



REQUEST FOR PROPOSALS

SOLAR PHOTOVOLTAIC PROJECTS

TOWN OF SUNDERLAND, MA

ISSUED: JUNE 4, 2012
PROPOSALS DUE: JULY 23, 2012

Sunderland Board of Selectmen

Town Office Building

12 School Street

Sunderland, MA 01375

REQUEST FOR PROPOSALS

SOLAR PHOTOVOLTAIC PROJECTS

SUNDERLAND, MA

The Town of Sunderland seeks proposals, pursuant to M.G.L. c. 30B, §16, Real Property Disposition, from solar energy developers (“*Respondents or Proposers*”) to:

1. Lease land at the Primary locations identified below pursuant to a Lease Agreement a form of which is included in this RFP, and install, own, operate and maintain thereon a solar photovoltaic energy system(s) (“Solar Energy Systems” or “Systems”). A description of the Primary locations is located in Attachment B to this RFP:
 - Primary locations including:
 - a. Sunderland Elementary School parcel at One Swampfield Drive (ground mounted);
 - b. Town Office Building/Public Library parcel(s) at 12 and 20 School Street (ground mounted); and
 - c. Public Safety/Wastewater Treatment Plant/Highway Garage parcel at 105, 111 and 113 River Road (ground mounted).
2. Lease land at the Secondary locations identified below pursuant to the Lease Agreement, and install, own, operate and maintain thereon a solar photovoltaic energy system(s) (“Solar Energy Systems” or “Systems”) at the following Secondary locations. A description of the Secondary locations is located in Attachment B to this RFP:
 - Secondary locations including:
 - a. Bull Hill Road parcel located at Map 8, Lots 43 & 47 covering 14.319 acres (ground mounted).
 - b. Capped landfill located on Reservation Road at Map 1, Lot 146 covering 6.884 acres (ground mounted).
3. Furnish Town with solar-generated electricity at the Primary locations and/or Secondary locations produced by the Systems power purchase agreement (“PPA”), for a term not to exceed twenty (20) years, that provides the Town with the maximum savings and/or offset for its electrical needs without increasing its current liabilities. The PPA is exempt from the procurement requirements contained in Chapter 30B pursuant to section 1(b) (33) of that chapter.

It is the desire of the Town to site several Solar Energy Systems for the benefit of the Town and the environment. This Request for Proposals is being issued to allow the Town to evaluate multiple options and determine the projects and financial arrangements that best meet the Town’s interest.

The Town is interested in receiving proposals for Primary locations and Secondary locations. The Primary locations and Secondary locations are hereafter referred to as the “Premises”. Respondents are not required to submit proposals for all of the Premises. The Town will evaluate all proposals and

reserves the right to select one or more proposals that provide the best economic solution for each Premise. Proposals for each of the Premises will be evaluated against other proposals received for the same Premises. In addition to other rights reserved herein, the Town reserves the right to cancel this RFP as to one or more, or all, of the Premises, in its discretion and to the fullest extent permitted by law.

Complete proposals are due on **July 23, 2012, no later than 11:00 AM.** Proposals as required in accordance with all terms and specifications contained herein will be received by:

Board of Selectmen Office
Att: Margaret Nartowicz, Town Administrator
Town Office Building
12 School Street
Sunderland, Massachusetts 01375

A Mandatory Pre-Proposal Conference will be held on June 19, 2012 at 1:00 PM in Sunderland Town Office Building located at 12 School Street, Sunderland, MA. Only those respondents attending the Mandatory Pre-Submission Conference will be permitted to submit proposals. Interested respondents are asked to R.S.V.P. to the Town's owner's agent, Beth Greenblatt of Beacon Integrated Solutions by June 15, 2012 at bgreenblatt@beacon-llc.com. Immediately following the conference, non-mandatory tours of the Premises will be offered by the Town.

Proposals must be submitted in a sealed outer package addressed to:

Board of Selectmen Office
Att: Margaret Nartowicz, Town Administrator
Town of Sunderland
Town Office Building
12 School Street, Sunderland, Massachusetts 01375

Within each envelope or package, the respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the proposal on behalf of the respondent.

The proposer's proposal shall include a "***Non-Price Proposal***" and a "***Price Proposal***" as required by this RFP.

All questions pertaining to this RFP must be made in writing to Beth Greenblatt at bgreenblatt@beacon-llc.com with a copy to Margaret Nartowicz at selectmen@townofsunderland.us by no later than June 29, 2012.

The RFP and supporting documents will be made available through an FTP site. Interested parties may request an electronic copy of the RFP document by request to Beth Greenblatt at bgreenblatt@beacon-llc.com with a copy to Margaret Nartowicz at selectmen@townofsunderland.us.

Due to size limitations, supporting documents will only be provided by electronic download from the FTP site. Instructions and logon permissions to the FTP site will be provided to interested parties at the mandatory pre-submission conference discussed previously. It is the proposer's responsibility to check prior to the Public Opening for any updates issued as a result of questions or changes needed in this RFP. A hard copy of the RFP and supporting documents will be available for review during normal business hours at the Town Office Building.

The Town reserves the right to reject any and all proposals, or projects within proposals if it is deemed to be in the best interest of the Town to do so, and for any other reason permitted by law.

This RFP contains the following Attachments:

Attachment A – Proposal Forms

- Attachment A-1 – Certification of Examination Form
- Attachment A-2 – Certificate of Non-Collusion
- Attachment A-3 – Certificate of Tax Compliance
- Attachment A-4 – Disclosure of Beneficial Interests
- Attachment A-5 – Certification Regarding Debarment
- Attachment A-6 – Proposer Minimum Requirements Checklist

Attachment B – Description of Premises

- General description
- Maps
- Property Cards
- Site Locus
- Parcel Deeds
- Order of Taking
- Solar By-Law

Attachment C – Municipal Energy Usage Data

Attachment D – Pricing Bid Forms

Please use Microsoft Excel workbooks provided separately.

Attachment E – Draft Power Purchase and Lease Agreements

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SECTION I: PROJECT DESCRIPTIONS AND KEY PROJECT ELEMENTS

A. Purpose

This RFP is being issued for the Disposition of Real Property under M.G.L. c. 30B, §16. The goal of this RFP is to lease a portion of the specified parcels for purposes of generating electricity from ground-mounted solar photovoltaic energy systems in order to provide a revenue stream to the Town in the form of lease payments, allow for a purchase of solar energy generation and net metering of solar energy, and to reduce the Town's reliance on fossil fuels and minimize its carbon footprint. The Town will evaluate the proposals in accordance with the criteria stated in this RFP to determine the best value to the Town. To this end, the Town aims to enter into Power Purchase Agreement(s) (PPA) for purchasing solar energy generation and net metering credits, and Lease Agreements for the use of Town property.

The selected Proposer will, at its sole cost, install, own, operate, maintain, service, repair, and ultimately remove the system unless it is otherwise purchased by the Town, and will be solely responsible for performing (and for paying all of the costs associated with) permitting, designing, owning, insuring, commissioning, interconnection, metering, operating, maintaining, monitoring and reporting the system, and for providing security for the system at all times. The selected Proposer shall also be responsible for all obligations and costs imposed upon the Town as "Host Customer" under the relevant tariff(s) of the local electric distribution company.

Proposer will be responsible for payment of all taxes, including without limitation real and personal property taxes arising from the lease of Town land and the solar energy system(s). Proposers are advised that under Massachusetts General Law, there is no exemption for real and/or personal property taxes for renewable generation assets that supply power to the grid like the Systems contemplated in this RFP. The Town will consider a payment in lieu of taxes as a compliance option of the real or property tax obligation.

The Town seeks proposals from entities in the business of developing solar energy generation facilities to finance, install, own, operate and maintain the solar photovoltaic systems on the sites identified in this RFP. As owner of each site, the Town will grant a lease to the selected Proposer(s) to allow the Proposer(s) to undertake the project for the purposes, and subject to the conditions, set forth herein. A form of lease is provided in Attachment E. The successful Proposer(s) shall enter into a lease substantially in the form so provided. The Town desires the highest financial return consistent with good design and construction that is fully compliant with federal, state, and local laws, regulations, standards, bylaws, codes, and requirements, and the requirements of the local electric distribution company.

B. Introduction

The Town desires to evaluate sites for solar photovoltaic energy systems and purchase solar-generated electricity for use by the Town in buildings and facilities located on properties owned by the Town. A summary of municipal energy consumption is provided in Attachment C. The Town seeks proposals from entities in the business of providing renewable energy from solar power electric generating facilities to finance, install, own, operate and maintain solar power electric generation facilities (Systems) on various sites defined by the Town. The Town is interested in purchasing from

the selected proposer all of the electricity generated by the Systems for a period of not-to-exceed twenty (20) years.

The selected respondent will own the System and will be responsible for the design, engineering, permitting, installation, testing, operation, maintenance, repair and decommissioning of the System, including, without limitation, procurement of the solar photovoltaic equipment and related services.

The selected respondent will be required to document prior to execution of any lease or power purchase agreements the suitability of Systems at each location, including but not limited to environmental/code compliance and permitting for all Systems.

It is the Town's expectation that the System(s) will generate sufficient electric generation that will result in net metering benefits to the Town over the life of the contract. All Systems, if Class II or III Net Metering Facilities under 220 CMR 18, must qualify as a "Net Metering Facility of a Municipality or Other Governmental Entity," and be eligible for participation in the Massachusetts Renewable Energy Portfolio Standard Solar Carve Out Program.

C. Permitting Requirements

The selected Proposer is responsible for obtaining, and paying all costs for, all permits associated with the system installation projects. These may include but are not limited to the following, provided, however, that, this section notwithstanding, it is solely the responsibility of the Proposer to determine what permits are required for the Systems:

- **Wetlands:** Any proposed work within 100-feet of wetland areas will require the contractor to file a Notice of Intent with the Sunderland Conservation Commission and comply with an Order of Conditions issued for the project.
- **Special Permit:** The projects may require a special permit from the Planning Board under the Sunderland Zoning By-Law. The successful Proposer shall apply for any required special permit promptly after selection and shall comply with any conditions in the special permit decision.
- **Building Codes:** The installation must comply with all local, state and federal laws, regulations, bylaws, codes and standards including the most recent version of the Mass. Building and Electric Codes.

D. Contractual Arrangements

The Town will consider the following types of agreements, subject to affirmative vote of Town Meeting:

- **Contract for lease of land:** Contract term will not exceed 20 years, plus a reasonable due diligence period.

- **Contract for a solar power purchase agreement (PPA):** Contract term will not exceed 20 years, plus a reasonable due diligence period.

In connection with this RFP, Sunderland may enter into a PPA with a proponent offering the most favorable prices, terms, conditions, schedule and other benefits to the Town. However, the Town reserves the right to reject any or all proposals for any reason permitted by law. In addition, this RFP does not constitute an offer to lease land but is an invitation for offers/proposals, and therefore, neither the issuance of this RFP nor the Town's receipt of proposals shall create an implied contract with any proposer. The Town may, in its sole discretion and to the fullest extent permitted by law, deviate from or abandon the RFP process at any time and for any reason permitted by law and without any liability for proposal preparation costs or damages of any kind.

As indicated in the enclosed form of PPA, the PPA shall include a right of the Town, in its sole discretion, to purchase the Systems during the term of the PPA at a price to be determined by an independent appraiser, or as otherwise agreed to by the parties.

E. Development Parameters

Timeline: Proposers must submit a preliminary project schedule with their Non-Price Proposal for each project.

Prevailing Wages: Because the construction, operation, and maintenance of the PV system will be financed privately, it is expected that prevailing wage rates will not apply to the construction work. If such laws do apply, however, the selected Proposer for each project shall be responsible for obtaining the relevant prevailing wage rates from the Commonwealth, and shall pay prevailing wages as applicable, and by submitting a proposal agrees to indemnify and hold the Town harmless from any and all costs, claims for wages, fines or any other monetary consequence associated with any failure of the selected Proposer to pay such wages.

Interconnection: Western Massachusetts Electric Company (WMECO) maintains an above-ground 13-kV three phase electricity distribution system along Route 116/Amherst Road abutting the Project 1 site and maintains an above-ground electricity distribution system adjacent to the Project 2 and Project 3 sites, which sites constitute the Primary locations.

The selected Proposer will be responsible for all interconnection activities including all costs associated with both the interconnection and any studies, and metering with WMECO. The selected Proposer will also be responsible for all costs incurred by the Town as Host Customer for the Systems, and for the performance of all obligations of the Town as Host Customer, except for the execution of any documents which WMECO requires to be executed by the Host Customer. It is the selected Proposer's responsibility to identify interconnection sites and complete required forms and applications. Interconnection studies and upgrades, if necessary, plus all associated costs, are the responsibility of the selected Proposer.

Solar Renewable Energy Credits (SRECs): Proposer shall be responsible to ensure that the facility is and will be eligible for generation of SRECs and the Massachusetts RPS Solar Carve Out Program, and for taking all actions and paying all costs necessary to ensure and maintain such eligibility. The Town intends to assign any SRECs, rebates, tax credits or other solar energy incentives to the Proposer, excluding the net metering credits generated by the Systems, as noted below. Proposers are responsible for obtaining such credits and shall document the anticipated financial benefits in their proposals for each

project. The Proposer will be responsible for applying for any federal or state financial assistance and there shall be no direct cost or financial outlay by the Town.

Net Metering Credits: For all Systems that would constitute a Class II or III Net Metering Facility under 220 CMR 18, the Selected Proposer shall take all actions necessary to cause such Systems to qualify as “Net Metering Facilities of a Municipality or Other Governmental Entity” under 220 CMR 18. The Town shall be entitled to the full benefit of all net metering credits for any electricity that is not consumed at the sites by the Town. In the event the facility or the Town does not qualify for net metering services, the Town may cancel this procurement or terminate any lease/PPA without liability. As a condition of any lease or power purchase agreement, the successful Proposer shall be responsible to facilitate the Town’s position to apply for a cap allocation and secure a reservation in net metering.

Proposals must include a measurement and verification strategy for metering onsite electricity generation, and shall, at no cost to the Town, install, operate and maintain revenue grade meters at the project sites.

In summary, the selected Proposer will be responsible for conducting site evaluations, completing and submitting all rebate and SREC requirements, obtaining all appropriate permits, complying with national, state and local laws, regulations, bylaws, requirements, codes and standards, and the requirements of the local electric distribution company, including, but not limited to, requirements for installing the PV systems and interconnecting the PV system with the local utility company.

F. Payment

The Town intends to enter into a lease, no to exceed twenty (20) years, contingent upon Town Meeting approval, for development of a photovoltaic solar energy system at project sites. Proposers shall submit an annual lease price and an electricity price per kWh, with and/or without an escalator, on the provided pricing bid form. The proposal shall include a summary of the payments to the Town over the life of the lease for each price format.

G. Bonds and Decommissioning Assurance

Bonds. As part of any PPA and/or Lease Agreement, the selected Proposer for each project will be required to provide payment and performance bonds in the amount equal to 100 percent of the cost of installation of the facility with the Town listed as bond obligee in the event the Proposer is unable to perform its obligations under the contract.

Decommissioning Assurance. The selected Proposer will be required to provide, in the Town’s discretion, security in the form of a an escrow fund, irrevocable letter of credit, surety bond or third party guaranty sufficient to cover the cost of the removal of the solar energy systems and restoration of the site(s) at the expiration or earlier termination of the lease(s)/PPAs. Such security shall be in a form satisfactory to the Town.

H. Insurance:

The selected proposers shall be required to provide the Town with proof of insurance as follows:

The selected firm will purchase and maintain for the term of the Lease/PPA Agreements or longer as may be required by the Town, from a company or companies lawfully authorized to do business in the Commonwealth and having a rating no lower than A- (Excellent) from A.M. Best's Key Rating Guide (latest edition in effect at the date of the Lease/PPA and at the time of renewal of any policies required by the Lease/PPA), the following insurance coverage's:

- 1) **General Liability** of at least \$1,000,000 Bodily Injury and Property Damage Liability, Combined Single Limit with a \$3,000,000 Annual Aggregate Limit. The Town shall be named as an "Additional Insured".
- 2) **Products and Completed Operations** should be maintained for up to 3 years after the completion of the project.
- 3) **Automobile Liability** (applicable for any contractor who has an automobile operating exposure) of at least \$1,000,000 Bodily Injury and Property Damage per accident. The Town shall be named as an "Additional Insured".
- 4) **Workers' Compensation Insurance** as required by law.
- 5) **Architects and Engineers Professional Liability** (applicable for any architects or engineers involved in the project) of at least \$1,000,000/occurrence, \$3,000,000 aggregate. The Town shall be named as an Additional Insured.
- 6) **Umbrella Liability** of at least \$2,000,000/ occurrence, \$2,000,000/aggregate. The Town shall be named as an Additional Insured.
- 7) **No Waiver of Subrogation.**

SECTION II: SOLICITATION AND PROPOSAL PROCESS

A. Projected Selection Timeline

Request for Proposals Issued	June 4, 2012
RFP Published in the Central Register and the Recorder	June 6, 2012
Mandatory Pre-Proposal Conference	June 19, 2012 at 1:00 PM
Questions Due to the Town	June 29, 2012
Responses to Questions/Addenda Issued by the Town	July 10, 2012
Proposals Due to the Town	July 23, 2012 by 11:00 AM
Public Opening	July 23, 2012
Anticipated Interviews	Week of August 6, 2012
Anticipated Selection of Most Qualified Proposer	August 23, 2012

B. Pre-Proposal Conference and Site Tour

As noted in the above schedule, the Town will hold a Mandatory Pre-Proposal Conference on **June 19, 2012 at 1:00 P.M. at the Sunderland Town Office Building, 12 School Street.** All prospective Proposers must attend the mandatory pre-proposal conference. Proposers will be invited to tour the Project sites immediately following the conference.

Please confirm your attendance via email to bgreenblatt@beacon-llc.com with a copy to selectmen@townofsunderland.us. In the email correspondence, please provide the number of attendees and the contact information for the primary representative attending the pre-proposal conference.

C. Questions and Inquiries

Any questions or clarifications about the program must be directed in writing to the Town's owner's agent Beth Greenblatt of Beacon Integrated Solutions at bgreenblatt@beacon-llc.com with a copy to Margaret Nartowicz, Town Administrator at selectmen@townofsunderland.us.

If any Proposer has any questions regarding the RFP, it shall submit them in writing. The Town shall not be responsible to respond to questions that are not submitted in writing. The deadline for submitting questions is 4:00 P.M. on June 29, 2012. If the Town determines, in its sole discretion, to respond to any questions, it will issue a written addendum to this RFP, reciting each question and its response. With regard to the questions raised, only the information contained in that addendum may be relied upon when submitting a proposal. Oral exchanges, including any occurring during the pre-proposal conference, will be considered informal and of no legal effect. If verbal questions are made at the Pre-Proposal Conference or subsequent tour of the sites and the proposer(s) desires that such questions be considered by the Town for possible addendum, the questions must be re-submitted in writing as indicated herein, whether or not a verbal answer was provided at the conference or tour.

