To: School Committee

From: Lemma Jn-baptiste, Director of Business & Finance

Tom Philbin, Town of Westwood Energy Manager

Date: September 8, 2022

RE: Solar Canopies and Green Initiatives Update

At the June School Committee meeting we brought forward two proposals for Green Initiatives that would impact Westwood facilities. Both proposals address the Infrastructure for the Future district priority, as part of the WPS Strategy for District Improvement. They are also both fiscally responsible proposals. This memo provides additional information that was requested by the School Committee on the Solar Canopies project, and also provides an update on other Green Initiatives that impact the Westwood Schools.

SOLAR CANOPIES

As we discussed in June, the Westwood Schools has an opportunity to pursue a new solar project via the installation of solar canopies in the High School parking lot and a small add-on to the Thurston rooftop array. This would be constructed in partnership with Ameresco, which has previously constructed solar arrays on rooftops in Westwood (High School, Martha Jones, Downey, and Thurston) at an initial cost of \$1.7M.

Revisions to Prior Proposal

In the last three months, there have been some changes to the proposed HS solar canopy project in response to feedback from the community, including the Westwood Environmental Action Committee (WEAC) and the School Committee. The changes include:

Redesign

The canopies are now proposed for the student parking lot adjacent to the Multipurpose Field, rather than the faculty parking lot. This change reduces the impacts of the canopies on Town and School stakeholders and positions the infrastructure in the rear corner of the high school grounds. As part of the redesign, Ameresco was able to slightly increase the production capacity of the solar array and to add an accessible paved walkway that is adjacent to the Multipurpose Field.

Adjusted Power Purchasing Rate

Due to increased construction and borrowing costs, as well as the accessible walkway and the increased size of the solar canopy, Ameresco needed to recalculate the power purchasing rate that the Westwood Schools would pay for electricity generated from the solar canopies. After discussions with the Town Energy Manager and Westwood Schools, Ameresco has established a variable rate and lowered the rate in the first years of the agreement, so that it better competes with the rate that the Town of Westwood has locked in with Constellation

Energy through its current fixed price contract. This improves the financials of the project in the first 3-5 years of operation.

Key Project Benefits

We also want to highlight the financial and emissions benefits of the HS solar canopy project. The High School solar canopy project is expected to generate at least 808,200 kWh in electricity per year. It would generate budget savings on an annual basis by protecting the Westwood Schools from an anticipated spike in the electric bill and protect the district from making difficult decisions in future budget cycles. It would also allow the Westwood Schools to reduce its dependence on non-renewable energy.

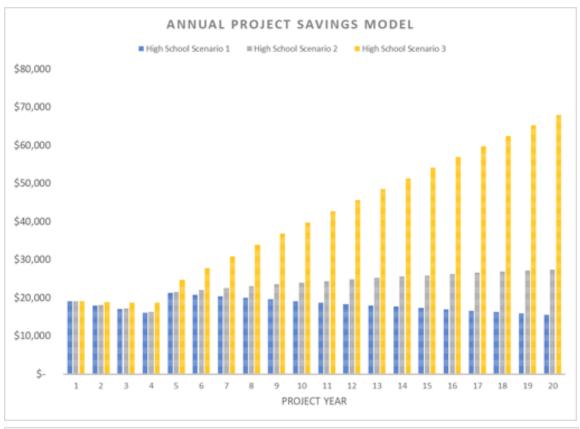
Financial Benefit

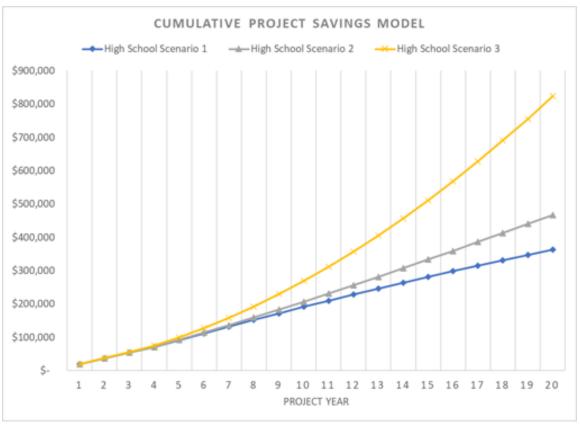
A financial model has been developed to explain the cash flow savings that the Westwood Schools may expect from participating in the Phase 2 solar project power purchase agreement and from the construction of the HS solar canopies. This financial model has captured the difference between the fixed price of the renewable energy that is projected to be purchased from Ameresco (~808,200 kWh per year) and the market rate for electricity that is anticipated over the 20-year term of the power purchasing agreement. Whenever the power purchase agreement rate (\$/kWh) is lower than the market rate (\$/kWh), the Westwood Schools will generate cash flow savings.

In any one year, assuming a 3% annual increase in electric costs, the HS solar canopy is projected to save the Westwood Schools between \$19K and \$28K. We can sum the annual savings to determine the valuation of the project over 20 years. Assuming a 3% annual increase in electric costs over the next 20 years, the HS solar canopy is an installation that can be valued at \$468K over 20 years. If we assume a more dramatic escalation in the cost of electricity, using a 5% annual increase per year, the HS solar canopies can be valued at \$824K over 20 years.

The charts below capture the annual cash flow savings and the cumulative cash flow or net present value of the project for the Westwood Schools, based on these different scenarios:

- 1. Annual increase in electric costs of 2% per year
- 2. Annual increase in electric costs of 3% per year
- 3. Annual increase in electric costs of 5% per year





The HS solar canopy will only partially protect the school department from increases in the price of electricity, because it provides a fixed price for only 19-26% of the historical usage. However, the Westwood Schools are protected from market rates through existing power purchasing agreements (these include prior Phase 1 projects with Ameresco and the Woburn virtual solar array).

Emissions Benefit

Already, the solar output from arrays that are on rooftops in the Westwood Schools and the array in Woburn is providing 84% of the School-only electric consumption. With the proposed HS solar canopies, the output will exceed 100% of the current Westwood Schools electric consumption. Our electric needs will increase in the future, but this will be an important milestone for the Westwood Schools when it is achieved.

The HS solar canopies would reduce our carbon impact by avoiding the release of 325.88 metric tons of carbon dioxide based on an analysis of emissions for our New England subregion.

This is equivalent to G	reenhouse Gas Emissions generated (or saved) by the following actions:
70.4	gas powered vehicles driven/year
808,389.2	miles driven by an average gasoline-powered passenger vehicle/year
61,468.1	therms of natural gas/year
757.6	barrels of oil consumed/year
4.3	tanker trucks filled with gasoline/year
12,387.1	incandescent light bulbs switches to LEDs/year
55.2	homes electricity use/year
37.6	homes energy use/year
5,429.7	number of urban tree seedlings grown for 10 years planted/year
423.1	acres of US forests storing carbon/year
2.2	acres of US forest preserved from conversion to cropland/year
13,574.2	propane cylinders used for home barbeques/year
1.8	railcars of coal burned/year
358,789.5	pounds of coal burned/year
110.8	tons recycled instead of landfilled/year
15.8	garbage trucks recycled instead of landfilled/year
813,863	bags of waste recycled instead of landfilled/year
41,553,681.5	smartphones charged/year

In addition to the emissions impact that it has for the Westwood Schools, the HS solar canopies and other associated Phase 2 projects will allow the Town of Westwood to cover nearly 80% of

its electric needs through renewable power sources. This brings the Town closer to meeting its energy goals as part of the Town Master Plan.

Public Engagement

In response to the School Committees request for public engagement on the HS solar canopies project, we have scheduled the following activities in the September and October timeframe:

- 1. Community Forum led by Westwood Environmental Action Committee (WEAC) in late September / early October
- 2. Article to be written by Claire Galkowski for the following audiences:
 - a. Transcript-Bulletin
 - b. Hometown Weekly
 - c. Patch
 - d. Westwood Minute
 - e. Westwood Today (new monthly magazine)
 - f. FB: Westwood Bulletin Board
 - g. Neighbors in Action
 - h. Keep the Woods in Westwood
 - i. Westwood Democrats
 - j. Next Door
 - k. School publications, if appropriate
- 3. Booth at Westwood Day
- 4. Recorded presentation via Westwood Media

Attachments

We are providing some attachments with additional information on this project.

1. Q&A for School Committee and Select Board

We have generated detailed answers to other questions that apply to the HS solar canopies and Phase 2 solar projects. These questions address the Town Master Plan and energy goals, the HS solar canopies project in detail, the Power Purchasing Agreement (PPA), as well as the construction timeline and other concerns.

2. FAQs for General Audience

As distinguished from the Q&A that is geared to the School Committee and Select Board, this is a draft of the FAQs that can be distributed to a general audience at Westwood Day and made available to interested parties.

3. HS Solar Canopy Renderings

These are the renderings of the revised HS solar canopy design after revisions were made this summer.

4. Power Purchasing Agreement Template

This is a draft power purchasing agreement that the Town of Westwood and Westwood Schools can review as a template. The exhibits will be populated by Ameresco in the coming weeks.

GREEN INITIATIVES UPDATE

We continue to pursue initiatives to build infrastructure for the future, in keeping with our long-term capital planning for the Westwood Schools.

In February 2022, the Westwood Town Energy Manager applied for a Green Communities Grant to fund two projects that will positively impact the Westwood Schools: an LED lighting project at the Sheehan Elementary School and an HVAC upgrade with air cleaning at the Thurston Middle School. In August 2022 the Town was awarded a grant of \$90,000 toward these projects, bringing the seven-year total of Massachusetts Department of Energy Resources (DOER) grants to approximately \$1,390,000. Over the next few months, the Westwood Schools will be working to plan these projects and schedule the required work.

Last spring, the Town of Westwood was informed that its application for electric vehicle charging station funding through the Massachusetts Electric Vehicle Incentive Program (MassEVIP) DC Fast Charging has been approved. The grant to the Town of Westwood totals \$340,212 with approval of up to \$85,053 for 2 ports of at least 62.5 KW capacity at the High School. This pays for the full cost of equipment and installation. In addition, Eversource has approved Westwood as part of its "Make Ready" program and has made a commitment to installing the requisite underground infrastructure for electric power delivery to the proposed location of the charging station, and to repairing any damage to asphalt or curbs that is caused by the installation of the underground infrastructure. This EV charging station project is not yet underway, due to a delay in the release of funding at the State level. However, we are poised to move it forward as soon as the funding is released.

SUMMARY

We believe that the Westwood Schools has an opportunity to leverage public incentive programs and private partnerships to demonstrate fiscal responsibility, a commitment to renewable energy, and achieve reduced emissions goals. We look forward to your questions and feedback.

Q&A FOR SCHOOL COMMITTEE AND SELECT BOARD

TABLE OF CONTENTS

TOWN ENERGY PLAN

What is the current state of the Town solar initiatives (location, kWh production, \$ savings).

What is the Town's ultimate energy goal? With what projects does the Town intend to reach that goal?

Please advise on the feasibility of adding solar to other Town buildings.

Why is the Westwood Schools project, or the HS solar canopy, considered the anchor project?

What are the financial impacts of the other Phase 2 projects that are being proposed outside of the HS solar canopy?

What is the carbon impact of the other Phase 2 projects that are being proposed outside of the HS solar canopy?

If the HS solar canopy project (and associated projects) are implemented, how close will Westwood be to the Town's energy goal?

Please comment on whether the Town of Westwood or Westwood Schools have opportunities to be the primary user (off-taker) of solar facilities located outside of the Town, as with the solar array that is located in Woburn. Would an opportunity like this be an alternative way to secure a fixed price contract for electricity and/or benefit from Eversource incentives?

HS SOLAR CANOPIES

How many canopies does the proposed project intend to install and how many solar panels will be on each canopy? How many solar panels total will the project contain?

The latest design is three rows of canopies covering five rows of parking in a single parking lot next to the Multipurpose Field. This includes a total of 1,404 solar panels at 480 watts each, for a total of 673 kW.

Please provide rendering(s) of all proposed HS solar canopies in their proposed locations.

Please provide financial impact for the HS solar canopies.

<u>Please provide carbon impact for Phase 2 HS solar canopy.</u>

Please describe benefits to the Westwood Schools grounds and facilities.

What is the incentive to Ameresco and to the Town (respectively) for the tranche that the Town is hoping to enter?

What is the incentive to Ameresco and to the Town (respectively) for the tranche after the current tranche and what is the difference in savings between the two tranches?

When does the Town need to sign the PPA to make the current tranche, and the latest date for the next tranche?

What is the latest date for the Town of Westwood to sign the PPA in order for construction to commence and conclude in the summer 2023?

POWER PURCHASING AGREEMENT (PPA)

How does the PPA work? It appears Ameresco will build the project and install the panels at Ameresco's sole cost and will then receive the RECs from the energy consumption. Is that correct?

What are the terms of the PPA?

Length of Term?

Is there a buy-out option? If so, when?

What termination rights does the Town have (if any)?

What is the cost to Westwood (if any) of the project?

Are there any important terms in the PPA that are to Westwood's benefit, not previously mentioned?

What if 500,000 kWh are produced in the first year, rather than the guaranteed 808,200 kWh for the HS solar canopies?

What approvals are needed to execute the PPA?

What approvals are needed after the execution of the PPA?

