoice, and Supplier shall promptly investigate and, if appropriate due to an error, reissue such invoice and refund any amounts improperly paid by Customer.


2.6 Taxes. Supplier shall be solely responsible for paying all Taxes imposed on the Facility or Site including real property or personal property taxes. Supplier shall also be responsible for paying all Taxes imposed on the generation of Energy Output. Customer shall be responsible for paying all Taxes imposed on the sale, delivery or consumption of Energy Output or Massachusetts Net Excess Generation (NEG) Credits and Supplier will collect and remit such Taxes as required by Law. The foregoing notwithstanding, if Taxes are imposed on account of the Facility or Site, including real property or personal property taxes, or if Taxes are imposed on the generation of Energy Output, the Supplier shall pay such Taxes, and the Energy Charge shall be increased to reflect the amount of such Taxes paid by Supplier. The Parties shall reasonably cooperate during the Term of this Agreement to minimize any Taxes assessed on the Facility, or on the generation, sale, delivery or consumption of the Energy Output or Massachusetts Net Excess Generation (NEG) Credits, including maintaining any Tax exemptions to which Supplier or Customer are entitled. Supplier shall be entitled to all Tax Benefits associated with and resulting from either the ownership, development and installation of the Facility or the production, sale, purchase or use of the Energy Output. Supplier shall also be entitled to (i) all

other cash payments or grants that in any way relate to the construction or ownership of the Facility and (ii) all direct third party subsidies for the generation of Energy Output.

2.7 Energy Output Level; Uptime Guarantee. Customer acknowledges that due to the nature of the Facility, Supplier is not committing to provide any specific level of Energy Output, but Supplier does hereby commit to take, and shall take, all commercially reasonable measures to maximize Energy Output. However, commencing 120 days after the Facility has been placed in Commercial Operation, Supplier warrants that the Facility will be delivering power (“uptime”) on average 80% of the time, or greater, annually. If the Facility is not delivering power due to a failure of equipment furnished by Supplier for any portion of the day when the sun is actually shining on the Facility (“daylight hours”), the Customer will be compensated for any shortfall in the energy (kWh) that would have been delivered by a fully functional Facility as determined by National Renewable Energy Laboratory (NREL) Version 1 PVWatts at a 0.77 derate factor, for Boston Massachusetts weather data, 20 degree tilt, 180 degree azimuth, system size identified in Exhibit A, and a 0.5% reduction in system size for every year of production for panel degradation. Damages begin when the total facility failure downtime exceeds 876 daylight hours yearly over any one (1) year period and is based on a total of 4,380 daylight hours per year (average). “Energy Damages,” in terms of kWh lost, are calculated by summing {the total predicted Watts of production where there was failure downtime in that one year period for the hours in excess of 876 daylight hours} and dividing that sum by {1000} (to convert the PVWatts-output units of Watts to kilo-Watt-hours). Financial damages associated with downtime are calculated by multiplying the above calculated Energy Damages, in kWh, by the difference of the {net metering cost per kWh during the period of time where failure downtime was in excess of 876 daylight hours} and the Energy Purchase Price for that one (1) year period}. Published sunrise/sunset charts may be utilized to determine actual daylight hours. Weather data used in the PVWatts kWh estimate shall be adjusted according to the actual irradiance data measured at the Facility’s DAS for the time periods in question. The following is an example of the Energy Damages calculation steps:

Open the PVWatts version 1 application. Enter in “0.77” for Derate Factor; for “Boston Massachusetts” for Location; “20” for Array Tilt; “fixed tilt” for Array Tilt; “180” Array Azimuth; and the following number for the DC Rating: System size stated in Exhibit A multiplied by  $(1-0.005)^{(N-1)}$ , for N=number of years since the Commencement Date. After pressing *Calculate* on that screen, an output page like the below image will display input data and monthly output predictions.





**AC Energy  
&  
Cost Savings**

Cautions  
for Interpreting  
the Results

(Type comments here to appear on printout; maximum 1 row of 80 characters.)

Station Identification		Results			
City:	Boston	Month	Solar Radiation (kWh m <sup>2</sup> day)	AC Energy (kWh)	Energy Value (\$)
State:	Massachusetts				
Latitude:	42.37° N	1	2.71	66	7.79
Longitude:	71.03° W	2	3.70	83	9.79
Elevation:	5 m	3	4.49	108	12.74
PV System Specifications		4	5.01	114	13.45
DC Rating:	1.0 kW	5	5.75	129	15.22
DC to AC Derate Factor:	0.770	6	6.03	127	14.99
AC Rating:	0.8 kW	7	6.13	133	15.69
Array Type:	Fixed Tilt	8	5.83	127	14.99
Array Tilt:	20.0°	9	4.93	106	12.51
Array Azimuth:	180.0°	10	4.09	94	11.09
Energy Specifications		11	2.62	59	6.96
Cost of Electricity:	11.8 ¢ kWh	12	2.36	56	6.61
		Year	4.47	1202	141.84

Output Hourly Performance Data

Output Results as Text

Press the button that says *Output Hourly Performance Data*. This brings up a page with 8760 lines of data, one for each hour of the year. The last value on each line is the “AC Power (W)” with *W*=Watts.

