



BARNSTABLE COUNTY

COMMISSIONERS
RONALD R. BEATY, Barnstable
RONALD BERGSTROM, Chatham
MARY PAT FLYNN, Falmouth

THE REGIONAL GOVERNMENT OF CAPE COD

Board of Regional Commissioners

REGULAR MEETING AGENDA



DATE: April 8, 2020

TIME: 10:30 AM

Note: The meeting will be held through remote participation by the Board of Regional Commissioners pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020. All public comments or questions should be directed to Jack Yunits, County Administrator, at jack.yunits@barnstablecounty.org. The Board will address any submissions at its next meeting

1. Call to Order
2. Pledge of Allegiance
3. Moment of Silence
4. Public Comment
5. Approval of Minutes
 - a. Regular Meeting of April 8, 2020
6. General Business
 - a. Update on COVID-19 (Novel Coronavirus) and Barnstable County
 - b. Presentation by Liz Argo, Manager of Programs & Administration for the Cape and Vineyard Electric Cooperative (CVEC) on Round 5 Photovoltaic/Storage Initiative Barnstable County
 - c. Request by Julie Wake, Executive Director of the Arts Foundation of Cape Cod, to support its Cape Cod Arts Relief Fund
 - d. Discussion on the effect of COVID-19 (Novel Coronavirus) on the County's financial position

- e. Barnstable County COVID-19 Emergency Building and Facility Access Policy

Note: For all items under General Business, the Board may take official action including votes

7. New Business – Other business not reasonably anticipated by the Chair
8. Commissioners’ Actions
 - a. Authorizing the approval of a request by the Cape Cod Chapter of the New England Mountain Bike Association (NEMBA) and the Friends of Cape Cod Pathways to create a trail on a parcel of land owned by Barnstable County near the intersection of Route 132 and Phinneys Lane
 - b. Authorizing the execution of an application and certifications for the annual allocation from the United States Department of Housing and Urban Development (HUD) to the Barnstable County HOME Program, in the amount of \$462,277.00, to create and preserve affordable housing for Program Year 2020, from July 1, 2020 through June 30, 2021
 - c. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with the Cape & Vineyard Electric Cooperative, Inc. (CVEC) for Roof Mounted Solar Photovoltaic Energy Facility located at Barnstable County Deeds
 - d. Authorizing the execution of a Lease Agreement for Rooftop Mounted Solar Photovoltaic Energy Facility with Alliance CVEC V LLC located at Barnstable County Deeds
 - e. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Photovoltaic Dual Use Energy Facility located at Barnstable County Farm
 - f. Authorizing the execution of a Lease Agreement for Ground Mounted Dual Use Solar Photovoltaic Energy Facility with Main Street Solar Project 2020, LLC at Barnstable County Farm
 - g. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with CVEC For Solar Canopy Photovoltaic Energy Facility located at Barnstable County Main Parking Lot
 - h. Authorizing the execution of a Lease Agreement for Canopy Solar Photovoltaic Energy Facility with Greenskies Clean Energy LLC at Barnstable County Main Parking Lot

- i. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Rooftop Solar Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC
- j. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Canopy Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC
- k. Authorizing the execution of a Lease Agreement for Roof Mounted Solar Photovoltaic Energy Facility with Rock Harbor Road RF Solar Project 2020, LLC located in the Town of Orleans
- l. Authorizing the execution of a Lease Agreement for Solar Canopy Photovoltaic Energy Facility with Rock Harbor Road Cy Solar Project 2020, LLC located in the Town of Orleans
- m. Authorizing the execution of the discharge of a mortgage by Tyler Y. Pierce to Barnstable County, acting by and through the Cape Cod Commission, dated January 5, 2010 and recorded with the Barnstable County Registry of Deeds in Book 24286, Page 35

9. Commissioners' Reports

10. County Administrator and Staff Reports

11. Adjournment

Reasonable accommodations for people with disabilities are available upon request. Please contact Justyna Marczak, Barnstable County ADA Coordinator at jmarczak@barnstablecounty.org or call 508-375-6646 at least 24 hours in advance of the meeting. The County Commissioners' meeting may be viewed in real time at <https://www.youtube.com/user/BarnstableCounty>, <https://www.barnstablecounty.org/>



COMMONWEALTH OF MASSACHUSETTS

Barnstable, ss.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the first day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020

Board Regional Commissioners:

Ronald R. Beaty	Present remotely
Ronald Bergstrom	Present remotely
Mary Pat Flynn	Present remotely

Staff Present:

Staff Present Remotely:

Jack Yunits	County Administrator
Justyna Marczak	Human Resources Director, Administration
Sonja Sheasley	Communications Manager, Administration
Owen Fletcher	Executive Assistant, Administration
Jennifer Frates	Chief Procurement Officer, Finance
Sean O'Brien	Director, Health and Environment
Beth Albert	Director, Human Services
Vaira Harik	Deputy Director & Senior Project Manager, Human Services
Irene Hamman	HOME Program Manager, Human Services
David Murphy	Assistant Register of Deeds, Registry of Deeds
Gail Coyne	Fiscal Officer, Cape Cod Commission
Ian Roberts	Technical Support Specialist, Information Technology

1. Call to Order

Chairman Bergstrom called the meeting to order at 11:30 A.M. The Chairman noted the Board held the meeting through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020.

2. Pledge of Allegiance**3. Moment of Silence****4. Public Comment**

The Board permitted members of the public to join the meeting online, asked that all public comments or questions be directed Mr. Yunits by phone or email, and stated the Board would address any submissions at its next meeting. No members of the public offered comment.

5. Approval of Minutes**a. Regular Meeting of March 11, 2020**

Motion by Commissioner Beaty to approve the minutes of the Board of Regional Commissioners' Regular Meeting of March 11, 2020 as presented, 2nd by Commissioner Flynn, approved 3-0-0

b. Regular Meeting of March 18, 2020

Motion by Commissioner Beaty to approve the minutes of the Board of Regional Commissioners' Regular Meeting of March 18, 2020 as presented, 2nd by Commissioner Flynn, approved 3-0-0

6. General Business**a. Update on Coronavirus 2019 (COVID-19) and Barnstable County**

Mr. O'Brien reported to the Board regarding the number of COVID-19 cases in Barnstable County and the Commonwealth as a whole. He also informed the Board regarding testing for the virus. The Board had a lengthy discussion on the testing results. Mr. O'Brien also discussed County supplies of personal protective

equipment (PPE) and coordination with Cape Cod Healthcare. The Board also discussed the County's order for N95 Masks. Mr. O'Brien noted the County may not receive them on time. The Board discussed calls from the public to close the bridges to Cape Cod. Mr. Yunits, Chairman Bergstrom, and Commissioner Beaty all noted that Governor Baker was the only elected official who could make that decision.

Ms. Albert discussed the effects of the emergency on the County's homeless population and housing discharged patients. The Board clarified that the County could not mandate people stay in provided housing and the County would not be managing any such facility. Ms. Harik discussed efforts to lessen the effect of the emergency on seniors.

Mr. Murphy briefed the Board on the pace of business at the Registry of Deeds. He noted the Registry on pace but may see a downturn later in the year.

Ms. Sheasly and Mr. Yunits spoke regarding enhanced County efforts to inform the public.

b. Discussion on H.R. 6201, the Families First Coronavirus Response Act (FFCRA)

Mr. Yunits and Ms. Marczak discussed the effects of the legislation on the County. Commissioner Beaty clarified that there were two federal bills, one for economic impacts and one for personnel issues.

c. Discussion regarding the economic impact of COVID-19 (Novel Coronavirus) on Barnstable County businesses

Mr. Yunits spoke regarding his efforts to reach out to Chambers of Commerce on Cape Cod. He informed the Board that the County would be putting together a committee to address the damage to Cape businesses.

d. Discussion and vote on the County of Barnstable Emergency Modification to the Sick Leave Policy Pursuant to the Enactment of the Federal Families First Corona Virus Response Act ("FFCRA"), effective April 1, 2020

Motion by Commissioner Beaty to approve the County of Barnstable Emergency Modification to the Sick Leave Policy Pursuant to the Enactment of the Federal Families First Corona Virus Response Act ("FFCRA"), effective April 1, 2020, as presented, 2nd by Commissioner Flynn, approved 3-0-0

Ms. Marczak detailed the many provisions of the FFCRA that required changes in County policies.

- e. **Discussion and vote on the County of Barnstable Emergency Modification to the Family and Medical Leave Policy Pursuant to the Enactment of the Federal Families First Corona Virus Response Act (“FFCRA”), effective April 1, 2020**

Motion by Commissioner Beaty to approve the County of Barnstable Emergency Modification to the Family and Medical Leave Policy Pursuant to the Enactment of the Federal Families First Corona Virus Response Act (“FFCRA”), effective April 1, 2020, as presented, 2nd by Commissioner Flynn, approved 3-0-0

- f. **Discussion on the County’s Remote Work Policies**

Mr. Yunits and Ms. Marczak engaged in a lengthy discussion with the Board regarding this item. They described the controls in place to ensure County staff continued to work in a productive manner.

7. **New Business – Other business not reasonably anticipated by the Chair**

8. **Commissioners’ Actions**

- a. **Authorizing the execution of an agreement for a grant from the Massachusetts Division of Marine Fisheries to the Cape Cod Cooperative Extension, in the amount of \$95,762.70 for purchase of equipment for a project “Evaluating The Potential Impacts Of Coastal Ocean Acidification And Changing Water Quality On Commercially-Important Shellfish Production Areas”, for a period through June 30, 2020**

Motion by Commissioner Beaty to authorize the execution of an agreement for a grant from the Massachusetts Division of Marine Fisheries to the Cape Cod Cooperative Extension, in the amount of \$95,762.70, for purchase of equipment for a project "Evaluating The Potential Impacts Of Coastal Ocean Acidification And Changing Water Quality On Commercially-Important Shellfish Production Areas", as presented, 2nd by Commissioner Flynn, approved 3-0-0

Mr. Maguire explained this item to the Board and discussed efforts in his Department to continue working through this crisis.

- b. **Authorizing the execution of an amendment to an agreement, for a grant from the United States National Oceanic and Atmospheric Administration, through Woods Hole Oceanographic Institution (WHOI) to the Cape Cod Cooperative Extension, executed May 2, 2018, in the amount of \$985,500.00, to support the Woods Hole Sea Grant Marine Extension Program, for a period from February 1, 2018 through August 31, 2022, to update of the total amount of**

the Federal Award to WHOI and the amount currently available for all efforts, and add \$250,000.00 in Year 3 funds

Motion by Commissioner Beaty to authorize the execution of an amendment to an agreement for a grant from the United States National Oceanic and Atmospheric Administration, through the Woods Hole Oceanographic Institution (WHOI) to the Cape Cod Cooperative Extension, executed May 2, 2018, to support the Woods Hole Sea Grant Marine Extension Program, to update of the total amount of the Federal Award to WHOI and the amount currently available for all efforts, and add \$250,000.00 in Year 3 funds, as presented, 2nd by Commissioner Flynn, approved 3-0-0

- c. Authorizing the execution of two (2) proposed change orders to an agreement with the Town of Barnstable for a maximum amount of \$500,500.00 to perform dredge related work for Sampson's Island, revising the contract amount to \$405,149.00**

Motion by Commissioner Beaty to authorize the execution of two (2) proposed change orders to an agreement with the Town of Barnstable for a maximum amount of \$500,500.00 to perform dredge related work for Sampson's Island, revising the contract amount to \$405,149.00, as presented, 2nd by Commissioner Flynn, approved 3-0-0

- d. Authorizing the ratification of the execution of a cooperative agreement with the Town of Chatham to do and perform all dredge related work for Mill Creek up to a maximum contract amount of \$72,000.00**

Motion by Commissioner Beaty to authorize the approval of a list of pre-qualified bidders for tradespersons, for towns in Barnstable County and Nantucket, for individual construction projects estimated to cost under \$50,000.00, with two (2) one-year options to renew, as presented, 2nd by Commissioner Bergstrom, approved 3-0-0

- e. Authorizing the renewal of contracts with Aggregate Industries Northeast, and Acme Shorey Precast Concrete Products, awarded April 10, 2019, for Drainage Structures and Hot Mix for towns in Barnstable County, for a period from April 1, 2020 through March 31, 2021**

Motion by Commissioner Beaty to ratify the execution of a cooperative agreement with the Town of Chatham to do and perform all dredge related work for Mill Creek up to a maximum contract amount of \$72,000.00, as presented, 2nd by Commissioner Flynn, approved 3-0-0

9. Commissioners' Reports

The Commissioners offered no reports at this meeting

10. County Administrator and Staff Reports

The staff did not provide any additional reports to the Board at this meeting.

11. Adjournment

Barnstable, ss. at 11:06 A.M. on this eighteenth day of March A.D. 2020, Commissioner Beaty made a motion to adjourn, 2nd by Commissioner Flynn, approved 3-0-0

List of Documents:

- Draft minutes of the Board of Regional Commissioners' Regular Meeting of March 11, 2020
- Draft minutes of the Board of Regional Commissioners' Regular Meeting of March 18, 2020
- Congressional Research Service (CRS) Bill Summary for H.R.6201 - Families First Coronavirus Response Act
- County of Barnstable Emergency Modification to the Family and Medical Leave Policy Pursuant to the Enactment of the Federal Families First Corona Virus Response Act
- County of Barnstable Emergency Modification to the Sick Leave Policy Pursuant to the Declaration of Emergency adopted March 18, 2020
- Agreement for a grant from the Massachusetts Division of Marine Fisheries to the Cape Cod Cooperative Extension, in the amount of \$95,762.70 for purchase of equipment for a project "Evaluating The Potential Impacts Of Coastal Ocean Acidification And Changing Water Quality On Commercially-Important Shellfish Production Areas", for a period through June 30, 2020
- Amendment 7 to an agreement for a grant from the United States National Oceanic and Atmospheric Administration, through Woods Hole Oceanographic Institute (WHOI) to the Cape Cod Cooperative Extension, executed May 2, 2018, in the amount of \$985,500.00, to support the Woods Hole Sea Grant Marine Extension Program
- Agreement for a grant from the United States National Oceanic and Atmospheric Administration, through Woods Hole Oceanographic Institute (WHOI) to the Cape Cod Cooperative Extension, executed May 2, 2018, in the amount of \$985,500.00, to support the Woods Hole Sea Grant Marine Extension Program
- Town of Barnstable Change Order No. 1, dated January 10, 2020 to Purchase Order #20004729 for the Contract entitled 2019 Dead Neck/Sampson's Island Dredging & Nourishment Project (PH2)
- Cooperative agreement with the Town of Chatham to do and perform all dredge related work for Mill Creek up to a maximum contract amount of \$72,000.00
- Memorandum dated March 25, 2020 to the County Commissioners from Jennifer Frates, Chief Procurement Officer regarding "Contract Renewal #7867 Drainage Structures & Hot Mix"
- Agreement between Barnstable County and Acme Shorey Precast Concrete Products, executed June 19, 2019, for Drainage Structures and Hot Mix for towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year
- Agreement between Barnstable County and Aggregate Industries Northeast, executed May 1, 2019, for Drainage Structures and Hot Mix for towns in Barnstable County for the period of April 1, 2019 through March 31, 2020, with the option to renew for one (1) additional year

Approved, Board of Regional Commissioners:

Ronald Bergstrom, Chair

Mary Pat Flynn, Vice-Chair

Ronald R. Beaty, Commissioner

Date

The foregoing records have been read and approved, April , 2020

A true copy, attest:

Janice O’Connell, Regional Clerk



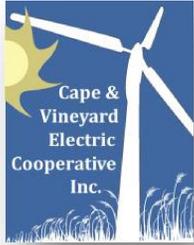
Cape & Vineyard Electric Cooperative, Inc.

**CVEC Round 5
Photovoltaic/Storage Initiative
Barnstable County**



Liz Argo, Executive Director

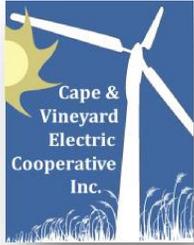
3.17.20



CVEC Initiatives:

- ❑ CVEC-7 Initial Round = 750kW on roofs
- ❑ Round 1 = 16MW, mostly on landfills
- ❑ Round 2 = 12MW on roofs & municipal lands
- ❑ Round 3 = 1MW on 7 roofs
- ❑ Round 4 = 11MW on roofs, parking canopies & municipal lands, with storage
 - ❑ *Round 4 now receiving permits and Interconnection approvals*
- ❑ **Round 5 = 20 projects for 16MW** on roofs, parking canopies & municipal lands, with storage where appropriate
- ❑ **7 projects to be installed for Barnstable County – 3 systems to include battery**



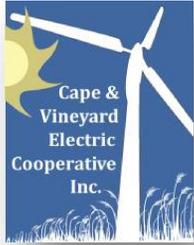


CVEC Initiatives:

- Round 5 = 20 projects (16MW)
- 7 projects to be installed for Barnstable County
 - – 3 systems to include battery

- Currently Round 5 is contracting. The County has been delivered executable contracts for 4 of the 7 BC projects. The other 3 are coming next week.
 - The Town of Sandwich has completed their contracting
 - Prompt contracting is essential to assure best incentives from the State

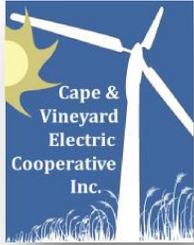




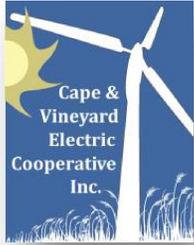
CVEC Round 5 Projects for Barnstable County

PROJECTS for Barnstable County:

- The County Farm Agricultural Ground Mount 7,000 kW
- The Deeds & Registry Building Roof 66 kW
- First District Courthouse Roof 75 kW
- Lab Building Solar Canopy over Park Lot 320 kW
- Orleans Courthouse Roof 395kW
- Orleans Courthouse Canopy 420kW
- Main Campus Parking Lot Solar Canopy 1,355 kW



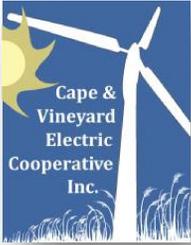
Project	Best Benefit
County Farm Agricultural Ground Mount	No facility close enough to power a facility. Lease payment is best for BC.
Deeds & Registry Building	PV/Storage to power the building. Avoid paying electric costs and get added resilience.
First District Courthouse	State pays this electric bill so better benefit to BC is through Lease payment.
Lab Solar Canopy	PV/Storage to power the building. Avoid paying electric costs and get added resilience.
Main Campus Parking Lot Canopy	If over 1MW, Eversource may cash-out with \$ paid for power directly to BC.
Orleans Courthouse Roof/Canopy	State pays this electric bill so better benefit to BC is through Lease payment.
Other Barnstable County facility roofs will need repair to support PV	



CVEC Round 5 Projects for Barnstable County

- **The County Farm Agricultural Ground Mounted PV:**
- 7,000 kW with a Battery
- LEASE Project (No PPA)
- Third Party Owner: PV and a battery for straight payment of \$455,000 annual rent
- Potential battery energy revenue - to be determined
- Agricultural use to be carried on under the solar panel canopy
- At year 20 revenue = \$9,020,000

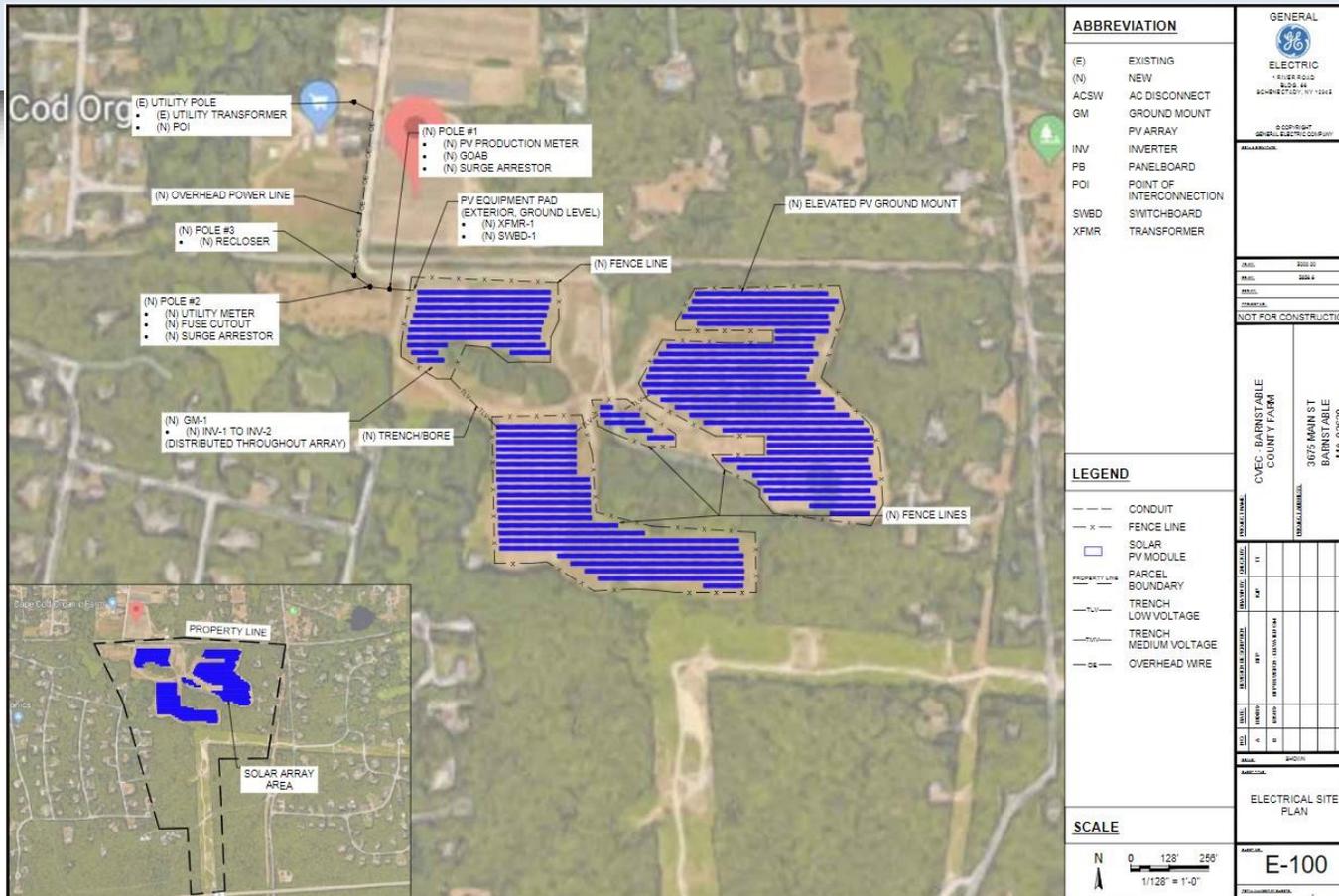
NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.

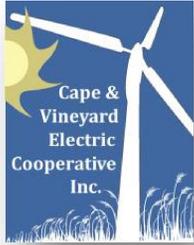


Cape & Vineyard Electric Cooperative

CVEC Round 5 Projects for Barnstable County

➤ The County Farm Agricultural Ground Mounted PV: 7,000 kW with a Battery

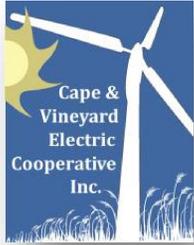




CVEC Round 5 Projects for Barnstable County

- **The Deeds Building Roof Mounted PV:**
- 66 kW with Battery Storage
- PPA Project to feed the Deeds building the PV power Behind the Meter
- Third Party Owner: Annual electric cost savings of ~ \$9,680 after paying PPA costs per kilowatt hour of production to developer (\$0.075) and to CVEC (Adder of \$0.0075)
- PPA at year 20 = ~ \$166,962

NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.

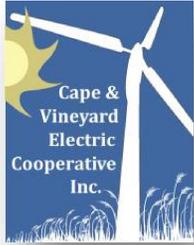


Cape & Vineyard Electric Cooperative

CVEC Round 5 Projects for Barnstable County

➤ The Deeds Building Roof Mounted PV: 66 kW

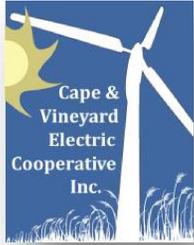




CVEC Round 5 Projects for Barnstable County

- **The First District Courthouse Roof Mounted PV:**
- 75 kW
- LEASE Project (No PPA)
- Third Party Owner: PV installed for a straight payment of \$4,2450 annual rent
- PPA at year 20 = \$85,000

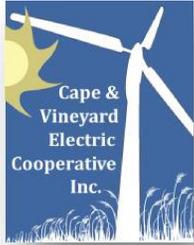
NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.



CVEC Round 5 Projects for Barnstable County

➤ The First District Courthouse Roof Mounted PV:

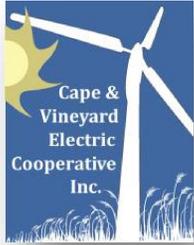




CVEC Round 5 Projects for Barnstable County

- **The Lab and Health Building Solar Canopy Mounted PV:**
- 320 kW
- PPA Project
- Third Party Owner: Annual electric cost savings of ~ \$25,559 after paying PPA costs per kilowatt hour of production to developer (\$0.1257) and to CVEC (Adder of \$0.0075)
- PPA at year 20 = ~ \$487,613

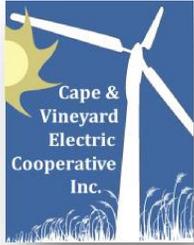
NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.