CONSTRUCTION

What is the process from the Power Purchasing Agreement execution through installation and implementation?

How long will construction take?

Will any portions of the parking lot be unavailable during construction? If so, is there a construction phasing plan? How long will the parking lots be unavailable?

Who will perform the construction?

GENERAL ISSUES

Who will be liable for damage to any portion of the canopies (post, roof, solar panels themselves)? Is the perpetrator of the damage (i.e. WHS baseball team) relevant for purposes of determining liability?

Who will be responsible for the ongoing maintenance and repair of the canopies (post, roof, solar panels themselves)?

Who will be responsible for clearing snow/ice from the tops of the canopies?

We do not need to clear snow. The steel is designed to withstand maximum snowfall.

Will the canopies contain snow guards to prevent large chunks of snow/ice from sliding off onto pedestrians below?

Once the project is complete, how many parking spaces will we lose permanently as a result of the canopies?

Have there been any discussions with other stakeholders about the impact of the solar canopies?

TOWN ENERGY PLAN

What is the current state of the Town solar initiatives (location, kWh production, \$ savings).

The Town of Westwood selected Ameresco as a partner for solar energy initiatives through an open bidding process in 2017 and the Town subsequently signed a Phase 1 Power Purchase Agreement (PPA) with them to implement solar in Westwood. Any near-term solar projects would be accomplished through this existing contract that has been reviewed and approved by the Town Counsel and Select Board.

The Town, through its Phase 1 projects with Ameresco, currently has solar panels installed on roofs of Westwood HS (186 kW), Thurston Middle School (99 kW), Downey Elementary School (181 kW) and Martha Jones Elementary School (151 kW). In calendar year 2021, the total financial savings to the Westwood Schools from these panels was \$83,908. This is a larger figure than we originally quoted because a closer analysis of the financials revealed that we had underestimated the savings.

Separately, the Schools have also agreed to be the primary user (off-taker) of a solar facility in Woburn, through a Power Purchasing Agreement (PPA) with ECA Solar (now owned by Greenbacker). After reviewing our financials on this project we determined that this facility generated \$43,343 through direct payments that are a fixed percentage of the electric output value in calendar year 2021. This was the first year of operation. Now that this Woburn revenue stream is established, the revenue can be used to offset utility costs in the district budget.

The combined financial value of these existing Power Purchasing Agreements was \$127,251.

These installations were made with no capital outlay from the Town, and through the Phase 1 projects with Ameresco the Town has the added benefit of a buy-out option in 2023 which would potentially increase the financial value of existing solar arrays. The cost to Ameresco of constructing the Phase 1 solar installations was approximately \$1.7M.

What is the Town's ultimate energy goal? With what projects does the Town intend to reach that goal?

The State of Massachusetts is attempting to move all power production in the State to alternative non-carbon polluting sources. Various legislative proposals have set goals for this transition, with target dates ranging from 2035 to 2050. The Westwood Town Master Plan calls for the Town to "Install solar panels on existing municipal properties including buildings, parking areas, and school properties."

The Town Master Plan does not specify a fixed renewable energy goal. The Town used approximately 5 million kWh (5 gWh) of electricity in the calendar year 2021. In the interest of setting measurable objectives, the Town Energy Manager has determined that the Town should attempt to meet 90% of its total kWh hours of electric need with renewable energy. This is consistent with State goals of eliminating fossil fuel usage and with the benchmarks that other communities have established.

The combination of existing Phase 1 solar and virtual solar installations cover about 52% of the Town's electric energy consumption needs based on 2021 numbers. The proposed Phase 2 projects would allow up to 20-25% more of the Town's electric energy consumption to be renewable. The

precise ratio depends on the final design of the various Phase 2 additions. If the full scope of the proposed Phase 2 projects is achieved, the Town would be covering nearly 80% of its electric needs via renewable sources.

The SMART Program and the State measure our success in eliminating fossil fuel usage by evaluating how much of the total municipal electric needs are met with renewable energy. It is noteworthy that if we look at only the school department's electric needs, which were 3.1 million kWh (3.1 gWh) in calendar year 2021, we find that the Westwood Schools already generated 84% of their needs through renewable energy via Power Purchasing Agreements in 2021. The proposed Phase 2 solar project components that involve Westwood Schools would generate enough renewable energy to generate 110% of the Westwood School need based on historical usage (exceeding 100% of our school needs is allowable under the SMART Program because the schools are a department of the Town). Our electric needs will increase in the future, but this will be an important milestone for the Westwood Schools when it is achieved.

What other projects will be included with the HS solar canopy project? Please provide location and capacity.

The Phase 2 solar project is proposed to include a solar canopy in the Westwood HS parking lot (673 kW), an addition to the existing Thurston MS roof panels (85 kW), and the Senior Center Council on Aging (COA) solar canopies (300 kW), and a small solar canopy at the Police Station/Town Hall (160 kw).

Note:

- Police Station / Town Hall Ameresco is reviewing permitting requirements for the solar canopy that was proposed at the Police Department, as there may be issues with the proximity of that parking lot canopy to the building and the Fire Department would need to approve it.
- Senior Center Council on Aging (COA) The Department of Energy Resources (DOER) needs to
 confirm whether the MA SMART program administrators will accept an extension request for
 construction of the Council of Aging solar canopy project to proceed with the SMART incentive
 block 4 that was originally reserved with the SMART Statement of Qualifications (SOQ)
 application submitted in 2020. Currently, the COA benefits from the most favorable incentive
 block in the Phase 2 projects, because its application was submitted earlier than others.
- Thurston MS This Phase 2 addition would nearly double the size of the current rooftop solar
 array at Thurston. This was not included in the Phase 1 solar project because of a scheduled roof
 replacement. The ability to connect the new solar array to the existing net meter needs to be
 confirmed.

Please advise on the feasibility of adding solar to other Town buildings.

Engineering studies were completed on all of the buildings below. Typically, anything less than 150 kW is not typically large enough for a Power Purchasing Agreement.

 Deerfield School - At the time when the Phase 1 solar project was underway, this roof was excluded from consideration due to a scheduled roof replacement. It is appropriately sized (~200 kW) but preliminary studies in 2022 indicate that the roof may not be a good candidate due to shading concerns.

- Fire Station (Islington) This was originally in the Phase 1 solar project, but found to be too small to be economical (~13 kW).
- Fire Station (Westwood) This was found to be too small to be economical (~20 kW).
- Main branch Public library The orientation and roof design is not amenable to placement of solar panels.
- Wentworth Hall The roof is too small to be economical (~10 kW).
- Town Hall The orientation and roof design is not amenable to placement of solar panels. However, a proposed solar parking garage is included in Phase 2.
- Police Station The roof size and design are not amenable and the portion that could be used for solar panels is too small. However, a proposed solar parking garage is included in Phase 2.
- Carby Street and Garages The roofs are not good candidates for a rooftop solar project. The roofs on Carby Street are not large enough for a solar PPA project.

Why is the Westwood Schools project, or the HS solar canopy, considered the anchor project?

For all power purchase agreements, Ameresco must be able to finance the project or portfolio of projects. When constructed as stand-alone projects, solar installations that are smaller than ~250 kW may not be financially feasible and may be difficult to finance with a power purchasing agreement. By bundling a number of Phase 2 projects with an anchor project that is large, the smaller projects may be more feasible and possible to finance.

The size of the Westwood HS project far exceeds that of the other Phase 2 additions. When constructed as stand-alone projects solar installations such as the Council on Aging are cost-prohibitive. However, by bundling a number of Phase 2 projects with the larger HS solar canopy, Ameresco can spread fixed costs over multiple projects and make it possible to do more work in the Town of Westwood.

What are the financial impacts of the other Phase 2 projects that are being proposed <u>outside</u> of the HS solar canopy?

The Phase 2 solar project is proposed to include the Senior Center Council on Aging solar canopies (300 kW) and the Police Station/Town Hall solar parking garage (160 kW). The estimated financial savings from these projects will be calculated after the final canopy designs are completed, and pending questions (referenced above) are addressed. The discussion of the financial impact of the HS solar canopy (provided below) is a good example of how these would impact Town budgets.

What is the carbon impact of the other Phase 2 projects that are being proposed <u>outside</u> of the HS solar canopy?

The Phase 2 proposals for the Senior Center Council on Aging and the Police Station / Town Hall are still being revised by Ameresco engineers. Based on current estimates, annual renewable energy from these two Town projects could be up to 500,000 kWh per year.

If it is achieved, this would contribute to the Town's energy goal, and would reduce our carbon impact by avoiding the release of 201.55 metric tons of carbon dioxide, based on an analysis of emissions for our New England subregion.

This is equivalent to G	reenhouse Gas Emissions generated (or saved) by the following actions:
43.5	gas powered vehicles driven/year
500,117.1	miles driven by an average gasoline-powered passenger vehicle/year
38,027.8	therms of natural gas/year
468.7	barrels of oil consumed/year
2.7	tanker trucks filled with gasoline/year
7,663.4	incandescent light bulbs switches to LEDs/year
34.1	homes electricity use/year
23.2	homes energy use/year
3,359.1	number of urban tree seedlings grown for 10 years planted/year
261.7	acres of US forests storing carbon/year
1.4	acres of US forest preserved from conversion to cropland/year
8,397.8	propane cylinders used for home barbeques/year
1.1	railcars of coal burned/year
221,968.3	pounds of coal burned/year
68.6	tons recycled instead of landfilled/year
9.8	garbage trucks recycled instead of landfilled/year
8,576.5	bags of waste recycled instead of landfilled/year
25,707,548.6	smartphones charged/year

If the HS solar canopy project (and associated projects) are implemented, how close will Westwood be to the Town's energy goal?

The latest design iteration for the Westwood HS solar canopy project would generate approximately 808,000 kWh annually. On its own, this component of the Phase 2 solar project would generate up to 16% of the Town's annual electric energy needs. If Phase 2 is achieved with all proposed components, the Town would be generating nearly 80% of its electric energy needs through renewable energy based on calendar year 2021 usage.

The Town's energy needs change with weather and when building infrastructure or equipment are modified (for example, both Thurston's recently approved Department of Energy Resources (DOER) project for replacing rooftop HVAC units and the Hanlon-Deerfield Project would decrease need for natural gas and increase need for electricity). The Town goal of getting 90% of its electric energy

consumption from renewable sources will require more solar and/or increased conservation beyond the Phase 2 solar project. In the short term, Phase 2 will bring us very close to our goal.

Please comment on whether the Town of Westwood or Westwood Schools have opportunities to be the primary user (off-taker) of solar facilities located outside of the Town, as with the solar array that is located in Woburn. Would an opportunity like this be an alternative way to secure a fixed price contract for electricity and/or benefit from Eversource incentives?

Solar installed and operated on Town facilities gives long term price protection because solar panels on Town facilities are owned by the Town at the end of the Power Purchasing Agreement (PPA) contract term. The Phase 2 solar arrays allow for easy substitution of the panels as panel technology becomes increasingly efficient. Therefore, the Town would be poised to benefit from the infrastructure both for the 20-year life of the PPA and well beyond.

At the moment, there is no open opportunity to participate in a virtual solar array. An opportunity could open at any time.

Virtual solar arrays that are located outside of the Town give a cash flow return that is a fixed percentage of the output value. At the end of the 20-year term on a virtual solar array, the facility is owned by others and the financial benefit disappears. At the end of the virtual solar array contract term, there is a temporary reduction in the percentage of Town electric consumption that is generated from renewable sources until other sources of renewable energy are identified. Lastly, whereas the Town benefits only from a fixed percentage of the output on a virtual solar array, via cash payments, the Eversource SMART program considers the Town to be the full offtaker of the power generation. The Eversource SMART program imposes caps on the incentives that municipalities may claim and the full power generation of the virtual array would count toward the Town of Westwood's cap, which means that the Town of Westwood may be prevented from benefiting from incentives for permanent solar projects that are installed and operated on Town facilities because it has prematurely reached its cap through the more temporary 20-year term on a virtual solar array.

HS SOLAR CANOPIES

How many canopies does the proposed project intend to install and how many solar panels will be on each canopy? How many solar panels total will the project contain?

The latest design is three rows of canopies covering five rows of parking in a single parking lot next to the Multipurpose Field. This includes a total of 1,404 solar panels at 480 watts each, for a total of 673 kW.

Please provide rendering(s) of all proposed HS solar canopies in their proposed locations.

We are providing a rendering below, and there are additional renderings in the attachments.



Please provide financial impact for the HS solar canopies.

There are two ways to describe the financial impact of the Phase 2 solar canopies at the high school. One way is to describe the important role of price stability in school budgets. The other is to put a dollar value on the project, by estimating the value of the savings that Westwood would likely enjoy over 20 years in today's dollars.

Price Stability

The Westwood Schools is currently benefiting from a fixed price contract with Constellation Energy, which protects the school budget from fluctuations in the supply cost for electricity. The market price for supply and distribution that the Westwood Schools would pay if it was not under this contract is currently 15 cents per kWh. The rate the Westwood Schools is paying is for supply and distribution under the Constellation Energy contract is 12.9 cents per kWh. This contract covers <u>all</u> of the electric usage of the Westwood Schools until December 2026. When it ends, the Westwood Schools will be vulnerable to market shocks in the price for electricity.

