

DEVELOPMENT OF A SOLAR ENERGY  
PROJECT AT MUNICIPALLY OWNED  
WELLFIELD IN AUBURN,  
MASSACHUSETTS

Request for Proposal

January 18, 2023

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## **PART 1 -GENERAL PROPOSAL INFORMATION**

### **1.1 PURPOSE**

The purpose of this Request for Proposals (“RFP”) is to seek proposals from qualified and experienced renewable energy developers (“Developers”) interested in implementing a renewable energy system which will (a) provide lease revenue to the Auburn Water District (sometimes referred to as the “District”) and (b) guaranteed discounted solar electricity to the District using Alternative On-Bill Credits (“AOBCs”) or other means as provided in 225 CMR 20.00: SOLAR MASSACHUSETTS RENEWABLE TARGET (SMART) PROGRAM. The Developer selected by the District (the “Selected Developer”) will lease land owned by the District, to develop, own operate and maintain a solar energy project and enter into a long-term Alternative On-Bill Credit Purchase Agreement (“AOBCPA”) selling all or a portion of the AOBCs resulting from the energy generation to the District.

The District intends to lease District-owned property for the installation of solar collectors, inverters, and cabling for a solar array at the District’s municipal wellfield sites on one or two multi-parcel properties located within the boundaries of Auburn, MA, shown in Attachments A and B. Proposals for PV project development will be accepted for one or the other or both properties. The lease term will be for a minimum term of twenty (20) years. The total term of the lease, including any renewal periods, shall not exceed thirty (30) years.

The District will enter into a long term AOBCPA (AOBC Purchase Agreement) with the Selected Developer. The AOBCPA between the District and the Selected Developer will include:

- Guaranteed quantity of solar energy supply (kWh) to be generated annually,
- The District’s allocated percentage of the AOBCs generated by the PV system,
- The price of the AOBCs delivered to the District, expressed either as a percentage of the monetary value of the AOBCs delivered to the District or as a fixed cents-per-kWh discount from the National Grid basic supply rate on the AOBCs delivered to the District,
- Term of the AOBCPA, including renewal options,
- A system buy-out (optional). The bidder may offer the District buy-out options with system ownership transfer to the District at some time or times during the term of the AOBCPA.

The Selected Developer will be responsible for the interconnection study, permitting, interconnection costs and all costs associated with obtaining Permission to Operate the PV system from the local utility, National Grid. The Selected Developer will construct, own, operate and maintain the solar energy project. The Selected Developer will retain all environmental credits, tax credits, and other credits or grants derived from the solar energy project. The District will purchase all or a portion of the AOBCs resulting from the solar energy generated from the project under an AOBCPA.

*The District reserves the right to withdraw this RFP; to reject any and all proposals; waive minor informalities; and to accept any proposal deemed to be in the best interest of the District.*

### **1.2 CONTACT PERSON**

All communication regarding this RFP must be made by email and directed to:

Gregory Woods, Superintendent  
Auburn Water District  
PO Box 187, 75 Church Street, Auburn MA 01501  
Email: [gwoods@auburnwater.com](mailto:gwoods@auburnwater.com)

### **1.3 SCHEDULE**

Proposal with all addenda is due on **March 3, 2023 by 11:00 AM.**

**Submit proposals by email to [gwoods@auburnwater.com](mailto:gwoods@auburnwater.com). Include “Auburn Water Solar Proposal” in the subject line.** The District will not consider responses received after the deadline for submission of responses.

### **1.4 PRE-PROPOSAL CONFERENCE AND SITE TOUR**

There will be a pre-proposal site tour for both sites to be held on **February 16, 2023 at 10:00 AM.** Meet at the District’s office at 75 Church Street, Auburn, MA.

### **1.5 ADDENDA AND EXPLANATIONS**

Questions may be submitted to the District by emailing [gwoods@auburnwater.com](mailto:gwoods@auburnwater.com) no later than **February 24, 2023 at 11:00 AM.** Include “Solar RFP Question” in the subject line. All questions and answers will be posted to the District website at: <https://www.auburnwater.com/forms-and-applications/>.

### **1.6 SUBMITTAL REQUIREMENTS**

Proposals are due as defined in Section 1.3 Schedule. Proposals received after the due date and time will not be considered.

Proposals shall consist of the following:

- a. Developer qualifications and Technical Proposal.
- b. AOBCPA of similar form and content as the draft AOBCPA included in Exhibit 2 to include pricing proposal and projected annual energy generation from the PV system. The AOBCPA shall include all terms, energy rates, escalation rates (if any), periods, etc.
- c. Land Agreement of similar form and content as the draft lease included in Exhibit 1, including proposed monthly rent payments and other material business terms.
- d. System buy-out agreement (optional): provisions in the proposed AOBCPA and lease which offer the District the opportunity to purchase the PV system at some time or times may be proposed.

### **1.7 DISCLOSURE OF CONFIDENTIAL OR PROPRIETARY INFORMATION**

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

### **1.8 INCURRED EXPENSES**

The District is not responsible for any expenses that Developers may incur in preparing and submitting proposals. All materials and documents submitted in response to this solicitation become the property

of the District and will not be returned.

## **1.9 CONDITIONS**

Each Developer shall become fully acquainted with conditions relating to the scope and performance of the work required under this RFP.

The Developer shall decide as to conditions and shall assume all development risk and responsibility and shall complete the work in and under conditions they may encounter or create, without extra cost to the District.

The District reserves the right to issue addenda to this RFP. If it becomes necessary to revise any part of this RFP, addenda will be posted to the District website at: <https://www.auburnwater.com/forms-and-applications/> and an email with a link to the addenda will be sent to all potential Developers who have provided their email address to the District as an expression of interest. The addenda shall be deemed a part of this RFP.

The District is not liable for any costs incurred by Developer prior to the issuance of a lease or if no action is taken on this RFP. The District may, in its sole discretion, determine that no lease award shall be made for one or both of the potential sites.

The District is not liable for any costs incurred by the Developer in development, ownership, or maintenance the PV system.

Developer's response to this RFP may be withdrawn or modified only by email communication delivered to the [gwoods@auburnwater.com](mailto:gwoods@auburnwater.com) email address. Any such communication must be received before the deadline for proposal submission.

By submission of a proposal, the Developer agrees, if its proposal is accepted, to enter a lease and AOBCPA with the District that incorporates all of the requirements of the RFP. A draft lease is provided in Exhibit 1 and a draft AOBCPA is provided in Exhibit 2. Each Developer should review these documents before submittal of their proposal. The Developer further accepts all the terms and conditions of this RFP.

The Selected Developer who enters into a lease with the District will be responsible for obtaining at its own expense, all appropriate Federal, State, and local permits, licenses, and approvals for the installation of the required equipment. If the Selected Developer is unable to obtain all necessary permits, licenses, and approvals, for reasons beyond the Selected Developer's control, the lease will be terminated, and no further obligation imposed upon either party.

The Selected Developer will be required to provide a financial guarantee payable to the District in the event that the Selected Developer fails to perform their obligation to develop and obtain permission to operate the solar generating facility in accordance with the timelines and performance specifications agreed upon in the lease. The financial guarantee shall be in the amount of \$250,000 or the cost to return the sites to original conditions whichever is greater.

In addition to and without limiting the foregoing, each Developer acknowledges and agrees that the District's ability to enter the lease with the Selected Developer may be contingent upon the District obtaining Article 97 (See Attachment E for more information) legislation authorizing such lease. If the District determines, in its sole and absolute discretion, that such Article 97 legislation is necessary, the Selected Developer shall, at the Selected Developer's sole cost and expense, (a) draft and revise the appropriate Article 97 legislation, incorporating any and all revisions and input that the District may

provide, (b) coordinate with the appropriate governmental authorities, to the fullest extent possible, in advancing the Article 97 legislation, and keep the District apprised of such progress, and (c) otherwise comply with all reasonable requests and directives that the District shall make concerning the passage of the Article 97 legislation.

### **1.10 COMPETENCY OF DEVELOPER**

The opening of the sealed envelopes shall not be construed as an acceptance of the Developer's qualifications. The District reserves the right to determine the competency of a Developer from its knowledge of the Developer's qualifications or from other sources.

### **1.11 DISQUALIFICATION OF DEVELOPER**

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

- a) Evidence of collusion among Developers.
- b) Questions of lack of competency as revealed by either experience or financial statements; or
- c) Default on a previous contract for failure to perform.

### **1.12 LICENSES**

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

### **1.13 PROCUREMENT REGULATIONS, EVALUATION, AND AWARD**

This RFP and any contract and/or lease entered as a result thereof are subject to M.G.L. Chapter 30B. Prevailing wage rates are not applicable.

Each response to this RFP will be evaluated in accordance with M.G.L. Chapter 30B. Proposals will not be opened in public and will not be made public until an award has been made. Developers meeting the minimum qualifications criteria outlined in Section 5.1 will advance to the proposal evaluation process.

The District may conduct such investigations as the District considers necessary to assist in the evaluation of any proposal and to establish the responsibility, qualifications, and financial ability of the Developer. The District shall be the sole judge of the Developer's qualifications and whether the proposal is in the best interests of the District.

The District will select the Developer with the most advantageous responsive and responsible proposal, taking into consideration the Developer's experience, references, Technical Proposal, and Financial Proposal.

### **1.14 NON-DISCRIMINATION**

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



## **PART 2 -SCOPE OF WORK**

### **2.1 DESCRIPTION OF THE PROJECT**

The District is interested in promoting the beneficial use of water supply land for renewable energy production. The District owns about 92 acres in four parcels as Shown in Attachment A. Four potential solar array locations, one on the west side of the railroad tracks (about 7 +/- acres) and three on the East side of the tracks (about 14 +/- acres) are shown on Attachment B. These potential solar array locations are just suggestions and can be modified. The two parcels are located in the vicinity of 9A Pine Valley Drive in Auburn, MA.

The sites include municipal water supply wells and /or vacant land in the vicinity of the wellfield. The land may include Zone 1 and Zone 2 Wellhead Protection Area and may require coordination with the Massachusetts Department of Environmental Protection (MassDEP). Satellite images and GIS Site Plans for both properties, including the boundaries of land available for the PV systems installations, are again shown in Attachment A and Attachment B.

The Selected Developer will be given 14 months to develop and construct the solar project and obtain Permission to Operate (PTO) from National Grid. This includes the design, permitting and financing of the solar project. The District's goal is for the Selected Developer to receive Permission to Operate (PTO) and the PV systems to be generating power on or before January 1, 2025 (PTO Date). An extension of the PTO deadline may be granted, by the District, if the failure to meet the PTO deadline is due to utility delays or forces beyond the control of the Selected Developer. Weather is not an acceptable cause for delay. After the development phase is complete and before construction begins, the District and the Selected Developer will execute a lease similar to the draft Lease Agreement provided in Exhibit 1. As part of the lease, the Selected Developer will maintain all operations and maintenance requirements and be responsible for all operation of the solar field.

The project areas contain wellhead protection zones used for public drinking water supplies. Care must be taken when working with equipment storage, vehicle parking, and while using any oils or hazardous materials to avoid any spills or releases to the environment. To the greatest extent possible, construction materials shall be free from oils or hazardous materials. Any oils used should be clearly marked and should be contained with spill protection. Any spills during construction shall be reported immediately to the District, Town and to the MassDEP.

### **2.2 PERMITS, APPROVALS AND SITE-SPECIFIC REQUIREMENTS**

The Selected Developer shall be responsible for obtaining all relevant approvals and permits associated with the Solar Energy Project. These may include, but are not limited to zoning permits, construction permits, access agreements, storm water management permits, sediment and erosion control permits, electrical permits, and interconnection agreements with the local utility. All permits shall be submitted under the direction of a licensed professional engineer. The costs for these approvals, agreements and permits shall be borne by the Selected Developer. The District will provide existing site-specific information, guidance, and support to the extent practical the Selected Developer shall be responsible for obtaining approval from the MassDEP and local authority for the installation of the solar systems within Zone 1 and Zone 2 Wellhead Protection zones as required in 310 CMR 22.21(1), 310 CMR 22.21 (3) (b) and 310 CMR 22.24. The governing policy, Bureau of Resource Protection "Wind & Solar Energy Projects Proposed in Zone 1" and guideline BRP #2011-1 are included in Attachment E. The parcel east of the railroad tracks does not have access from Elm Street or an existing railroad crossing on the District property. The Selected Developer shall be responsible for securing an access agreement with either a

property abutter or the railroad owner.

To assist the Selected Developer in development and permitting, the following documents have been included in the RFP or a link to the document has been provided:

- Attachment A - Contiguous District Properties off Pine Valley Drive
- Attachment B - Satellite Image of Property Boundaries, Zone 1s and Potential Array Locations
- Attachment C - Link to "Town of Auburn Zoning By-Laws dated October 26, 2021"
- Attachment D - Link to "Town of Auburn General By-Laws dated May 2022"
- Attachment E - Bureau of Resource Protection Policy "Wind and Solar Energy in Zone 1" and Bureau of Resource Protection "Drinking Water Program Guideline", and
- Attachment F – District Electricity Use Data for All Facilities.

The Selected Developer will be required to prepare a system maintenance plan and control plans for sediment and erosion control, storm water runoff, vegetation control and security.

The District requires the Selected Developer to handle all non-hazardous and hazardous materials and install the solar energy project on the wellfield properties in a manner that protects the District's property interests and in accordance with all applicable local, state, and federal requirements. Maps of the Wellhead Zones for both parcels of land, including wetlands, can be found under the "Layers" tab on the Town of Auburn GIS at: <https://www.mapsonline.net/auburnma/>.

## **2.3 LEASE TERM**

The Selected Developer shall enter into a Lease Agreement for an initial term of not less than twenty (20) years and not more than a total of thirty (30) years (including any option periods).

## **2.4 CODES AND STANDARDS**

The Selected Developer shall meet all applicable industry standards and requirements for all equipment utilized.

## **2.5 AOBC SALES**

The Selected Developer shall enter the AOBCPA with the District substantially in the form attached hereto as Exhibit 2.

The District is seeking to obtain all or a portion of the AOBCs resulting from the energy generated by the PV system to realize the maximum economic benefit for the District. All District facilities are located within the Town of Auburn and the National Grid territory. Historical electric usage data for all District facilities are provided in Attachment F – District Electricity Use Data – All Facilities.

To the extent that the monetary value of the AOBCs resulting from the generation output are greater than the District's electricity costs, the Selected Developer's proposal must include a plan for the disposition of any AOBCs in excess of those purchased by the District. Proposals must include a measurement and verification strategy for measuring electricity generation and the resulting AOBCs.

The Selected Developer shall guarantee that the systems will produce the Guaranteed Annual Energy Production in each contract year as defined by the Selected Developer on the form given in Attachment K. In the event that a production shortfall exists in any contract year, the Selected Developer shall pay to District, within thirty (30) days of the end of the contract year, the monetary value of the AOBCs associated with the kWh of such production shortfall.

All bidders shall specify and record the system(s) design parameters in Attachment G and submit the Attachment with the proposal. The energy produced by the Solar PV system should be calculated using NREL's PVWatts V8 (or other equivalent software).

## **2.6 FINANCIAL ASSURANCE**

### *Construction*

Before any site work or construction begins, the Selected Developer will be required to post financial assurance payable to the District in the event the Selected Developer is unable to procure and install a fully operational solar power generating facility in accordance with the timelines and performance specifications agreed upon in the lease. The financial assurance shall be the estimated amount to restore the property or \$250,000 whichever is greater.

### *Decommissioning*

The Selected Developer will be required to post financial assurance payable to the District to cover the costs to decommission the solar generating system at the end of the lease agreement. The estimated financial assurance shall include but is not limited to removal of solar panels, racking system, all electrical connections and equipment, and the legal proper disposal of all equipment and waste. The financial assurance estimate shall also include all costs for returning the property to pre-project conditions and shall include all professional costs, labor costs, trucking costs, hauling and disposal costs, landscaping costs, and any other cost not mentioned but which is expected to be incurred. The financial assurance shall be the estimated amount to restore the property or \$250,000 whichever is greater.

## **2.7 INDEMNIFICATION**

The Selected Developer shall be required to indemnify the District officers, employees, and contractors against any claim for performance of the Selected Developer's contractors' services contemplated by this RFP. The Selected Developer shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the District, its officers and employees from and against any and all claims, demands, suits, actions, recoveries, judgments, costs and expenses in connection therewith, on account of the loss of life, property or injury or damage to the person, body or real property or tangible personal property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this RFP and the resulting lease.

## **PART 3 -INSURANCE REQUIREMENTS**

### **3.1 INSURANCE REQUIREMENTS - CONSTRUCTION PHASE**

The Selected Developer and subcontractors shall, at their own expense, procure and maintain required insurance until all their obligations have been discharged, including until any warranty periods under the lease are satisfied and any insurance claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the Selected Developer, its agents, representatives, employees, or subcontractors are resolved.

The Selected Developer shall provide evidence of such insurance to the District. The policies or certificates

thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the District by registered mail, return receipt requested, for all of the following stated insurance policies.

If at any time any of the policies required herein shall be or become unsatisfactory to the District as to form or substance, or if a company issuing any such policy shall become unsatisfactory to the District, the Selected Developer shall upon notice to that effect from the District promptly obtain a new policy, submit the same to the District for approval and submit a certificate thereof. Upon failure of the Selected Developer to furnish, deliver and maintain such insurance, the lease, at the election of the District, may be declared suspended, discontinued, or terminated. Failure of the Selected Developer to provide and maintain any of the required insurance shall not relieve the Selected Developer from any liability under the lease, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations on the Selected Developer concerning indemnification. The District may waive the requirement of coverage type or amount if not reasonably available and if the District deems it to be in the best interest to do so.