CVEC Round 5 Projects for Barnstable County

- **The Lab and Health Building Solar Canopy Mounted PV:**

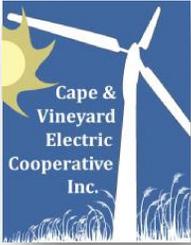




CVEC Round 5 Projects for Barnstable County

- **The Main Parking Lot Solar Canopy PV:**
- 1,355 kW
- Proposed as PPA Project
- Third Party Owner: Annual Net Metering Credit savings of ~\$92,303 via cash-out, after netting out PPA costs per kilowatt hour of production to developer (\$0.1045) and Adder to CVEC (Adder of \$0.0075)
- An alternative Lease was offered by third party owner with annual rent of \$59,090
- PPA at year 20 = ~ \$2,779,244 Lease at year 20 = \$1,181,800

NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.



CVEC Round 5 Projects for Barnstable County

➤ The Main Parking Lot Solar Canopy PV: 1,355 kW

Drawing File: W:\Greenskies Development\Preliminary Engineering and Design\Design\PEP\CVEC Round 5\11475 Barn County\Drawing\Barn County\Barnstable, MA\Plotted Date: Dec 03, 2019 - 3:40pm

PROPOSED PV SOLAR ARRAY LAYOUT

SYSTEM INFORMATION	
SYSTEM SIZE (DC)	1,355 KW
SYSTEM SIZE (AC)	1,000 KW
PANEL SIZE	390 W URE*
PANEL QUANTITY	3,474
PANEL TILT	7° / 3°
PANEL AZIMUTH	35° / 30°
ROW SPACING	0.5°
Min. CLEARANCE HEIGHT	10'
INVERTER SIZE	(14) SOLECTRIA 60TL* (1) SOLECTRIA 60TL* (3) SOLECTRIA 38TL*
ESTIMATED ANNUAL PRODUCTION	1,542 MWh

*Preliminary equipment selection, equivalent alternative may be used in actual installation

RACKING CROSS-SECTION (NOT TO SCALE)

PROGRESS SET NOT FOR CONSTRUCTION

Greenskies

180 Johnson Street
Middletown, CT 06457
PH - 860.398.5408
FAX - 860.398.5423

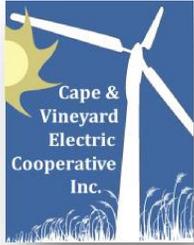
REVISIONS:		
NO.	DATE	DESCRIPTION

PROPOSED SITE PLAN

BARN COUNTY
PV SOLAR ARRAY
3231 MAIN STREET
BARNSTABLE, MA 02630

BATCH NO.:	PROPOSAL
DRAWN BY:	KK
SCALE:	AS NOTED
DATE:	03 DECEMBER 2019

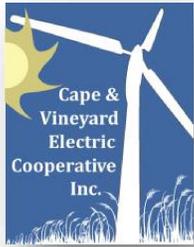
PV.01



CVEC Round 5 Projects for Barnstable County

- **Orleans Courthouse Roof Mounted PV:**
- 395 kW
- LEASE Project (No PPA)
- Third Party Owner: PV installed for a straight payment of \$9,100 annual rent
- PPA at year 20 = \$182,000

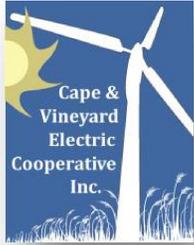
NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.



CVEC Round 5 Projects for Barnstable County

➤ Orleans Courthouse Roof Mounted PV:

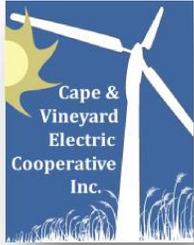




CVEC Round 5 Projects for Barnstable County

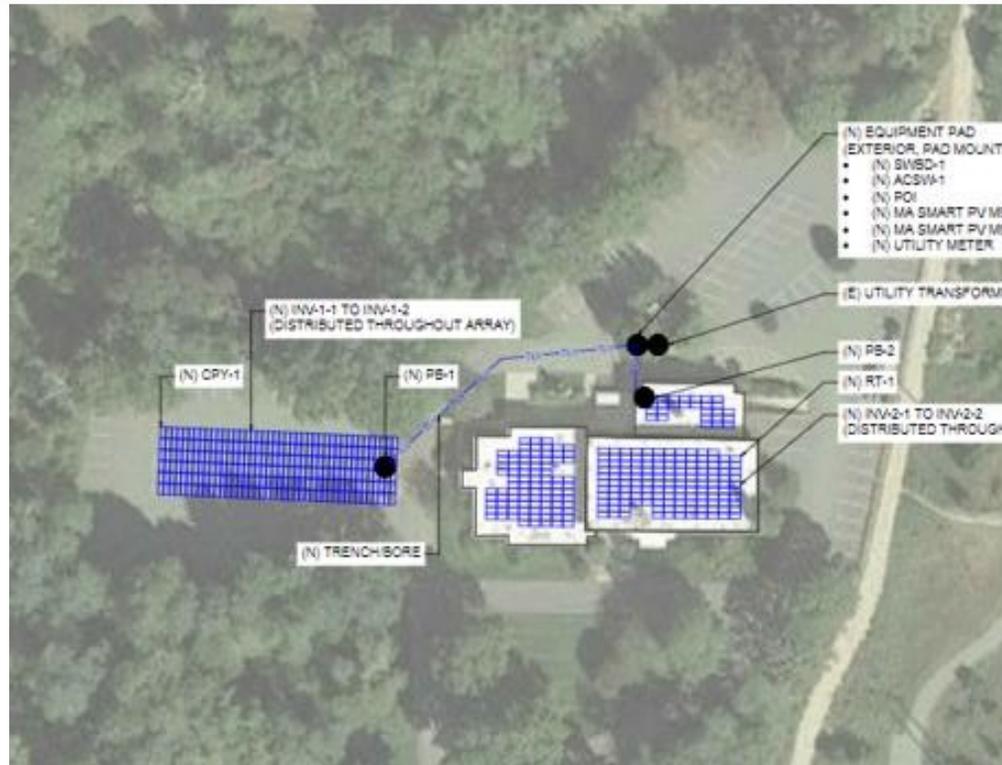
- **Orleans Courthouse Canopy Mounted PV:**
- 420 kW
- LEASE Project (No PPA)
- Third Party Owner: PV installed for a straight payment of \$9,100 annual rent
- PPA at year 20 = \$182,000

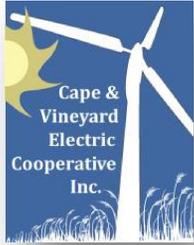
NOTE: Revenues/savings are based on approval in SMART Block 5 and only \$10,000 in infrastructure upgrade costs imposed by Eversource. Contracts carry adjustment formulas and termination rights to accommodate disadvantageous Blocks and/or Eversource costs.



CVEC Round 5 Projects for Barnstable County

➤ Orleans Courthouse Canopy Mounted PV:





CVEC Round 5 Projects for Barnstable County

REVIEW OF PROJECTS for Barnstable County:

- | | | |
|---|----------|--------------------------|
| ➤ The County Farm Agricultural Ground Mount | 7,000 kW | (Battery) Lease |
| ➤ The Deeds & Registry Building Roof | 66 kW | Battery / Power for Bldg |
| ➤ First District Courthouse Roof | 75 kW | Lease |
| ➤ Lab Building Solar Canopy over Park Lot | 320 kW | Battery / Power for Bldg |
| ➤ Orleans Courthouse Roof | 395kW | Lease |
| ➤ Orleans Courthouse Canopy | 420kW | Lease |
| ➤ Main Campus Parking Lot Solar Canopy | 1,355 kW | Cash-out |



Cape & Vineyard Electric Cooperative, Inc.



**CVEC
Board & Staff
Barnstable Airport
Earth Day 2015**

Owen Fletcher

From: Owen Fletcher
Sent: Tuesday, April 7, 2020 3:18 PM
To: Needs Action Request
Subject: RE: Cape Cod Artists Relief Fund - will the County join us

Dear Mr. Bergstrom,

I'm doing whatever I can to see if the County might be able to help seed this initiative. In the past, the Arts Foundation received funding from the County and then it suddenly stopped. I'd like to request the County consider helping me with this emergency initiative.

I've also forwarded to Mr. Yunits.

Thanks so much for your support of the arts.
I'm available to speak if you have any questions.
Stay safe.
Best,
Julie

----- Forwarded message -----

From: **Julie Wake** <jwake@artsfoundation.org>
Date: Mon, Mar 23, 2020 at 11:29 AM
Subject: Cape Cod Artists Relief Fund - will the County join us
To: Jack Yunits Jr <jack.yunits@barnstablecounty.org>

Dear Jack,

It's hard to believe the turn of events over the past several days. It feels like everything that was familiar, safe, and comfortable has been turned on its head. I hope that you, your family, and your staff are weathering this storm and, most importantly, are safe and well.

As you are aware, all cultural events, workshops, school's extra-curricular arts programming, and mentoring programs have been stopped in their tracks. Over the past week, we have circled the wagons and spent our time working on ways we can help our artists and cultural organizations who will be severely impacted by the effects of this pandemic.

We know the impact from COVID-19 could potentially devastate the Cape Cod economy and, in particular, the Cape's creative economy. We also know that we are one community.

If there ever was a time to act, it is now.

Now is the time to help our cultural institutions when they need it most. Now is the time to help the employees of arts organizations that work behind the scenes to bring us plays, concerts, lectures, poetry readings, and world-class exhibitions that have inspired and brought joy to this community for generations. Now is the time to help the artists that create the works that enrich our lives and give it meaning.

Today, we are launching the **Cape Cod Arts Relief Fund** that will award grants of \$250 to \$5,000 to individual artists and cultural institutions whose operations and incomes have been adversely impacted by the COVID-19/coronavirus pandemic.

Jac, I am asking Barnstable County to help us launch this fund with a generous gift of \$5,000 that will go to the hardest hit in our region. We would also like to use this donation as a “matching gift challenge” to help us reach our fundraising goal of \$100,000 by May 1.

Your gift will help keep the lights on in the museums, theaters, and cultural institutions that make Cape Cod such a special place for all. Your gift will change the lives of working artists and their families who will be hard hit with the economic consequences of this crisis. Your gift will give our cultural community the hope they so desperately need right now.

On behalf of those we serve -- especially those who are seeking a lifeline to save our creative economy - thank you.

Julie

Feel free to contact me with any questions 508-360-3612.

P.S. I have included a list of ways we’re doubling our efforts to minimize the impact of the current state of affairs. We can’t do this alone. We need your help. I look forward to talking with you further about this proposal.

Here’s what we’re focused on right now:

Resources: Organizing and disseminating information that is actionable, relevant, and useful. We are sharing websites and services, locally and nationally, that provide tools and resources for navigating this crisis.

We’ve also shared a check list of to-do’s with our artists and cultural organization members as they relate to finances; what should they be looking at now (cash flow!); and proactive steps they should be taking to protect themselves as best they can.

Advocacy: We are communicating directly with our local and state legislators to ensure they clearly understand the impact this crisis is having on the creative economy. This will better equip them to fight for us when disaster relief funds are disseminated.

Connectivity: We have put together a survey to learn more about the impact that this situation has had on our artists and cultural centers. We’ve also asked them to provide any virtual or online events they may be producing that we will continue to share as if it were a live event.

Julie Wake
Executive Director
508-362-0066, ext. 111
She/Her/Hers



www.ArtsCapeCod.org

There's always something going on!

[Sign up for our weekly listings email](#)

**BARNSTABLE COUNTY
COVID-19 EMERGENCY BUILDING AND FACILITY ACCESS POLICY**

I. PURPOSE

It is essential that the County's elected officials and staff work together as a unit to adhere to the guidelines and recommendations of the Commonwealth of Massachusetts and Governor Charles D. Baker during the State of Emergency declared in both the Commonwealth and the County to Respond to COVID-19. It is imperative that we understand and respect that the essential employees who are providing limited but necessary tasks in person and on campus to keep our County running at their own risk. They deserve the right to work free from fear, as well from unwanted and unnecessary intrusions so that their health and safety is securely protected.

It is likewise imperative that we recognize and respect the tasks that our Registry of Deeds employees are performing in the face of this danger to ensure our fiscal sustainability. As a County we must use every effort to err on the side of caution to protect them from unnecessary exposure.

Finally, it is essential that we act realistically to respect the efforts of our fantastic Facilities staff. As a unit, we must make every effort to minimize their need to clean and sanitize County buildings, as we call upon them daily to clean and maintain our Courthouses with the added challenge of protecting the greater public from an invisible hazard.

It is the County's right and duty to limit use of space on campus for the benefit and protection of its employees.

II. DURATION

This policy will become effective April 8, 2020 after approval by the Barnstable County Board of Regional Commissioners and will remain in full force and effect through May 8, 2020. The County's Administration may extend this period as necessary to comply with the guidelines and recommendations of the Commonwealth of Massachusetts and Governor Charles D. Baker during the State of Emergency declared in both the Commonwealth and the County to Respond to COVID-19

III. BUILDING ACCESS

Access to all buildings will be denied to all staff and elected officials with the exceptions listed below unless deemed necessary by the County Administrator and Facilities Director:

Children's Cove: - excepting emergency response personnel who are deemed essential as directed by the Cove Director.

East Wing and Harborview Conference Rooms: - excepting use of the Harborview Conference Room for emergency backup assistance for the Registry of Deeds, and then only to Registry of Deeds designees as directed by the Register of Deeds

First District Courthouse, Superior Courthouse, and the Commissioners' Office: excepting staff or Court personnel deemed essential

Health and Environment Building: – excepting Nursing Staff and Barnstable County Multi-Agency Coordination Center (MACC) staff should a Situation Room become necessary, and subject to scheduling approval with Facilities Director

County Water Quality Lab: - excepting designated lab staff at pre-scheduled times approved by Facilities Director

Registry of Deeds Building: - excepting employees as designated by the Register of Deeds.

Open Cape Building: excepting only employees who are deemed essential

Resource Development Office/White House Building: –closed until further notice

IV. **ENFORCEMENT**

The Facilities Director is hereby authorized to take any action necessary to secure County buildings. Commencing with the adoption of this policy by the Barnstable County Board of Regional Commissioners, restrictions to access to all County Buildings by employees, the public, or elected officials shall be strictly enforced, and Key Cards will be disabled.

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

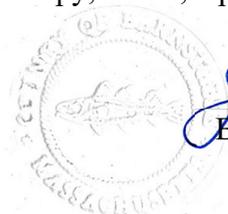
At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Beaty to approve the Barnstable County COVID-19 Emergency Building and Facility Access Policy, as presented, 2nd by Commissioner Flynn, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 8, 2019

 *Janice O'Connell*
Barnstable County Regional Clerk

Proposed Trail on County Land near Route 132/Phinneys Lane

April 2, 2020

To the Barnstable County Commissioners:

The Cape Cod chapter of the New England Mountain Bike Association (NEMBA) and the Friends of Cape Cod Pathways (an ad-hoc pathways advocacy group) request permission to create a trail on the County's parcel near the intersection of Route 132/Phinneys Lane. There is growing interest in trail use in this area for bikers traveling to and from the nearby bike shop, the hotel, the brewery and the trail network within the Hathaway's Pond Recreation Area as well as from neighborhoods to the south. The trail would be created as a loop and primarily used by bikers as a warm-up.

I want to assure you about the liability of landowners that allow public access:

Mass General Law Title II Chapter 21 Section 17C state that landowners are not liable as long as you don't charge a fee for public access. Here's a link to a summary of the law: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleII/Chapter21/Section17C>

Liability protection during trail creation is provided by the New England Mountain Bike Association's (NEMBA) insurance. Trail creation would avoid cutting large trees and consist primarily of brush clearing and log removal. Should the Commissioners desire, our group would help install a sign recognizing the County's participation. No construction would occur and our group recognizes that trail use is at the County's pleasure and could be terminated at any time without cause.

I do feel that in these trying times if we can provide many healthy outdoor recreation opportunities, we can help people to exercise more (gyms are closed!). Exercising benefits mental and physical health, and boosts immune function. We should do what we can to help make sure folks can still get active. More people than I've ever seen are out on pathways, and providing trail access on this parcel will help build good will between the county and trail users, including not only bikers, but also walkers and runners. I hope you agree!

Lev Malakhoff
Friends of Cape Cod Pathways
Trail Ambassador – Cape Cod NEMBA



Proposed pathway on County land near Route 132/Phinneys Lane



BARNSTABLE COUNTY
DEPARTMENT OF HUMAN SERVICES
3195 Main Street, Post Office Box 427
Barnstable, Massachusetts 02630
Office: 508-375-6628 | Fax: 508-362-0290
www.bchumanservices.net

BARNSTABLE COUNTY HOME PROGRAM

MEMORANDUM

To: Jack Yunits, County Administrator / County Commissioners
CC Beth Albert
From: Renie Hamman, HOME Program Manager
RE: Barnstable County HOME Program
HUD 2020 Allocation / Certifications to be Signed
Date: April 2, 2020

HUD has announced its annual allocation for the HOME Program for Program Year 2020 (July 1, 2020 to June 30, 2021). The HUD annual allocation for PY20 is \$462,277. Additionally, the HOME Program has an expected program income - derived from the payoff of down payment assistance mortgages - at \$200,000 for the year. As you are aware, to receive this annual award, HUD requires an Application and certain Certifications to be signed by the accepting grantee, Barnstable County, and submitted to HUD.

Please find the following electronic documents attached that need to be signed and executed by the Chair of the County Commissioners. These documents can be signed electronically:

- Application for Federal Assistance SF-424
(*please sign and date in yellow box bottom of page 3*)
- Assurances – Construction Programs
- Certifications – General
- Specific HOME Certifications

Once these documents are executed, please return the originals to my attention for submission to HUD. Please feel free to let me know if you have any questions.

Thank you,
Renie Hamman, HOME Program Manager

Renie Hamman

Application for Federal Assistance SF-424

* 1. Type of Submission:

- Preapplication
- Application
- Changed/Corrected Application

* 2. Type of Application:

- New
- Continuation
- Revision

* If Revision, select appropriate letter(s):

* Other (Specify):

* 3. Date Received:

4. Applicant Identifier:

DC-25-0217

5a. Federal Entity Identifier:

5b. Federal Award Identifier:

M-20-DC-25-2017

State Use Only:

6. Date Received by State:

7. State Application Identifier:

8. APPLICANT INFORMATION:

* a. Legal Name:

Barnstable County

* b. Employer/Taxpayer Identification Number (EIN/TIN):

04-6001419

* c. Organizational DUNS:

0766124070000

d. Address:

* Street1:

3195 Main Street

Street2:

P.O. Box 427

* City:

Barnstable

County/Parish:

* State:

MA: Massachusetts

Province:

* Country:

USA: UNITED STATES

* Zip / Postal Code:

02630-0427

e. Organizational Unit:

Department Name:

Human Services

Division Name:

f. Name and contact information of person to be contacted on matters involving this application:

Prefix:

Mrs.

* First Name:

Irene

Middle Name:

* Last Name:

Hamman

Suffix:

Title:

HOME Program Manager

Organizational Affiliation:

* Telephone Number:

508-375-6622

Fax Number:

508-362-0290

* Email:

irene.hamman@barnstablecounty.org

Application for Federal Assistance SF-424

*** 9. Type of Applicant 1: Select Applicant Type:**

B: County Government

Type of Applicant 2: Select Applicant Type:

Type of Applicant 3: Select Applicant Type:

* Other (specify):

*** 10. Name of Federal Agency:**

U.S. Department of Housing and Urban Development

11. Catalog of Federal Domestic Assistance Number:

14.239

CFDA Title:

HOME Investment Partnership Program

*** 12. Funding Opportunity Number:**

* Title:

13. Competition Identification Number:

Title:

14. Areas Affected by Project (Cities, Counties, States, etc.):

Add Attachment

Delete Attachment

View Attachment

*** 15. Descriptive Title of Applicant's Project:**

Annual HOME allocation to create and preserve housing for the region's low income households.

Attach supporting documents as specified in agency instructions.

Add Attachments

Delete Attachments

View Attachments

Application for Federal Assistance SF-424

16. Congressional Districts Of:

* a. Applicant

* b. Program/Project

Attach an additional list of Program/Project Congressional Districts if needed.

Add Attachment

Delete Attachment

View Attachment

17. Proposed Project:

* a. Start Date:

* b. End Date:

18. Estimated Funding (\$):

* a. Federal	<input type="text" value="462,277.00"/>
* b. Applicant	<input type="text" value="0.00"/>
* c. State	<input type="text" value="0.00"/>
* d. Local	<input type="text" value="0.00"/>
* e. Other	<input type="text" value="0.00"/>
* f. Program Income	<input type="text" value="200,000.00"/>
* g. TOTAL	<input type="text" value="662,277.00"/>

*** 19. Is Application Subject to Review By State Under Executive Order 12372 Process?**

a. This application was made available to the State under the Executive Order 12372 Process for review on

b. Program is subject to E.O. 12372 but has not been selected by the State for review.

c. Program is not covered by E.O. 12372.

*** 20. Is the Applicant Delinquent On Any Federal Debt? (If "Yes," provide explanation in attachment.)**

Yes No

If "Yes", provide explanation and attach

Add Attachment

Delete Attachment

View Attachment

21. *By signing this application, I certify (1) to the statements contained in the list of certifications and (2) that the statements herein are true, complete and accurate to the best of my knowledge. I also provide the required assurances** and agree to comply with any resulting terms if I accept an award. I am aware that any false, fictitious, or fraudulent statements or claims may subject me to criminal, civil, or administrative penalties. (U.S. Code, Title 218, Section 1001)**

** I AGREE

** The list of certifications and assurances, or an internet site where you may obtain this list, is contained in the announcement or agency specific instructions.

Authorized Representative:

Prefix: * First Name:

Middle Name:

* Last Name:

Suffix:

* Title:

* Telephone Number: Fax Number:

* Email:

* Signature of Authorized Representative:



* Date Signed:

ASSURANCES - CONSTRUCTION PROGRAMS

OMB Number: 4040-0009
Expiration Date: 02/28/2022

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant:, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.
4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.
5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.
6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards of merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.
14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq).
18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.
20. Will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from (1) Engaging in severe forms of trafficking in persons during the period of time that the award is in effect (2) Procuring a commercial sex act during the period of time that the award is in effect or (3) Using forced labor in the performance of the award or subawards under the award.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL 	TITLE Chair - Barnstable County Commissioners
APPLICANT ORGANIZATION Barnstable County	DATE SUBMITTED 

Specific HOME Certifications

The HOME participating jurisdiction certifies that:

Tenant Based Rental Assistance -- If it plans to provide tenant-based rental assistance, the tenant-based rental assistance is an essential element of its consolidated plan.

Eligible Activities and Costs -- It is using and will use HOME funds for eligible activities and costs, as described in 24 CFR §§92.205 through 92.209 and that it is not using and will not use HOME funds for prohibited activities, as described in §92.214.

Subsidy layering -- Before committing any funds to a project, it will evaluate the project in accordance with the guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other Federal assistance than is necessary to provide affordable housing;

Signature of Authorized Official

Date

Barnstable County Board of Regional Commissioners
Title

CERTIFICATIONS

In accordance with the applicable statutes and the regulations governing the consolidated plan regulations, the jurisdiction certifies that:

Affirmatively Further Fair Housing --The jurisdiction will affirmatively further fair housing.

Uniform Relocation Act and Anti-displacement and Relocation Plan -- It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR Part 24. It has in effect and is following a residential anti-displacement and relocation assistance plan required under 24 CFR Part 42 in connection with any activity assisted with funding under the Community Development Block Grant or HOME programs.

Anti-Lobbying --To the best of the jurisdiction's knowledge and belief:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions; and
3. It will require that the language of paragraph 1 and 2 of this anti-lobbying certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

Authority of Jurisdiction --The consolidated plan is authorized under State and local law (as applicable) and the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

Consistency with plan --The housing activities to be undertaken with Community Development Block Grant, HOME, Emergency Solutions Grant, and Housing Opportunities for Persons With AIDS funds are consistent with the strategic plan in the jurisdiction's consolidated plan.

Section 3 -- It will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and implementing regulations at 24 CFR Part 135.

Signature of Authorized Official

Date

Barnstable County Board of Regional Commissioners

Title

APPENDIX TO CERTIFICATIONS

INSTRUCTIONS CONCERNING LOBBYING CERTIFICATION:

Lobbying Certification

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

INTER-GOVERNMENTAL NET ENERGY POWER SALES AGREEMENT

BETWEEN

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

AND

BARNSTABLE COUNTY

FOR ROOF MOUNTED SOLAR PHOTOVOLTAIC ENERGY FACILITY

LOCATED AT BARNSTABLE COUNTY DEEDS

_____, 2020

Barnstable County

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**INTER-GOVERNMENTAL NET ENERGY POWER SALES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BARNSTABLE COUNTY, MASSACHUSETTS**

This Inter-Governmental Net Energy Power Sales Agreement (“Agreement” or “Inter-Governmental PSA”) is entered into this ___ day of _____, 2020 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Seller”), and the Barnstable County, Massachusetts (“Buyer”).