It is the responsibility of the Proposer to ensure that it has received all addenda issued by the Town of Sunderland.

D. Deadline for Submission of Responses

1. The deadline for submission of proposals for all projects is **11:00 A.M. on July 23, 2012**. The Town will not consider responses received after the submission deadline. Proposals will be received until, and publicly opened on, the submission deadline at the following address.

Address proposals to:

Board of Selectmen's Office
ATTN: Margaret Z. Nartowicz, Town Administrator
Town Office Building
12 School Street
Sunderland, MA 01375

2. Any Proposer may withdraw or modify its proposal by written request at any time prior to the deadline for submission of proposals. Such request must be submitted in the same manner as the proposal. The Proposer is solely responsible for ensuring that any such request is received by the Town before the deadline for submission of proposals.
3. The Town will not reimburse Proposers for any costs incurred in preparing their proposals, including, but not limited to, site visits or preliminary engineering analyses.
4. No proposal may be withdrawn for a period of ninety (90) calendar days after the date of opening the proposals.
5. Submission of a proposal shall be conclusive evidence that the Proposer has examined the Premises and is familiar with all the conditions of this procurement. Upon finding any omissions or discrepancy in the RFP or other proposal documents, the Proposer shall notify the Town immediately so that any necessary addenda may be issued. Failure of the Proposer to completely investigate the Premises and/or to be thoroughly familiar with the contract documents and all addenda, and any failure of the Proposer to immediately notify the Town of the same, shall in no way relieve the Proposer from any obligation with respect to the proposal or any lease or contract entered into.
6. The successful Proposer shall be responsible to indemnify, defend and save the Town harmless from any and all claims, damages, liabilities, costs and expenses, including attorneys' fees, arising out of the Proposer's activities at the property, and to carry such insurance as the Town may require from insurers qualified to do business in Massachusetts and acceptable to the Town.

SECTION III: SUBMISSION REQUIREMENTS

A. Submission Package

Any person or entity with the required qualifications who wishes to submit a response to this RFP shall submit complete documentation according to the requirements described herein. Every proposal must be in two parts, a **Non-Price Proposal** and a **Price Proposal**, together referred to as the “proposal.”

The proposal for each project should form a complete package that includes a detailed description of the proposed renewable energy systems, proposed leased payments, proposed unit pricing for the electricity, timetable for commercial operation, a detailed description of equipment and services to be provided, and an estimate of the electricity production, as well as any special terms offered by the Proposer in its response.

The Non-Price Proposal and the Price Proposal should be enclosed in a sealed envelope marked on the outside, **“PROPOSAL FOR LEASE OF LAND FOR SOLAR FACILITIES.”** This envelope should then be placed in another sealed envelope for delivery.

All qualifications should be written in ink or typed. If there is any correction with whiteout, the person signing the statement of qualifications must initial the correction.

It is the proposer’s responsibility to see that its proposal is delivered within the time and at the place prescribed. No proposals shall be opened by the Town until the time set for opening (the “**Public Opening**”). Proposals may be withdrawn upon written request (on the letterhead of the proposer and signed by the person signing the proposal) and must be received prior to the Public Opening. Proposals may be modified in the same manner. No proposal or modification thereof received after the Public Opening will be considered.

No selected proposer shall discriminate against any employee or applicant for employment because of a physical or mental handicap for any position for which the employee or applicant is qualified and, in the event of noncompliance, the Town may declare the selected proposer in breach and take any necessary legal recourse including termination or cancellation of any contract awarded pursuant to this RFP.

A proposer filing a proposal thereby certifies that (1) no officer, agent, or employee of the Town of Sunderland has a pecuniary interest in the proposal or has participated in contract negotiations on the part of the Town; (2) the proposal is made in good faith without fraud, collusion, or connection of any kind with any other prospective proposer for the same RFP, and (3) the prospective proposer is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

The right is reserved, as the interest of the Town may require, to reject any or all proposals, to waive any technical defect or informality in proposals received, and to accept or reject any proposal or portion thereof.

B. Non-Price Proposal

Proposers are required to submit five (5) hard copies and two (2) CD-ROM or thumb drives in Adobe (pdf) format.

The Non-Price Proposal shall contain the following information:

1. Proposer Minimum Requirements Checklist.

Proposers are required to complete and submit the Proposer Minimum Criteria Checklist provided in Attachment A-6 of this RFP.

2. Transmittal Letter.

Each proposer's response should include a transmittal letter signed by a party authorized to make a formal proposal on behalf of the proposer. The letter shall include a brief overview of the respondent's proposal. Transmittal letters must also acknowledge receipt of any Addenda issued by the Town.

3. Qualifications.

Company Profile:

- (a) Year founded and number of continuous years in business. Minimum of five (5) years in business is required.
- (b) Ownership status (private or publicly-held).
- (c) Number of employees in local branch office at the time of submittal (full-time employees, excluding contractors).
- (d) Corporate Office and Local Office locations

Licensing:

- (a) Provide a list of all relevant State-Specific contracting licenses held, including classification and number.
- (b) List any Electrical, Structural and/or Mechanical Engineering Licenses held by firm members, including classification and number.

Insurance:

- (a) Provide evidence of the insurance limits held by firm demonstrating respondent's ability to comply with the insurance requirements set forth in this RFP.

Project Team:

- (a) Team leader identification for the entire proposal, including full contact information, office location and key qualifications and professional credentials.

- (b) Identification of each business entity, person or firm involved in the proposal and their role (design, installation, permitting, equipment supply by component, operations and maintenance, etc.)
- (c) Resumes of personnel for each business entity, person or firm directly involved with the development of the proposed Systems. Provide evidence, as appropriate, of NABCEP-certified installer, Professional Engineer (P.E.), and Master Electrician.

Safety:

- (a) List your firm's or subcontractor OSHA ratings (Recordable Incidence Rates and Lost Workday Incident Rates) for the past three (3) years.

Capital Finance Structure:

- (a) Provide a description of the relevant financing structure for the proposed Project. Detail any unique features that the firm's model offers in comparison to traditional third-party financing structures.
- (b) Provide a list of at least two (2) solar PV systems, with one being a ground-mounted installation, installed by the firm in the Northeast (New England, New York and New Jersey) and operating under a power purchase agreement, including the rated capacity in kW (DC) per project, length of contract, project name and description, and term remaining on contract.
- (c) Provide evidence that the firm has the ability to secure financing for the total installed cost of the System proposed in response to this RFP. This should be in the form of a letter of interest from an anticipated funding source.

4. Solar Photovoltaic Project Experience

- (a) List the total capacity (in kW DC) of operational solar PV installations completed by the firm to date.
- (b) List the number, size (in kW DC) and location of PV projects completed in the Northeast, as defined above, within the past 3 years over 250 kW in size.
- (c) List the total capacity (in kW DC) of solar PV systems installed in the Northeast, as defined above, via the following methods:
 - Roof-mounted systems
 - Ground-mounted systems
- (d) List firm's direct experience with installed solar PV module technologies including brand, module rating and technology type (crystalline, thin-film, etc.). If the firm has any proprietary and/or exclusive corporate affiliation to any materials, equipment, or manufacturers related to the System, please indicate those relationships.
- (e) Discuss in detail Respondents direct experience interconnecting into local electric distribution systems. Provide direct references for projects installed behind Western Massachusetts Electric Company or Northeast Utilities.
- (f) Discuss firm's approach and success in incorporating "renewable energy" into the educational curriculum or community awareness programs.

5. References

- (a) Describe currently operating non-residential grid-connected PV systems greater than 250 kW DC that the firm installed and commissioned within the past three (3) years. A minimum of at least two (2) completed projects must be listed, with one being a ground-mounted installation. For each, provide the following information:
 - System Size (kW DC).
 - Host Customer's and/or Owner's name with contact person's name, email, address, phone number.
 - Location of system.
 - Date completed
 - Indicate if the installation was for multiple sites and whether it was roof or ground-mounted.
 - Any other installation-specific information that may be relevant.
- (b) Briefly describe any currently contracted yet incomplete projects including project size (in kW DC), customer name and contact, and projected completion date.
- (c) If the Respondent has an example of a large installation within 100 miles of Sunderland, MA that could be visited for a representative sample of the firm's work, please list.

6. Proposed Solar Photovoltaic Systems for Each of the Premises

- (a) System Components: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at a minimum include modules, inverters, mounting system and DAS system). Specification sheets for any proposed technologies are encouraged. Proposals shall list the specific system components for each of the Premises.
- (b) Design: Include preliminary/one-line drawings for each of the Premises for the proposed solution that include at a minimum:
 - System size (in kW DC and kW AC)
 - List of all proposed equipment including mounting system
 - Location of modules (including tilt)
 - Location of inverters
 - Discussion whether the System sizing and configuration is based on a structural analysis or engineering study by a licensed engineer or based on a calculated load analysis.
 - Any other site-specific information that will aid in overall evaluation.
- (c) Schedule: Include a Preliminary Project Implementation Schedule that accounts for milestones in the Design, Construction and Closeout Stages. Milestones should include (at a minimum):
 - Award & Contract Negotiation
 - Design Period
 - Permitting
 - Installation
 - LDC Interconnection
 - System Commissioning (Energizing)

- Delivery of Closeout Documentation
 - Commercial Operation
- (d) Interconnection: Please describe Respondent's approach to interconnecting the system to Western Massachusetts Electric Company's electric distribution system. Respondent shall be required to complete all requirements of the specific interconnection process according to tariff requirements.
7. System Performance Monitoring, Warranty and Service (O&M) for Each of the Premises
- (a) Monitoring Solution: Indicate how the firm will provide system performance monitoring via a data acquisition system (DAS). Provide a detailed description of the DAS system and provide a detailed description of the end-user interface.
- (b) Warranties: Describe any warranties associated with the installation, including full system coverage and/or warranties associated with individual components. Discuss whether such warranties pass to the Town upon any transfer of ownership.
- (c) Operations & Maintenance Services: The Proposer will provide Operation & Maintenance (O&M) services for the full term of the Lease/PPA.
- Describe the proposed O&M procedures for the System, detailing duties performed and if the lease agreement will be maintained by the selected respondent or a third-party provider.
 - Briefly describe the firm's experience providing such services for similar installations and name the key personnel in charge of handling O&M services.

C. Price Proposal

Proposers must submit five (5) hard copies and two (2) CD-ROM or thumb drives in Adobe (pdf) and Microsoft Excel format.

The Price Proposal must include:

1. The annual rent to be paid for use of the Premises, signed by an individual authorized to bind the Proposer contractually.
2. An annual price per kWh for the purchase of solar energy generation or net excess generation, plus any annual escalators if proposed.
3. A proposed schedule of termination values related to any default of the Town. Proposers are required to use the form included in this RFP as Attachment D.

Proposer may submit more than one Price Proposal for a project, each such proposal to offer alternative combinations of rent and electricity prices. **Proposers are required to complete the forms provided in Attachment D for all base and alternative proposals.**

The Price Proposal must take account of payment of all applicable municipal real and personal property taxes arising out of the lease and installation of the system. All such taxes shall be paid by the Proposer.

As discussed previously, as allowed by M.G.L. c. 59 § 38H (b), the Town would consider a payment in lieu of taxes based on the full and fair cash valuation. Proposers shall provide the value of the impact of any tax liability on both the rent payment and/or annual price per kWh for the purchase of solar energy generation or net excess generation.

D. Selection of Proposer

1. Sealed proposals will be accepted by the Town of Sunderland until the time indicated in the advertisement for proposals.
2. The Town will evaluate all responses based upon the criteria listed in this RFP. To be considered responsive, all proposals must first meet minimum evaluation criteria as described herein. The Town shall be the sole judge of the Proposer's qualifications and whether the proposal is in the Town's best interests. The Town may conduct such investigations as it considers necessary to assist in the evaluation of any proposal and to establish the responsibility, qualifications, and financial ability of the Proposer.
3. The Town will select the most advantageous proposal for each project from a responsive and responsible Proposer taking into consideration lease payments to the Town and the price for electricity to be paid by the Town and all other evaluation criteria set forth herein. The Town reserves the right to base its decision on the entirety of the information provided and its sole judgment as to the best arrangement offered.
4. The Town may request additional information as deemed necessary. Failure to provide such information may result in the proposal being considered incomplete. The Town reserves the right to reject any and all proposals in whole or in part; to waive any technicalities and informalities; to amend by addenda and/or cancel the RFP; and to correct any clearly evident clerical error in a proposal.
5. The Town may enter into negotiations with the highest ranked Proposer. If the Town and that Proposer cannot reach an acceptable agreement within 60 days upon selection, unless extended by the Town in its sole discretion, the Town may initiate negotiations with the second-ranked Proposer.
6. The selected Proposer's Disclosure of Beneficial Interests must be filed by the successful proposer with the Division of Capital Asset Management, and an updated disclosure form must be filed within 30 days of any change in beneficial interests during the lease term.

SECTION IV: PROPOSAL EVALUATION CRITERIA

A. Minimum Evaluation Criteria

Each of the items listed on the following table shall be marked (Y) if supplied and (N) if not supplied. Proposals that do not contain all items enumerated in Minimum Required Items as set forth below, shall be disqualified prior to further qualification review at the discretion of the Town.

1. Bond Capability - Proposers shall provide evidence of bond capability of at least the value of the construction from a surety company licensed to do business in the Commonwealth and whose name appears on the U.S. Treasury Department Circular 570.
2. Form of legal entity and year entity was established. List any other legal names of the firm.
3. Describe any changes in ownership status over the past five (5) years.
4. List ultimate parent company, if applicable.
5. 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 firm. 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 firm. Non-public firms may attach either unaudited financial statements or copies of tax forms and schedule that are filed with the Internal Revenue Service where applicable.
6. Lawsuits and Disputes – Discuss whether your firm has ever been involved in a lawsuit regarding a contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit(s) or litigation. Further, please discuss whether your firm has been barred from providing performance based energy services or other services in any state.
7. Minimum Prior Experience - Proposers must have successfully completed at least two (2) solar PV installations within the past three (3) years sized at a minimum of 250 kW DC, of which at least one (1) has been ground-mounted.

Criteria	Supplied
Minimum Requirements	Y/N
Proposal Completeness and Adherence to Format	Y/N
Evidence of Bond Capability	Y/N
Form of Legal Entity; Other Entity Names	Y/N
Statement of Changes in Ownership	Y/N
Identification of Parent Company	Y/N
Federal Tax Identification Number	Y/N
Submission of Financial Statements	Y/N
Statement of Lawsuits	Y/N
Minimum Prior Experience	Y/N

B. Comparative Evaluation Criteria

1. Non-Price Proposal

A. Approach and Schedule: The proposal shall include an explanation of how the Proposer will approach the various tasks, including scheduling, methods and sources.

- a. Unacceptable: No proposal
- b. Not Advantageous: Incomplete proposal
- c. Advantageous: Complete proposal
- d. Highly Advantageous: Clear and comprehensive proposal

B. Proposer Qualifications and Experience: Specialized experience is required of the proposed project personnel to undertake the work assignments. Qualifications must clearly demonstrate the capability, academic and practical work background, training, certifications and experience of the Respondent and its proposed personnel. The availability of the proposed staff is also of crucial importance and must be demonstrated. Specific project responsibility of staff to be assigned to the Projects must be included, as well as professional background and caliber of previous experience of key persons and of each consultant to be assigned to the Project. An office location for each staff member must be provided.

If sub-consultants will be employed, similar information must be provided and the portions to be sub-consulted must be identified. (There is no penalty for use of sub-consultants; the qualifications of the entire team will be evaluated.)

Proposals must clearly demonstrate full knowledge, understanding, and experience in the methods and techniques required for the financing, permitting, installation, interconnection, operation and maintenance of a solar energy facility. Capacity and capability of the Proposer to perform the work on schedule and to be responsive to the Town's concerns should be clear. The Town will evaluate the Proposer's ability to form successful working relationships with the Town.

- a. Unacceptable: No proposal
- b. Not Advantageous: Incomplete proposal
- c. Advantageous: Complete proposal
- d. Highly Advantageous: Comprehensive and detailed proposal

C. Performance Record of Proposer. The previous performance of the Proposer is a strong indicator of likely success for this project. References must be submitted from at least two (2) contracting officers and Host Customers for similar projects to provide insight into the firm’s capabilities and performance on previous projects. The Proposal should include a brief explanation of referenced work. The Proposer shall indicate the individuals who had responsibility for each project and whether or not these people are still employed by the Proposer.

- a. Unacceptable: No proposal
- b. Not Advantageous: Incomplete proposal
- c. Advantageous: Complete proposal
- d. Highly Advantageous: Comprehensive proposal documenting a record of successful performance

D. Project Understanding: The Proposer must demonstrate a comprehension of the role of this project in addressing the financial and energy needs of the Town. In addition to an understanding of the scope and approach, the Proposer must demonstrate the following:

- Knowledge of current issues and state-of-the-art technologies
- Demonstrated experience on similar projects
- Working knowledge of the geographic area as evidenced by prior work experience in the Northeast
- Ability to integrate and utilize interdisciplinary study teams effectively on assignments requiring a variety of skills and expertise
- Demonstrated understanding of structural requirements and environmental conditions and issues.

- a. Unacceptable: No proposal
- b. Not Advantageous: Incomplete proposal
- c. Advantageous: Complete proposal
- d. Highly Advantageous: Comprehensive proposal showing thorough knowledge of the project and the geographic area

E. Proposer’s Plan to Make Optimum Use of the Site: The Proposal shall show how the system will be located on the premises, describe how site constraints will be addressed, and describe how to maximize power production while minimizing costs to optimize system performance.

- a. Unacceptable: No proposal
- b. Not Advantageous: Limited use of the site
- c. Advantageous: Good, but less than optimum site layout
- d. Highly Advantageous: Optimum site use to maximize benefits within identified constraints

F. Financial Plan: The Town will evaluate the Proposer’s financial plan and financial ability to execute the project in order to determine the capability of the Proposer to obtain the financing to complete the Project in a timely manner.

- a. Unacceptable: No financial plan
- b. Not Advantageous: Incomplete or unclear financial plan
- c. Advantageous: Plan shows an ability to complete the project
- d. Highly Advantageous: Detailed financial plan submitted with strong track record of completing similar projects

2. Price Proposal.

The Proposer's Price Proposal must include all of the information required in the price proposal form.

A. Overall Economic Benefit: Each Price Proposal will be evaluated to determine the best overall economic benefit to the Town based on the following criteria:

- a. Unacceptable: No price proposal
- b. Not Advantageous: Incomplete price proposal or insufficient economic benefit to the Town
- c. Advantageous: Positive economic benefit to the Town
- d. Highly Advantageous: High financial return to the Town over the length of the Lease/PPA

**ATTACHMENT A-1
CERTIFICATION OF EXAMINATION FORM**

The undersigned has read the Request for Proposals (RFP) and has carefully examined all specifications/evaluation criteria therein. The undersigned certifies that he/she has visited the Premises and that there are no known obstacles to prevent the prompt negotiation and execution of an agreement with the Issuers. The undersigned acknowledges that the Town of Sunderland, MA may reject all proposals, or waive portions of the RFP for all proposals, if it deems it in the best interests of the public.