### **3.1.1 MINIMUM SCOPE AND LIMITS OF INSURANCE**

The Selected Developer shall provide coverage with limits of liability not less than those stated below:

#### **A. Commercial General Liability – Occurrence Form**

- Policy shall include bodily injury, property damage, and broad form contractual liability coverage.
- General Aggregate: \$2,000,000
- Products – Completed Operations Aggregate: \$1,000,000
- Personal and Advertising Injury: \$1,000,000
- Each Occurrence: \$1,000,000

#### **B. Workers' Compensation and Employer's Liability**

- Workers' Compensation Insurance as required by the state of Massachusetts.
- Employers' Liability Insurance covering all of Selected Developer's employees working on or off the work site and acting within the scope of their employment as required by the state of Massachusetts.

**C. Excess Umbrella Liability** - Annual Aggregate: \$5,000,000.

**D. Automobile Liability Insurance** - Combined single limit of \$1,000,000.

**E. Professional Liability Insurance** - Covering errors and omissions, \$1,000,000 each occurrence and \$2,000,000 aggregate limit.

#### **F. Builders' Risk Insurance or Installation Floater**

- In an amount equal to the initial amount for the construction of the solar energy project, the District, Town of Auburn and the Selected Developer and subcontractors shall be "Insureds" on the policy. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs.
- Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy.
- Policy must provide coverage from the time any covered property becomes then responsibility of the Selected Developer, and continue without interruption during construction, renovation, or

installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

**G. Excess Liability Insurance, Umbrella Form** - \$2,000,000 each occurrence and \$5,000,000 aggregate.

### **3.2 INSURANCE REQUIREMENTS - OPERATION PHASE**

The Selected Developer and subcontractors shall procure and maintain insurance coverage until all their obligations have been discharged, including until any warranty periods under the lease are satisfied and any insurance claims for injury to persons or damage to property which may arise from or in connection with the performance of the work by the Selected Developer, its agents, representatives, employees, or subcontractors are discharged.

The insurance requirements herein are minimum requirements for the lease and in no way limit the indemnity covenants contained in this RFP.

The District in no way warrants that the minimum limits contained herein are sufficient to protect the Selected Developer from liabilities that might arise out of the performance of the work under the lease by the Selected Developer, its agents, representatives, employees, or subcontractors. The Selected Developer is free to purchase such additional insurance as may be determined necessary.

#### **3.2.1 ADDITIONAL INSURANCE FOR OPERATION PHASE**

All the insurance listed above in Section 3.1 shall remain in effect and full force for the term of the lease. In addition, the Selected Developer shall procure and maintain the following insurance:

##### **A. Property Insurance**

Property insurance shall be written on an all risk, replacement cost coverage.

Policy shall be in force at the time of substantial completion of the solar energy project's construction and continue until the termination of the lease.

## **PART 4 -LEASE INFORMATION AND PROPOSED LEASE PROVISIONS**

### **4.1 PARTIES TO THE LEASE**

The lease and all exhibits thereto to be entered into as a result of this RFP shall be by and between the Selected Developer and the District. The lease shall be of a form and substance similar to the draft Lease Agreement found in Exhibit 1.

### **4.2 LEASE TERM**

The lease initial term will be for a minimum of 20 years.

## **PART 5 -SUBMITTAL REQUIREMENTS: DEVELOPER QUALIFICATIONS**

### **5.1 MINIMUM DEVELOPER QUALIFICATIONS**

Bidders shall demonstrate the following minimum qualifications with supporting documentation in their

proposal. Developer Qualifications shall be submitted by email with the Developer's Technical Proposal.

### **5.1.1 CORPORATE HISTORY AND STRUCTURE**

Each Developer shall identify itself by corporate name or partnership name and/or affiliate name, if applicable, and list all officers, directors, primary stockholders, and partners of the Developer. Developers shall describe their corporate structure and the location or jurisdiction in which the Developer is registered.

### **5.1.2 PROJECT DEVELOPMENT EXPERIENCE**

Each Developer shall submit documentation showing that the Developer meets the following minimum qualification criteria:

1. The Developer for development of ground mounted Solar PV systems in Massachusetts must have a minimum of two (2) years of experience designing, installing, and operating PV systems with system sizes a minimum of 300kW per site. Operations experience shall include long term monitoring and reporting experience particularly in the Northeast and specifically in Massachusetts. Developers shall demonstrate by example its experience working in facilities similar to the facilities included in this RFP.
2. Provide a summary of at least five (5) examples of large ground mount solar PV installations, and two (2) installations must be in Massachusetts. Include system owner name, date project received permission to operate, date construction began, total final project cost, projected annual electricity generation, and any annual production shortfalls. Developer must also indicate whether the project was completed on schedule, and if not, explain the reasons for such delay.
3. The Developer will demonstrate its project development experience, including interacting with state environmental and permitting agencies and energy departments and similar city / town / district boards.
4. The Developer must demonstrate its ability to manage the power project development, including the utility interconnection agreement, credit purchase agreement (either alternative on-bill credit agreements or net metering agreements), state and local permits, and project insurance including insurance on environmentally sensitive land.
5. Provide a plan for staffing the development, construction, operation, and maintenance of the project. Indicate the number of Developer's full-time personnel to be assigned to the project in each phase. If subcontractors, rather than the Developer's in-house staff, are to be responsible for any work, the Developer shall include a list of subcontractors that may be used, their role and the location of the subcontracted workers.

## **5.2 FINANCIAL CAPACITY**

The Developer shall submit documentation regarding financial capacity to complete the project:

1. Form of legal entity and year entity was established, any changes in ownership status over the past five (5) years, other entity names, if any and ultimate parent company, if applicable.
2. Annual reports or other current audited financial data of the Developer shall be submitted for the prior three (3) years.
3. Developers must identify specifically those portions of their financial history, if any, which they believe contain confidential information. These portions of the Developer's submittal treated as confidential under Section 1.7 will not be released as public documents.
4. The Developer with the winning bid must demonstrate its ability to obtain project financing.
5. Financial Assurance. The Developer will be required to provide evidence of ability to meet the

- Financial Assurance requirements discussed in Section 2.6 of this RFP.
6. Discuss whether your firm has ever been involved in a lawsuit or dispute regarding a contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit or litigation. Further, you must disclose whether your firm has been barred from providing services in Massachusetts or any other states.

## 5.3 TECHNICAL PROPOSAL

Each Developer shall submit documentation showing the technical approach to the project:

### 5.3.1 System Design and Permitting

- a) Provide details on the scope of the projects, preliminary design and systems size and layout, required resources, and expected District responsibilities, if any.
- b) Describe Developer's approach to the technical design of the project.
- c) List all procedures, formulas and methodologies including special metering or equipment, which Developer would use to determine electricity generation.
- d) Provide project development schedule.
- e) Describe all permitting and approvals required for the projects.
- f) For any design work conducted by third-party experts, please identify whether Developer takes engineering risk including stamping engineering submittals.

### 5.3.2 Construction and Commissioning

- a) State Developer's proposed construction schedule. Submit a preliminary project schedule with the Technical Proposal using Day 0 as day Site Lease Agreement is signed, Developers should complete and include the following target schedule:

Site Lease Agreement signature date	Day 0
Permitting begins	0 + _____ days
Final design plans complete	0 + _____ days
Equipment ordered	0 + _____ days
Construction begins	0 + _____ days
Permission to Operate & Electrical generation begins	0 + _____ days

- b) Discuss Developer's project management protocols to ensure schedule adherence, including willingness to post liquidated damages for delays.
- c) Discuss the role Developer takes in managing subcontractors including subcontractor oversight.
- d) Describe Developer's approach to handling construction debris, recycling, and disposition. Refer to Attachment E for information on solar development in Wellhead Protection Zones.

### **5.3.3 Methodology of Determining and Guaranteeing Electricity Generation and Reconciling Solar Energy Provided with National Grid Bill Period Energy Use.**

Describe the methodology the Developer will use in settling the bill for AOBCs provided by the Selected Developer with the electric bill from National Grid. Describe how the kWh and District bill amounts be reconciled if the monthly bill period from the National Grid bill does not agree with the bill period for the sale of AOBCs from the Developer. Describe how any difference in the energy accounting and associated bills will be addressed.

### **5.3.4 Service and Maintenance**

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

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

## **PART 6 – SUBMITTAL REQUIREMENTS: PRICING PROPOSAL**

The Pricing Proposal will be submitted in a separate envelope from the Technical Proposal. Only those Developers that meet the minimum qualifications will have their Technical and Pricing Proposals considered and evaluated.

### **6.1 PRICING PROPOSAL**

Pricing Proposals will be submitted in a separate email document and shall consist of quarterly payments to be made to the District for the term of the lease. The Price Proposal must include:

- (a) The price of the AOBCs delivered to the District, expressed either as a percentage of the monetary value of the AOBCs delivered to the District or as a fixed cents-per-kWh discount on the AOBCs delivered to the District,
- (b) Monthly rent under the lease during the term, including any renewal terms,
- (c) Performance Bond Amount (from Exhibit 1 Section 5.3),
- (d) Termination Fee Schedule (from Exhibit 2 Sections (ww) and (xx)).

The Pricing Proposal must include completed forms Attachments G, H, I, J and K. Developer should include all assumptions and conditions in the Pricing Proposal.



## Attachment A - Contiguous District Properties off Pine Valley Drive



Property boundaries of the four parcels owned by Auburn Water Department. Access to the two parcels west of the railroad tracks is from Pine Valley Drive. The two parcels east of the tracks are not currently accessible by vehicles and access agreements with either the railroad or abutters will to be developed by applicant

## Attachment B - Satellite Image of Property Boundaries, Zone 1s and Potential Array Locations



Auburn Water District property boundaries are outlined in red, the two Zone 1 boundaries for AWD's two water supply wells are in yellow, and four potential locations for solar arrays are outlined in blue.

**Attachment C – Link to “Town of Auburn Zoning By-Laws” dated October 26, 2021**

[Auburn Zoning By-Laws \(auburnguide.com\)](http://auburnguide.com)

**Attachment D – Link to “Town of Auburn General By-Laws”, dated May 2022**

[General-By-Laws-PDF \(auburnguide.com\)](#)

**Attachment E – Guideline # BRP 2011-1: Guideline Bureau of Resource  
Protection Drinking Water Program**

# Department of Environmental Protection

One Winter Street Boston, MA 02108 617-292-5500

Charles D. Baker  
Governor

Matthew A. Beaton  
Secretary

Karyn E. Polito  
Lieutenant Governor

Martin Suuberg  
Commissioner

Guideline  
Bureau of Resource Protection  
Drinking Water Program

Information to be Submitted to MassDEP for Proposed Solar and Wind Energy Projects on  
Lands Owned or Controlled By Public Water Systems for Drinking Water Purposes

Effective Date: September 1, 2011

Updated: March 26, 2012; April 18, 2018

Guideline # BRP 2011-1

Applicability: Public Water Systems

Approved by: Douglas Fine, Assistant Commissioner, Bureau of Water Resources

Signed

Supersedes Guideline: none

To provide guidance to public water suppliers on information to be submitted to MassDEP for wind and solar energy projects proposed on lands owned or controlled by public water systems for drinking water purposes.

**Applicability:** This Guideline applies to public water suppliers and their representatives requesting written approval from MassDEP to install solar and wind energy projects on lands held by public water systems for drinking water purposes.

**Note:** The public water supplier may need to seek additional approvals from other entities and/or MassDEP, including, but not limited to, municipal approval, legislative approval pursuant to Article 97, and MEPA approval pursuant to 301 CMR 11.00.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751. TTY#  
Mass Relay service 1-800-439-2370  
MassDEP Website: [www.mass.gov/dep](http://www.mass.gov/dep)

Printed on Recycled Paper

Authority. /Background:

M.G.L. Chapter 1 1 1, Section 160 titled "Examinations of water supply; Rules; Penalty for violation," states that the department may "make rules and regulations and issue such orders as its opinion may be necessary to prevent the pollution ... and to ensure the delivery of a fit and pure water supply to all consumers."

310 CMR 22.21 (1) and 22.21 require activities in the Zone I to be limited to those directly related to the provision of public drinking water or that will have no significant adverse impact on water quality.

310 CMR 22.24: Sale, Transfer of Property Interest, or Change in Use of Water Supply Land (1) No supplier of water may sell, lease, assign, or otherwise dispose of, or change the use of, any lands used for water supply purposes without the prior written approval of the Department. The Department will not approve any such disposition or change in use unless the supplier of water demonstrates to the Department's satisfaction that such action will have no significant adverse impact upon the supplier of water's present and future ability to provide continuous adequate service to consumers under routine and emergency operating conditions, including emergencies concerning the contamination of sources of supply, failure of the distribution system and shortage of supply.

In addition, M.G.L. Chapter 40, Section 15B, states "[a] town, city or district authorized to furnish water for domestic purposes, may, with the advice and approval of the state department of environmental protection ... in its discretion, by lease, license or other agreement, permit the construction and maintenance on any land under its control of towers, poles, wires, and other

structures for the purpose of transmitting electric power over lands and water held for water supply purposes; provided, that such lease, license or agreement will not, in the opinion of the said department, affect or interfere with the water supply; and provided, further, that said city, town or district may, with the approval of said department, revoke said lease, license or agreement for cause to be determined by it. " Review and Approval

MassDEP supports wind and solar energy projects but also recognizes that lands that are under the control of public water systems have been identified as the most critical to protect public drinking water reservoirs and wells. In addition, these lands may be the future sites for new or replacement public water system sources. Pursuant to 310 CMR 22.24(1), public water suppliers must obtain Mitten approval from MassDEP for projects described in the Applicability section above. .

Public water suppliers shall submit a written certification to MassDEP that proposals to construct and maintain wind and solar energy projects will have no significant adverse impact on the public water supplier's present and future ability to provide continuous adequate service to consumers under routine and emergency operating conditions, including emergencies concerning the contamination of sources of supply, failure of the distribution system and shortage of supply. The certification should include maps, plans or other documentation to support that statement and should address, at a minimum, the information listed in Part A below. Public water suppliers and their contractors, operators, and/or lessees will be required to adhere to the applicable conditions in Part B below as a condition of their approval. For Zone I projects, the public water supplier should also certify that the wind and/or solar energy project will have no significant adverse impact on water quality and that the energy generated by the facility will be used to benefit, either by direct consumption or by other means, the operation of the public water system. In addition, there shall be a minimum of a 200 ft. no disturbance area from the well within the Zone I for the installation of, or land clearing related to, solar installations. Site characteristics and conditions may require a larger no disturbance area at the discretion of MassDEP staff. Solar batteries and solar battery storage housing (trailers, buildings, etc.) are prohibited within the Zone I.

If a public water supplier submits a written certification in accordance with this Guideline, MassDEP approval will be presumed unless the agency informs the public water supplier otherwise within 30 days



of the Department's receipt of the submission. MassDEP may request additional information or deny the request within 30 days.

#### A. General Site Information and Site Design

- The location of the public water system source; water supply protection areas; and depth to ground water.
- Project footprint; new easements or roads; existing water system structures.
- A description of the wind or solar infrastructure proposed for the site.
- The estimated schedule and duration for the construction of the project.
- The type of soils, vegetation, and slopes in the project area; the location and amount to be disturbed; and the method of soil/slope stabilization during and after the project.
- There shall be a minimum of a 200 ft. no disturbance area from the well within the Zone I for the installation of, or land clearing related to, solar installations. Site characteristics and conditions may require a larger no disturbance area at the discretion of the Department.
- Solar batteries and solar battery storage housing (trailers, buildings, etc.) are prohibited within the Zone I.
- The location and amount of pervious surface that will be changed to impervious surface and a description of how stormwater will be managed on the site.
- A list of expected coolants, lubricants, cleaning products and other potential contaminants associated with the construction and maintenance of the infrastructure.
- Descriptions of any wash water disposal practices and/or equipment used at the site.
- For projects located within the Zone I, an explanation of how the energy generated will benefit the operation of the public water system.
- Description of emergency response procedures (e.g. fire safety measures) in place.
- Any other information requested by MassDEP to protect the public water supply.

#### B. Conditions for Siting Solar Batteries and Battery Storage Housing (trailers, buildings, etc.) Outside the Zone I at Public Wells.

- There shall be no solar battery storage units or their housing (trailers, buildings, etc.) located within the Zone I.
- A smoke detection system must be installed and operating in the battery storage housing.
- Each battery chamber must have its own heat sensor and detection alarm system.
- The battery storage housing must be located above the 100 year floodplain.
- High pressure fire extinguishers containing Novec 1230 or equivalent must be located on site.
- The battery system must be stored in a self-containment area so that in the event of a fire, fire extinguishing chemicals will be completely contained.
- Battery storage units must number only those needed to support the solar installation at the site.
- Spent or expired battery units must be immediately removed from the site. There must be no stockpiling of battery units.
- Applicants may be required to increase water quality monitoring.
- MassDEP may consider revoking an applicant's participation in the Water Quality Monitoring Waiver Program.



- Applicants shall be subject to local and state regulations for proposed impervious surfaces.
- Stormwater from proposed impervious sources must be directed away from drinking water sources.
- The battery storage housing must not interfere with the operation of the public water system or access to the water distribution system.

#### C. Construction and Post-Construction Conditions

- All exposed soils and slopes shall be stabilized with erosion controls during and after construction until vegetation is established.
- There shall be a minimum of a 200 ft. no disturbance area from the well within the Zone I for the installation of, or land clearing related to, solar installations. Site characteristics and conditions may require a larger no disturbance area at the discretion of the Department.
- Solar batteries and solar battery storage housing (trailers, buildings, etc.) are prohibited within the Zone I.
- Vegetation related to the facility shall be managed through mowing or other mechanical means or with native plantings if possible. If pesticide use is necessary for employee safety, such as to control poison ivy, the application shall comply with local, state, and federal requirements. There shall be application of pesticides or fertilizers in the Zone I.
- There shall be no oil, hazardous materials, cleansers, or other potential contaminants stored on-site in the Zone I. If these materials are stored on-site in Zones II and III and in Zones A, B, and C, they shall properly labeled, covered and contained.
- Disposal of wash water at the facility shall be avoided or minimized to prevent contamination of ground or surface waters and will comply with any applicable regulatory requirement (including underground injection control registration).
- Emergency response procedures shall be developed by the public water system in conjunction with any contractors, operators, and/or lessees.
- The public water supplier shall notify MassDEP within 30 days of project completion.
- Any other conditions required by MassDEP to protect the public water supply.