RECITALS

A. Whereas, at Buyer’s request, Seller issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility with or without a battery energy storage system (“PV System”) (defined herein and further identified in Exhibit B) to be located on property owned by the Buyer and leased to the Developer;

B. Whereas, pursuant to the RFP, Buyer has entered into a lease agreement (“Lease”) with the Developer to develop the PV System, specifically a solar roof mounted PV System (the “PV System”) at the Barnstable County, 3195 Main Street, Barnstable, MA 02630 (the “Premises”), owned by the Buyer;

C. Whereas, Seller has entered into a Power Purchase Agreement (“PPA”) with Developer pursuant to which Seller will purchase Net Energy (as defined herein) generated by the PV System and in turn sell an allocated share of that Net Energy to Buyer, pursuant to this Agreement;

D. Whereas, Buyer desires to purchase the Net Energy generated by the PV System from Seller to reduce its electric load and to obtain Net Metering Credits to apply against electric bills; and

E. Whereas, Seller, to the extent permitted by law, will net meter the Net Energy generated by the PV System for the benefit of Buyer.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE I:DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I that are capitalized shall be given their common and ordinary meanings when they

appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

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

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

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

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

“Commercial Operation” means that the PV System is ready for regular, daily operation, has undergone testing as provided in the PPA, has been accepted by Seller and Buyer (and to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects (including, but not limited to, a grant of permission to operate from the Distribution Company, and completion of all final inspections), and is capable of producing Energy and delivering it to the Point of Delivery.

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

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

“Cooperative Member” means any municipality, county or political subdivision thereof, or other body politic, that has duly joined Seller as a cooperative member. Although Buyer is a Cooperative member, Buyer shall be excluded from this definition under this Agreement.

“Developer” means the Lessee under the Lease who will develop the PV System and then sell the Net Energy to the Seller pursuant to the PPA.

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

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

“DOER” means the Massachusetts Department of Energy Resources.

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

“Energy” means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include Environmental Attributes.

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

“Event of Default” means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

“Event of Termination” means any event of termination as defined in Section 8.1 of this Agreement.

“Financier” means any individual or entity providing money or extending credit for the PV System to Seller or Developer for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Seller or Developer.

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

- (a) Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Cooperative shall be able to assert Host Town’s governmental actions on Permits for the PV System as an event of *Force Majeure*.
- (e) Any nonpayment under this Agreement or any third party agreement.
- (f) Economic hardship of either Party.

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

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

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of

them, or any court or tribunal, excluding Seller and any Cooperative Members, including, without limitation, Buyer, unless acting in their regulatory authority.

“**Host Customer**” has the meaning set forth in 220 CMR 18.02.

“**ISO**” means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as those Agreements are amended, superseded or restated from time to time.

“**kW**” means Kilowatt.

“**kWh**” means Kilowatt hour.

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

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

“**Municipal Load**” means Buyer’s total annual energy usage as determined on the Effective Date of this Agreement, as specified in Exhibit C.

“**MW**” means Megawatt.

“**MWh**” means Megawatt hour.

“**NEPOOL**” means the New England Power Pool and any successor organization.

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

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

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

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

“Parties” means Buyer and Seller collectively, and their respective successors and permitted assignees.

“Party” means Buyer or Seller individually, and their respective successors and permitted assignees.

“Permits” means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

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

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

“PPA” means the Net Energy Power Purchase Agreement between Seller and Developer, a form of which is attached hereto as Exhibit D.

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

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

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

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

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

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

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

“**Term**” has the meaning set forth in Article IV (Term).

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

ARTICLE II: CONSTRUCTION; OBLIGATION TO MODIFY AGREEMENT

2.1 Construction

The Parties acknowledge that inconsistencies may exist between this Agreement, the PPA and the Lease and that the Parties will use their best efforts to construe all agreements harmoniously.

2.2 Obligation to Modify

Upon implementation by the Massachusetts Department of Public Utilities, DOER, or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding Net Metering, or any rule or regulation amending 225 CMR 14.00 (Renewable Energy Portfolio Standard) or 225 CMR 20.00 (Solar Massachusetts Renewable Target (SMART) Program), the Parties shall be obligated to amend this Agreement to conform to such rule(s), order(s) and/or regulation(s) to the extent that such amendments are Commercially Reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

ARTICLE III: PURCHASE AND SALE

3.1 Conditions Precedent

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

- (a) execution by Developer and Host of the Lease as of or of even date with the Effective Date of this Agreement.
- (b) execution by Developer and Buyer of the PPA as of or of even date with the Effective Date of this Agreement.

3.2 Sale and Purchase

Buyer shall purchase and Seller shall sell the Net Energy pursuant to the terms and conditions set forth in Exhibit A.

3.3 ISO Forward Capacity Market.

Seller shall retain the right to all ISO Forward Capacity Market Demand Resource credits or payments associated with the Net Energy.

3.4 Take-or-Pay for Net Energy Delivered to Point of Delivery

Subject to Section 8.3 (Events of Default by Seller) and Section 8.4 (*Force Majeure*), if Buyer fails to take Net Energy allocated to Buyer or made available to Buyer at the Delivery Point that Buyer is required to purchase under the terms of this Agreement, then Buyer shall pay to Seller on a monthly basis the price of the Net Energy as specified in Exhibit A upon thirty (30) days prior written notice by Seller. Seller shall have no duty to mitigate any charges under this Section. Disputes regarding compensation under this provision shall be subject to Article X (Dispute Resolution). Buyer shall not enter into any other energy agreements, other than with the Seller, that would result in any reduction in the total number of kWh that are allocated to Buyer under this Agreement. Pursuant to M.G.L. c. 40, §4A, the obligation of the Buyer to purchase the Net Energy as required under the terms of this Agreement in any contract year shall not be subject to appropriation and the Buyer shall not be exempt from liability pursuant to M.G.L. c. 44, §31.

3.5 Environmental Credits and Value

The Net Energy to which Buyer is entitled shall not include any Environmental Attributes. Buyer may not, under this Agreement, make any claims whatsoever with respect to any Environmental Attributes or the corresponding Energy in regards to a renewable portfolio standard, emission offset or other environmental, disclosure or similar regulatory requirement.

3.6 Net Metering and Alternative On-bill Credits

Seller and Buyer acknowledge and agree that for purposes of complying with the regulations at 220 C.M.R. 18.07(2), Buyer shall: (i) sign the Interconnection Agreement as Host Customer (as such term is defined in 220 C.M.R. 18.02); and (ii) designate Seller as its agent for purposes of communications and interactions with the Distribution Company as necessary to carry out the terms of this Agreement, the Lease and the PPA.

(a) Allocation of Net Metering and Alternative On-bill Credits.

(i) Buyer with Seller's and Developer's assistance, shall: (i) designate on Schedule Z to the Interconnection Agreement Buyer's accounts for which Buyer desires to allocate its share of the Net Metering and Alternative On-bill Credits generated or created during the Term in connection with the operation of the PV System; and (ii) at Seller's direction, designate on Schedule Z the accounts of other Cooperative Members or governmental entities to receive Net Metering Credits generated or created during the Term in connection with the operation of the PV System in excess of Buyer's Municipal Load (as such term is defined in the Inter-Governmental PDA). Buyer acknowledges that for purposes of allocating Net Metering Credits, in Buyer's role as Host Customer, it shall have no interest in and title to any Net Metering and Alternative On-bill Credits

generated in connection with the operation of the PV System in excess of Buyer's Municipal Load.

(ii) Seller and Buyer acknowledge and agree that in accordance with the Distribution Company tariffs, the Host Customer may amend Schedule Z of the tariffs two (2) times per calendar year, or as otherwise agreed to by the Distribution Company. Buyer and Seller will use Commercially Reasonable efforts to request that the Distribution Company amend the Schedule Z to address any changes in the identified electric accounts. Buyer shall report to Seller as soon as reasonably possible in advance of any anticipated material change in Buyer's electric accounts that would require an amendment to the Schedule Z.

(b) Purchase of Net Metering Credits by Distribution Company.

In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Buyer's designees, Buyer shall assign to Seller the right to receive such payment. Seller shall allocate to Buyer and any other purchaser of Net Metering Credits associated with the Net Energy of the PV System their respective shares of the Net Metering Credit value as paid to Seller by the Distribution Company pursuant to Buyer's assignment of such payment right.

Seller and Buyer acknowledge and agree to request on Schedule Z of the Distribution Company tariffs that the Distribution Company purchase Net Metering Credits from the Host Customer in connection with the operation of the PV System. In the event that the Distribution Company does not agree to such request and instead elects to allocate Net Metering Credits to the Host Customer or its designees, Seller and Buyer agree to use their best efforts to amend Exhibit A to conform to Section 3.4(a) and the original intent and economic effect of this Agreement in a timely fashion. Regardless of whether Buyer receives an allocation of Net Metering Credits or whether Buyer receives a payment for its share of the value of the Net Metering Credits purchased by the Distribution Company, Buyer must pay the price for each kWh of electric power set forth in Exhibit A.

3.7 Maximum Financial Liability of the Parties Pursuant to M.G.L. c. 40, Section 4A

This Agreement is not intended to impose any financial liabilities on the Parties other than as expressly set forth herein.

ARTICLE IV:TERM

4.1 Term

The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal

Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

ARTICLE V: METERING AND BILLING

5.1 Billing

On or before the fifteenth (15th) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Seller shall calculate the amount due and payable to Seller pursuant to Exhibit A, with respect to the immediately preceding month, and shall forward to Buyer two invoices. One invoice will be for the Net Energy payment. The second invoice will be for payment of the Operational Costs Adder and any other direct costs incurred by Seller in connection with the PV System as set forth in Section (b)(i) of Exhibit A. Each invoice shall include a calculation with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Each invoice shall also contain instructions for payment in accordance with Section 5.2 (Payment) of this Agreement.

5.2 Payment

Buyer shall pay Seller, within thirty (30) days of the receipt of Seller's invoice pursuant to Section 5.1 (Billing).

5.3 Metering Equipment and Testing

Developer and the Distribution Company shall provide, install, own, operate and maintain the Metering Device(s). Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer. In accordance with the PPA, Developer shall maintain and test the Metering Device(s). At Buyer's request, Seller shall exercise its rights under the PPA to ensure that the Metering Devices are tested and are accurately measuring the Net Energy of the System.

5.4 Dispute

If a Party, in good faith, disputes a payment or calculation of Buyer's share of Net Metering Credits, as described in this Article V, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within twenty-one (21) Business Days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article V, the Parties shall follow the procedure set forth in Article X (Dispute Resolution). Buyer and Seller hereby acknowledge and agree that during the Term of the PPA (as defined therein), Seller will rely on the information in the invoices provided to Seller by Developer pursuant to Section 7.4 (Billing) of the PPA in the preparation of its

invoices sent to Buyer under this Article V, and that the dispute provision in the PPA will govern the dispute of invoices under this Article V. Buyer and Seller further acknowledge and agree that upon such time as Seller is the owner of the PV System, the dispute provisions of this Section 5.4 shall control the dispute of Seller's invoices to Buyer under this Article V.

ARTICLE VI: PARTIES' OBLIGATIONS

6.1 Seller's Obligations

(a) Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required (and in the form required) by any Governmental Authority, NEPOOL, ISO, or as may be reasonably required by Buyer.

(b) For the duration of the Term, Seller shall provide Buyer with access to information regarding the operations of the PV System or other data concerning the PV System.

(c) For the duration of the Term, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Facility may be mechanically inoperable for more than a seven (7) day period.

6.2 Buyer's Obligations

(a) Buyer shall be responsible for any present and future taxes, fees and levies, if any, imposed on or associated with the Energy at and from the Delivery Point. Seller shall receive the benefit of any allowances or other credits related to the PV System to the extent provided in the PPA, and except as expressly provided to Buyer under this Agreement. During such time as Developer is owner and operator of the PV System, Buyer shall reimburse Seller for any Governmental Charges paid by Seller to Developer pursuant to the PPA Agreement.

(b) Buyer shall not be required to enter into collateral assignments of this Agreement except as provided by this Section 6.2(b). Subject to the terms and conditions of this Agreement, Buyer shall, upon prior written request by Seller or Developer, execute a consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form acceptable to Buyer, provided (i) Seller shall reimburse Buyer for all reasonable expenses and attorneys' fees incurred by Buyer in connection therewith, and (ii) that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

(c) Buyer further acknowledges that the Financier(s) may have other or further requests with respect to the assignment of this Agreement and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer will consider any such requests and will cooperate and

negotiate any such consent and agreement or assignment in good faith. Upon Buyer's written request after execution of any such consent and agreement or assignment, Seller shall reimburse Buyer for any reasonable attorney's fees and expenses associated therewith.

(d) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendments do not change the substance and underlying agreement of the terms originally a part hereof.

(e) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any Permit, license or similar authorization necessary for the PV System, including, without limitation, assisting Seller with the Interconnection Agreement required by the Distribution Company for Net Metering, in particular Schedule Z, but Buyer acting in its regulatory capacity shall not be required under this subsection to provide approvals or permits to Developer other than in the regular course of exercising its regulatory power.

(f) Buyer agrees that it will accept an assignment from Seller of the PPA in the event that Seller ceases its operations, or otherwise if the Parties mutually agree that it is in the best interests of both Parties for Buyer to assume the obligations of Seller to purchase Net Energy pursuant to the PPA.

6.3 Net Metering or Alternative On-bill Credits

(a) Each Party's obligations under this Agreement are subject to the PV System qualifying for Net Metering as a Solar Net Metering Facility or for Alternative On-bill Credits as an Alternative On-bill Generation Unit

(b) Subject to the provisions of this Agreement, each of Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering or receiving Alternative On-bill Credits

(c) So long as any such amendment will materially benefit a Party without material detriment to the other Party, the Parties commit to each other in good faith to make Commercially Reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering or Alternative On-bill Credits and ensure that the PV System is eligible for Net Metering or Alternative On-bill Credits.

ARTICLE VII: REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties

As of the Effective Date of this Agreement, Seller represents and warrants to Buyer as follows:

- (a) Seller has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Seller has full authority to do so and to fully bind Seller; and
- (c) Seller knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Seller's ability to carry out its obligations under this Agreement.

7.2 Buyer's Representations and Warranties

As of the Effective Date of this Agreement, Buyer represents and warrants to Seller as follows:

- (a) Buyer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer; and
- (c) Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations under this Agreement.
- (d) Buyer agrees that it has read and fully understands the form of PPA (attached as Exhibit D to this Agreement), including, without limitation, the price paid for Net Energy to Developer thereunder.

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES

8.1 Termination

Subject to Section 8.4 (*Force Majeure*), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Either Party may terminate this Agreement in the event that an incurable material Event of Default by Developer under the Lease or the PPA that prevents operation of the PV System for twelve (12) months, except with respect to *Force Majeure* events.

(b) Seller may terminate this Agreement if there is an Event of Default by Buyer pursuant to Section 8.2.

(c) Either party may terminate this Agreement in the event that the Developer defaults under the Lease, either party may terminate this Agreement, and may exercise any other remedy provided for in this Agreement or otherwise allowed by law.

(d) Seller may terminate this Agreement in the event that the PPA is terminated by either Seller or Developer, except to the extent the PPA is terminated due to Seller's or Buyer's exercise of their Purchase Options (as defined therein).

8.2 Events of Default by Buyer

The following shall each constitute an Event of Default by Buyer:

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

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

(c) If any material representation or warranty made by Buyer in Article VII (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Seller and Buyer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from the Seller.

(d) Any breach by Buyer pursuant to any of the provisions in Section 3.3 (Take-or-Pay for Energy Delivered to Point of Delivery).

(e) Any other material breach of this Agreement not specifically enumerated above.

Events of Default in this Section 8.2 are subject to, among other things, specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.3 Events of Default by Seller

It shall constitute an Event of Default by Seller if Seller breaches any material obligation under this Agreement that proves to have a material adverse effect on Buyer and fails to cure the breach within thirty (30) Business Days after notification by Buyer of the breach. Events of Default in this Section 8.3 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.4 Force Majeure

Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Buyer) and 8.3 (Events of Default by Seller), if by reason of *Force Majeure* either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date, provided, however, that the other Party may not terminate this Agreement if the non-performing Party is using Commercially Reasonable efforts to cure the Event of Termination and the non-performing Party provides reasonable written assurances that it will be able to cure such Event of Termination within an additional one hundred eighty (180) days. In the event of termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

8.5 Remedies.

- (a) Subject to the limitations set forth in Section 8.5(c) below, in the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Buyer) or 8.3 (Events of Default by Seller), as applicable, the non-defaulting Party may seek, among other things, specific performance and/or monetary damages pursuant to this Section 8.5.
- (b) In the case of a payment default by Buyer hereunder, Seller shall have the obligation, during any cure or waiver period provided to Buyer, to sell Net Energy to any other party on Commercially Reasonable terms to mitigate its losses.
- (c) In the case of a payment default by Buyer hereunder, Seller's monetary damages shall be the difference between the price under this Agreement and the price at which Seller sells the Buyer's share of the Net Energy on Commercially Reasonable terms to mitigate its losses plus any costs of arranging for such resale. Provided, however, that if the price at which Seller sells the Buyer's share of the Net Energy to mitigate its losses is greater than the price under this Agreement, Seller's monetary damages shall be reasonable costs, including any costs of arranging for such resale, incurred by Seller.
- (d) Both Parties agree that they have a duty to use Commercially Reasonable efforts to mitigate damages that may be incurred as a result of the other Party's performance or non-performance under the Agreement.

(e) After the Termination Date of this Agreement, Buyer shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the Termination Date. After the Termination Date, this Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the PV System, subject to Section 11.10 (Survival).

(f) Buyer may not enforce any remedies against Developer under the PPA, except as otherwise provided therein. Seller agrees to enforce any and all remedies against the Developer under the PPA.

For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

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

8.6 Step-in Rights of Financier

(a) Buyer is cognizant of the need of Developer to finance its interest in the PV System. Pursuant to Sections 6.2 (Buyer's Obligations), and 9.1(a) (Seller Assignment), Buyer agrees without any further request for prior consent to permit Developer to mortgage, assign or transfer this Agreement for the purpose of obtaining financing of the PV System, provided: (i) the term of such mortgage, assignment or transfer shall not exceed the Term hereof; (ii) Seller shall give Buyer notice of the name and address of Financier, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer; and (iii) that the existence of such mortgage, assignment or transfer, or any foreclosure by any Financier, shall not relieve Seller from any liability or responsibility for the performance of its obligations under this Agreement.

(b) Buyer agrees to give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided

however, that Financier shall have an additional reasonable period of time thereafter, not to exceed one hundred eighty (180) days, to cure the Event of Default if Financier uses Commercially Reasonable efforts to cure such Event of Default during the initial sixty (60) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such reasonable period of time thereafter.

(c) Buyer agrees that, prior to termination pursuant to Section 8.1 (Termination), Buyer shall give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional one hundred eighty (180) days to cure the Event of Termination if Financier uses Commercially Reasonable efforts to cure such Event of Termination during the initial one hundred eighty (180) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Termination within the additional one hundred eighty (180) days.

(d) Buyer also agrees that, in the event that Buyer terminates this Agreement pursuant to Section 8.1 (Termination), then the Buyer shall assume the obligations of the Seller in the PPA or a new agreement shall be executed by Buyer with Developer or Financier, as the case may be, to assume Seller's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Developer or Financier.

8.7 Purchase Options

Seller agrees and understands that Buyer shall have the right to purchase the PV System from Developer pursuant to Article 13 of the PPA and Article VIII of the Lease. Buyer agrees and understands that if Buyer does not exercise its option to purchase the PV System in accordance with Article 13 of the PPA and Article VIII of the Lease, then Seller may exercise its purchase option under such provisions.

8.8 Effect of Purchase Options on this Agreement

In the event that Buyer exercises its right to purchase the PV System from Developer in accordance with the terms of the PPA and the Lease, then this Agreement shall terminate. In the event that Seller exercises its right to purchase the PV System from Developer in accordance with the terms of the PPA and the Lease, then this Agreement shall continue in full force and effect.

ARTICLE IX: ASSIGNMENT

9.1 No Assignment Without Permission

Subject to the following, the rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto:

- (a) Seller Assignment. Seller may assign, subcontract or delegate all or a portion of its rights, privileges or obligations under this Agreement to any Person, subject to the prior written approval of Buyer, such consent not to be unreasonably withheld; provided that prior notice to or consent of Buyer shall not be required: (i) for an assignment by Seller to any of Seller's individual other Cooperative Members or individual members of the Cape Light Compact; and (ii) for a collateral assignment by Seller to any Financier, subject to the terms and conditions of Sections 6.2(b), 6.2(c) and 8.6.
- (b) Buyer Assignment. Buyer shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Seller, such consent not to be unreasonably withheld.

Notice of any assignment that does not require prior written approval shall be provided to the other Party as soon as practicable. If a Party fails to obtain prior written approval of the non-assigning Party to the extent required for an assignment under this Section 9.1, such assignment is voidable by such non-assigning Party.

ARTICLE X: DISPUTE RESOLUTION

10.1 Dispute Resolution

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article X shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties agree to mediation, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the

Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be courts in and for Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

10.2 Stay of Termination.

(a) During informal negotiations and mediation pursuant to Section 10.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 10.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 10.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) During the Term of the PPA (as defined therein), if there is any lawsuit pending between Seller and Developer, Buyer shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Buyer may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by the Seller at any time by any reason.

ARTICLE XI: MISCELLANEOUS

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

If to Buyer:

Barnstable County Administrator
Barnstable County
3195 Main Street,
Barnstable, MA 02630
Phone: _____
Email: _____

If to Seller:

Cape & Vineyard Electric Cooperative, Inc.
23H2 White's Path

South Yarmouth, MA 02664
Attn: Liz Argo, Executive Director
Tel: (774) 722-1812
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

11.2 Entire Agreement; Amendments; Binding Effect. This Agreement and the PPA and Lease constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

11.3 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

11.4 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

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

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

11.7 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance

with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

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

11.8 Nondiscrimination. The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

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

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

11.11 Survival. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 10 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

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

11.13 Developer as Third Party Beneficiary. The Parties agree that the Developer shall be a third party beneficiary of this Agreement.

11.14 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

[Signature page to follow.]

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

SELLER

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name:
Title: Clerk

By: _____
Name:
Title: President

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

BUYER

By: 
Name: Ronald Bergstrom
Title: Chair, Barnstable County Board of Regional Commissioners
Barnstable County
3195 Main Street,
Barnstable, MA 02630
Phone: ronald.bergstrom@barnstablecounty.org
Email: (508) 776 8556

List of Exhibits to Agreement

- Exhibit A – Prices and Terms
- Exhibit B – Description of the PV System
- Exhibit C – Special Terms and Conditions
- Exhibit D – Form of PPA

EXHIBIT A

PRICES AND TERMS

- (a) The Term for provision of Energy under this Agreement shall begin on the Effective Date and shall continue until the end of the twentieth (20th) year after the Effective Date unless otherwise terminated or extended in accordance with its terms.
- (b) (i) While the Developer owns the PV System, Buyer shall pay Seller the price paid by Seller to Developer under the PPA plus an operational cost adder as identified on Exhibit C.
- (ii) Alternatively, in the event that Seller exercises its purchase option and takes ownership of the PV System, the price shall be as follows: For the first year or any portion thereof following the date on which Seller takes ownership of the PV System, Buyer shall pay Seller a price to be determined for each kWh of electric power as delivered or allocated to Buyer from the PV System pursuant to Buyer's percentage share as determined in (d) below.
- (c) This price does not include any applicable taxes.
- (d) Buyer's percentage share of the Net Energy generated by the PV System shall be 100%. In the event the Distribution Company allocates rather than purchases Net Metering Credits, and the Net Energy projected to be produced in the PV System's first year of operation is greater than the Buyer's Municipal Load as determined on the Effective Date of this Agreement, Seller shall use Commercially Reasonable efforts to reallocate any excess Net Energy to other Cooperative Members or governmental entities on a pro rata basis.
- (e) The Net Energy generated by the PV System shall be purchased by Buyer subject to Net Metering or Alternative On-bill Credits (as defined in the Agreement), the applicable rules and regulations promulgated by the Department of Public Utilities, and the Distribution Company's Tariffs (as defined in the Agreement).
- (f) In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Buyer's designees, Buyer shall assign to Seller the right to receive such payment. Seller shall allocate to Buyer and any other purchaser of Net Metering Credits associated with the Net Energy of the PV System their respective shares of the Net Metering Credit value as paid to Seller by the Distribution Company.
- (g) In the event that Developer pays Seller damages for a Production Shortfall pursuant to the PPA (as such term is defined in the PPA), Delay Liquidated Damages pursuant to PPA (as such term is defined in the PPA), upon Seller termination for a Developer event of default pursuant to the PPA, Seller shall, within a reasonable period

of time after receiving such payment from Developer, allocate such payment to Buyer under the same formula for allocating Net Energy produced by the PV System.

EXHIBIT B

DESCRIPTION OF THE PV SYSTEM

PV SYSTEM: Module Manufacturer: Qcells Qty (184) 400-watt (Or Equivalent)

Nameplate Capacity: 73,600 watts DC _____

Approximate Annual Energy Production:
_____ 91,632 _____ kWh

Location: Roof Mounted PV located at Barnstable Deeds Building 3195 Main St. Barnstable, MA (41.701124 LAT -70.305211LON) _____

Mounting Systems: Panel Claw FR (Ballasted)

Preliminary Specifications:
__ Modules will be deployed with 10° tilt on ballasted racking system with 14" row spacing

Battery Manufacturer: Solar Edge (or Equivalent)

BESS Nameplate Capacity in kilowatts per hour:
__ 40 kWh or battery capacity _ kW for ____ hours

Location: Mounted on exterior wall of building

PV SYSTEM ASSETS:

Mounting System __ Panel Claw FR (10° tilt) _____

Inverters: Solar Edge Qty (1) SE43.2K-US and Qty (1) SE14.4K-US _____

Related Equipment: Square D Panelboard & Disc. Switch __

Electric Lines: 3-phase 4-wire 208/120 volts

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

EXHIBIT C

SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS INTER-GOVERNMENTAL NET METERED POWER PURCHASE AGREEMENT

1. Operational Costs Adder.

Seller shall be entitled to recover its operational costs for its services in managing this Agreement and any other Net Metered Power Sales Agreement entered into pursuant to Seller's Request for Proposals ("RFP") for the Lease and the PPA.

