

# TOWN OF KINGSTON

MASSACHUSETTS



## REQUEST FOR PROPOSALS

PROPOSALS SHALL BE SUBMITTED  
PRIOR TO 3:00 PM ON  
FRIDAY, AUGUST 27, 2010

FOR

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

*Large Scale Ground Mounted Solar Photovoltaic Installation*

Town Administrator/Chief Procurement Officer  
Kingston Town House  
26 Evergreen Street  
Kingston, MA 02364

## **Notice**

The Town of Kingston, acting through its Board of Selectmen, hereby seeks competitive bids for the highest lease payment for certain Town-owned real property to design, permit, construct, own and operate a commercial or utility class Large Scale Ground Mounted Solar Photovoltaic Installation (“Installation”) at the Town’s Landfill located near Cranberry Road, Kingston MA, and associated equipment for the purpose of creating renewable electrical energy. The Town will consider an option to enter into a power purchase agreement to purchase energy created by the proposed Installation. The lease shall be for a minimum term of twenty years with options for two five year extensions.

The Request for Proposals is available via email from the Office of the Town Administrator / Chief Procurement Officer ([jmyers@kingstonmass.org](mailto:jmyers@kingstonmass.org)). To be considered, proposals must be received before 3:00 PM on August 27, 2010, at which time all proposals will be opened in the Selectmen’s Hearing Room and a Register of Proposals prepared. The Town of Kingston reserves the right to reject any or all proposals. MGL Chapter 25A shall govern all procedures related to energy management services and the lease of the real property, as applicable.

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

**Request for Proposals: Lease of Real Property for  
Construction of Renewable Energy Facilities**  
*Large Scale Ground Mounted Solar Photovoltaic Installation*

**INVITATION**

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

**PROPOSAL SUBMISSION REQUIREMENTS**

To be considered, a proposal must be received before 3:00 PM on August 27, 2010, by the office of the Town Administrator. Late proposals will be returned unopened. An original and three copies of the Proposal shall be placed in a sealed envelope marked on the outside as “Request for Proposals: Lease of Real Property for Construction of Renewable Energy Facilities - Large Scale Ground Mounted Solar Photovoltaic Installation” and delivered to:

Jill R. Myers, Town Administrator/Chief Procurement Officer  
Kingston Town House  
26 Evergreen Street  
Kingston, MA 02364

**Project Proposal**

The proposal shall include the following:

1. a letter of intent outlining the proposer’s interest in this project and the qualifications of the proposer to perform the scope of services;
2. a clearly defined plan of services for completion of the project including a description of the proposer’s internal operations, its management systems, a list of personnel with an organizational chart, and the names and qualifications of all personnel who will be assigned to the project. The plan of services shall include a description of the manner in which the proposer will fulfill the project, a schedule for completion of the scope of services with detailed timelines, a description of anticipated operation and maintenance services, and a discussion of financial capability to complete the project on schedule;
3. resumes of the key individual(s) who will lead the project and listing of projects of similar nature performed by the proposer including contact names and current telephone numbers;
4. signed disclosure of beneficial interests, non-collusion, and tax compliance certificate. (Form attached).
5. Completed bid form, as described below.

**Bid Form**

The Proposer shall indicate on the Bid Form, the highest annual lease payment that the Proposer will pay the Town of Kingston for the right to lease space at the project site to design, permit, construct, own, operate, and maintain Large Scale Ground Mounted Solar Photovoltaic Installation. The Town may consider an offer by the Proposer to purchase the energy from the

Installation, if advantageous to the Town. The offer for sale of electrical energy, if offered, shall be indicated on a per kilowatt hour price on the Bid Form.

The electrical energy price and estimated annual energy production shall be included on the attached Bid Form and enclosed in a separate sealed envelope marked “Bid Form.” The proposer shall bid on the lowest cost of electrical energy (price/kWh) they are willing to provide the Town in a Power Purchase Agreement for the initial 20-year term.

### **Security Deposit**

All proposals shall include a Security Deposit of fifteen thousand dollars (\$15,000) in the form of a certified, cashier’s or bank check. The Security Deposits shall be returned upon the execution of the lease by the Town and the successful proposer.

### **SELECTION METHODOLOGY**

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

### **Evaluation Criteria**

- Bid Amount – The highest annual lease payment for the right to develop and operate a renewable energy facility at the site; or the best combined lease payment and PPA terms.
- Experience – The firm’s experience in designing, financing, constructing and operating an Installation.
- Project Team – The experience and quality of project personnel and the commitment of them to the proposed project.
- Financial Capability - The demonstrated ability of the proposer to obtain financing to ensure the timely completion of the project.
- Schedule – The demonstrated ability of the proposer to hold to a committed schedule.