MassDEP staff may conduct an initial site visit and/or a final inspection of the installation. The installation and operations are subject to review during sanitary surveys or other MassDEP inspections. The public water supplier is responsible for ensuring that project construction and operation are consistent with the proposal and approval including all conditions. The public water system and this project remain subject to Massachusetts General Laws, the Massachusetts Drinking Water Regulations, all other relevant Massachusetts regulations, and MassDEP's authority herein.

## Model CERTIFICATION

The PWS \_\_\_\_\_ provides this certification to MassDEP that its proposal to construct and maintain wind and solar energy projects will have no significant adverse impact on its present and future ability to provide continuous adequate service to consumers under routine and emergency operating conditions, including emergencies concerning the contamination of sources of supply, failure of the distribution system and shortage of supply. If this proposal is for Zone 1, PWS also certifies that the wind and/or solar energy project will have no significant adverse impact on water quality and that the energy generated by the facility will be used to benefit, either by direct consumption or by other means, the operation of the public water system.

Note: The public water supplier may need to seek additional approvals from other entities and/or MassDEP, including, but not limited to, municipal approval, legislative approval pursuant to Article 97, and MEPA approval pursuant to 301 CMR 1 1.00. .

In support of this proposal the PWS is attaching the following:

- The location of the public water system source; water supply protection areas; and depth to ground water.
- Project footprint; new easements or roads; existing water system structures.
- A description of the wind or solar infrastructure proposed for the site.
- The estimated schedule and duration for the construction of the project.
- The type of soils, vegetation, and slopes in the project area; the location and amount to be disturbed; and the method of soil/slope stabilization during and after the project.
- An acknowledgment that there shall be a minimum of a 200 ft. no disturbance area from the well within the Zone I for the installation of, or land clearing related to, solar installations. Site characteristics and conditions may require a larger no disturbance area at the discretion of the Department. .
- An acknowledgement that solar batteries and solar battery storage housing (trailers, buildings, etc.) are prohibited within the Zone I.
- The location and amount of pervious surface that will be changed to impervious surface and a description of how stormwater will be managed on the site.
- A list of expected coolants, lubricants, cleaning products and other potential contaminants associated with the construction and maintenance of the infrastructure.
- Descriptions of any wash water disposal practices and/or equipment used at the site.
- Description of emergency response procedures (e.g. fire safety measures) in place.
- For projects located within the Zone I, an explanation of how the energy generated will benefit the operation of the public water system.

PWS \_\_\_\_\_ also certifies that the proposal will meet the following conditions:

- All exposed soils and slopes shall be stabilized with erosion controls during and after construction until vegetation is established.
- There shall be a minimum of a 200 ft. no disturbance area from the well within the Zone I for the installation of, or land clearing related to, solar installations. Site characteristics and conditions may require a larger no disturbance area at the discretion of the Department.

- Solar batteries and solar battery storage housing (trailers, buildings, etc.) are prohibited within the Zone I.
- Vegetation related to the facility shall be managed through mowing or other mechanical means or with native plantings if possible. If pesticide use is necessary for employee safety, such as to control poison ivy, the application shall comply with local, state, and federal requirements. There shall be application of pesticides or fertilizers in the Zone I.
- There shall be no oil, hazardous materials, cleansers or other potential contaminants stored on-site in the Zone I. If these materials are stored on-site in Zones II and III and in Zones A, B, and C, they shall properly labeled, covered and contained.
- Disposal of wash water at the facility shall be avoided or minimized to prevent contamination of ground or surface waters and will comply with any applicable regulatory requirement (including underground injection control registration).
- Emergency response procedures shall be developed by the public water system in conjunction with any contractors, operators, and/or lessees.
- The public water supplier shall notify MassDEP within 30 days of project completion.

For the Siting of Solar Batteries and Battery Storage Buildings outside the Zone I at Public Wells

- There shall be no solar battery storage units or their housing (trailers, buildings, etc.) located within the Zone I.
- A smoke detection system must be installed and operating in the battery storage housing.
- Each battery chamber must have its own heat sensor and detection alarm system.
- The battery storage housing must be located above the 100 year floodplain.
- High pressure fire extinguishers containing Novec 1230 or equivalent must be located on site.
- The battery system must be stored in a self-containment area so that in the event of a fire, fire extinguishing chemicals will be completely contained.
- Battery storage units must number only those needed to support the solar installation at the site.
- Spent or expired battery units must be immediately removed from the site. There must be no stockpiling of battery units.
- Applicants may be required to increase water quality monitoring.
- MassDEP may consider revoking an applicant's participation in the Water Quality Monitoring Waiver Program.
- Applicants shall be subject to local and state regulations for proposed impervious surfaces.
- Stormwater from proposed impervious sources must be directed away from drinking water sources.
- The battery storage housing must not interfere with the operation of the public water system or access to the water distribution system.

\_\_\_\_\_ [signature] Date: \_\_\_\_\_

Title: \_\_\_\_\_ for \_\_\_\_\_ the Public Water System

## Attachment F – District Electricity kWh Use Data for All Facilities

Bill Period	Pine Valley Pole 39-1	60 Church	61 Church	199 Prospect	75 Church	74 Walsh	25 Southbridge Street Court	198 Leicester St	71 West St
	03038-33016	03246-13014	15580-00017	28184-53013	28201-86018	52734-05016	65197-85012	90491-65030	90516-71016
Sept 2022	--	24,142	7,600	1,635	1,600	26,400	11,600	1,501	18,900
Aug 2022	--	28,703	11,328	1,719	2,573	25,800	14,600	1,600	23,500
Jul 2022	172*	25,708	8,758	1,577	1,801	25,600	13,200	1,453	17,900
Jun 2022	1,145*	29,844	9,851	1,812	1,420	27,600	16,500	1,654	16,900
May 2022	28,051*	21,462	8,598	1,561	1,246	22,000	11,900	1,421	14,000
Apr 2022	15,002*	25,889	8,059	1,833	1,462	21,800	12,100	1,667	16,300
Mar 2022	2,680*	23,289	7,972	1,874	1,593	20,400	20,200	1,706	17,100
Feb 2022	2,100*	23,414	7,561	1,685	1,780	27,200	10,400	1,519	8,400
Jan 2022	3,064*	29,302	9,205	1,850	1,875	32,400	9,700	1,709	12,800
Dec 2021	2,410*	26,363	9,412	1,827	1,804	24,800	8,300	1,716	16,800
Nov 2021	1,490*	24,018	7,888	1,714	1,473	27,400	12,800	1,629	16,700
Oct 2021	95*	24,410	9,724	1,609	1,288	25,000	17,900	1,520	24,600*
Sept 2021	226*	22,398	9,866	1,580	1,640	21,800	16,000	1,493	27,600*
Aug 2021	744*	26,098	10,144	1,708	2,101	18,600	14,600	1,594	28,300*
Jul 2021	456*	27,846	10,090	1,639	1,905	16,200	12,000	1,552	28,700*
Jun 2021	628*	35,503	12,974	1,876	1,719	13,400	15,700	1,755	29,600*
May 2021	1,355*	25,438	8,629	1,577	1,294	18,600	13,400	1,488	16,100
Apr 2021	7,649*	25,462	8,374	1,708	1,586	19,400	13,100	1,621	16,700
Mar 2021	18,183	24,826	7,901	1,470	2,086	17,600	13,900	1,615	16,700
Feb 2021	16,281	19,628	5,288	1,109	2,536	23,400	12,800	1,787	12,500
Jan 2021	12,047	24,306	7,693	1,031	2,373	16,600	8,300	1,700	16,600
Dec 2020	17,171	20,958	6,291	1,074	2,036	36,600	1,900	1,875	13,400
Nov 2020	11,492	22,896	7,057	911	1,316	8,000	3,100	1,603	12,600
Oct 2020	10,820	24,207	7,412	846	1,106	20,200	9,100	1,515	16,000
Comments:	* South St Wells Off-line April '21. *Use non data	Wells 1 & 2	Well 3	2 Tanks	Office	Walsh WTP	SBSTCT WTP	2 Tanks	West St WTP  Blower VFD offline summer-fall '21

## Attachment G – Proposed System(s) Design Parameters

Specify for each proposed system:

System	West of Railroad	East of Railroad
System DC Rating (kW)		
DC to AC Derate Factor		
Module Wattage		
Array tilt angle		
Array azimuth		
Surface area of solar panels		
Land area needed		
Installation/ground mounting method		

## Attachment H -Proposal Cover Page

### For AOBC Purchase Agreement - Auburn Water District

To: Greg Woods, Superintendent Auburn Water District

From:

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Federal Tax id (SS# for individuals): \_\_\_\_\_

Organization Structure: Partnership \_\_\_\_\_ Corporation \_\_\_\_\_ Joint Venture \_\_\_\_\_

Individual/Proprietorship \_\_\_\_\_ Other \_\_\_\_\_

Ownership: Public \_\_\_\_\_ Private \_\_\_\_\_ Non-Profit \_\_\_\_\_

I have read, understand, and agree to comply with the terms and conditions of providing an AOBC Purchase Agreement to the awarding authority as stated in the Awarding Authority's Request for Proposal. I acknowledge that I have accessed and reviewed the Awarding Authority website for RFP addenda noted below.

RFP Addenda (if any):

Addendum Number: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum Number: \_\_\_\_\_ Dated: \_\_\_\_\_

Addendum Number: \_\_\_\_\_ Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Print name and title

## **Attachment I - Certificate of Non-Collusion**

### **Auburn Water District**

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

\_\_\_\_\_  
(Signature of person signing Proposal)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Name of Business)

\_\_\_\_\_  
(Date)

## Attachment J - Price Proposal

For AOBC Purchase Agreement

Auburn Water District

1. Term of Contract: 20 years [with two (2) options to extend for five (5) years each]
2. AOBC Price: [ ] % of the monetary value of the AOBC delivered to the District or the monetary value of the AOBC delivered to the District less [ ] cents/kWh
3. Performance and Payment Bond Amount: \$ \_\_\_\_\_

Signature: \_\_\_\_\_

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Print or Type Title

Offeror Information:

Name of Organization: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number of Contact: \_\_\_\_\_



## Attachment K - Guaranteed Annual Energy Produced

Offered for Sale to the Auburn Water District

Contract Year	Guaranteed Energy Produced (kWh)	Anticipated Monetary Benefit to District
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

Offeror Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT 1 – Lease Agreement (DRAFT)

This LEASE AGREEMENT (this “Lease”) is made and entered into this \_\_\_\_ day of [\_\_\_\_\_] (the “Effective Date”), by and between [\_\_\_\_\_] a [\_\_\_\_\_] with a usual place of business at \_\_\_\_\_ (“Lessee”), and the AUBURN WATER DISTRICT, a Massachusetts public water district established by Chapter 585 of the Acts of 1947, as amended, with a principal place of business at 75 Church Street, Auburn Massachusetts in Worcester County, Massachusetts (“Lessor”). Lessor and Lessee are sometimes referred to collectively hereinafter as the “Parties.”

### RECITALS

A. Lessee is the developer, owner, and operator of solar energy generation equipment and facilities suitable for the production and delivery of electrical energy.

B. Lessor is a Massachusetts water district and is the owner of certain real property located off Pine Valley Drive in Auburn, Massachusetts 01501, more particularly described in Exhibit 1A attached hereto (the “Property”).

C. Lessee desires to (i) lease a portion of the Properties (the “Premises”) from Lessor, as shown on Exhibit 1A attached hereto, for purposes of constructing, installing, owning, operating, and maintaining Solar Facilities (as defined herein), and (ii) obtain certain ancillary rights affecting the Premises for purposes incidental thereto as more fully set forth below.

D. Lessor agrees to lease the Premises to Lessee for the purposes set forth in this Lease and to grant Lessee certain ancillary rights, all on the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meaning set forth below:

1.1 “Interest Rate” means the rate of interest equal to one percentage point over the rate of interest announced by The Wall Street Journal as its “prime” or “base” lending rate on the Solar Commencement Date, or if such rate can no longer be determined, the base or prime rate advertised by such other commercial bank having an office in New York, NY agreed to by the Parties.

1.2 “Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets, and allowances, howsoever entitled, directly or indirectly attributable to the generation from the Solar Facilities and their displacement of conventional energy. Environmental Attributes include but are not limited to: (1) any benefit accruing from the renewable nature of the generation of energy from the Solar Facilities, (2) any avoided emissions of pollutants to the air, soil or water; (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane

(CH<sub>4</sub>) and other greenhouse gases (GHGs); (4) displacements of energy generation by fossil fuel sources; (5) any reporting rights to these avoided emissions such as Green Tag Reporting Rights; (6) any certificates, attributes or other premiums or additional value for renewable, clean or green energy generation, or avoided emissions; and (7) any production tax credits or related generation subsidies.

1.3 “Environmental Incentives” include, but are not limited to, (i) federal, state or local production tax credits associated with the construction, purchase, operation, and/or maintenance of the Solar Facilities, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Facilities that are applicable to a local, state or federal income taxation obligation, (iii) grants or subsidies in support of renewable energy, (iv) emission reduction credits encumbered or used by the Solar Facilities for compliance with local, state, or federal operating and/or air quality permits, and all rebates, benefits, credits, reductions, tax deductions, offsets, and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or operation of the Solar Facilities.

1.4 “Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Lease or from complying with conditions required under this Lease if such act or event, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and are beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance, “Force Majeure” may include without limitation: an act of God or the elements; explosion, fire, epidemic, landslide, or mudslide; sabotage; terrorism; lightning, earthquake, flood or similar cataclysmic event; an act of public enemy, war, blockade, civil insurrection, riot, or other civil disturbance; or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

1.5 “Interconnection Agreement” means an agreement entered or to be entered between the Lessee, as owner and operator of the Solar Facilities, and the local electric utility, National Grid.

1.6 “Interconnection Facilities” means all improvements the purpose of which is to transmit electrical power from the Solar Facilities to a utility grid or other system, including, without limitation, transformers, and electrical transmission lines.

1.7 “AOBC Purchase Agreement” means that certain agreement entitled “Alternative On-Bill Credit Purchase Agreement” of even date herewith between the Auburn Water District and the owner and operator of the Solar Facilities for the sale of Alternative On-Bill Credits resulting from the electric power generated on the Premises.

1.8 “Photovoltaic Facilities” means any photoelectric cells or other equipment designed for the collection and/or generation of electrical power from solar radiation, including without limitation, solar panels, associated support structures, racking, floatation devices, braces, wiring, and related equipment.

1.9 “Tax Agreement” means the agreement entitled “Agreement for Payment in Lieu of Taxes for Real Property and Personal Property” entered or to be entered between the Solar Facilities owner and the Town of Auburn, concerning the real estate and personal property taxation on the Premises as shown in Exhibit 1A.

1.10 “Hazardous Materials” means (i) any material, substance, product, petroleum, petroleum product, derivative, compound or mixture, mineral, including but not limited to asbestos and asbestos containing materials, gas, radon, radioactive materials, chemical, flammable explosives, medical waste or other pollutant, urea formaldehyde foam insulation, lead, polychlorinated biphenyl, in each case whether naturally occurring, man-made or the by-product of any process that is toxic, harmful or hazardous or acutely hazardous and that may cause damage to human health or the environment, safety or real Premises, or (ii) any material or substance sustaining a cause of action or claim under any Environmental Law, whether or not such material or substance is defined as hazardous as such under any Environmental Law and whether such substance is now or hereafter designated as hazardous, under any Environmental Law, or by any environmental agency or otherwise.

1.11 “Environmental Laws” means all federal, state and local laws, ordinances, rules, regulations and legally enforceable policies and guidelines regarding the environment, human health or safety (herein “Environmental Laws”) applicable to the Premises, or the use thereof, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), Resource Conservation & Recovery Act (42 U.S.C. Sect. 6901 et seq.), Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), Toxic Substances Control Act (15 U.S.C. Sect. 2601 et seq.) the Clean Air Act (42 U.S.C. Sect. 7401 et seq.), and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sect. 9601 et seq.); and Massachusetts General Laws Chapter 21E and the Massachusetts Contingency Plan.

2. Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises consisting of approximately [ ] acres as shown on Exhibit 1A and described as “Premises” commencing on the Construction Commencement Date (as hereinafter defined) and terminating on the expiration of the Term (as hereinafter defined), subject to extensions, in accordance with the terms and conditions set forth herein.

As used herein, the term “Premises” means of that portion of the Property as set forth on Exhibit 1A. The term “Remaining Lessor Property” means the Property, exclusive of the Premises. Throughout the Term of the Lease, Lessee and its employees, contractors, vendors, licensees, and invitees shall have non-exclusive, reasonable access to, over and upon the Remaining Lessor Property from public ways within the Town of Auburn for access to and from the Premises.

2.1 Term. The term of this Lease (the “Term”) shall be comprised of the following:

2.1.1 A construction period commencing upon the date of this Lease (the “Construction Commencement Date”) and expiring upon the day immediately preceding the date that commercial operation of the Solar Facilities commences (the “Solar Commencement Date”) (from the Construction Commencement Date until the day immediately preceding the Solar Commencement Date, herein referred to as the “Construction Term”); provided, however, that the Solar Commencement Date shall commence no later than [ ]. Lessee shall deliver written notice

to Lessor of the date construction activities will commence on the Premises (the “Notice of Commencement”). Lessee shall also deliver written notice to Lessor of the Solar Commencement Date. If Lessee does not achieve the Solar Commencement Date by the deadline specified, then this Lease may be terminated by Lessor and be subject to the applicable provisions of Section 12.