Favorites <http://rredc.nrel.gov/solar/calculators/PVWATTS/vers...> Page Safety Tools

"Year", "Month", "Day", "Hour", "AC Power (W)"

1980,	1,	1,	01:00,	0
1980,	1,	1,	02:00,	0
1980,	1,	1,	03:00,	0
1980,	1,	1,	04:00,	0
1980,	1,	1,	05:00,	0

If the system's 877th daylight hour with failure downtime is at 10:00am on 10/31 for that year,  $N=6$  for example, and the system comes back on line after three hours, then the calculation for Energy Damages is as follows:  $360\text{Wh} + 515\text{Wh} + 562\text{Wh} = 1,437\text{ Wh}$ , divided by 1000 = 1.437 kWh, multiplied by  $(1-0.005)^{(6-1)} = 1.401\text{ kWh}$ .

1987, 10, 31, 01:00, 0
1987, 10, 31, 02:00, 0
1987, 10, 31, 03:00, 0
1987, 10, 31, 04:00, 0
1987, 10, 31, 05:00, 0
1987, 10, 31, 06:00, 0
1987, 10, 31, 07:00, 0
1987, 10, 31, 08:00, 147
1987, 10, 31, 09:00, 334
1987, 10, 31, 10:00, 360
1987, 10, 31, 11:00, 515
1987, 10, 31, 12:00, 562
1987, 10, 31, 13:00, 493
1987, 10, 31, 14:00, 472
1987, 10, 31, 15:00, 316
1987, 10, 31, 16:00, 132
1987, 10, 31, 17:00, 0
1987, 10, 31, 18:00, 0
1987, 10, 31, 19:00, 0
1987, 10, 31, 20:00, 0
1987, 10, 31, 21:00, 0
1987, 10, 31, 22:00, 0
1987, 10, 31, 23:00, 0
1987, 10, 31, 24:00, 0
1986, 11, 1, 01:00, 0

### Article 3

#### MAINTENANCE OF FACILITY; METERS

3.1 Maintenance of Equipment. Supplier shall maintain and monitor the Facility during the term of this Agreement in accordance with Prudent Industry Practices, provided that if any portion of the Facility is damaged or destroyed as a direct result of the acts of Customer or its agents, employees, tenants, customers, contractors or other Persons under Customer's control or for whom Customer is responsible, then in addition to the Energy Charge hereunder, Customer shall, subject to applicable law, be liable for the cost of the required repair or replacement for such damage or destroyed portion. Any repairs or replacement to the Customer Facilities that involve or result in removal and/or replacement of the Facility pursuant to the previous sentence shall be at Customer's sole cost and expense. Nothing in this section is intended to make, and shall not make, Customer liable for any damage or destruction resulting from any other cause.

#### 3.2 Metering

(a) Supplier will provide revenue-quality metering equipment to measure the quantity of Energy Output delivered to Customer at the Electricity Delivery Point. All such metering equipment shall be of the type that provides and preserves a continuous flow of the relevant data twenty-four (24) hours per day. Supplier will routinely test its metering equipment in accordance with the manufacturer's recommendations, which shall not be less than every two years, and, if requested by Customer, will conduct such tests in the presence of a representative of Customer. If requested by Customer, Supplier will conduct such testing on additional occasions, but no more than once per calendar year; provided, however, that unless such testing indicates that the tested equipment provides metering results that are inaccurate by two percent (2%) or more in a manner which is adverse to Customer, Customer will pay all reasonable and

necessary testing costs incurred by Supplier. Supplier will maintain an accurate log or record of all tests, whether initiated by Supplier or Customer, and will make the results of such tests available to Customer promptly upon request.

(b) If any test of the metering equipment reveals equipment that has failed to accurately record the Energy Output metered thereby, Supplier shall restore such metering equipment to a condition of accuracy or replace it. If the metering equipment is in error by two percent (2%) or more, then Supplier will repair or replace such defective metering equipment within a reasonable period after receiving notice or becoming aware thereof.

(c) If Supplier's metering record is interrupted at any time for any reason, or is found to be inaccurate and in need of repair or replacement, the measurement of Energy Output to be billed for such period of interruption, or for the period from the last test of the affected meters which shows them to have been operating within the acceptable limits of error under Section 3.2(b) through the date upon which such meters are corrected, will be estimated jointly by Customer and Supplier, acting reasonably, based upon past Energy Output during a similar period and under similar conditions if such information is available (and if such information is not available, based upon any other relevant information and/or bases which may reasonably be used for such purpose in the circumstances), and Customer will pay invoices during such period based on the estimated measurement.

#### Article 4

#### REPRESENTATIONS AND WARRANTIES

##### 4.1 Mutual Representations.

(a) Each Party represents and warrants to the other that it has the requisite corporate, partnership or limited liability company capacity to enter into this Agreement and fulfill its obligations hereunder, that the execution and delivery by it of this Agreement and the performance by it of its obligations hereunder have been duly authorized by all requisite action of its stockholders, partners or members, and by its board of directors or other governing body, and that, subject to compliance with and obtaining all required governmental approvals under any applicable regulatory laws or regulations governing the sale or delivery of Energy Output, the entering into of this Agreement and the fulfillment of its obligations hereunder does not contravene any law, statute or contractual obligation of the Party giving the representation or warranty.

(b) Each Party represents and warrants to the other that no suit, action or arbitration, or legal administrative or other proceeding is pending or has been threatened against the representing Party that would have a material adverse effect on the validity or enforceability of this Agreement or the ability of the representing Party to fulfill its commitments hereunder, or that could result in any material adverse change in the business or financial condition of the representing Party.