Signature: _____

Name: _____

Title: _____

Respondent Information

Name of Respondent: _____

Address: _____

Name of Primary Contact: _____

Title of Primary Contact: _____

Primary Contact Phone Number: _____

Primary Contact Fax Number: _____

Primary Contact Email Address: _____

Addenda Acknowledgement: _____

**ATTACHMENT A-2
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)

(Name of person signing qualifications)

(Name of business)

**ATTACHMENT A-3
ATTESTATION REGARDING FILING OF TAX RETURNS**

Pursuant to M.G.L. c. 62C, § 49A, I certify under the penalties of perjury that the undersigned respondent has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Federal Identification Number

Signature of Individual or Officer

Name of Corporation

Date

ATTACHMENT A-4

DISCLOSURE OF BENEFICIAL INTERESTS IN REAL PROPERTY TRANSACTION

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Asset Management, as required by M.G.L. c. 7, §40J, prior to the conveyance of or execution of a sale or lease of the real property described below. Attach additional sheets, if necessary.

1. Public Agency Involved in This Transaction: Town of Sunderland, Massachusetts

2. Description of the Property:

3. Type of Transaction: Lease of property

4. Lessor: Sunderland Board of Selectmen

Bidder: _____

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have, a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed, except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need not be disclosed.*

NAME

ADDRESS

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts, except as noted below:

NAME

TITLE OR POSITION

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in Item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation. The undersigned acknowledges and swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT A-5
CERTIFICATION REGARDING DEBARRMENT**

The undersigned certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Signature

Name of person signing qualifications

Name of business

**ATTACHMENT A-6
PROPOSER MINIMUM REQUIREMENTS CHECKLIST**

Criteria	Supplied
Minimum Requirements	Y/N
Proposal Completeness and Adherence to Format	
Evidence of Bond Capability	
Form of Legal Entity; Other Entity Names	
Statement of Changes in Ownership	
Identification of Parent Company	
Federal Tax Identification Number	
Submission of Financial Statements	
Statement of Lawsuits	
Minimum Prior Experience	
Submittal of completed Attachments A-1 through A-5	
Acknowledgement of Addenda	

**ATTACHMENT B
DESCRIPTION OF PREMISES**

On April 27, 2012, Town Meeting voted to approve a Solar By-Law for Large-Scale, Ground-Mounted Solar Electric Installations. A copy of the By-Law is provided as Attachment B-1. Site documents listed below are provided in Attachment B-2. A Town zoning map is provided in Attachment B-3.

PRIMARY LOCATIONS:

Site 1. Sunderland Elementary School

The Sunderland Elementary School is located at One Swampfield Drive, off of Old Amherst Road, approximately 0.5 miles from Route 116.

Site documents include:

- Map 6
- Property cards
- Site locus
- Parcel deeds

The entire parcel is 22.85 acres; although the portion of the parcel, Lot 30, offered as the site for a proposed ground mounted solar photovoltaic energy system is approximately 2 acres in size. The proposed site is bordered by a perennial stream on the southerly side, a chain link fence on the northerly side, and wooded areas easterly and westerly. The central portion of the site has gentle grades to facilitate stormwater runoff. The successful Proposer must comply with storm-water management regulations and bylaws and any wetland and open space requirements.

Site 2. Sunderland Town Office Building and Public Library

The Town Office Building and Public Library are located at 12 and 20 School Street, off of North Main Street, approximately 0.1 miles from Route 116.

Site documents include:

- Map 5
- Property cards
- Site locus
- Parcel deeds

The combined acreage of Assessors Map 5, parcels 59, 60, 61 and 65 is 9.03 acres. A solar array to accommodate routine activities which would not interfere with the operation or maintenance of the system is desired on the proposed site. Portions of the site are zoned Commercial-1, Village Residence or Rural Residence with Prime Agricultural District overlay under the Town's Zoning By-Law. The successful Proposer must comply with bylaws and any wetland and open space requirements.

Site 3: Sunderland Public Safety Complex, Wastewater Treatment Plant and Highway Garage

The Sunderland Public Safety Complex, Wastewater Treatment Plant and Highway Garage are located at 105, 111 and 113 River Road, approximately 0.5 miles from Route 116.

Site documents include:

- Map 10
- Property cards
- Site locus
- Parcel deeds

The entire parcel is 8 acres, of which a portion, Lot 3, is offered as a site for a ground mounted solar photovoltaic energy system. The site is zoned Rural Residence with Prime Agricultural District overlay under the Town's Zoning By-law. The successful Proposer must comply with bylaws and any wetland and open space requirements.

The Town makes no representations or warranties as to the condition or suitability of the land proposed to be leased under this RFP, and the successful proposer(s) shall be responsible to satisfy itself/themselves that the land is suitable for the purposes contemplated in this RFP.

SECONDARY LOCATIONS:

Site 4: Bull Hill Road parcel

The Bull Hill Road parcel is located at Map 8, Lots 43 and 47, and encompasses approximately 14 acres. The site is zoned Rural Residence with Watershed District overlay under the Town's Zoning By-law.

Site documents include:

- Map 8
- Property cards
- Site locus
- Parcel deed

Site 5: Capped Landfill on Reservation Road

The capped landfill on Reservation Road is located at Map 1, Lot 146, and encompasses approximately 6.88 acres. The site is zoned Rural Residence with Critical Resource District overlay under the Town's Zoning By-law.

Site documents include:

- Map 1
- Order of Taking

Supplemental information available for inspection upon request:

1. Landfill Post Closure Report

**ATTACHMENT C
MUNICIPAL ENERGY USAGE DATA**

LOCATION	FACILITY TYPE	TOTAL ANNUAL CONSUMPTION	
		May-2010-April 2011	May-2011-April 2012
Graves Memorial Library Bldg	Municipal building	2,482	2,181
Highway Garage	Municipal building	12,257	11,414
Library	Municipal building	90,640	79,120
Public Safety Complex	Municipal building	126,991	105,749
Sunderland Elementary School	Municipal building	335,808	261,120
Town Office Building	Municipal building	49,832	48,994
Town Park	Municipal building	847	686
WWTP - 113 River Rd	Municipal building	111,300	105,300
Highway - 27500 Lumen HP Sod	Lighting Account	1,296	1,270
Streetlights 140,000 Lumen HP Sod	Lighting Account	4,950	4,628
Streetlights 16,000 Lumen HP Sod	Lighting Account	716	723
Streetlights 27,500 Lumen HP Sod	Lighting Account	1,396	1,305
Streetlights 36000 Lumen HP Sod	Lighting Account	1,878	1,885
Streetlights 50000 Lumen HP Sod	Lighting Account	19,654	19,801
Streetlights 6300 Lumen HP Sod	Lighting Account	16,104	16,224
Streetlights 9500 Lumen HP Sod	Lighting Account	492	494
WWTP Old Amherst Pump	Pump Station	26,868	26,600
WWTP Warner Dr Pump Station	Pump Station	22,720	23,760
TOTAL		826,231	711,254

ATTACHMENT D

PRICING BID FORMS

Please refer to Microsoft Excel Workbooks. Pricing must be provided as follows:

1. Pricing for each location
2. Schedule of Termination Values for Town Default

Proposers shall provide pricing for Primary and Secondary Locations. Optional proposals are encouraged providing varying scenarios of lease payments and electricity pricing per kWh. Proposers are requested to properly label any such optional proposals.

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND, MA

PRICING FOR SYSTEM LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)	Annual Lease Payment (\$)	Escalation Rate (%)	Extended Lease Payment (\$)
1					\$0			
2	\$0.00000		\$0.00000		\$0	\$0		\$0
3	\$0.00000		\$0.00000		\$0	\$0		\$0
4	\$0.00000		\$0.00000		\$0	\$0		\$0
5	\$0.00000		\$0.00000		\$0	\$0		\$0
6	\$0.00000		\$0.00000		\$0	\$0		\$0
7	\$0.00000		\$0.00000		\$0	\$0		\$0
8	\$0.00000		\$0.00000		\$0	\$0		\$0
9	\$0.00000		\$0.00000		\$0	\$0		\$0
10	\$0.00000		\$0.00000		\$0	\$0		\$0
11	\$0.00000		\$0.00000		\$0	\$0		\$0
12	\$0.00000		\$0.00000		\$0	\$0		\$0
13	\$0.00000		\$0.00000		\$0	\$0		\$0
14	\$0.00000		\$0.00000		\$0	\$0		\$0
15	\$0.00000		\$0.00000		\$0	\$0		\$0
16	\$0.00000		\$0.00000		\$0	\$0		\$0
17	\$0.00000		\$0.00000		\$0	\$0		\$0
18	\$0.00000		\$0.00000		\$0	\$0		\$0
19	\$0.00000		\$0.00000		\$0	\$0		\$0
20	\$0.00000		\$0.00000		\$0	\$0		\$0

TOWN OF SUNDERLAND

Termination Occurs in Year:	Termination Fee	Removal and Restoration Costs
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
At expiration		

ATTACHMENT E

SOLAR POWER PURCHASE AGREEMENT AND LEASE AGREEMENT

Please refer to the “Draft Solar Power Purchase Agreement and Lease Agreement” provided separately.

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT ("*Agreement*") is made and entered into as of this ____ day of _____ (the "*Effective Date*"), by and between _____, a _____ of the Commonwealth of Massachusetts ("*User*") and _____, a _____ corporation ("*Owner*"). User and Owner are sometimes hereinafter referred to individually as a "*Party*" and collectively as the "*Parties*."

RECITALS

WHEREAS, User desires to purchase solar-generated electricity for use by User, and Owner desires to finance, install, operate and maintain a solar electricity generating facility on property of the User;

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

WHEREAS, Owner proposes to finance, install, own, operate and maintain solar energy facilities (the "*System*") on the Premises, as that System is more particularly set forth in Exhibit B attached hereto;

WHEREAS, Owner desires to sell to User, and User desires to purchase from Owner, all of the Electricity generated by the System during the Term for use in the Facility, and otherwise in accordance with the terms of this Agreement, all as further specified in this solar power purchase provisions (the "*SPPP*") set forth in Exhibit C attached hereto: and

WHEREAS, Owner will be required to guarantee certain System performance obligations as set forth in Exhibit D attached hereto; and

WHEREAS, User proposes to grant to Owner a lease pursuant to this Agreement to allow Owner to install, operate, maintain and remove Systems on the Premises for the purposes and subject to the conditions set forth herein, all as further specified in the lease agreement (the "*Lease*") set forth in Exhibit A attached hereto; and

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

ARTICLE 1: DEFINED TERMS; RULES OF INTERPRETATION

Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement, or as otherwise set forth below:

"*Agreement*" means this Power Purchase Agreement, including all Exhibits and attachments hereto.

“Annual System Degradation Factor” means the factor expressed in percent by which the Guaranteed Annual Electricity Output of the System shall decrease from one Contract Year to the next Contract Year as set forth in Exhibit C.

“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, which may at any time be applicable to the Premises or the System, or any part thereof, or to any condition or use thereof, or to the design, construction, installation, permitting, operation, maintenance, repair and removal of the System, including, but not limited to, the Massachusetts Prevailing Wage Law (if and as applicable), and all Governmental Approvals which are or may be required for the use and occupancy of the Premises, and for the design, installation, permitting, operation, maintenance, repair and removal of the System, and the Tariff.

“Appraised Value” means the fair market value assigned to the System, and any other power sales agreements, emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements to which Owner is a party and which are assignable to User, as determined by the Independent Appraiser using customary and accepted appraisal methods in the energy and solar electricity industry.

“Bankrupt” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to its which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means any day except a Saturday, Sunday, or a Massachusetts legal holiday.

“Commercial Operation” means that the System is ready for regular, daily operation, has been connected to the Premises’ electrical system and the LDC System, as applicable, has undergone testing as provided herein, has been accepted by User and the LDC (to the extent

required by the LDC), has been installed in accordance, and is in compliance, with Applicable Legal Requirements in all respects, and is producing and delivering to the Delivery Point, or is immediately capable of producing and delivering to the Delivery Point, Electricity in an annual quantity equal to or more than the Guaranteed Annual Electricity Output.

“Commercial Operation Date” means the first day on which the System achieves Commercial Operation, as certified in writing by Owner to User in the Notice of Commercial Operation.

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

“Construction Commencement Date” means the date of mobilization to the Premises by the installation contractor and commencement of actual construction activities on the Premises in connection with the installation of the System.

“Decommissioning Assurance” means adequate financial assurance, in a form reasonably satisfactory to User and in the amount set forth in Exhibit C hereto, which is to be established by Owner upon and after the Commercial Operation Date and thereafter maintained continuously throughout the Term, to fully cover the cost of decommissioning the System and restoring the Premises to its original condition and as otherwise specified in the Lease.

“Delivery Point” means the Metering Device.

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

“Electricity” means the actual and verifiable amount of electricity generated by the System and delivered to User at the Delivery Point for use by User on the Premises, as metered in whole kilowatt-hours (kWh) at the Metering Device and that conforms to Applicable Legal Requirements. Electricity shall not include any electricity consumed by the System.

“Electricity Price” shall mean the amount paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto, provided, however, that, notwithstanding anything to the contrary in this Agreement, the Electricity Price shall not exceed the lesser of the LDC Retail Rate or the monetary value of a Net Metering Credit (per kWh), as calculated in accordance with 220 CMR 18 and the Tariff.

“Electricity Price Increase (Escalation) Factor” means the amount, expressed as a percentage, by which the Electricity Price shall increase from one Contract Year to the next Contract Year, as set forth in Exhibit C attached hereto.

“Environmental Attributes” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) financial based incentives under any federal or State initiatives, (ii) greenhouse gas offsets under

the Regional Greenhouse Gas Initiative, (iii) Solar Renewable Energy Credits or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iv) tax credits, incentives or depreciation allowances established under any federal or State law, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Electricity generated by the System during the Term and in which Owner has good and valid title. “Environmental Attributes” do not include Net Metering Credits, which shall be allocated and assigned to User in accordance with the provisions of this Agreement.

“*Events of Default*” has the meaning set forth in Section 8.1.

“*Excess Electricity*” means any Electricity produced by the System in excess of the instantaneous usage requirements of User and is delivered to the LDC System.

“*Fair Market Value*” means, with respect to the System or System Assets, the price that would be negotiated for the purchase and sale of the System or System Assets in an “arms length” transaction for cash by and between an informed seller willing to sell voluntarily and an informed buyer willing to buy, and neither of whom is subject to unlawful coercion by any person to complete the transaction.

“*Force Majeure*” means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the fault, of the Party claiming Force Majeure (the “*Claiming Party*”), and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) User’s inability to economically use Electricity purchased hereunder, except that it will be based on User’s inability to receive, use or allocate to its LDC accounts the Net Metering Credits generated by the System, (ii) Owner’s ability to sell Electricity at a price greater than the Electricity Price under this Agreement, or (iii) ordinary or foreseeable fluctuations in sunlight or in the availability or unavailability thereof.

“Governmental Approval” means any approval, consent, franchise, authorization, permit, agreement, confirmation, certificate, resolution, concession, license, privilege or assent issued by or on behalf of any applicable Governmental Authority.

“*Governmental Authority*” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to User), and any agency, department, commission, board, bureau, committee, official, authority, or instrumentality of any of them, the LDC, and any independent electric system operator.

“*Governmental Charges*” means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, real property, personal property, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, fines, penalties, adders or

surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the System, Electricity and/or this Agreement.

“Guaranteed Annual Electricity Output” means the minimum amount of electricity that is guaranteed by the Owner to be generated by the System in a Contract Year, as set forth in Exhibit D.

“Hazardous Materials” are any hazardous, toxic or radioactive materials, substances or waste, as defined in the Applicable Legal Requirements, including federal or state law regulating or addressing the generation, storage, use, or transportation of such materials, including but not limited to Massachusetts General Laws, chapter 21E; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §1801, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III), 42 U.S.C. §11001, et seq.; and any rules, regulations or orders promulgated pursuant thereto.

“Host Customer” is as defined in 220 CMR 18, and who, under this Agreement, shall be the USER.

“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 value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Owner, any affiliate of Owner, or User.

“Interconnection Customer” is as defined in the Tariff, and who, under this Agreement, shall be the Owner.

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

“LDC” means the regulated electric local distribution company that provides electric distribution service to the municipality in which User is located, as set forth in Exhibit C.

“LDC Retail Rate” means the average applicable all-inclusive rate (expressed on a \$/kWh basis) charged by the LDC in any Contract Year for Electricity that is delivered in the municipality in which User is located, and shall include, without limitation, all electric commodity charges, transmission, distribution or other delivery charges, ancillary service charges, transition, renewable energy, efficiency, or competitive service charges, taxes, and other fees and charges in place.

“LDC System” means the electric distribution system operated and maintained by the LDC.

“Lease” or **“Lease Agreement”** means the lease agreement for the use of the Premises granted by User to Owner, which is set forth in Exhibit A attached hereto.

“Lease Area” means the area in which User grants Owner a lease to install and operate the System, as set forth in paragraph 1.1 and Exhibit A of the Lease.

“Maximum Electricity Price” means the maximum Electricity Price, paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto, which, notwithstanding anything to the contrary in this Agreement, including Exhibit C, shall not exceed the lesser of the LDC Retail Rate or the monetary value of a Net Metering Credit (per kWh), as calculated in accordance with 220 CMR 18 and the Tariff.

“Metering Device” means the utility revenue-grade quality meter, meter mounting equipment, and data acquisition equipment which shall be installed by Owner or the LDC at Owner’s expense in accordance with the Tariff for the registration, recording, and transmission of information regarding the amount of Electricity generated by the System and delivered to the LDC System.

“Net Metering” shall have the meaning set forth in M.G.L. c.164, s.138 and 220 CMR 18.

“Net Metering Credit” shall mean the applicable credit paid to a “Net Metering Facility of a Municipality or Other Governmental Entity” as calculated in accordance with 220 CMR 18.

“Owner” has the meaning set forth in the Preamble.

“Person” means an individual, general or limited partnership, corporation, Municipal Corporation, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

“Premises” has the meaning set forth in paragraph 1.1 and Exhibit A of the Lease, and shall include the Lease Area.

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

“Purchase Price” shall have the meaning ascribed to it in Section 12.5 of this Agreement.

“Release” means any release, migration, seepage, discharge, disposal, leak or spill of Hazardous Materials, including without limitation as any of the foregoing may be defined in or pursuant to any of the Applicable Legal Requirements.

“SPPP” means the solar power purchase provisions set forth in Exhibit C attached hereto, which provisions shall be deemed a part of this Agreement.

“System” means the solar photovoltaic electric generating facility, including but not limited to the System Assets, that produces the Electricity sold and purchased under this Agreement, all as further set forth in Exhibit B attached hereto.

“System Assets” means each and all of the assets of which the System is comprised, including Owner’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, Metering Devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

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

“Tariff” means the tariffs of the LDC as approved by the Massachusetts Department of Public Utilities, including, but not limited to, the interconnection tariff and net metering tariff.