The Constellation Energy contract took effect on December 15, 2021. In just six months through June 30, 2022, the Constellation Energy contract protected the Westwood Schools from unbudgeted expenses of about \$37K. Given the current market rates and stable electric usage, in the current year the Westwood Schools would be anticipating \$75K in unbudgeted electric costs if the Constellation Energy contract was not in place.

Due to the lengthy budget development cycle, it is difficult to adapt to price volatility after the budget is discussed and voted on by the School Committee. There are contractual obligations that the Westwood Schools have that restrict the ability to make cuts after the school year is underway. A fixed price contract protects the school department from difficult mid-year decisions, such as a midyear freeze on non-essential hiring or supply purchases. It also protects the school department

from difficult decisions during its annual budget development cycle, including the need to forego strategic investments in order to appropriately fund the utility costs in the operating budget.

The Phase 2 solar project would ensure that the Westwood Schools can continue to benefit from price stability, through a similar fixed price contract for its electric supply. The difference is that the Power Purchasing Agreement covers a longer time span of 20 years and only a limited portion, approximately 19-26% of the Westwood Schools kWh electric usage, based on calendar year 2021.

The range of 19-26% is provided here because solar production varies due to weather conditions and the production of the solar panels due to panel decay declines by half a percent each year. There is a clause in the Power Purchasing Agreement that protects the Westwood Schools in a year where the generation is particularly low, whereby Ameresco guarantees to supply a minimum of 19% of our current usage at the fixed price or provide financial compensation equivalent to the lost production. The contract benefits are capped at a maximum of 26% of our typical usage.

20-Year Financial Return

A financial model has been developed to explain the cash flow savings that the Westwood Schools may expect from participating in the Phase 2 solar project Power Purchase Agreement and from the construction of the HS solar canopies.

This financial model has captured the difference between the fixed price of the renewable energy that is projected to be purchased from Ameresco (~808,200 kWh per year) and the market rate for electricity that is anticipated over the 20-year term of the Power Purchasing Agreement. Whenever the PPA rate (\$/kWh) is lower than the market rate (\$/kWh), the Westwood Schools generate cash flow savings. These cash flow savings are adjusted (discounted by the current 20-year Treasury bill rate of 3.6%) to show the value of the project in today's dollars.

For the purpose of optimizing the Power Purchase agreement, Ameresco has lowered its proposed power purchasing rate for the Westwood Schools for the first years of the agreement when the Constellation Energy contract is in effect and the school department is substantially protected from market shocks in electric rates. This allows the school department to achieve an additional annual cash flow savings of approximately \$19K annually and is improved from prior iterations of the power purchasing rate for these years.

The calculated 20-year financial return also relies on two assumptions. The first assumption is the electric rate in January 2027, and the second assumption is the escalation for electric rates thereafter.

Electric Rates in 2027

Once the Constellation Energy contract expires in December 2026, the cash flow savings that is generated from this project is tied to the assumptions that are made about future electric rates. For the purpose of this analysis, the Town Energy Manager obtained a quote from Constellation Energy based on its projections for the electric supply rate in January 2027 and determined that the anticipated price that the Westwood Schools will pay for supply and distribution in 2027 would be

16.6 cents per kWh. If this industry-generated projection is accurate, it could represent a 28% jump over the rate that the Westwood Schools would be paying in December 2026.

Annual Escalation after 2027

Since the Phase 2 solar project Power Purchasing Agreement has a 20-year term, the financial model had to project cash flow savings after 2027. For simplicity, we made an assumption on the annual increase in the market rate for supply and distribution of electricity after 2027. Three potential scenarios (ranging from 2% to 3% to 5% annual escalation in electric rates) are shown below, with the resulting annual cash flow savings that are obtained from the HS solar canopy shown in dollars. The charts below capture the discounted annual cash flow savings and the cumulative discounted cash flow or net present value of the project (shown at the bottom in blue) for the Westwood Schools, based on these three scenarios.

The HS solar canopy will only partially protect the school department from increases in the price of electricity, because it provides a fixed price for only 19-26% of the historical usage. However, the Westwood Schools are protected from market rates through existing Power Purchasing Agreements (as described above, Phase 1 and the virtual solar array). Assuming a typical 3% annual increase in electric supply and distribution rates, the HS solar canopy is an installation that can be valued at \$468K over 20 years. In any one year over, assuming a 3% annual increase in electric costs, the HS solar canopy would save the Westwood Schools between \$19K and \$28K. If we assume a more dramatic escalation in the cost of electricity at 5% per year, the HS solar canopies can be valued at \$824K over 20 years.

		Annual S	wine	gs in Toda	V t D	ollars		Cumulativ	e Sav	ings in Toda	w's D	ollars
Assumptions	-	h School nario 1	Hig	h School nario 2	Hig	h School nario 3		School sario 1	High	School ario 2	High	School nario 3
2027 Utility Supply (\$/kWh)	5	0.1352	5	0.1352	5	0.1352	5	0,1352	5	0.1352	5	0.1352
Utility Rates Escalation (%) after 2027		2.0%		3.0%		5.0%		2.0%		3.0%		5.01
Year 1	5	19,082	5	19,082	S	19,082	5	19,082	5	19,082	5	19,082
2	5	18,034	5	18,110	5	18,910	5	37,116	5	37,192	\$	37,992
3	5	17,041	5	17,190	5	18,783	5	54,158	5	54,382	5	56,775
4	\$	16,102	5	16,322	\$	18,698	\$	70,260	5	70,704	\$	75,473
5	\$	21,256	5	21,545	5	24,698	S	91,516	S	92,249	5	100,17
	5	20,823	5	22,071	s	27,780	5	112,340	5	114,320	5	127,95
7.	5	20,399	\$	22,577	5	30,829	S	132,739	5.	136,897	\$	158,78
8	5	19,984	5	23,062	5	33,846	5	152,723	5	159,959	5	192,62
9	\$	19,577	\$	23,527	5	36,833	5	172,300	5	183,486	5	229,45
10	5	19,178	5	23,972	5	39,790	5	191,478	5	207,457	5	269,24
11	\$	18,768	5	24,398	5	42,718	\$	210,266	5	231,855	5	311,96
12	\$	18,405	5	24,806	5	45,618	5	228,670	\$	256,661	5	357,58
13	5	18,030	5	25,195	5	48,491	5	246,701	5	281,857	5	406,070
14	\$	17,663	5	25,568	5	51,337	5	264,363	5	307,424	\$	457,414
15	5	17,303	5	25,923	5	54,158	5	281,667	5	333,347	5	511,57
16	\$	16,951	\$	26,261	5	56,954	\$	298,617	5	359,608	\$	568,520
17	5	16,605	5	26,583	5	59,726	5	315,223	5	386,191	5	628,253
18	\$	16,267	5	26,890	\$	62,475	\$	331,490	5	413,081	\$	690,721
19	\$	15,936	5	27,181	5	65,201	5	347,426	5	440,261	5	755,929
Year 20	\$	15,611	\$	27,457	\$	67,906	5	363,037	\$	467,718	\$	823,833

Please provide carbon impact for Phase 2 HS solar canopy.

The anchor project of Phase 2 is the HS solar canopy (673 kW). The annual renewable energy generated by this solar array could be up to 808,200 kWh per year. This would contribute to the Town's energy goal and would reduce our carbon impact by avoiding the release of 325.88 metric tons of carbon dioxide, based on an analysis of emissions for our New England subregion.

This is equivalent to Greenhouse Gas Emissions generated (or saved) by the following actions					
70.4	gas powered vehicles driven/year				
808,389.2	miles driven by an average gasoline-powered passenger vehicle/year				

61,468.1	therms of natural gas/year
757.6	barrels of oil consumed/year
4.3	tanker trucks filled with gasoline/year
12,387.1	incandescent light bulbs switches to LEDs/year
55.2	homes electricity use/year
37.6	homes energy use/year
5,429.7	number of urban tree seedlings grown for 10 years planted/year
423.1	acres of US forests storing carbon/year
2.2	acres of US forest preserved from conversion to cropland/year
13,574.2	propane cylinders used for home barbeques/year
1.8	railcars of coal burned/year
358,789.5	pounds of coal burned/year
110.8	tons recycled instead of landfilled/year
15.8	garbage trucks recycled instead of landfilled/year
813,863	bags of waste recycled instead of landfilled/year
41,553,681.5	smartphones charged/year

Please describe benefits to the Westwood Schools grounds and facilities.

The HS solar canopies would provide protection from the elements, including sun, rain, and snow. The need for snow plowing in the winter would be greatly reduced. There would be no reduction in parking spaces. The canopies are designed with integrated LED lighting that illuminates the parking lot in the evening and a water management system so that ice melt and rain are channeled appropriately.

As part of the canopy construction, Ameresco will be installing an accessible covered walkway that abuts the Multipurpose field and provides shaded seating in the grass viewing area that abuts the Multipurpose field.

For Westwood Day, the canopies may eliminate the need for some or all of the display tents. In the current revised canopy design, the faculty parking lot will not have canopies, which allows the high school to conduct outdoor student activities on the paved faculty parking lot if desired.

Solar canopies in school parking lots have been implemented in Wayland, Natick and Stonehill and numerous other facilities with success. These districts did not observe a noteworthy increase in accidents or loss of parking spaces, and the design of the canopies has improved in recent years so that rainwater and ice formation concerns that were raised by early adopters are now resolved.

What is the incentive to Ameresco and to the Town (respectively) for the tranche that the Town is hoping to enter?

When entering the Power Purchasing Agreement, the Town of Westwood and Westwood Schools benefit from a discounted rate for renewable electricity that is offered by Ameresco. They do not

directly benefit from SMART Program incentives that decline via a defined schedule (also known as the tranche and block schedule) because SMART Program payments are not made to the Town of Westwood or Westwood Schools.

Nonetheless, the discounted rate for renewable electricity that is charged in the Power Purchasing Agreement is calibrated to indirectly split the financial benefits of the project between Ameresco and the Westwood Schools. Ameresco is responsible for the construction and 20-year maintenance costs of the solar arrays and the power purchasing rate that is paid by Westwood is impacted by Ameresco's borrowing costs, labor and material costs in the construction industry, and the tax benefits that accrue to Ameresco due to the depreciation schedule on the project. In addition, the greater the SMART Program incentives to Ameresco, the lower the electric rate that Ameresco can reasonably charge Westwood while continuing to cover their costs and generating a requisite rate of return.

The HS solar canopies are currently in Eversource SMART incentive block 6 and this drives the base incentive. There are multiple tranches which add additional incentives and the HS solar canopies are in tranche 1 for the canopy project and tranche 3 of public entity projects. The sooner the Power Purchasing Agreement is executed, the more likely we are able to complete construction on time and lock in these incentives, because the incentives decline as other communities claim the earlier tranches and blocks.

What is the incentive to Ameresco and to the Town (respectively) for the tranche *after* the current tranche and what is the difference in savings between the two tranches?

The total incentive from the SMART Program declines by approximately 1 cents per kWh as each incentive block declines or about 1.5-2 cents per year based on recent SMART Program applications. It is not possible to predict how long the current tranche or block will remain open, because it is dependent on how many other communities claim the incentives. However, as a means of estimating the impact of waiting, we have increased the power purchasing rate by 1 cent per kWh in the financial model for the HS solar canopies in order to estimate how Ameresco and Westwood would recalibrate the financial benefits of the project due to a declining SMART Program incentive. A 1 cent per kWh increase in the power purchasing cost for the HS solar canopy would mean a loss of nearly \$100K in discounted cash flows over 20 years. Another cost of waiting is the rising cost of construction and the rising cost of borrowing for Ameresco. If the Phase 2 solar project is delayed, the financial benefit to both Ameresco and Westwood could decline as a result of these factors.

When does the Town need to sign the PPA to make the current tranche, and the latest date for the next tranche?

The entry into tranche and block is determined by the date when a Statement of Qualifications (SOQ) is submitted to the Eversource SMART Program. A Statement of Qualifications (SOQ) was submitted in July 2020 for the Senior Center Council on Aging (COA) canopy and a Statement of Qualifications (SOQ) was submitted in May 2022 for Westwood HS solar canopies.

There is no penalty for the SMART incentive application withdrawal, but it starts an 18-24 month clock for the project to get online. At this time, it is already becoming impossible for Ameresco to guarantee a Summer 2023 construction timeline. Due to anticipated delays in steel and material

delivery, Ameresco is checking with the SMART program administrators to confirm they will provide extensions that would allow construction of the HS solar canopies in Summer 2024 and permit the project to remain eligible for its current block and tranche.

Two potential timelines are presented later in this document, in a preliminary project schedule.

What is the latest date for the Town of Westwood to sign the PPA in order for construction to commence and conclude in the summer 2023?

Please refer to the preliminary project schedule, below. Solar canopy construction at schools is typically scheduled for major construction activity to take place during the summer to avoid disruption of the parking lot during the school year. The solar canopy construction at Westwood HS would depend on the Interconnection Service Agreement, all permitting requirements, steel and canopy materials lead times, and other milestones summarized in the project schedule for Westwood HS.

In what ways does the Inflation Reduction Act impact this project or provide alternatives to this project?

The recently passed Inflation Reduction Act provides municipalities like Westwood with incentives to participate in Direct Pay options. If it exercised such an option, Westwood could partner with Ameresco to provide engineering, procurement, construction, and maintenance services while the Town directly financed and owned the system. This would allow the Town of Westwood and Westwood Schools to more directly and comprehensively capture the incentive payments and savings from the renewable energy generation.