##### 4.2 Additional Customer Representations and Warranties.

(a) Customer hereby further represents and warrants to Supplier that the audited financial statements of Customer dated the past three calendar years, and the related audited statements of income shareholders' equity and cash flows for the fiscal years ended on such dates and the unaudited interim financial statements of Customer, and the related unaudited statements of income, shareholders' equity and cash flows for the most recent period since the last annual audited financial statements (i) were prepared in accordance with generally accepted accounting principles consistently applied throughout the respective periods covered thereby, except as otherwise expressly noted therein, subject to, in the case of the unaudited interim financial statements, normal year-end adjustments and the lack of footnote disclosures; and (ii) present fairly the financial condition of Customer as of the dates thereof and results of its operations for the periods covered thereby. Customer further represents and warrants to Supplier that since the date of the most recent of the above-referenced audited financial statements, there has been no material adverse change in Customer's financial condition, business, operations or prospects.

(b) Customer will reasonably cooperate with Supplier in connection with any applicable state Environmental Incentive program, including but not limited to filling out such program's application and related forms. Supplier will assist by obtaining and initially filling out such application and forms for Customer.

(c) Customer hereby further represents and warrants to Supplier that Customer has complied with any and all applicable state and local procurement regulations and related rules, if any, in connection with the selection of Supplier as the party with whom to contract via this Agreement.

## Article 5 ADDITIONAL AGREEMENTS

5.1 Confidential Information. The Parties understand and acknowledge that Customer is subject to the Massachusetts Public Records Law, G.L. c. 66, §10(a) and G.L. c. 4, §7(26), and that documents made or received by Customer in connection with this Agreement may be subject to disclosure under such law, which is incorporated herein by reference.

5.2 Publicity. The Parties share a common desire to generate favorable publicity regarding the Facility and their association with it. The Parties agree that they may, from time-to-time, issue press releases regarding the Facility and that they shall cooperate with each other in connection with the issuance of such releases including, without limitation, completed review of press releases proposed to be issued by the other Party by no later than ten (10) Business Days after submission by such other Party. Each Party agrees that it shall not issue any press release regarding the Facility without the prior consent of the other, and each Party agrees not to unduly withhold or delay any such consent. Customer shall have the right to publicize that it is serving as a host for the Facility and to display photographs of the Facility in its advertising and promotional materials, provided that any such materials identify Supplier as the owner and developer of the Facility and shall be consistent with Section 5.3 of this Agreement. Without limiting the foregoing, the Facility shall be named "Constellation Energy at Town of Norfolk" or other name mutually agreed upon by the Parties.

### 5.3 Ownership of Environmental Attributes and Environmental Incentives.

Supplier shall own, and may assign or sell or pledge or grant a lien, in each case, in its sole discretion (and to the extent permitted by federal or state law), all right, title, and interest associated with or resulting from the development and installation of the Facility or the production, sale, purchase or use of the Energy Output, including, without limitation:

(a) all Environmental Incentives and all Environmental Attributes; and

(b) the Reporting Rights and the exclusive rights to claim that: (i) the Energy Output was generated by the Facility; (ii) Supplier is responsible for the delivery of the Energy Output to the Electricity Delivery Point; (iii) Supplier is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Energy Output and the delivery thereof to the Electricity Delivery Point; and (iv) Supplier is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

### 5.4 Impairment of Environmental Attributes and Environmental Incentives.

Customer recognizes that Supplier shall own all Environmental Attributes and Environmental Incentives created by the operation of the Facility and that Supplier derives substantial economic value from such ownership. Customer shall not knowingly take or fail to take any action that will materially and adversely affect Supplier's ownership of the Environmental Attributes and Environmental Incentives and ability to sell the associated renewable energy credits. Upon Commercial Operation of the Facility, Supplier will work with Customer to craft an appropriate joint public announcement and/or statement regarding the Facility and operation thereof; and the Norfolk Town Administrator will distribute a memo to all department heads (i) requesting that they not issue any written press releases about the Facility; (ii) advising that they are not to make any public statements that the Town of Norfolk is (a) using, purchasing, being provided or being supplied solar energy or (b) reducing its emissions or carbon footprint due to the solar project; and (iii) advising that any questions of the public regarding the Facility be directed to the Town Administrator.

5.5 Other Property Rights. Nothing in this Agreement or the Lease shall be construed to convey to Customer a license or other right to trademarks, copyrights, technology or other intellectual property of Supplier.

### 5.6 Reduced Facility Operation.

Customer will use reasonable good faith efforts to provide Supplier as much notice as possible prior to any planned shut down of Customer's facilities at the Premises (the "Customer Facilities") that would cause a significant reduction in the production of electricity by the Facility. If during the Term, and through no fault of Supplier, Customer causes or requests the Facility to be shut down or otherwise knows of or causes an event that significantly reduces the Facility's production of electricity, then during the period of the reduction or shut down Customer will pay the Make-Whole Payment to Supplier.

5.7 Additional Customer Financial Information. If requested by Supplier, and if maintained by Customer in the ordinary course of Customer's business, and if available at the time of Supplier's request, Customer shall deliver (i) within one hundred twenty (120) days



following the end of each fiscal year, a copy of Customer's annual report containing audited consolidated financial statements with any footnotes for such fiscal year and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Customer's quarterly report containing unaudited consolidated financial statements with any footnotes for such fiscal quarter. In all cases such financial statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles consistently applied; provided, however, that if any such financial statements are not available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default.

5.8 Cash Deposit and Other Security. In the event that Customer is, at any time, rated by one of the following rating agencies at less than (i) Baa3 by Moody's Investors Service, Inc. (or its successor), or (ii) BBB- by Standard and Poor's Rating Services, a division of McGraw-Hill (or its successor), Supplier may require that Customer make a cash deposit or provide other security reasonably acceptable to Supplier (or increase such deposit or security). Customer will, to the extent permitted by law, deliver any required cash deposit or other required security (or any increase therein) within thirty (30) days of Supplier's request.