The operational adder for Buyer pursuant to Section (b)(i) of Exhibit A shall be \$0.0075. Commencing on the first anniversary of the Commercial Operation date of the PV System, and on each anniversary date thereafter, the operational adder shall be increased by the percentage that the United States Department of Labor Bureau of Labor Statistics Consumer Price Index For All Urban Consumers (All Items Index for Boston-Brockton-Nashua) ("CPI-U") for the month in which such anniversary occurs exceeds the corresponding CPI-U for the month in which the Commercial Operation date of the PV System occurs. If the manner in which the CPI-U is determined is substantially revised or the CPI-U shall become unavailable, Seller and Buyer agree to cooperate to determine an acceptable, comparable alternative index upon which to base the increase in the operational adder.

2. Municipal Load. The Municipal Load of Buyer is approximately 1,500,000 kWh.

Barnstable County Deeds Building

EXHIBIT D

FORM OF POWER PURCHASE AGREEMENT

Please see attached.

COMMONWEALTH OF MASSACHUSETTS

BANRSTABLE, SS.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Beaty to approve Item 8c through 8l as listed on the agenda for the Board of Regional Commissioners' Meeting on April 8, 2020, as presented, and introduce any required ordinances at the next meeting of the County Assembly of Delegates, pursuant to Section 2 – 8(e) of the Barnstable County Home Rule Charter:

- c. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with the Cape & Vineyard Electric Cooperative, Inc. (CVEC) for Roof Mounted Solar Photovoltaic Energy Facility located at Barnstable County Deeds;
- d. Authorizing the execution of a Lease Agreement for Rooftop Mounted Solar Photovoltaic Energy Facility with Alliance CVEC V LLC located at Barnstable County Deeds;
- e. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Photovoltaic Dual Use Energy Facility located at Barnstable County Farm;
- f. Authorizing the execution of a Lease Agreement for Ground Mounted Dual Use Solar Photovoltaic Energy Facility with Main Street Solar Project 2020, LLC at Barnstable County Farm;
- g. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with CVEC For Solar Canopy Photovoltaic Energy Facility located at Barnstable County Main Parking Lot;
- h. Authorizing the execution of a Lease Agreement for Canopy Solar Photovoltaic Energy Facility with Greenskies Clean Energy LLC at Barnstable County Main Parking Lot;
- i. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Rooftop Solar Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC;
- j. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Canopy Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC;

- k. Authorizing the execution of a Lease Agreement for Roof Mounted Solar Photovoltaic Energy Facility with Rock Harbor Road RF Solar Project 2020, LLC located in the Town of Orleans; and
- l. Authorizing the execution of a Lease Agreement for Solar Canopy Photovoltaic Energy Facility with Rock Harbor Road Cy Solar Project 2020, LLC located in the Town of Orleans;

2nd by Commissioner Flynn, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 8, 2020

A circular seal with a scalloped edge, containing a central emblem and text around the perimeter.
Janice O'Connell
Barnstable County Regional Clerk

INTER-GOVERNMENTAL SERVICES AGREEMENT

BETWEEN

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

AND

BARNSTABLE COUNTY

FOR MANAGEMENT OF SOLAR PHOTOVOLTAIC DUAL USE ENERGY FACILITY

LOCATED AT BARNSTABLE COUNTY FARM

_____, 2020

**INTER-GOVERNMENTAL SERVICES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BARNSTABLE COUNTY, MASSACHUSETTS**

This Inter-Governmental Services Agreement (“Agreement”) is entered into this ___ day of _____, 2020 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“CVEC”), and Barnstable County, Massachusetts (“County”). CVEC and the County may be referred to as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the County is a member of CVEC;

WHEREAS, at the County’s request, CVEC issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility (“PV System”) to be located on property owned by the County and leased to the Developer;

WHEREAS, pursuant to the RFP, County has entered into a lease agreement (“Lease”), attached as Exhibit A, with the Developer to develop the PV System, specifically a ground mounted dual-use solar PV System at Barnstable County Farm, 3675 Main Street, Barnstable, MA 02630 (the “Premises”), to be owned by the Developer and to be operated by the Developer on space leased by the County to the Developer; and

WHEREAS, per the County’s request, CVEC will perform financial and operations management services on the County’s behalf for the PV System, including the tasks listed below.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, CVEC and County agree as follows:

ARTICLE I: SCOPE OF WORK

1.1 Conditions Precedent. The obligations of the County and CVEC under this Agreement shall be conditioned upon execution by Developer and County of the Lease as of or of even date with the Effective Date of this Agreement.

1.2 Scope of Work. CVEC shall serve as the County’s representative and complete the following tasks in the Lease on behalf of the County:

(a) Represent the County’s interests with the Developer and the utility and facilitate PV System commissioning;

- (b) Represent the County's interests concerning PV System design and construction;
- (c) Perform inspections, or arrange for inspections, of the PV System as necessary or requested by the County;
- (d) Notify the Developer of its maintenance obligations with respect to the PV System under the Lease and update the County on compliance with same;
- (e) Monitor Developer's compliance with maintenance obligations under the Lease;
- (f) Monitor Developer's compliance with the federal, state, and local permit and regulatory requirements identified in the Lease, exclusive of tax issues;
- (g) Ensure that Developer provides for Decommissioning Assurance per the terms of the Lease;
- (h) Facilitate the County's decision making steps concerning the County's Purchase Option, as set forth in the Lease;
- (i) Maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, or as may be reasonably required by County;
- (j) Keep full and accurate records of all costs, fees, charges and other amounts incurred by CVEC under this Agreement, and maintain such records for inspection by the County for a period of three years after termination of this Agreement;
- (k) Provide County with access to information regarding the operations of the PV System or other data concerning the PV System; and
- (l) Notify County as soon as practicable when CVEC becomes aware that the PV System may be mechanically inoperable for more than a seven (7) day period.

The County's obligations in the Lease not specifically tasked to CVEC herein shall remain the sole responsibility of the County.

1.3 County's Informational Obligations. The County shall provide to CVEC all information necessary for CVEC to fulfill the Scope of Work set forth in Section 1.2, including making County administrative staff available as necessary or appropriate.

ARTICLE II: COMPENSATION FOR CVEC'S SERVICES

2.1 Payment to CVEC and Billing. Based on the CVEC Scope of Work set forth in Article I and in accordance with a Sliding Scale established by a CVEC Board of Directors vote, the County shall pay to CVEC \$4,000 for CVEC annual services. CVEC shall invoice the County annually on the project's commercial operations anniversary, and County shall pay CVEC within thirty (30) days of the receipt of CVEC's invoice.

ARTICLE III: TERM

3.1 Term. The term of this Agreement (the “Term”) commences on the Effective Date and continues for a period of twelve (12) months unless terminated earlier by either Party pursuant to Section 4.1. The County may, in its sole discretion, elect to renew this Agreement for up to nine (9) additional 12-month terms, with amendments to Exhibit A (Lease), including pricing terms and scope of services, as the Parties may agree to in writing. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

ARTICLE IV: NONPERFORMANCE; TERMINATION; REMEDIES

4.1 Nonperformance.

(a) In the event that CVEC fails to perform any part of the Scope of Work set forth in Section 1.2 of this Agreement, the County may provide written notice to CVEC of such nonperformance, which CVEC may then within ten (10) business days cure the nonperformance or produce a plan acceptable to the County (in its reasonable discretion) to cure the nonperformance. In the event that CVEC fails to cure the nonperformance or to agree with the County on a plan to cure the nonperformance within that timeframe, the County may (i) remove such task(s) from CVEC’s Scope of Work and take over such responsibility or responsibilities, with compensation to CVEC reduced accordingly, or (ii) terminate this Agreement upon ten (10) days’ written notice to CVEC. In taking over, the County shall have the right, for completing the services, to have access to any database and materials of CVEC. CVEC shall not be held liable for nonperformance of any part of the Scope of Work if the reason for such nonperformance is lack of adequate or accurate information or resources from the County.

(b) In the event that the County fails to provide information to CVEC in accordance with Section 1.3 or to compensate CVEC in accordance with Section 2.1, CVEC may provide written notice to the County of such noncompliance, which the County may then within ten (10) business days cure the noncompliance or produce a plan acceptable to the other Party (in its reasonable discretion) to cure the noncompliance. In the event that the County fails to cure the noncompliance, CVEC may terminate this Agreement upon ten (10) days’ written notice to the County, with interest on any amounts due and owing related to the nonperformance or breach.

4.2 Termination. In addition to the termination provisions for nonperformance set forth in Section 4.1, this Agreement shall be subject to termination by either Party for (a) Force Majeure (as defined in the Lease), or (b) in the event that the Lease is terminated, except to the extent the Lease is terminated due to CVEC’s or County’s exercise of their Purchase Options (as defined therein).

4.3 Remedies. Each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to any nonperformance or breach by the other Party under this Agreement, subject to any limitations set forth in this Agreement.

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

ARTICLE V: DISPUTE RESOLUTION

5.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 5.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm.

ARTICLE VI: MISCELLANEOUS

6.1 Modification. This Agreement may be modified only by a written amendment signed by both Parties hereto. In the event of a regulatory or legal change related to net metering that materially impacts this Agreement, the Parties shall use good faith efforts to modify this Agreement to comply with such regulatory or legal change, subject to termination rights in this Agreement.

6.2 Interpretation. When used in this Agreement, terms shall have the meanings defined in Exhibit A (Lease), unless otherwise provided. Words not defined herein shall be given their common and ordinary meanings.

6.3 Construction. The Parties acknowledge that inconsistencies may exist between this Agreement and the Lease between the County and the Developer, and that CVEC and the County will use their best efforts to construe this Agreement harmoniously with that Lease.

6.4 No Assignment Without Permission. The Parties agree that each shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of the other Party, such consent not to be unreasonably withheld.

6.5 Entire Agreement; Binding Effect. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

6.6 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

6.7 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

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

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

6.10 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law. The Parties agree that Barnstable County Superior Court, Massachusetts shall have jurisdiction over any litigation entered into hereunder.

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

6.11 Nondiscrimination. The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

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

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

6.14 Survival. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 5 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

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

6.16 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

6.17 Notice.

All correspondence and notices between County and CVEC shall be directed to the following:

If to County:

Barnstable County Administrator
Barnstable County
3195 Main Street,
Barnstable, MA 02630
Attn: _____
Phone () - -
Email _____

If to CVEC:

Liz Argo
Executive Director
Cape & Vineyard Electric Cooperative, Inc.

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

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Notices may also be sent by electronic mail message and shall be deemed properly served when the sending Party receives a confirmation that the message has been completely transmitted without error (out-of-office auto-responses shall not comply), provided that messages transmitted on any day that is not a Business Day, or after 5:00 p.m. local time (at the location of the receiving Party) on a Business Day, shall be deemed given on the next Business Day following the day on which the sending Party receives a confirmation that the message has been completely transmitted without error. The Parties are responsible for maintaining current and complete contact information; any Party may change its contact person and the contact information provided above by giving written notice thereof.

6.18 G.L. c. 40 §4A. The Parties acknowledge and agree that this Agreement is an inter-governmental agreement entered into in accordance with G.L. c. 40 §4A. The Parties shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received under this Agreement and undertake regular audits of such records.

6.19 Ownership of Documents and Work Product. In the event of termination of this Agreement, all documents, data, spreadsheets, databases, and information of any kind developed by CVEC, as well as all results or products of the services provided by CVEC pursuant to this Agreement or the Statement of Work in the Peregrine Agreement related to this Agreement shall be the sole property of the County, and upon request of the County shall be returned to the County.

[Signature page to follow.]

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

CVEC

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name:
Title: Clerk

By: _____
Name:
Title: President

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

COUNTY

Barnstable County

By: _____

Name:

Title:

List of Exhibits to Agreement

Exhibit A – Lease between County and Developer (including related exhibits)

EXHIBIT A

LEASE BETWEEN COUNTY AND DEVELOPER

B.C. Main Parking Lot

INTER-GOVERNMENTAL NET ENERGY POWER SALES AGREEMENT

BETWEEN

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

AND

BARNSTABLE COUNTY

FOR SOLAR CANOPY PHOTOVOLTAIC ENERGY FACILITY

LOCATED AT BARNSTABLE COUNTY MAIN PARKING LOT

_____, 2020

Barnstable County

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**INTER-GOVERNMENTAL NET ENERGY POWER SALES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BARNSTABLE COUNTY, MASSACHUSETTS**

This Inter-Governmental Net Energy Power Sales Agreement (“Agreement” or “Inter-Governmental PSA”) is entered into this ___ day of _____, 2020 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Seller”), and the Barnstable County, Massachusetts (“Buyer”).

RECITALS

A. Whereas, at Buyer’s request, Seller issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility with or without a battery energy storage system (“PV System”) (defined herein and further identified in Exhibit B) to be located on property owned by the Buyer and leased to the Developer;

B. Whereas, pursuant to the RFP, Buyer has entered into a lease agreement (“Lease”) with the Developer to develop the PV System, specifically a solar canopy PV System (the “PV System”) at the Barnstable County, 3195 Main Street, Barnstable, MA 02630 (the “Premises”), owned by the Buyer;

C. Whereas, Seller has entered into a Power Purchase Agreement (“PPA”) with Developer pursuant to which Seller will purchase Net Energy (as defined herein) generated by the PV System and in turn sell an allocated share of that Net Energy to Buyer, pursuant to this Agreement;

D. Whereas, Buyer desires to purchase the Net Energy generated by the PV System from Seller to reduce its electric load and to obtain Net Metering Credits to apply against electric bills; and

E. Whereas, Seller, to the extent permitted by law, will net meter the Net Energy generated by the PV System for the benefit of Buyer.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE I:DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I that are capitalized shall be given their common and ordinary meanings when they

appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

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

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

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

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

“Commercial Operation” means that the PV System is ready for regular, daily operation, has undergone testing as provided in the PPA, has been accepted by Seller and Buyer (and to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects (including, but not limited to, a grant of permission to operate from the Distribution Company, and completion of all final inspections), and is capable of producing Energy and delivering it to the Point of Delivery.

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

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

“Cooperative Member” means any municipality, county or political subdivision thereof, or other body politic, that has duly joined Seller as a cooperative member. Although Buyer is a Cooperative member, Buyer shall be excluded from this definition under this Agreement.

“Developer” means the Lessee under the Lease who will develop the PV System and then sell the Net Energy to the Seller pursuant to the PPA.

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

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

“DOER” means the Massachusetts Department of Energy Resources.

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

“Energy” means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include Environmental Attributes.

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

“Event of Default” means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

“Event of Termination” means any event of termination as defined in Section 8.1 of this Agreement.

“Financier” means any individual or entity providing money or extending credit for the PV System to Seller or Developer for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Seller or Developer.

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

- (a) Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Cooperative shall be able to assert Host Town’s governmental actions on Permits for the PV System as an event of *Force Majeure*.
- (e) Any nonpayment under this Agreement or any third party agreement.
- (f) Economic hardship of either Party.

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

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

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of

them, or any court or tribunal, excluding Seller and any Cooperative Members, including, without limitation, Buyer, unless acting in their regulatory authority.

“**Host Customer**” has the meaning set forth in 220 CMR 18.02.

“**ISO**” means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as those Agreements are amended, superseded or restated from time to time.

“**kW**” means Kilowatt.

“**kWh**” means Kilowatt hour.

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

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

“**Municipal Load**” means Buyer’s total annual energy usage as determined on the Effective Date of this Agreement, as specified in Exhibit C.

“**MW**” means Megawatt.

“**MWh**” means Megawatt hour.

“**NEPOOL**” means the New England Power Pool and any successor organization.

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

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

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

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

“Parties” means Buyer and Seller collectively, and their respective successors and permitted assignees.

“Party” means Buyer or Seller individually, and their respective successors and permitted assignees.

“Permits” means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

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

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

“PPA” means the Net Energy Power Purchase Agreement between Seller and Developer, a form of which is attached hereto as Exhibit D.

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

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

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

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

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

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

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

“**Term**” has the meaning set forth in Article IV (Term).

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

ARTICLE II: CONSTRUCTION; OBLIGATION TO MODIFY AGREEMENT

2.1 Construction

The Parties acknowledge that inconsistencies may exist between this Agreement, the PPA and the Lease and that the Parties will use their best efforts to construe all agreements harmoniously.

2.2 Obligation to Modify

Upon implementation by the Massachusetts Department of Public Utilities, DOER, or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding Net Metering, or any rule or regulation amending 225 CMR 14.00 (Renewable Energy Portfolio Standard) or 225 CMR 20.00 (Solar Massachusetts Renewable Target (SMART) Program), the Parties shall be obligated to amend this Agreement to conform to such rule(s), order(s) and/or regulation(s) to the extent that such amendments are Commercially Reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

ARTICLE III: PURCHASE AND SALE

3.1 Conditions Precedent

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

- (a) execution by Developer and Host of the Lease as of or of even date with the Effective Date of this Agreement.
- (b) execution by Developer and Buyer of the PPA as of or of even date with the Effective Date of this Agreement.

3.2 Sale and Purchase

Buyer shall purchase and Seller shall sell the Net Energy pursuant to the terms and conditions set forth in Exhibit A.

3.3 ISO Forward Capacity Market.

Seller shall retain the right to all ISO Forward Capacity Market Demand Resource credits or payments associated with the Net Energy.

3.4 Take-or-Pay for Net Energy Delivered to Point of Delivery

Subject to Section 8.3 (Events of Default by Seller) and Section 8.4 (*Force Majeure*), if Buyer fails to take Net Energy allocated to Buyer or made available to Buyer at the Delivery Point that Buyer is required to purchase under the terms of this Agreement, then Buyer shall pay to Seller on a monthly basis the price of the Net Energy as specified in Exhibit A upon thirty (30) days prior written notice by Seller. Seller shall have no duty to mitigate any charges under this Section. Disputes regarding compensation under this provision shall be subject to Article X (Dispute Resolution). Buyer shall not enter into any other energy agreements, other than with the Seller, that would result in any reduction in the total number of kWh that are allocated to Buyer under this Agreement. Pursuant to M.G.L. c. 40, §4A, the obligation of the Buyer to purchase the Net Energy as required under the terms of this Agreement in any contract year shall not be subject to appropriation and the Buyer shall not be exempt from liability pursuant to M.G.L. c. 44, §31.

3.5 Environmental Credits and Value

The Net Energy to which Buyer is entitled shall not include any Environmental Attributes. Buyer may not, under this Agreement, make any claims whatsoever with respect to any Environmental Attributes or the corresponding Energy in regards to a renewable portfolio standard, emission offset or other environmental, disclosure or similar regulatory requirement.

3.6 Net Metering and Alternative On-bill Credits

Seller and Buyer acknowledge and agree that for purposes of complying with the regulations at 220 C.M.R. 18.07(2), Buyer shall: (i) sign the Interconnection Agreement as Host Customer (as such term is defined in 220 C.M.R. 18.02); and (ii) designate Seller as its agent for purposes of communications and interactions with the Distribution Company as necessary to carry out the terms of this Agreement, the Lease and the PPA.

(a) Allocation of Net Metering and Alternative On-bill Credits.

(i) Buyer with Seller's and Developer's assistance, shall: (i) designate on Schedule Z to the Interconnection Agreement Buyer's accounts for which Buyer desires to allocate its share of the Net Metering and Alternative On-bill Credits generated or created during the Term in connection with the operation of the PV System; and (ii) at Seller's direction, designate on Schedule Z the accounts of other Cooperative Members or governmental entities to receive Net Metering Credits generated or created during the Term in connection with the operation of the PV System in excess of Buyer's Municipal Load (as such term is defined in the Inter-Governmental PDA). Buyer acknowledges that for purposes of allocating Net Metering Credits, in Buyer's role as Host Customer, it shall have no interest in and title to any Net Metering and Alternative On-bill Credits

generated in connection with the operation of the PV System in excess of Buyer's Municipal Load.

(ii) Seller and Buyer acknowledge and agree that in accordance with the Distribution Company tariffs, the Host Customer may amend Schedule Z of the tariffs two (2) times per calendar year, or as otherwise agreed to by the Distribution Company. Buyer and Seller will use Commercially Reasonable efforts to request that the Distribution Company amend the Schedule Z to address any changes in the identified electric accounts. Buyer shall report to Seller as soon as reasonably possible in advance of any anticipated material change in Buyer's electric accounts that would require an amendment to the Schedule Z.

(b) Purchase of Net Metering Credits by Distribution Company.

In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Buyer's designees, Buyer shall assign to Seller the right to receive such payment. Seller shall allocate to Buyer and any other purchaser of Net Metering Credits associated with the Net Energy of the PV System their respective shares of the Net Metering Credit value as paid to Seller by the Distribution Company pursuant to Buyer's assignment of such payment right.

Seller and Buyer acknowledge and agree to request on Schedule Z of the Distribution Company tariffs that the Distribution Company purchase Net Metering Credits from the Host Customer in connection with the operation of the PV System. In the event that the Distribution Company does not agree to such request and instead elects to allocate Net Metering Credits to the Host Customer or its designees, Seller and Buyer agree to use their best efforts to amend Exhibit A to conform to Section 3.4(a) and the original intent and economic effect of this Agreement in a timely fashion. Regardless of whether Buyer receives an allocation of Net Metering Credits or whether Buyer receives a payment for its share of the value of the Net Metering Credits purchased by the Distribution Company, Buyer must pay the price for each kWh of electric power set forth in Exhibit A.

3.7 Maximum Financial Liability of the Parties Pursuant to M.G.L. c. 40, Section 4A

This Agreement is not intended to impose any financial liabilities on the Parties other than as expressly set forth herein.

ARTICLE IV:TERM

4.1 Term

The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal

Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

ARTICLE V: METERING AND BILLING

5.1 Billing

On or before the fifteenth (15th) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Seller shall calculate the amount due and payable to Seller pursuant to Exhibit A, with respect to the immediately preceding month, and shall forward to Buyer two invoices. One invoice will be for the Net Energy payment. The second invoice will be for payment of the Operational Costs Adder and any other direct costs incurred by Seller in connection with the PV System as set forth in Section (b)(i) of Exhibit A. Each invoice shall include a calculation with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month. Each invoice shall also contain instructions for payment in accordance with Section 5.2 (Payment) of this Agreement.

5.2 Payment

Buyer shall pay Seller, within thirty (30) days of the receipt of Seller's invoice pursuant to Section 5.1 (Billing).

5.3 Metering Equipment and Testing

Developer and the Distribution Company shall provide, install, own, operate and maintain the Metering Device(s). Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer. In accordance with the PPA, Developer shall maintain and test the Metering Device(s). At Buyer's request, Seller shall exercise its rights under the PPA to ensure that the Metering Devices are tested and are accurately measuring the Net Energy of the System.

5.4 Dispute

If a Party, in good faith, disputes a payment or calculation of Buyer's share of Net Metering Credits, as described in this Article V, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within twenty-one (21) Business Days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article V, the Parties shall follow the procedure set forth in Article X (Dispute Resolution). Buyer and Seller hereby acknowledge and agree that during the Term of the PPA (as defined therein), Seller will rely on the information in the invoices provided to Seller by Developer pursuant to Section 7.4 (Billing) of the PPA in the preparation of its

invoices sent to Buyer under this Article V, and that the dispute provision in the PPA will govern the dispute of invoices under this Article V. Buyer and Seller further acknowledge and agree that upon such time as Seller is the owner of the PV System, the dispute provisions of this Section 5.4 shall control the dispute of Seller's invoices to Buyer under this Article V.

ARTICLE VI: PARTIES' OBLIGATIONS

6.1 Seller's Obligations

- (a) Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required (and in the form required) by any Governmental Authority, NEPOOL, ISO, or as may be reasonably required by Buyer.
- (b) For the duration of the Term, Seller shall provide Buyer with access to information regarding the operations of the PV System or other data concerning the PV System.
- (c) For the duration of the Term, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Facility may be mechanically inoperable for more than a seven (7) day period.

6.2 Buyer's Obligations

- (a) Buyer shall be responsible for any present and future taxes, fees and levies, if any, imposed on or associated with the Energy at and from the Delivery Point. Seller shall receive the benefit of any allowances or other credits related to the PV System to the extent provided in the PPA, and except as expressly provided to Buyer under this Agreement. During such time as Developer is owner and operator of the PV System, Buyer shall reimburse Seller for any Governmental Charges paid by Seller to Developer pursuant to the PPA Agreement.
- (b) Buyer shall not be required to enter into collateral assignments of this Agreement except as provided by this Section 6.2(b). Subject to the terms and conditions of this Agreement, Buyer shall, upon prior written request by Seller or Developer, execute a consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form acceptable to Buyer, provided (i) Seller shall reimburse Buyer for all reasonable expenses and attorneys' fees incurred by Buyer in connection therewith, and (ii) that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.
- (c) Buyer further acknowledges that the Financier(s) may have other or further requests with respect to the assignment of this Agreement and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer will consider any such requests and will cooperate and

negotiate any such consent and agreement or assignment in good faith. Upon Buyer's written request after execution of any such consent and agreement or assignment, Seller shall reimburse Buyer for any reasonable attorney's fees and expenses associated therewith.

(d) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendments do not change the substance and underlying agreement of the terms originally a part hereof.