### **PROJECT SPECIFICATIONS**

1. The Town will lease a parcel of land located at Assessor’s Map 66 Lot 50 and Assessor’s Map 75, Lot 11, to a Large Scale Ground Mounted Solar Photovoltaic Installation energy developer (“developer” or “selected firm”) for the purpose of constructing and operating the Installation on the Town’s capped Landfill. The parcel (Attachment 1) includes approximately 38 acres of land; however, the amount leased will be determined in negotiation with the selected Firm, and as to not interfere with the proposed wind turbine project.
2. The Town intends to enter into a lease for a Wind Turbine on the same Premises, not including the Property except to the extent that access to the Property may be shared by both installations. Tenant does hereby agree to cooperate and not unreasonably interfere with the installation and operation of any Wind Turbine on the Premises and further the Tenant does hereby warrant and represent that it will in no way oppose or impede permitting of same but to the contrary will fully cooperate with the Landlord, its successors or assigns relating thereto. Tenant acknowledges that the Wind Turbine may cast a shadow on certain portions of the Installation and the Tenant will design accordingly.
3. The developer shall attend periodic meetings to discuss the project, provide progress

- updates, and make presentations to boards and committees as required. Some meetings may be conducted outside of normal business hours. All travel and related expenses for this project are to be included in the Proposer's offer.
4. The developer will be required to meet all local planning and zoning requirements (Attachment 3) and will be responsible for all permits, taxes, and related costs.
  5. Upon execution of the lease, the developer shall be required to post a bond or letter of credit with a minimum rating of "A-" with the Town in the amount of \$250,000 to ensure proper removal of the equipment in the event of default, bankruptcy or dissolution of the developer which causes the equipment to be abandoned for a period of more than six (6) months.
  6. Lease payments shall begin accruing upon execution of the lease agreement. A quarterly payment shall be made in advance of each quarter.
  7. Concurrent with the filing of the building permit application, the developer shall submit a report by a qualified professional engineer or other appropriate professional who shall certify the structural integrity of the proposed Installation.
  8. The developer has the option to submit a Power Purchase Agreement (PPA) to the Town for a term up to 20-years. Should the Town wish to enter into the PPA at the rates offered, the agreement will be formalized with the selected developer.
  9. The successful developer will be required to indemnify and hold harmless the Town of Kingston for any damage to life or property that may occur due to its negligence or that of its employees, contractors, subcontractors (if any) or agents. Further, the developer will maintain commercial general liability insurance with limits of not less than two million (\$2,000,000.00) per occurrence, four million (\$4,000,000.00) aggregate, which policy will name the Town as an additional insured.
  10. A draft Lease Agreement may be found in Attachment 4.
  11. All contracts for construction of the Installation shall be provided to the Town prior to the issuance of the building permit. The Town reserves the right to request that said contracts may be assignable in the event of dissolutionment of the developer.
  12. The Town of Kingston has filed an application for BWP-SW36 Post Closure Use Major Modification for installation of a wind turbine on the landfill. *A separate Post Closure Use Permit for the Solar project has not yet been filed.* The Wind application and accompanying documents stipulate requirements for the repair and resoration of the landfill cap around the turbine foundation. Copies of the application and related documents are available upon request. Please note that the documents contain representative design concepts, including that of a foundation system. It shall be the bidders responsibility to provide signed and sealed design documents required for permitting and construcion.

**BID QUESTIONS**

Address all questions to Jill R. Myers, Town Administrator/Chief Procurement Officer at [jmyers@kingstonmass.org](mailto:jmyers@kingstonmass.org)

- END -

**BID FORM**

*(Please note that Section A and B are required and Section C is optional. This Form must be placed in a separate envelope from the Project Proposal and marked “Bid Form.”)*

A. The undersigned proposes to lease town owned land (as described below) situated near Cranberry Road, Kingston, MA to construct, operate, and maintain a Large Scale Ground Mounted Solar Photovoltaic Installation and associated equipment (as described below) and pay the Town of Kingston

Annual lease payment of \$\_\_\_\_\_ per year.

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

B. We propose to construct and operate the following:

Proposed Installation\_\_\_\_\_

Nameplate capacity (kW)\_\_\_\_\_

Estimated average annual energy production \_\_\_\_\_(MWh/year)

C. Power Purchase Agreement (Optional for Bidder )

Bidder offers to sell the Town energy from the Installation over a term of \_\_\_\_\_ years, at the following rate:

Year 1 \_\_\_\_\_ \$/kWh

Annual Escalation \_\_\_\_\_ % per year

The Town will considered entering into a Power Purchase Agreement with the Proposer for a period of up to 20 years if determined to be in the best interest of the Town, at its sole discretion.

Name of Vendor: \_\_\_\_\_

Description of Proposed Lease Area:

The Town will lease a parcel of land located at Assessor’s Map 66 Lot 50 and Assessor’s Map 75, Lot 11, to a solar energy developer (“developer” or “selected firm”) for the purpose of constructing and operating a Large Scale Ground Mounted Solar Photovoltaic Installation on the Town’s capped Landfill. The parcel includes approximately 38 acres of land; however, the amount leased will be determined in negotiation with the selected Firm, and not interfere with the proposed wind turbine also located on that parcel.