## Article 6 DEFAULTS AND REMEDIES

### 6.1 Supplier Defaults and Customer Remedies

(a) The occurrence of any one of the following shall constitute an Event of Default with respect to Supplier ("Supplier Default"):

(i) Supplier shall fail to make payments as and when due under this Agreement to Customer within fifteen (15) days after receiving notice of such failure;

(ii) Supplier shall fail to comply with any material provision of this Agreement (other than an obligation which is the subject of another Event of Default under this Section 6.1(a)), and such failure shall continue uncured for thirty (30) days after notice thereof by Customer, provided that Supplier is using commercially reasonable efforts to pursue such cure and provided, further, if such failure is not capable of being cured within such period of thirty (30) days with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time (not to exceed one hundred eighty (180) days) so long as Supplier is exercising commercially reasonable efforts to cure such failure;

(iii) Supplier shall: (1) be unable to pay its debts as such debts become due; (2) make a general assignment or an arrangement or composition with or for the benefit of its creditors; (3) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Supplier under any bankruptcy or similar law; or (4) take any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case shall be commenced, without the application or consent of Supplier, in any court of competent jurisdiction, seeking: (1) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (2) the appointment of a receiver, trustee, custodian, liquidator or the like of Supplier or of

all or any substantial part of its assets; or (3) similar relief in respect of Supplier under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days;

(v) An Event of Default (as defined in the Lease) of Supplier shall have occurred under the Lease; and

(vi) Any representation made by Supplier under Article 4 shall have been false in any material respect when made, shall have had, or would reasonably be expected to have, a material adverse effect on Customer or Supplier's ability to perform under this Agreement, and such failure shall not be cured within thirty (30) days after notice thereof by Customer.

(b) Upon the occurrence and during the continuation of a Supplier Default: (i) Customer shall have the right to pursue any and all remedies under this Agreement, at law and in equity, and (ii) Customer may terminate this Agreement and either elect to purchase the Facility for the applicable amount set forth on Exhibit A (or if within the first five (5) years, purchase the Facility for the sum of Supplier's total costs of the Facility including but not limited to Supplier's design and installation costs and the costs of all Facility equipment and the value of any loss of Environmental Incentives) or require Supplier to remove the Facility pursuant to Section 9.2(c) (provided that such removal shall be at Supplier's expense).

## 6.2 Customer Defaults and Supplier Remedies

(a) The occurrence of any one of the following shall constitute an Event of Default with respect to Customer ("Customer Default"):

(i) Customer shall fail to make payments as and when due under this Agreement to Supplier within fifteen (15) days after receiving notice of such failure;

(ii) Customer shall fail to comply with any material provision of this Agreement (other than an obligation which is the subject of another Event of Default under this Section 6.2(a)), and such failure shall continue uncured for thirty (30) days after notice thereof by Supplier, provided that Customer is using commercially reasonable efforts to pursue such cure and provided, further, if such failure is not capable of being cured within such period of thirty (30) days with the exercise of reasonable diligence, then such cure period shall be extended for an additional reasonable period of time (not to exceed one hundred eighty (180) days) so long as Customer is exercising commercially reasonable efforts to cure such failure;

(iii) Customer shall: (1) be unable to pay its debts as such debts become due; (2) make a general assignment or an arrangement or composition with or for the benefit of its creditors; (3) fail to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against Customer under any bankruptcy or similar law; (4) take any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case shall be commenced, without the application or consent of Customer, in any court of competent jurisdiction, seeking: (1) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (2) the appointment of a receiver, trustee, custodian, liquidator or the like of Customer of all or any substantial part of its assets; or (3) similar relief in respect of Customer under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and, with respect to Customer only, such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect, for a period of ninety (90) days;

(v) Customer shall have failed to comply with its obligations under Section 5.8;

(vi) An Event of Default (as defined in the Lease) of Customer shall have occurred under the Lease;

(vii) Any representation made by Customer under Article 4 shall have been false in any material respect when made, shall have had, or would reasonably be expected to have, a material adverse effect on Supplier or Customer's ability to perform under this Agreement, and such failure shall not be cured within thirty (30) days after notice thereof by Supplier; and

(viii) A Cross Default has occurred.

(b) Upon the occurrence and during the continuation of a Customer Default: (i) Supplier shall have the right to pursue any and all remedies at law or in equity under this Agreement and (ii) Supplier may terminate this Agreement and remove the Facility pursuant to Section 9.2(c). Additionally, if a Customer Default under Section 6.2(a)(i) has occurred and is continuing, then Supplier may choose not to terminate this Agreement and the Lease and may instead sell the Energy Output to another buyer in a commercially reasonable manner, but only for such a period as such default continues and no longer; in such event, Customer shall also be liable to pay Supplier in an amount equal to Supplier's loss, if any, incurred as direct result of the resale of the Energy Output. Nothing herein is intended to reduce Supplier's obligation to mitigate its damages in the event of any Customer Default.

## Article 7

### FORCE MAJEURE; DELIVERY EXCUSE

#### 7.1 Force Majeure

(a) If either Party is prevented from or delayed in performing any of its obligations hereunder by reason of a Force Majeure Event, such Party will notify the other Party in writing as soon as practicable and will be excused from its obligations hereunder to the extent of such interference; provided, however, that no payment obligation hereunder will be excused or delayed as the result of a Force Majeure Event.