2.1.2 An initial operating term of twenty (20) years, beginning on the Solar Commencement Date, subject to extension or earlier termination as set forth herein (the “Operating Term”). Following the expiration of the Operating Term, Lessee shall fulfill the obligations set forth in Section 12 during the Decommission Period, as defined herein.

2.2 Payments to Lessor. The Rent Schedule attached hereto as Exhibit 1B sets forth the monthly rent (the “Rent”) due from Lessee to Lessor. Lessee’s obligation to pay Rent shall begin on the Solar Commencement Date and continue throughout the Term. The total amount of Rent for each year shall be payable in monthly installments, payable in advance, on the first day of each and every calendar month of the Term. If the Solar Commencement Date shall occur on a date other than the first day of a calendar month, the Rent for such month shall be adjusted on a per diem basis.

All payments shall be addressed and directed to the Superintendent, Auburn Water District, P.O. Box 187, 75 Church Street, Auburn, MA 01501.

2.3 Solar Facilities. Lessee shall be the sole legal and beneficial owner and operator of the Solar Facilities, which Solar Facilities may be upgraded or replaced with similar or dissimilar technology; provided, however, that if such upgrade or replacement may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor’s approval of all plans and specifications for same, which approval shall not be unreasonably withheld. The Solar Facilities shall remain the personal property of Lessee and shall not attach to or be deemed a part of, or become a fixture to, the Premises. At all times, Lessee shall have one hundred percent (100%) of all right, title and interest in and to all Green Tags, Green Tag Reporting Rights, Environmental Incentives and other items of whatever nature relating to Environmental Attributes and Environmental Incentives of the Solar Facilities. Lessor acknowledges that Lessee will receive federal tax credits and accelerated depreciation on the Solar Facilities directly related to the construction and continued operation of the Solar Facilities and Lessor acknowledges that such tax credits and accelerated depreciation are the sole right and property of Lessee. Lessor shall execute and furnish any instrument and/or take any action reasonably requested by Lessee to perfect, confirm or maintain the Lessee’s right, title and interest in the items described in the preceding two sentences so long as all costs and expenses associated with such required action are borne solely by Lessee. Lessee will be responsible for the planning, construction, operation and maintenance of the Solar Facilities at Lessee’s sole cost and expense and shall be solely responsible for the cost of maintaining the Premises in a manner consistent with a “triple net” lease and in compliance with the MA Department of Environmental Protection (“MassDEP”) regulations pertaining to renewable energy development, operation, and maintenance within Wellhead Protection Zones 1 & 2. Lessee will comply with applicable laws and regulations relating to the operation of the Solar Facilities and the generation and sale of energy, including obtaining and maintaining in effect all relevant approvals and permits.

2.4 Sale of Energy

2.4.1 The Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations (as hereinafter defined) on, the Premises. Except as otherwise provided in the AOBC Purchase Agreement, any economic benefit from the transmission of energy from the Solar Facilities shall be the sole right, title and interest of Lessee and any economic benefit which is initially credited or paid to the Lessor for such energy, together with any and all Environmental Attributes and/or Environmental Incentives, will be assigned by Lessor to Lessee without delay. Lessor shall also execute and furnish any instrument and/or take any action reasonably requested by Lessee to assign, transfer, perfect, confirm or maintain the Lessee's right, title and interest in the items described in the preceding sentence.

All rights claimed by the Lessee in this Lease for the right to operate the Solar Facilities and to obtain the economic benefits therefrom, whether it be by sale of electricity or by the claim of any of the benefits set forth in the preceding paragraph are subject to any and all applicable regulations of any governmental agency and it shall be the sole responsibility of the Lessee and not the Lessor to comply with same.

Under no circumstances shall the Lessor be responsible for the payment of any claim, charge, fee, permit, application, or any other payment of any kind which may be associated with the operation of the Solar Facilities or the transmission of electricity to the local electrical distribution network. All such charges or payments of any type or kind shall be borne by and be timely paid by the Lessee without any credit for or offset against or on account of any payment which may be due to Lessor from Lessee, whether same be rent, tax payment or any other payments due to the Lessor from Lessee under this Lease.

If the Lessor is required to take action as described in this paragraph, then the Lessee shall bear the cost of such action and reimburse the Lessor for such actual costs, including, but not limited to, reasonable attorney's fees for the Lessor's counsel.

2.4.2 The Parties acknowledge and agree that the Parties shall execute the AOBC Purchase Agreement simultaneously with the execution of this Lease. This Lease is contingent upon the execution of the AOBC Purchase Agreement. This Lease shall terminate upon the termination of the AOBC Purchase Agreement.

2.5 Exclusive Rights of Lessee. For so long as there shall be no Event of Default by Lessee under its obligations under this Lease and for so long as this Lease has not been terminated, the Lessee shall have the sole and exclusive right to conduct operate the Photovoltaic Facilities on the Premises. Lessor shall not grant any rights in the Property that would materially interfere with Lessee's conduct of its operations in derogation of Lessee's sole and exclusive rights and privileges hereunder. For so long as there shall be no Event of Default by Lessee under its obligations under this Lease and for so long as this Lease has not been terminated, without the prior written consent of Lessee, Lessor shall not (i) grant, confirm, acknowledge, recognize or acquiesce in any right claimed by any other person or entity (other than as successor or assignee of the Lessee) to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee, at Lessee's sole cost and expense, in resisting and disputing such claims, or (ii) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including, without limitation any environmental regulation, land use ordinance or

zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the Solar Facilities on the Premises, except to the extent that such waiver or grant of rights is reasonably required in connection with the development or use of the Remaining Lessor Property.

Lessee further acknowledges and recognizes that this Lease and the Premises, as well as the Remaining Lessor Property, is subject to regulation by the MassDEP.

2.6 Contingencies. The parties acknowledge that this Lease is expressly contingent upon the following (each a "Contingency" and together the "Contingencies"):

2.6.1 Receipt by Lessee of the Planning Board Site Plan Approval from the Town of Auburn.

2.6.2 An affirmative agreement with the Town of Auburn Board of Selectmen approving the Tax Agreement, in a form and on terms reasonably acceptable to Lessee and Lessor.

2.6.3 Receipt by Lessee of a duly executed AOBC Purchase Agreement between Lessee and Auburn Water District both in a form and on terms reasonably acceptable to Lessor and Lessee.

2.6.4 Lessee entering an Interconnection Agreement with National Grid; and

2.6.5 Lessee obtaining the insurance policies required herein.

Lessor and Lessee shall cooperate in Lessee's efforts to satisfy the Contingencies listed above and to take all reasonable steps to expedite same including, but not limited to, transmitting draft documents and explanatory materials furnished by Lessee, executing appropriate documents after review by Lessor's counsel, if deemed necessary by Lessor at Lessee's expense subject to the terms of Section 10 and limitations below, authorizing entry onto the Premises by Lessee, its employees, agents, engineers, surveyors, and others for purposes related to obtaining the permits including, but not limited to, the survey of the Premises the preparation of a site plan, the preparation of engineering studies or reports in support of the development of the Solar Facilities by Lessee, the preparation of applications and information required under the Interconnection Agreement and such other activities as may be reasonably deemed necessary by the Lessee in preparation for the construction of the Photovoltaic Facilities. Such entry shall be during normal business hours provided that none of same shall disrupt the normal operations on the Property during the conduct of any such activities. In addition, the Lessee shall be solely responsible to restore the Premises to its current condition following any such inspections or tests and all of the contractors, subcontractors or consultants shall be required by the Lessee to be insured for workmen's compensation and to carry commercial general liability insurance in forms and amounts reasonably acceptable to Lessor. Lessee shall be responsible for any damage to person or Property which may occur as a result of any of these entries onto the Property and shall indemnify and hold lessor harmless from any such personal injury or property damage.

2.7 Option to Extend. Lessee shall have the right to extend the Operating Term (an "Option to Extend") for the two (2) periods of five (5) years each (each an "Extension Term"). An Option to Extend shall be effectively exercised only if (a) Lessee gives notice of exercise to Lessor not less than 270 days prior to then-existing final day of the Term, and (b) there are no Events of

Default outstanding on either the date of exercise or the first day of the Extension Term. Each Extension Term shall be on the terms and conditions of this Lease as existing on immediately preceding the commencement of such Extension Term, provided, however, that the number of Extension Terms available to Lessee shall be reduced by one (1) for each Option to Extend that is exercised and the Rent shall be as set forth in Exhibit 1B.

3. Access Rights and Solar License

3.1 Solar License. Lessor hereby grants to Lessee, from the Construction Commencement Date through the end of the Term, a Solar License over and on the Premises, whereby no structure shall be erected on, or vegetation be permitted on the Remaining Lessor Property, which will, during daylight, cast a shadow on the Solar Facilities.

3.2 Access. Lessor grants to Lessee the access to the Premises.

4. Use of the Premises.

4.1 Permitted Uses. During the Term, Lessee shall have the right to occupy and use the Premises for solar energy generation, conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, "Operations") which shall be limited to the following:

(a) constructing, reconstructing, erecting, installing, maintaining, repairing, improving, upgrading, replacing, relocating, removing, using, monitoring and/or operating existing, additional or new (i) Photovoltaic Facilities and Interconnection Facilities, (ii) electrical production, transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) interconnection and/or switching facilities, transformers and inverters, (v) control boxes and computer and monitoring hardware, (vi) utility installation, (vii) safety protection facilities, (viii) signs and fences, and (ix) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, sale or other use or conveyance of electricity (all of the foregoing, including the Photovoltaic Facilities and Interconnection Facilities, collectively "Solar Facilities") which Solar Facilities may be replaced with similar or dissimilar technology at Lessee's cost and expense; provided, however, that if such replacement may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld;

(b) Generating, producing, inverting, transforming, and transmitting energy related to the Operations of the Photovoltaic Facilities.

(c) Undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that are necessary, helpful, appropriate, desirable or convenient in connection with, incidental to or to accomplish any of the foregoing purposes so long as they are essential to the Operations of the Photovoltaic Facilities and the sale and transmission of electricity



emanating therefrom, and are in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies ("Legal Requirements").

4.2 Lessee's Exercise of Rights. Lessee may, at any time and from time to time after the commencement of the Construction Term and throughout the Term, construct, install, use, maintain, repair, replace and/or relocate any part of the Solar Facilities (including, but not limited to, racks, panels, pipes, electric lines, conduits, wires and/or appurtenant fixtures and equipment and the like, wherever located on the Premises) and otherwise conduct and perform Operations in a manner Lessee deems reasonable and appropriate subject to the Legal Requirements.

5. Design and Construction of Solar Facilities.

5.1 Installation. Lessor acknowledges that the installation of all or a portion of the Solar Facilities may require physically mounting and adhering the Photovoltaic-Facilities on the Premises. Lessor's consent shall not be required for the installation, any reconstruction, maintenance, repair, relocation, removal, alteration or modification of all or any portion of the Solar Facilities; provided, however, that if such installation, reconstruction, maintenance, repair, relocation, removal, alteration or modification may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld. All costs and expenses (including permits or licenses) attributable to any installations by Lessee shall be borne by Lessee.

5.2 Liens and Claims. In the event that any contractor, subcontractor, vendor, supplier or any other party for whom Lessee is responsible makes claim of a demand for payment Lien against the Lessors, Lessee shall, within thirty (30) days following notice of such claim or demand, cause such claim or demand to be released and discharged (whether by obtaining and recording or filing a lien discharge, posting a bond as required under statute, or otherwise) at no cost to Lessor. Upon becoming aware of the existence of a claim or demand, the Lessee shall give prompt notice to the Lessor, providing the details of such claim or demand and the identification of the claimant. Lessee shall keep Lessor advised of the steps being taken by Lessee to have the claim or demand released and shall indemnify and hold Lessor harmless from any and all claims, costs, and expenses which Lessor may incur in the release of such claim or demand and adverse impact same may have to the Lessor before its removal, including but not limited to reasonable attorney's fees and the cost of any bond.

5.3 Performance Bond. Notwithstanding anything contained herein to the contrary, as a precondition to Lessee installing any component of the Solar Facilities at the Premises, Lessee shall post a bond in the amount of \$[ ] with a bonding company reasonably acceptable to Lessor to secure (a) the complete the initial construction and installation of the Solar Facilities, and (b) the removal of all components of the Solar Facilities at the expiration of the Term.

6. Maintenance and Repair.

6.1 Maintenance and Repair Obligations of Lessor and Lessee. Lessee shall, for the Term of this Lease, at Lessee's sole cost and expense, maintain and repair the Solar Facilities in accordance with all Legal Requirements.

6.2 Impact on Solar Facilities.

6.2.1 Lessor shall not (and shall not allow any other party to) move, remove, upset, disturb or otherwise handle any of the Solar Facilities except to the extent that it is necessary to take such action in order to prevent imminent damage to tangible property or personal injury, in which event Lessor shall notify Lessee as soon as practicable of the emergency event and the actions taken by or on behalf of Lessor. Lessor shall not be responsible for any action taken by it or its agents, servants, employees in connection or conjunction with such activity. Except in the case of an emergency, in connection with any maintenance or repairs by Lessor or anyone acting by or behalf of Lessor with respect to the Remaining Lessor Property, Lessor shall provide Lessee with not less than thirty (30) days prior written notice of any unavoidable need to move, remove, upset, or otherwise handle any of the Solar Facilities.

7. Ownership of Improvements. Except as expressly set forth herein, the Solar Facilities shall at all times remain the property of the Lessee or its successors and assigns and the Lessor shall have no right, title, or interest therein. The Solar Facilities shall not be deemed to be fixtures (even if affixed to the Premises) and shall be and remain the sole property of Lessee.

8. Security. After the Solar Commencement Date, Lessee shall implement commercially reasonable measures that Lessee deems necessary or desirable to secure the Solar Facilities at Lessee's sole cost and expense; provided, however, that the plans for any fencing, signage or other security measures which may be visible from the Remaining Lessor Property shall be approved in advance by Lessor, such approval not to be unreasonably withheld. Such measures may, but not necessarily will, include warning signs, fences along the array perimeter or perimeter of the Premises, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the Solar Facilities or injury or damage to persons or property resulting from the Solar Facilities and Operations. It shall be the Lessee's sole responsibility to conform in all such activities to the Legal Requirements of all governmental agencies which have jurisdiction over the Solar Facilities or the Premises.

9. Representations, Warranties and Covenants.

9.1 Representations, Warranties and Covenants of Lessor.

9.1.1 Lessor represents and warrants as follows to the best of Lessor's knowledge: (a) there are no circumstances known to Lessor and no commitments to third parties that may damage, impair or otherwise adversely affect Lessee's Operations, the Solar Facilities or their function including, but not limited to, blocking direct sunlight to the Photovoltaic System; (b) Lessor has good and lawful fee simple title to the Premises and all required legal access for ingress and egress to and from the Premises, free and clear of all mortgages or other liens (c) Lessor has the full right to enter into this Lease without the consent or approval of any other party; and (d) Lessee shall have quiet and peaceful possession and use of the Premises throughout the term of this Lease.

9.1.2 Lessor hereby agrees, for itself, its agents, employees, representatives, tenants, contractors, successors and assigns, that it will not initiate or conduct activities at any location that it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar

Facilities or their functions, including, without limitation, activities that may adversely affect the Photovoltaic System's exposure to sunlight. Lessor further covenants for itself, its agents, employees, representatives, tenants, contractors, successors and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Lease; (ii) take any action or permit any action to be taken which will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of energy to or from the Premises or by, over and through the easement areas; (iv) take any action or permit any action to be taken that may impair Lessee's access to the Premises and/or any portion of the Solar Facilities for the purposes specified in this Lease, or (v) plant, maintain or allow any vegetation or erect or maintain or allow any structure or use which will, during daylight, cast a shadow on the Solar Facilities or permit the same to be done by others. To the extent that Lessor is provided with notice of plans to develop or build upon any properties directly adjacent to the Premises, then Lessor shall immediately provide Lessee with notice of such plan to develop or build.

9.2 Representations, Warranties and Covenants of Lessee. Lessee represents, warrants and covenants that: (a) subject to the Contingencies set forth herein, Lessee has the full right to enter into this Lease without the consent or approval of any other party; and (b) Lessee shall maintain and repair the Solar Facilities and the Premises in good repair and condition, in a neat and orderly manner and full compliance with requirements of this Lease and any governmental agency or authority having jurisdiction over the Solar Facilities and/or the Premises, including without limitation Environmental Laws.

9.3 Solar Facilities Property of Lessee; Transfer of Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the Solar Facilities, that no portion or component of the Solar Facilities is a fixture, and the Solar Facilities may not be sold, leased, assigned, mortgaged, pledged, or otherwise alienated or encumbered by Lessor. Lessor agrees that this Lease shall survive any Transfer of the Premises and it shall be the obligation of Lessor to inform any transferee of this Lease and the rights and obligations set forth herein.

9.4 Lessee Rights to Electricity and Environmental Attributes. Subject to the terms and conditions of the AOBC Purchase Agreement, Lessor acknowledges that Lessee and/or its affiliate and/or transferee is the exclusive owner of electricity generated by the Solar Facilities and of the Environmental Attributes and Environmental Incentives of and arising from the Solar Facilities. Lessor shall execute and furnish any instrument and/or take any action reasonably requested by Lessee to perfect, confirm or maintain the Lessee's right, title and interest in the items described in the preceding sentence.