**CERTIFICATE OF NON-COLLUSION**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

+++++

**CERTIFICATION AS TO COMPLIANCE WITH TAX LAWS**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

+++++

**DISCLOSURE OF BENEFICIAL INTERESTS**

The undersigned certifies under penalties of perjury that this proposal for a Large Scale Ground Mounted Solar Photovoltaic Installation has been made and submitted with the below as required by Chapter 7, Section 40J of the General Laws of Massachusetts. The following names and addresses represent all persons who have or will have a direct or indirect beneficial interest in parcel 59-1-2 if the Town of Kingston offers to lease a portion of the parcel to the undersigned:

<u>Name</u>	<u>Address</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

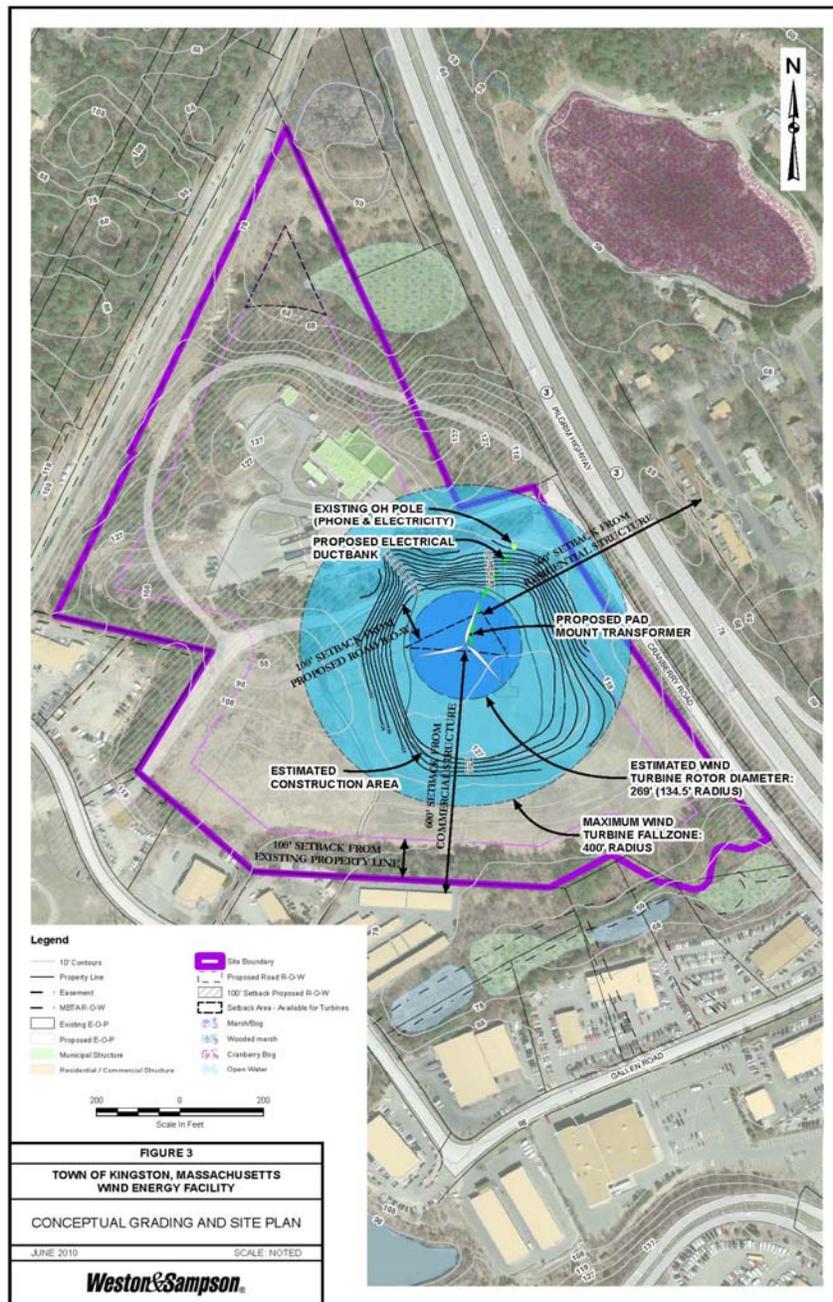
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Attachment 1**

**CONCEPTUAL SITE PLAN FOR**  
**ASSOCIATED WIND TURBINE PROJECT**

The attached Conceptual Site Plan has been approved by the Town of Kingston Planning Board for the proposed wind project under a separate RFP. The Planning Board has not approved a site plan for Solar. Alternate plans may be proposed by the Proposer at its discretion; however, it will be Proposers responsibility to obtain required approvals for any alternate plans.