If it exercised a Direct Pay option under the Inflation Reduction Act, Westwood would be responsible for the initial capital outlay for construction, would not benefit from the accelerated depreciation schedule, and would assume other costs such as insurance. Exercising this option would require time and analysis and may push the construction and operation of the solar arrays into Summer 2025 or Summer 2026.

POWER PURCHASING AGREEMENT (PPA)

How does the PPA work? It appears Ameresco will build the project and install the panels at Ameresco's sole cost and will then receive the RECs from the energy consumption. Is that correct?

As part of the program today, Eversource claims the renewable energy credits (RECs) in exchange for funding the SMART Program and no REC's go directly to Ameresco. Ameresco receives a SMART incentive payment directly from the State of Massachusetts.

Ameresco's required rate of return for moving forward with this Power Purchasing Agreement is based on three defined revenue streams:

 SMART program incentive payment, which is based on the SMART Value of Energy workbook published by the SMART program. This workbook determines the SMART incentive payment as a function of the incentive block and tranche.

- Ameresco retains a stream of cash flows through the sale of electricity from the solar panels to Westwood, through the power purchasing rate that is established in the agreement.
- Ameresco benefits from tax credits, which they claim against capital costs from prior years.
 This also effectively generates a cash flow stream. The Town of Westwood cannot benefit from the tax credits directly, which is one reason that this is a proposed partnership rather than an independently constructed array.

Ameresco finances the construction of all of its solar arrays, and interest rates impact the rate of return on their projects. Other factors include the accelerated depreciation and maintenance and insurance costs.

What are the terms of the PPA?

Length of Term?

20 years

Is there a buy-out option? If so, when?

There is a termination payment which is the equivalent of a buyout option and would be defined in Exhibit E of the Power Purchasing Agreement. Westwood is eligible to terminate anytime from Year 6 to Year 20 of the Project. Ameresco typically does not offer any sooner termination than Year 6 because they would be penalized by the IRS for clawback on the Investment Tax Credit. The depreciated cost of the arrays depends on the year that the buyout option is exercised, and the Westwood Schools can evaluate whether the value of the power generation justifies this investment and whether there are financing options available that make this the right decision.

What termination rights does the Town have (if any)?

The termination payment is defined by the depreciated value of the solar array.

What is the cost to Westwood (if any) of the project?

The Town of Westwood and Westwood Schools incur no capital or operational costs outside of the Power Purchasing Agreement. Permitting fees are on Ameresco.

Are there any important terms in the PPA that are to Westwood's benefit, not previously mentioned?

The general terms and conditions are provided in the power purchasing template provided by Ameresco. They specify that Ameresco will construct, own, operate and maintain the solar photovoltaic canopy facilities on the property. Ameresco will qualify the Facilities for the SMART program, and offer an electric power production guarantee.

The production guarantee specifies that sixty (60) days after each contract year, Ameresco will provide the Town of Westwood with a reconciliation of all production by the facilities in Phase 2. A shortfall payment will be paid to Westwood for failure to meet the guaranteed annual electric

output. The shortfall is based on 80% of the first year predicted design production, minus an industry-standard .5% annual degradation in the electric output that is due to panel decay.

What if 500,000 kWh are produced in the first year, rather than the guaranteed 808,200 kWh for the HS solar canopies?

If the solar array generates 500,000 kWh and the power purchasing rate is 11.3 cents at the time, Westwood would pay Ameresco 11.3 cents x 500,000 kWh to meet the terms of the Power Purchasing Agreement. If this generation is determined to fall below 80% of the first year predicted design production, Ameresco issues a shortfall payment or credit to Westwood. If the current market rate for electric supply and distribution is 15.0 cents, Ameresco would pay Westwood for its lost cash flow savings of 3.7 cents per kWh on 146,560 kWh. This is paid at the end of a calendar year and based on the following calculation:

- 808,200 kWh * 80% percent production = 646,560 kWh production guarantee
- 646,560 kWh guaranteed 500,000 kWh generated = 146,560 kWh shortfall
- 15.0 cents 11.3 cents = 3.7 cents savings per kWh per power purchasing rate
- 146,560 kWh * 1.3 cents = \$5,422 shortfall payment

What approvals are needed to execute the PPA?

The Town Administrator needs to sign with authorization from the Select Board. If the project involves the Westwood Schools, the Westwood School Committee needs to vote to indicate its support prior to the Select Board meeting vote.

What approvals are needed <u>after</u> the execution of the PPA?

Approvals are needed from the Town of Westwood Planning Board, Engineering Department, and Building Inspector. Solar canopy water management options such as gaskets, gutters and downspouts may require stormwater permits.

CONSTRUCTION

What is the process from the Power Purchasing Agreement execution through installation and implementation?

The dates below pertain to the HS solar canopy, which is the anchor project. Other projects in Phase 2 will have to follow a similar construction schedule.

#	Milestone	Description	Realistic	Best Case	
			Date	Scenario Date	

1	Selection / Award	Notice of Award from Town of Westwood was executed by the town and AMRC; established relationship to develop the solar PV systems	5/10/2016	5/10/2016
2	SOQ	Preliminary SOQ submitted by AMRC, fee paid by AMRC, SMART incentive block reserved	5/26/2022	5/26/2022
3	Interconnection Application, 30% Design	IA to be submitted by AMRC, including 30% Design, PE Stamped SLD, fee paid by AMRC, etc.	9/15/2022	9/15/2022
4	Power Purchase Agreement	The PPA to be executed by AMRC and Town of Westwood	11/30/2022	11/15/2022
5	ISA, 60% Design and All Permitting	Interconnection Service Agreement to be executed by Eversource and AMRC; including interconnection upgrades and system modifications required by Eversource	3/31/2023	12/31/2022
6	90%/100% Design	90%/100% Design, following ISA with Eversource; Issue for Construction	4/14/2023	1/31/2022
7	Procurement	Solar panels, inverters, AC panel, canopy materials, disconnects, etc. Major equipment lead times including steel canopy 6 months.	8/19/2023	2/15/2022
8	Mechanical Completion	Construction substantially complete; major construction activity in school parking lot during summer vacation	7/15/2024	8/30/2023
9	Commercial Operation Date	Eversource inspection is complete; solar PV system begins producing power on COD.	8/31/2024	10/1/2023

Interconnection and final completion are subject to work performed by Eversource. We consider these dates reasonable assumptions as to when Eversource will complete its interconnection work. Delivery

schedules of long-lead equipment are subject to supply chain constraints. If construction is delayed and cannot start in time for it to be completed by the end of the Summer 2023, then construction will commence Summer 2024.

How long will construction take?

An aggressive schedule could have the HS solar canopy constructed in 6 weeks. In anticipation of stopping and starting construction for summer activities, we expect to be completed in about 10 weeks, right before school begins.

Will any portions of the parking lot be unavailable during construction? If so, is there a construction phasing plan? How long will the parking lots be unavailable?

Yes, for safety purposes, sections of the parking lot will be unavailable during construction as Ameresco is constructing the concrete and steel posts as well as hosting the panels into the air. If necessary, it's possible that construction can be phased for just one row of parking spaces to be unavailable at a time. Typically a row of parking spaces will be unavailable for ~2 weeks at a time.

Who will perform the construction?

Ameresco is also responsible for all costs and labor to permit, interconnect, engineer, procure, and construct the solar projects. They will be hiring an electrical subcontractor and vendors as necessary to complete the construction. All permitting and interconnection approvals will be completed prior to construction commencement. Once the system is operational, Ameresco will guarantee performance of the solar system throughout the 20-year project life.

Who, on the town side, will oversee/manage the construction?

Town Inspectors.

GENERAL ISSUES

Who will be liable for damage to any portion of the canopies (post, roof, solar panels themselves)? Is the perpetrator of the damage (i.e. WHS baseball team) relevant for purposes of determining liability?

Ameresco is responsible for all maintenance to the solar system. If the Westwood baseball team were to damage a solar panel, Ameresco would replace the panel.

Who will be responsible for the ongoing maintenance and repair of the canopies (post, roof, solar panels themselves)?

Ameresco is responsible for ongoing maintenance of and repair of the canopies.

Who will be responsible for clearing snow/ice from the tops of the canopies?

We do not need to clear snow. The steel is designed to withstand maximum snowfall.

Will the canopies contain snow guards to prevent large chunks of snow/ice from sliding off onto pedestrians below?

The "Y-shaped" design helps direct any snow and ice away from vehicles and pedestrians. The canopy has been designed with stormwater and snow melt management features to prevent icing in the parking spaces. Current road and parking lot treatments must continue to be used as well.

Once the project is complete, how many parking spaces will we lose permanently as a result of the canopies?

Zero parking spaces will be lost. Every 3-4 parking spaces, there is a 36" diameter concrete column at the base of the post (as can be seen in the renderings). The concrete column will be designed to intersect at the parking lines to minimize the encroachment into the parking space. Typically, the most encroachment will be 18" into a single parking space, usually it is less than 18". Final design and location of the concrete columns will be presented to Town of Westwood representatives before construction begins.

Have there been any discussions with other stakeholders about the impact of the solar canopies?

Conversations have been held with all stakeholders and their needs taken into account to the degree feasible in the revised project design. The Town Energy Manager has spoken with High School staff and Facilities staff in the Westwood Schools. They have been reassured by the preservation of parking spaces, reduced plowing needs, and weather protection for vehicles due to the water management system. The Town Energy Manager has consulted the Recreation Department regarding activities that occur on the Westwood HS grounds and parking lots, and inquired specifically about Westwood Day and Recreation Summer Programs. He has also consulted with the organizers of the All Night Graduation Party.

FAQS FOR GENERAL AUDIENCE

TABLE OF CONTENTS

Why should we add solar canopies in the school parking lots?

How much will this cost?

Will it increase taxes?

Will it take away from other school and community needs?

Will this project affect the school budget?

Will excess power be credited back to the school?

Who is responsible for maintenance and costs?

What safety and security measures will be included?

How will the structure be protected from accidents or people driving into them?

Will the solar canopy affect parking?

What is the implementation timeline?

The implementation process for solar canopies in school parking lots (including permitting, contracts, etc.) takes up to two years.

When will construction happen and how long will it take?

How tall are the canopy structures?

How will snow, ice and plowing be handled?

What fire safety procedures exist?

Should the panels catch fire, Fire Department will follow its procedures to extinguish the fire, which includes isolating the burning panels, using salvage covers to minimize the spread, and using the dry chemical truck and its agent to extinguish the fire.

Will infrastructure changes be required?

What is the lifespan of the panels being used?

Why should we add solar canopies in the school parking lots?

- 1. Solar array installations align with the Town's broader energy strategy and goals.
- There is a statewide utility incentive called the SMART Program. Under the program, public
 entities and parking canopy projects qualify for additional funding; therefore, the school can
 maximize incentive rate and capture the highest savings. Parking canopy structures have a
 higher incentive in the SMART Program than rooftop panels.
- 3. The SMART Program is a declining block program meaning it is "first come, first serve." Currently there is available capacity, but if we wait we may lose the opportunity.
- 4. School buildings are some of the highest energy consumers of all town-owned buildings due to their size and function. Therefore, adding renewable energy to these buildings will make a substantial impact in terms of greenhouse gas reduction and cost savings.
- 5. Educational opportunities aligned with STEM curriculum and more.

How much will this cost?

The town would enter into a Power Purchase Agreement (PPA) with the installer. PPAs are the most common type of agreement for public entities because the municipality <u>does not</u> need to make the capital investment, and there is no requirement for municipal financing. The installer pays for 100% of the engineering, procurement, construction and ongoing maintenance. In turn, the municipality purchases the power generated by the arrays at the PPA price and thereby saves money on electricity.

Will it increase taxes?

No. There should be no increase to taxes as a result of this project. In fact, one benefit of the project is a reduced price for electricity that will not necessarily lower tax rates, but should keep them from rising due to rising electric costs.

Will it take away from school and community needs?

No. This project, and private funding for this project, is separate from any school or community programs. Stakeholders who use school grounds have been consulted about any impacts, and these concerns have been addressed whenever possible. There will also be no impact on residential electric bills.

Will this project affect the school budget?

Yes! There are no costs to the school for installation, maintenance, and servicing of the units. Through the project agreement, the schools will save money on electricity because the project hedges against electric utility rate escalations over 20 years. The savings will mean that the schools do not have to take cuts in programming in order to pay rising electric rates.

Will excess power be credited back to the schools?

Yes. We don't anticipate excess power generation, but in theory the system will be a behind-the-meter system meaning that the panels will produce energy to be consumed by the building first and then excess power is exported to the grid.

Who is responsible for maintenance and costs?

Power Purchase agreements (PPA) include all maintenance, inverter replacements and associated costs of the solar canopy and components. The installer would cover any damage through their insurance.

What safety and security measures will be included?

As a part of the design, we would include LED lighting under the canopies. The PPA includes insurance for the project. Furthermore, the panels and inverter are typically mounted high on the steel columns which helps prevent damage.

How will the structure be protected from accidents or people driving into it?

The solar canopy structure is made of steel. In addition, the standard design uses a 36" diameter concrete foundation. Should a driver bump into the concrete foundation, they would damage their vehicle before damaging the structure.