10. Permits and Governmental Approvals. Lessee shall be responsible for obtaining, renewing, and maintaining, at its sole cost and expense, any governmental approvals necessary for the construction and operation of the Solar Facilities, including, but not limited to, the Utility Permits, any zoning variances, building permits, approvals, environmental statements, licenses, authority or other Legal Requirement from any county, state or federal authority (collectively, "Permits"), and shall pay all costs associated therewith. Lessor shall cooperate with Lessee as necessary to obtain any governmental approvals, at no cost or expense to Lessor, provided that Lessee shall reimburse Lessor for its reasonable actual out-of-pocket expenses

directly incurred in connection with such cooperation in an amount not to exceed \$5,000.00 in the aggregate, including, but not limited to, reasonable attorney's fees, payable no sooner than the occurrence of the Solar Commencement Date. Lessor agrees to cooperate with and assist the Lessee in applying for any and all Permits that Lessee finds necessary or desirable for the operation of the Solar Facilities, all at Lessee's sole cost and expense.

11. Default and Remedies. The provisions of this Section 11 are subject to the provisions of Section 16 (relating to financing).

11.1 Event of Default Defined. The occurrence of any of the following shall be an "Event of Default" on the part of Lessee:

11.1.1 The failure by Lessee to pay any Rents or taxes when due, and such failure continues for ten (10) days after written notice of such failure to Lessee, provided, however, that Lessor shall not be obligated to provide such written notice more than three (3) times in any twenty-four (24) month period; or

11.1.2 The failure by Lessee to perform any of the other terms and conditions of this Lease and failure to remedy the same within thirty (30) days after receipt of notice from Lessor to do so, provided that in the case of breaches of obligations under this Lease which are susceptible to cure but cannot be cured within thirty (30) days after receipt of notice from Lessor through the exercise of due diligence, so long as the Lessee commences such cure within thirty (30) days after receipt of notice from Lessor and thereafter diligently and continuously pursues such cure, such breach shall not be deemed to create an Event of Default; or

11.1.3 The failure, not timely cured, by Lessee to make any payment or perform any term or condition of the AOBC Purchase Agreement and/or the Tax Agreement. The breach of any one of the three Agreements shall constitute a breach of all three (3) such Agreements; or

11.1.4 If Lessee shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its assets; or

11.1.5 If there is an entry of an order for relief, or, in the absence of an order for relief, if, within sixty (60) days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if within sixty (60) days after the appointment without the consent or acquiescence of Lessee of any trustee, receiver or liquidator of Lessee or of any material part of its assets, such appointment shall not have been vacated; or

11.1.6 If the interest of Lessee in the Premises shall be sold under execution or other legal process.

## 11.2 Bankruptcy Default.

11.2.1 If a petition is filed by, or an order for relief is entered against the Lessee under Chapter 7 of the United States Bankruptcy Code (the "Bankruptcy Code") and the trustee of the Lessee elects to assume this Lease for the purpose of assigning it, the election or assignment, or both, and subject to limitations then in force under the Bankruptcy Code, the same may be made only if all of the terms and conditions of Sections 11 of this Lease are satisfied. If the trustee fails to elect to assume this Lease for the purpose of assigning it within ninety (90) days after his appointment, this Lease will be deemed to have been rejected. The Lessor shall then immediately be entitled to possession of the Leased Premises without further obligation to the Lessee or the trustee, and this Lease will be terminated. The Lessor's right to be compensated for damages in such bankruptcy proceeding, however, shall survive.

11.2.2 If the Lessee files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code or a proceeding that is filed by or against the Lessee under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding.

11.3 Lessor Remedies. At any time following and during the continuance of an uncured Event of Default on the part of Lessee:

11.3.1 Lessor may cure any default by Lessee after Lessee's cure period has expired. If Lessor at any time by reason of Lessee's default pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor as additional rent hereunder, together with any interest due.

11.3.2 Subject to the requirement for notice and right to cure set forth hereinabove, Lessor may terminate Lessee's right to possession of Lessor's Premises upon written notice to Lessee. No act by Lessor other than the giving of such notice to Lessee shall terminate this Lease. This Lease and Lessee's rights and obligations hereunder shall continue as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect Rent, plus accrued interest, if any, when due. Upon termination, and subject to Lessor's compliance with the requirements of applicable laws, Lessor has the right to recover from Lessee the unpaid Rent and/or any other charges due hereunder or any charges, taxes, or rents due to Lessor under the AOBC Purchase Agreement and/or the Tax Agreement, plus interest at the Interest Rate and costs including a reasonable attorney's fee from the date due until the date paid by Lessee.

11.3.3 In the event that Lessor elects to terminate Lessee's right to possession of the Leased Premises pursuant to this Section 11.3 following an Event of Default, Lessor may reenter and take possession of the Premises, and Lessee hereby waives any claim for damages as a result thereof, and Lessee shall be obligated to pay to Lessor as damages on demand, and Lessor shall be entitled to recover from Lessee, (a) all Additional Rent payable to the date of termination of Lessee's right to possession, plus (b) the cost to Lessor of all reasonable legal and other expenses and costs (including attorney's fees) incurred by Lessor in obtaining possession of the Leased Premises, in enforcing any provision of this Lease, in preserving the Premises during any period of vacancy, in taking reasonable steps to protect its interest in the Premises, in making such repairs as Lessor may reasonably deem necessary or advisable in operating and maintaining the Premises, and in re-letting the Premises, including reasonable brokerage commissions, plus (c) amounts equal to any Additional Rent herein

reserved for the balance of the Term less the net amount of rent, if any, which may be collected and received by Lessor from the Premises for a period of time commencing upon termination of Lessee's right of possession and terminating on the sixth (6th ) anniversary thereof. During the balance of the Term, Lessor may relet the Premises, or any part or parts thereof (but in no event shall Lessor be obligated to do so), for a term or terms which may at Lessor's option be less than or extend after the Term, and Lessor may grant concessions or charge a rental in excess of that provided in this Lease (and Lessee shall have no right to any excess), plus any damages allowable at law or in equity.

11.3.4 Lessor may sue for and collect any amounts which may be due pursuant to the provisions of the preceding subsections of this Lease from time to time as Lessor may elect, but no such suit shall bar or in any way prejudice the rights of Lessor to enforce the collection of amounts due at any time or times thereafter by a like or similar proceeding.

## 12. Surrender and Restoration; Holding Over.

12.1 Surrender; Restoration. Upon any termination, surrender, or expiration of this Lease, except as expressly set forth herein, Lessee shall remove the Solar Facilities and all of Lessee's improvements and shall peaceably deliver to Lessor possession of the Premises or any part thereof, and other rights granted by this Lease. Upon any termination, surrender or expiration of this Lease, Lessee shall restore the Premises to its condition at the Effective Date, considering ordinary and reasonable wear and tear since the Effective Date, and shall repair any damage to the Premises as a result of any removal of the Solar Facilities under this Section. Said restoration shall be completed within six (6) months following the termination of the Operating Term (the "Decommissioning Period"). The obligation of the Lessee to the Lessor under the terms of this Lease for the payment of such use and occupancy and associated costs, and taxes is independent of the obligation to restore the Premises and shall not be affected by the provisions of this Section 12.1. Notwithstanding the foregoing, the Lessee shall surrender all roadways or access ways constructed by Lessee upon the Premises or the Remaining Lessor Property upon the expiration or earlier termination of the Lease in their then as-is condition.

12.2 Holding Over. If Lessee shall remain in possession of the Premises without extension after the expiration of the Term, Lessee shall hold as a tenant at sufferance.

12.3 Decommissioning Obligations. In the event that Lessee fails to timely fulfill the Decommissioning Obligations, then Lessor shall be entitled to file a claim, or multiple claims, against the bond required under Section 5.3 to obtain the funds necessary to complete the Decommissioning Obligations. In addition to and without limiting the foregoing, any property on the Premises after the Decommissioning Period shall become the property of Lessor and Lessee shall immediately, upon demand, reimburse Lessor for all of Lessor's costs incurred in connection with removing and disposing of the Solar Facilities. In the event Lessee fails so to remove any such components of the Solar Facilities or fails to repair any such damage to the Premises or Remaining Lessor Property, Lessor may perform such work and collect from Lessee the cost of such work.

## 13. Insurance

13.1 Commercial General Liability and Property Damage Insurance. Commencing on the date of the Construction Commencement Date and during the remainder of the Term, and except

to the extent otherwise required by Applicable Legal Requirements or by the Interconnection Agreement, Lessee at its cost shall maintain commercial general liability insurance on the Premises that is written on an occurrence basis insuring against all liability for personal injury and property damage arising out of and in connection with the Premises, the Permitted Use or Lessee's use or occupancy of the Premises, in standard form with a general aggregate limit of not less than \$5,000,000, a products-completed operations aggregate limit of not less than \$2,000,000 and a per occurrence limit of not less than \$2,000,000 for bodily injury and property damage, with a deductible amount of \$10,000 and which shall include operations and blanket contractual liability coverage which insured performance of Lessee of the indemnity provisions of this Lease. The Auburn Water District shall be named as an additional insured.

13.2 Property Insurance-Personal Property. Commencing on the date of the Construction Commencement Date and during the remainder of the Term, Lessee at its cost shall maintain on all of its personal property on or about the Premises a policy of "all risk" or "special causes of loss" property insurance, with a deductible amount of \$10,000 and with vandalism and malicious mischief endorsements, to the extent of at least 100 percent of their full replacement.

13.3 Automobile Insurance. Business automobile liability insurance (occurrence coverage) for owned, non-owned, and hired automobiles with a minimum combined single limit of liability of \$1,000,000 each accident for bodily injury and property damage.

13.4 Workers' Compensation Insurance. Commencing on the date of its Construction Commence Date and during the remainder of the Term, if applicable, Lessee shall at its cost maintain Workers' Compensation Insurance, subject to the statutory limits of the Commonwealth of Massachusetts, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per employee.

13.5 Lessor's Insurance. During the Term, Lessor at its cost shall maintain insurance of the type and in the amount(s) customarily maintained by the Auburn Water District against acts, omissions or negligence by Lessor.

13.6 Insurance Companies. All insurance required under this Lease shall be issued by insurance companies authorized to do business in the Commonwealth of Massachusetts, with a claim paying ability rating of A- or better and a financial class of V or better, as rated in the most recent edition of Best's Insurance Reports.

13.7 Policy Delivery, Payment Evidence. Concurrent with the delivery of the Notice of Commencement and not less than thirty (30) days prior to the expiration dates of the expiring policies furnished pursuant to this Article 13, certificates of insurance bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to the other Party of such payment shall be delivered by Lessee and Lessor to the other Party.

13.8 Notice of Cancellation. Each certificate of insurance delivered hereunder, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty (30) days prior written notice to the other Party and to any mortgagee named in such policy.

#### 14. Indemnity.

14.1 Lessee shall indemnify, defend and hold harmless Lessor and their respective managers, officers, agents and employees (the "Lessor Indemnitees") from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, and damage or destruction of Premises, including, but not limited to, claims of any utility company or other loss or damage incurred by Lessor, arising out of (a) acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees or contractors and subcontractors; or (b) the material breach by Lessee of any of its obligations under this Lease; or (c) claims made against Lessor by a contractor, subcontractor, laborer, vendor, supplier or any other party for whom Lessee is responsible. The obligation to indemnify shall extend to and encompass all reasonable costs actually incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations pursuant to this Section 14.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessor, the Lessor Indemnities, or their respective contractors, successors, or assigns, or to the acts of third parties for which no specific obligation of indemnification has otherwise been given by Lessee. Lessee shall pay any cost that may be incurred by Lessor or the Lessor Indemnities in enforcing this indemnity, including reasonable attorney's fees.

#### 15. Assignment.

15.1 Lessor's Assignment. The Lessor shall have the right to assign any of its rights, duties, or obligations under this Lease without the prior written consent of the other Party, to a purchase of the Premises, provided that such assignee agrees in writing to be bound by all of the terms and conditions of this Lease. Following such assignment, including the delivery to the assignee of the balance of the any security deposit, if any, given by Lessee to Lessor in accordance with this Lease, (a) the Lessee shall recognize and attorn to the assignee and (b) the assignor shall be automatically released from any and all liabilities and/or obligations arising hereunder from and after the effective date of such assignment to the extent assumed in writing by the assignee. At the request of the Lessor, the Lessee shall execute an estoppel certificate and such other instruments as are reasonably requested by the Lessor to confirm any such assignment and the continuing viability of this Lease.

15.2 Lessee Assignment. Subject to the provisions of Section 16 (relating to financing), Lessee shall not transfer or assign (collectively, an "Assignment") this Lease or any interest therein, without prior written consent of Lessor. Notwithstanding the prior sentence, without Lessor's consent, Lessee may (i) make an Assignment to an affiliate of Lessee or Guarantor (provided that such Assignment shall not release Lessee or Guarantor from its obligations hereunder) or (ii) make an Assignment to a successor in the operation of the assignor's or transferor's assets and/or business by reason of a reorganization, merger, consolidation, sale or foreclosure, where substantially all of such assignor's or transferor's assets are acquired by such successor; provided, however, that in the case of an Assignment described in clause (ii) the assignee or transferee meets all of the Conditions (as defined below). Lessor's consent to any other Assignment shall not be unreasonably withheld if Lessor has been provided with reasonable evidence that the proposed assignee: (x) has comparable experience to that of the initial named Lessee in operating and



maintaining photovoltaic solar systems comparable to the Solar Facility; and (y) has comparable financial capability to that of the initial named Lessee and Guarantor (the requirements of (x) and (y) are, collectively, the "Conditions"). Any Assignment in violation of this Article 15 will be null and void.

16. Lessee and Lessor Financing.

16.1 Lessee Financing.

16.1.1 Right to Grant a Security Interest. Lessee or its successors and/or assigns may from time to time, without the prior written consent of Lessor, encumber the interest of Lessee or a successor and/or assignee in this Lease and the rights granted hereunder by one or more security instruments (a "Security Interest"), provided that any Security Interest and all rights acquired under it shall (i) be subject to each and all of the covenants, conditions and restrictions stated in this Lease, (ii) be subject to all rights and interests of Lessor and shall not constitute a lien against Lessor's fee simple interest in the Property and (iii) shall be subordinate to the current or future mortgage lien of the Lessor's current or future mortgagee(s) subject to a non-disturbance agreement executed by such mortgagee and an attornment agreement by Lessee, and further provided, that Lessee or an assignee shall promptly upon the execution of any Security Interest deliver a true copy thereof to Lessor. Without limiting the generality of the foregoing, nothing contained in such Security Interests shall release or be deemed to relieve Lessee from full and faithful observance and performance of the terms, covenants and conditions contained in this Lease to be observed and performed by Lessee or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder, except as expressly provided for herein, and further provided that such Security Interest shall be subordinate to the Security Interest referred to in paragraph 28 given to secure the full and faithful performance of this Lease, the AOBC Purchase Agreement and the Tax Agreement.

16.1.2 Protection of Security Interest. Any Security Interest Holder of any interest of Lessee hereunder shall, for so long as its Security Interest is in existence and until the lien thereof has been extinguished, be entitled to the following protections:

(a) Notice of Default. Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless and until Lessor shall first have given the Security Interest Holder(s) a written notice of Lessee's default and failure to cure same within the period(s) specified in Article 11 and thereafter afforded the Security Interest Holder(s) an opportunity to cure such default within 30 days and the Security Interest Holder(s) shall have failed to effect the cure of such default within 30 days. It is understood that the Lessor shall have the right to give to the Security Interest Holder(s) written notice of the default and demand to cure simultaneously with the notice given to Lessee, and all such cure periods shall run concurrently for 30 days. The Security Interest Holder shall be entitled to remedy any default under this Lease in the manner and on the same terms as granted to Lessee in Article 11 of this Lease.

(c) Right to Perform. The Security Interest Holder shall have the right at any time to pay any Rent due hereunder and to perform or cause to be performed any other obligation of Lessee at or within the time such payment or performance is required under this Lease. Nothing in this Lease shall be construed to obligate the Security Interest Holder to cure any default of Lessee.

(d) Foreclosure. If Lessee's Security Interest Holder becomes the assignee of this Lease by means of foreclosure or transfer in lieu thereof, such Security Interest Holder shall be personally liable under this Lease only for the period the Security Interest Holder remains a successor Lessee hereunder, provided that any subsequent assignee or Lessee shall assume and agree to be bound by all the terms and conditions of this Lease

(e) Re-entry and Repossession. Following (i) any re-entry and repossession of the Premises by Lessor or (ii) any termination of this Lease (whether by rejection of the Lease in any bankruptcy or similar proceeding or otherwise), Lessor shall deliver written notice to the Security Interest Holder indicating the completion of Lessor's re-entry and repossession of the Premises or termination of this Lease.

#### 17. Estoppel Certificate

17.1 Estoppel Certificate from Lessor. At the request of Lessee or a Security Interest Holder, Lessor shall execute, acknowledge and deliver to such Lessee or Security Interest Holder a written statement declaring: (i) either that the Lease is unmodified and in full force and effect, or the manner in which this Lease has been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Lessee's monetary obligations hereunder have been paid in advance; (iii) to Lessor's knowledge, whether Lessee is or is not then in default hereunder; and (iv) to Lessor's knowledge, whether any past defaults of Lessee have been fully cured.

17.2 Estoppel Certificate from Lessee. At the request of Lessor, Lessee shall execute, acknowledge and deliver to Lessor a written statement declaring: (i) either that this Lease is unmodified and in full force and effect, or the manner in which the Lease has been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Lessee's monetary obligations hereunder have been paid in advance; (iii) to Lessee's knowledge, whether the Lessor is or is not then in default hereunder; and (iv) to Lessee's knowledge, whether any past defaults of Lessor have been fully cured.

#### 18. Casualty/Eminent Domain

18.1 Casualty. If any part of the Premises is damaged by fire or other casualty so as to render it inoperable and the Premises substantially unsuitable for operation of the Lessee in its reasonable determination, Lessee shall either promptly restore and repair the Premises or terminate this Lease by providing at least thirty (30) days prior written notice thereof to Lessor and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration of this Lease, and this Lease shall be null and void, without recourse to the Parties, except that the provisions hereof that are stated herein to survive said termination shall so survive. Upon any such termination, Lessee shall be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for any prepaid Rent.