(e) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any Permit, license or similar authorization necessary for the PV System, including, without limitation, assisting Seller with the Interconnection Agreement required by the Distribution Company for Net Metering, in particular Schedule Z, but Buyer acting in its regulatory capacity shall not be required under this subsection to provide approvals or permits to Developer other than in the regular course of exercising its regulatory power.

(f) Buyer agrees that it will accept an assignment from Seller of the PPA in the event that Seller ceases its operations, or otherwise if the Parties mutually agree that it is in the best interests of both Parties for Buyer to assume the obligations of Seller to purchase Net Energy pursuant to the PPA.

6.3 Net Metering or Alternative On-bill Credits

(a) Each Party's obligations under this Agreement are subject to the PV System qualifying for Net Metering as a Solar Net Metering Facility or for Alternative On-bill Credits as an Alternative On-bill Generation Unit

(b) Subject to the provisions of this Agreement, each of Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering or receiving Alternative On-bill Credits

(c) So long as any such amendment will materially benefit a Party without material detriment to the other Party, the Parties commit to each other in good faith to make Commercially Reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering or Alternative On-bill Credits and ensure that the PV System is eligible for Net Metering or Alternative On-bill Credits.

ARTICLE VII: REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties

As of the Effective Date of this Agreement, Seller represents and warrants to Buyer as follows:

- (a) Seller has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Seller has full authority to do so and to fully bind Seller; and
- (c) Seller knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Seller's ability to carry out its obligations under this Agreement.

7.2 Buyer's Representations and Warranties

As of the Effective Date of this Agreement, Buyer represents and warrants to Seller as follows:

- (a) Buyer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer; and
- (c) Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations under this Agreement.
- (d) Buyer agrees that it has read and fully understands the form of PPA (attached as Exhibit D to this Agreement), including, without limitation, the price paid for Net Energy to Developer thereunder.

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES

8.1 Termination

Subject to Section 8.4 (*Force Majeure*), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Either Party may terminate this Agreement in the event that an incurable material Event of Default by Developer under the Lease or the PPA that prevents operation of the PV System for twelve (12) months, except with respect to *Force Majeure* events.

(b) Seller may terminate this Agreement if there is an Event of Default by Buyer pursuant to Section 8.2.

(c) Either party may terminate this Agreement in the event that the Developer defaults under the Lease, either party may terminate this Agreement, and may exercise any other remedy provided for in this Agreement or otherwise allowed by law.

(d) Seller may terminate this Agreement in the event that the PPA is terminated by either Seller or Developer, except to the extent the PPA is terminated due to Seller's or Buyer's exercise of their Purchase Options (as defined therein).

8.2 Events of Default by Buyer

The following shall each constitute an Event of Default by Buyer:

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

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

(c) If any material representation or warranty made by Buyer in Article VII (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Seller and Buyer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from the Seller.

(d) Any breach by Buyer pursuant to any of the provisions in Section 3.3 (Take-or-Pay for Energy Delivered to Point of Delivery).

(e) Any other material breach of this Agreement not specifically enumerated above.

Events of Default in this Section 8.2 are subject to, among other things, specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.3 Events of Default by Seller

It shall constitute an Event of Default by Seller if Seller breaches any material obligation under this Agreement that proves to have a material adverse effect on Buyer and fails to cure the breach within thirty (30) Business Days after notification by Buyer of the breach. Events of Default in this Section 8.3 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.4 Force Majeure

Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Buyer) and 8.3 (Events of Default by Seller), if by reason of *Force Majeure* either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date, provided, however, that the other Party may not terminate this Agreement if the non-performing Party is using Commercially Reasonable efforts to cure the Event of Termination and the non-performing Party provides reasonable written assurances that it will be able to cure such Event of Termination within an additional one hundred eighty (180) days. In the event of termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

8.5 Remedies.

(a) Subject to the limitations set forth in Section 8.5(c) below, in the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Buyer) or 8.3 (Events of Default by Seller), as applicable, the non-defaulting Party may seek, among other things, specific performance and/or monetary damages pursuant to this Section 8.5.

(b) In the case of a payment default by Buyer hereunder, Seller shall have the obligation, during any cure or waiver period provided to Buyer, to sell Net Energy to any other party on Commercially Reasonable terms to mitigate its losses.

(c) In the case of a payment default by Buyer hereunder, Seller's monetary damages shall be the difference between the price under this Agreement and the price at which Seller sells the Buyer's share of the Net Energy on Commercially Reasonable terms to mitigate its losses plus any costs of arranging for such resale. Provided, however, that if the price at which Seller sells the Buyer's share of the Net Energy to mitigate its losses is greater than the price under this Agreement, Seller's monetary damages shall be reasonable costs, including any costs of arranging for such resale, incurred by Seller.

(d) Both Parties agree that they have a duty to use Commercially Reasonable efforts to mitigate damages that may be incurred as a result of the other Party's performance or non-performance under the Agreement.

(e) After the Termination Date of this Agreement, Buyer shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the Termination Date. After the Termination Date, this Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the PV System, subject to Section 11.10 (Survival).

(f) Buyer may not enforce any remedies against Developer under the PPA, except as otherwise provided therein. Seller agrees to enforce any and all remedies against the Developer under the PPA.

For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

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

8.6 Step-in Rights of Financier

(a) Buyer is cognizant of the need of Developer to finance its interest in the PV System. Pursuant to Sections 6.2 (Buyer's Obligations), and 9.1(a) (Seller Assignment), Buyer agrees without any further request for prior consent to permit Developer to mortgage, assign or transfer this Agreement for the purpose of obtaining financing of the PV System, provided: (i) the term of such mortgage, assignment or transfer shall not exceed the Term hereof; (ii) Seller shall give Buyer notice of the name and address of Financier, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer; and (iii) that the existence of such mortgage, assignment or transfer, or any foreclosure by any Financier, shall not relieve Seller from any liability or responsibility for the performance of its obligations under this Agreement.

(b) Buyer agrees to give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided

however, that Financier shall have an additional reasonable period of time thereafter, not to exceed one hundred eighty (180) days, to cure the Event of Default if Financier uses Commercially Reasonable efforts to cure such Event of Default during the initial sixty (60) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such reasonable period of time thereafter.

(c) Buyer agrees that, prior to termination pursuant to Section 8.1 (Termination), Buyer shall give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional one hundred eighty (180) days to cure the Event of Termination if Financier uses Commercially Reasonable efforts to cure such Event of Termination during the initial one hundred eighty (180) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Termination within the additional one hundred eighty (180) days.

(d) Buyer also agrees that, in the event that Buyer terminates this Agreement pursuant to Section 8.1 (Termination), then the Buyer shall assume the obligations of the Seller in the PPA or a new agreement shall be executed by Buyer with Developer or Financier, as the case may be, to assume Seller's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Developer or Financier.

8.7 Purchase Options

Seller agrees and understands that Buyer shall have the right to purchase the PV System from Developer pursuant to Article 13 of the PPA and Article VIII of the Lease. Buyer agrees and understands that if Buyer does not exercise its option to purchase the PV System in accordance with Article 13 of the PPA and Article VIII of the Lease, then Seller may exercise its purchase option under such provisions.

8.8 Effect of Purchase Options on this Agreement

In the event that Buyer exercises its right to purchase the PV System from Developer in accordance with the terms of the PPA and the Lease, then this Agreement shall terminate. In the event that Seller exercises its right to purchase the PV System from Developer in accordance with the terms of the PPA and the Lease, then this Agreement shall continue in full force and effect.

ARTICLE IX: ASSIGNMENT

9.1 No Assignment Without Permission

Subject to the following, the rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto:

- (a) Seller Assignment. Seller may assign, subcontract or delegate all or a portion of its rights, privileges or obligations under this Agreement to any Person, subject to the prior written approval of Buyer, such consent not to be unreasonably withheld; provided that prior notice to or consent of Buyer shall not be required: (i) for an assignment by Seller to any of Seller's individual other Cooperative Members or individual members of the Cape Light Compact; and (ii) for a collateral assignment by Seller to any Financier, subject to the terms and conditions of Sections 6.2(b), 6.2(c) and 8.6.
- (b) Buyer Assignment. Buyer shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Seller, such consent not to be unreasonably withheld.

Notice of any assignment that does not require prior written approval shall be provided to the other Party as soon as practicable. If a Party fails to obtain prior written approval of the non-assigning Party to the extent required for an assignment under this Section 9.1, such assignment is voidable by such non-assigning Party.

ARTICLE X: DISPUTE RESOLUTION

10.1 Dispute Resolution

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article X shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties agree to mediation, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the

Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be courts in and for Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

10.2 Stay of Termination.

(a) During informal negotiations and mediation pursuant to Section 10.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 10.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 10.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) During the Term of the PPA (as defined therein), if there is any lawsuit pending between Seller and Developer, Buyer shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Buyer may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by the Seller at any time by any reason.

ARTICLE XI: MISCELLANEOUS

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

If to Buyer:

Barnstable County Administrator
3195 Main Street,
Barnstable, MA 02630
Phone: _____
Email: _____

If to Seller:

Cape & Vineyard Electric Cooperative, Inc.
23H2 White's Path

South Yarmouth, MA 02664
Attn: Liz Argo, Executive Director
Tel: (774) 722-1812
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

11.2 Entire Agreement; Amendments; Binding Effect. This Agreement and the PPA and Lease constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

11.3 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

11.4 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

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

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

11.7 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance

with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

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

11.8 Nondiscrimination. The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

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

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

11.11 Survival. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 10 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

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

11.13 Developer as Third Party Beneficiary. The Parties agree that the Developer shall be a third party beneficiary of this Agreement.

11.14 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

[Signature page to follow.]

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

SELLER

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name:
Title: Clerk

By: _____
Name:
Title: President

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

BUYER

By: _____
Name:
Title: Barnstable County Administrator
Barnstable County
3195 Main Street,
Barnstable, MA 02630
Phone: _____
Email: _____

List of Exhibits to Agreement

- Exhibit A – Prices and Terms
- Exhibit B – Description of the PV System
- Exhibit C – Special Terms and Conditions
- Exhibit D – Form of PPA

EXHIBIT A

PRICES AND TERMS

- (a) The Term for provision of Energy under this Agreement shall begin on the Effective Date and shall continue until the end of the twentieth (20th) year after the Effective Date unless otherwise terminated or extended in accordance with its terms.
- (b) (i) While the Developer owns the PV System, Buyer shall pay Seller the price paid by Seller to Developer under the PPA plus an operational cost adder as identified on Exhibit C.
- (ii) Alternatively, in the event that Seller exercises its purchase option and takes ownership of the PV System, the price shall be as follows: For the first year or any portion thereof following the date on which Seller takes ownership of the PV System, Buyer shall pay Seller a price to be determined for each kWh of electric power as delivered or allocated to Buyer from the PV System pursuant to Buyer's percentage share as determined in (d) below.
- (c) This price does not include any applicable taxes.
- (d) Buyer's percentage share of the Net Energy generated by the PV System shall be 100%. In the event the Distribution Company allocates rather than purchases Net Metering Credits, and the Net Energy projected to be produced in the PV System's first year of operation is greater than the Buyer's Municipal Load as determined on the Effective Date of this Agreement, Seller shall use Commercially Reasonable efforts to reallocate any excess Net Energy to other Cooperative Members or governmental entities on a pro rata basis.
- (e) The Net Energy generated by the PV System shall be purchased by Buyer subject to Net Metering or Alternative On-bill Credits (as defined in the Agreement), the applicable rules and regulations promulgated by the Department of Public Utilities, and the Distribution Company's Tariffs (as defined in the Agreement).
- (f) In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Buyer's designees, Buyer shall assign to Seller the right to receive such payment. Seller shall allocate to Buyer and any other purchaser of Net Metering Credits associated with the Net Energy of the PV System their respective shares of the Net Metering Credit value as paid to Seller by the Distribution Company.
- (g) In the event that Developer pays Seller damages for a Production Shortfall pursuant to the PPA (as such term is defined in the PPA), Delay Liquidated Damages pursuant to PPA (as such term is defined in the PPA), upon Seller termination for a Developer event of default pursuant to the PPA, Seller shall, within a reasonable period

of time after receiving such payment from Developer, allocate such payment to Buyer under the same formula for allocating Net Energy produced by the PV System.

EXHIBIT C

SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS INTER-GOVERNMENTAL NET METERED POWER PURCHASE AGREEMENT

1. Operational Costs Adder.

Seller shall be entitled to recover its operational costs for its services in managing this Agreement and any other Net Metered Power Sales Agreement entered into pursuant to Seller's Request for Proposals ("RFP") for the Lease and the PPA.

The operational adder for Buyer pursuant to Section (b)(i) of Exhibit A shall be \$0.0075. Commencing on the first anniversary of the Commercial Operation date of the PV System, and on each anniversary date thereafter, the operational adder shall be increased by the percentage that the United States Department of Labor Bureau of Labor Statistics Consumer Price Index For All Urban Consumers (All Items Index for Boston-Brockton-Nashua) ("CPI-U") for the month in which such anniversary occurs exceeds the corresponding CPI-U for the month in which the Commercial Operation date of the PV System occurs. If the manner in which the CPI-U is determined is substantially revised or the CPI-U shall become unavailable, Seller and Buyer agree to cooperate to determine an acceptable, comparable alternative index upon which to base the increase in the operational adder.

2. Municipal Load. The Municipal Load of Buyer is approximately 1,500,000 kWh.

B.C. Main Parking Lot

EXHIBIT D

FORM OF POWER PURCHASE AGREEMENT

Please see attached.

INTER-GOVERNMENTAL SERVICES AGREEMENT

BETWEEN

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

AND

BARNSTABLE COUNTY

FOR MANAGEMENT OF SOLAR CANOPY PHOTOVOLTAIC ENERGY FACILITY

LOCATED AT ROCK HARBOR ROAD CY SOLAR PROJECT 2020, LLC

_____, 2020

**INTER-GOVERNMENTAL SERVICES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BARNSTABLE, MASSACHUSETTS**

This Inter-Governmental Services Agreement (“Agreement”) is entered into this ___ day of _____, 2020 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“CVEC”), and Barnstable County, Massachusetts (“County”). CVEC and the County may be referred to as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the County is a member of CVEC;

WHEREAS, at the County’s request, CVEC issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility (“PV System”) to be located on property owned by the County and leased to the Developer;

WHEREAS, pursuant to the RFP, County has entered into a lease agreement (“Lease”), attached as Exhibit A, with the Developer to develop the PV System, specifically a Solar Canopy PV System at Orleans Courthouse, 19 School Road, Orleans, MA 02653 (the “Premises”), to be owned by the Developer and to be operated by the Developer on space leased by the County to the Developer; and

WHEREAS, per the County’s request, CVEC will perform financial and operations management services on the County’s behalf for the PV System, including the tasks listed below.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, CVEC and County agree as follows:

ARTICLE I: SCOPE OF WORK

1.1 Conditions Precedent. The obligations of the County and CVEC under this Agreement shall be conditioned upon execution by Developer and County of the Lease as of or of even date with the Effective Date of this Agreement.

1.2 Scope of Work. CVEC shall serve as the County’s representative and complete the following tasks in the Lease on behalf of the County:

(a) Represent the County’s interests with the Developer and the utility and facilitate PV System commissioning;

- (b) Represent the County's interests concerning PV System design and construction;
- (c) Perform inspections, or arrange for inspections, of the PV System as necessary or requested by the County;
- (d) Notify the system owner of its maintenance obligations with respect to the PV System under the Lease and update the County on compliance with same;
- (e) Monitor Developer's compliance with maintenance obligations under the Lease;
- (f) Monitor Developer's compliance with the federal, state, and local permit and regulatory requirements identified in the Lease, exclusive of tax issues;
- (g) Ensure that Developer provides for Decommissioning Assurance per the terms of the Lease;
- (h) Facilitate the County's decision making steps concerning the County's Purchase Option, as set forth in the Lease;
- (i) Maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, or as may be reasonably required by County;
- (j) Keep full and accurate records of all costs, fees, charges and other amounts incurred by CVEC under this Agreement, and maintain such records for inspection by the County for a period of three years after termination of this Agreement;
- (k) Provide County with access to information regarding the operations of the PV System or other data concerning the PV System; and
- (l) Notify County as soon as practicable when CVEC becomes aware that the PV System may be mechanically inoperable for more than a seven (7) day period.

The County's obligations in the Lease not specifically tasked to CVEC herein shall remain the sole responsibility of the County.

1.3 County's Informational Obligations. The County shall provide to CVEC all information necessary for CVEC to fulfill the Scope of Work set forth in Section 1.2, including making County administrative staff available as necessary or appropriate.

ARTICLE II: COMPENSATION FOR CVEC'S SERVICES

2.1 Payment to CVEC and Billing. Based on the CVEC Scope of Work set forth in Article I and in accordance with a Sliding Scale established by a CVEC Board of Directors vote, the County shall pay to CVEC \$500 for CVEC annual services. CVEC shall invoice the County annually on the project's commercial operations anniversary, and County shall pay CVEC within thirty (30) days of the receipt of CVEC's invoice.

ARTICLE III: TERM

3.1 Term. The term of this Agreement (the “Term”) commences on the Effective Date and continues for a period of twelve (12) months unless terminated earlier by either Party pursuant to Section 4.1. The County may, in its sole discretion, elect to renew this Agreement for up to nine (9) additional 12-month terms, with amendments to Exhibit A (Lease), including pricing terms and scope of services, as the Parties may agree to in writing. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

ARTICLE IV: NONPERFORMANCE; TERMINATION; REMEDIES

4.1 Nonperformance.

(a) In the event that CVEC fails to perform any part of the Scope of Work set forth in Section 1.2 of this Agreement, the County may provide written notice to CVEC of such nonperformance, which CVEC may then within ten (10) business days cure the nonperformance or produce a plan acceptable to the County (in its reasonable discretion) to cure the nonperformance. In the event that CVEC fails to cure the nonperformance or to agree with the County on a plan to cure the nonperformance within that timeframe, the County may (i) remove such task(s) from CVEC’s Scope of Work and take over such responsibility or responsibilities, with compensation to CVEC reduced accordingly, or (ii) terminate this Agreement upon ten (10) days’ written notice to CVEC. In taking over, the County shall have the right, for completing the services, to have access to any database and materials of CVEC. CVEC shall not be held liable for nonperformance of any part of the Scope of Work if the reason for such nonperformance is lack of adequate or accurate information or resources from the County.

(b) In the event that the County fails to provide information to CVEC in accordance with Section 1.3 or to compensate CVEC in accordance with Section 2.1, CVEC may provide written notice to the County of such noncompliance, which the County may then within ten (10) business days cure the noncompliance or produce a plan acceptable to the other Party (in its reasonable discretion) to cure the noncompliance. In the event that the County fails to cure the noncompliance, CVEC may terminate this Agreement upon ten (10) days’ written notice to the County, with interest on any amounts due and owing related to the nonperformance or breach.

4.2 Termination. In addition to the termination provisions for nonperformance set forth in Section 4.1, this Agreement shall be subject to termination by either Party for (a) Force Majeure (as defined in the Lease), or (b) in the event that the Lease is terminated, except to the extent the Lease is terminated due to CVEC’s or County’s exercise of their Purchase Options (as defined therein).

4.3 Remedies. Each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to any nonperformance or breach by the other Party under this Agreement, subject to any limitations set forth in this Agreement.

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

ARTICLE V: DISPUTE RESOLUTION

5.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 5.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm.

ARTICLE VI: MISCELLANEOUS

6.1 Modification. This Agreement may be modified only by a written amendment signed by both Parties hereto. In the event of a regulatory or legal change related to net metering that materially impacts this Agreement, the Parties shall use good faith efforts to modify this Agreement to comply with such regulatory or legal change, subject to termination rights in this Agreement.

6.2 Interpretation. When used in this Agreement, terms shall have the meanings defined in Exhibit A (Lease), unless otherwise provided. Words not defined herein shall be given their common and ordinary meanings.

6.3 Construction. The Parties acknowledge that inconsistencies may exist between this Agreement and the Lease between the County and the Developer, and that CVEC and the County will use their best efforts to construe this Agreement harmoniously with that Lease.

6.4 No Assignment Without Permission. The Parties agree that each shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of the other Party, such consent not to be unreasonably withheld.

6.5 Entire Agreement; Binding Effect. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

6.6 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

6.7 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

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

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

6.10 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law. The Parties agree that Barnstable County Superior Court, Massachusetts shall have jurisdiction over any litigation entered into hereunder.

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

6.11 Nondiscrimination. The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

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

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

6.14 Survival. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 5 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

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

6.16 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

6.17 Notice.

All correspondence and notices between County and CVEC shall be directed to the following:

If to County:

County Administrator
Barnstable County
3195 Main Street
Barnstable, MA 02630
Attn: _____
Phone () ____ - ____
Email: _____

If to CVEC:

Liz Argo
Executive Director
Cape & Vineyard Electric Cooperative, Inc.
23H2 White's Path, Suite 2

South Yarmouth, MA 02664
Tel: 774-722-1812
largo@cvecinc.org

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Notices may also be sent by electronic mail message and shall be deemed properly served when the sending Party receives a confirmation that the message has been completely transmitted without error (out-of-office auto-responses shall not comply), provided that messages transmitted on any day that is not a Business Day, or after 5:00 p.m. local time (at the location of the receiving Party) on a Business Day, shall be deemed given on the next Business Day following the day on which the sending Party receives a confirmation that the message has been completely transmitted without error. The Parties are responsible for maintaining current and complete contact information; any Party may change its contact person and the contact information provided above by giving written notice thereof.

6.18 G.L. c. 40 §4A. The Parties acknowledge and agree that this Agreement is an inter-governmental agreement entered into in accordance with G.L. c. 40 §4A. The Parties shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received under this Agreement and undertake regular audits of such records.

6.19 Ownership of Documents and Work Product. In the event of termination of this Agreement, all documents, data, spreadsheets, databases, and information of any kind developed by CVEC, as well as all results or products of the services provided by CVEC pursuant to this Agreement or the Statement of Work in the Peregrine Agreement related to this Agreement shall be the sole property of the County, and upon request of the County shall be returned to the County.

[Signature page to follow.]

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

CVEC

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name:
Title: Clerk

By: _____
Name:
Title: President

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

COUNTY

Barnstable County

By: _____

Name:

Title:

List of Exhibits to Agreement

Exhibit A – Lease between County and Developer (including related exhibits)

EXHIBIT A
LEASE BETWEEN COUNTY AND DEVELOPER

LEASE AGREEMENT
FOR
SOLAR CANOPY PHOTOVOLTAIC ENERGY FACILITY
BETWEEN
ROCK HARBOR ROAD CY SOLAR PROJECT 2020, LLC
AND
COUNTY OF BARNSTABLE, MASSACHUSETTS

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LEASE AGREEMENT FOR
SOLAR CANOPY PHOTOVOLTAIC ENERGY FACILITY
BETWEEN
ROCK HARBOR ROAD CY SOLAR PROJECT 2020, LLC
AND
COUNTY OF BARNSTABLE, MASSACHUSETTS

STANDARD TERMS AND CONDITIONS

This Lease Agreement (the “Agreement” or “Lease”) is entered into this ___ day of _____, 2020 (the “Effective Date”) and is by and between Rock Harbor Road CY Solar Project 2020, LLC, a Delaware limited liability company (“Developer”), and the Barnstable County, Massachusetts, with an address of 3195 Main Street, Barnstable, MA 02630 (“Host”).

RECITALS

(a) Host wishes to lease an area of ground space described in Exhibit A (the “Premises”), which is a part of the Property located at 237 Rock Harbor Road, Orleans, MA 02653 and owned by Host to the Developer to allow it to design, procure, install, test, commission, own, operate and maintain a solar photovoltaic system and battery energy storage system (“PV System”), as defined in Article I (Definitions), on the Premises for beneficial public purposes;

(b) Developer wishes to lease the Premises in order to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises for beneficial public purposes, subject to the terms and restrictions set forth in this Agreement; and

(c) Host has entered into a Services Agreement (the “Services Agreement”) with the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation with an address at 23H2 White’s Path, Suite 2, South Yarmouth, MA 02664 (“CVEC”) pursuant to which CVEC will provide consultation, management and oversight concerning the PV System on behalf of the Host, as set forth in that Services Agreement and as set forth in this Agreement.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows.

ARTICLE I: DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Additional Exceptions” has the meaning set forth in Exhibit A-1 hereto.

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

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

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

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

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

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

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

“Commercial Operation” means that the PV System is ready for regular, daily operation, has undergone testing and met Commissioning Requirements as set forth in the Common Technical Specifications, Exhibit E, has been accepted by Developer and Host (and to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects, including all final inspections, is capable of producing Energy and delivering it to the Point of Delivery, and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E, are complete and provided to Host.

“Commercial Operation Date” means the date that the Developer certifies in a written notice to the Host that Commercial Operation has been achieved in accordance with Section 5.19.

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

“Construction Commencement Date” means the date that the Developer (a) has secured all required permits and approvals from Governmental Authorities and the Distribution Company under Applicable Legal Requirements for the construction of the PV System and (b) has mobilized to commence work at the Premises, as certified in writing to the Host and CVEC.

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

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

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

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

“Energy” means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

“Environmental Attributes” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or any

expansion, reenactment, extension or replacement thereof that may come into effect in the future, including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) Class I Renewable Generation Attributes (as such term is defined at 225 C.M.R. 14.02) or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iii) tax credits, incentives or depreciation allowances established under any federal or state law, (iv) energy investment tax credits under Section 48 of the Internal Revenue Code of 1986, as amended, (v) incentives under the Solar Massachusetts Renewable (SMART) Program as provided in 225 CMR 20.00, and (vi) other allowances however named or referenced, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Net Energy generated by the PV System during the Term and in which Developer has good and valid title.