Will it affect parking?

By locating the foundation at the center of the parking lines, the most infringement on a parking space is 18". No parking spaces will be lost.

What is the implementation timeline?

The implementation process for solar canopies in school parking lots (including permitting, contracts, etc.) takes up to two years.

When will construction happen and how long will it take?

The goal is for the bulk of the construction to occur during the summer months to minimize interference with normal school day activities. The installer will work with the school and town to minimize interference with day-to-day activities to the maximum extent practicable.

How tall are solar canopy structures?

The standard design is 13+ft tall, which accommodates most heavy equipment vehicles. The installer will work with the town on final designs so that school buses, snowplows, fire trucks, and other vehicles have unrestricted access through the parking lot.

How will snow, ice, and plowing be handled?

Less plowing is needed since the snow lands on the panels. The "Y-shaped" design helps direct any snow and ice away from vehicles and pedestrians. The canopy can be designed with stormwater and snow melt management features to prevent icing in the parking spaces. Current road and parking lot treatments will continue to be used as well.

What fire safety protection measures exist?

It is extremely unusual to encounter a fire on these kinds of solar canopies. Should the panels catch fire, the Fire Department will follow its procedures to extinguish the fire, which includes isolating the burning panels, using salvage covers to minimize the spread, and using the dry chemical truck and its agent to extinguish the fire.

Will infrastructure changes be required?

Some infrastructure changes may be required. The specifics such as lighting, drainage, electrical, replanting trees, etc. will be addressed during the planning, design and permitting phase of the project.

What is the lifespan of the panels being used?

Solar panels typically last for 25+ years, but they start to lose their efficiency over time. Newer installations allow the owner to swap out deteriorating panels for new panels, while retaining the infrastructure and framing. Power Purchase Agreement terms are typically 20 years, and the Town would

also have the option to purchase the panels at a discount after 20 years. Solar panels are recyclable and additional information is available on the U.S. Environmental Protection Agency website https://www.epa.gov/hw/solar-panel-recycling.

























SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT ("Agreement") is made and entered into as of this ___ day of ___ (the "Effective Date") by and between the City/Town of Westwood, Massachusetts, with an address of 580 High Street, Westwood, MA, a municipal corporation of the Commonwealth of Massachusetts ("Buyer") and Westwood Schools Solar 2 LLC, a Delaware limited liability company with an address of 111 Speen Street, Suite 410, Framingham, MA 01701 ("Developer"). Buyer and Developer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Developer proposes to construct, own, operate and maintain multiple solar photovoltaic generation facilities (individually, a "Facility" and collectively, the "Facilities") with an aggregate generating capacity of up to approximately []kW DC (the "*Project*") on the property or properties described in <u>Exhibit A</u> hereto (each, a "*Property*" and together, the "*Properties*);

WHEREAS, Developer intends to qualify the Facilities under the SMART Program (defined below) as either Alternative On-Bill Credit Generation Units (as defined in 225 CMR §20.02), Net Metered Generation Units (as defined in 225 CMR §20.02) or Behind-the-meter Solar Tariff Generation Units (as defined in 225 CMR §20.02), each as noted on Exhibit B hereto, to provide Buyer with Alternative On-Bill Credits (defined below) or Net Metering Credits (defined below) available from the LDC pursuant to the SMART Program, and to retain for its own account all other incentives available under the SMART Program; and

WHEREAS, WHEREAS, Developer desires to deliver to Buyer, all of the electricity generated by the Facilities during the Term, and Buyer desires to pay for all of such electricity and receive the right to allocate all of the Alternative On-Bill Credits/Net Metering Credits (as applicable) generated by all of the Facilities for use in offsetting the electric utility bills associated with other Buyer utility accounts in accordance with the terms of this Agreement;

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

Section 1. DEFINED TERMS; RULES OF INTERPRETATION

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

- "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.
- "Agreement" means this Power Purchase Agreement, including all Exhibits and attachments hereto.
- "Alternative On-Bill Credits" or "AOBC" has the meaning set forth in the SMART Program Regulations.
- "Annual Facilities Degradation Factor" means the factor expressed in percent by which the Guaranteed Annual Electric Output of the Facilities shall decrease each Contract Year as set forth in Exhibit C.
- "Applicable Legal Requirements" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to the Facility, or any part thereof or to any condition or use thereof, or a Party's rights and obligations hereunder and all leases, permits and other governmental consents which are or may be required for the use and occupancy of the Properties and for the design, installation, operation, maintenance and removal of the Facilities.
- "Bankrupt" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- "BTM Facility" means a "Behind-the-Meter Solar Tariff Generation Unit" as defined in the SMART Program Regulations.
- "Billing Cycle" means the monthly billing cycle established by the Local Electric Utility as applicable to a specific electric service account and meter.

- "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.
- "Claiming Party" has the meaning set forth in Section 8.
- "Commercial Operation" means with respect to a Facility, that the Facility is capable of producing Electricity, is ready for regular, daily operation, has approval to interconnect to the LDC system, and has all relevant governmental approvals.
- "Commercial Operation Date" means the first day on which the first Facility to achieve Commercial Operation, as defined herein, is ready for Commercial Operation, as certified in writing by Developer to Buyer in a notice of Commercial Operation.
- "Contract Year" means a 365-day period commencing on the Commercial Operation Date, and each subsequent 365-day period thereafter.
- "Costs" means (i) all reasonable attorney's fees and expenses incurred by the relevant Party in connection with the termination of this Agreement, and (ii) all reasonable costs and expenses incurred by the relevant Party in removal of the Facilities and (iii) breakage fees related to Developer's financing or early termination of purchase and sale contracts for Environmental Attributes; provided that the relevant Party uses commercially reasonable efforts to mitigate such Costs.
- "Decommissioning Assurance" means financial security in the form of an escrow account, bond or other form of security reasonably acceptable to Buyer to be established as provided in Section 4(h)(1) of this Agreement and to be in the cumulative amount of \$. ____
- "Delivery Point" means, (a) with respect to a BTM Facility, the point at which such BTM Facility interconnects to the Buyer's intertie with the LDC on the Buyer's side of the LDC Metering Device, or (b) with respect to a FTM Facility, the point at which such FTM Facility interconnects to the LDC Facilities..
- "Developer Metering Device" means with respect to the Facilities, the revenue quality meter(s) installed by Developer and used for the registration, recording, and transmission of information regarding the amount of Electricity generated by a Facility.
- "Developer Termination Payment" means the payment made by the Developer to the Buyer in accordance with Section 9 and shown on Exhibit F.
 - "Early Termination Date" shall have the meaning ascribed to it in Section 9.
 - "Effective Date" is the date first set forth in the introductory paragraph of this Agreement.
- "*Electricity*" means the electricity generated by the Facilities and delivered to the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Developer Metering Device. The electricity

delivered to the Delivery Point shall be deemed to be equal to the electric energy measured at the Developer Metering Device; actual energy losses between the Developer Metering Device and the Delivery Point shall not reduce the measurement of Electricity.

"*Electricity Price*" shall mean the price per kWh of Electricity delivered to the Delivery Point, as set forth in Exhibit C attached hereto.

"Environmental Attributes" means the characteristics of electric power generation by the Facilities that have intrinsic value separate and apart from the energy and arising from the perceived environmental benefit of the Facilities or the energy produced by the Facilities including but not limited to all environmental attributes or renewable energy credits, including carbon trading credits, or certificates, emissions reduction credits, emissions allowances, green tags and tradable renewable credits, environmental and other attributes that differentiate the Facilities or energy produced by the Facilities from energy generated by fossil fuel based generation units, fuels or resources, characteristics of the Facilities that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or mercury, or other base or chemical, soot particulate matter or other substances attributable to the Facilities or the compliance of the Facilities or energy with the law, rules and standards of the United Nations Framework convention on Climate Changes or the Kyoto Protocol or the UNFCCC or crediting "early action" with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator of any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights. Environmental Attributes does not include Environmental Incentives, Alternative On-Bill Credits or Net Metering Credits..

"Environmental Incentives" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) tax credits, incentives or depreciation allowances established under any federal or state law, (iii) fuel-related subsidies or "tipping fees" that may be paid to accept certain fuels, and (iv) other financial incentives in the form of credits, tax write-offs, reductions or allowances under Applicable Legal Requirements attributable to the Facilities or Electricity, and all Reporting Rights with respect to such incentives. Environmental Incentives do not include Alternative On-Bill Creditsor Net Metering Credits.

"Events of Default" has the meaning set forth in Section 9.

"Facility" or "Facilities" have the meanings set forth in the recitals. For avoidance of doubt, except as otherwise expressly provided herein, the term "Facility" as used in this Agreement shall correspond with the term "Solar Tariff Generation Unit" as used in the SMART Program Regulations.

"Facility Assets" means each and all of the assets of which a Facility is comprised, including solar energy panels, mounting systems, tracking devices, inverters, integrators and other related equipment and components installed on the Properties, electric lines and conduits required to connect such equipment to the Delivery Point and the LDC Facilities, protective and associated equipment, improvements, Metering Devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the Facilities.

"Facilities Loss" means loss, damage or destruction of a Facility, or Facility Assets that prevents or limits the Facility from operating in whole or in part, resulting from or arising out of casualty, condemnation or Force Majeure. Loss, damage or destruction of a building or other structure in which or upon which a Facility is installed, which prevents or materially impairs Developer's access to and/or use of such Facility for the uses intended hereunder, shall be deemed a Facilities Loss for the purposes of this Agreement.

"Fair Market Value" means the price that would be established in an arm's-length transaction between an informed and willing buyer and an informed and willing seller, neither being under any compulsion to buy or sell, as determined by an Independent Appraiser.

"Force Majeure" means any event or circumstance having an adverse effect upon a Party's ability to perform pursuant to this Agreement if such event or circumstance is beyond the Party's reasonable control and is not the result of willful or negligent act or omission of the Party relying thereon as justification for not performing any obligation or complying with any obligation required of such Party under this Agreement. "Force Majeure" events or circumstances may include but are not restricted to events of the following kinds: an act of God, an act of war, insurrection, riot or civil disturbance, fire, explosion, flood, epidemics, unusually severe and extraordinary weather conditions, acts of government or regulatory authorities (so long as the affected Party has not applied for or assisted or caused such act by a governmental authority and not including acts of government or regulatory authorities in response to a violation of Applicable Legal Requirements by the Party claiming the Force Majeure Event), and strikes or lockouts which materially affect, impact or impede obligations under this Agreement. Force Majeure will not be based on (i) Buyer's inability to economically use Electricity purchased hereunder, or (ii) Developer's ability to sell Electricity at a price greater than the Electricity Price under this Agreement.

"FTM Facility" means an "Alternative On-bill Credit Generation Unit" or a "Net Metered Generation Unit" as defined in the SMART Program Regulations.

"Governmental Authority" means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to Buyer), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Electricity or this Agreement.

"Guaranteed Annual Electric Output" means the amount of electricity that is guaranteed by the Developer to be generated by the Facilities in a Contract Year, as set forth in Exhibit C.

- "Hazardous Substances" means those substances defined, classified, or otherwise denominated as a "hazardous substance", "toxic substance", "hazardous material", "hazardous waste", "hazardous pollutant", "toxic pollutant" or oil in the Applicable Legal Requirements or in any regulations promulgated pursuant to the Applicable Legal Requirements.
- "Independent Appraiser" means an individual qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facilities. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three (3) years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Developer, any Affiliate of Developer, or Buyer.
- "Interest Rate" means a fluctuating interest rate per annum equal to the sum of the lesser of (i) the Prime Rate as stated in the "Bonds, Rates & Yields" section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, or (ii) ten percent (10%). In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Buyer and reasonably acceptable to Developer. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred and sixty-five (365) days and the actual number of days for which such interest is due.
- "LDC" means the local electric distribution company that provides electric distribution service to the Buyer, as set forth in Exhibit C.
- "LDC Retail Rate" means the rate (expressed on a \$/kWh basis) charged by the LDC (excluding any LDC charges that are not strictly based on electricity usage or kWh unit rate) in any Contract Year for Electricity that is delivered to Buyer, and shall include, without limitation, all electric commodity charges, transmission, distribution or other delivery charges, ancillary service charges, transition, renewable energy, efficiency, or competitive service charges, taxes, and other fees and charges in place.
 - "LDC Facilities" means the electric distribution system operated and maintained by the LDC.
- "LDC Metering Device" means one or more meters furnished and installed by the LDC for the purpose of measuring the Electricity delivered to the LDC.
- "*License*" means the license for the use of the Properties granted by Buyer to Developer, as further described in Section 4(b).
- "Licensed Area" means the area on the Properties in which Buyer grants Developer a license to install and operate the Facilities.
- "Liens" mean any mortgage, pledge, lien, charge, encumbrance, easement, lease, exercise of rights, security interest, and claims.
 - "Net Metering" shall have the meaning set forth in the Net Metering Rules.