ARRAY INFORMATION			
ITEM	VALUE	ITEM	VALUE
No. of Modules	6,656	No. of Modules per Panel	8
Module Wattage	230	No. of Panel Assemblies	832
Tilt Angle (degrees)	20	No. of Omitted Modules	0
Inter-row Spacing (in)	120	Tube Length (in)	314.25
Ground Clearance (in)	-	Method of Hold Down	BALLAST
Perimeter Fence Ht. (ft)	-	No. of Ground Screws	-
Planform Area (ft <sup>2</sup> )	218,289	No. of Ballast Blocks	TBD
DC String Length	-	Req'd Ballast Block Wt.	TBD
No. of Strings	-	Project Latitude	41° 58' 41.0" N

***SOLAR PV ARRAY INSTALLATION  
INFORMATIONAL PURPOSES ONLY***

## **Attachment 2**

### **REQUIREMENTS**

#### **General**

The Town of Kingston seeks the installation of a modern, cost-effective, ground mounted system installation on the Town's capped Landfill.

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

#### **Experience of Manufacturer, Designer and Installer**

The photovoltaic panels and installation shall be furnished by a manufacturer and installer that is fully experienced, reputable, and qualified in the design, manufacture and operation of a large scale ground mounted photovoltaic installations and all associated appurtenances to be furnished. Contractor shall demonstrate thorough expertise in design, mounting and operation of a system located on a capped Landfill. The successful proposer must demonstrate the following experience levels: At least five (5) other comparable Installations have been designed and/or installed and in continuous operation for at least a two-year period following successful commissioning; of which one (1) being a ground mounted system on a Landfill .

#### **Installation Quality**

The manufacturing Quality Control and Quality Assurance (Q/C and Q/A) programs of the Installation manufacturer and those of its major suppliers shall meet ISO 9000-series requirements. All Proposers shall provide a copy of such a certificate(s) with their proposal.

#### **Siting Requirements and Constraints**

The Installation must comply with all Town of Kingston Zoning Bylaws.

#### **Permitting**

In conjunction with the Wind project only, the Town of Kingston has filed applications for the the following permits and/or approvals:

- Massachusetts Department of Environmental Protection Post Closure Use Major Modification Permit
- MESA Project Review Checklist

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

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

**Attachment 3**

**KINGSTON ZONING BYLAW PERTAINING TO SOLAR**

*PLEASE NOTE:*

*PROPOSED AMENDMENTS TO SECTION 2, 4, 6 AND 7 OF KINGSTON ZONING BY-LAWS VOTED AT THE APRIL 5, 2010 ANNUAL TOWN MEETING ARE AWAITING ATTORNEY GENERAL APPROVAL. A COPY OF THE AMENDMENTS MAY BE EXAMINED AT THE TOWN CLERK’S OFFICE.*

**4.17. Large-Scale Ground-Mounted Solar Photovoltaic Installations Overlay District**

**4.17.1.0. Purpose** The purpose of this bylaw is to promote the creation of new large-scale ground-mounted solar photovoltaic installations by providing standards for the placement, design, construction, operation, monitoring, modification and removal of such installations that address public safety, minimize impacts on scenic, natural and historic resources and to provide adequate financial assurance for the eventual decommissioning of such installations.

The provisions set forth in this section shall apply to the construction, operation, and/or repair of large-scale ground-mounted solar photovoltaic installations.

**4.17.1.1. Applicability** This section applies to large-scale ground-mounted solar photovoltaic installations proposed to be constructed after the effective date of this section. This section also pertains to physical modifications that materially alter the type, configuration, or size of these installations or related equipment.

**4.17.2.0. Definitions**

**4.17.2.1. As-of-Right Siting:** As-of-Right Siting shall mean that development may proceed without the need for a special permit, variance, amendment, waiver, or other discretionary approval. As-of-right development may be subject to site plan review to determine conformance with local zoning ordinances or bylaws. Projects cannot be prohibited, but can be reasonably regulated by the inspector of buildings, building commissioner or local inspector, or if there is none in a town, the board of selectmen, or person or board designated by local ordinance or bylaw.

**4.17.2.2. Building Inspector:** The inspector of buildings, building commissioner, or local inspector, or person or board designated by local ordinance or bylaw charged with the enforcement of the zoning ordinance.

**4.17.2.3. Building Permit:** A construction permit issued by an authorized building inspector; the building permit evidences that the project is consistent with the state and federal building codes as well as local zoning bylaws, including those governing ground-mounted large-scale solar photovoltaic installations.

**4.17.2.4. Designated Location:** The locations designated by Town Meeting, in accordance with Massachusetts General Laws Chapter 40A, section 5, where ground-mounted large scale solar photovoltaic installations may be sited as-of right. Said locations are shown on a Zoning Map of Kingston, Massachusetts dated December 17, 1993 revised through April 5, 2010 pursuant to Massachusetts General Laws Chapter 40A Section 4. This map is hereby made a part of this Zoning Bylaw and is on file in the Office of the Town Clerk.

**4.17.2.5. Large-Scale Ground-Mounted Solar Photovoltaic Installation:** A solar photovoltaic system that is structurally mounted on the ground and is not roof-mounted, and has a minimum nameplate capacity of 250 kW DC.