(b) The Party whose performance hereunder is prevented or delayed as the result of a Force Majeure Event will use reasonable efforts to remedy its inability to perform;



provided, however, nothing in this Section will be construed to require the settlement of any strike, walkout or other labor dispute with its employees on terms which are contrary to its interest.

## 7.2 Delivery Excuse

(a) Supplier shall not be responsible or liable for or deemed in breach of this Agreement for any delay or failure of performance of its obligations under this Agreement to the extent such delay or failure of performance is solely and directly caused by a Delivery Excuse.

(b) “Delivery Excuse” shall mean: subject to paragraph 7.1 (Force Majeure) (i) any uncured Customer Default under paragraph 6.2(a)(ii) this Agreement that directly causes a material reduction in Energy Output or (ii) the delay or failure by Customer in performing an obligation under this Agreement that directly causes a material reduction in Energy Output.

(c) During any period in which the Facility is unable to generate its full Energy Output as a direct result of a Delivery Excuse, Customer shall pay Supplier the lesser of the value of the resulting reduction in Energy Output, or a Monthly payment (the “Make-Whole Payment”) (pro-rated as needed) equal (i) to the average Monthly amount payable by Customer pursuant to Section 2.3 for the preceding twelve (12) Months or however long the Facility has been in commercial operation if less than twelve (12) Months minus (ii) the amounts paid to Supplier for the Energy Output if any, that the Facility is able to provide during such period plus (iii) the value of all Environmental Incentives for such Month that are not available to Supplier as a direct result of such Delivery Excuse.

(d) Notwithstanding anything to the contrary in this Agreement, so long as Customer’s operations on the Premises, and on the property on which Customer’s landfill and transfer station are located, are conducted in accordance with Applicable Law, neither those operations nor the results of those operations shall constitute a Customer Default or Delivery Excuse, irrespective of any perceived effect of those operations on the Facility or that such operations may result in a reduction in Energy Output.

## Article 8 INTENTIONALLY OMITTED

## Article 9 TERM; TERMINATION

### 9.1 Term and Termination

(a) Unless sooner terminated pursuant to the terms hereof, this Agreement will remain in effect for a period of time as set forth in Exhibit A (“Initial Term”) and, if (i) Customer provides written notice of its desire to renew the term of this Agreement at least twelve (12) months prior to the end of the Initial Term, and (ii) the Parties agree to a new Energy Charge in Exhibit A, then this Agreement will continue in effect for a period of time beginning on and including the day immediately after the last day of such term and ending on and including the

day immediately prior to the fifth (5th) anniversary of the first day of such term (a “Renewal Term”), if any; provided that the number of Renewal Terms shall not exceed the limit set forth in Exhibit A.

(b) Supplier shall have the right, but not the obligation, to terminate this Agreement prior to expiration of the Initial Term upon the occurrence of:

(i) an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices;

(ii) elimination or alteration of one or more Environmental Incentives or other change in law that directly results in a material and demonstrable adverse economic impact on Supplier;

(iii) an annual level of direct beam solar resource availability that is equal to 90% or less of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Premises and/or other reliable calibrated and appropriate weather station representative of the Premises;

(iv) if, through no fault of its own and despite proceeding with all reasonable diligence, Supplier has not obtained all permits, contracts, and agreements required for the installation of the Facility within one (1) year of the Effective Date (or such other time, if any, set forth in Exhibit A); or

(v) if, for any reason, less than seven (7) reasonably usable acres at the Site are not made available to the Supplier for the mounting of solar panels.

In the event of a termination pursuant to this Section 9.1(b), Supplier shall remove the Facility pursuant to Section 9.2(c) (provided that such removal shall be at Supplier’s expense), and Customer shall have no liability to Supplier other than payment of any Energy Output furnished to Customer prior to the termination date.

(c) If the Commencement Date has not occurred within twelve (12) months after the Effective Date (unless otherwise set forth in Exhibit A), Customer shall have the right, in addition to any other rights and remedies available to Customer and without any liability to itself as a result thereof, to terminate this Agreement without any liability to Supplier and require Supplier to remove the Facility pursuant to Section 9.2(c) (provided that such removal shall be at Supplier’s expense).

(d) If, through no fault of Supplier and despite its having proceeded with all reasonable diligence, the Commencement Date has not occurred within twelve (12) months after the Effective Date (unless otherwise set forth in Exhibit A), Supplier shall have the right to terminate this Agreement and shall remove the Facility pursuant to Section 9.2(c) (provided that such removal shall be at Supplier’s expense).

(e) After the sixth (6<sup>th</sup>) anniversary of the Commencement Date and at the end of the years listed on Exhibit A, Customer shall have the right to terminate this Agreement and purchase the Facility for the applicable amount set forth on Exhibit A.

9.2 Effect of Termination. Upon the expiration or termination of this Agreement:

(a) unless Customer elects to purchase the Facility, or directs Supplier to remove the Facility pursuant to Section 9.2(c) (in which case Supplier shall so disconnect and remove the Facility), Supplier shall have no further obligations under this Agreement, except as provided in section 9.2(e), below;

(b) Customer, upon the expiration of this Agreement at the end of the Initial Term or any Renewal Term shall purchase the Facility for the applicable amount set forth on Exhibit A or shall direct Supplier to remove the Facility pursuant to Section 9.2(c);

(c) if Supplier is to remove the Facility (which removal shall be at Supplier's expense unless such removal is a direct result of a Customer Default), Supplier will remove the Facility and any other property of Supplier on the Premises within 120 days of the date on which such removal is required or requested, and it shall do so in a prudent and workmanlike manner, and will repair and restore in a manner reasonably satisfactory to Customer all damage to the Premises caused by such removal and restore the Premises to its original condition, reasonable wear and tear excepted;

(d) Customer will pay Supplier all amounts then payable to Supplier hereunder (and, in the event Customer is purchasing the Facility, the purchase price payable); provided, that if the Lease is also terminated, any amounts due under this Agreement shall be netted against amounts owed by each Party under the Lease into a single liquidated amount payable by Customer to Supplier, or by Supplier to Customer, as applicable; and

(e) Customer and Supplier will have no further obligations hereunder other than (i) obligations accruing prior to the date of such termination or expiration and (ii) obligations under Sections 6.1, 6.2, 9.2, 9.3 and 10, all of which will survive the expiration or termination of this Agreement.