18.2 Eminent Domain. If a taking authority takes all of the Premises by Eminent Domain, this Lease shall terminate as of the date title vests with the taking authority. If a substantial portion of the Premises are taken and the taking, in Lessee's reasonable determination, renders the remaining Premises substantially unsuitable for the operation, Lessee may terminate this Lease by written notice thereof within sixty (60) days of such taking, and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration of this Lease,

and this Lease shall be null and void, without recourse to the Lessee, except that the provisions hereof that are stated herein to survive said termination shall so survive including all balances due to the date of termination to Lessor under this Lease, the Purchase Power Agreement and the Tax Agreement. The Lessee will be entitled to share in the taking proceeds in proportion to the values of its ownership interest in the personal property located on the Premises which, for Lessee, may include, if applicable the value of the Premises, moving expenses and business relocation expenses.

19. Notice.

Any notice or communication required, permitted, or contemplated hereunder shall be given in writing, addressed to the Party to be notified at the address or set forth below or at such other address or addresses (s) as a Party may designate for itself from time to time by written notice hereunder and delivered by (a) hand delivery, (b) nationally recognized overnight courier with delivery signature required, (c) registered or certified mail, return receipt requested. Any notice or communication so delivered shall be deemed duly given on the earliest of (i) the actual date received, (ii) the first (1st) business day following the day of depositing such communication with a nationally recognized overnight courier with next day delivery specified, so long as confirmation of delivery is given by such courier service, or (iii) the third (3rd) business day following the day of mailing if mailed by registered or certified mail, return receipt requested.

Lessor:            Auburn Water District  
                         Greg Woods, Superintendent  
                         P.O. Box 187  
                         75 Church Street  
                         Auburn, MA 01501  
                         (508) 832-5336  
                         [gwoods@auburnwater.com](mailto:gwoods@auburnwater.com)

Lessee:            [                    ]  
                         [                    ]  
                         [                    ]  
                         [                    ]

20. Miscellaneous.

20.1 Waiver / Headings / Further Assurances. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. The headings in this Lease are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Lease. The Parties acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against either Party merely because its counsel has prepared it. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall

unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

20.2 Memorandum. Lessor and Lessee agree (a) to execute, on the date hereof, a memorandum of this Lease setting forth the pertinent terms of this Lease in accordance with MGL c. 183 § 4.

20.3 Disputes and Choice of Law: Attorneys' Fees. This Lease is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts (without regard to principles of conflicts of laws). Any controversy or claim arising out of, or relating to, this Lease, or to the making, performance, or interpretation thereof, shall be submitted to the jurisdiction and venue of the Superior Court of the Commonwealth of Massachusetts for the County of Middlesex. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS LEASE.

20.4 No Partnership or Sale. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller of electrical energy, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

20.5 Force Majeure. Except as otherwise specifically provided in this Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the terms of this Lease (other than Lessee's obligation to pay Rent or any other sums due herein and to maintain insurance to be in effect), if and to the extent that such delay or failure is directly attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section shall immediately; (i) notify the other Party in writing of the existence of the force Majeure Event, which shall include any information reasonably available regarding the nature and anticipated duration of such Force Majeure Event, (ii) exercise all commercially reasonable and diligent efforts necessary to continue to perform its obligations hereunder and to minimize delay caused by such Force Majeure Event, (iii) promptly notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If a Force Majeure Event shall have occurred that has prevented either Party from performing any of its material obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days, then either Party shall have the right, but not the obligation, to terminate this Lease upon three (3) days' written notice to the other Party without penalty or further liability. Upon such termination due to a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination or those which expressly survive the termination or expiration of the Lease pursuant to the terms hereof). The suspension of performance shall be of no greater scope and of no longer duration that is reasonably required by the Force Majeure Event.

20.6 Counterparts / Binding Effect / Entire Lease. This Lease and the rights, privileges, duties, and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns. This Lease represents the full and complete Lease between the Parties with respect to the subject matter contained herein and supersedes all prior written and oral Leases between the Parties

with respect to said subject matter. This Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

20.7 Reserved Rights. Lessor hereby reserves the right at any time and from time to time to make alterations or additions to existing buildings located on the Remaining Lessor Property and/or to construct or alter other buildings or improvements upon the Remaining Lessor Property, provided that such actions do not adversely impact Lessee's Operations or otherwise conflict or interfere with Lessee's rights hereunder.

20.8 Brokerage. Lessor and Lessee warrant to each other that no broker or agent was hired, engaged or consulted with regard to this transaction. Lessor and Lessee hereby agree to indemnify each other against any claim, action or suit for any fee or commission arising out of this transaction.

21. Professional Costs and Expenses. Except as otherwise set forth in Section 10 above, Lessor and Lessee shall each be responsible for the costs and expenses of their own respective legal and other professional consultants in connection with the transaction contemplated herein.

23. Certification Required Per M.G.L. c. 62C, §49A. By entering this Lease, the duly authorized representative of Lessee certifies, under penalties of perjury, that Lessee has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

24. Disclosure Required of Lessee. Lessor and Lessee acknowledge that Lessee completed and submitted to Lessor a Disclosure of Beneficial Interests, pursuant to MGL c. 7C, § 38, attached as Exhibit 1C.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Lease on their behalf, on the dates set forth below.

LESSOR: Auburn Water District

By: \_\_\_\_\_  
Name: Gregory Woods  
Title: Superintendent

DATE: \_\_\_\_\_

LESSEE: [\_\_\_\_\_]

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

SCHEDULE OF EXHIBITS

**Exhibit 1A: Plan Showing Remaining Lessor Property**

**Auburn Water District**

**Satellite Image of Property Boundaries, Zone 1s and Potential Array Locations**



Auburn Water District property boundaries are outlined in red, the two Zone 1 boundaries for AWD's two water supply wells are in yellow, and four potential locations for solar arrays are outlined in blue.

## Exhibit 1B: Rent Schedule

Contract Year in Term	Annual Rent – East Parcel	Annual Rent – West Parcel	Contract Year in Term	Annual Rent – East Parcel	Annual Rent – West Parcel
1			17		
2			18		
3			19		
4			20		
5			21		
6			22		
7			23		
8			24		
9			25		
10			26		
11			27		
12			28		
13			29		
14			30		
15					
16					



## Exhibit 1C: Form for Disclosure of Beneficial Interest in Real Property

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Asset Management and Maintenance, as required by M.G.L. c. 7C, § 38, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: Auburn Water District

2. Complete legal description of the Property:

A portion of the properties located at and known as \_\_\_\_\_ and adjacent properties,  
Auburn, MA, containing approximately \_\_\_\_\_ acres of land and being  
more fully described in \_\_\_\_\_

3. Type of transaction ☐ Sale ☒ Lease or rental for [\_\_\_\_\_] / (\_\_\_\_\_) year term.

4. Seller(s) or Lessor(s): Auburn Water District

Purchaser(s) or Lessee(s):

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

Name

Address

_____	_____
_____	_____
_____	_____
_____	_____

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

Name	Title or position
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT 2 – AOBC Purchase Agreement (DRAFT)

### ALTERNATIVE ON-BILL CREDIT PURCHASE AGREEMENT

THIS ALTERNATIVE ON-BILL CREDIT PURCHASE AGREEMENT (this “Agreement”) is entered into this day of \_\_\_\_\_, 202\_\_\_\_, by and between [\_\_\_\_], LLC (“Seller”) and the Auburn Water District, a Massachusetts public water district established by Chapter 585 of the Acts of 1947, as amended (“Buyer”). Seller and Buyer are each referred to herein individually as a “party” and collectively as the “parties.”

#### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

(a) “Adjusted Annual Expected Performance Output” means the difference between (i) the Annual Expected Performance Output multiplied by the Annual Insolation Factor and (ii) the Excused Output.

(b) “Annual Expected Performance Output” has meaning as defined in **Section 3.3.a.**

(c) “Affiliate” of a Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with the first Person. For purposes of this definition, “control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests) of such Person, whether by contract or otherwise.

(d) “Agreement” means this Alternative On-Bill Credit Purchase Agreement and the exhibits and schedules hereto.

(e) “Alternative On-Bill Credit”, means the monetary value of the Delivered Energy commensurate with Buyer’s Allocated Percentage, as calculated pursuant to the Tariff, and (x) credited to Buyer by the Utility on its monthly invoice for electric service at the Retail Service Address or (y) transferred to Buyer by Seller after being issued to Seller by the Utility, in each case, in accordance with the Tariff; and excluding, for the avoidance of doubt, any Solar Incentives or Environmental Attributes; *provided, however*, that Seller shall be entitled in its sole discretion to transfer the Environmental Attributes from the System to the Utility in accordance with the Program rules, in order to have the Alternative On-Bill Credits include the value associated with said Environmental Attributes.

(f) “Annual Actual Insolation” means for each year during the Term, the annual actual insolation in units of kWh/m<sup>2</sup> measured using the on-site DAS or if no on-site pyranometer exists using reference location agreed to by the Parties in their reasonable discretion.

(g) “Annual Insolation Factor” means for each year during the Term, the Annual Actual Insolation divided by the Annual Expected Insolation for a specific year.

(h) “Annual Expected Insolation” means for each year during the Term, the expected

insolation in units of kWh/m<sup>2</sup> at the Site calculated using PVSYST modeled with meteorological parameters reasonably selected by Seller.

(i) “Applicable Law” means any laws, statutes, ordinances, regulations, rules, notice requirements, Governmental Approval requirements, court orders, treaties or other international agreements, agency guidelines, principles of law, including the common law, and orders of any Governmental Authority.

(j) “Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

(k) “Business Day” means any day other than a Saturday, Sunday or any other day on which banks in Massachusetts are authorized or obligated to close.

(l) “Buyer Default” has the meaning set forth in **Section 9.2(a)**.

(m) “Buyer Termination Notice” has the meaning set forth in **Section 9.1(b)**.

(n) “Buyer’s Account Information” means the Retail Service Address and Buyer’s account number associated with the Retail Service Address, as set forth in **Schedule 1**.

(o) “Buyer’s Allocated Percentage” means Buyer’s allocated portion, stated as a percentage, of the Delivered Energy in a given month, as set forth in **Schedule 1**.

(p) “Commercial Operation” means that the System: (i) has been constructed in accordance with Applicable Law, (ii) is operational and generating electricity on a commercial basis, (iii) has been interconnected to the Utility’s electric distribution system, and (iv) has received all Government Approvals required to operate and generate electricity.

(q) “Commercial Operation Date” means the date on which the System achieves Commercial Operation, as notified in writing by Seller to Buyer within ten (10) Business Days after such date.

(r) “Contract Year” means each consecutive 12-month period commencing on the

Commercial Operation Date.

(s) “Creditworthy” means, if a non-governmental entity, a long-term credit rating (corporate or long-term senior unsecured debt) of, or, if a governmental entity, a general obligation bond rating of (a) Baa3 or higher by Moody’s, (b) BBB- or higher by Fitch IBCA, or (c) BBB- or higher by Standard and Poor’s; or, for non-governmental entities not rated by Moody’s, Fitch IBCA, or Standard and Poor’s, an equivalent credit rating as determined by Seller through review of such non-governmental entities (x) most recent three (3) years of audited financial statements with notes, or, if such audited financial statements are not available, (y) the entity’s most recent three (3) years of unaudited financials (prepared by an external accountant, if available) including income and cash flow statements, a balance sheet, and accompanying notes, if any, for each.

(t) “Delivered Energy” means the amount of photovoltaic energy generated by the System and delivered to the Utility as measured at the Production Meter.

(u) “Environmental Attributes” means, without limitation, carbon trading credits, Renewable Energy Certificates or credits, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, or Green-e® products.

(v) “Excused Output” means the kWhs during the relevant calendar year that Seller was unable to produce from the System due to any one or any combination of the following reasons: (i) to Force Majeure; (ii) an emergency situation that threatens injury to persons or property that was not a result of the acts or omissions of Seller; or (iii) the System being prevented from operating, or having its operations diminished or curtailed, other than due to the acts or omissions of Seller.

(w) “Force Majeure” has the meaning set forth in **Section 8.1**.

(x) “Governmental Approval” means all applicable construction, land use, air quality, emissions control, environmental and other permits, licenses, and approvals from any Governmental Authority required under Applicable Law for construction, ownership, operation and maintenance of the System or for participation in the Program.

(y) “Governmental Authority” means any (a) federal, national, provincial, state, regional, local, municipal, or other government, governmental or public department, central bank, court, tribunal, arbitrator, commission, board, bureau or agency, (b) subdivision, agent, commission, board or authority of any of the foregoing, or (c) any regulatory authority, agency, commission or board of any federal, national, provincial, state, regional, municipal, local or other government.

(z) “Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Site.

(aa) “Invoice Date” has the meaning set forth in **Section 5.2**

(bb) “kWh Rate” means [\_\_\_\_\_ (\_\_\_\_%)] of the Alternative On-Bill Credit for the applicable billing period [or the Alternative On-Bill Credit for the applicable billing period less \_\_\_\_ cents (\$0.0\_\_) per kWh of Buyer’s Allocated Percentage for such billing period].

(cc) “Lender” means, any Person who has made or will provide financing to Seller (or an Affiliate of Seller) with respect to the System, including any equity investors.

(dd) “Losses” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

(ee) “Party” or “Parties” has the meaning set forth in the preamble.

(ff) “Payment” has the meaning set forth in **Section 5.1**.

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

(hh) “Production Meter” means the revenue quality meter installed, operated, and maintained by the Utility to measure electricity generated by the System.

(ii) “Qualified Third Party” means a company with at least 10 megawatts (MW) of community or distributed solar, or at least 100 MW of utility scale solar in operation.

(jj) “Renewable Energy Certificate” means any “GIS Certificate” representing a “Generation Attribute” all as described in 225 C.M.R. 14.02, as may be amended from time to time or as further defined or supplemented by Applicable Law.

(kk) “Retail Service Address” is the address at which Buyer receives retail electric service from the Utility, as set forth in **Schedule 1**.

(ll) “Seller” has the meaning set forth in the preamble.

(mm) “Seller Default” has the meaning set forth in **Section 9.1(a)**.

(nn) “Site” means the physical location where the System is to be constructed.

(oo) “Site Lease” means that certain lease of even date herewith by and between Buyer, as landlord, and Seller, as tenant, for the Site.

(pp) “Site Restrictions” means those requirements or limitations related to the Site as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

(qq) “Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and all other solar or renewable energy subsidies and incentives.

(rr) “Solar Massachusetts Renewable Target Program” or “Program” means the rules for the Solar Massachusetts Renewable Target (“SMART”) Program as set forth in 225 C.M.R. 20.00 et seq. promulgated pursuant to Chapter 75 of the Acts of the Commonwealth of Massachusetts

of 2016, and the rules and regulations issued pursuant thereto (including the Tariff), as may be amended from time to time or as further defined or supplemented by Applicable Law.

(ss) "System" means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in **Schedule 1** that generates electricity.

(tt) "System Operations" means Seller's operation, maintenance and repair of the System performed in accordance with the requirements herein.

(uu) "Tariff" means the SMART Program tariff of the Utility, as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

(vv) "Term" has the meaning set forth in **Section 2.1**.

(ww) "Default Termination Fee" means an amount equal to the lesser of (i) [\_\_\_\_\_] and (ii) one cent (\$0.01) per kWh of Buyer's Allocated Percentage for the billing period immediately preceding termination of this Agreement.

(xx) "No Cause Termination Fee" means \$[\_\_\_\_\_].

(yy) "Utility" means the distribution company set forth on **Schedule 1**.

1.2 Interpretation. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. Words in this Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof", "herein", and "hereunder" and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as the context otherwise indicates, all references to "Articles" and "Sections" refer to Articles and Sections of this Agreement.

## 2. TERM AND TERMINATION.

2.1 Term. The term (the "Term") of this Agreement shall commence on the date of this Agreement and shall continue for [\_\_\_\_\_] (\_\_\_\_) years from the Commercial Operation Date, unless and until terminated earlier pursuant to the provisions of this Agreement.

2.2 Seller Conditions of this Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) terminate this Agreement upon written notice delivered to Buyer before the Commercial Operations Date, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination, provided, however, that if Seller terminates this Agreement pursuant to this Section 2.2, Seller must simultaneously terminate the Site Lease.

(a) There exist site conditions (including environmental conditions and ecological concerns such as presence of wildlife species) at the Site or construction requirements that could not have been reasonably known as of the date of this Agreement and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed.

(b) There has been a material adverse change in (i) the rights of Seller to construct the System on the Site through no fault of Seller, (ii) the Program or Applicable Law, or (iii) the regulatory environment or availability of Solar Incentives (including the failure of the System to qualify for or expiration of any incentive program or tax incentives in effect as of the date of this Agreement).

(c) Seller has not received evidence reasonably satisfactory to it that interconnection services, the Program or Alternative On-Bill Credits will be available with respect to energy generated by the System.

(d) Seller has determined that there are easements, Site Restrictions, other liens or encumbrances, or other facts, circumstances or developments that would materially impair or prevent, or have a material adverse effect on, the installation, operation, maintenance, or removal of the System.

(e) Seller is unable to obtain financing for the System on terms and conditions reasonably satisfactory to Seller.

(f) Buyer's representation and warranty contained in Section 7.2(e) or Section 7.2(f) is no longer true and correct.

(g) A Buyer Default has occurred.

2.3 Early Termination by Buyer without Cause. Buyer may terminate this Agreement without cause and for any reason upon one hundred eighty days (180) prior written notice to Seller ("Notice Period"). During the Notice Period, Seller agrees to use reasonable best efforts to search for a third party with an eligible load to receive Alternative On-Bill Credits. Following the Notice Period, in the event no third party that meets the qualifications listed in **Section 11.3(b)(A)-(E)** has been identified to assume this Agreement, Buyer may terminate this Agreement, provided that Buyer pays the No Cause Termination Fee to Seller at least five (5) Business Days in advance of the termination date.