**4.17.2.6. On-Site Solar Photovoltaic Installation:** A solar photovoltaic installation that is constructed at a location where other uses of the underlying property occur.

**4.17.2.7. Rated Nameplate Capacity:** The maximum rated output of electric power production of the Photovoltaic system in Direct Current (DC).

**4.17.2.8. Site Plan Review:** review by the Site Plan Review Authority to determine conformance with local zoning ordinances or bylaws.

**4.17.2.9. Site Plan Review Authority:** For purposes of this bylaw, Site Plan Review Authority refers to the body of local government designated as such by the municipality

**4.17.2.10. Solar Photovoltaic Array:** an arrangement of solar photovoltaic panels.

**4.17.2.11. Zoning Enforcement Authority:** The person or board charged with enforcing the zoning ordinances or bylaws.

**4.17.3.0. General Requirements for all Large Scale Solar Power Generation Installations** The following requirements are common to all solar photovoltaic installations to be sited in designated locations.

**4.17.3.1. Compliance with Laws, Ordinances and Regulations**

The construction and operation of all large scale solar photovoltaic installations shall be consistent with all applicable local, state and federal requirements, including but not limited to all applicable safety, construction, electrical, and communications requirements. All buildings and fixtures forming part of a solar photovoltaic installation shall be constructed in accordance with the State Building Code.

**4.17.3.2. Building Permit and Building Inspection**

No large scale solar photovoltaic installation shall be constructed, installed or modified as provided in this section without first obtaining a building permit.

**4.17.3.3. Fees**

The application for a building permit for a large scale solar photovoltaic installation must be accompanied by the fee required for a building permit.

**4.17.3.4.** Renewable or alternative energy research and development facilities, and renewable or alternative energy manufacturing facilities, subject to Site Plan Review by the Planning Board, pursuant to Section 7.3. and 4.17.3.5. Site Plan Review and subject to the dimensional requirements of Section 4.17.3.9. Dimension and Density Requirements. Said Site Plan Approval shall be an "expedited" application and permitting process under which said facilities may be sited within one (1) year from the date of initial application to the date of final approval by the Planning Board.

**4.17.3.5. Site Plan Review**

Ground-mounted large scale solar photovoltaic installations with 250 kW or larger of rated nameplate capacity shall undergo site plan review by the Site Plan Review Authority prior to construction, installation or modification as provided in this section.

**4.17.3.5.1. General**

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

#### **4.17.3.5.2. Required Documents**

Pursuant to the site plan review process, the project proponent shall provide the following documents:

(a) A site plan showing:

- i. Property lines and physical features, including roads, for the project site;
- ii. Proposed changes to the landscape of the site, grading, vegetation clearing and planting, exterior lighting, screening vegetation or structures;
- iii. Blueprints or drawings of the solar photovoltaic installation signed by a Professional Engineer licensed to practice in the Commonwealth of Massachusetts showing the proposed layout of the system and any potential shading from nearby structures
- iv. One or three line electrical diagram detailing the solar photovoltaic installation, associated components, and electrical interconnection methods, with all National Electrical Code compliant disconnects and over current devices;
- v. Documentation of the major system components to be used, including the PV panels, mounting system, and inverter;
- vi. Name, address, and contact information for proposed system installer;
- vii. Name, address, phone number and signature of the project proponent, as well as all co-proponents or property owners, if any;
- viii. The name, contact information and signature of any agents representing the project proponent; and

(b) Documentation of actual or prospective access and control of the project site (see also Section 4.17.3.6.);

(c) An operation and maintenance plan (see also Section 4.17.3.7.);

(d) Zoning district designation for the parcel(s) of land comprising the project site (submission of a copy of a zoning map with the parcel(s) identified is suitable for this purpose);

(e) Proof of liability insurance; and

(f) Description of financial surety that satisfies Section 4.17.3.13.3.

The Site Plan Review Authority may waive documentary requirements as it deems appropriate.

#### **4.17.3.6. Site Control**

The project proponent shall submit documentation of actual or prospective access and control of the project site sufficient to allow for construction and operation of the proposed solar photovoltaic installation.

#### **4.17.3.7. Operation & Maintenance Plan**

The project proponent shall submit a plan for the operation and maintenance of the large-scale ground-mounted solar photovoltaic installation, which shall include measures for maintaining safe access to the installation, storm water controls, as well as general procedures for operational maintenance of the installation.

#### **4.17.3.8. Utility Notification**

No large-scale ground-mounted solar photovoltaic installation shall be constructed until evidence has been given to the Site Plan Review Authority that the utility company that operates the electrical grid where the installation is to be located has been informed of the solar photovoltaic installation owner or operator's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

#### 4.17.3.9. Dimension and Density Requirements

##### 4.17.3.9.1. Setbacks

For large - scale ground-mounted solar photovoltaic installations, front, side and rear setbacks shall be as follows:

- (a) Front yard: The front yard depth shall be at least 10 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the front yard shall not be less than 50 feet.
- (b) Side yard. Each side yard shall have a depth at least 15 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the front yard shall not be less than 50 feet.
- (c) Rear yard. The rear yard depth shall be at least 25 feet; provided, however, that where the lot abuts a Conservation-Recreation or Residential district, the front yard shall not be less than 50 feet.