### 9.3 Customer's Purchase of Facility

(a) If Customer is to purchase the Facility pursuant to the terms of this Agreement, such purchase shall close on a date that is as soon as reasonably possible after Customer has elected to purchase the Facility (the "Closing Date"). If Customer elects to purchase the Facility before expiration of the 20<sup>th</sup> year of this Agreement, then, concurrently with the closing of the purchase, Customer shall, to the extent permitted by law, assume all obligations of Supplier accruing after the Closing Date under any contracts with respect to the sale of Environmental Attributes and Environmental Incentives ("SREC Contracts"), and at the closing Supplier shall assign and Customer shall assume any and all such SREC Contracts under a written assignment and assumption agreement reasonably acceptable to Customer. Otherwise, Customer shall be under no obligation to assume existing contracts between Supplier and any other person or entity.

(b) Closing of the purchase shall occur at the offices of Customer, or such other location as Customer may reasonably designate, on the Closing Date or such other date as the Parties may agree upon. At the closing, (i) Supplier shall execute and deliver to Customer Onsite Solar PPA with Lease Exhibit (11.10)

such bills of sale and instruments of assignment as are necessary or appropriate to transfer to Customer all of Supplier's right, title and interest in and to the Facility and any contracts or agreements to be assigned, on an "as is, where is" basis, without representation or warranty other than as to Supplier's due authorization and legal capacity to execute and deliver such instruments, documents and agreements, (ii) Supplier shall also promptly deliver to Customer all documents, records, and information made and received by Supplier, and by Supplier's contractors, for and in connection with the Facility and this Agreement, including, but not limited to, any written manufacturer's (or other) warranties, operation-and-maintenance manuals and records, as-built drawings for the Facility, and all other documents, records and information which Customer may reasonably request, but excluding any Supplier confidential information not already in the public domain, and (iii) Customer shall deliver to Supplier the purchase price, by wire transfer of immediately available funds or by other payment means acceptable to Supplier, and shall execute and deliver such assignment and assumption agreement.

## Article 10 GENERAL PROVISIONS

10.1 Notices. All notices and communications under this Agreement shall be in writing and shall be (a) delivered in person, or (b) mailed, postage prepaid, either by registered or certified mail with return receipt, or (c) sent by reputable overnight express carrier, addressed in each case to the person and at the address as set forth on the signature page hereto, or to such other address as either Party may hereafter designate to the other by such notice and with signature confirming delivery. Notices to Supplier shall include a copy to: Constellation Energy, Attn: Legal Counsel, 100 Constellation Way, Suite 1200C, Baltimore, MD 21202. All notices sent pursuant to this Agreement shall be deemed received upon receipt.

### 10.2 Successors and Assigns

(a) Neither Party shall assign its right, title and interest or delegate its duties under this Agreement without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed), except:

(i) Supplier may assign its right, title and interest and delegate its duties under this Agreement, or any part thereof, to (A) any Permitted Transferee, subject to the advance written consent of Customer, which consent shall not be unreasonably withheld, conditioned or delayed, or (B) to an Affiliate of Supplier upon advance written notice to Customer; and

(ii) With advance written notice to Customer, Supplier may assign any or all of its right, title and interest in this Agreement to any bank or other lender, or to any trustee or agent acting on behalf of such lender (each, a "Financing Party") to whom Supplier provides a security interest in Supplier's right, title and interest in the Facility in connection with financing (or refinancing) the Facility. Customer shall reasonably cooperate with Supplier in connection with such an assignment, including but not limited to providing reasonable written consents, reasonable estoppel certificates, and any other reasonable documents reasonably and customarily required with respect thereto.



No consent by either Party to any assignment or delegation by the other Party shall be deemed to be a novation or otherwise to relieve the assigning Party of its obligations hereunder unless otherwise expressly so stated in such consent.

(b) This Agreement will be binding upon and inure to the benefit of the Parties hereto and their successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended or will be construed to confer upon any Person (other than the Parties and successors and assigns permitted by this Section 10.2 and Persons expressly benefited by the provisions of Sections 8.1 and 8.2) any right, remedy or claim under or by reason of this Agreement.

10.3 Entire Agreement; Amendments. This Agreement contains the entire understanding of the Parties hereto with regard to the subject matter contained herein, and supersedes all prior agreements or understandings between or among any of the Parties hereto. The Lease shall be deemed as having been executed simultaneously with the execution of this Agreement. This Agreement will not be amended, restated, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

10.4 Interpretation. Article titles and headings to sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

10.5 Waivers. Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver will be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party. The failure of any Party hereto to enforce at any time any provision of this Agreement will not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement will be held to constitute a waiver of any other or subsequent breach.

10.6 Expenses. Each Party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as otherwise set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

10.7 Partial Invalidity. Wherever possible, each provision hereof will be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein will, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision will be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable. Upon any such determination that any term or other provision hereof is invalid, illegal or unenforceable, the Parties hereto shall negotiate in

good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner, to the end that the transactions contemplated hereby are fulfilled to the extent possible in the circumstances.