“Term” shall have the meaning set forth in Section 2.1 herein.

“Termination Date” means the earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Agreement as the result of an Event of Default, and (iii) the date of termination of this Agreement pursuant to any other applicable provision of this Agreement or law.

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

ARTICLE 2: TERM AND TERMINATION

2.1 Term. The term of this Agreement (the ***“Term”***) shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Commercial

Operation Date. Notwithstanding the foregoing, the User shall have the right to terminate the Agreement in accordance with the provisions of this Agreement, including, but not limited to, this Article.

2.1.1 Extension of Term. User shall have the option, but not the obligation, to extend the Term for up to one (1) consecutive period of five (5) years (an “*Extension Term*”), upon providing ninety (90) days prior written notice to Owner, unless this Agreement has been earlier terminated by either Party pursuant to Sections 7.1(d) (i), 7.3 or 8.2(a) hereof.

2.1.2 Legislative/Executive Approval. Notwithstanding anything to the contrary in this Agreement or the Lease, this Agreement and the Lease are subject to approval by User’s legislative and executive bodies, absent which neither the Agreement nor the Lease shall be effective.

2.2 Termination.

(a) Termination for Cause. Either Party may terminate this Agreement “for cause.” Subject to any right to cure or remedy a potential default, if applicable and as provided in Article 8 of this Agreement, sufficient “cause” for termination shall include the Events of Default defined in Section 8.1 of this Agreement, and shall also include any other material breach of this Agreement, as defined by law. Where cause for termination exists, the Non-Defaulting Party shall, except as otherwise provided in Article 8, have the right to terminate this Agreement by giving written notice to the defaulting Party of such termination and specifying the effective date thereof, said written notice to be given at least ten (10) days before the effective date of such termination. Notwithstanding the above, the Defaulting Party shall not be relieved of liability to the non-defaulting Party for damages sustained by the Non-Defaulting Party for personal injury, property damage or otherwise by virtue of any termination of this Agreement, and, if non-defaulting Party is the USER, the USER may, notwithstanding anything to the contrary in this Agreement or the Lease, withhold any payments to the OWNER for the purpose of a set-off until such time as the exact amount of damages to the USER from the OWNER is determined.

(b) Termination for the Convenience of the USER after Year Six. At any time during the Term, but no earlier than Seventy two (72) months after the Commercial Operations Date, the USER may terminate this Agreement without cause and purchase the System pursuant to Article 12, by giving 180 days advance written notice to the OWNER, which notice shall also serve as written notice requiring determination of the Purchase Price under Section 12.2. The Parties shall proceed to follow the procedure set forth in Sections 12.3-12.9, as applicable, and the Agreement will terminate at the end of the calendar year, or such other period as may be stated in the notice of termination or otherwise agreed to in writing by the Parties. Notwithstanding the above, OWNER shall not be relieved of liability to the USER for damages sustained by the USER for personal injury, property damage or otherwise by virtue of any termination of this Agreement or exercise of the Option to Purchase, and the USER may withhold any payments to the OWNER for the purpose of a set-off until such time as the exact amount of damages to the USER from the OWNER is determined.

(c) Early Termination by User. In addition to any other rights of termination stated in this Agreement, USER may terminate this Agreement upon ten (10) days written notice to Owner for the reasons specified below:

(i) in the event that Owner has not submitted to the LDC, within forty-five (45) days of the Effective Date, a complete interconnection application seeking authorization to construct and interconnect the System to the LDC System;

(ii) if the System is to be constructed on a capped landfill, in the event that Owner has not submitted an application to the Massachusetts Department of Environmental Protection (“DEP”) within forty-five (45) days of the Effective Date for any necessary post-closure use (or other necessary DEP) permit(s);

(iii) in the event that Owner has not provided to User, within 45 days of Owner’s receipt of written notice from the LDC approving interconnection of the System with the LDC System (with or without conditions), written verification that the System qualifies as a “Net Metering Facility of a Municipality or Other Governmental Entity” under 220 CMR 18;

(iv) in the event that Owner has not provided to User, within 45 days of Owner’s receipt of written notice from the LDC approving interconnection of the System with the LDC System (with or without conditions), written verification that the Owner has obtained financing sufficient to purchase, construct, interconnect, commission, own, operate and maintain the System;

(v) in the event that the Interconnection Agreement, in form and substance satisfactory to Owner and User, in their reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Owner’s submission of the interconnection application;

(vi) in the event that, if the System is to be constructed on a closed landfill, Owner has not secured, within one hundred eighty (180) days of the Effective Date, a post-closure use (or other necessary) permit(s) from the DEP;

(vii) in the event that Owner has not obtained, within two hundred ten (210) days of the Effective Date, a “Statement of Qualification” from the Massachusetts Department of Energy Resources indicating that the System is eligible and qualified as an “RPS Class I Solar Carve-Out Renewable Generation Unit” as such term is defined in, and in accordance with, 225 C.M.R. 14; or

(viii) in the event that the Owner has not achieved the Milestone Dates in Section 2.3.

(d) Early Termination by Owner. In addition to any other rights of termination stated in this Agreement, Owner may terminate this Agreement before the Commercial Operations date upon ten (10) days written notice to USER for the reasons specified below:

(i) There exist site conditions at the Premises (including environmental site conditions) or construction requirements which, despite Owner’s examination of the Premises

before execution of this Agreement, were not known and could not, following a diligent examination of the Premises, reasonably have been known as of the Effective Date, and which will substantially increase the cost of the construction of the System. This right of termination may only be exercised if Owner first notifies User of such conditions and requests a reasonable adjustment to the Electricity Price, and User does not agree, in its sole discretion, to such adjustment;

(ii) Owner is unable, through no fault of its own and despite its diligent efforts, which must be demonstrated to the reasonable satisfaction of User, to obtain financing for the System on reasonable and customary terms and conditions; or

(iii) Owner is unable, through no fault of its own and despite its diligent efforts, to obtain all permits from and approvals of any Governmental Authority for installation and operation of the System and for the sale and delivery of Electricity to User.

2.3 Achievement of Commercial Operation. The Construction Commencement Date must occur no later than 365 calendar days from the Effective Date, and the Commercial Operation Date must be achieved no later than 545 calendar days from the Effective Date (the "Milestone Dates").

ARTICLE 3: FACILITY OWNERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL AND RELATED COSTS

3.1 Title. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the System shall be with the Owner.

3.2 Lease Agreement. Owner shall install, operate, insure, maintain, repair and remove the System on the Premises pursuant to and in strict conformance with this Agreement and the Lease.

3.3 Construction, Maintenance, and Monitoring of System by Owner. Owner shall, at its sole cost and expense, and in accordance with Applicable Legal Requirements, and the requirements of any Governmental Authority, prudent industry standards, the requirements of the LDC, any requirements of User's and Owner's insurance policies, and any manufacturers' and contractors' warranties, instructions and specifications: (i) construct, operate, repair, and maintain (in good and first class condition and repair) the System; (ii) undertake and perform any environmental mitigation measures, utility upgrades, and any other construction or related work, services or activities required by Applicable Legal Requirements, any Governmental Authority, and any insurer furnishing insurance to Owner or User for the Property, Premises and/or System; (iii) interconnect the System to the LDC and, if applicable, to the facilities of USER, (iv) continuously monitor the System performance to ensure that any System malfunction causing or likely to cause a loss of Electricity, or causing or likely to cause damage to the System or LDC System, will be promptly discovered, which Owner shall promptly rectify, subject to Article 7; and (v) insure the System in accordance with the terms of this Agreement and Lease, and in accordance with prudent standards of the solar electricity generating and insurance industries.

3.4 Host/Interconnection Customer Costs. Notwithstanding anything to the contrary in this Agreement, Seller shall be responsible to (1) perform, on behalf of User, all obligations imposed by the LDC upon USER, as Host Customer, except for the obligation(s) to execute any documents that the LDC requires to be executed by the Host Customer; (2) perform all obligations imposed by the LDC upon Owner, as Interconnection Customer, including, but not limited to, the execution of an Interconnection Agreement with the LDC; (3) pay for all costs and expenses associated with the fulfillment of all obligations imposed by the LDC on the Host Customer and Interconnection Customer; (4) pay all costs incurred by USER under any “retail customer” (or similar) agreement with the LDC for the System; and (5) pay all costs and expenses associated with the interconnection of the System to the LDC System. USER shall reasonably cooperate with Seller in connection with Seller’s efforts to fulfill its obligations set forth in this Section, and shall execute such documents required by the LDC to be executed by the Host Customer. In addition to any other rights and remedies available to USER under this Agreement, the Lease or at law or in equity, Seller shall defend, indemnify and save harmless the USER from any claims asserted against the USER, as Host Customer, by any third party for claims, damages, liabilities, costs, and expenses, including attorneys’ fees, arising from or related to activities undertaken at the Premises by the Owner, its employees, officers, agents, representatives, lessees, licensees and persons acting on Owner’s behalf or for whom Owner is responsible.

3.5 Operations Manual; Training. Owner shall deliver to User an operations, maintenance and parts manual covering the System. In addition, Owner will train User’s representative(s) on business-as-usual maintenance and monitoring operations of the System and on emergency preparedness and response. Notwithstanding the foregoing, User shall have no right, and no obligation, to perform any maintenance or repair on the System without Owner’s prior written consent, except in the case of an emergency where immediate action on the part of User is reasonably necessary for safety reasons, in which event USER shall have the right, but not the obligation, to perform such maintenance or repair as may reasonably be perceived to be necessary to abate any such emergency, the reasonable costs of which shall be promptly reimbursed to USER by Owner. User shall in good faith endeavor to provide Owner with verbal notice prior to performing any such maintenance or repair, if practicable, or if prior notice is not practicable, User shall provide such notice promptly after performing any such maintenance or repair.

3.6 Governmental Approvals. Owner assumes and shall bear full responsibility and costs to secure expeditiously all Governmental Approvals necessary for or in connection with its use of the Premises; the design, permitting, installation, interconnection, operation, maintenance, testing, inspection, repair and removal of the System; and the production and sale and delivery of the Electricity generated by the System.

3.7 Notice of Commercial Operation. Subject to the provisions of this Agreement, Owner shall promptly notify and represent to User when the System has achieved Commercial Operation (“*Notice of Commercial Operation*”), and shall in such notice certify to User the Commercial Operation Date.

3.8 Removal of the System. Except as otherwise provided herein, Owner shall, within Sixty (60) days following the end of the Term and at Owner's sole cost and expense, remove the System from the Premises and restore the Premises to its original condition.

3.9 User's Right to Acquire the System. The Parties agree if this Agreement is terminated due to the expiration of its initial Term or any extension thereof, and User notifies Owner of User's intention to exercise the Purchase Option pursuant to Section 12.1, or if the Purchase Option is otherwise exercised or deemed exercised pursuant to the terms of this Agreement, then User shall temporarily waive Owner's duty to comply with Section 3.7 for a period of up to one hundred twenty (120) days following the effective date of such termination, and such waiver shall expire if, on or before the expiration of such period, User has not notified Owner of its election to exercise the Purchase Option and further extend the waiver of Owner's duty to comply with Section 3.7.

3.10 Renewable Energy Portfolio Standard ("RPS") Solar Carve Out Program.

(a) The Parties acknowledge and agree that Owner shall be responsible for timely submitting any and all information and applications and other forms required for the System to be qualified as a "RPS Class I Solar Carve-Out Renewable Generation Unit" in the RPS Solar Carve Out Program in accordance with 225 CMR 14.

(b) During the Term of this Agreement, Owner shall at all times comply with any obligations or requirements that are imposed on or in connection with the System by the RPS Solar Carve Out Program, including, but not limited to, any obligations or requirements imposed upon an "installer" or "owner" of the System, and any reporting requirements, minimum technical requirements, minimum insurance requirements, minimum energy efficiency requirements, and any requirement to pay prevailing wages.

3.11 The provisions of Article 3 are in addition to, and not a limitation of, the provisions in the Lease regarding the construction, interconnection, operation, maintenance, repair, testing, inspection, and removal of the System.

**ARTICLE 4: PURCHASE AND SALE; DELIVERY;
GOVERNMENTAL CHARGES**

4.1 Purchase and Sale of Electricity.

(a) Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Owner shall deliver to User free and clear of all liens, security interests, claims, and other encumbrances, and User, as Host Customer, shall take delivery of at the Delivery Point, all of the Electricity generated by the System.

(b) Notwithstanding anything to the contrary in this Agreement, including the provisions of Section 4.1(a) above, in the event that the System produces Excess Electricity, then the Parties agree that USER shall pay for such Excess Electricity only to the extent that USER is authorized by Applicable Legal Requirements (i) to receive, and does in fact receive from the

LDC, Net Metering Credits for the Excess Electricity, and (ii) to allocate such credits to its accounts with the LDC.

4.2 Price for Electricity.

(a) Except as set forth in Section 4.1(b), above, and subject to the provisions of this Agreement, including, but not limited to, Section 4.3 and Article 6, below, User shall pay Owner for the Electricity, as metered at the Metering Device, at the applicable Electricity Price. The payment to be made by User to Owner shall equal the Electricity for the relevant period multiplied by the Electricity Price for such period.

(b) The Electricity Price for the first Contract Year of the Term (and any extension thereof) shall be as stated in the SPPP. On the first anniversary of the Commercial Operation Date, and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Electricity Price shall be increased by the applicable Electricity Price Increase Factor.

(c) Maximum Electricity Price. Notwithstanding the provisions of this Agreement, the Parties agree that in no event shall the Electricity Price exceed the Maximum Electricity Price.

(d) Adjustments to Electricity Price. In all cases, any adjustments in the Electricity Price shall be made to the nearest thousandth of a cent.

4.3 Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Owner to User at the Delivery Point, subject to paragraph 4.1(b), above. Owner represents, warrants and agrees that it will deliver the Electricity to User at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

4.4 Governmental Charges.

(a) Owner is responsible for local, state and federal income taxes attributable to Owner for income received under this Agreement.

(b) Owner is responsible for all real property and personal property taxes attributable to the System.

(c) Owner is responsible for any Governmental Charges attributable to the System and to the sale of Electricity from Owner to User, and any Governmental Charges that are imposed upon the production of renewable and/or distributed electrical energy, irrespective of whether any Governmental Charges so attributable or imposed were attributable or imposed before, upon or after the delivery of Electricity to User at the Delivery Point or to the LDC System.

(d) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions. In the event any of the sales of Electricity hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall,

upon the other Party's request therefor, provide any available documentation within its possession to evidence such exemption or exclusion.

4.5 Guaranteed Annual Electricity Output.

(a) Owner guarantees that the Systems will produce the Guaranteed Annual Electricity Output in each Contract Year, as adjusted by the Annual System Degradation Factor as defined in Exhibit C. On the first anniversary of the Commercial Operation Date, and each anniversary of the Commercial Operation Date thereafter during the Term (and any extension thereof), the Guaranteed Annual Electricity Output shall be decreased by the Annual System Degradation Factor.

(b) In the event that a Production Shortfall exists in any Contract Year, Owner shall pay to User, within thirty (30) days of the end of such Contract Year, the LDC Retail Rate for each kWh of such Production Shortfall.

4.6 Net Metering.

(a) Owner understands and agrees that it is an essential and primary purpose of this Agreement that the System qualify as a "Net Metering Facility of a Municipality or Other Governmental Entity," as defined in 220 CMR 18, and that USER be entitled to receive Net Metering Credits and allocate such credits to its accounts with the LDC. Owner agrees to take and pay the costs of all steps necessary to ensure that the System so qualifies and that USER will be so entitled. USER shall reasonably cooperate with Owner in that regard. Owner further agrees that all Net Metering Credits generated by the System shall be assigned to USER for allocation to USER's accounts with the LDC, and Owner shall, on behalf of USER, file all necessary "schedule Zs" or other documents with the LDC and do such other things as may be necessary for that purpose. In the event that the System does not qualify, or through no fault of USER is at any time during the Term disqualified, as a Net Metering Facility of a Municipality or Other Governmental Entity, USER may terminate this Agreement upon 30 days written notice to Owner.

(b) If required by the LDC, User agrees to execute a "retail customer" (or similar agreement) with the LDC for the distribution and allocation of Net Metering Credits.

(c) In addition to the Metering Device, Owner agrees to install, at its cost, any and all metering device(s) and other equipment and devices necessary for the System to qualify as an "RPS Class I Solar Carve-Out Renewable Generation Unit" under 225 C.M.R. 14, and to enable User to receive all Net Metering Credits generated by the System and allocate such credits to USER's accounts with the LDC.

ARTICLE 5: ENVIRONMENTAL ATTRIBUTES

5.1 Title to Environmental Attributes. All Environmental Attributes relating to the System or the Electricity will be and remain property of Owner. Owner shall have all right, title,

and interest in and to any and all Environmental Attributes that relate to the Electricity during the Term, and User shall have no right, title or interest in or to any such Environmental Attributes.

5.2 Reporting of Ownership of Environmental Attributes. Owner shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Electricity.

5.3 Further Assurances. At Owner's request and expense, User shall execute additional such documents and instruments reasonably necessary to effect or evidence Owner's right, title and interest in and to the Environmental Attributes relating to the Electricity. If the standards used to qualify the Environmental Attributes to which Owner is entitled under this Agreement are changed or modified, User shall, at Owner's request and expense, reasonably cooperate with Owner in Owner's efforts to cause the Environmental Attributes to comply with the standards as changed or modified.

ARTICLE 6: METERING DEVICE AND METERING

6.1 Metering Equipment. The Parties acknowledge and agree that Owner shall be responsible to provide, install, own, operate, maintain, repair and replace the Metering Device, or if the Metering Device is required to be installed and owned by the LDC under the Tariff, to pay the LDC, in accordance with and to the extent required by the Tariff, for the costs and expenses incurred by the LDC to provide, install, own, operate, maintain, inspect, test, repair and replace the Metering Device.

6.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Electricity delivered to User; *provided*, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 6.3, or registers inaccurately, measurement of Electricity shall be determined in accordance with the Tariff and requirements of the LDC, and Seller shall be responsible to make all necessary arrangements with the LDC to conduct such measurement.

6.3 Testing and Correction.

(a) User's Right to Conduct Tests. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Owner or LDC to verify the accuracy of the measurements and recordings of the Metering Device. Owner shall provide at least twenty (20) days prior written notice to User of the date upon which any such test is to occur. Whether or not User witnesses any test, Owner shall prepare a written report setting forth the results of each such test, and shall provide User with copies of such written report not later than thirty (30) days after completion of such test. Owner shall bear the cost of all testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. Any disputes regarding the accuracy of the Metering Device shall be resolved in accordance with the Tariff and requirements of the LDC. If such resolution results in a decrease

in the amount of Electricity delivered at the Metering Device, Owner shall, within 30 days of such resolution, reimburse User for the payments made by User on account of the Electricity reduction. Likewise, if such resolution results in an increase in the amount of Electricity delivered at the Metering Device, Owner shall add the amount of such increased Electricity to the next invoice to User at the Electricity Price applicable at the time of such Electricity was delivered to the Metering Device.