“Environmental Claim” means causes of action, claims, fines, penalties, damages, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements arising from activities conducted on or in connection with the Work which arise, or are alleged to have arisen, out of any (a) violation of any applicable Environmental Law, (b) action by a Governmental Authority for enforcement, cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law, or (c) compensation, or injunctive relief resulting from injuries to persons or property due to (i) an alleged violation of any Environmental Law or (ii) any release of Hazardous Material.

“Environmental Law” means any and all existing and future Applicable Legal Requirements relating to human health, human safety or the environment.

“Event of Default” means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

“Event of Termination” means any event of termination as defined in Section 8.1 of this Agreement.

“Financier” means any individual or entity providing money or extending credit for the PV System to Developer or its Affiliates for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; extreme winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions; curtailments ordered by the Distribution Company, the independent electric system operator, or any Governmental Authority. Nothing in this provision is intended to excuse either Party from

performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, Force Majeure shall not mean:

- A. Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System, except to the extent weather conditions are extreme, unusual or create unsafe working conditions as reasonably determined by Developer.
- B. Unavailability of sun.
- C. Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of Force Majeure.
- D. Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Developer shall be able to assert Host's governmental actions on Permits for the PV System as an event of Force Majeure.
- E. Any nonpayment under this Agreement or any third party agreement.
- F. Economic hardship of either Party.

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

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including Host in its regulatory capacity but excluding Host as Lessor under this Agreement.

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

“Leasehold Mortgage” has the meaning set forth in Section 11.4.

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

“Net Energy” means the actual and verifiable amount of Energy generated by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements and the Tariffs.

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

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

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

“Outside Construction Commencement Date” means the later of ninety (90) days after the Effective Date or ninety (90) days after the PV System has received a “Statement of Qualification” pursuant to and as defined in the SMART Program or ninety (90) days after PV System has received all permits or approvals from the distribution company or approval board or any governmental authority.

“Outside Commercial Operation Date” means one hundred eighty (180) days after the Outside Construction Commencement Date.

“Parties” means Host and Developer collectively, and their respective successors and permitted assignees.

“Party” means Host or Developer individually, and their respective successors and permitted assignees.

“Permits” means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

“Permitted Use” means the use, occupation, and enjoyment of the Premises by Developer to design, procure, install, test, commission, own, operate, maintain, expand and

remove the PV System, all of which are designed and intended for the purpose of producing solar-generated electricity in accordance with Applicable Legal Requirements.

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

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

“Premises” means the portion of the Property on which the PV System will be installed and operated, which is more specifically identified in Exhibit A to this Agreement.

“Property” means the real property owned by the Host upon which the Premises is located.

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

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

“Services Agreement” has the meaning set forth in the recitals, a form of which is attached hereto as Exhibit G.

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

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

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

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

“Term” has the meaning set forth in Section 3.1.

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

ARTICLE II: LEASE OF PREMISES

2.1 Leased Premises.

(a) Host, in consideration of the covenants and agreements on the part of the Developer, hereby leases to Developer, and Developer accepts and takes from Host, the possession, use, enjoyment, and control of the Premises (as described in Exhibits A and A-1) for the sole and exclusive purpose of conducting the Permitted Use, as set forth below, subject to the conditions in this Agreement and the Host’s reserved uses as set forth in Article X (Quiet Enjoyment).

(b) As shown in Exhibit A, Host also grants to Developer a non-exclusive easement for reasonable pedestrian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance, and access to, electric lines, cables, conduits and related equipment necessary to operate the PV System and interconnect the PV System to the building owned by Host and located on the Premises, which is interconnected with the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility. In the event that the PV System is required to be connected directly to the distribution system operated by the Distribution Company, Host hereby grants to Developer a non-exclusive easement on, under, and across the Property to install, construct, operate and maintain electric lines, cables, poles, conduits and related equipment necessary to interconnect the PV System to the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility or otherwise meet the requirements of the SMART Program.

(c) Host also grants Developer the exclusive right to receive sunlight at the Premises during every hour of each day that sunlight reasonably could be received by the PV System, and Host shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System.

(d) To the extent requested by Developer and reasonably necessary, and subject to Applicable Legal Requirements and available space, as determined in Host’s sole discretion, Host shall provide necessary space on the Property at locations and for such time as specified by Host (such locations, the “Construction Laydown Area”) for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Developer shall not obstruct access to the Property, or interfere with or disrupt Host’s use thereof or operations therein. Following temporary use thereof, the Developer shall immediately restore the Construction Laydown Area and such other areas of the Property used by the Developer, but not included in the Premises, to their condition prior to Developer’s use.

(e) The Premises are demised subject to the following:

(1) any encumbrances shown on the survey of the Premises;

(2) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A-1;

(3) present and future zoning laws, ordinances, bylaws, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises for the Permitted Use;

(4) the condition and state of repair of the Premises as the same may be on the Effective Date;

(5) all electric and telecommunication cable or wireless services charges, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the construction and operation of the PV System or any appurtenant facilities or improvements associated with the Permitted Use;

(f) full compliance by the Developer with all Applicable Legal Requirements;

and

(g) Host's reserved uses, as provided in Article X (Quiet Enjoyment) and set forth in the Additional Exceptions, attached hereto as Exhibit A-1, or Special Terms and Conditions, attached hereto as Exhibit D.

2.2 As-Is Condition of the Premises. Developer accepts the Premises in the condition or state in which the Premises now are, and except as expressly provided herein, without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Premises or any part thereof may be put, subject to Developer's right to terminate this Agreement for failure of conditions precedent to construction set forth in Section 5.2.

2.3 Ownership of the PV System. Host shall have no ownership interest in the PV System or any of the products or services attributable to the PV System, except for any ownership interest Host may have by exercising its purchase option in accordance with Section 8.11 or by virtue of being a CVEC Member in the event that CVEC purchases the PV System. Developer and Host acknowledge and agree that Host shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with the ownership, construction, operation, maintenance, repair, or removal of the PV System unless and until Host exercises the purchase option in accordance with Section 8.11 and purchases the PV System.

2.4 Net Lease. Except as expressly set forth herein, the Parties acknowledge and agree that Host shall not be required prior to or during the Term to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, installation, operation, maintenance, repair reconstruction or removal of the PV System, subject to the Additional Exceptions set forth in Exhibit A-1.

2.5 Purpose. The Premises shall be used for the sole and exclusive purpose of conducting the Permitted Use. Except with the prior express written consent of Host Town, Developer shall not use the Premises for any use other than the Permitted Use.

2.6 Subordination. Developer acknowledges and understands that this Agreement and all rights of Developer are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions, permits, or other matters of record. Developer acknowledges and understands that the Host reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, which do not interfere with Developer's use of the Premises or the exercise of Developer's other rights hereunder and the operation of the PV System, and provided that each third party to which such grant is made acknowledges in writing Developer's rights under this Agreement. Host shall provide Developer with reasonable notice in the event that Host grants such additional rights on the Premises to a third party. Notwithstanding any term to the contrary contained herein, Host shall provide Developer with a Commercially Reasonable Subordination, Non-Disturbance and Attornment Agreement for any and all existing and future mortgagees and tenants of the Property.

2.7 No Interference. Developer shall operate, maintain and repair the PV System in a manner that will not obstruct or interfere with other uses of the Property, as identified in Exhibit A-1 to this Lease. In the event interference occurs, Developer agrees to take all Commercially Reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Host. Notwithstanding the foregoing, if the PV System is a ground-mounted system, Developer may implement reasonable security measures to control and monitor access to the Premises, which may include posting warning signs, lighting, cameras, installing fencing, and securing access points.

Host may make alterations to the Premises that do not substantially impair the installation and operation of the PV System. The Developer acknowledges and agrees that Host may have continued operation or maintenance responsibilities at the Premises to be conducted at the sole expense of the Host, and Developer will use Commercially Reasonable efforts to cooperate with Host's prosecution and completion of such work.

2.8 Use of the Premises. Developer and its subcontractors, agents, consultants, and representatives shall have reasonable access at all reasonable times, subject to any Special Conditions in Exhibit D (including under emergency conditions) to the necessary portion of the Property for the purpose of construction, interconnection, operation, inspection, maintenance, repair and removal of the PV System, and to any documents, materials and records of Host relating to the Premises that Developer reasonably requests in conjunction with these activities. Developer shall provide Host with reasonable notice of all activities conducted by or on behalf of

Developer on the Premises relating to the PV System. During any such activities, Developer, and its subcontractors, agents, consultants and representatives shall comply with Host's reasonable safety and security procedures (as may be promulgated from time to time) and Developer and its subcontractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Host's activities.

2.9 Notice of Lease. Developer shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and Host shall provide Commercially Reasonable assistance as necessary for Developer to do so, with the applicable land registry that in each case includes all information as may be required pursuant to M.G.L. c. 183, §4 with respect to the real property rights described in the Lease, as applicable. Developer shall be responsible for all reasonable documented costs of recording the Notice of Lease in a form attached hereto as Exhibit H.

ARTICLE III: TERM

3.1 Term. The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements, for one five (5) year period, with such modifications to the provisions hereto as may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

3.2 Holdover. If Developer or any party claiming by, through or under Developer, retains possession of the Premises or any part thereof for longer than one hundred twenty (120) days after the expiration or earlier termination of this Lease, then Host may, at its option, serve written notice upon Developer that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Developer shall also pay to Landlord all damages sustained by Host resulting from retention of such possession by Developer including but not limited to court costs and attorney's fees. Developer hereby agrees that the provisions of this Section shall not constitute a waiver by Host of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Host's right to terminate this Lease for Developer's breach of the Lease. For greater clarity, the 120-day period mentioned in this section is the period afforded to Developer for removal of the PV System pursuant to Section 8.9 of this Agreement.

ARTICLE IV: RENT

4.1 Rent. Commencing on the Commercial Operation Date until the end of the Term, Developer shall pay to Host an annual rental payment in the amount set forth in Exhibit A-2, to

be paid to the Town on a lump sum basis beginning on or before the Commercial Operation Date and on each anniversary of the Commercial Operation Date until the end of the Term. The amount of the rent payment shall be pro-rated for the last calendar year of Commercial Operation. If Developer shall fail to pay Host any sum required to be paid by Developer to Host within ten (10) Business Days after such payment is due, interest on the unpaid amount shall accrue at the Interest Rate from and including the date such payment is due but excluding the date the payment is received.

4.2 Taxes. Developer shall be responsible for and pay to the applicable Governmental Authority all ad valorem real and personal property taxes, if any, assessed by the local Governmental Authority, with respect to the leasehold or the PV System, as may be further set forth in Exhibit D (Special Terms and Conditions). The Parties acknowledge and agree that within thirty (30) days of Developer's payment of such charges and fees to the Host, the Host will have ninety (90) days to reimburse Developer for such charges and fees. In the event any of the sales of Net Energy are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

ARTICLE V: DESIGN, INSTALLATION AND OPERATION OF PV SYSTEM

5.1 General Description. Except as otherwise specified herein, the PV System shall consist of the equipment and property described in Exhibit B.

5.2 Conditions Precedent to Commencement of Construction. Developer's obligations under this Agreement are subject to the fulfillment or waiver by the applicable Party of each of the following conditions precedent:

(a) Developer shall have obtained financing on terms acceptable to Developer in its sole discretion. For the purposes of this subparagraph, financing may include debt financing, equity financing, tax equity financing, loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the construction and operation of the PV System;

(b) Developer shall have obtained all permits, licenses and other approvals required by Applicable Legal Requirements and from the Distribution Company for construction and installation of the PV System, and agree to follow the requirements of Section 5.3, below (Governmental Permits);

(c) Developer shall have determined that no features of the Premises will substantially impair the installation and operation of the PV System, and that the Premises has sufficient space to accommodate the installation, operation and maintenance of the PV System along with the operation and maintenance of existing facilities;

(d) Developer shall have determined that it is feasible to make related improvements as necessary on the Premises to install, operate, and interconnect the PV System

to existing infrastructure, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any required upgrades, but that this condition may be satisfied if either Party agrees to implement any necessary upgrades at its own cost, or if the Parties agree to share the costs of such upgrades;

(e) Distribution Company shall not require any material changes in plans and/or specifications to the PV System or its interconnection that require additional costs or fees, in excess of \$10,000 in the aggregate, or such greater amount as Developer and Host may agree or such greater amount as Developer and Host may agree (including agreement as to allocation of costs) pursuant to Section 8.1;

(f) The Interconnection Agreement, in form and substance satisfactory to Developer and Host, in each of its reasonable discretion, is finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, as such deadline may be extended pursuant to Section 8.1;

(g) Developer shall have determined to its satisfaction that the PV System is eligible to receive the investment tax credit of thirty percent (30%) of eligible costs pursuant to Section 48 of the Internal Revenue Code;

(h) Developer shall have received a Statement of Qualification (as defined in 225 CMR 20.02) under the SMART Program;

(i) Host, in its regulatory capacity as a Governmental Authority, and Developer shall have reached agreement on the liability of Developer for ad valorem property taxes, if any are to be assessed; and

(j) Host shall have approved the final design of the PV System and its integration into the Host's Property, in accordance with Section 5.4 hereof.

Either Party may waive any condition precedent applicable to it as set forth in this Section 5.2. Without limitation of Section 8.1(a), either Party may terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent applicable to it and shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be Commercially Reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement pursuant to this Section 5.2, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement.

5.3 Governmental Permits. Developer shall obtain at its sole cost all Permits required for Developer's use of the Premises, the Permitted Use, and the PV System from any and all Governmental Authorities having jurisdiction in the matter. Developer shall promptly inform Host of all significant developments relating to the issuance of such Permits. Host shall reasonably cooperate with Developer in procuring such Permits. If any changes in plans and/or

specifications for the Project are required by any Governmental Authority, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld.

5.4 Design and Installation. Developer shall design the PV System in accordance with Good Engineering Practice, shall consult with and receive input from Host with respect to integration of the PV System with the Host's facilities and submit the final design for Host's approval, not to be unreasonably withheld or delayed, with a copy to CVEC. In the case of a Battery Energy Storage System, Developer shall submit a fire prevention plan to Host's fire chief and obtain his or her approval. Developer shall furnish all supplies, materials, labor, tools, equipment and other services necessary for installation of the PV System. As soon as practicable after the Effective Date, Developer shall provide Host and CVEC an updated schedule for design, permitting, equipment procurement, commencement of construction and commissioning of the PV System, indicating milestones and durations of activities. Subject to delays excused hereunder, or the failure of the Host to comply with its obligations hereunder, Developer shall commence construction of the PV System no later than the Outside Construction Commencement Date and will proceed diligently and continuously thereafter until completion, but in no event shall the installation be completed later than the Outside Commercial Operation Date. Developer shall install the PV System in accordance with Good Engineering Practice, all Applicable Legal Requirements, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E, applicable requirements of the insurance policies maintained by Host with respect to the PV System, and the terms of this Agreement.

5.5 Interconnection with Electric Distribution Grid. Developer shall obtain at its sole cost all Permits and agreements required for Developer's interconnection of the PV System to the electric distribution grid maintained by the Distribution Company. Developer shall promptly inform Host and CVEC of all significant developments relating to such interconnection matters. Host shall provide Developer with such information as Developer may reasonably request in connection with Developer's procurement of such Permits and agreements. If any material changes in plans and/or specifications to the PV System are required by the applicable electric distribution company, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld, with a copy to CVEC.

5.6 Access to and Use of the Premises. During construction and the operation of the PV System, including, but not limited to, all pre-construction activities, Developer and its contractors or agents shall have access to the Premises in accordance with Exhibit D (Special Terms and Conditions).

5.7 Plans and Specifications. Installation of the PV System shall be completed in accordance to plans approved by Host, which approval shall not be unreasonably withheld, with a copy to CVEC. Prior to the Commercial Operation Date, Developer shall provide Host and CVEC with documentation as set forth in the Common Technical Specifications, Exhibit E, including as-built plans, permission to Operate from local distribution company, and

specifications of the PV System installed on the Premises which show the actual location of the PV System.

5.8 Maintenance Responsibilities. Developer shall properly maintain the PV System, conduct all required maintenance, and make all repairs thereto in accordance with Good Engineering Practice. Developer shall take all measures necessary to maximize production of the PV System throughout the Term. Such obligations shall include, but not be limited to, maintaining the PV System in a condition of Commercial Operation, and taking all actions necessary to comply with the Applicable Legal Requirements. The Developer shall deliver a maintenance report annually to the Host and CVEC. Developer shall be responsible for all costs related to the PV System, including, but not limited to, those costs necessary to construct, operate, maintain, repair, and remove the PV System. Host shall have no duty or liability to Developer with respect to maintenance, repair or security of the PV System.

5.9 Manufacturer and Installer Warranties. All manufacturer and installer warranties shall run to the benefit of the Developer.

5.10 Use of Installation and/or Maintenance Subcontractors. Developer may use qualified subcontractors to install and/or maintain the PV System, provided that Developer shall at all times remain fully responsible for the acts and omissions of such subcontractors. Installation and maintenance subcontractors shall be required to meet the insurance requirements set forth in Exhibit C, provided, however, that satisfaction of such requirements shall not relieve Developer of its responsibilities for such subcontractors as set forth in this Section 5.10.

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

(a) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration, a "Substantial Alteration");

(b) No Substantial Alteration shall be commenced except after prior written notice to and consent from Host, which consent shall not be unreasonably withheld;

(c) Any alteration or Substantial Alteration shall be made with reasonable dispatch, in accordance with Good Engineering Practice, and in compliance with all Applicable Legal Requirements; and

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

(e) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibits A-1 and D to this Lease.

5.12 Host Cooperation. Host shall have the following duties under this Agreement:

(a) to act expeditiously, and in good faith in supporting application for and facilitating any Permits necessary for the construction and operation of the PV System. Notwithstanding anything to the contrary herein, the execution of this Lease does not authorize a waiver of any permit or approval the Developer may require from the Host acting in its regulatory capacity, nor require the Host, acting in its regulatory capacity, to expedite its review of the Developer's Permit application in the Host's normal course of business;

(b) to cooperate with Developer to the extent reasonable and appropriate given the particular use of the Property on issues regarding access, construction, on-site electrical metering and consumption, and interconnection.

5.13 Emergencies. The Parties agree that Host shall have the right, but not the obligation, to respond to any emergency involving the PV System if necessary to protect the Property, including the Premises, or to protect public health or safety, and to effectuate any necessary repairs or take corrective action.

5.14 Damage. Any damage done to the Premises or other property not belonging to Developer during installation or during operations which is directly caused by Developer shall be repaired at Developer's expense as soon as practicable, but no later than thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

5.15 Payment and Performance Bonds. Prior to the Commencement Construction Date, the Developer shall provide Host with a performance bond from an issuer with a Best's rating of not less than "A", and from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570, in a form reasonably acceptable to Host (the "Performance Bond"), which Performance Bond shall be in an amount sufficient to secure 100% of Developer's obligations with respect to the construction of the PV System under this Agreement or, prior to completion of construction and commissioning of the System. The Performance Bond shall name Host as obligee. The Performance Bond shall remain in effect until sixty (60) days after delivery by Developer to Host of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by Host, (b) Host has provided notice to Developer of a dispute regarding the completion of the PV System in accordance with the provisions of this Agreement, in which case the Performance Bond shall remain in effect until the resolution of such dispute, (c) Host provides the issuer of the Performance Bond written notice authorizing the expiration of the Performance Bond, or (d) this Agreement is terminated pursuant to the provisions hereof and Developer has fulfilled its removal and restoration obligations under this Agreement. In addition, at least fifteen (15) days prior to the Construction Commencement Date, Developer shall provide Host with a payment bond from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to Host (the "Payment Bond"). The Payment Bond shall name Host as obligee. The

Payment Bond shall be released upon the later of: (a) receipt by Host of satisfactory evidence that all subcontractors, laborers, have been paid in full; or (b) the Commercial Operation Date.

5.16 Mechanics Liens. Developer shall not file any mechanics liens against Host for its work performed in accordance with this Agreement and this requirement shall flow down to all of Developer's contractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the PV System, Developer, within ten (10) days after notice to Developer of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Developer shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Host may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Host and costs and expenses, including court costs and attorney's fees reasonably incurred by Host in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Host's making of the payment of the cost and expenses, shall be paid by Developer to Host within ten (10) Business Days of Host's invoice therefor.

5.17 Utilities. Developer shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all electricity consumed by the Developer on the Premises; provided that the Host shall make available to Developer throughout the Term, and Developer may use in connection with the Permitted Use, all electricity, water, and internet service located on the Premises. For avoidance of doubt, Host shall have no obligation to provide new utility interconnections on the Premises. Host shall keep electric transmission and distribution facilities on the Property in good working order, and work in good faith with Developer to resolve any service issues on the Property promptly. Except as provided herein, and without limitation of the obligations of the Host in the preceding sentence, Host shall have no duty or liability to Developer with respect to the maintenance, repair, upgrade, replacement or security of any other utilities, nor shall Host have any liability to Developer (including, without limitation, liability for lost revenue) arising from Host's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Developer desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Host, Developer may do so at Developer's expense subject to notice to CVEC and the Host and the approval of Host, which shall not be unreasonably withheld.

5.18 Operations and Maintenance Manual; Training. Prior to the Commercial Operation Date, the Developer shall deliver a set each to Host and CVEC an operations and maintenance manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit E. In addition, Developer will train Host's representative(s), including employees or contractors of Host on basic principles of operation and maintenance of the PV System and on emergency preparedness and response. Developer shall also provide an online portal or other tool sufficient to allow the Host to monitor activity at the PV System without operation of PV System. Notwithstanding the foregoing, Host shall have no right to perform any maintenance or repair on the PV System without Developer's prior written consent,

except in the case of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons.

5.19 Notice of Commercial Operation. Subject to the provisions of this Agreement, Developer shall notify and represent to Host and CVEC when the PV System has achieved Commercial Operation (“Notice of Commercial Operation”), and shall in such notice certify to Host and CVEC the Commercial Operation Date.

5.20 Late Completion. If the commencement of construction does not occur on or before the Outside Construction Commencement Date and/or Commercial Operation does not occur on or before the Outside Commercial Operation Date for any reason other than Host’s failure to perform its obligations hereunder or as set forth in Section 5.21, Developer shall pay to Host all lost rent revenue (prorated by day) for the duration between: (a) the Outside Construction Commencement Date and the date of actual Construction Commencement Date; (b) the Developer’s anticipated Commercial Operation date, and the date of actual Commercial Operation; or (c) if the actual Construction Commencement Date or Commercial Operation Date are not achieved, such Delay Liquidated Damages shall continue until twelve (12) months following the Outside Commercial Operation date, at which point this Agreement shall terminate (“Delay Liquidated Damages”).

5.21 Notwithstanding the foregoing, Developer shall not be obligated to commence payment of the annual rent as provided in Section 5.20 in the event that Developer cannot satisfy the Outside Construction Commencement Date and/or Outside Commercial Operation Date milestone due to delays caused by the Host, CVEC, the local electric utility, governmental authorities or an event of Force Majeure and the Developer is utilizing Commercially Reasonable efforts to overcome such delays.

5.22 Maintenance; Repairs.

(a) Developer shall take good care of the Premises and the PV System, conduct all required maintenance and make all repairs to the PV System, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep Premises and the PV System in good condition, and in compliance with all Applicable Legal Requirements and Good Engineering Practice.

(b) Host shall have no duty or liability to Developer with respect to the maintenance and repair of the PV System.

(c) Any damage caused by Developer or its subcontractors to the Premises or other property not belonging to Developer or its subcontractors shall be repaired at Developer’s expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

(d) Host shall maintain the Building in good repair that is sufficient to support operation of the PV System. However, nothing in this Agreement shall limit Host’s ability to maintain the Premises in a reasonable manner consistent with Host’s current and past practices,

the Additional Exceptions set forth in Exhibit A-1, and any other conditions imposed by a Governmental Authority that are applicable to the Premises.

5.23 Host's Maintenance. Developer acknowledges that Host may need to temporarily remove or relocate all or a portion of the PV System in order to perform routine or necessary maintenance. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Developer shall be solely responsible):

(a) Host will provide Developer with at least thirty (30) days prior written notice of its intent to temporarily relocate (except in the case of an Emergency, in which case notice shall be given as soon as practical and may be after some emergency response work has occurred);

(b) In such notice, Host will certify that Host's requested removal or relocation of the PV System is required to perform routine or necessary maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency response work has occurred) and Developer will have no obligation to temporarily remove or relocate all or a portion of the PV System unless the Host provides such certification;

(c) Host will be responsible for any and all actual, documented, reasonable costs incurred in the relocation of all or a portion of the PV System to and from the temporary location, including any temporary storage costs;

(d) any such relocation shall be performed by Developer (except that, in the case of an Emergency, Host may perform such activities as are reasonably necessary in light of such Emergency);

(e) Host may not request more than one relocation or temporary removal during the Term, which shall not be of a duration longer than thirty (30) days unless otherwise agreed by the Parties; and

(f) in the event that other than temporary removals or relocations that are an "Emergency" (i) the PV System is temporarily removed or relocated for longer than thirty (30) days or if there has already been at least one relocation during the Term, or (ii) there is more than one relocation or temporary removal during the Term, Host shall promptly pay Developer for any lost revenue (including lost revenue attributable to the sale of electricity, environmental attributes, and any incentives related to or attributes of the operation or ownership of the PV System) for the duration of the temporary removal or relocation in excess of thirty (30) days.