10.8 Execution in Counterparts. This Agreement may be executed in one or more counterparts, each of which will be considered an original instrument, but all of which will be considered one and the same agreement, and will become binding when one or more counterparts have been signed by each of the Parties hereto and delivered to Supplier and Customer.

10.9 Governing Law. This Agreement will be governed by and construed in accordance with the internal laws and decisions of the state where the Facility is located, without respect to any conflicts of law principles.

10.10 Time. Time is of the essence hereof.

10.11 No Partnership. This Agreement does not and shall not be construed to create establish a partnership, agency, joint venture, lease, license or any other relationship between the Parties hereto, nor constitute either Party as an agent of the other. Neither Party hereto shall hold itself out to others, by act or omission, contrary to the terms of this Section.

10.12 Limitation of Liability. For breach of any provision of this Agreement for which an express remedy or measure of damages is provided in this Agreement, the rights of the non-defaulting Party and the liability of the defaulting Party shall be limited as set forth in this Agreement, as the sole and exclusive full, agreed-upon and performance shortfall payment, and not as a penalty, and all other damages or remedies are waived. Notwithstanding any other provision of this Agreement to the contrary, in no event shall Customer and Supplier be liable for special, indirect, incidental or consequential damages ("Indirect Damage"), under any theory of recovery, whether based in contract, warranty, tort, negligence, strict liability or otherwise, including, but not limited to, loss of profits or revenue, loss of use of the goods or any associated equipment, cost of capital, cost of substitute equipment, facilities or services, downtime costs, delays, and claims of any customers, provided however that the Facility Purchase Price shall not in any event be considered an Indirect Damage for Customer. Excluding Supplier's insurance coverages in the Lease, Supplier's maximum aggregate liability under this Agreement (whether in contract, warranty, indemnity, tort, negligence, strict liability, or otherwise) shall in no case exceed seven million five hundred thousand dollars (\$7,500,000). In other words, this liability cap is above and beyond the amount of any insurance which may be available to cover any liability of Supplier.

10.13 Legal Effect of Contract

(a) The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract for the sale to Customer of energy produced at an alternative energy facility.

(b) The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States

Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

10.14 Notwithstanding anything to the contrary herein and in any other agreement between the Parties, including the Lease, in the event that the Lease is terminated or expires, this Agreement shall automatically and simultaneously terminate or expire, and vice versa.

10.15. Facility Removal: In the event removal of the Facility is required under any provision of this Agreement, Supplier shall accomplish such removal within 120 days of the date on which removal was required or made necessary, and shall accomplish such removal in a good and workmanlike manner and in accordance with all applicable local, state and federal laws and regulations, permits, governmental approvals, utility authorizations and agreements, all applicable standards of care, and Prudent Industry Practices, and Supplier shall restore the Premises to its original condition, reasonable wear and tear excepted.

10.16. Facility Records. Supplier shall maintain detailed records of all of its activities under this Agreement, including, but not limited to, records relating to the design, construction, operation and maintenance of the Facility, and any records required to be made or kept by law or regulation, and records customarily made and kept for the activities contemplated in this Agreement, and shall maintain all such records according to Supplier’s corporate Records Retention Policy. In no event shall Supplier destroy or otherwise discard any design plans and specifications and other operational records directly relating to the design, construction, operation and maintenance of the Facility and any SREC Contracts then in effect (collectively, “Facility Records”) during the Term of this Agreement; in the event this Agreement terminates and Customer elects to purchase the Facility under as set forth in this Agreement, then Supplier shall promptly provide all such Facility Records upon closing of such purchase. At all reasonable times and upon reasonable written notice, Supplier shall permit Customer access to all such records but excluding any Supplier confidential information.

IN WITNESS WHEREOF, the Parties hereto have caused this Onsite Solar Power Purchase Agreement to be executed by their duly authorized persons.

**CUSTOMER NAME:**

Town of Norfolk, Massachusetts

By: [Signature]  
Name: Robert J. Garrity  
Title: Chairman

By: [Signature]  
Name: James M. Tomaszewski  
Title: Vice Chairman

By: [Signature]  
Name: James C. Lehan  
Title: Clerk

Address: 1 Liberty Lane  
Norfolk, MA 02056

**SUPPLIER NAME:**

Constellation Solar Massachusetts, LLC

By: \_\_\_\_\_  
Name: Michael D. Smith  
Title: President  
Address: 100 Constellation Way, Suite 1200C  
Baltimore, MD 21202

Solely with respect to Section 2.1(C):

Constellation Energy Projects & Services Group, Inc.

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

Effective Date: March 31, 2011



IN WITNESS WHEREOF, the Parties hereto have caused this Onsite Solar Power Purchase Agreement to be executed by their duly authorized persons.

**CUSTOMER NAME:**

Town of Norfolk, Massachusetts

By: \_\_\_\_\_  
Name: Robert J. Garrity  
Title: Chairman

By: \_\_\_\_\_  
Name: James M. Tomaszewski  
Title: Vice Chairman

By: \_\_\_\_\_  
Name: James C. Lehan  
Title: Clerk

Address: 1 Liberty Lane  
Norfolk, MA 02056

**SUPPLIER NAME:**

Constellation Solar Massachusetts, LLC

By: \_\_\_\_\_  
Name: Michael D. Smith  
Title: President  
Address: 100 Constellation Way, Suite 1200C  
Baltimore, MD 21202

Solely with respect to Section 2.1(C):

Constellation Energy Projects & Services Group, Inc.