##### 4.17.3.9.2. Appurtenant Structures

All appurtenant structures to large- scale ground-mounted solar photovoltaic installations shall be subject to reasonable regulations concerning the bulk and height of structures, lot area, setbacks, open space, parking and building coverage requirements. All such appurtenant structures, including but not limited to, equipment shelters, storage facilities, transformers, and substations, shall be architecturally compatible with each other. Whenever reasonable, structures should be shaded from view by vegetation and/or joined or clustered to avoid adverse visual impacts.

#### 4.17.3.10. Design Standards

##### 4.17.3.10.1. Lighting

Lighting of solar photovoltaic installations shall be consistent with local, state and federal law. Lighting of other parts of the installation, such as appurtenant structures, shall be limited to that required for safety and operational purposes, and shall be reasonably shielded from abutting properties. Where feasible, lighting of the solar photovoltaic installation shall be directed downward and shall incorporate full cut-off fixtures to reduce light pollution.

##### 4.17.3.10.2. Signage

Signs on large- scale ground-mounted solar photovoltaic installations shall comply with a municipality's sign bylaw. A sign consistent with a municipality's sign bylaw shall be required to identify the owner and provide a 24-hour emergency contact phone number.

Solar photovoltaic installations shall not be used for displaying any advertising except for reasonable identification of the manufacturer or operator of the solar photovoltaic installation.

##### 4.17.3.10.3. Utility Connections

Reasonable efforts, as determined by the Site Plan Review Authority, shall be made to place all utility connections from the solar photovoltaic installation underground, depending on appropriate soil conditions, shape, and topography of the site and any requirements of the utility provider. Electrical transformers for utility interconnections may be above ground if required by the utility provider.

#### 4.17.3.11. Safety and Environmental Standards

##### 4.17.3.11.1. Emergency Services

The large scale solar photovoltaic installation owner or operator shall provide a copy of the project summary, electrical schematic, and site plan to the local fire chief. Upon request the owner or operator shall cooperate with local emergency services in developing an emergency response plan. All means of shutting down the solar photovoltaic installation shall be clearly marked. The owner or operator shall identify a responsible person for public inquiries throughout the life of the installation.

#### **4.17.3.11.2. Land Clearing, Soil Erosion and Habitat Impacts**

Clearing of natural vegetation shall be limited to what is necessary for the construction, operation and maintenance of the large – scale ground-mounted solar photovoltaic installation or otherwise prescribed by applicable laws, regulations, and bylaws.

#### **4.17.3.12. Monitoring and Maintenance**

##### **4.17.3.12.1 Solar Photovoltaic Installation Conditions**

The large - scale ground-mounted solar photovoltaic installation owner or operator shall maintain the facility in good condition. Maintenance shall include, but not be limited to, painting, structural repairs, and integrity of security measures. Site access shall be maintained to a level acceptable to the local Fire Chief and Emergency Medical Services. The owner or operator shall be responsible for the cost of maintaining the solar photovoltaic installation and any access road(s), unless accepted as a public way.

##### **4.17.3.12.2. Modifications**

All material modifications to a solar photovoltaic installation made after issuance of the required building permit shall require approval by the Site Plan Review Authority.

#### **4.17.3.13. Abandonment or Decommissioning**

##### **4.17.3.13.1. Removal Requirements**

Any large- scale ground-mounted solar photovoltaic installation which has reached the end of its useful life or has been abandoned consistent with Section 4.17.3.13.2. of this bylaw shall be removed. The owner or operator shall physically remove the installation no more than 150 days after the date of discontinued operations. The owner or operator shall notify the Site Plan Review Authority by certified mail of the proposed date of discontinued operations and plans for removal. Decommissioning shall consist of:

- (a) Physical removal of all large- scale ground-mounted solar photovoltaic installations, structures, equipment, security barriers and transmission lines from the site.
- (b) Disposal of all solid and hazardous waste in accordance with local, state, and federal waste disposal regulations.
- (c) Stabilization or re-vegetation of the site as necessary to minimize erosion. The Site Plan Review Authority may allow the owner or operator to leave landscaping or designated below-grade foundations in order to minimize erosion and disruption to vegetation.

##### **4.17.3.13.2. Abandonment**

Absent notice of a proposed date of decommissioning or written notice of extenuating circumstances, the solar photovoltaic installation shall be considered abandoned when it fails to operate for more than one year without the written consent of the Site Plan Review Authority. If the owner or operator of the large- scale ground-mounted solar photovoltaic installation fails to remove the installation in accordance with the requirements of this section within 150 days of abandonment or the proposed date of decommissioning, the town may enter the property and physically remove the installation.