Such lost revenue shall be based on Net Energy that would have been produced during the time period of the relocation or temporary removal as estimated by PVWatts Calculator, or similar recognized method using accurate data inputs for the parameters of the PV System and its location. Host agrees to work in good faith to minimize the timing and the operational and economic impacts on Developer of a temporary removal or relocation of the PV System. For purposes of this Section 5.22, "Emergency" shall mean any *Force Majeure* event, condition or circumstance at or affecting the Premises that would, in the reasonable opinion of Host,

materially and substantially harm life or property on the Premises without immediate preventative or remedial action. The Host shall not be responsible in any way for lost revenue that is the result of an Emergency.

5.24 Project Relocation. Host may request to move the PV System to another location on the Property or to another site owned by Host, but any such relocation shall be subject to the approval of Developer and Financier, not to be unreasonably withheld provided the alternate location or site is suitable for the PV System without increasing the development, construction, interconnection or operating cost of the PV System, and the PV System is capable of generating substantially equivalent amounts of electric energy when installed at the alternate site. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the PV System but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Developer in connection with the new location. Host shall pay all costs associated with the removal and relocation of the PV System, including design, permitting, site investigations, installation, and testing costs and interconnection study and costs.

In addition, starting at the shutdown of the PV System pursuant to such relocation, and ending at the Commercial Operation of the PV System when such relocated PV System is reinstalled at a new location (the "Relocation Event"), Host will pay Developer an amount equal to the sum of (i) payments that Host would have made to Developer hereunder for electric energy that would have been produced by the PV System following the Relocation Event; (ii) revenues that Developer would have received with respect to the PV System under applicable solar programs and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes that Developer would have received with respect to electric energy that would have been produced by the PV System following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the PV System in the same period in the previous Contract Year, unless Developer and Host mutually agree to an alternative methodology.

5.25 No Voiding of Existing Warranties. Developer shall ensure that the PV System is designed and constructed so that no existing warranties that apply to the Premises are voided because of the installation of the PV System. Developer shall consult, as may be necessary, with any company that has provided such warranty.

5.26 Use of Hazardous Materials Prohibited. Developer shall not use at nor transport to the Property, including the Premises, any hazardous materials, including any substances defined, classified, or otherwise denominated as a "hazardous substance", "toxic substance", "hazardous material", "hazardous waste", "hazardous pollutant", "toxic pollutant" or oil by the Applicable Legal Requirements, unless specifically authorized by Host. Developer shall have no liability concerning the release of hazardous materials on or from the Premises other than liability arising from or related to any hazardous materials brought to the Premises at the direction of Developer. The Developer shall fully indemnify the Host for any release of

hazardous materials brought to the Property by Developer (or its contractors) and caused by the Developer (or its contractors) including all court costs, attorney's fees, damages and liabilities as a result thereof. The provisions of this Section 5.25 shall survive the expiration or earlier termination of the Agreement.

ARTICLE VI: DEVELOPER'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS

6.1 Developer's Representations and Warranties. As of the Effective Date of this Agreement, Developer represents and warrants to Host as follows:

- (a) Developer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;
- (c) Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement; and
- (d) None of the documents or other written or other information furnished by or on behalf of Developer to Host or its agents pursuant to this Agreement contains any knowingly untrue statement of a material fact or knowingly omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

6.2 Developer's Covenants. In addition to the other covenants set forth in this Agreement, Developer covenants to Host as follows:

- (a) Developer shall promptly inform Host and CVEC of the occurrence of any event that may reasonably be expected to materially adversely affect the operation of the PV System or the performance of Developer's obligations under this Agreement (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on Developer or Host); and
- (b) Developer shall provide Host or CVEC such other information as Host or CVEC may reasonably request in order to review Developer's compliance with the terms of this Agreement.

ARTICLE VII: HOST'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS

7.1 Host's Representations and Warranties. As of the Effective Date of this Agreement, Host represents and warrants the following to Developer:

- (a) Host has full legal capacity to enter into this Agreement;
- (b) Host has the power to perform all of its obligations hereunder and the right to grant Developer rights provided under this Lease;
- (c) The execution of this Agreement has been duly authorized in accordance with open meeting laws, and each person executing this Agreement on behalf of Host has full authority to do so and to fully bind Host;
- (d) Host knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Host or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Host's ability to carry out its obligations under this Agreement;
- (e) Host has delivered to Developer a true, correct and complete copy of warranties in effect with respect to the Premises; and
- (f) Host warrants that it holds sufficient title in the Premises to authorize the completion of activities in this Lease, except those listed in the Additional Exceptions set forth in Exhibit A-1.

7.2 Host's Covenants. In addition to the other covenants set forth in this Agreement, Host covenants to Developer that throughout the Term and any extensions thereof, Host shall not interfere or allow a third party to interfere with the sun affecting the PV System.

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES; PURCHASE OPTIONS

8.1 Termination. Subject to Section 8.4 (Force Majeure), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Any applicable party may terminate this Agreement prior to the Construction Commencement Date for failure to achieve a condition precedent to construction, pursuant to Section 5.2.
- (b) The non-defaulting party may terminate this Agreement in the event a material Event of Default pursuant to Section 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer) prevents operation of the PV System for twelve (12) months, except with respect to Force Majeure events.

(c) Subject to Section 5.20, unless the Developer is paying Delay Liquidated Damages, Host may terminate this Agreement in the event that Commercial Operation is not achieved by the Outside Commercial Operation Date unless the Developer cannot satisfy the Outside Commercial Operation Date milestone because Developer lacks a permit, approval or Interconnection Agreement necessary to commence Commercial Operation of the PV System, and Developer is utilizing Commercially Reasonable efforts to secure such permit, approval or Interconnection Agreement, because of Force Majeure as provided in Section 8.4, or because of Host's failure to comply with its obligations under this Agreement.

(d) Host may terminate this Agreement upon ten (10) Business Days written notice to the Developer, in the event that Developer's material breach of this Agreement, including but not limited damage to the Premises or its occupants, and such damage is not cured within cure periods set forth in Section 8.3.

(e) Host may terminate this Agreement upon five (5) Business Days written notice, in the event Developer fails to cure an Event of Default under Section 8.3(c);

(f) Either Party may terminate this Agreement prior to the Construction Commencement Date by written notice to the other Party given not later than twenty (20) Business Days following the applicable related event specified below, but before the Construction Commencement Date (if possible, and unless otherwise provided):

(1) in the event that during the interconnection process the Distribution Company imposes a cost for utility upgrades necessary to interconnect the PV System in excess of \$10,000, the Parties agree that for each \$10,000 in excess of the initial threshold of a cost of \$10,000 for utility upgrades to be paid solely by the Developer, the Developer may decrease the annual rent payment by the amount specified in Exhibit A-2, and Host shall determine in its sole discretion whether to accept such decrease in annual rent, in which case this condition shall be deemed satisfied; or

(2) in the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Host, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, provided, however, that Host will extend the deadline for compliance with this subsection in thirty (30) day increments, upon Host's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement, and further that said deadline will be automatically extended to the extent that achievement of the same is delayed while awaiting utility action.

(f) Subject to Section 8.11(1), this Agreement shall terminate at such time as Host purchases the PV System pursuant to the exercise of its Purchase Option in accordance with the terms of Section 8.11, or otherwise.

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

(a) Host breaches any material obligation under this Agreement, and fails to cure such breach within sixty (60) Business Days after notification by Developer of the breach.

(b) If any material representation or warranty made by Host in Article VII of this Agreement (Host's Representations, Warranties, and Additional Covenants) proves to have been misleading or false in any material respect when made and as such has had a material adverse effect on the Developer, and Host does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Developer.

(c) Host fails to carry out its obligations and duties pursuant to Article X (Quiet Enjoyment).

(d) Any other material breach of this Agreement, or the Intergovernmental Power Sale Agreement, which proves to have a material adverse effect on the Developer, not specifically enumerated above.

Events of Default in this Section 8.2 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.3 Events of Default by Developer. It shall constitute an Event of Default by Developer if Developer:

(a) breaches any material obligation under this Agreement that proves to have a material adverse effect on Host and fails to cure the breach within thirty (30) days after notification by Host of the breach; provided, however, no Event of Default shall occur if the nature of such breach is such that it cannot reasonably be cured within thirty (30) days and Developer commences remedying the breach within said thirty (30) day period and actually remedies the breach with ninety (90) days after notification by Host of the breach;

(b) makes any material representation or warranty made by Developer in Article VI (Developer's Representations, Warranties and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Host, and Developer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Host; or

(c) fails to provide or maintain in full force and effect any required insurance or bond or other surety, if such failure is not remedied within five (5) Business Days after receipt of written notice from the Host, or the occurrence of a default by the insurer of such Developer under any insurance policy provided hereunder.

8.4 Force Majeure. Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Host) and 8.3 (Events of Default by Developer), if by reason of Force Majeure either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a)

the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (b) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (c) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. The affected Party shall, as soon as practicable, give the other Party hereto written notice describing the particulars of the occurrence of the Force Majeure event. If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date, and neither Party shall have liability by reason of such termination. In the Event of Termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

8.5 Remedies.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer), as applicable, the non-defaulting Party may seek specific performance and/or monetary damages.

(b) So long as an Event of Default has occurred and has not been cured, the non-defaulting Party may terminate this Agreement subject to the limitations and under the provisions of Section 8.1.

(c) In the event of an Event of Default by Host requiring the permanent removal of the PV System from the Premises, and provided that the Host designates an alternative location at which the PV System is able to produce substantially equivalent amounts of Electricity, the Developer shall mitigate any damages by removing, storing and re-installing the PV System at the alternative location, all such costs to be borne by Host as damages.

(d) [Reserved].

For breach of any provision for which an express remedy, other than termination, or express measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct and actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR

IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY. DEVELOPER'S AGGREGATE LIABILITY HEREUNDER SHALL NOT IN THE AGGREGATE EXCEED AN AMOUNT EQUAL TO THE AMOUNT SET FORTH IN EXHIBIT A-3, WHICH EXCLUDES THIRD PARTY INDEMNIFICATION OBLIGATIONS.

8.6 Step-in Rights of Financier.

(a) Host agrees to give written notices to any Financier, of which Host has written notice, upon the occurrence of any Event of Default hereunder, the failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, or an Event of Termination on account of Force Majeure, and Financier shall have a period of thirty (30) days after receipt of notice of failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed an additional ninety (90) days, to cure the Event of Default or Event of Termination on account of Force Majeure if Financier uses Commercially Reasonable efforts to cure such Event of Default or Event of Termination during the initial ninety (90) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such a reasonable period of time thereafter.

(b) Host agrees that, prior to termination pursuant to Section 8.1 (Termination), Host shall give written notice to any Financier of which Host has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such Event of Termination.

(c) Host also agrees that, in the event that Host terminates this Agreement pursuant to Section 8.1 (Termination), and Financier agrees in writing to assume all liabilities and obligations of the Developer, then a new agreement shall be executed by Host with Financier to assume the Developer's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Financier or extend or expand Host's obligations hereunder.

8.7 Damage or Destruction of PV System.

(a) Developer shall bear the risk of loss to the PV System (including casualty, condemnation or Force Majeure), except to the extent that such loss results from the gross negligence of the Host or Host's agents, representative, customers, vendors, employees, or contractors.

(b) In the event of any PV System loss, Developer shall, at its sole cost and expense either (i) repair or replace the PV System, or (ii) elect to terminate this Agreement in

which case Developer shall remove the PV System and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date in accordance with Section 8.8 (Site Restoration).

(c) In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects not to repair or replace the Premises, the Developer shall be limited to recovery of proceeds from its insurance coverage. In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects to repair or replace the Premises, the Developer may exercise either of its options under Section 8.7(b).

8.8 Site Restoration. On the Termination Date, Developer shall peaceably and quietly leave, surrender and yield up unto Host the Leased Premises, provided however that following the Termination Date of this Agreement, Developer shall have one hundred eighty (180) days to remove the PV System from the Leased Premises, and to restore the Leased Premises to a neat and orderly condition, reasonable wear and tear excepted, or such additional time as may be necessary after Host has declined to exercise a Purchase Option pursuant to this Lease. Developer and Host shall agree upon whether supports, anchors, penetrations, conduits, or other similar ancillary equipment will be removed, considering whether such removal would cause harm or damage to the Premises.

8.9 Abandonment of PV System. Notwithstanding anything to the contrary contained in this Agreement, any waiver in whole or in part of the requirement to remove the PV System shall require the written approval of Host. Any of the PV System left on the Premises after the passage of one hundred twenty (120) days after the Termination Date shall be deemed abandoned. Host shall provide written notice to the Developer within thirty (30) days of the expiration of such one hundred twenty (120) day period, of its election to retain all or any of the PV System as its property, or dispose of all or any of the PV System in such reasonable manner as Host may see fit and at Developer's sole cost; provided, however, that Host's election to retain the PV System as its property shall relieve Developer from any liability for its failure to remove such PV System; and provided further, however, that the foregoing shall not apply to any of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure or the negligent acts or omissions of Host (in which in either case the time period for removal shall be extended on a day for day basis).

8.10 Decommissioning Assurance. Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount specified in Exhibit D, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Depending on the circumstances, and subject to Host's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of Developer's failure to comply with its PV System removal and Premises restoration obligations under the Agreement.

8.11 Purchase Options.

(a) Grant of Purchase Option to Host. For and in consideration of the agreement of Host to enter into this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Developer hereby grants to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Lease (the "Host Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (i) upon the tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date, or (ii) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article. The Parties acknowledge that Host may, in its sole discretion, assign its purchase option-related rights under this Lease to CVEC.

(b) Timing of Purchase Option. If the Host declines the Purchase Option or otherwise fails to send its Host Purchase Option Notice within sixty (60) Business Days prior to tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date, or the date of the expiration of the Term, then the Host Purchase Option shall be deemed to have been declined. Promptly following receipt of a Purchase Option Notice from Host, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host the records of the operations, maintenance, and warranty repairs of the PV System and the Environmental Attributes, and shall provide reasonable access to inspect the PV System for its inspection during normal business hours.

(c) Inspection. Host shall have fifteen (15) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

(d) Determination of Purchase Price. The purchase price shall be the higher of the Host Purchase Payment in Exhibit A-2, or the Appraised Value of the PV System, including but not limited to its physical assets, as determined by the Independent Appraiser ("Purchase Price"). If the Purchase Option arises out of a Developer Event of Default, the Purchase Price shall be the Appraised Value.

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

(f) PV System Records and Inspection. The Developer shall make the records related to the PV System available to the Independent Appraiser and shall give the Independent Appraiser reasonable access to inspect the PV System. Similarly, Host shall make available to

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

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

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

(i) Final Purchase Option Notice. Within ten (10) Business Days of the Final Determination, Host shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with this Section 8.11 (“Final Purchase Option Notice”). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable.

(j) Transfer Date. The closing of any sale of the PV System (the “Transfer Date”) pursuant to this Article will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 8.11(i). This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

(k) Terms of PV System Purchase. On the Transfer Date (a) Developer shall surrender and transfer to Host all of Developer’s right, title and interest in and to the PV System, and the Environmental Attributes arising after the Transfer Date, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes arising prior to the Transfer Date, (b) Host shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) Host shall pay to Developer all other amounts owing to Developer as of the Transfer Date arising hereunder, 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 PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes created following the Transfer Date in Host, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Host. The purchase shall be on an “as is,” “where is” basis without warranty of any kind.

(l) If Host exercises its Purchase Option, then the Host will assume responsibilities under agreements with energy generation customers existing as of the Transfer Date, until the termination date of such agreements. As set forth in Section 11.1(a), Developer shall include in any such agreements with energy generation customers a right of Developer to assign such contracts to Host. Monthly Minimum Reliability Contribution assessments shall be assumed by the entity that has exercised the Purchase Option. In the event that CVEC purchases the PV System, this Agreement shall be novated to substitute CVEC for the Host and shall continue in full force and effect.

ARTICLE IX: INDEMNIFICATION; INSURANCE

9.1 Developer Indemnification of Host. To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Host and all of its agents, officers, employees, boards, commissions, and representatives from and against all third-party claims, causes of action, suits, costs, damages, and liability of any kind (“*Losses*”), including any Environmental Claim, which arise out of the performance of Developer’s work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions, including failure to comply with the provisions of this Agreement, of the Developer, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts Developer is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Host, but the Developer’s obligation to pay Losses shall be reduced in proportion to the percentage by which the Host’s negligent or intentional acts, errors or omissions caused the Losses.

9.2 Host Indemnification. To the extent permitted by law, Host shall indemnify and hold harmless Developer from and against any and all Losses from or to third parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Host, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of Developer, but the Host’s obligation to pay Losses shall be reduced in proportion to the percentage by which the Developer’s negligent or intentional acts, errors or omissions caused the Losses. Notwithstanding any other provision in this Agreement, the Host’s liability hereunder shall be limited by the protections and immunities afforded by and to the amount set forth in Chapter 258 of the Massachusetts General Laws.

9.3 **Insurance.** The Parties agree to comply with the insurance obligations allocated to them in Exhibit C hereto.

9.4 **Survival.** If a Party receives notice of the commencement of any proceeding in connection with Losses asserted by any third party as to which it believes that the other Party may have an obligation under Section 9.1 or Section 9.2, such Party shall deliver to the indemnifying Party reasonably prompt written notice thereof, but in any event not later than sixty (60) calendar days after receipt of such notice. Failure to deliver such prompt written notice shall not relieve the indemnifying Party of its obligations under Section 9.1 or Section 9.2, as applicable, except to the extent that the indemnifying Party is prejudiced by reason of such failure; provided that notwithstanding the foregoing, the provisions of Section 9.1 and 9.2 shall survive for thirty-six (36) months following the commencement of such proceeding.

ARTICLE X: QUIET ENJOYMENT

10.1 **Quiet Enjoyment.** Host covenants that Developer shall quietly have and enjoy the Premises throughout the Term and any extensions thereof. Host warrants and agrees that, throughout the Term and any extensions thereof:

(a) the Premises shall be dedicated to Developer's use for conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the PV System, except as provided for in Section 10.2 and subject to the Additional Exceptions set forth in Exhibit A-1 and Special Conditions in Exhibit D;

(b) any other uses of the Premises by Host or any third party pursuant to Section 10.2 and the Additional Exceptions set forth in Exhibit A-1 shall not materially interfere with the Permitted Use and the operational and solar requirements of the PV System;

(c) Host shall maintain or obtain any agreements, contracts, consents, Permits, approvals, or other instruments or permissions necessary for Developer to have the quiet enjoyment of its rights under this Agreement; and

(d) Host shall, in good faith, use its best efforts to protect Developer's quiet enjoyment of its rights hereunder, including, without limitation, defending against a third party claim that could materially interfere with Developer's rights under this Article X or the Permitted Use.

Subject to the specific provisions of this Agreement permitting the same, Host shall have the right to enter upon the Premises at any time, at its own risk, as may be necessary in connection with the maintenance of the Premises for any purpose, consistent with Section 5.21, and provided that such access does not materially interfere with or affect the operation of the PV System, no such entry that complies with the provisions of this Agreement permitting the same shall be considered a breach of the covenant of quiet enjoyment.

10.2 Host's Reserved Uses. Except as specifically set forth in the Additional Exceptions contained in Exhibit A-1, Host shall not itself conduct any other use, nor shall Host allow any third party to conduct any other use, on the Premises.

ARTICLE XI: ASSIGNMENT AND MORTGAGE

11.1 Assignment.

(a) **Developer Assignment.** Except as otherwise provided by this Agreement, Developer shall not assign, subcontract, sublet or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Host, provided that prior notice to or consent of Host shall not be required: (i) for an assignment or transfer by Developer to any of its other individual members or to CVEC; and (ii) for a collateral assignment by Developer to any Financier, subject to the terms and conditions of this Article XI. For assignments requiring Host's approval, approval may be denied in the reasonable discretion of Host if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning Developer. Notwithstanding the foregoing, Host may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Developer. Developer's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Developer shall reimburse Host for its reasonable attorneys' fees related to review and approval of assignments, and such reasonable attorneys' fees as may be incurred by Host.

(b) **Host Assignment.** Host shall not assign this Agreement without the prior consent of Developer, such consent not to be unreasonably withheld, provided, however, that any such assignment shall be made subject to the terms and provisions of this Agreement. Host shall assign this Agreement to any successor owner or lessee of the Property or the Premises or to any person that holds an exclusive easement interest in the Premises or the PV System. Host's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Host shall promptly provide Developer a copy of the assignment document following any assignment.

(c) The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto. Notice of any permitted assignment shall be provided to the other Party as soon as practicable.

11.2 Financing by Leasehold Mortgage. Host is cognizant of the need of Developer to finance its interest in the Premises and the PV System thereon, and therefore specifically agrees, subject to Section 8.6, without any further request for prior consent to permit Developer to mortgage, assign or transfer its interest in this Agreement and/or the Premises for the purpose of obtaining financing, which shall include equity and/or debt, provided:

(a) The term of such mortgage, assignment or transfer, or other security interest shall not exceed the Term; and

(b) Developer shall give Host and CVEC notice of the existence of any mortgage, assignment or transfer, together with the name and address of the mortgagee, assignee or transferee, within thirty (30) days of the execution of such mortgage, assignment or transfer.

11.3 Financing by Leasehold Mortgage Release of Developer. Developer shall be relieved from its obligations under this Agreement in whole or in part, as the case may be:

(a) by any whole or partial disposition of Developer's interest in this Agreement in compliance with Section 11.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by the terms of this Agreement, unless the Parties agree otherwise, and except as otherwise provided by the terms of any assignment or transfer; and

(b) in the event of any foreclosure by a Financier, in which case the Financier shall substitute for the Developer for purposes of this Agreement.

Absent express written consent of Host, the execution of a mortgage or any assignment from a Financier to another Financier shall not relieve Developer from its obligations under this Agreement.

11.4 Financier Provisions. Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or in any PV System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Host or Host's fee interest in and to the Premises, or Host's rights under this Agreement. Host shall promptly execute any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendment does not materially change the terms of this Agreement.

(a) **Financier's Right to Possession, Acquire and Assign.** Pursuant to the provisions of this Section 11.4 and subject to Section 8.6, a Financier shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold estate by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; (iv) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure; and (v) to sell the PV System and rights under any contracts dealing with the sale of Net Energy or renewable energy certificates from the PV System to a third party. Host's consent shall not be required for the Financier's acquisition of the encumbered leasehold estate created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

(b) Upon the Financier's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Financier shall have the right to sell or assign said acquired leasehold estate, provided Financier and proposed assignee (as applicable) shall

first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Host, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of Developer's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements. Financier may assign this Agreement subject to the same requirements for assignment in Section 11.1(a).

(c) Notice of Default; Opportunity to Cure. The Financier shall be entitled to receive simultaneous notice of any default by Developer, provided that such Financier shall have first delivered to Host notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by state laws, rules, regulations, Developer's procedures, and the provisions of this Agreement. If any notice shall be given of the default of Developer and Developer has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice that Developer has failed to cure such default and such Financier shall be entitled to cure any such default pursuant to the terms of Section 8.6. The Financier may take possession of the Premises and the PV System, and operate the PV System if necessary, pursuant to Section 8.6.

ARTICLE XII: DISPUTE RESOLUTION

12.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties so agree, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be the courts for or in County of Barnstable, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

12.2 Stay of Termination.

(a) During informal negotiations and mediation pursuant to Section 12.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 12.1 are pending, the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 12.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Host may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by Host at any time for any reason.

12.3 Survival. This Article XII shall survive the expiration or earlier termination of this Agreement.

ARTICLE XIII: MISCELLANEOUS

13.1 Construction; Obligation to Modify Agreement. Upon implementation by the Department of Public Utilities, Department of Energy Resources, or other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the economic benefits anticipated by either Party, in particular any rule or regulation regarding Net Metering, the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

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

If to Host:

Barnstable County Administrator
Barnstable Superior Court
P.O. Box 427
3195 Main Street
Barnstable, MA 02630
Attn: _____

Phone (____) ____ - ____
Email: _____

If to Developer:

Rock Harbor Road CY Solar Project 2020, LLC
200 Harborside Drive
Suite 200
Schenectady, NY 12305
Attention: Erik Schiemann
Email: Erik.Schiemann@ge.com
Phone: +1 518-742-6863

with a copy to:

General Counsel
Distributed Solar Development, LLC
200 Harborside Drive
Suite 200
Schenectady, NY 12305
Telephone: (518) 380-3770
Email: Jennifer.Gerrard@ge.com

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

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement; or (d) by electronic mail (confirmed by the recipient) to the Party to which notice is to be given. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

13.3 Entire Agreement; Amendments; Binding Effect. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written

amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

13.4 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

13.5 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

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

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

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

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

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

13.10 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force

and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

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

13.12 Survival. Termination of this Agreement for any reason shall not relieve Host or Developer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Sections 5.25, 9.1 and 9.2 (Indemnification), Article IX (Indemnification), and Article XII (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

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

13.14 Special Terms and Conditions. This Agreement is a standard form lease agreement for project development and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

13.15 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

[Signature page to follow]

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

DEVELOPER:

**ROCK HARBOR ROAD CY SOLAR
PROJECT 2020, LLC**

By: _____

Name: _____

Title: _____

HOST:

COUNTY OF BARNSTABLE

By: _____

Name: _____

Title: _____

List of Exhibits to this Agreement

- Exhibit A – Description of Premises
- Exhibit A-1 – Additional Exceptions
- Exhibit A-2 – Rent
- Exhibit A-3 – Liability Cap
- Exhibit B – Description of PV System
- Exhibit C – Insurance Requirements
- Exhibit D – Special Terms and Conditions
- Exhibit E – Common Technical Specifications
- Exhibit F – Services Agreement

EXHIBIT A

DESCRIPTION OF PREMISES

Address:

237 Rock Harbor Road
Orleans, MA 02653

Legal Description:

Solar canopy space occupying approximately 30 parking spaces, located at the above address, as illustrated in the Sketch Plan entitled "Orleans Courthouse PV System", as such Sketch Plan may be amended or revised from time to time.