- "Net Metering Credit" shall mean the applicable monetary value of an excess kilowatt-hour of electricity, determined in accordance with the Net Metering Rules.
- "Net Metering Facility" and "Net Metering Facility of a Municipality or other Governmental Entity" shall have the meanings set forth in the Net Metering Rules.
- "Net Metering Rules" means collectively, M.G.L. c.164, section 138-140 and 220 CMR 18.00 et seq., orders issued by the Massachusetts DPU relating to Net Metering, and the associated net metering tariff of the LDC, as same may be amended.
- "*Person*" means an individual, general or limited partnership, corporation, Municipal Corporation, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority, limited liability Company, or any other entity of whatever nature.
 - "PILOT Agreement" shall have the meaning set forth in Section 5(e).
- "Production Shortfall" means the amount, expressed in kWh, by which the actual amount of Electricity generated by the Facilities in any Contract Year is less that the Guaranteed Annual Electric Output for the same Contract Year.
 - "Properties" has the meaning set forth in Exhibit A.
- "Public Cap Allocation" means an assurance that a Host Customer will receive Net Metering Services (as defined in the Net Metering Rules) within the Public Cap (as defined in the Net Metering Rules) upon the Host Customer's receipt of notice of authorization to interconnect from the LDC.
 - "Purchase Option" shall have the meaning ascribed to it in Section 13 of this Agreement.
 - "Purchase Price" shall have the meaning ascribed to it in Section 13 of this Agreement.
- "Reporting Rights" means the right of Developer to report to any federal, state or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, to the extent that such Acts provide such rights, or under any present or future domestic, international or foreign emissions trading program, that Developer owns the Environmental Attributes and the Environmental Incentives associated with energy produced by the Facilities.
 - "Schedule Z" shall have the meaning set forth in Section 4(m).
 - "Shortfall Payment" shall have the meaning set forth in Section 5(f).
 - "SMART Program" has the meaning set forth in the SMART Program Regulations.
 - "SMART Program Regulations" means 225 CMR 20.00, et. seq., as amended from time to time.
- "SMART Tariff" means the tariff to implement the incentive program contemplated under the SMART Program to be filed by the LDC, which is approved by DPU and as from time to time amended.

- "Specified Rate" shall mean the specified cost of electric energy for calculating the Shortfall Payment and such cost is set forth in Exhibit C attached hereto.
- "Target Buyer Accounts" means electric service accounts of Buyer with the LDC as designated from time to time to which Buyer's Allocation Percentage(s) generated by the Facilities shall be allocated.
 - "Term" shall have the meaning set forth in Section 3 herein.
- "Termination Date" means the earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Agreement as the result of an Event of Default, and (iii) the date of termination pursuant to Section VIII herein.
- "*Termination Payment*" means an amount payable by Buyer to Developer in the event of termination of this Agreement as a result of an Event of Default by Buyer, as set forth in Exhibit E attached hereto.

Section 2 FACILITIES DESCRIPTION

- (a) This Agreement provides the terms and conditions, upon which the Developer may, subject to satisfaction or waiver of the conditions precedent below, construct and install the Facilities. A preliminary description of the Facilities is set forth in Exhibit B hereto. Prior to the commencement of construction, Developer shall coordinate with and receive input from Buyer's designated technical staff and consultants and submit the final Facility design drawings, construction schedule and a plan showing the location of the construction staging areas (the "*Plans*") for approval by Buyer, such approval not to be unreasonably withheld, conditioned or delayed. Buyer shall have ten (10) days to approve or object to the Plans. If Buyer objects to the Plans, Buyer shall send written notice with a description of its objection. Buyer and Developer shall attempt to address Buyer's objections and Developer shall repeat the procedure above to obtain Buyer's approval. If Buyer does not object to the Plans within such 10-day period, Developer's Plans shall be deemed approved.
- (b) The rights and obligations of the Parties with respect to a Facility on a particular Property are separate and independent from the rights and obligations of the Parties with respect to each other Facility. In furtherance of the foregoing, the Parties acknowledge and agree that, among other things, for purposes of Section 9 (Events of Default) of this Agreement, the Parties shall have the right to terminate this Agreement and to exercise remedies for default as provided in Section 9 only as to the applicable Facility and the calculations pursuant to the Termination Payment will be made as to the applicable Facility.

Section 3 TERM

(a) <u>Term</u>. The term of this Agreement (the "*Term*") shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date, or such earlier date provided herein.

- (b) Without constituting a default under this PPA, and without liability of either Party to the other Party (except for amounts then due under this PPA), Developer shall have the right, but not the obligation, to terminate this Agreement prior to expiration of the Term upon the occurrence of an unstayed order of a court or administrative agency having the effect of subjecting the sales of Electricity to federal or state regulation of prices and/or services.
- (c) <u>Conditions Precedent</u>. The obligation of Developer to commence construction of each Facility hereunder (and with respect to subparagraph (c) (xii) below, the obligation of Developer to commence selling Electricity hereunder) is subject to the fulfillment of each of the following conditions precedent or waiver by Developer with respect to each Facility: though such waiver will not affect any right of Buyer to terminate this Agreement under Section 8 (Force Majeure):

(i

- (ii) Developer shall have obtained all permits, licenses and other approvals required by Applicable Legal Requirements and from the LDC and owner of the Properties for construction, installation and operation of the Facilities;
- (iii) For roof mounted systems, Developer shall have determined that the roofs of the buildings at the Properties have sufficient load-bearing capacity to support the Facilities and and all related foot traffic and construction activities and/or the infrastructure of the buildings at the Properties can support the Facilities.
- (iv) Developer shall have determined that no upgrades are required to Buyer's existing electrical infrastructure, structural infrastructure or roofs, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any required upgrades;
- to the LDC shall not have required material changes in plans and/or specifications to the Facilities or the interconnection of Buyer's facilities which requires additional costs or fees for interconnection application costs, utility upgrade costs and utility impact study costs in excess of \$[____] (said amount being the amount Developer reasonably anticipates as the cost of interconnection and upgrades, if any, as of the Effective Date); provided that Developer's right of termination hereunder may be exercised only if (1) Developer requests a reasonable adjustment to the Electricity Price for such interconnection costs and Buyer, in its sole discretion, does not agree within a reasonable time thereafter (not to exceed 30 days) such agreement to be evidenced by an amendment to this Agreement executed by the Parties; OR (2) Developer requests Buyer pay any such interconnection and utility costs over \$[___] directly to the LDC (or as otherwise agreed) and Buyer does not agree to make such payment within a reasonable time thereafter (not to exceed 30 days);
- (vi) Buyer shall have entered into all contracts and delivered all other documents required by the LDC in connection with this Agreement and the transactions contemplated hereby (the "Utility Documents") to the reasonable satisfaction of Developer, or the LDC shall have waived the requirements for such Utility Documents;
- (vii) Without limiting the foregoing condition, Buyer shall have delivered a copy of the executed Schedule Z and Customer Interconnection Acknowledgement Agreement and all required allocation information for the SMART Program as requested by Developer;

- (viii) Developer shall have entered into all contracts for procurement, construction, installation and operation of the Facilities;
- (ix) Developer shall have satisfied itself that the Facilities, if constructed, would not be in violation of zoning or land use laws applicable to the Properties, it being acknowledged by Buyer that Developer is under no obligation to apply for or obtain zoning relief;
- (x) As applicable, Buyer shall have applied for and received a Public Cap Allocation; Developer shall assist Buyer in applying for the Public Cap Allocation and shall pay all reservation fees to apply and maintain the Public Cap Allocation;
- (xi) The Facilities shall have qualified under, and Buyer and Developer shall each have taken actions within their respective control to cause the Facilities to qualify under, the SMART Program as Alternative On-Bill Credit Generation Units, Net Metered Generation Units or Behind the Meter Solar Tariff Generation Units, with public entity adder as applicable and in accordance with Exhibit B;
- (xii) For ground-mounted Facilities, Developer has performed a title examination and environmental due diligence of the Properties and is satisfied in its sole discretion with the results of such examination.

Developer shall give Buyer written notice of Developer's intent to terminate this Agreement due to non-fulfillment or failure of any of the foregoing conditions. In the event Developer terminates this Agreement, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof. Developer shall notify Buyer when the conditions are met, and on or before such notice, Developer shall provide Buyer with the construction schedule. Developer may elect to terminate this Agreement with respect to one or some of the Facilities due to non-fulfillment or failure of any of the foregoing conditions, and continue with the other Facilities, in which case Developer upon request by Buyer shall deliver to Buyer releases or other documents releasing all right in Facilities terminated by Developer.

- (d) <u>Conditions Precedent for Buyer's Obligations</u>. Buyer's obligation to purchase Electricity from Seller under the provisions of this Agreement with respect to any Facility is subject to the fulfillment of each of the following conditions precedent or waiver thereof by Buyer with respect to such Facility as of the Commercial Operation Date for such Facility:
 - (i) Developer shall have obtained and maintained in full force and effect all permits and approvals required for the construction and operation of the Facility;
- (ii) As applicable, for the Facilities noted on Exhibit B as net metered, Buyer shall have received a Public Cap Allocation and such Public Cap Allocation shall not have expired; and
- (iii) the Facility shall have been interconnected with the LDC in accordance with the requirements of the interconnection service agreement, the SMART Program, Net Metering Rules (as applicable) and Applicable Legal Requirements.

Buyer shall give Developer thirty (30) days prior written notice of Buyer's intent to terminate this Agreement due to non-fulfillment or failure of any of the foregoing conditions within five (5) days

of receipt of the Notice of Commercial Operation Date from Developer. In the event Buyer terminates this Agreement under this Section 3(d), the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof provided that, at Developer's election, Buyer shall negotiate in good faith with Developer for a lease of the Properties to Developer to permit Developer to sell electricity from the Facilities to the LDC or other persons and with market lease payments to Buyer and such other terms and conditions as the Parties shall mutually agree upon.. Buyer may not exercise any rights under this Section 3(d), if the failure to achieve a condition precedent is due to Buyer's failure to provide access to the Properties or to comply with any other obligation under this Agreement and Buyer may not terminate the Agreement (i) if Buyer is able to meet such condition precedent within thirty (30) days of receipt of Buyer's notice or (ii) following Buyer's writing confirmation of the Commercial Operation Date.

Section 4 FACILITY DEVELOPERSHIP, INSTALLATION, OPERATION, MAINTENANCE, AND REMOVAL

- (a) <u>Construction.</u> Developer will use diligent and commercially reasonable efforts to (i) obtain all permits and financing for the Project, (ii) furnish all design, materials, supplies, tools, equipment, labor, and other services necessary for the installation of the Facilities, and (iii) maintain the Facilities in good condition and repair and in accordance with Applicable Legal Requirements and the terms of this Agreement. Developer shall schedule a kick-off meeting with Buyer to discuss and agree on staging areas for construction, and shall coordinate the construction with Buyer so as to minimize disruption to Buyer's activities. Developer shall perform the construction work at the Properties between the hours of 7:00 AM and 7:00 PM in a manner that minimizes inconvenience and interference with Buyer's use of the Properties to the extent commercially practical. Developer shall coordinate project meetings with a representative of the Buyer to discuss the status and progress of the Project and to address any issues that may arise during construction. Upon completion of the construction of the installation of the Facilities, Developer shall remove all debris, tools, and packaging.
- (b) Title to Facilities. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the Facilities, , permits, approvals, Environmental Attributes, Environmental Incentives, Reporting Rights, and tax benefits associated with the Facilities and the shall be with the Developer. The Parties intend that Developer shall be the legal and beneficial owner of the Facilities, which Facilities will at all times retain the legal status of personal property of Developer as defined under Article 9 of the Uniform Commercial Code. The Facilities will not attach to or be deemed a part of, or a fixture to, the Properties notwithstanding the manner in which the Facilities is or may be affixed to real property of Buyer. If there is any mortgage or fixture filing against the Properties which could reasonably be construed as prospectively attaching to the Facilities as a fixture, Buyer shall provide a disclaimer or release from such lienholder. Buyer shall not directly or indirectly permit, create, incur, assume or suffer to exist any Lien attributable to Buyer on the Facility, and if there shall nonetheless be such a Lien, Buyer hereby agrees that it shall, at its expense, cause the same to be duly discharged and removed within thirty days of notice of such lien. Buyer will not take a position on any tax return or in other filings suggesting that it is anything other than a purchaser of Electricity and associated Alternative On-Bill Credits from the Facilities. Buyer authorizes Developer to file a precautionary UCC financing statement which shall disclaim the fixture status of the Facilities.. The Parties intend this Agreement to be treated as a "service contract" within the meaning of section 7701(e) (3) of the Internal Revenue Code.

(c) <u>Cooperation Regarding Authorizations</u>. Developer will prepare, file and manage applications for all permits, approvals, registrations and other related matters under the SMART Program and with the LDC and any other Governmental Authority and, to the extent necessary, Developer will do so on behalf of Buyer. Buyer agrees to reasonably cooperate with Developer in preparing such applications and securing such permits, approvals and registrations, including without limitation, timely executing and delivering all documentation required from Buyer relating thereto. Where allowed by law and if necessary, and subject to Applicable Legal Requirements, Buyer shall designate Developer as its agent in obtaining all permits, approvals, registrations and additional authorizations required of Buyer in connection with this Agreement and the transactions contemplated hereby.

(d) <u>License; Access; Other Rights</u>.