2.4 Right to Terminate this Agreement. In addition to other termination rights of a Party set forth herein, (a) Buyer may terminate this Agreement with no payment of any termination fee if the Commercial Operation Date has not occurred within [\_\_\_\_] (\_\_\_\_) months following the date hereof, or (b) Seller may terminate this Agreement effective one hundred eighty (180) days following delivery of written notice to Buyer if there has been a material adverse change in (i) the Program or Applicable Law, or (ii) the regulatory environment or availability of Solar Incentives for the System or (c) Buyer may terminate this Agreement effective upon written notice delivered to Seller if Buyer no longer operates one or more Retail Service Addresses that is eligible under the Program to subscribe to the System and upon such termination Buyer shall pay Seller the No Cause Termination Fee.

### 3. SYSTEM OPERATIONS.



3.1 Seller as Seller and Operator. Throughout the Term, Seller or Seller's Lender shall be the legal and beneficial owner of the System at all times, the System shall remain the personal property of Seller or Seller's Lender, and the System will be operated and maintained in accordance with the Tariff and, as necessary, repaired by Seller at its sole cost and expense. Buyer will not have access to the System for any purpose. Buyer will have no ownership, possession right or control of the System, and will have no rights or obligations with respect to the operation and maintenance of the System. This Agreement does not convey to Buyer any right, title or interest in or to any portion of any property (tangible or intangible, real or personal) underlying or comprising any portion of the System or any Solar Incentives or Environmental Attributes.

3.2 Obligations of Parties. The Parties will work cooperatively and in good faith, but at no expense to Buyer, to meet all Program requirements under Applicable Law and the Tariff, including applicable interconnection and Alternative On-Bill Credit requirements. The Parties agree that commencing on the Commercial Operation Date (a) Seller shall deliver Buyer's Allocated Percentage of the Delivered Energy to the Utility, and (b) Buyer (or its designee) shall be entitled to any and all Alternative On-Bill Credits resulting from such delivery. This Agreement does not convey to Buyer any right, title or interest in or to the Delivered Energy.

### 3.3 Output Guaranty.

(a) Annual Expected Performance Output. Seller estimates that the System should have delivered an "Annual Expected Performance Output" for each full Contract Year beginning on the Commercial Operation Date, which shall be the annual kWh at the Production Meter calculated using PVSYST modeled with Annual Expected Insolation and other meteorological parameters including but not limited to snowfall and allowing for a 0.7% annual degradation in System performance. These values are specified in **Schedule 2** and are subject to update by Seller by written notice delivered to Buyer within thirty (30) days after the Commercial Operation Date.

(b) Guaranteed Output. Seller hereby guarantees that, for each Contract Year during the Term, Buyer's Allocated Percentage of Delivered Energy will be at least ninety percent (90%) of the product of Buyer's Allocated Percentage multiplied by Adjusted Annual Expected Performance Output for that Contract Year (the "Guaranteed Output"). For purposes of calculating whether the Guaranteed Output has been achieved, within forty-five (45) days following the last day of each Contract Year during the Term, Seller shall deliver to Buyer a report (the "Seller's Report") describing for such Contract Year: Buyer's Allocated Percentage, the amount of Excused Output, the Delivered Energy, the inputs used to calculate the Adjusted Annual Expected Performance Output, the Annual Expected Performance Output and whether the Delivered Energy achieves the Guaranteed Output.

(c) In the event that the Buyer's Allocated Percentage of Delivered Energy for any Contract Year is less than the Guaranteed Output for that Contract Year (the amount of difference being the "Performance Difference"), then Seller shall pay Buyer an amount equal to the product of (i) the Performance Difference multiplied by (ii) the Rate Difference. Payment shall be made within thirty (30) days following receipt of written notice from Buyer of the amount due. "Rate Difference" means the greater of (1) an amount equal to the Alternative On-Bill Credit (or weighted average Alternative On-Bill Credit) in place during the relevant Contract Year set forth in Seller's Report minus the Buyer's kWh Rate for the relevant Contract Year, and (2) zero (0).

3.4 Environmental Attributes and Solar Incentives. Buyer's purchase does not include Environmental Attributes or Solar Incentives. Buyer disclaims any right to Solar Incentives or Environmental Attributes, and shall, at the request of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section. Buyer agrees not to make any statement contrary to Seller's ownership of all Environmental Attributes and Solar Incentives associated with the System.

3.5 Production Meter. Upon Buyer's request, Seller shall make available to Buyer, at no cost to Buyer, any and all data in Seller's possession concerning the production, measurement, and transfer of Delivered Energy, as well as all other information concerning the performance of the System. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Production Meter or other telemetry equipment necessary to accurately report the quantity of Delivered Energy

#### 4. REALLOCATION; ADDITIONAL CAPACITY.

4.1 Reallocation. To enable ongoing buyer balancing across systems, Seller reserves the right, at its option and in its sole discretion, to assign all or a portion of Buyer's Allocated Percentage among one or more systems that qualify for the Program, so long as such reallocation is also made to other eligible systems in the same Utility's service territory. The Parties agree to modify any terms of this Agreement as necessary to effectuate or reflect the details of such assignment(s), so long as such modifications do not decrease the benefits to Buyer or increase the potential costs or liabilities to Buyer under this Agreement.

4.2 Additional Capacity. Buyer may elect to purchase Alternative On-Bill Credits associated with an additional allocation of the Delivered Energy from the System or another system (pursuant to a separate contract) if so available, and if doing so would not violate any terms of the Program or this Agreement.

#### 5. PRICE AND PAYMENT.

5.1 Consideration. In consideration for Seller's delivery of Buyer's Allocated Percentage of the Delivered Energy to the Utility and Buyer's right to receive Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy, Buyer shall pay Seller a monthly payment (the "Payment") for such Alternative On-Bill Credits commencing on the Commercial Operation Date and continuing through the Term, equal to the product of (x) the Alternative On-Bill Credits received by Buyer for the relevant month, multiplied by (y) the kWh Rate. Buyer understands that the kWh Rate is based on the Alternative On-Bill Credit and that, because the Alternative On-Bill Credit will change from time to time, the kWh Rate will increase and decrease during the Term.

5.2 Invoices. Seller shall invoice Buyer on or before the last Business Day of each calendar month (each such date on which an invoice is issued by Seller to Buyer, an "Invoice Date") for the Payment in respect of Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy produced during the calendar month that preceded the month in which the invoice is issued. Buyer's first invoice under this Agreement shall be for the first full calendar month after the Commercial Operation Date in which Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy are issued. For the avoidance of doubt, Buyer shall (i) neither receive nor be entitled to any Alternative On-Bill Credits associated with Delivered Energy prior to the Commercial Operation Date, and (ii) have no obligation to make or any liability for Payments for Alternative On-Bill

Credits associated with Delivered Energy prior to the Commercial Operation Date.

5.3 Time of Payment. Buyer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

5.4 Method of Payment. Buyer shall make all Payments under this Agreement by electronic funds transfer in immediately available funds to the account designated by Seller from time to time. If Buyer does not have electronic funds transfer capability, the Parties shall agree to an alternative method for submitting Payments. Except for billing errors or as provided in **Section 5.5** below, all Payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Payment of the disputed amount shall not be required until the dispute is resolved in accordance herewith.

5.6 Billing Adjustments Following Utility Billing Adjustments. If, as a result of a Utility billing adjustment that is not due to a Buyer Default, the quantity of Delivered Energy is decreased (the "Electricity Deficiency Quantity") and the Utility reduces the amount of Alternative On-Bill Credits allocated to Buyer for such period, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Delivered Energy allocated to Buyer is increased (the "Electricity Surplus Quantity") and the Utility increases the amount of Alternative On-Bill Credits allocated to Buyer for such period, Buyer shall pay for the Electricity Surplus Quantity at the kWh Rate applicable during such period.

## 6. GENERAL COVENANTS.

6.1 Seller's Covenants. Seller covenants and agrees to the following:

(a) Notice of Damage or Emergency. Seller shall promptly notify Buyer if it becomes aware of any significant damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

(b) Governmental Approvals. While providing the Installation Work and System Operations, Seller shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Seller and to enable Seller to perform such obligations.

(c) Interconnection Fees. Seller shall be responsible for all costs, fees, charges, and obligations required to connect the System to the Utility distribution system ("Interconnection Obligations"), including any fees associated with system upgrades and operation and maintenance carrying charges, as provided in the interconnection procedures of the Utility ("Interconnection Procedures"). In no event shall Buyer be responsible for any Interconnection Obligations.

(d) Compliance with Tariff and Interconnection Procedures. Seller shall cause the System to be installed, maintained, and operated in compliance with the Tariff and the

## Interconnection Procedures.

(e) **Buyer's Account Information.** Seller shall be responsible for providing Buyer's Account Information to the Utility, in accordance with the Tariff. Seller shall take care to preserve the privacy expectations of Buyer, including by not publicly disclosing Buyer's Account Information. Seller shall not disclose such information to third parties, other than to the Utility or Governmental Authorities in connection with the Program, unless Buyer has provided explicit informed consent or such disclosure is in accordance with the terms of **Section 0** or compelled by Applicable Law.

(f) **Communications.** Seller shall designate a representative to be available to Buyer to address all operational matters under this Agreement. Seller shall use best efforts to respond to communications from Buyer within five (5) Business Days after receiving Buyer communications.

(g) **Insurance Coverage.** Seller shall maintain insurance coverage sufficient to repair, restore or rebuild the System in the event of significant damage or loss in the use of the System.

(h) **Assumption of Risk.** Except as expressly provided otherwise herein, Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the System's eligibility to receive any federal or state tax credits, to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes, or to receive any other grant or subsidy from a governmental entity or other person. The obligation of the Parties hereunder shall be effective regardless of whether the production or sale of the Delivered Energy from the System is eligible for, or receives, any federal or state tax credits.

(i) **Site Lease.** Seller shall fulfill its obligations under the Site Lease.

### 6.2 Buyer's Covenants. Buyer covenants and agrees as follows:

(a) **Consents and Approvals.** Buyer shall ensure that any authorizations required of Buyer under this Agreement are provided in a timely manner. To the extent that only Buyer is authorized to request, obtain, or issue any necessary approvals, permits, rebates or other financial incentives, Buyer shall cooperate with Seller, at no expense to Buyer, to obtain such approvals, permits, rebates or other financial incentives.

(b) **Buyer's Account Information.** To the extent Buyer's Account Information is not fully set forth in **Schedule 1** as of the date of this Agreement, Buyer shall provide Seller with such information within thirty (30) days of the date of this Agreement. Seller may terminate this Agreement effective upon notice to Buyer if any supplemental information provided by Buyer pursuant to this provision is materially different from the information as of the date of this Agreement.

## 7. REPRESENTATIONS & WARRANTIES.

7.1 **Representations and Warranties Relating to Agreement Validity.** In addition to any other representations and warranties contained in this Agreement, each Party represents and warrants to the other as of the date of this Agreement that:

(a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization.

(b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement.

(c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement.

(d) this Agreement constitutes its legal, valid, and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally.

(e) there is no litigation, action, proceeding, or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to adversely affect its ability to carry out the transactions contemplated herein.

(f) its execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and

(g) no Bankruptcy Event has occurred and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in a Bankruptcy Event.

7.2 Specific Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the date of this Agreement that:

(a) Buyer is: (i) an "accredited investor" as that term is defined in Rule 501 of the Securities and Exchange Commission under the Securities Act of 1933, as amended (the "Securities Act"); or (ii) an incorporated municipality or governmental subdivision with total assets in excess of \$5,000,000; provided, however, that notwithstanding the representation and warranty set forth in (i), the Parties agree that this Agreement is not, and is not intended to be, a security under applicable state and federal securities laws;

(b) Buyer is the sole party in interest agreeing to purchase Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy and is acquiring such Alternative On-Bill Credits for its own account and not with a view to the resale or other distribution thereof, in whole or in part, and agrees that it will not transfer, sell or otherwise dispose of such Alternative On-Bill Credits in any manner that will violate applicable securities law. Buyer is aware that this Agreement and the Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy have not been registered under the Securities Act or registered or qualified under the securities laws of the state in which Buyer resides or is located based in part upon the representations of Buyer contained herein.

(c) Buyer has been given the opportunity to ask questions of, and receive answers from, Seller concerning the terms and conditions of this Agreement and other matters

pertaining to this Agreement, and has been given the opportunity to obtain such additional information necessary in order for Buyer to evaluate the merits and risks of the purchase of Alternative On-Bill Credits corresponding with Buyer's Allocated Percentage of Delivered Energy to the extent Seller possesses such information or can acquire it without unreasonable effort or expense;

(d) Buyer is not relying on Seller or any of its employees, members of its board of directors (or equivalent body) or officers, or this Agreement with respect to tax and other economic considerations involved in the investment.

(e) Buyer is a retail electric service customer of the Utility, and the Retail Service Address is within the same Utility's service territory as the System; and

(f) Buyer is not an "electric company," "generation company," "aggregator," "supplier," "power marketer," or "power broker," each as defined under Mass. Gen. Laws Ch. 164.

7.3 Specific Representations and Warranties of Seller. Seller represents and warrants to Buyer as of the date of this Agreement that:

(a) The System does not infringe on any third party's intellectual property; and

(b) Seller: (i) has taken all required actions, if any, necessary to comply with the Public Utility Holding Company Act of 2005, as amended; and (ii) is not an electric utility subject to the rate regulation by any Governmental Authority.

7.4 Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE SITE LEASE, THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY SELLER TO BUYER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO BUYER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

7.5 Taxes And Governmental Fees. Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System, as well as for any and all taxes on the generation, sale, and delivery of Delivered Energy (collectively, "Seller Taxes"). Seller shall not be obligated for any taxes payable by or assessed against Buyer based on or related to Buyer's overall income or revenues, as applicable. In the event Buyer shall be required by law or regulation to remit or pay any Seller's Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller's Taxes from the amount due to Seller. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

## 8. FORCE MAJEURE.

8.1 Definition. "Force Majeure" means any act or event that prevents Seller from

performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of Seller and Seller had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the following conditions, "Force Majeure" shall include acts of God or the public enemy; war; hostilities; epidemic; quarantine; riots; terrorism; fires or explosions, floods, earthquakes, volcanic eruptions, tornados, hurricanes or designated storms per the National Weather Service (<https://www.weather.gov/>) or other natural catastrophes; a Governmental Authority's actions or failure to act; a utility's actions or failure to act; or any event of force majeure under the Interconnection Procedures.

8.2 Excused Performance. Except as otherwise specifically provided in this Agreement, Seller shall not be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure; *provided* that Seller shall as soon as reasonably practical (i) notifies Buyer in writing of the existence of the Force Majeure, (ii) exercises all reasonable efforts necessary to minimize delay caused by such Force Majeure, (iii) notifies Buyer in writing of the cessation or termination of said Force Majeure, and (iv) resumes performance of its obligations hereunder as soon as practicable thereafter.

8.3 Termination in Consequence of Force Majeure. If a Force Majeure shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days or more, then Seller shall be entitled to terminate this Agreement. Upon such termination for a Force Majeure, the Buyer shall be responsible for making any and all payments up to the start of such Force Majeure event.

## 9. DEFAULT.

### 9.1 Seller Defaults and Buyer Remedies.

(a) Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):

(i) Except as otherwise expressly permitted in this Agreement, Seller terminates this Agreement before the end of the Term.

(ii) Seller is in breach of any representation or warranty or fails to perform any material obligation as set forth in this Agreement and (A) if such breach or failure can be cured within thirty (30) days after Buyer's notice of such breach or failure and Seller fails to so cure, or (B) Seller fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed.

(iii) Seller defaults under the Site Lease; and

(iv) A Bankruptcy Event occurs with respect to Seller.

(b) Buyer's Remedies. If a Seller Default described in **Section 9.1(a)** has occurred and is continuing, Buyer may, in addition to any other remedies available at law or in equity, exercise the following rights and remedies, each of which shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of any one or more of which shall not

preclude the simultaneous or later exercise by Seller of any other rights or remedies provided for in this Agreement:

(i) withhold any other payments due Seller under this Agreement until the Seller Default is cured and, if and when such Seller Default is cured, offset such withheld amounts by any reasonable costs incurred by Buyer in connection with such Seller Default, including reasonable attorneys' fees,

(ii) seek specific performance to enforce the provisions of this Agreement, in which case Seller shall reimburse Buyer for any reasonable costs incurred by Buyer in connection with such Seller Default, including reasonable attorneys' fees; and

(iii) terminate Buyer may terminate this Agreement and exercise any other remedy it may have at law or equity or under this Agreement; provided, however, that no termination shall be effective under this Section unless: (A) Buyer has delivered to Seller a notice of its intent to terminate this Agreement, which such notice shall describe the Seller Default that has occurred and is continuing ("Buyer Termination Notice"); (B) sixty (60) days have passed since Seller's receipt of the applicable Buyer Termination Notice; and (C) Seller has not cured the Seller Default set forth in the applicable Buyer Termination Notice as of the time of termination. In the event of a termination under this Section, Buyer shall use reasonable efforts to mitigate its damages. Buyer shall not be required to pay any termination fee for exercising its rights under this Section.

#### 9.2 Buyer Defaults and Seller's Remedies.

(a) Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

(i) Except as otherwise expressly permitted in this Agreement, Buyer terminates this Agreement before the end of the Term.

(ii) Buyer fails to make any payment when due in accordance with **Section 5** and such nonpayment is not cured within fifteen (15) days following receipt of a written notice from Seller concerning such nonpayment.