**4.17.3.13.3. Financial Surety**

Proponents of large-scale ground-mounted solar photovoltaic projects shall provide a form of surety, either through escrow account, bond or otherwise, to cover the cost of removal in the event the town must remove the installation and remediate the landscape, in an amount and form determined to be reasonable by the Site Plan Review Authority, but in no event to exceed more than 125 percent of the cost of removal and compliance with the additional requirements set forth herein, as determined by the project proponent. Such surety will not be required for municipally- or state-owned facilities. The project proponent shall submit a fully inclusive estimate of the costs associated with removal, prepared by a qualified engineer. The amount shall include a mechanism for calculating increased removal costs due to inflation.

**Attachment 4**

**TOWN OF KINGSTON, MASSACHUSETTS**

**DRAFT LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Agreement”), dated as of the date below, is entered into by the Town of Kingston, a Massachusetts municipal corporation, with a Tax ID# 046001192 having its principal office at 26 Evergreen Street, Kingston, Massachusetts (“Landlord”) and \_\_\_\_\_, having a mailing address of \_\_\_\_\_ (“Tenant”).

**BACKGROUND**

Landlord owns that certain plot, parcel or tract of land, together with all rights and privileges arising in connection therewith, located at Cranberry Road, Kingston, Massachusetts and shown on Town Assessors’ Map 66, Lot 50 and Assessor’s Map 75 Lot 11 and more particularly described in a deed/order of taking recorded in Book 4315 Page 252 and Book 3624 Page 288 at the Plymouth County Registry of Deeds of Massachusetts (“the Premises”).

The parties agree as follows:

**1. LEASE OF PROPERTY.**

Landlord hereby leases to Tenant a portion of the Premises containing \_\_\_\_\_ square feet more or less as shown on a plan entitled “\_\_\_\_\_” and attached hereto as Exhibit 1, together with the non-exclusive right for ingress and egress for the purpose of installation and maintenance of a Large Scale Ground Mounted Photovoltaic Installation (hereinafter the “Installation”), which land, structures and access are collectively referred to hereinafter as the “Property”.

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

**2. PERMITTED USE.**

(a) Tenant may erect and maintain on the Property improvements, personal property, and facilities, including, but not limited to Installation(s), appurtenances, and any other equipment and related facilities necessary for the generation of electrical energy. In accordance with Tenant’s response to the Town of Kingston, “Request for Proposals: Lease of Real Property for Construction of Renewable Energy Facilities”; such use includes the right to test, survey and check title on the Property and any other items necessary to the successful and secure operation of the Installation . Landlord and Tenant agree that Exhibit 1 shows the initial location of the Installation by Tenant and that it does not limit Tenant’s rights under this paragraph. Landlord’s execution of this Agreement will signify Landlord’s approval of Exhibit 1. Tenant has the right to install [*describe equipment to be installed*] and to make improvements, alterations, or additions on the Premises appropriate for Tenant’s use with Landlord’s written approval (“Tenant Changes”). Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the Installation on the Property. Tenant has the right to modify, supplement, replace, and/or upgrade the equipment at any time during the term of this Agreement. Tenant will be allowed, subject to approval by Landlord, which approval will not be unreasonably withheld, to make such alterations to the Property as are required to

accomplish Tenant's Changes or to insure that Tenant's Installation complies with all applicable federal, state or local laws, rules or regulations, permits, and approvals. Tenant shall not use the Property for any other purpose without the written consent of the Landlord.

(b) Construction Standards. Any and all improvements to be constructed, erected or maintained on or at the Property shall be constructed, erected and maintained in accordance with plans and specifications submitted to and approved by the Landlord and in accordance with local building permits. The Tenant's construction, operation and maintenance of any and all improvements on or at the Property shall at all times comply with all applicable federal, state, and local laws (including the local Zoning By-law), rules and regulations as they may be enacted or amended from time to time. The Tenant will be responsible for obtaining, at its sole cost and expense, all approvals, and permits necessary for the construction of any and all improvements on or at the Property, and the operation and maintenance of said improvements and the Property, including, without limitation, special permits and variances required by local authorities, and approvals and authorizations required by the state and federal authorities, if any.

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

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

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

### **3. TERM.**

(a) The lease term will be twenty (20) years ("Initial Term"), commencing upon the Commencement Date, as defined below. The term will terminate on the last day of the month in which the twentieth annual anniversary of the Commencement Date occurred.

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

### **4. RENT.**

Commencing on the date that Tenant executes this Lease Agreement (the "Commencement Date"), Tenant will pay the Landlord an annual rental payment in the amount

of \$ \_\_\_\_\_ and as stated in the Bid Form payable on the anniversary of the execution of the Lease.

## 5. APPROVALS.

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

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

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

## 6. TERMINATION.

This Agreement may be terminated, without penalty or further liability, by either party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Agreement after the applicable cure periods.