- (1) Buyer hereby grants to Developer and Developer's employees, contractors, consultants, invitees, designees and Designated Third Parties ("Developer's Designees"), a license ("License") to enter upon the Properties to construct, install, maintain, operate and remove the Facilities, which License shall be irrevocable and rent free during the Term. The area of a Property upon which a Facility will be located (in each case, the "Licensed Area") consists of (i) rooftop space of the building on the Property, (ii) ground space on the Property (as set forth on Exhibit B) and (ii) other space either inside the building or elsewhere on such Property for the installation, operation and maintenance of utility lines, cables, conduits, transformers, wires, meters, monitoring equipment, communication lines and other necessary and convenient equipment and appurtenances ("Cabling Space"). A preliminary depiction of the rooftop space, ground space and the respective Facilities at each of the Properties is shown on Exhibit B hereto. After construction, Developer shall provide updated drawings of the rooftop space, ground space and Facilities at each Property.
- (2) Buyer hereby grants to Developer and Developer's Designees rights of ingress and egress over and across each Property to and from the respective Licensed Areas from all public roads serving the Property.
- (3) Buyer hereby grants to Developer and Developer's Designees the temporary use of additional space at each Property for construction laydown, storage of construction materials, parking of construction crew vehicles and trailers, such area to be agreed upon by the Parties prior to construction.
- (4) Buyer hereby grants to Developer and Developer's Designees the use of Developer's water supply already available at the Properties for purposes of construction, cleaning and maintenance of the Facilities.
- (5) During the Term, Buyer shall not grant any license or other interest in and to the Properties that would interfere with the License granted to Developer or that interferes with other rights granted to Developer under this Agreement. Buyer shall not cause or permit any shading of the Facilities or permit any obstruction or interference with direct sunlight to the Facilities.

- (6) Developer and Developer's Designees shall have access at all reasonable times to the Properties pursuant to the License for the purpose of planning, constructing, operating, inspecting, maintaining, repairing and removing the Facilities, and to any documents, materials and records of Buyer relating to the Properties that Developer reasonably requests in conjunction with these activities.
- (e) <u>Security</u>. Buyer shall at all times comply with all safety and other operating procedures established by Developer, for which notice shall be provided in accordance with Section 20 "Notices", herein, and all Applicable Legal Requirements.
- (f) Operations Manual; Training. On or before the Commercial Operation Date, Developer shall deliver to Buyer an operation, maintenance and parts manual for the Facilities. In addition, Developer will train Buyer's representative(s) on Buyer operations and monitoring (for informational purposes only) and emergency preparedness and response, it being acknowledged by Buyer that Buyer shall not operate the Facilities, except in the case of an emergency where immediate action on the part of the Buyer is reasonably necessary for safety reasons. In the event of an emergency where immediate action on the part of Buyer is reasonably necessary for safety reasons, Buyer may, but is not obligated to, shut down or disconnect the Facilities and provide immediate notice to Developer, but otherwise Buyer shall not be permitted to perform any maintenance or repair on the Facilities. Any lost production resulting from Buyer's emergency shutdown shall not be the subject of a claim for lost revenue unless Buyer does not notify Developer as required in this subsection.
- (g) <u>Notice of Commercial Operation</u>. Subject to the provisions of this Agreement, Developer shall notify Buyer when the Facilities achieve Commercial Operation ("*Notice of Commercial Operation*"), and shall in such notice state the Commercial Operation Date.
- Removal of the Facilities. Except as otherwise provided herein, Developer shall, within one hundred twenty (120) days following the expiration of the Term and at Developer's sole cost and expense, remove the Facilities from the Properties and restore the Properties to their original respective conditions, normal wear and tear excluded. Developer shall provide Decommissioning Assurance in the form and amount, and at the time, and to the extent required by the Buyer or applicable Governmental Authority. The Electricity Price shall reflect an increase, by an adder, for any Decommissioning Assurance required under this Agreement. Buyer acknowledges that the price adder to the Electricity Price shown on Exhibit C to the Agreement assumes that the acceptable Decommissioning Assurance will be a bond for removal of the System and at the bond value as set forth on Exhibit C, namely \$. _____o the extent the Buyer or other applicable Governmental Authority requires a different form of Decommissioning Assurance, then Buyer agrees that the Electricity Price may be subject to increase depending on the cost impact of the Decommissioning Assurance required. Developer shall have the right, in its discretion, to replace such bond with cash held in an escrow account pursuant to a tri-party escrow agreement on terms and conditions reasonably acceptable to the Buyer, including, not limited to, the escrow agent being located in Massachusetts. Not later than sixty (60) days after Developer's removal of the Facilities and restoration of the Properties is completed, Buyer shall release, disclaim or return to the Developer any remaining unexpended portion of the Decommissioning Assurance, including any interest accrued thereon. If Developer fails to remove or commence substantial efforts to remove the Facilities within one hundred and twenty (120) days after

the expiration or earlier termination of this Agreement, for reasons other than Force Majeure, any Buyer delay or any inability to obtain any necessary permits or approvals or access to the Facilities, which shall excuse the Developer only for the duration of any such delay event(s), Buyer shall have the right, at its option, but exercisable only if Buyer has provided at least ten (10) days' prior notice to Developer of such election, to remove the Facilities and restore the Properties as contemplated by Section 4(h) hereof. Buyer shall remove the Facilities to a public warehouse or storage facility within a reasonable distance of the Properties, if Developer has so identified such warehouse or storage facility and has entered into an agreement with said warehouse or storage facility to pay any and all storage costs. If Developer has failed to identify such warehouse or agreed to pay storage costs, the Facilities will be deemed abandoned, and Buyer shall have the right to sell the Facilities and Storage System and retain proceeds from such sale. In addition, Buyer shall be entitled to access the Decommissioning Assurance to cover its reasonable costs in removing the Facilities, restoring the Properties and either transporting the Facilities and to storage or disposing of them, as the case may be. The provisions of this Section survive expiration or termination of this Agreement until the actual removal of the Facilities has been completed hereunder.

- (i) <u>Developer Access.</u> Notwithstanding anything to the contrary in this subsection (i), Developer shall be allowed immediate access to the Properties and the Facilities in connection with any emergency condition then existing with respect to the Facilities that could reasonably be expected to pose an imminent threat to the safety of persons or property.
- (j) <u>Buyer Safety Requirements</u>. Developer shall at all times comply with all applicable safety, security, and other requirements of Buyer for entering upon and working on the Properties, including the requirements attached hereto as Exhibit G.
- (k) <u>CORI</u>. Upon notice to Developer, Buyer may conduct checks of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Facilities Board, and the Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board for any officer or employee of the Developer or of a subcontractor or any person who will work on the Facilities on the Properties. The Buyer may refuse to allow any such person to work on the Properties if the Buyer, in its sole discretion, determines that such person is not suitable for work on the Properties based upon the results of such CORI or SORI. All Developer employees and subcontractor employees who will work on the Properties shall complete forms related to a CORI and SORI and present identification at a location determined by Buyer, which Buyer may rely upon to initiate a CORI and SORI search.
- (l) <u>Educational Program</u>. If requested by Buyer, Developer shall provide Buyer with Developer's standard Massachusetts-based educational program regarding the Facilities and its operation.

(e) SMART Program.

(1) The Parties acknowledge and agree that as between Buyer and Developer, Developer is responsible for timely submitting any and all information and applications and other forms required for the Facilities to be qualified as a "Alternative On-Bill Credit Generation Unit" in the SMART Program, and for obtaining a Statement of Qualification from the Massachusetts Department of Energy Resources to that effect. During the Term of this

Agreement, Developer shall at all times comply with any obligations or requirements that are imposed on or in connection with the Facilities by the SMART Program, including, but not limited to, any obligations or requirements imposed upon an "installer" or "Developer" of the Facilities, and any reporting requirements.

- (2) <u>Customer Interconnection Acknowledgement</u>. In order to fulfill the LDC's requirements for interconnecting to the LDC distribution grid an energy generating facility that is owned by one party but is located behind the LDC utility meter of another party, Developer shall be party to the interconnection service agreement and Buyer agrees, promptly following Developer's request to enter into the LDC's required standard form of customer interconnection agreement (the "Customer Interconnection Acknowledgement Agreement").
- Oeveloper for a portion of the Electricity delivered to the LDC as a means of facilitating the sale of Alternative On-Bill Credits to User. Nevertheless, to the extent that this Agreement is deemed to constitute an agreement for the purchase or sale of Electricity, any Electricity deemed purchased by Buyer from Developer under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the LDC pursuant to the SMART Program), without prior approval of Developer, which approval shall not be unreasonably withheld, and Buyer shall not take any action which would cause Buyer or Developer to become a utility or public service company.
- (n) Hazardous Substances. Developer is not responsible for any Hazardous Substances encountered at the Property or Licensed Area except to the extent introduced by Developer. Developer shall indemnify Buyer for any Losses suffered by Buyer due to a Release of Hazardous Substances by Developer in violation of Applicable Legal Requirements. Upon encountering any Hazardous Substances, Developer will stop work in the affected area and duly notify Buyer and, if required by Applicable Legal Requirements, any Governmental Authority with jurisdiction over the Property or Licensed Area. Developer shall resume work at the affected area(s) of the Property only after a qualified independent expert engaged by Buyer provides written certification that (i) remediation has been accomplished as required by Applicable Legal Requirements and (ii) all necessary approvals have been obtained from all Governmental Authorities having jurisdiction over the Property for Developer to resume construction.
- (o) Bonds. Prior to commencement of construction of the Project, Developer will provide to Buyer copies of any and all payment and performance bonds issued to Developer by Developer's subcontractors with respect to the construction of the Project. Such payment and performance bonds provided by Developer's subcontractors shall be equal to 100% of their respective contract values. Buyer acknowledges that this Agreement itself is not a construction contract and, therefore, Developer is not able to procure its own typical payment and performance bonds for construction of the Project hereunder.

Section 5. PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

(a) <u>Purchase and Sale of Electricity</u>. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Developer shall sell and make available to Buyer,

and Buyer shall purchase and take delivery of at the Delivery Point, all of the Electricity generated by the Facilities. Buyer acknowledges that Electricity produced by the Facilities is intermittent as available energy product and that Buyer is solely responsible for meeting any and all of its energy needs not met from Facilities-generated energy at Buyer's cost and expense.

- (b) <u>Price for Electricity</u>. Notwithstanding any other provision of this Agreement, Buyer shall pay Developer for the Electricity, as metered at the Developer Metering Device, at the applicable Electricity Price.
- Adjustments to Electricity Price. In all cases, any adjustments in the Electricity Price (c) shall be made to the nearest thousandth of a cent. The Electricity Prices set forth on Exhibit C assume that the Facilities are accepted into Block [] and Tranche [] of the SMART Program with energy storage adder. If the Facilities are not accepted into Block [] and Tranche [] of the SMART Program with energy storage adder, then the Electricity Prices set forth on Exhibit C shall be equitably adjusted to restore the economic benefits under this Agreement to Developer as contemplated as of the Effective Date. Promptly upon receipt of acceptance into the SMART Program, Developer shall provide written notice to Buyer confirming the applicable Block and Tranche of the SMART Program for the Project and the adjusted Electricity Prices (the "SMART Notice"). If adjusted Electricity Prices reflects an increase of more than [20]% over the initial Electricity Prices the Buyer shall have the right to terminate this Agreement upon written notice to Developer for a period of ten (10) business days following receipt of SMART Notice by Buyer (the "SMART Notice Period"). If the Buyer has not provided such notice of termination within the SMART Notice Period, Buyer shall be deemed to have waived its right to terminate pursuant to this Section 5(c) and the Electricity Prices shall be as set forth in the SMART Notice. Buyer understands and acknowledges that Developer will not begin procurement of equipment or submit a Notice-to-Proceed to construct the Facilities until the SMART Notice Period has expired or Buyer has affirmatively waived in writing its right of termination under this Section 5(c)
- (d) <u>Title and Risk of Loss of Electricity</u>. Title to and risk of loss of the Electricity will pass from Developer to Buyer at the Delivery Point. Developer warrants that it will deliver the Electricity to Buyer at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

(e) Governmental Charges.

- (i) Developer is responsible for local, state and federal income taxes attributable to Developer for income received under this Agreement.
- (ii) Buyer shall pay directly or reimburse Developer on an after-tax basis for all sales and use taxes that may be imposed by any Governmental Authority on the sale of Electricity to Buyer. Buyer shall provide Developer with its exemption certificate or documentation which may be necessary for Developer to demonstrate to such Governmental Authority that no sales or use taxes should be imposed on Buyer as a municipal corporation.
- (iii) In the event Buyer intends to assess real or personal property taxes against Developer due to such party's ownership of the Facilities or occupancy of the Licensed Area,

the Parties shall enter into a payment in lieu of taxes agreement ("PILOT Agreement") under the authority of and in accordance with General Laws Chapter 59, §38H, as amended, prior to the assessment of any such tax to establish a stable, levelized payment structure regarding payment of such taxes for the Term. If any real or personal property taxes are assessed against Developer due to Developer's ownership or operation of the Facilities or occupancy of the Properties or if payments are required to be made under a PILOT Agreement, in each case in excess of \$5,000 per year, Developer will promptly submit to Buyer a written notice setting forth (A) the manner in which such payments change Developer's costs to provide the Electricity, and (B) Developer's adjustment to the Electricity Price. The Parties explicitly agree that any assessment of real or personal property tax shall be offset with an equivalent increase in the Electricity Price based on the adder set forth in Exhibit C.