ARTICLE 7: LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; REMOVAL OF SYSTEM FOR REPAIRS TO PREMISES; FORCE MAJEURE

7.1 System Loss, Removal of System for Repairs to Premises.

(a) Owner shall bear the risk of any System Loss, except to the extent such System Loss results from the gross negligence of User or User's agents, representatives, customers, vendors, visitors, employees, contractors, or invitees (collectively, "*User Misconduct*").

(b) In the event of any System Loss that results in less than total damage, destruction or loss of the System and is not caused by User Misconduct, this Agreement will remain in full force and effect, and Owner will, at Owner's sole cost and expense, repair or replace the System as quickly as practicable notwithstanding the availability (or lack) of any insurance proceeds that may be payable on account of any such System Loss.

(c) In the event of any System Loss that results in total damage, destruction or loss of the System and is not caused by User Misconduct, Owner shall, within twenty (20) Business Days following the occurrence of such System Loss and in accordance with the following sub-sections (i) and (ii), notify User whether Owner is willing, notwithstanding such System Loss, to repair or replace the System, unless the System Loss was caused by the negligence or willful misconduct of Owner or any person for whom Owner is responsible, in which event Owner shall repair or replace the System as quickly as practicable notwithstanding the availability of any insurance proceeds that may be payable on account of any such System Loss.

(i) In the event that Owner notifies User that Owner is not willing to repair or replace the System, this Agreement will terminate automatically effective upon the date User receives such notice and Owner shall promptly remove the System from the Premises in accordance with Section 3.8. If such System Loss has not been caused by User Misconduct, Owner shall, within ten (10) Business Days following such termination, pay to User as liquidated damages and not as a penalty, the greater of the product of the Guaranteed Annual Electricity Output for one full Contract Year multiplied by the Electricity Price.

(ii) In the event that Owner notifies User that Owner is willing to repair or replace the System, the following shall occur, (a) this Agreement will remain in full force and effect, and (b) Owner will repair or replace the System as quickly as practicable notwithstanding the availability (or lack) of any insurance proceeds that may be payable on account of any such System Loss.

(d) If any repair or replacement of the System required or elected by the Owner to be undertaken hereunder shall not have been commenced within sixty (60) calendar days of the date of the damage, destruction or other casualty, or if after commencement such repair or replacement does not proceed with all diligence, Landlord may, upon ten (10) calendar written notice, terminate the PPA and Lease without penalty or liability. Within sixty (60) days of its receipt of such notice, Owner shall, at its sole cost and expense, remove the System and any other structures on the Premises and restore the Premises to their original condition.

7.2 Removal of System for Repairs to Premises. If USER is required by Applicable Legal Requirements or any Governmental Authority to undertake repairs, work or other activities at the Premises, and such repairs, work or activities cannot reasonably, practicably or economically be performed without the removal of the System or a part thereof, then the Owner shall, at its sole cost, remove the System or part thereof to the extent necessary to permit USER to undertake such repairs, work or activities. Such removal shall not constitute an Event of Default of any Party; USER shall not be responsible to pay for any loss of production of Electricity, loss of Environmental Attributes or other damages arising from such removal; and any Electricity that would have otherwise been generated but for the removal shall not constitute or be counted towards a Production Shortfall.

7.3 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Claiming Party becomes aware of the Force Majeure event or circumstance), then the Claiming Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party will use commercially reasonable and diligent efforts to eliminate or avoid the Force Majeure and, thereafter, promptly and diligently resume performing its obligations under this Agreement. Following receipt of notice from the Claiming Party and until the Force Majeure is eliminated or avoided by the Claiming Party, the non-Claiming Party will not be required to perform or resume performance of any obligations corresponding to the obligations of the Claiming Party excused by Force Majeure. For the avoidance of doubt, USER shall not be required to pay for any Electricity that is not generated by the System, whether such lack of generation is due to a Force Majeure or other cause.

7.4 Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure which continues for a consecutive period of three (3) calendar months or longer, the non-Claiming Party may terminate this Agreement without any liability to the Claiming Party as a result of such termination, and Owner shall, at its sole cost, promptly remove the System from the Premises and return the Premises to its original condition.

ARTICLE 8: EVENTS OF DEFAULT; REMEDIES; USER STEP-IN RIGHTS

8.1 Events of Default. An “**Event of Default**” means, with respect to a Party (a “**Defaulting Party**”), the occurrence of any of the following:

(a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within fifteen (15) calendar days after receipt of a written notice from the other Party (the “*Non-Defaulting Party*”) stating that such payment is overdue. For the avoidance of doubt, the failure to make a payment shall not constitute an Event of Default by the Defaulting Party unless and until such written notice has been received by such Party, and even then, not until fifteen days from the date of the Defaulting Party’s receipt of such notice have passed and the Defaulting Party has failed to make payment, provided, however, that the first day of such 15-day period shall be the day after the Defaulting Party’s receipt of the written notice, and if the 15th day is not a Business Day, the 15-day period shall not be deemed to have expired until the next Business Day;

(b) any representation or warranty made by such Party in this Agreement was false or misleading in any material respect as of the Effective Date, and either (i) such Party made such representation or warranty knowing that it was false or misleading and the other Party neither knew nor should have known of the false or misleading nature of the representation or warranty, or (ii) the false or misleading nature of the representation or warranty has resulted in, or will result in, material and adverse consequences to the other Party and the prompt correction of the representation or warranty by the Defaulting Party will neither avoid nor substantially mitigate such consequences;

(c) the failure to perform any material covenant or material obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within twenty (30) calendar days after receipt of written notice from the other Party Non-Defaulting Party, or, provided the Defaulting Party promptly commenced and is diligently undertaking a cure, such longer period as may be reasonably required to cure, provided, however, that the cure period shall not exceed 120 calendar days, unless otherwise agreed to in writing by the Parties;

(d) such Party becomes Bankrupt;

(e) such Party fails to provide or maintain in full force and effect any required insurance, and either such failure is not remedied within three (3) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party or, whether or not such failure is remedied, any loss otherwise covered by such insurance is sustained during the period that such insurance was not provided or maintained in full force and effect, or (ii) the occurrence of a default by the insurer of such Party under any insurance policy provided hereunder, which shall be deemed an Event of Default by such Party;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of such Party under this Agreement, or the Party makes an assignment of some or all of its rights and obligations under this Agreement in a manner contrary to Article 16 of this Agreement;

(g) failure by the Owner to achieve the Milestone Dates, except due to an event of Force Majeure; or

(h) Commission of an Event of Default under (or material breach of) the Lease.

(i) Occurrence of any event set forth in Section 2.2(a) of this Agreement defined as Termination for Cause.

8.2 Remedies for Event of Default. If at any time an Event of Default has occurred and is continuing, the Non-Defaulting Party shall, in addition to all other rights and remedies available to the Non-Defaulting Party under this Agreement or applicable law or in equity, have the right: (a) by notice to the Defaulting Party, terminate the Agreement effective no earlier than twenty (20) Business Days after the date of such notice; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend or cease its performance under this Agreement; and (d) to exercise all rights and remedies under this Agreement, at law and in equity to recover from the Defaulting Party all damages resulting or arising from the Event of Default.

8.3 User Rights upon Termination for Default. In the event that User is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, User shall, in its sole and absolute discretion and in addition to all other rights and remedies available to USER under this Agreement and at law or in equity, either (a) require Owner to remove the System as provided in Section 3.8 above, or (b) exercise the Purchase Option provided in Section 12.1 below and deduct from the Purchase Price the full amount of USER's damages resulting from Owner's Event of Default.

8.4 Owner Rights upon Termination for Default. In the event that Owner is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, Owner shall be entitled to exercise such rights and remedies available to it under this Agreement and at law or in equity as a result of USER's Event of Default; provided, however, that, notwithstanding the foregoing and anything to the contrary in this Agreement or the Lease, Owner shall, subject to Applicable Legal Requirements and approval of USER, continue to operate the System in accordance with Applicable Legal Requirements, prudent industry standards, and the Lease, and in a manner such that it will, subject to Force Majeure, generate annually, at minimum, the Guaranteed Annual Electricity Output. And Owner shall, as part of its legal duty to mitigate damages, expend all commercially reasonable and diligent efforts to sell the Electricity generated by the System to the purchaser(s) offering the highest price therefor until the expiration or earlier termination (for reasons other than an Event of Default or termination of this Agreement) of the Lease, and the amount of money generated thereby shall be deducted from any damages otherwise payable by User.

8.5 Closeout Setoffs. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the Defaulting Party under this Agreement, any amounts due and owing to the Defaulting Party under this Agreement.

8.6 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

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

8.8 User Cure and Step-In. In the event that Owner commits an Event of Default, USER may, in its sole discretion and in lieu of terminating the Agreement, and in addition to and not a limitation or waiver of any of USER's rights and remedies under this Agreement, at law or in equity do one or both the following:

(a) Remedy Owner's Event of Default. All costs and expenses incurred by User to remedy such default (including, without limitation, any and all engineering, consulting and attorney's fees), shall be paid by Owner, and may be deducted by USER from any amounts otherwise payable to Owner under this Agreement.

(b) Regardless of whether User exercises its right pursuant to Section 8.8(a), above, take possession of the System and operate the System upon the occurrence of an Event of Default by Owner until Owner demonstrates to the reasonable satisfaction of User that the events giving rise to Owner's Event of Default have been cured, and that Owner has taken all steps necessary to ensure that such events will not re-occur. All costs and expenses incurred by USER in exercising possession and operational control, excluding any costs and expenses incurred as a direct result of User Misconduct, shall be paid by Owner, and may be deducted by USER from any amounts otherwise payable to Owner under this Agreement.

8.9 Notwithstanding anything to the contrary in this Agreement, User shall not be required to pay Owner for Electricity delivered to User during any period in which User is exercising its step-in rights in accordance with Section 8.8.

ARTICLE 9: INVOICING AND PAYMENT

9.1 Invoicing and Payment. All invoices under this Agreement will be due and payable not later than thirty (30) calendar days after receipt of the invoice (or, if such day is not a Business Day, then on the next Business Day). Each Party will make payment by electronic funds transfer to the account designated by the other Party, or by other mutually agreeable method(s).

9.2 Disputed Amounts. A Party may in good faith dispute any invoice under this Agreement at any time within twelve (12) months following the date the invoice was rendered, unless the Party neither knew nor had reason to know of the grounds for the dispute, in which

event it may raise such dispute within twelve months of the date on which it knew or should have known of the same. In the event that either Party disputes any invoice or invoice adjustment, it shall give prompt written notice of the basis of its dispute to the other Party. If such dispute arises before payment on such invoice has been made, such Party shall pay any undisputed portions of the disputed invoice or invoice adjustment by the applicable payment due date. The Parties shall comply with the dispute resolution procedures set forth in Article 14.1 to resolve any payment disputes. Following dispute resolution proceedings, any payment deemed required to be made will be made within five (5) Business Days after resolution of the applicable dispute, without interest.

9.3 Interest. If either Party shall fail to pay the other Party any undisputed sum required to be paid within five (5) Business Days after the payment due date, interest on the unpaid amount shall accrue at the Interest Rate from and including the payment due date to but excluding the date the payment is received.

9.4 Netting and Set off. The Parties may net any and all mutual debts and payment obligations that are due and owing under this Agreement.

9.5 Records and Audits. Owner shall keep, for a period not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period USER may, at its sole cost and expense, and upon reasonable notice to the Owner, examine Owner's records pertaining to transactions during Owner's normal business hours. Before Owner discards or destroys any records, however, it shall provide 60 days advance written notice to USER, who may, in its discretion and at its sole cost and expense, copy such records at a mutually agreeable time.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES; USER ACKNOWLEDGEMENT

10.1 Representations and Warranties. Subject (as to USER) to paragraph 2.1.2, above, each Party represents and warrants to the other Party that: (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Legal Requirements; (b) this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Applicable Legal Requirements affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court.

ARTICLE 11: INTENTIONALLY LEFT BLANK

ARTICLE 12: SYSTEM PURCHASE AND SALE OPTIONS

12.1 Grant of Purchase Option. For and in consideration of the payments made by User under this Agreement, and for and in consideration of such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Owner hereby grants User the right and option to purchase all of Owner's right, title and interest in and to the System and the Environmental Attributes on the terms set forth in this Agreement (the "**Purchase Option**").

12.2 User Request for Appraisal of System Value. Not later than (a) 180 days prior to the end of the Initial Term or any Extension Term, or (b) in accordance with Section 2.2(b), or (c) in the event of an Owner Event of Default under Section 8.3, User shall have the right to provide a notice to Owner requiring a determination of the Purchase Price in accordance with Sections 12.4 and 12.5.

12.3 Selection of Independent Appraiser. Within twenty (20) Business Days of Owner's receipt of a notice provided under Section 12.2, Owner and User shall each propose an Independent Appraiser. If Owner and User do not agree upon the appointment of an Independent Appraiser within such twenty (20) Business Day period, then at the end of such twenty (20) Business Day period, two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Owner and User. Such selection shall be final and binding on Owner and User absent fraud.

12.4 Determination of Purchase Price.

(a) The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Purchase Price in accordance with Section 12.5 (the "**Preliminary Determination**").

(b) Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Owner and User, together with all supporting documentation that details the calculation of the Preliminary Determination. Owner and User shall each have the right to object to the Preliminary Determination within twenty (20) Business Days of its receiving such Preliminary Determination; provided that the objecting Party provides a written explanation of the reasons for its objection. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the selected Independent Appraiser shall issue its final determination (the "**Final Determination**") to Owner and User, which shall specifically address the objections received by the Independent Appraiser and whether and how such objections were taken into account in making the Final Determination, and which shall state

the Appraised Value. 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.

12.5 Calculation of Purchase Price. The purchase price (the “**Purchase Price**”) payable by User for the System and the Environmental Attributes shall be equal to the Appraised Value as determined by the Independent Appraiser and contained in the Final Determination.

12.6 Costs and Expenses of Independent Appraiser. Owner and User shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

12.7 Exercise of Purchase Option.

(a) User shall have twenty (20) Business Days from the date of its receipt of the Final Determination (such period, the “**Exercise Period**”), to exercise the Purchase Option at the Purchase Price. User must exercise its Purchase Option during the Exercise Period by providing a notice (an “**Exercise Notice**”) to Owner. Once User delivers its Exercise Notice to Owner, such exercise shall be irrevocable, except in the event that USER’s legislative body fails to approve the purchase and appropriate funds in the full amount of the Purchase Price, in which event USER may revoke the Exercise Notice.

(b) Promptly following receipt of User’s notice pursuant to Section 12.2, Owner shall make the System and the Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, available to User and the Independent Appraiser for their inspections during normal business hours.

12.8 Terms of System Purchase. On the Transfer Date (defined in Section 12.9): (a) Owner shall surrender and transfer to User all of Owner’s right, title and interest in and to the System, and the Environmental Attributes and take all actions necessary and appropriate to complete such surrender and transfer; (b) Owner shall retain all liabilities arising from or related to the System and the Environmental Attributes arising prior to the Transfer Date, and arising, before or after such date, from or related to the activities of the Owner at the Premises; (c) User shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System and the Environmental Attributes from and after the Transfer Date except those liabilities assumed by Owner according to the preceding subclause; and (d) 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 System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System, and the Environmental Attributes in User, and (ii) deliver ancillary documents, including resolutions, certificates, third person consents and approvals and all other documents and instruments as may be reasonably necessary to complete the sale of the System and the Environmental Attributes to User.

12.9 Transfer Date. The closing of any sale of the System (the “**Transfer Date**”) pursuant to this Article will occur no later than ninety (90) Business Days following the date of

the Exercise Notice, unless additional time is required for USER to appropriate funds in the full amount of the Purchase Price.

ARTICLE 13: INSURANCE AND INDEMNIFICATION

13.1 Insurance. Owner shall at all times comply with the insurance requirements and obligations included in the Lease Agreement.

13.2 Indemnification of User. Owner shall indemnify, defend and save harmless User, its officers, officials, employees, agents and representatives (collectively, the “*User Indemnified Parties*”) from and against all liabilities, losses, damages, fines, penalties, costs, and expenses, including, but not limited to, environmental cleanup costs, engineering and reasonable attorneys’ fees, that are imposed upon, charged or asserted against, or incurred by any User Indemnified Party caused by or resulting from, in whole or in part, directly or indirectly, the acts or omissions of the Owner (its officers, officials, employees, agents, representatives, licensees, lessees, contractors and other persons acting on behalf of Owner or for whom Owner is responsible) in connection with this Agreement or the Lease. This right to be indemnified is in addition to, and not a limitation of, any other rights and remedies available to USER under this Agreement, or at law or in equity.

ARTICLE 14: DISPUTE RESOLUTION

14.1 Notice of Dispute/Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, either Party may, by written notice to the other, request a settlement meeting to discuss possible resolution of the controversy, claim or dispute. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the twenty (20) Business Day period following said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party may, during said twenty (20) Business Day period, request the utilization of the services of a professional mediator to conduct up to a single day of non-binding mediation of the Parties’ dispute(s), and the other Party or parties to this dispute shall cooperate with such request and share equally the reasonable costs of such mediator. Any such mediation must occur within 20 Business days of the request for the utilization of a mediator.

14.2 The foregoing section notwithstanding, neither Party is prevented from exercising all rights and remedies under this Agreement, at law or in equity before, during, or after any dispute resolution procedures initiated in accordance with Section 14.1.

ARTICLE 15: NOTICES

15.1 Notices. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail. Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile, unless confirmation of successful transmission is received, including by way of a reply to the e-mail by the receiving Party. A Party may change its address and contact information by providing notice of the same in accordance with the provisions of this section.

Include below USER's and Owner's address, telephone and facsimile numbers, and e-mail addresses for receipt of notices.

User:

Owner:

ARTICLE 16: ASSIGNMENT; BINDING EFFECT

16.1 Assignment; Binding Effect.

(a) Owner shall not, without the prior written consent of User, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void; provided, however, that Owner may, with only prior written notice to User, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement for security purposes in connection with any financing or other financial arrangements which are reasonably necessary to finance the installation, operation or maintenance of the System (each, a "***Permitted Transfer***"); *provided further, however*, that, if the assignment is of all Owner's rights and obligations under the Agreement, the assignee shall agree in writing to assume all of Owner's obligations under this Agreement, and Owner represents and warrants in writing that, based upon Owner's reasonable investigation, the assignee has the financial and technical ability to fulfill all of the obligations of the Owner under the Agreement. Owner shall deliver notice of any Permitted Transfer to User in writing as soon as reasonably practicable but before any assignment, pledge or transfer is made. Absent agreement of the Parties in writing, Owner shall not be relieved of its obligations under the PPA notwithstanding any assignment.