By: \_\_\_\_\_  
Name: Gregory S. Jarosinski  
Title: President

Effective Date: March 31, 2011

## EXHIBIT A

### FACILITY SPECIFIC INFORMATION AND PRICE

#### Premises Address/Location

The Facility shall be, collectively, the solar power facilities which are located on the site ("Site"), as determined by the Parties as set forth below.

The approximately 60-acre property is located at 33 Medway Branch Road, Norfolk, Massachusetts. The property includes Lot 32 shown in The Town of Norfolk Assessor's Map 9, Block 32, as well as Lot 27 and Lot 32 shown in The Town of Norfolk Assessor's Map 15, Block 32. Town Assessor information is identified on the document below "Town of Norfolk Highway Department Facility As-Built," a drawing dated 1/29/02.

Site where solar panels will be located includes two areas: a capped landfill located at the property an additional and 4-5 acres of land adjacent to the landfill on the and generally east of the landfill. The latter area is to be cleared by the Town of Norfolk Department of Public Works at the Town's expense in accordance with the terms of the Agreement and Lease. Subject to the terms of the Agreement and Lease, electrical and communications system components to be located at 1) the areas of the solar panels; 2) in DPW building(s) on or near the site; 3) at the utility poles near the site; and 4) running over/under ground in areas between these locations.

The Customer will, following execution of this Agreement and upon written request of Supplier, transmit documentation to Supplier regarding any landfill closure approvals from the Massachusetts Department of Environmental Protection that are current at the time that construction begins. Notwithstanding anything to the contrary herein, Customer makes no representations and warranties as to the Site and landfill.

Before commencing installation of the Facility, Supplier shall carefully evaluate the site of the proposed Facility and current permits issued by the Massachusetts Department of Environmental Protection to determine whether, in Supplier's opinion and based on the information available, the site is ready and in a condition appropriate to receive the Facility, and shall notify Customer in writing if Supplier has determined that the site is not so ready or is not in such condition at such time.

#### Facility Description

##### Technical Specifications

- Rated Photovoltaic Array Capacity (STC) ~1,600kW with flat-plate crystalline panels, ground-mounted at a fixed tilt (final configuration and size to be determined during engineering study)

Photovoltaic PANEL  
AREAS

0

### Application

Crystalline panels to be installed utilizing a ballasted or driven pole-mounted racking system. Panels are connected electrically in series into strings and strings' wiring is routed through covered wire channels, if over ground, or direct-buried if underground. These array string wires are electrically configured in parallel at combiner boxes; single DC outputs from multiple combiner boxes are connected to the inverter input circuits; AC outputs are connected to either the onsite building's switchgear or to the utility's pole-mounted distribution system feeders.

The system being proposed assumes that all environmental, Utility, and Town approvals can be acquired by Supplier with reasonable efforts and design. Should it be determined that the landfill-oriented Solar PV system cannot be constructed with reasonable efforts and design, Customer may, in its sole discretion, make good faith efforts to make more land on the Site available for mounting solar panels in order to achieve target system size.

### Data Acquisition System

The output of the inverter is metered and monitored through the Data Acquisition System ("DAS"). The information from the inverter and the photovoltaic arrays are fed to the DAS. The DAS processes and records the data, displaying the data on computer monitors. The displayed data includes the following:

- Input & Output voltages, currents, power
- Weather information, temp, wind, solar radiation
- Current performance data
- Historical performance data

### Energy Purchase Price

Subject to section 2.3 of the PPA, the Energy Purchase Price is \$0.056 per kWh. The rate shall increase at a rate of 2% per year beginning one (1) year after the Commencement Date.

Customer shall be entitled to any Massachusetts Net Excess Generation (NEG) Credits generated by operation of the Facility and Supplier shall assign such NEG Credits to meters and/or accounts designated by Customer. Supplier represents and warrants that, to the best of its knowledge, in the event Customer is not able to use all Energy Output, NEG Credits will be available to Customer through the operation of the Facility.

<u>Year</u>	<u>Energy Purchase Price (\$/kWh)</u>
1	\$0.0560
2	\$0.0571
3	\$0.0583
4	\$0.0594
5	\$0.0606
6	\$0.0618

7	\$0.0631
8	\$0.0643
9	\$0.0656
10	\$0.0669
11	\$0.0683
12	\$0.0696
13	\$0.0710
14	\$0.0724
15	\$0.0739
16	\$0.0754
17	\$0.0769
18	\$0.0784
19	\$0.0800
20	\$0.0816

### **Initial Term; Renewal Terms**

20 years from the Commencement Date.

Maximum number of five (5) year Renewal Terms: 2

### **Facility Purchase Price**

The Facility purchase price shall be the greater of any applicable price as set forth below or the fair market value of the Facility at the date of purchase by Customer.

<u>End of Year</u>	<u>Price (\$) based on a 1.6MW DC Solar PV System</u>
6	\$4,996,000
10	\$3,796,000
15	\$2,296,000
20	Fair market value

To determine the fair market value, the Parties shall negotiate in good faith within thirty (30) days from the date Customer gives notice of its intent to purchase the Facility. If agreed upon, the Parties may choose an independent appraiser who possesses the necessary expertise and who will act in good faith and reasonably determine the fair market value, and whose cost may be shared equally between the Parties.

### **Other Terms**

N/A

## **EXHIBIT B**

### **ONSITE SOLAR PHOTOVOLTAIC SYSTEM SITE LEASE AGREEMENT**

See Attached.