## 7. INSURANCE.

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

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

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

"Notwithstanding any other provision herein, should any of the above policies be cancelled or materially amended before the expiration date

thereof, the issuing company will mail thirty (30) days prior written notice thereof to the named certificate holder and to the Town Administrator, Kingston Town House, 26 Evergreen Street, Kingston, Massachusetts 02364 before such cancellation or amendment shall take place.”

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

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

## **8. INTERFERENCE.**

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

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

(c) Notwithstanding the above, Tenant does hereby acknowledge and accept that Landlord intends to enter into a lease for a Wind Turbine on the Premises, not including the *Lease of Real Property for Construction, Operation & Maintenance of Renewable Energy Facilities*

Property except to the extent that access to the Property may be shared by both installations. Tenant does hereby agree to cooperate and not unreasonably interfere with the installation and operation of any Wind Turbine on the Premises and further the Tenant does hereby warrant and represent that it will in no way oppose or impede permitting of same but to the contrary will fully cooperate with the Landlord, its successors or assigns relating thereto. Tenant acknowledges that the Wind Turbine may cast a shadow on certain portions of the Installation and the Tenant will design accordingly.

## **9. INDEMNIFICATION.**

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

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

## **10. WARRANTIES.**

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

(b) Landlord represents : (i) Landlord solely owns the Property as a legal lot in fee simple, or controls the Property by lease or license, unencumbered by any liens, restrictions, mortgages, covenants, conditions, easements, leases, agreements of record or not of record, which would adversely affect Tenant's use and enjoyment of the Property under this Agreement; (ii) its execution and performance of this Agreement will not violate any laws, ordinances, covenants or the provisions of any mortgage, lease or other agreement binding on the Landlord; and (iii) if the Property is or becomes encumbered by a deed to secure a debt, mortgage or other security interest, Landlord will use best efforts to provide promptly to Tenant a mutually agreeable Subordination, Non-Disturbance and Attornment Agreement.

## **11. ENVIRONMENTAL.**

(a) Landlord and Tenant agree that each will be responsible for compliance with any and all environmental, hazardous material and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial

hygiene condition or matters as may now or at any time hereafter be in effect, that are now or were related to that party's activity conducted in, or on the Property.

(b) Tenant agrees to hold harmless and indemnify Landlord from and to assume all duties, responsibilities, and liabilities at its sole cost and expense, for all duties, responsibilities and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) Tenant's failure to comply with any environmental, hazardous material or industrial hygiene law, including without limitation any regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect, and (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to the activities conducted by the Tenant on the Property, unless the environmental conditions are caused by the Landlord or third party.

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

## **12. ACCESS.**

At all times throughout the term of this Agreement, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four hour, seven day access to and over the Property for the installation, maintenance and operation of the Installation and any utilities serving the Property. In the event any public utility is unable to use the access provided to Tenant, the Landlord hereby agrees to grant an additional access either to Tenant or to the public utility, for the benefit of Tenant, at no cost to Tenant. Notwithstanding the foregoing this provision is subject to access requirements as set forth in paragraph 8(c) above.

## **13. REMOVAL.**

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

## **14. MAINTENANCE, UTILITIES.**

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

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

## **15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Agreement: (i) non-payment of Rent if such rent remains unpaid for more than thirty (30) days after receipt of written notice of such failure to pay from Landlord; or (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.

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

#### **16. ASSIGNMENT/SUBLEASE.**

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

#### **17. NOTICES.**

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

#### **18. SEVERABILITY.**

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

#### **19. CONDEMNATION.**

In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within forty-eight (48) hours. If a condemning authority takes all of the Property, or a portion sufficient, in Tenant's sole determination, to render the Property unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will be entitled to share in the condemnation proceeds in proportion to the values of their respective interests in the Property, which for Tenant will include, where applicable, the value of its Installation, moving expenses, prepaid rent, and business dislocation expenses. Tenant will be entitled to reimbursement for any prepaid Rent.

**20. CASUALTY.**

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

**21. WAIVER OF LANDLORD'S LIENS.**

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

**22. PERFORMANCE, PAYMENT, AND REMOVAL BONDS**

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

(b) Prior to the commissioning of the Installation the Tenant shall provide to the Landlord a decommissioning and removal bond in the amount of \$250,000.00.

**23. MISCELLANEOUS.**

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

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

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

(d) Entire Agreement. This Agreement and the exhibits attached hereto, the Request for Proposals dated August 27, 2010 and the Tenants responses thereto and the Site Plan Review approval of the Planning Board dated June 28, 2010 all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements.

5. (e) Governing Law / Forum. This Agreement will be governed by the laws of the

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

(f) Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term “including” will be interpreted to mean “including but not limited to”; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms “termination” or “expiration” are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

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

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

IN WITNESS WHEREOF, the undersigned has caused this Agreement to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_  
for the Tenant

\_\_\_\_\_  
for the Landlord

**EXHIBIT 1**

**Allowable Area for Solar Installation Construction**

*[To be inserted in the executed Lease Agreement]*