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

(c) An assignee of a Permitted Transfer (“Permitted Transferee”) shall have the right, but not the obligation, to perform any act required to be performed by Owner under this Agreement to prevent or cure a default by Owner in accordance with Article 8 of this agreement, and USER shall accept a cure performed by any Permitted Transferee, provided, however, that the cure is performed in accordance with the terms of this Agreement. Upon the receipt of a written request from Owner, USER shall execute or arrange for the delivery of such documents as may reasonably be requested by Owner to consummate any financing or refinancing necessary for the installation, operation, maintenance or removal of the System, provided, however, that this provision shall not require USER to execute any documents or instruments which are contrary to Applicable Legal Requirements or which may increase USER’s risk or obligations under the Agreement.

ARTICLE 17: LIMITATION OF LIABILITY

17.1 Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, AND EXCEPT AS OTHERWISE PROVIDED IN THIS PARAGRAPH, 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. THIS LIMITATION EXCLUDES, AND THEREFORE DOES NOT APPLY TO, DAMAGES ARISING OUT OF PERSONAL INJURY OR DAMAGE TO REAL PROPERTY.

ARTICLE 18: MISCELLANEOUS

18.1 Amendment and Restatement; No Effect on Existing Guaranty; Contract Drafting. The Parties acknowledge that they jointly participated in the drafting of this Agreement, jointly participated in the choice of language used in this Agreement, and have each reviewed all of the terms of this Agreement. This document has not been proffered by one Party to the exclusion of the other Party. If any ambiguous word or phrase is found in this Agreement, the canon of construction requiring that any such word or phrase be construed against the drafter shall not be applied to determine the true meaning of that ambiguous word or phrase.

18.2 Waiver. No waiver by either Party of any one or more defaults or breaches by the other in the performance of this Agreement shall operate or be construed as a waiver of any future defaults or breaches, whether of a like or different character.

18.3 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. Any provisions adjudged to be invalid or unenforceable shall be severed from the Agreement and the remaining provisions shall continue in full force and effect. The Parties shall endeavor to negotiate in good faith to fashion contractual provisions to be observed in place of any provisions adjudged to be invalid or unenforceable to achieve as nearly as possible the commercial results contemplated by this Agreement.

18.4 Headings. The headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

18.5 Entire Agreement; Amendment. This Agreement and any Exhibits referenced herein, together with the Lease, USER's Request for Proposals, if any, shall constitute the entire agreement of the Parties as to the subject matter addressed herein. There are no other agreements between the Parties concerning the subject matter of this Agreement. This Agreement and its Exhibits may not be altered, modified, supplemented, terminated or discharged except by way of an instrument in writing executed by both Parties.

18.6 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

18.7 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without resort to any principles of law that would call for the application of the laws of any other jurisdiction. Each of the Parties consents to the jurisdiction of the state courts of the Commonwealth of Massachusetts with respect to all disputes arising under or out of this Agreement.

18.8 Consent to Service of Process. Each Party hereby consents 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. Owner agrees that service of process upon it shall be valid if made by hand delivery or certified mail (return receipt requested) delivery at the address provided in Section 15.

18.9 Recording. The User and Owner agree the Owner shall have the right to record a notice of this Agreement in the appropriate Registry of Deeds where the Project is located, upon a mutually agreed upon form required by Massachusetts General Laws, executed by both User and Owner.

18.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission is binding upon the other Party as an original.

18.11 No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

18.12 Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

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

18.14 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement or the attached Leases shall be deemed to be an agreement by User to issue or cause the issuance of any approval, consent, order, authorization, permit or license, or to limit or otherwise influence or affect the ability of the User or the Commonwealth of Massachusetts to exercise its legislative and executive functions or to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

18.15 Survivorship. Sections 3.8, 3.9, 4.4, 8.2, 8.3, 8.5, 8.6, 8.7, 8.8, 9.5, 13.1, 13.2, 14.1, 17.1, 18.1, 18.7, 18.8, 18.11, 18.13, 18.16, and 18.17 shall survive the expiration or earlier termination of this Agreement.

18.16 Certifications by Owner. By signing this Agreement, the Owner certifies under penalties of perjury, as follows:

A. It has complied with all laws of the Commonwealth relating to taxes, the reporting of employees and contractors, and the withholding and remitting child support.

B. Its proposal, submitted in response to USER's Request for Proposal, was made and submitted in good faith and without collusion or fraud with any person. As used in this provision, the word "person" means any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

C. It has not given, offered, promised or agreed to give any gift, contribution, offer of employment, or thing of value as an inducement for, or in connection with, USER's award of this Agreement or the Lease to Owner in violation of the Massachusetts Conflict of Interest Law, M.G.L. c. 268.

18.17 Miscellaneous. Notwithstanding anything to the contrary in this Agreement or the Lease:

A. Except as provided in Section 8.4, in the event the Lease expires or is terminated, this Agreement shall automatically and simultaneously expire or be deemed terminated, and *vice versa*, except that in the event of a termination which requires the removal of the System by Owner, Owner shall have a revocable license for the period of time within which such removal is required to be accomplished under the Agreement.

B. User shall not be required to execute documents or instruments subsequent to the execution of the Agreement shall not require User to execute any documents which User reasonably believes will increase User's risk or obligations under the Agreement or Lease, or result in the waiver of any of User's rights or remedies under the Agreement, the Lease or at law or in equity.

C. Any requirement that User reasonably cooperate or assist Owner shall not require User to interfere with or influence the independent executive, regulatory, licensing, permitting or legislative functions of any department, board, committee, body or commission of User.

D. The Agreement and Lease shall be subject to Applicable Legal Requirements, which are incorporated herein and shall control if in conflict with the provisions of the Agreement or Lease.

E. Owner agrees that it shall not engage in conduct declared to be unlawful under Section 2 of Chapter 151E of the Massachusetts General Laws.

F. Nothing in this Agreement or the Lease is intended, and nothing shall operate, to waive any of the rights, remedies, defenses and immunities afforded User, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities User hereby reserves.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this POWER PURCHASE AGREEMENT under seal as of the day and year first above written.

USER:	OWNER:
By: _____ [SIGNATURE]	By: _____ [SIGNATURE]
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

EXHIBIT A
LEASE AGREEMENT

LEASE AGREEMENT

This Lease Agreement (this "Lease") is entered into on this _____ day of _____ 2011 (the "Commencement Date"), by and between the **Town of Sunderland**, a Massachusetts municipal corporation acting by and through its Board of Selectmen ("Landlord"), and _____, (collectively, "Tenant"). Tenant and Landlord are each a "Party" and collectively, the "Parties."

Recitals

Whereas, Landlord is the owner of a certain parcel of land located at _____ in the Town of _____, Massachusetts, containing approximately _____ acres of land, and described more particularly in a deed recorded with the Bristol Registry of Deeds in Book _____, Page _____ (the "Property"), of which approximately _____ acres consists of a currently inactive capped landfill (the "Landfill Area");

Whereas, Landlord issued a Request for Proposals (the "RFP"), soliciting proposals for the lease a portion of the Property for the purpose of installing and operating a solar photovoltaic system on the leased land and for the sale of energy/net metering credits generated by such system to Landlord;

Whereas, Tenant submitted a proposal in response to the RFP and Landlord accepted that proposal;

Whereas, simultaneously with the execution of this Lease, the Parties have executed a Solar Power Purchase Agreement (the "PPA") for the sale of energy/net metering credits to Landlord, which is incorporated herein by reference;

Whereas, it is the intention of the Parties that the PPA and Lease be complementary, such that what may be expressly required by one shall be deemed required by the other;

Whereas, the Parties wish to set forth herein the terms and conditions governing Tenant's use of the Property.

Now, therefore, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Tenant and Landlord hereby agree as follows:

Unless otherwise expressly provided herein, Capitalized terms used in this Lease shall have the meaning ascribed to them in the PPA.

1. Premises.

1.1 The Premises. Landlord, for and in consideration of the covenants and agreements on the part of Tenant contained in this Lease, does hereby lease unto Tenant, and Tenant does hereby take from Landlord, upon and subject to the conditions expressed in this Lease and the PPA, a certain portion of the Property referred to as the "Lease Area," as described more particularly in Exhibit A, attached hereto and incorporated herein, for the sole and exclusive purpose of installing, constructing, operating, maintaining, repairing and removing the "System," as defined in the PPA, and for no other purposes. Landlord hereby agrees to grant Tenant all licenses, and subject to affirmative vote of Sunderland Town Meeting (if not already taken) an easement, to the point of interconnection of the System with the electric grid. Tenant shall provide Landlord prompt notice of the local electric utility's grant of approval to interconnect the System to the electric grid, and the exact locations for the installation of the cables and related equipment necessary to support the System. Landlord agrees to seek Town Meeting approval of an easement, if necessary, to allow Tenant to install and maintain its cables and related equipment for the System. The location of these easements, if any, shall be referred to herein as the "Easement Areas." Upon the grant, if any, of said easement(s), the license provided above shall terminate and be supplanted by the easement(s). The Lease Area and the area subject to the license or the subsequent Easement Areas are collectively referred to herein as the "Premises." The Parties agree to amend Exhibit A if any easements are granted by Landlord, which revised Exhibit A shall be incorporated into this Lease. The Property, excluding the Lease Area, is referred to as the "Remaining Property."

1.2 Appurtenant Rights. Landlord further grants to Tenant, during the period commencing on the Commencement Date of this Lease and ending upon the expiration or earlier termination of this Lease, or such additional time as permitted by Landlord for the removal of the System and restoration of the Premises, the following:

(a) If the Lease Area does not abut a public way, a non-exclusive right of access to the Lease Area across or through any adjacent area owned by Landlord which is necessary to gain access to the System;

(b) The exclusive use of, and right to develop, design, install and operate the System within the Lease Area, and the exclusive right to maintain, repair and replace the System throughout the Term of this Lease, subject to the terms of this Lease and the PPA;

(c) A right of access for the installation, operation, and maintenance of electric lines necessary to interconnect the System to the local electric utility's electric distribution system; and

(d) The exclusive right to receive sunlight at the Lease Area (the "Solar Easement") during every hour of each day that sunlight could be received by the System. Subject to the requirements of Applicable Legal Requirements or any Governmental Authority, Landlord shall not create or install vegetation, structures or other objects on the Property that will obstruct the passage of sunlight on the Lease Area; and

(e) To the extent requested by Tenant and reasonably necessary, and subject to Applicable Legal Requirements and available space, as determined in Landlord's sole discretion, Landlord shall provide necessary space on the Remaining Property at locations specified by Landlord for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and (v) other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Tenant shall not obstruct access to the Remaining Property, or interfere with or disrupt Landlord's use thereof or operations therein, including, but not limited to, Landlord's transfer station, if any. Tenant shall immediately restore the Remaining Property to the condition they were in prior to Tenant's use.

The preliminary locations of the Easement Areas are set forth on Exhibit B attached hereto and such exhibit will be supplemented by a signed amendment to this Lease prior to the start of construction of the System.

1.3 Condition of Premises. Tenant accepts the Premises in its "AS IS" condition, after a full and complete examination of the Premises and the title thereto, and knowledge of its past and present uses and non-uses, including but not limited to use as a landfill. Tenant accepts the Premises in the condition and state in which the Premises are in as of the Commencement Date without any representation or warranty, express or implied in fact or by law, by Landlord, and without any recourse whatsoever against Landlord as to the title thereto, and as to the nature, condition or usability of the Premises, and as to the use or uses to which the Premises or any part thereof have been and may be put. Landlord is not required to furnish any services or facilities or to make any repairs or alterations in or to the System or the Premises. The foregoing notwithstanding, the Parties agree that Tenant is not responsible for conditions on the Premises arising from or related to acts or omissions that both occurred prior to the Commencement Date and were not caused by Tenant.

1.4 Utilities. Tenant shall be solely responsible for providing, and paying for, all electrical and other utilities of sufficient capacity to serve Tenant's use of the Premises, which shall be installed in accordance with Applicable Legal Requirements and the reasonable requirements of Landlord, and in a manner that avoids interference to or disruption of other activities on the Property. Landlord shall have no duty or liability to Tenant with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, but not limited to, any electrical transmission or distribution lines, whether such lines are owned by Landlord or any third party. Nor shall Landlord have any liability to Tenant for any damages, including, but not limited to, lost revenue, arising from Landlord's actions or omissions regarding any such maintenance, repair, upgrade, replacement or security. In the event Tenant desires to undertake any maintenance, repair, upgrade, replacement or security of any electrical transmission or distribution lines owned by Landlord, Tenant may do so at its cost and expense, but only with the advance written approval of Landlord.

1.5 Landfill Area. If the Premises consist of, all or in part, a capped landfill, the Tenant hereby so acknowledges, and agrees to obtain at its sole cost and expense, all

Governmental Approvals, as such term is defined in the PPA, including, but not limited to, a Post-Closure Use Permit (the “DEP Permit”), if and as required, from the Massachusetts Department of Environmental Protection (“DEP”) to allow Tenant to use the Premises for the “Permitted Uses” (defined in Section 2, below). Tenant also acknowledges and agrees that the DEP Permit may impose certain conditions and requirements which are related to the Tenant’s use of the Premises and/or the installation, construction and/or operation of the System and which would not have been imposed on Landlord were it not for this Lease (hereinafter referred to as “Tenant’s Landfill Obligations”).

Tenant agrees that it (a) shall not conduct any activities on the Premises that will or are reasonably likely to penetrate any landfill capping material or otherwise threaten the integrity of any landfill cap; (b) shall not violate Applicable Legal Requirements, including but not limited to the DEP Permit, (c) shall comply with Tenant’s Landfill Obligations, at Tenant’s sole cost and expense, and (d) shall not interfere with or disrupt (i) Landlord’s operation, maintenance, use and repair of Landlord’s transfer station, if any, located on the Property or (ii) access to the landfill or transfer station, or (iii) with Landlord’s performance of any duties required of Landlord under Applicable Legal Requirements, including but not limited to any laws, regulations, codes, and agreements with respect to the landfill. To the extent that the DEP Permit requires Landlord to satisfy any of the Tenant’s Landfill Obligations, Tenant shall forthwith pay Landlord for the cost thereof in advance, failing which Landlord may use to pay for such costs such amounts as may otherwise be due Tenant under the PPA, notwithstanding anything to the contrary in the PPA or this Lease.

2. Permitted Uses. Tenant shall use the Premises solely for the purpose of constructing, installing, operating, maintaining, repairing, removing and replacing the System in accordance with the PPA, this Lease, Applicable Legal Requirements and the requirements, orders and permits of any Governmental Authority, and uses incidental thereto (the “Permitted Uses”). Tenant’s use of and activities on the Premises shall at all times conform to Applicable Legal Requirements. Absent written approval by Landlord’s legislative and executive bodies, which may be withheld in Landlord’s sole and absolute discretion, Tenant shall not use the Premises for any use other than the Permitted Uses.

Tenant agrees that its use of the Premises is subject to, among other things, all Applicable Legal Requirements, including, but not limited to, present and future laws, regulations, bylaws (including zoning bylaws), ordinances, resolutions, and regulations of the municipality in which the Premises is located, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, bodies, committees, and departments of any municipal, county, state or federal authority, agency or governmental body regulating the use of the Premises. Tenant further agrees that its use of the Premises is subject to its strict and full compliance with all such Applicable Legal Requirements.

3. Term.

3.1 **Initial Term.** The term of this Lease shall commence on the Commencement Date hereof and, unless terminated in accordance with the provisions of the PPA or this Lease, shall terminate on the last day of the month after the twentieth annual anniversary of the Commercial

Operations Date (the “Initial Term”). The term “Commercial Operations Date” is defined in the PPA. Notwithstanding anything to the contrary in this Lease, the termination of the Lease shall result in the automatic and simultaneous termination of the PPA.

3.2 Extension Term. At the expiration of the Initial Term, this Lease may be extended in accordance with the terms of the PPA, and if extended, shall be on the same terms and conditions set forth herein. Any extension shall be referred to as the “Extension Term.” The Initial Term and the Extension Term, if the latter is permitted and exercised, shall be referred to, collectively as the “Term.” The term “Lease Year” means a period of one (1) year commencing on the Commencement Date or the annual anniversary date thereof.

3.3 Early Termination. The Parties hereby acknowledge and agree that Tenant’s obligations under this Lease are contingent on the satisfaction of any conditions precedent and antecedent set forth in the PPA, and that this Lease may be terminated for the same reasons for which the PPA may be terminated, and any termination of the PPA shall result in the automatic and simultaneous termination of the Lease, except as expressly provided in Section 8.4 of the PPA.

3.4 Holdover. If Tenant or any party claiming by, through or under Tenant, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then Landlord may, at its option, serve written notice upon Tenant that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of such possession by Tenant. Tenant hereby agrees that the provisions of this Section shall not constitute a waiver by Landlord of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Landlord's right to terminate this Lease for Tenant’s breach of the Lease.

4. Rent

4.1 Base Rent. Beginning on the Commercial Operations Date, Tenant shall pay Landlord without notice or demand therefor and without any deduction or set-off whatsoever, except as expressly otherwise provided herein, rent in the amount of _____ (\$ _____) a year during the Term of this Lease (the “Base Rent”), to be paid in equal monthly installments. If the Commercial Operation Date shall be on any day other than the first day of a calendar month, the Base Rent and other charges for such month shall be pro rated on a per diem basis. The Base Rent shall be exclusive of any taxes chargeable to the Premises including, but not limited to, any real property taxes under G.L. c. 59, s. 2B (the “Real Estate Taxes”), which shall be separately payable by Tenant. For any taxes imposed by the Town of _____, Tenant shall promptly pay all such taxes.

4.2 Additional Rent. On and from the Commencement Date, Tenant shall pay or cause to be paid as “Additional Rent,” before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, any and all Governmental Charges (including but not

limited to assessments, taxes, charges, utilities of every kind or nature provided to the Premises, excises, levies, and license and permit fees) relating or attributable to Premises, the System, and/or Tenant's use of the Premises and/or the System, whether or not the Governmental Charges are assessed directly against Tenant or through (or in the name of) Landlord, it being the intention and purpose of this Lease, and the agreement of the Parties, that the Base Rent shall be absolutely net to Landlord so that this Lease shall yield net to Landlord the Base Rent specified herein, and that all costs, expenses, and obligations of every kind and nature whatsoever relating to the Property and their use and occupancy which may arise or become due during the Term shall be paid or discharged by Tenant as Additional Rent, except as expressly provided in this Lease. Base Rent, Additional Rent and any and all sums to be paid to Landlord by Tenant under the terms of this Lease are referred to collectively as "Rent."

The foregoing notwithstanding, Tenant shall have the right, in its own name, to contest the validity or amount, in whole or in part, of any of the Governmental Charges by appropriate proceedings timely instituted, provided such Tenant takes all actions (including payment of the same) to stay or prevent any official or judicial sale of the Property, or any part thereof, by reason of nonpayment of any imposition. In addition to any other rights and remedies available to Landlord, Tenant shall defend, indemnify and hold harmless Landlord from any costs and expenses related to any such contest, including reasonable attorneys' fees, and Tenant shall promptly pay any valid final adjudication enforcing any Governmental Charges, failing which Landlord shall have the right to deduct such charge from amounts otherwise due Tenant under the PPA.