Description of the Premises:

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

EXHIBIT A-1

ADDITIONAL EXCEPTIONS

A. Developer's use of the Premises shall be subject to the following:

NONE

Host's Reserved Uses of the Premises:

[TBD}

EXHIBIT A-2

RENT

As described in Section 4.1 of this Agreement, the annual rent payment shall be \$9,600.¹

REDUCTION OF ANNUAL RENT PAYMENT FOR EACH \$10,000 OF UTILITY UPGRADE COSTS (IN EXCESS OF INITIAL \$10,000) ²	\$1300.00 per year	
PROPOSED HOST PURCHASE PAYMENT FOR THE PV SYSTEM ³	\$ 410,387	Contract Year 10
	\$ 394,294	Contract Year 12
	\$ 240,520	Contract Year 15
	\$ 64,745	Contract Year 20

¹ Assumes SMART Block 5 and associated adders. For each incremental SMART Block above Block 5 the annual rental payment decreases by \$2,100

² Pursuant to the terms of Section 8.1(f)(1).

³ In accordance with Section 8.11, the Purchase Price shall be the greater of the Appraised Value and the Host Purchase Payment for the PV System.

EXHIBIT A-3

AGGREGATE LIABILITY CAP

As described in Section 8.5 of this Agreement, the aggregate liability cap shall be \$192,000, which excludes third party indemnification obligations.

EXHIBIT B

DESCRIPTION OF PV SYSTEM

PV SYSTEM:

Module Manufacturer: Hanwha

Nameplate Capacity: 420 kW

Approximate Annual Energy Production:

127,965 kWh

Location: Parking lot of Orleans Courthouse

Preliminary Specifications:

Battery Manufacturer: N/A

BESS Nameplate Capacity in kilowatts per two
hour duration: _____kW

Location: _____

Mounting Systems: Steel foundations

PV SYSTEM ASSETS:

Inverters: Sunny TriPower Core 50 kW

Related Equipment: _____

Electric Lines: _____

EXHIBIT C

INSURANCE REQUIREMENTS

A. Developer's insurance obligations. Developer shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Developer shall provide Host with evidence, reasonably satisfactory to the Host, of its insurance hereunder, upon request.

1. ***Comprehensive commercial general liability insurance*** of at least \$2,000,000 combined single limit. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Excess liability*** coverage of at least \$10,000,000.

3. ***Additional insurance requirements.*** All insurance maintained by Developer shall:

a. include as additional insured the Host for obligations arising out of this Agreement. The policies shall be endorsed to require that such additional insureds receive at least thirty (30) days' notice of cancellation or non-renewal. Additionally, the Developer shall be required to provide notice to the Host of any cancellation or non-renewal at least thirty (30) days in advance of said cancellation or non-renewal.

b. the insurance may be provided on a claims-made basis.

c. in the event such insurance is cancelled or non-renewed, Developer agrees to provide a 36 month discovery period endorsement for obligations under this Agreement.

d. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.

e. The insurance shall include blanket contractual liability coverage, including coverage for this Agreement.

B. Host's insurance obligations. Host shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Host shall provide Developer with evidence, reasonably satisfactory to the Developer, of its insurance hereunder, upon request.

1. ***Commercial general liability insurance*** written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations liability, and broad form general liability, with limits of not less than \$3,000,000 combined single limit and annual aggregate. This limit requirement may be may be satisfied by (i) the purchase of the specified limits in an individual

policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Property insurance*** on the Premises with a waiver of subrogation rights against the Developer.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS
LEASE AGREEMENT

Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount of \$20,550, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement

EXHIBIT E

COMMON TECHNICAL SPECIFICATIONS

This Exhibit describes the technical specifications and requirements that are common to all the PV Systems. These common technical specifications are those that each PV System must meet or exceed. These specifications and requirements are not intended to be all-encompassing, nor are they intended to override Good Engineering Practice or Applicable laws and code requirements. The Developer is responsible for conformance to all relevant, prevailing codes, and the codes take precedence over these Technical Specifications. Site-specific conditions and/or local regulations may require additional specifications and requirements not included in this Exhibit.

A. Design

1. Design Life and Estimated Production Requirements

- a. Each PV System shall have a service life of twenty (20) years at rated load.
- b. The PV System must be designed so that the estimated annual energy output for the PV System, based on actual site-specific shading, azimuth, and inclination is at least 80% of the default optimal output for a fixed PV System of the same capacity in Boston as estimated by PVWATTS Version 1. PVWATTS Version 1 is available at the following website:
<http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Massachusetts/>

2. Additional Design Requirements - Stamped affidavits or drawings are required for the electrical and structural components of the installation.

- a. The electrical design of the PV System must be performed by a Professional Engineer (“PE”) licensed in the Commonwealth of Massachusetts.
- b. The structural design of the PV System requires a stamped affidavit from a Massachusetts-licensed PE confirming that the underlying structure or bearing stratum, is adequate to withstand the static and dynamic loads of the PV System. The analysis must include all mounted portions of the PV System, including modules, racks, ballast, and other related components. The analysis must also include all mount securing portions of the PV System, including any anchors and penetrating devices.

B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. If the Developer determines the use of galvanized structural steel is warranted, the extent of Developer’s use of such

material shall be clearly outlined in the Developer's Proposal. All materials subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. Bare copper conductors exposed to free air shall be tin-plated. Alternative materials must be approved by the Host and CVEC.

2. Inverters

- a. Inverter efficiency shall be equal to or greater than 93%.
- b. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- c. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
- d. Each inverter shall include:
 - i. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
 - ii. Ground fault protection.
 - iii. NEMA 2R rating for interior electrical room location or NEMA 3R for any exterior locations.
- e. The inverter(s) must have secure, weatherproof housing in the exterior installation.
- f. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
- g. The inverter(s) must be located to provide adequate air flow for cooling.
- h. Lightning protection must be provided for the inverter(s) housing.

3. Batteries – The battery energy storage system will be DC coupled and meet all NEC requirements.

4. Combiner & Junction Boxes - Combiner boxes and junction boxes which are located outdoors shall have the following characteristics: NEMA 4X enclosure, 600 VDC, and listed by a nationally recognized testing laboratory. All PV System output circuits shall be protected by lightning arrestors of the appropriate voltage rating.

5. DC Disconnect Switches - The DC disconnect(s) shall be 600 VDC, heavy-duty safety switch and be listed by a nationally recognized testing laboratory. Where

located outdoors, disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.

6. **AC Disconnects** - All AC disconnects shall be rated to interrupt the necessary voltage and current for the application and be listed by a nationally recognized testing laboratory. Where located outdoors disconnects shall be NEMA 3R. The AC disconnect shall be appropriately located per the utility's requirements and its location shall be noted on the one-line electrical drawing.
7. **Interconnection Circuit Breaker** - The Developer shall provide the appropriate size, make, and model circuit breaker for the specified AC interconnection switchgear that is suitable for back feed in accordance with NEC 690.64.
8. **Wiring and Conduit**
 - a. All system wiring shall be of an MEC approved wiring method. All conductors shall have a temperature rating of 90 degrees C or lower.
 - b. All conductors shall be copper, sized appropriately to minimize line losses.
 - c. All conduits used in interior building applications shall be electro metallic tubing ("EMT").
 - d. All exterior conduits shall be hot dipped galvanized EMT with weather tight compression fittings and expansion joints as required.
 - e. Expansion fittings shall be used in conduit runs in compliance with MEC article 300.7. A value of 144°F (80°C) shall be used for the maximum change in temperature (delta T) in the calculation of conduit expansion.
 - f. All conduits shall be bonded at each end using listed bonding bushings.
 - g. Where conduit is attached to roofs, fully flashed, non ferrous stanchions shall allow for expansion and contraction. For roof-mounted conditions, conduits shall be supported at a height greater than 3.5 inches by fully flashed, non ferrous stanchions. Manufacturer's approved surface applied stanchions shall be used on membrane roofs.
 - h. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
 - i. Exposed cables shall be listed as sunlight resistant and have a temperature rating of 90°C. These conductors shall be properly secured and well supported. Conductors are not permitted to be resting on the abrasive surfaces such as asphalt shingles.
 - j. All wiring and conductors installed in subsurface applications shall be housed in utility grade PVC conduit(s) sufficiently covered and include trench

warning identification. Spare conduits shall also be installed with a volumetric capacity of at least 25% of the original service. In the event subsurface conduits are exposed to vehicular traffic, concrete encasement shall be included.

9. PV System Grounding - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.

10. PV Array

a. PV Modules

i. Modules shall be UL 1703 listed.

b. Mounting Systems

i. In all installations, the mounting system shall promote ambient air circulation beneath and above modules to enhance efficiency. The lower edge of the panels on the mounting should be designed to eliminate power production losses from snow coverage and provide a comfortable working height for maintenance.

ii. Modules shall be individually removable for maintenance and repair.

iii. The mounting system, regardless of application, shall be designed to meet or exceed requirements of all applicable state and local building codes, including wind speed, snow and seismic load requirements. The Developer shall describe and document the wind and snow loads that the PV System is designed to withstand.

iv. For ballasted roof mounted systems, the Developer shall provide a manufacturer's comprehensive designed system. The Professional Engineer responsible for this portion of work shall also be licensed in the state of Massachusetts.

v. In the event an existing lightning protection system is modified or augmented, the Developer is responsible for UL recertification.

vi. Each module row or column must be separated to minimize shadowing effects on other modules. The spacing between modules shall be noted on the PV layout drawing.

vii. For all PV Systems with roof penetration points through previously warranted roofs, and provided that Host has delivered a true, complete and correct copy of such roof warranty to Developer prior to the Effective Date, then the Developer is responsible for designing and installing the PV

System in compliance with such roof warranty to ensure that it is not voided.

11. Installation Requirements

- a. If the PV System interconnects to a building owned by Host and located on the Property, the output of the PV inverter(s) shall not interfere with or damage the function of existing building electrical distribution systems. All serviceable components must be “accessible” as defined by the MEC article 100. The installation shall comply with all applicable federal, state and local building codes including the latest Massachusetts Electrical Code. The Developer shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Developer shall coordinate with the Host to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to the Host for interconnection of PV System output or if the switchgear is to be turned off.
- b. The PV System electrical work must be performed by individuals licensed in Massachusetts.
- c. The PV System must be installed according to the manufacturer’s instructions and in compliance with all applicable codes and standards.
- d. The Developer is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any Net Metering or Alternative On-bill Credit arrangement requested by CVEC or the Host. An application must be submitted to the local electric utility, with or without Schedule Z as appropriate, to start the formal interconnection process, and sufficient lead time should be allowed to successfully achieve interconnection under the local electric utility interconnection standards. All PV Systems must have an appropriate electric utility interconnection agreement in place at the time of interconnection to the utility grid.
- e. All pertinent permits and inspections must be obtained and copies kept on file as may be required by local codes and/or state law.
- f. All PV Systems shall include appropriate surge arresters or other means to protect the PV System components from lightning and other surge events. It is the responsibility of the Developer to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

12. PV System Warranty Requirements

- a. Developer Warranty. All PV Systems must have a minimum five (5) year labor warranty provided by the Developer to protect the Host against defective workmanship, PV System or component breakdown, or degradation in

electrical output of more than fifteen percent from their originally rated electrical output during the warranty period. The warranty must cover the PV System, including PV modules (panels) and inverter(s), racking, conduit run, and components, and provide for no-cost repair or replacement of the PV System, components, including any associated labor during the warranty period.

- b. **Manufacturer Warranty.** All major equipment must meet the following minimum manufacturer warranties:
 - i. **Photovoltaic Module:** Minimum of one (1) year product warranty from date of sale to first consumer purchaser for product workmanship and materials, plus a minimum performance warranty of twenty (20) years within which time the module will produce, under standard test conditions, a minimum of 80% of the product's minimum rated power at time of sale.
 - ii. **Inverters:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
 - iii. **Batteries:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
 - iv. **Revenue grade production meters:** Minimum of two (2) years following the effective commercial operation date that the meter system will be free from all defects in design, materials and workmanship.
 - v. **Mounting equipment:** The Developer shall obtain from the mounting system manufacturer(s) a warranty that the mounting system(s) will be free from all defects in design, materials and workmanship for a period of ten (10) years following the effective commercial operation date.

13. Electricity Production Meter Requirements - All PV Systems must have a dedicated revenue grade production meter that:

- a. is readily accessible and easily understood by the Host;
- b. records the PV System's AC output as measured on the AC side of the PV System's isolation transformer;
- c. shall be separate from the local utility billing meter and shall not interfere with utility billing or net metering;
- d. must be a standard utility "revenue quality" meter that conforms to applicable American National Standards Institute ("ANSI") C-12 standards and shall be installed on the AC output side of the PV System's inverter or isolation transformer; and

- e. shall have a visible display of cumulative energy produced by the PV System and be available for periodic testing and/or re-calibration, if necessary.

14. Automated Reporting - All PV Systems must include an automated reporting system, i.e. Data Acquisition System (“DAS”) which will report to the Massachusetts Renewable Energy Trust (“MRET”) Production Tracking System (“PTS”) and detail view be accessible to CVEC and Host. In addition, the public will have access to a Public View from the DAS. Where Battery Energy Storage System is proposed, automated and manual system controls must be provided which will be accessible to CVEC and Host offsite through high speed internet online access.

C. Commissioning Requirements

- 1. Commissioning Procedure** - At a minimum, the Developer’s sample testing and commissioning plan shall cover:
 - a. measurement and recording of voltage-open-circuit of every source circuit;
 - b. performance of inverter startup tests as specified by the inverter manufacturer in the inverter operation manual;
 - c. measurement of AC power and comparison to predicted power based upon estimated irradiance level;
 - d. performance of loss of grid test and verification of five minute delay upon restoration of the grid; and
 - e. measurement and recording of I_{mp} of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
- 2.** The Developer shall verify that the data acquisition/display system and, where applicable, the Battery Energy Storage System controls, are functioning properly, comparing independent measurements to data acquisition display and able to switch Battery Energy Storage System configurations and operations.
- 3.** The Developer shall correct, at no additional cost to the Host, any deficiencies uncovered by the testing prior to commissioning of the PV System.

D. Training Requirements

The Developer shall train the Host or staff at the Premises on basic principles of operation, maintenance requirements, on-line data monitoring and system controls, and safety issues that are specific to the PV System installed (including points of contact in

emergency situations). An operations manual to accompany the training will be delivered to the Host and to CVEC.

E. Documentation Requirements

- 1. Documentation** – The Developer shall prepare an Operations and Maintenance manual for the PV System. In addition, the Contractor shall provide CVEC and the Host each with one (1) printed copy and one (1) digital copies on CD of the information listed below.
- 2.** The documentation shall include:
 - a. A complete set of all approved shop drawings, a list of equipment and products used, and product literature. The list of equipment shall include the manufacturer, brand name, model (if applicable), equipment components, recommended maintenance procedures for each piece of equipment, approximate amount of product installed and materials contained in the product.
 - b. Record drawings showing, to scale, the location of all arrays, locations of major equipment, including combiner box clusters, all underground and major conduit runs, grounding electrodes and specific locations to building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.
 - c. The Permission to Operate provided by the Local Distribution Company.
 - d. Trouble shooting guidelines.
 - e. PV System maintenance schedule and procedures.
 - f. Contact information for technical assistance and parts ordering.
 - g. Records of all warranties and serial numbers of all warranted equipment.

EXHIBIT F
SERVICES AGREEMENT

EXHIBIT G
[RESERVED]

UPON RECORDING RETURN TO:

Distributed Solar Development, LLC
General Counsel
2690 Balltown Road
Building 610
Miskayuna, NY 12309
Schenectady, NY 12345
Attention: Jennifer Gerrard, Esq.

SPACE ABOVE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

Pursuant to M.G.L. c. 183, §4

THIS MEMORANDUM OF LEASE (this "*Memorandum*") is dated as of the ___ day of _____, 2020, by and between the COUNTY OF BARNSTABLE, a Massachusetts municipal corporation ("*Owner*"), and ROCK HARBOR ROAD CY SOLAR PROJECT 2020, LLC, a Delaware limited liability company ("*Tenant*").

1. Fee Parcel. Owner owns and maintains approximately ___ acres of land located at 237 Rock Harbor Road, Orleans, MA 02653, as more particularly shown on Assessor's Map ___, Block ___, Lot __ (the "*Fee Parcel*").
2. Lease. Owner and Tenant entered into that certain Lease Agreement for Ground Mounted Solar Canopy Photovoltaic Energy Facility, dated as of _____, 2020 (the "*Lease*"), pursuant to which Owner (a) leased to Tenant, and Tenant leased from Owner a portion of the Fee Parcel consisting of approximately ___ acres on land, as more particularly described in the Lease and as more specifically described on Exhibit A attached hereto (the "*Site*"), for the purposes of constructing, interconnecting and operating a solar power generation facility on the Site (the "*Project*"), and (b) granted and conveyed to Tenant certain Easements (as such term is defined in the Lease).
3. Term of Lease. The initial term of the Lease commenced on _____, 2020 (the "*Commencement Date*"), and shall end on the twentieth (20th) anniversary of the Commercial Operation Date (as

such term is defined in the Lease), unless sooner terminated in accordance with the terms of the Lease. The initial term of the Lease may be extended for one additional five (5) year period.

4. Provisions Binding on Parties. The provisions of the Lease to be performed by Owner and Tenant are intended to and shall bind or benefit the respective parties hereto and their respective successors and assigns, as applicable, at all times.
5. Purpose of Memorandum of Lease. This Memorandum is prepared solely for purposes of providing constructive notice of Tenant's rights under the Lease to third parties in accordance with M.G.L. c. 183, §4, and in no way modifies the provisions of the Lease.
6. Counterparts. This Memorandum of Lease may be executed in any number of counterparts, each of which when taken together shall constitute one and the same original.

[Remainder of Page Intentionally Left Blank

Signature Pages Follow]

TENANT:

ROCK HARBOR ROAD CY SOLAR PROJECT 2020, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF NEW YORK §
 §
COUNTY OF _____ §

On the ____ day of _____, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument..

Notary Public

EXHIBIT A

DESCRIPTION OF LEASE PARCEL

Assessor's Map ____, Block __, Lot __

Address:

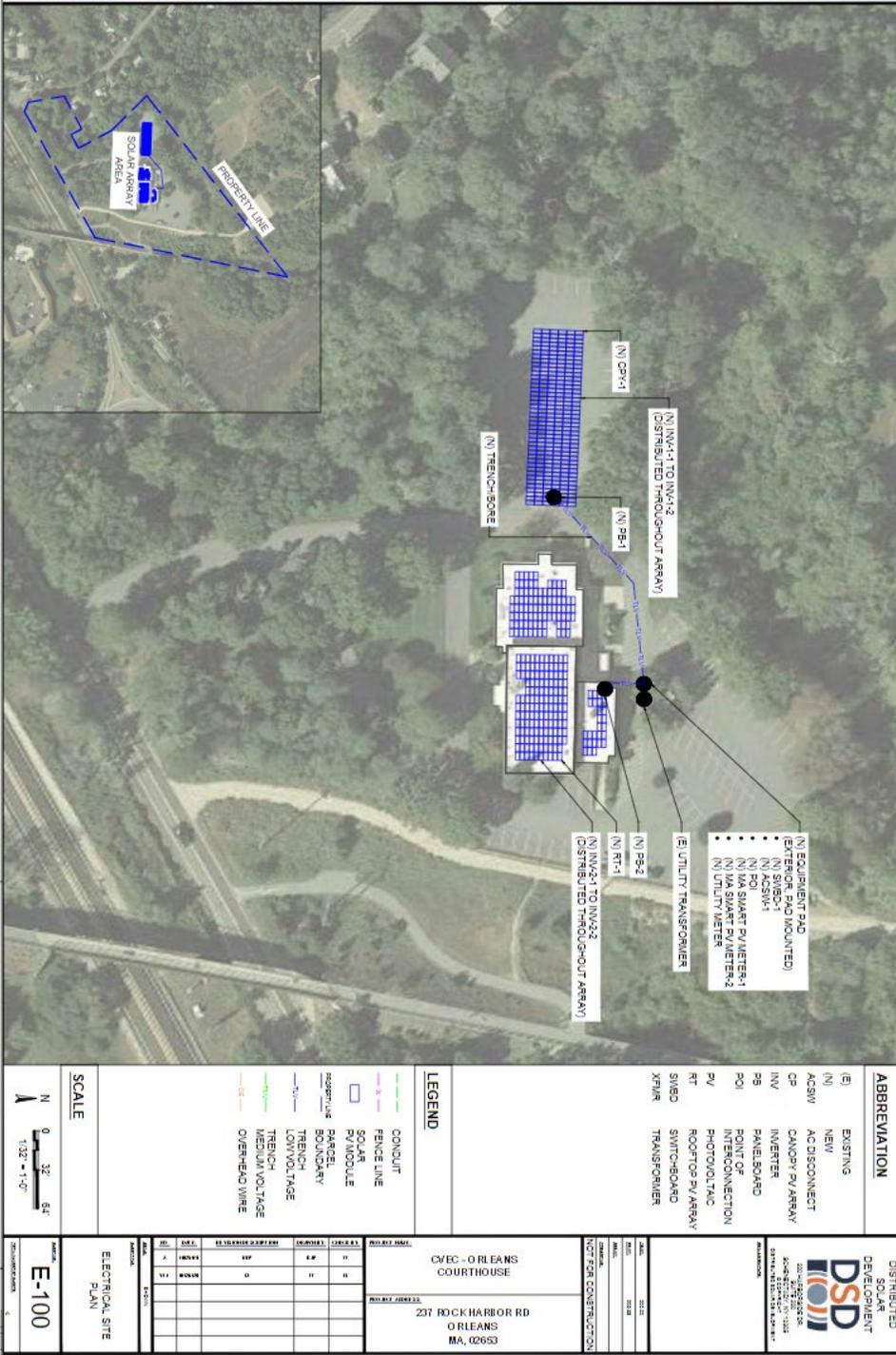
237 Rock Harbor Road, Orleans, MA 02653

Legal Description:

Solar canopy space occupying approximately _____ parking spaces, located at the above address, as illustrated in the Sketch Plan entitled "Orleans Courthouse PV System", as such Sketch Plan may be amended or revised from time to time.

Description of the Premises:

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



ABBREVIATION

(E)	EXISTING
(N)	NEW
ACSW	AC DISCONNECT
CP	CANOPY PV ARRAY
INV	INVERTER
PS	PANELBOARD
POI	POINT OF INTERCONNECTION
PV	PHOTOVOLTAIC
RT	ROOFTOP PV ARRAY
SWBD	SWITCHBOARD
XFMR	TRANSFORMER

LEGEND

	CONDUIT
	FENCE LINE
	SOLAR
	PV MODULE
	PROPERTY LINE
	TRENCH
	TRENCH BOUNDARY
	TRENCH LOW VOLTAGE
	TRENCH MEDIUM VOLTAGE
	OVERHEAD WIRE

SCALE



DISTRIBUTED DEVELOPMENT

201 WASHINGTON ST
ROCK HARBOR, MA 02653
TEL: 508-253-1111
WWW.DSDMA.COM

PROJECT NAME: CVEC - O RLEANS COURTHOUSE

PROJECT ADDRESS: 237 ROCK HARBOR RD
O RLEANS
MA, 02653

DATE: 02/28/2018

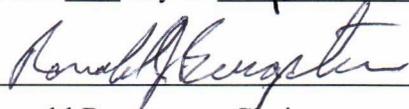
SCALE: E-100

PROJECT NUMBER: 9

DISCHARGE OF MORTGAGE

Barnstable County, acting by and through the Cape Cod Commission, the holder of a mortgage by **Tyler Y. Pierce**, to **Barnstable County**, acting by and through the Cape Cod Commission, dated January 5, 2010 recorded with the Barnstable County Registry of Deeds in Book 24286 Page 35 acknowledges satisfaction of the same.

In Witness Whereof, Barnstable County has caused its corporate seal to be hereto affixed and these presents to be signed, acknowledged and delivered in its name and behalf by **Ronald Bergstrom, Chair, Barnstable County Commissioners** hereto duly authorized by a vote of the Barnstable County Commissioners, this 24th day of April, 2020.



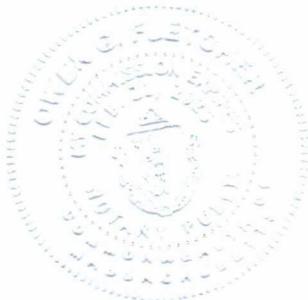
Ronald Bergstrom, Chair
Barnstable County Commissioners

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

April 24, 2020

On this 24th day of April, 2020, before me, the undersigned notary public, personally appeared **Ronald Bergstrom, as Chair, Barnstable County Commissioners**, proved to me through satisfactory evidence of identification, which were personal knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.





Notary Public
My Commission Expires: 02/21/25

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Beaty to authorize the execution of the discharge of a mortgage by Tyler Y. Pierce to Barnstable County, acting by and through the Cape Cod Commission, dated January 5, 2010 and recorded with the Barnstable County Registry of Deeds in Book 24286, Page 35, as presented, 2nd by Commissioner Flynn, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 22, 2019

 *Janice O'Connell*
Barnstable County Regional Clerk