(iii) subject to foregoing clause (ii), Buyer breaches any representation or warranty or any material term of this Agreement and (A) if such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed; and

(iv) A Bankruptcy Event occurs with respect to Buyer.

(b) Seller's Remedies. If a Buyer Default described in **Section 9.2(a)** has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to **Section 10**, Seller may exercise the following rights and remedies, each of which shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise of any one or more of which shall not preclude the simultaneous or later exercise by Seller of any other rights or remedies provided for in this Agreement:



(i) terminate this Agreement, and, at Seller's option, sell Buyer's Allocated Percentage to one or more persons other than Buyer, and recover from Buyer the greater of (A) the Default Termination Fee minus revenue received by Seller from selling Buyer's Allocated Percentage to others; and (B) any loss in revenues resulting from such sales minus revenue received by Seller from selling Buyer's Allocated Percentage to others; *provided* that, in the event of such termination, Seller shall use reasonable efforts to mitigate its damages;

(ii) terminate this Agreement and collect the Default Termination Fee; and

(iii) exercise any other remedy Seller may have at law or equity or under this Agreement.

#### 10. LIMITATIONS OF LIABILITY.

10.1 Subject to the limitations in **Section 10.2** below, the Parties agree to indemnify, defend, and hold the other Party, and its officers, employees, agents, representatives and independent contractors (each an "Indemnified Party") harmless from and against any damages or Losses sought by a third party directly attributable to a material breach of Party's obligations under this Agreement or that are found to be due to the Party's negligence or willful misconduct. If any action or proceeding is brought against an Indemnified Party arising out of any occurrence described in this section, upon notice from the Indemnified Party the Seller shall, at its expense, defend such action or proceeding using legal counsel approved by the Indemnified Party which such approval shall not be unreasonably withheld, conditioned, or delayed, and provided that no such action or proceeding shall be settled without the approval of the Indemnified Party which such approval shall not unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing or anything contained herein to the contrary, Buyer's obligations to indemnify Seller pursuant to this Agreement shall be subject to the limitations of Massachusetts law concerning a municipal entity's authority to indemnify a person or entity for the matters described above.

10.2 Except for the Parties' indemnity obligations under **Section 10.1** above with respect to third party claims, any breach of **Section 12** or in the event of fraud or willful misconduct by an allegedly liable Party, neither Party will be liable to the other Party for special, punitive, exemplary, indirect, incidental, or consequential damages arising from or out of this Agreement. The total liability of Seller to Buyer under this Agreement will in no event exceed the aggregate of all Payments made by Buyer under this Agreement during the preceding twelve (12) months; provided, however, that the foregoing limitation on Seller's maximum liability does not apply with regard to any claims related to property damage or personal injury caused by Seller's fraud or willful misconduct or Seller's breach of **Section 12**. Further, no claim under this Agreement shall be valid unless notice thereof is provided by the claiming Party to the other Party during the Term or by the second anniversary of the last day of the Term.

10.3 In the event of a Seller Default or a Buyer Default, the non-defaulting Party shall take reasonable commercial efforts to minimize losses and damages that it may incur.

#### 11. ASSIGNMENT.

11.1 Assignment by Seller. Seller may assign this Agreement along with all of Seller's rights and obligations to any Affiliate, Lender, or Qualified Third Party without prior notice, for any purpose, including in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity, or assignment of this Agreement as collateral security in connection with

any financing of the System (including pursuant to a tax equity transaction); provided that for assignments to Qualified Third Parties (other than Lenders), Seller shall provide Buyer with information documenting that the assignee has comparable experience in operating and maintaining solar systems comparable to the System. In the event that Seller identifies such secured Lender, then Buyer shall comply with the provisions set forth in **Section 11.2** and **Exhibit A** to this Agreement. Any Lender shall be an intended third-party beneficiary of this Section, Seller shall notify Buyer of any assignment under this Section within thirty (30) days following the date of the assignment.

11.2 Acknowledgment of Collateral Assignment. In the event that Seller identifies a secured Lender, then Buyer hereby:

(a) acknowledges and agrees to the collateral assignment by Seller to the Lender, of Seller's right, title and interest in, to and under this Agreement, as consented to under **Section 11.1** of this Agreement;

(b) acknowledges and agrees that the Lender as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Seller's interests in this Agreement.

(c) acknowledges and agrees that, if applicable, it has been advised that Seller has granted or may grant a first priority perfected security interest in the System to the Lender and that the Lender has relied upon the characterization of the System as personal property, as agreed in this Agreement in accepting such security interest as collateral for its financing of the System; and

(d) agrees to execute a consent agreement or estoppel certificate in a form reasonably satisfactory to Buyer within ten (10) days after a request by Seller.

Any Lender shall be an intended third-party beneficiary of this Section.

11.3 Assignment by Buyer.

(a) Buyer shall not assign this Agreement or any interest herein, without the prior written consent of Seller; provided, however, that Seller shall not unreasonably withhold, condition or delay its consent for Buyer to change the Retail Service Address for which the Alternative On-Bill Credits will apply to another eligible Retail Service Address, nor shall Seller unreasonably withhold, condition or delay its consent for Buyer to sell or transfer its interest or a fractional interest in this Agreement to another party with a credit rating that is equivalent or better than Buyer's and who agrees to comply with and assume all provisions under this Agreement (including, for the avoidance of doubt, pricing terms) and meets the requirements under **Section 11.3(b)**. Such transfer shall be treated as a contract novation from the Buyer to the new party to the extent that the new party assumes Buyer's responsibilities under this Agreement. In accordance with this **Section 11.3**, Buyer may transfer any fraction of its interests in this Agreement up to and including the full Buyer's Allocated Percentage which would represent a full assignment.

(b) Buyer's request for Seller's consent to any proposed change or assignment as contemplated in **Section 11.3(a)** shall be in writing and furnished to Seller at least thirty (30) days prior to the proposed effective date of such change or assignment, which request must include: (i) Buyer's name and mailing address; (ii) the current Retail Service Address; (iii) the new Retail Service

Address (if applicable); (iv) the name of the individual or entity to whom Buyer is requesting to assign this Agreement (if applicable) and the consideration (if any) proposed to be provided to Buyer for such assignment; and (v) the proposed effective date of such proposed change or assignment. In the case of any assignment of this Agreement in whole or in part to another individual or entity pursuant to this Section, (A) such assignee's Retail Service Address shall be located within the Utility's service territory as the System, (B) such assignee shall be Creditworthy, (C) Buyer shall reimburse Seller for Seller's reasonable, documented transaction costs associated with such assignment, (D) such assignee shall execute a novation agreement of this Agreement which shall specifically include the representations and warranties set forth in **Section 7.2**, and (E) such assignment shall be effective upon the later to occur of (1) the proposed effective date of such assignment and (2) the date upon which the Utility shall have approved such assignment.

(c) Upon any assignment of this Agreement pursuant to this **Section 11.3** Buyer will surrender all right, title and interest in and to the portion of this Agreement that has been assigned. Any purported assignment in contravention of this **Section 11.3** shall be of no force and effect and null and void ab initio. No assignment will extend the Term of this Agreement.

(d) If Buyer terminates its retail electric service with the Utility or moves outside of the Utility's service territory without first transferring Buyer's Allocated Percentage to an eligible transferee, Buyer will forfeit its right to receive Alternative On-Bill Credits but will continue to be responsible for the Payments for accrued Alternative On-Bill Credits under this Agreement until this Agreement is terminated pursuant to the terms in this Agreement.

## 12. CONFIDENTIALITY.

12.1 It may become necessary during the course of this Agreement for one Party to disclose to the other Confidential Information. Any Confidential Information of a Party (the "**Disclosing Party**") which is disclosed to or otherwise received or obtained by the other Party (the "**Receiving Party**") incident to this Agreement shall be held in confidence, and, except as otherwise permitted herein or otherwise directed in writing by the Disclosing Party, the Receiving Party shall not copy, reproduce, remanufacture, publish or otherwise disclose any Confidential Information to any Person for any reason or purpose whatsoever, except to those of its Representatives (defined below) that have a *bona fide* need to know such Confidential Information pursuant hereto, or use any Confidential Information for its own purposes or for the benefit of any Person except in connection with the performance of its duties hereunder, without the prior written approval of the Disclosing Party. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Confidential Information, which such Party observes with respect to its own information of the same or similar kind. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party. For purposes of this Section 12, "Representatives" means the Receiving Party's or any of its Affiliates' respective shareholders, members, directors, managers, officers, employees, financing sources, potential financing sources and attorneys. Notwithstanding the foregoing or anything contained herein to the contrary, Buyer's obligations under this Section 12 shall be subject to Buyer's compliance with all applicable laws, including but not limited to the Massachusetts Public Records law (M.G.L. c. 66) and the Massachusetts Open Meeting Law (M.G.L. c.30A), and Buyer shall be entitled to use its discretion in determining how to comply with such legal requirements.

## 13. MISCELLANEOUS.

13.1 Survival. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations, including representations, warranties, remedies and indemnities that, by their nature, should survive such cancellation, expiration, or termination, which obligations shall survive for the period of the applicable statute(s) of limitation, including **Sections 3.4, 7.5, and 10**.

13.2 Goodwill and Publicity. Seller shall have the right to use graphical representations or photography of the System in marketing and promotional materials. Seller agrees not to disclose any Buyer information in connection with Seller's marketing and promotional materials without prior written consent of Buyer. Buyer agrees not to use Seller's name, logo, trademark, trade name, service mark, or other Seller intellectual property in any marketing or promotional materials without the prior written consent of Seller. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use and to help ensure that Environmental Attributes will be certified by Green-e® or a similar organization, Buyer shall submit to Seller for approval any press releases regarding this Agreement and shall not submit for publication any such releases without the prior written approval of Seller.

13.3 Entire Agreement. This Agreement (including the Exhibits and Schedules hereto) constitutes the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior contracts or agreements with respect to the subject matter hereof. There are no agreements, understandings, representations, or warranties between the Parties other than those set forth herein and in this Agreement.

13.4 Amendments and Modification. This Agreement may be amended, supplemented, or modified only by a written instrument duly executed by each Party. In the event any provision of this Agreement would, in the reasonable judgment of Seller, be reasonably expected to result in Seller's non-compliance with any provision in the Tariff (as the same may be amended or revised from time to time), the Parties shall exercise commercially reasonable efforts to negotiate an amendment to this Agreement to conform the applicable provision(s) of this Agreement to the applicable provisions in the Tariff.

13.5 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement the normal standards of performance within the solar photovoltaic power generation industry in the United States shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical, or trade meanings shall be so construed.

13.6 No Waiver. Any provision of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any provision of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other provision of this Agreement on any future occasion, and, unless otherwise set forth in this Agreement, no failure or delay on the part of any Party in exercising any rights, powers or remedies under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other right, power or remedy thereunder. Failure on the part of a Party to complain of any act of any Party or to declare any Party in default, irrespective of how long such failure continues, will not constitute a waiver by that Party of its rights with respect to that default. Subject to **Section 10**, all remedies, either under this Agreement or by law or in equity, shall be cumulative and not alternative.

13.7 Relationship of the Parties. Nothing contained in this Agreement will be construed as constituting a joint venture or partnership between the Parties. Neither Seller nor Buyer shall have any authority to enter into agreements of any kind on behalf of the other Party and shall not have the power or authority to bind or obligate the other Party in any manner to any third party. Seller and Buyer shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with laws of the Commonwealth of Massachusetts, without reference to choice of laws, that would require the application of the law of another jurisdiction. All actions or proceedings arising in connection with this Agreement may be tried and litigated in the state or federal courts located in Boston, Massachusetts. Each Party hereby waives any right it may have to assert the doctrine of *forum non conveniens* or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this Section and stipulates that the courts identified in this Section shall have *in personam* jurisdiction over each of them for the purpose of litigating any such dispute, controversy, or proceeding. Each Party hereby authorizes and accepts service of process sufficient for personal jurisdiction in any action against it as contemplated by this Section by registered or certified mail, return receipt requested, postage prepaid, to its address for the giving of notices as set forth in **Section 13.12**. Nothing herein shall affect the right of any Party to serve process in any other manner permitted by law.

13.9 Severability. Subject to **Section 13.4**, if any provision contained herein is invalid, illegal or unenforceable in any respect under any Applicable Law or decision, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way, and the Parties shall so far as practicable execute such additional documents in order to give effect to any provision hereof which is determined to be invalid, illegal or unenforceable.

13.10 Successors and Assigns. This Agreement is binding upon and inures to the benefit of the Parties and their respective successors and permitted assigns.

13.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same agreement. Signatures delivered by facsimile or portable document format (pdf) shall be deemed to be original signatures.

13.12 Notices. Any notice to be given hereunder shall be in writing and shall be delivered by hand (including by express courier against written receipt) or sent by registered prepaid first-class mail, overnight courier or by facsimile copy to the persons or addresses specified below (or such other person or address as a Party may previously have notified the other Party in writing for that purpose). A notice shall be deemed to have been served when delivered by hand at that address or received by facsimile copy, or, if sent by registered prepaid first-class mail or overnight courier as aforesaid, on the date delivered. In addition, either Party may provide notice or other formal communications under this Agreement by e-mail to the addresses below (and if more than one address is listed for a Party, then notice must be given to all addresses listed for such Party for notice to be effective) with such notice effective one (1) Business Day after written acknowledgment of receipt from the receiving Party

(automated responses excluded). The names and addresses for the service of notices referred to herein are:

Buyer:

Attn: Greg Woods, Superintendent  
Auburn Water District  
75 Church Street  
Auburn, MA 01501  
gwoods@auburnwater.com

Seller:

[Company Name] [address]  
Attn: Email:

**Lender:**

[To be provided by Seller when known]

[Signature Page Follows]

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

“SELLER”: [\_\_\_\_\_]

By:

Name:

Title:

“BUYER”: Auburn Water District

By:

Name:

Title:

## **EXHIBIT A Certain Agreements for the Benefit of the Financing Parties**

1. Lender Conditions. In order to finance the development and operation of the System, Seller may borrow money or otherwise seek investment from a Lender (as defined in this Agreement). Buyer acknowledges that Seller may finance the acquisition, development, installation, operation, and maintenance of the System with financing or other accommodations from one or more financial institutions and that Seller's obligations to the Lender may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first priority security interest in the System (collectively, the "Security Interest"). In order to facilitate the necessary financing, Buyer consents to Seller's granting to the Lender the Security Interest.

Buyer acknowledges and agrees that: (i) Buyer and all of Buyer's rights under this Agreement are and will be subject and subordinate to the Security Interest (and as later modified by any and all renewals, modifications, supplement, amendments, consolidations, replacements, substitutions, additions, and extensions); and (ii) no amendment or modifications of this Agreement is permitted without the Lender's written consent.

2. Lender's Default Rights. If Seller defaults under the financing documents with the Lender, the following provisions apply:
  - A. The Lender, through its Security Interest, will be entitled to exercise any of Seller's rights and remedies under this Agreement. The Lender will also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.
  - B. The Lender will have the right, but not the obligation, to pay all sums due from Seller under this Agreement and to perform any other act, duty, or obligation required of Seller, and to cure any default by Seller in the time and manner provided by the terms of this Agreement. Nothing requires the Lender to cure any default by Seller (a "Seller Default") under this Agreement, to perform any act, duty or obligation of Seller under this Agreement, unless the Lender has succeeded to Seller's rights under this Agreement, but Buyer hereby gives Lender the option to do so.
  - C. If the Lender exercises its remedies under the Security Interest, including any sale by the Lender, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to Lender (or its assignee) in lieu of sale, the Lender will give Buyer notice of the transfer or assignment of this Agreement. If Lender exercises these remedies, it will not constitute a default under this Agreement, and will not require Buyer consent.
  - D. Upon any rejection or other termination of this Agreement under any process undertaken with respect to Seller under the United States Bankruptcy Code, Buyer agrees to enter into a new agreement with Lender or its assignee under substantially the same terms as this Agreement if Lender so requests within ninety (90) days of the termination or rejection of this Agreement.
  - E. At Seller's request, Buyer agrees to execute and deliver to Lender and Seller such



acknowledgment consent as may be required by Lender and in which Buyer acknowledges and confirms that the legal and beneficial ownership of the System remains in Seller, or its affiliate, and that the System is the property of Seller, or its affiliate.

3. Lender's Right to Cure. Regardless of any contrary terms in this Agreement:
  - A. Buyer will not terminate or suspend this Agreement unless Buyer has given the Lender prior written notice of Buyer's intent to terminate or suspend this Agreement describing the event giving rise thereto, including any alleged Seller Default, and provide the Lender with the opportunity to cure any such Seller Default within sixty (60) days after such notice or any longer period provided for in this Agreement. If the Seller Default reasonably cannot be cured by the Lender within the period established under this Agreement, and the Lender commences and continuously pursues the cure of such Seller Default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional thirty (30) days. Seller's and Buyer's respective obligations will otherwise remain in effect during the cure period.
  - B. If the Lender or its lawful assignee (including any buyer or transferee) acquires title to or control of Seller's assets and within the applicable time period cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third party, then the Lender or such third party buyer or transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.
  - C. At the request of Lender and/or its assignee, Buyer agrees to execute and deliver any document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue, or terminate the security interest in favor of Lender in all assets of Seller, and to secure the obligations evidenced by the Security Interest.

**SCHEDULE 1: Description of System**

**System Site Location:** [\_\_\_\_\_]

**System Size:** [\_\_\_\_\_] kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)

**Utility:** National Grid

**Retail Service Address:** See table on next page

**Buyer’s Allocated Percentage:** See table below. Total allocation is [\_\_\_\_\_] %

## SCHEDULE 2: Annual Expected Production Output

Contract Year in Term	Annual Expected Performance Output	Contract Year in Term	Annual Expected Performance Output
1		14	
2		15	
3		16	
4		17	
5		18	
6		19	
7		20	
8			
9			
10			
11			
12			
13			