4.3 General Rent Provisions. Rent shall be payable by Tenant to Landlord monthly in advance on the first day of each month during the Term of this Lease and for so long as Tenant remains in occupancy of the Premises. Unless otherwise agreed in writing by the Parties, all Rent and other payments required to be made by Tenant to Landlord under this Lease shall be paid by check payable to the "Town of _____" and delivered to Landlord at the address set forth below, or at such other place as Landlord may from time to time direct by written notice to Tenant.

4.4 Interest. All payments becoming due under this Lease and not paid when due shall bear interest from the applicable due date until received by Landlord at an annual rate equal to the prime rate of interest charged from time to time by Bank of America or its successor or similar national bank plus 2 percent.

5 **System Construction, Installation and Operation.**

5.1 Installation Work.

A. Subject to the terms of the PPA and Lease, and Applicable Legal Requirements, Landlord hereby consents to the installation and construction of the System by Tenant on the Premises, including, without limitation, the installation of solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections ("Installation Work"). No Installation Work shall occur until Tenant has obtained all Governmental Approvals necessary for that work, including, but not limited to, permits and approvals of any Governmental Authority, and until Landlord has approved the plans and specifications under Subsection C, below. Tenant will be responsible for obtaining and maintaining, at its sole cost and expense, all Governmental Approvals, including but not limited to all permits necessary for the Installation Work and any and all other improvements on or at the Premises. Notwithstanding anything to the contrary herein, the execution of this Lease does not to any extent provide a waiver of any permit or approval the Tenant may require from the Town of _____.

B. Before commencing the Installation Work, Tenant shall carefully evaluate the Premises and site of the proposed System, and Applicable Legal Requirements, including but not limited to the permits issued by the DEP, to determine whether, in Tenant's opinion, the Premises is ready and in a condition appropriate to receive the System, and Tenant shall notify Landlord in writing before any installation activities commence if Tenant has determined that the site is not so ready or is not in such condition. Under no circumstances will Tenant penetrate, puncture, damage, destroy or alter any of the materials of which the landfill cap is constituted, and Tenant shall do nothing that shall cause or result in capped landfill being deemed in violation of Applicable Legal Requirements, including but not limited to the regulations, decrees, orders, and permits of the DEP.

C. Notwithstanding anything to the contrary in the Lease or PPA, at least sixty (60) days before commencing the Installation Work, Tenant shall furnish to Landlord for Landlord's approval, which approval shall not be unreasonably withheld, copies of all design plans, drawings, specifications, and detailed schedules for such work. This review is in addition to, and not a limitation of, any regulatory review or process required by Applicable Legal Requirements or any Governmental Authority, including, but not limited to, any such review or process required by the Sunderland Board of Health, Planning Board, Zoning Board of Appeals, and/or Building Department. Tenant shall schedule a pre-construction meeting with Landlord at least 14 days before commencement of any work at the Premises, and shall coordinate all such work with Landlord's activities at the Premises. Notwithstanding any approval by Landlord, Tenant shall not be relieved of its obligations under the PPA and the Lease concerning the engineering, design, construction, operation, maintenance, monitoring, inspection, permitting, and "interconnection" of the System to the electric grid.

D. Tenant will cause the System to be designed, engineered, installed, constructed, operated, maintained, monitored, tested and inspected in accordance with all Applicable Legal

Requirements, the terms of the Lease and PPA, applicable standards of care, prudent industry practices, and manufacturers' and construction contractors' warranties, instructions, specifications and recommendations, and the plans and specifications approved by Landlord under Subsection C, above, and shall pay for all costs and expenses arising therefrom. Tenant shall keep Landlord informed on a weekly basis regarding the progress, scheduling and coordination of the Installation Work. Tenant shall undertake and prosecute the Installation Work using commercially reasonable and diligent efforts, and without unreasonable delay or interruption.

E. Promptly following the completion of the Installation Work, Tenant shall provide Landlord with "as-built" drawings, stamped by a Massachusetts licensed professional architect or engineer, setting forth in detail the location of all components of the System, and shall provide Landlord with reasonable prior written notification, in no event less than 45 days in advance, regarding any substantial repair, modification, alteration, change or replacement required with respect to any part of the System, together with plans, drawings and specifications for such repair or replacement for Landlord's approval in the same manner as was required for the Installation Work.

F. Tenant understands that Landlord is responsible for performing certain activities in connection with the landfill located on and about the Premises, including, but not limited to, monitoring and inspection, and operation of a transfer station, if any. Tenant understands that Landlord's performance of such activities is for Landlord's, and not Tenant's, benefit. Tenant represents that it has been afforded full opportunity to thoroughly familiarize itself with those activities, and agrees that, notwithstanding anything to the contrary in the PPA or Lease, it shall not interfere with or disrupt such activities.

5.2 Additional Rights. Subject to Applicable Legal Requirements and the terms of the PPA and Lease, including Section 5.1, Tenant shall also have the right from time to time during the Term hereof in connection with this Lease, to (a) maintain, clean, repair, replace and dispose of part or all of the System; (b) to add to or remove the System or any part thereof; and (c) perform, or cause to be performed, all tasks necessary to carry out the Permitted Uses or carry out the activities set forth in this Section 5.

5.3 Access to and Use of Leased Premises. Subject to the terms of the PPA and this Lease, and Applicable Legal Requirements, Tenant shall have access to the Premises twenty-four (24) hours, seven (7) days a week for the purpose of performing the Installation Work and Permitted Uses.

5.4 Mechanics Liens. Tenant shall not permit any mechanics' liens, or similar liens, to remain upon the Premises for labor and material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed at the direction of Tenant, and shall cause any such lien to be released of record without cost to the Landlord within thirty (30) days after Tenant receives notice of filing of same. In addition to any other rights and remedies available to Landlord, Tenant agrees to indemnify, save, defend, and hold harmless the Landlord against, of and from all costs,

liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees, resulting therefrom.

5.5 Changes, Alterations. Tenant shall obtain Landlord's prior written consent, which will not be unreasonably withheld, prior to making any material or structural alterations, changes, or additions to the System. Tenant shall follow the review and approval procedures and standards set forth in this Section 5 to obtain Landlord's consent.

5.6 Insurance for Tenant's Work. During the performance of the Installation Work and any other improvements approved by Landlord, Tenant shall have and maintain in force public liability and property insurance, builder's risk insurance covering Landlord (with no exclusion for design or construction defects, errors or omissions), and workmen's compensation insurance affording applicable statutory coverage and containing statutory limits, all in compliance with the provisions of Section 12.

5.7 Landlord Access/Inspection Rights/Notice of Damage.

A. Landlord may, upon reasonable prior notice to Tenant, except in the case of an emergency, in which event Landlord will give notice as soon as practicable, enter upon any and all portions of the Premises for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, and for the purpose of carrying out its obligations with respect to maintenance and monitoring of the Premises and any landfill cap located thereon, and the operation, maintenance, and repair of the transfer station, if any, or as otherwise may be required by Applicable Legal Requirements. The foregoing notwithstanding, the Sunderland Board of Health and DEP, their assigns and/or representatives, shall have full access to the Premises at all times and without restrictions, and Tenant shall provide the Board of Health with keys (for the Board's possession) to any locked gates or other security measures limiting access to the Premises.

B. During the course of construction and any substantial alteration or modification of the System, Tenant shall maintain all plans, shop drawings, and specifications relating to such construction so that Landlord, its agents or contractors may examine at reasonable times upon reasonable prior notice.

C. At any time, Landlord shall have the right, but not the obligation, upon reasonable prior notice to Tenant and without any hindrance by Tenant, to observe and inspect the System for any reasonable purpose.

D. Landlord shall have the right, upon reasonable prior notice to Tenant, to examine, during normal business hours, the books of account and other records in Tenant's possession, custody and control pertaining to Tenant's obligations under this Lease, the PPA, and Applicable Legal Requirements.

E. Tenant shall immediately notify Landlord of any damage to or loss of use of the Premises or System, and of any events or circumstances of which Tenant is aware that may result in damage or loss of use of the Premises or System.

5.8 Performance and Removal Bonds. Tenant shall, before any Installation Work commences, furnish to Landlord a performance bond and removal bond, and any other bonds or forms of security required in the PPA and RFP. Bonds shall be in the form reasonably satisfactory to Landlord, issued by sureties qualified to do business in Massachusetts, and in amounts required in the RFP, or otherwise reasonably required by Landlord, to cover, in the case of the performance bond, the Installation Work, and in the case of the removal bond, to remove the System and restore the Premises to its original condition.

5.9 Safety. During the Installation Work and any other Landlord-approved improvements to the Premises, Tenant shall install such safety devices as may be necessary and appropriate, and as Landlord may reasonably require, to ensure the safety of Landlord's personnel, persons on the Premises, the Premises and landfill, the Remaining Property, adjacent property owners and their property, and the general public. Notwithstanding anything to the contrary in the Agreement, Third-Party Agreement and this Lease, Landlord is not responsible for the security of the Premises or any improvements made thereto, which shall be at all times the sole responsibility of Tenant.

6 Representations and Warranties, Covenants of Landlord.

6.1 Authorization. Landlord represents and warrants that Landlord (i) has been duly authorized to enter into this Lease by all necessary action and (ii) will not be in default under any agreement to which it is a party with respect to the Premises (including any lease in respect of the Premises as to which Landlord is the tenant) by entering into this Lease or performing its obligations hereunder.

6.2 Landlord's Title to Leased Premises. Landlord shall not sell, assign or otherwise alienate the Premises unless Landlord shall have given Tenant at least thirty (30) days' prior written notice thereof, which notice shall identify the transferee, the premises to be so transferred and the proposed date of transfer. Landlord agrees that this Lease and the Solar Easement shall run with the Premises and survive any transfer of any of the Premises. In furtherance of the foregoing, Landlord agrees that it shall cause any purchaser, Tenant, assignee, mortgagee, pledge or party to whom a lien has been granted by Landlord to execute and deliver to Tenant a document pursuant to which such party acknowledges and consents to Tenant's rights in the Premises as set forth herein including, without limitation, an acknowledgement by the transferee that it has no interest in the System and shall not gain any interest in the System by virtue of Landlord's transfer.

6.3 No Interference With System. Excluding activities required by Applicable Legal Requirements and activities ongoing on, in or about the Property and Premises as of the date of execution of this Lease, Landlord will not knowingly conduct activities on, in or about the Premises that will cause material damage to or otherwise materially and adversely affect the System. Tenant, upon Landlord's prior review and approval and at Tenant's sole expense, shall implement and maintain reasonable and appropriate security measures to prevent unauthorized parties from accessing the Premises or the System, and to prevent any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Landlord agrees to endeavor in good faith to cause any third party who, with Landlord's assent, may in the future obtain an interest in the Premises, including any lenders to Landlord, to enter into a so-called "Subordination, Non-Disturbance and Attornment Agreement" with Tenant, to provide that each such lien or interest is subordinate to this Lease, does not and shall not encumber the System or other interests of Tenant in the Premises provided for in this Lease, with the effect that in the event of any foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale of such mortgagee's lien: (a) Tenant shall not be named as a defendant therein unless required to be named by Applicable Legal Requirements; (b) Tenant's rights and interests under this Lease shall not be affected or impaired thereby; (c) this Lease shall continue in effect during the Term; and (d) Tenant shall recognize any acquirer of title to the Premises by any such process as the Landlord under this Lease so long as the transferee continues to hold such title.

7 Representations and Warranties, Covenants of Tenant.

7.1 Authorization; Enforceability. The execution and delivery by Tenant of this Lease, and the performance of its obligations hereunder, have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do

not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Tenant or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Lease constitutes a legal and valid obligation of Tenant, enforceable against Tenant in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

8 Maintenance.

8.1 Maintenance of Premises. Tenant shall all at its sole cost and expense keep the Premises in first class and safe order and condition, comply with Tenant's Landfill Obligations, if any or, if Landlord is required by DEP to perform same, pay Landlord for such compliance, and shall not commit, or permit its agents, employees, representatives or invitees to commit, waste to the Premises. If Tenant or its agents, employees, representatives or invitees (including sublessees) damage the Property (including, without limitation, the landfill cap) or any property of Landlord or any other tenant on the Property, Tenant shall, at its sole cost and expense, promptly and in accordance with Applicable Legal Requirements repair and restore the Property, Premises and any other property of Landlord and any property of other tenants. Tenant shall be responsible for the removal of all of its trash and waste and for removing snow and ice from the Premises. Tenant acknowledges that Landlord shall have no duty, obligation or liability to Tenant for the maintenance, repair and security of the Premises, except that Landlord shall, for its own benefit and not for the benefit of Tenant, be responsible for its own activities at the landfill, with which activities Tenant shall not interfere.

8.2 Maintenance of System. Tenant shall maintain and repair the System and related equipment so as to keep it safe, sanitary, and in first class working order and condition, all at its sole cost and expense. Landlord shall have no duty or liability to Tenant with respect to the maintenance, repair or security of the System.

8.3 Temporary Removal of System. In addition to any provisions of the PPS allowing for the removal of the System for repair to the Premises, in the event that the landfill cap requires repair or replacement during the term of the Lease, the Tenant shall, at its cost, remove portions of the System as necessary for the repair or replacement work to be performed. During the period of such removal, those portions of the System that are removed from their original location may be temporarily stored off-site, or the Landlord may designate a location for the temporary storage on other Landlord property, if available. During such temporary storage, the Tenant shall be responsible for the security of the System, and, if the System or any part thereof is temporarily stored on Landlord property, the Tenant shall store it in a manner that prevents the public from gaining access to the System. To the extent that damage to the landfill cap or other areas of the Premises is the result of the acts or omissions of any of the Tenant, the Tenant shall, in addition to any other rights and remedies available to Landlord, indemnify the Landlord for any and all resulting damages, including, but not limited to, all administrative penalties or fines imposed on the Landlord and reasonable attorneys' fees, and all costs incurred in the restoration of the cap in compliance with the requirements of the DEP and any other Governmental Authority.

8.4 Landlord's Cure Rights. In addition to the rights afforded Tenant under Section 8.8 of the PPA, if repairs are required to be made by Tenant pursuant to the terms hereof, Landlord may demand that Tenant make the same forthwith, and, if Tenant refuses or neglects to commence and diligently pursue the completion of such repairs within thirty (30) days after such demand, or forthwith in the case of emergency repairs, Landlord may (but shall under no circumstances be required or obligated to) make or cause such repairs to be made and shall not be responsible to Tenant for any loss or damage that may accrue to Tenant's property by reason thereof. If Landlord makes or causes such repairs to be made, Tenant agrees that Tenant shall forthwith, on demand, pay to Landlord the costs thereof, failing which, Landlord shall have the remedies provided herein as it does for the failure to pay Rent, and/or may, notwithstanding anything to the contrary in the PPA, deduct the cost of such repairs from amounts otherwise due Tenant under the PPA.

10. Hazardous Materials.

10.1. Hazardous Materials. "Hazardous Materials" are any hazardous, toxic or radioactive materials, substances or waste, as defined in federal or state law regulating or addressing the generation, storage, use, or transportation of such materials, including but not limited to Massachusetts General Laws, chapter 21E; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §1801, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; the Clean Water Act, 33 U.S.C. §1251, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136, et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Emergency Planning and Community Right to Know Act (SARA Title III), 42 U.S.C. §11001, et seq.; and any rules, regulations or orders promulgated pursuant thereto (collectively, the "Environmental Laws").

10.2. Tenant Hazardous Activities. Tenant agrees that it shall not, nor allow others under its control (including subtenants and licensees) to, use, generate, store or dispose of any Hazardous Material on, under, about or within the Property, or cause the release from the landfill of any Hazardous Material, in violation of any of the Environmental Laws or Landfill Obligations.

10.3. Landfill. Tenant acknowledges that (a) the Premises was previously operated by Landlord as a municipal solid waste landfill; (b) the Premises are subject to on-going maintenance activities pursuant to applicable legal requirements which shall be the responsibility of the Tenant to perform; (c) all activities on the Premises, including but not limited to the construction, operation, maintenance, decommissioning and removal of the System, must be conducted in full conformance with Applicable Legal Requirements; (d) Applicable Legal Requirements may prohibit and/or require the use of certain construction, operation, maintenance and removal procedures in connection with the use of the Premises for a System; and (e) Tenant is fully familiar with the condition and all aspects of the Premises, and it has approved and accepted the same for its intended purposes and otherwise.

10.4. Tenant Environmental Indemnity. In addition to any other rights and remedies available to Landlord, Tenant agrees to defend, hold harmless and indemnify Landlord from and to assume all and all claims, suits, penalties, obligations, damages, losses, liabilities, payments, costs and expenses (including without limitation reasonable attorneys' fees) (collectively, "Claims") arising from (i) the failure by Tenant or its agents, employees, contractors, subcontractors, licensees or invitees (collectively, with Tenant, referred to as the "Tenant Parties") to comply with any applicable Environmental Laws, and (ii) any Hazardous Materials on or about the Premises which are in any way caused by or related to the acts or omission of any of the Tenant Parties.

10.5. Costs. The indemnifications and covenants of Section 10.4 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.

10.6. Survival. The provisions of this Section 10 will survive the expiration or termination of this Lease.

11. Indemnification; Release

11.1 Tenant Indemnity. In addition to Tenant's indemnifications obligations under Section 10 of the Lease and under the PPA and any other rights and remedies available to Landlord, Tenant shall indemnify, hold harmless, release and defend Landlord from and against all Claims: (a) arising directly or indirectly from the failure of any of the Tenant Parties to comply with the terms of this Lease, the PPA and/or Applicable Legal Requirements; (b) caused by or arising, directly or indirectly, from the act, omission, or negligence on the part of any of the Tenant Parties; (c) relating to any work done or action taken during the Term of this Lease and the Term of the PPA in, on or about the Premises or any part thereof, including, but not limited to, the Installation Work and any other improvement on the Premises, by any of the Tenant Parties; and (d) relating to the use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof during the Term of this Lease by any of the Tenant Parties.

11.2 Release. To the maximum extent permissible by law, Tenant agrees to use and occupy the Premises at Tenant's own risk, and Landlord shall have no responsibility or liability for any loss or damage to the System or other personal property of Tenant unless caused directly and solely by the negligence or willful misconduct of any of the Landlord.

11.3 Limitation on Liability. Notwithstanding anything to the contrary in this Lease or the PPA, Landlord shall in no event be liable for any indirect, consequential, punitive or special damages, loss of profit or the like, whether or not such damages are deemed foreseeable, and Tenant hereby waives any claims that Tenant or the other Tenant Parties may have against Landlord with respect to such damages.

11.4 No Personal Liability. To the fullest extent permitted by law, no official, employee, agent or representative of Landlord shall be individually or personally liable for any obligation or liability of Landlord under this Lease.

11.5 Survival. The provisions of this Section shall survive the termination or expiration of this Lease.

12. Insurance.

12.1 Required Insurance. Tenant shall maintain, during the Term of this Lease and for so long as Tenant or the System continue to be on the Premises, the following insurance:

(a) General comprehensive liability insurance, written on an occurrence basis, with a combined single limit of not less than One Million Dollars (\$1,000,000.00) for injury to or death of any one person, for injury to or death of any number of persons in one occurrence, and for damage to property, insuring against any and all liability of Landlord and Tenant, including, without limitation, coverage for contractual liability and broad form property damage, with respect to the Premises, the System, or arising out of the maintenance, use, or occupancy of the Premises and/or the System, and Three Million Dollars (\$3,000,000.00) in aggregate; and (ii) excess liability (so-called umbrella) coverage having a limit of Five Million Dollars (\$5,000,000.00) written on an occurrence basis;

(b) All-risk property damage insurance for replacement of the System and Tenant's other personal property. Said insurance shall include coverage for all natural disasters, including earthquakes, hurricanes, tornadoes and floods, and damage arising from design or construction defects, errors or omissions, and damages to or loss of construction materials while in transit. The value of such insurance shall be in an amount not less than the total costs to construct and install the System, including all so-called "soft" costs (e.g., fees for engineering, architectural, legal and other services);

(c) During the performance of the Installation Work, Tenant shall also require the construction manager and/or general contractor hired by Tenant for the construction of the System to maintain (i) for the benefit of Tenant and Landlord, as additional insured, commercial general liability insurance, including products and completed operations coverage, against any claims for bodily injury, death and property damage occurring upon, in or about the Premises and on, in and about the adjoining sidewalks and passageways during the construction of the System for at least \$3,000,000 combined single limit; (ii) worker's compensation in amounts required by statute; (iii) employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000), and (iv) automobile liability insurance, including the ownership, maintenance and operation of any automotive equipment, owned, hired or non-owned, in an amount not less than One Million Dollars (\$1,000,000) combined single limit; and

(d) Workers Compensation in the minimum amount of the statutory limit.

12.2 General Requirements. The following conditions shall apply to the insurance policies required herein:

(a) Tenant shall submit duplicate originals of all the policies required to be carried hereunder on the Commencement Date and on each anniversary thereof, or at Landlord's reasonable request. All the insurance required under this Section 12 shall name Landlord as additional insurance, and all insurance policies and certificates shall include a provision requiring thirty (30) day's written notice to Landlord by certified mail of any cancellation, material change, or reduction in coverage.

(b) All insurance of Tenant shall be primary with respect to any insurance maintained by Landlord and shall not call on Landlord's insurance for contributions.

(c) All insurance shall be issued through valid and enforceable policies issued by insurers authorized to transact insurance business in the Commonwealth of Massachusetts and having an A+ or better financial rating from a recognized insurance accreditation institution (such as A.M. Best Company).

(d) The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as the limits in combination equal or exceed those required herein.

(e) Tenant's failure to obtain, procure or maintain the required insurance shall constitute a material breach of this Lease.

(f) Tenant's obligation to hold harmless and indemnify Landlord shall not be limited by the requirement for, or existence of, insurance coverage.

(g) Landlord shall have the right to require Tenant to increase such limits when, during the term of this Lease, minimum limits of liability insurance commonly and customarily carried on properties comparable to the Premises by responsible owners or tenants are more or less generally increased, it being the intention of this sentence to require Tenant to take account of inflation in establishing minimum limits of liability insurance maintained from time to time on the Premises.

12.3 Landlord's Cure Rights. In the event of Tenant's failure, in whole or in part, at any time during the Term of this Lease or thereafter, to obtain insurance required to be carried by Tenant under the provisions hereof or to provide such evidence thereof in timely fashion, Landlord shall have the right (but shall not be obligated) to procure such insurance and Tenant shall pay to Landlord the costs and expenses thereof as Additional Rent, or Landlord may, in its discretion, deduct such costs and expenses from amounts otherwise due from Landlord to Tenant under the PPA.

12.4 Insurance Proceeds for Damage to Property. In the event any damage to the Property, including the Premises, is covered by insurance, all insurance proceeds payable on account of such damage that are received by, or within the control of, Tenant, shall be forthwith paid to Landlord.

13. Default.

13.1 Default by Tenant.

It shall be an Event of Default if:

(a) Tenant fails to pay Rent or comply with any provision curable by the payment of money, including, without limitation, Tenant's obligation to maintain the insurance required under this Lease, when due hereunder and such failure continues for fifteen (15) days after written notice from Landlord that the same is due;

(b) Tenant fails to perform or observe any other term or condition contained in this Lease and such failure is not cured within thirty (30) days after written notice from Landlord, provided, however, that if such failure is of such a nature that Tenant cannot reasonably remedy the same within such thirty (30) day period, no such failure will be deemed to exist if Tenant promptly commences to cure the default within such thirty (30) day period and prosecutes the same to completion with reasonable diligence (but in no event later than sixty (60) days from the date of the notice from Landlord unless otherwise agreed upon in writing); or

(c) Tenant shall be declared bankrupt or insolvent according to law, or, if any assignment shall be made of Tenant's property for the benefit of creditors, or a receiver or trustee is appointed to take over and conduct the business of Tenant, whether in receivership, reorganization, bankruptcy or other action or proceeding, and such bankruptcy or insolvency proceeding, receivership or trusteeship shall not have been vacated not later than ninety (90) days after such declaration, election or appointment, unless (i) such debtor in possession, receiver or trustee shall have within said ninety (90) days shall have remedied all defaults under this Lease; and (ii) such debtor in possession, receiver or trustee shall have within said ninety (90) days executed an agreement, duly approved by Landlord, whereby such debtor in possession, receiver or trustee shall assume and agree to be bound by each and every term, provision and limitation of this Lease, and if in bankruptcy Tenant, for itself, for the debtor in possession, the receiver or trustee does, hereby waives its ability to request an extension of the period to assume or reject this Lease in excess of ninety (90) days from the Court's Order for Relief.

(d) Tenant has committed an Event of Default under the PPA.

Upon an Event of Default, Landlord at any time thereafter may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least forty-five (45) days after the giving of such notice, subject to the rights for cure if and only if such rights apply to the Event of Default in question. Unless the Event of Default is one for which a cure may be made, and a cure has been made or commenced in accordance with Section 13.1, upon the date specified in such notice, this Lease and the Term hereby demised and all rights of Tenant under this Lease shall expire and terminate, and Tenant shall remain liable as hereinafter provided prior to the default.

At any time or from time to time after any such expiration or termination of a cure period provided above, and notwithstanding anything to the contrary in this Lease, Landlord shall have the right, but not the obligation, to re-enter and take complete possession of the Premises, to declare the Term of this Lease ended, and/or remove the System and Tenant's other affects on the Premises at Tenant's cost, without prejudice to any remedies which might be otherwise be available to Landlord.

Upon an Event of Default, Landlord shall be entitled to exercise any and all rights and remedies available under this Lease, the PPA, at law and equity, and Landlord may, but shall not be obligated to, take any and all actions to cure Tenant's default, all at Tenant's cost and expense. Landlord may enter upon the Premises (after ten (10) days' written notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

Tenant agrees to reimburse Landlord for all costs associated with the enforcement of this Lease, or any and all provisions therein, including but not limited to all legal and court costs and attorneys' fees. Without limiting any of Landlord's rights and remedies hereunder, and in addition to all other amounts Tenant is otherwise obligated to pay, it is expressly agreed that Landlord shall be entitled to recover from Tenant all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in enforcing this Lease from and after Tenant's default.

The provisions of this Section 13.1 shall survive the expiration or earlier termination of this Lease.

13.2 Default by Landlord. It shall be an event of default under this Lease if Landlord fails to perform any material term or condition under this Lease within sixty (60) days after receipt of written notice from Tenant specifying the failure, provided, however, that no such failure will be deemed to exist if Landlord commences to cure the default within such sixty (60) day period and thereafter prosecutes the same to completion with reasonable diligence. In the event that Tenant terminates this Lease because of Landlord's default hereunder, Tenant shall have the right to pursue any and all remedies available to it at law and/or equity.

14. Leasehold Mortgages

14.1 Leasehold Mortgages. Tenant shall have the right, from time to time, without the prior consent of Landlord, to mortgage, hypothecate, pledge, or otherwise encumber Tenant's leasehold estate in the Premises as security for payment of any indebtedness and/or the performance of any obligation by means of one or more mortgages, assignments of leasehold interest or any other security instruments in favor of an institutional lender or lenders (referred to herein as a "Permitted Institutional Mortgage") with the holder of such mortgage referred to herein as a "Permitted Institutional Mortgagee"). Each Permitted Institutional Mortgage shall mature no later than the last day of the term of this Lease, and shall be a Leasehold Mortgage only, expressly subject to the terms and conditions of this Lease. It is expressly understood and agreed that Tenant has no right to mortgage or otherwise encumber the fee title to the Property or the Premises, except that Tenant may encumber the fee title to the System upon prior written notice to Landlord. Tenant shall promptly deliver to Landlord a true copy of the Permitted Institutional Mortgage and any assignment thereof. Landlord shall have no obligation to notify a

Permitted Institutional Mortgagee of any default under this Lease or otherwise, and any such notice shall be the responsibility of Tenant notwithstanding anything to the contrary in this Lease or the PPA.

14.2 Permitted Institutional Mortgages not Assignment. The making of a Permitted Institutional Mortgage shall not be deemed to constitute an assignment or transfer of this Lease. Nor shall any Permitted Institutional Mortgagee, as such, be deemed an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Permitted Institutional Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder; but the purchaser at any sale of the leasehold interest created by this Lease in any proceedings for the foreclosure of any Permitted Institutional Mortgage, or the assignee or transferee of such leasehold interest under any instrument of assignment or transfer in lieu of the foreclosure of any Permitted Institutional Mortgage, shall be deemed to be an assignee or transferee and shall be deemed to have assumed the performance of all of the terms, covenants and conditions on the part of Tenant to be performed hereunder from and after the date of such purchase and assignment, and shall immediately execute a written instrument assuming Tenant's obligations hereunder. Absent agreement of the Parties in writing, Tenant shall not be relieved of its obligations under the Lease notwithstanding the making of a Permitted Institutional Mortgage or any subsequent assignment or transfer to a Permitted Institutional Mortgagee.

15. Fire or Other Casualty; Condemnation

15.1 Casualty. If, at any time during the Term, the System is damaged or destroyed or rendered inoperable by fire or other casualty, Tenant shall repair, replace or remove the System in accordance with Section 7.1 of the PPA.

15.2. Condemnation. In the event Landlord receives notification of any condemnation proceedings affecting the Premises, Landlord will provide reasonably prompt notice of the proceeding to Tenant. If a condemning authority takes all of the Premises, or a portion sufficient to render the Premises demonstrably unsuitable for Tenant, this Lease shall terminate as of the date the title vests in the condemning authority. Landlord and Tenant will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Premises.

16. Surrender.

Within sixty (60) days from the expiration or termination of this Lease, Tenant shall remove the System and all other improvements installed by Tenant on the Premises in compliance with Applicable Legal Requirements and restore the Premises to its original condition as of the Commonment Date. In connection with such removal, Landlord shall continue to provide Tenant with access to the Premises without payment of further Rent or consideration during said 60-day period. Any improvements not removed from the Premises within the foregoing 60-day period shall be deemed abandoned and shall become the sole property of Landlord. In such case, Landlord shall have the right to use the Removal Bond to pay for the removal of the System, any costs associated with repairing any damage caused to the

Premise for the removal of the System and/or to make such repairs or improvements to the Premises to restore the Premises to the condition in which they were required to be maintained under this Lease. The provisions of this Section shall survive expiration or earlier termination of this Lease.

17. Assignment.

The Tenant may assign this Lease to the same extent as it may assign the PPA, as provided in the PPA. Otherwise, Tenant shall not assign this Lease or sublet the Premises or any portion thereof under any circumstances absent the advance written approval of Landlord, which may be withheld in Landlord's sole discretion. The granting of a Permitted Institutional Mortgage shall not be deemed an assignment of this Lease, unless the Permitted Institutional Mortgagee forecloses thereupon.

18. Miscellaneous.

18.1 Landlord's Access. In addition to such other rights of access stated in this Lease, Landlord or Landlord's agents may, at reasonable times, except in case of emergency when no such notice shall be necessary, enter the Premises to ensure compliance with the terms of this Lease, to take necessary actions to protect the property or persons on the Property, including the Premises, to enforce the terms of this Lease, to perform any work or activities that are required of Landlord, or for any other purpose.

18.2 Quiet Enjoyment.

(a) Landlord covenants that so long as no Event of Default has occurred and is continuing, but subject at all times to Applicable Legal Requirements and the activities of Landlord on and about the Premises as of the Commencement Date, Tenant shall quietly have and enjoy the Lease Area during the Term. Landlord's exercise of self-help remedies provided under this Lease and rights of entry and inspection and right to continue to perform its activities in relation to the landfill shall not be considered a breach of the covenant of quiet enjoyment notwithstanding anything to the contrary herein. Landlord's exercise of the rights of access in accordance with the terms of this Lease or Applicable Legal Requirements shall not be deemed a breach of the covenant of quiet enjoyment.

(b) Tenant shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Landlord's use of the Property, the Easement Areas, or the Remaining Property or the rights of any other occupants in and to such areas. In the event interference occurs, Tenant agrees to take all reasonable steps necessary and appropriate to eliminate such interference promptly, but no later than thirty (30) days from notification by Landlord. Tenant will use its best efforts, which shall at minimum be commercially reasonable and diligent, to operate, maintain and repair its System in a manner that does not interfere with the Remaining Property. Landlord may construct, reconstruct, modify or make alterations to the Property, the Easement Areas, and the Remaining Property so long as such activities do not materially and adversely interfere with the operation of the System, provided, however, that Landlord may do

all such things as may be required by Applicable Legal Requirements notwithstanding anything to the contrary in this Lease and the PPA.

18.3 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Lease shall be deemed to be an agreement by Landlord to issue or cause the issuance of any Governmental Approval, or to limit or otherwise affect the ability of Landlord or any regulatory authority of Landlord to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

18.4 Subordination to Existing Leases, Easements and Rights of Way. Tenant acknowledges and understands that this Lease and all rights of Tenant hereunder are subject and subordinate to all existing easements, rights of way, declarations, restrictions or other matters of record. Landlord reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not materially and adversely interfere with Tenant's use of the Premises and the operation of the System, provided, however, that Landlord may do all such things as may be required by Applicable Legal Requirements notwithstanding anything to the contrary in this Lease and the PPA.

18.5 Amendments. This Lease may be amended only in writing signed by Tenant and Landlord or their respective successors in interest.

18.6 Notices. Any notice required or permitted to be given in writing under this Lease shall be (a) mailed by certified mail, postage prepaid, return receipt requested, (b) sent by overnight air courier service, (c) personally delivered to a representative of the receiving Party, or (d) sent by facsimile, and shall be deemed delivered upon mailing, faxing (provided fax receipt indicates transmission) or deposit with a courier. All such communications shall be mailed, sent or delivered, addressed to the Party for whom it is intended and to the Party's attorney, at the address set forth below:

If to Landlord:

With a copy to:

If to Tenant:

With a copy to:

18.7 Waiver. Failure of either Party to complain of any act or omission on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by either Party at any time, express or

implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision. If any action by either Party shall require the consent or approval of the other Party, the other Party's consent to or approval of such action on any one occasion shall not be deemed a consent to or approval of said action on any subsequent occasion or a consent to or approval of any other action on any subsequent occasion.

18.8 Remedies Cumulative. No remedy herein conferred upon or reserved to Tenant or Landlord shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

18.9 No Third Party Beneficiaries. This Lease is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third Party not a Party hereto.

18.10 Landlord's Costs. Tenant shall reimburse Landlord for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Tenant for Landlord's consent hereunder.

18.11 Captions. The captions and headings throughout this Lease are for convenience of reference only and the words contained therein shall in no way be held or deemed to define, limit, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of, or the scope or intent of this Lease, nor in any way affect this Lease, and shall have no legal effect.

18.12 Severability. If any term or provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

18.13 Choice of Law. This Lease shall be construed in accordance with the laws of the Commonwealth of Massachusetts notwithstanding any laws regarding conflicts of laws, and any claims or dispute relating to this shall be brought in courts within the Commonwealth of Massachusetts, and the Parties hereby assent to the jurisdiction of such courts.

18.14 Binding Effect. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

18.15 Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court proceedings between the parties.

18.16 Entire Agreement. This Lease and the PPA represent the full and complete agreement between the Parties with respect to the subject matter contained therein and supersedes all prior written or oral agreements between said Parties with respect to said subject matter.

18.17 Further Assurances. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither Party shall unreasonably withhold its compliance with any reasonable request made pursuant to this Section, provided, however, that Landlord shall not be required to execute any additional document, instrument or assurance that it reasonably believes will increase its risk or obligations under the Lease or PPA.

18.18 Notice of Lease. Landlord and Tenant mutually agree to execute herewith, in triplicate, a Notice of Lease in recordable form with respect to this Lease, and agree to execute, upon termination of this Lease for whatever cause, a Notice of Termination of Lease in recordable form for recording with said Registry.

[signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

LANDLORD:

TOWN OF _____
By its Board of Selectmen

TENANT:

By: _____
Name:
Title: President

434545/LUNE/0001

EXHIBIT A

DESCRIPTION OF PREMISES

EXHIBIT B

LOCATION OF EASEMENT AREAS

EXHIBIT B

DESCRIPTION OF THE SYSTEM

TOWN OF _____, MA

SYSTEM 1: _____

SOLAR ENERGY SYSTEM:	System Manufacturer: _____
	Nameplate Capacity: _____
	Approximate Annual Energy Production:
	_____ kWh
	Location: _____
	Preliminary Specifications:

SOLAR ENERGY SYSTEM ASSETS:	Mounting Systems _____
	Tracking Devices: _____
	Inverters: _____
	Integrators: _____
	Related Equipment: _____
	Electric Lines: _____
	Permits: _____
	Contracts: _____

EXHIBIT C

SOLAR POWER PURCHASE PROVISIONS

TOWN OF _____, MA

EXPECTED ANNUAL ELECTRICITY OUTPUT	_____ kWh/year
GUARANTEED ANNUAL ELECTRICITY OUTPUT	_____ kWh/year
ANNUAL SYSTEM DEGRADATION FACTOR	.5 % per year
ELECTRICITY PRICE	\$_____ per kWh during the first Contract Year of the Term
ELECTRIC PRICE INCREASE FACTOR (ESCALATOR)	_____ % per year (starting in year 2)
MAXIMUM ELECTRICITY PRICE	\$_____/kWh during the last Contract Year of the Term
LDC	Western Massachusetts Electric Company (division of Northeast Utilities)
DECOMMISSIONING ASSURANCE AMOUNT	\$_____
LOCATION OF DELIVERY POINT	

OVERALL TERM PRICING

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Escalated Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

EXHIBIT D

PERFORMANCE OBLIGATIONS

TOWN OF _____, MA

Nameplate Rated Capacity:

System 1: _____

System 2: _____

System 3: _____

Overall Performance Obligations

Year	Expected Annual Electricity Output in kWh/year	Minimum Guaranteed Annual Electricity Output in kWh/year
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		