(iv) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Electricity hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefore, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

(f) <u>Guaranteed Annual Electric Output.</u>

- (i) Developer guarantees that the Facilities will produce the Guaranteed Annual Electric Output, as adjusted by the Annual Facilities Degradation Factor, under standard insolation conditions at the Properties and measured on an annual basis. On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term, the Guaranteed Annual Electric Output shall be decreased by the Annual Facilities Degradation Factor.
- (ii) Subject to clause (iii) below, in the event that a Production Shortfall exists in any Contract Year, Developer may be required to credit Buyer a Shortfall Payment as follows:

Shortfall Payment \$ = Shortfall Amount kWh x (Specified Rate \$/kWh - Electricity Price \$/kWh)

(iii) For purposes of calculating a Shortfall Payment under clause (ii) above, the Production Shortfall shall be adjusted as reasonably determined by Developer due to insolation conditions other than standard insolation conditions as of the Effective Date, failure, damage or downtime attributable to Buyer or third parties, general utility outages or any failure of any electric grid, Force Majeure, or breaches or omissions of Buyer of any of its obligations hereunder. Within sixty (60) days after each Contract Year, Developer shall provide Buyer with a reconciliation of all production by the Facilities. Credit of the Shortfall Payment, as described herein, shall be Buyer's sole remedy against Developer for failure to meet the Guaranteed Annual Electric Output. Notwithstanding the foregoing, Developer may install additional equipment on the Properties (including without limitation additional solar panels) to prevent or reduce future Production Shortfalls, upon advance approval by Buyer, such approval

not to be unreasonably withheld, conditioned or delayed. Developer shall credit Buyer on its next invoice(s) the Shortfall Payment.

(g) Outages for Maintenance and Roof Repair or Replacement.

- (i) The Parties agree that at any time during the Term of the Agreement, Buyer shall be afforded a period of up to five (5) days per Contract Year per Facility during which a designated Facility may be temporarily shut down and taken out of operation so that Buyer may perform roofing repair work on the Property on which such Facility is located (to the extent the Facility is located on rooftop space). Buyer agrees to and shall pay Developer an amount with respect to such work equal to Developer's actual and documented removal, storage, and replacement costs. Buyer agrees to coordinate such minor repair work to minimize the period of time in which the Facility is taken out of operation and to mitigate the Developer's loss of revenues by attempting to schedule repair work during times of day and year when insolation is at a minimum.
- (ii) If the Buyer requires that a Facility be temporarily shut down and taken out of operation for repair or reconstruction of roofs for an amount of time exceeding five (5) days in a Contract Year (or thirty (30) days in aggregate per Facility over the Term), Buyer agrees to and shall pay Developer an amount with respect to such work equal to Developer's actual and documented removal, storage, and replacement costs plus any estimated Electricity not delivered and any lost SMART Tariff revenue during such outage. Following Buyer's notice to Developer containing an assurance that an appropriation has been made for payment of the estimated removal, storage, and replacement costs (plus amounts owed for estimated Electricity not delivered and any lost SMART Tariff revenue, if applicable) in the required amount, Developer shall arrange for removing, storing and re-installing the Facility at an existing building. Buyer shall reimburse Developer (or, at the Developer's option, make payment directly to the applicable contractor or vendor on Developer's behalf) for the actual documented costs of such removal, storage and reinstallation of the Facility (plus amounts owed for estimated Electricity not delivered and any lost SMART Tariff revenue, if applicable) within thirty (30) days following receipt of an invoice from Developer, including reasonably acceptable back up information, with respect thereto. Buyer shall provide at least ninety (90) days' prior notice of the need for such extended temporary removal. Notwithstanding the foregoing, Developer shall respond within 24 hours to any request from Buyer to turn off a Facility to permit Buyer to make emergency repairs to the roof of any Property. The Electricity output of the affected Facility shall be estimated by Developer for the period of such shutdown and such estimated output shall be added to actual Facility output for purposes of determining whether the Guaranteed Annual Electric Output has been satisfied.

Section 6. ENVIRONMENTAL ATTRIBUTES

(a) <u>Title to Environmental Attributes</u>. All Environmental Attributes, Environmental Incentives, and Reporting Rights relating to the Facilities, or the Electricity, other than Net Metering Credits and Alternative On-Bill Credits, if any, will be and remain property of Developer (unless transferred to the LDC pursuant to the SMART Program). As between Developer and Buyer, Developer shall have all right, title, and interest in and to any and all such Environmental Attributes, Environmental Incentives, and Reporting Rights that relate to the Electricity during the Term.

- (b) <u>Reporting of Ownership of Environmental Attributes</u>. Buyer shall not report to any Person that any Environmental Attributes, Environmental Incentives, or Reporting Rights relating to the Electricity or the Facilities belong to any Person other than Developer.
- (c) <u>Further Assurances</u>. At Developer's request, Buyer shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Developer's right, title and interest in and to the Environmental Attributes, Environmental Incentives, and Reporting Rights relating to the Electricity. If the standards used to qualify Environmental Attributes, or Environmental Incentives to which Developer is entitled under this Agreement are changed or modified, and the Parties shall use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

Section 7. METERING DEVICE AND METERING

- (a) <u>Metering Equipment</u>. Developer shall be responsible for providing, installing, owning, operating and maintaining the Developer Metering Device. Developer shall maintain and test the Developer Metering Device in accordance with Applicable Legal Requirements.
- (b) Measurements. Readings of the Developer Metering Device shall be conclusive as to the amount of Electricity delivered to Buyer; *provided*, that if the Developer Metering Device is out of service, is discovered to be inaccurate, or registers inaccurately, measurement of Electricity shall be determined in the following sequence: (i) by estimating by reference to quantities measured during periods of similar conditions when Developer Metering Device was registering accurately; or (ii) if no reliable information exists as to the period of time during which such Developer Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction was equal to (A) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (B) if the period of inaccuracy cannot be determined, one-half (1/2) of the period from the date of the last previous test of such Developer Metering Device through the date of the adjustments, *provided*, *however*, that, in the case of clause (B), the period covered by the correction shall not exceed nine (9) months.
- (c) <u>Testing and Correction/Buyer's Right to Conduct Tests</u>. Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Developer to verify the accuracy of the measurements and recordings of the Developer Metering Device. Developer shall provide at least ten (10) days prior written notice to Buyer of the date upon which any such test is to occur. Developer shall prepare a written report setting forth the results of each such test, and shall provide Buyer with copies of such written report not later than thirty (30) days after completion of such test.
- (d) <u>Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy</u>. The following steps shall be taken to resolve any disputes regarding the accuracy of the Developer Metering Device:
 - (i) If either Party disputes the accuracy or condition of the Developer Metering Device, such Party shall so advise the other Party in writing setting forth in reasonable detail the reasons it believes the Developer Metering Device is inaccurate including the dates it discovered same.

- (ii) The non-disputing Party shall, within fifteen (15) days after receiving such notice from the disputing Party, advise the other Party in writing as to its position concerning the accuracy of such Developer Metering Device and state reasons for taking such position.
- (iii) If the Parties are unable to resolve the dispute, then either Party may cause the Developer Metering Device to be tested by an agreed upon and independent third party.
- (iv) If the Developer Metering Device is found to be inaccurate by two percent (2%) or less, any previous recordings of the Developer Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Developer Metering Device shall bear the cost of inspection and testing of the Developer Metering Device.
- If the Developer Metering Device is found to be inaccurate by more than two percent (2%) or if such Developer Metering Device is for any reason out of service or fails to register, then (A) Developer shall promptly cause any Developer Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Electricity delivered during the periods affected by such inaccuracy, service outage or failure to register in accordance with Section 7(b) above (but for not more than nine (9) months prior), and (C) Developer shall bear the cost of inspection and testing of the Developer Metering Device in accordance with Section 7(c). If as a result of such adjustment the quantity of Electricity for any period is decreased (such quantity, the "Electricity Deficiency Quantity"), Developer shall reimburse Buyer for the amount paid by Buyer in consideration for the Electricity Deficiency Quantity by crediting such amount against Buyer's payment obligations under this Agreement, and Developer shall bear the cost of inspection and testing of the Developer Metering Device. If as a result of such adjustment the quantity of Electricity for any period is increased (such quantity, the "Electricity Surplus Quantity"), Buyer shall pay for the Electricity Surplus Quantity at the Electricity Price applicable during the applicable Contract Year and Buyer shall reimburse Developer for the cost of inspection and testing of the Developer Metering Device.

Section 8. LOSS, DAMAGE OR DESTRUCTION OF FACILITIES; FORCE MAJEURE

(a) Facilities Loss.

- (i) Developer shall bear the risk of any Facilities Loss, except to the extent such Facilities Loss results from the negligence of Buyer or Buyer's agents, representatives, vendors, employees, contractors, (collectively, "Buyer Misconduct").
- (ii) <u>Partial Loss.</u> In the event of any Facilities Loss that results in less than total damage, destruction or loss of the Facilities, this Agreement will remain in full force and effect and Developer will, at Developer's sole cost and expense, subject to the provisions below, repair or replace the Facilities. Subject to M.G.L. c. 258, to the extent applicable, to the extent of any Facilities Loss that results in less than total damage, destruction or loss of the Facilities, and is caused by Buyer Misconduct, Buyer shall promptly upon demand therefore from Developer pay any and all costs and expenses of such repair or replacement, including any lost revenues for sales of Electricity and loss of Environmental Attributes based upon the estimated energy production capacity of the Facilities in the relevant Contract Year, to the extent permitted by Applicable Legal Requirements. Subject to M.G.L. c. 258, to the extent

applicable, in the event Facilities Loss is caused by Buyer Misconduct, then after written demand from Developer, Buyer shall pre-pay or post security acceptable to Developer for any repair expenses reasonably estimated by Developer. Buyer shall pay as quickly as practicable within applicable internal processing constraints, including claims processing time for Buyer's insurer.

(iii) Total Loss. In the event of any Facilities Loss that, in the reasonable judgment of Developer, results in total damage, destruction or loss of the Facilities, Developer shall, within sixty (60) Business Days following the occurrence of such Facilities Loss, notify Buyer whether Developer is willing, notwithstanding such Facilities Loss, to repair or replace the Facilities. In the event that Developer notifies Buyer that Developer is not willing to repair or replace the Facilities following a total loss, this Agreement will terminate automatically effective upon the effectiveness of such notice and Developer shall within a reasonable time remove the Facilities from the Property in accordance with Section IV. Subject to M.G.L. c. 258, to the extent applicable, if such Facilities Loss was caused by Buyer Misconduct, Buyer shall pay to Developer, as liquidated damages, the Termination Payment as of such termination date. Buyer shall pay as quickly as practicable within applicable internal processing constraints, including claims processing time for Buyer's insurer.

In the event that Developer notifies Buyer that Developer is willing to repair or replace the Facilities following a total loss, the following shall occur, (A) this Agreement will remain in full force and effect, (B) Developer will repair or replace the Facilities as quickly as practicable, and (C) if such Facilities Loss has been caused partially or totally by Buyer Misconduct, subject to M.G.L. 285 Buyer shall promptly upon demand therefore from Developer pay any and all costs and expenses of such repair or replacement, lost revenues for sales of Electricity, loss of Environmental Attributes and Environmental Incentives and Reporting Rights, in each case based upon the estimated energy production capacity of the system in the relevant Contract Year. After written demand from Developer, in the case of Buyer Misconduct, Buyer shall pre-pay or post security acceptable to Developer for any repair expenses reasonably estimated by Developer. Buyer shall pay as quickly as practicable within applicable internal processing constraints, including claims processing time for Buyer's insurer.

Performance Excused by Force Majeure. To the extent either Party is prevented by (b) Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives written notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, but the period of time to pay shall be extended if Buyer is prevented from paying due to Force Majeure). The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure for so long as the claim of Force Majeure continues. For greater clarity, the Guaranteed Annual Electric Output shall be adjusted or pro-rated for any period of time the Facilities are not generating Electricity due to Force Majeure.

- (c) <u>Termination Due to Force Majeure</u>. If a Claiming Party claims a Force Majeure for a consecutive period of twelve (12) calendar months or longer, then either Party may terminate this Agreement, in whole or in part, without any liability to the Claiming Party as a result of such termination and Developer shall within a reasonable time remove the Facilities from the Properties.
- Change in Law. In the event that a change in Law occurs, including without limitation, a change in the Net Metering Rules, the SMART Program, or the administration of interpretation thereof by the Massachusetts Department of Public Utilities or the LDC ("Change in Law") which (a) materially restricts the ability of Developer to deliver Electricity generated by the Facilities to Buyer or the ability of Electricity generated by the Facilities to be delivered to the LDC or the ability of Buyer to receive Net Metering Credits or Alternative On-Bill Credits, (b) results in one or more Facilities for which Buyer is Host Customer being disqualified as a Net Metering Facility of a Municipality or Other Governmental Entity or an Alternative On-Bill Credit Generation Unit (as applicable), or (c) otherwise materially impacts the ability of either Party to perform its obligations under this Agreement, including changes in Law that result in a material increase in Developer's costs of construction and installation, or operation of one or more Facilities, then, upon a Party's receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith, but subject to Applicable Legal Requirements, endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties.. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement in the form of a net metering credit or on-bill credit purchase agreement. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty days, either Party may terminate this Agreement; provided that if Buyer terminates this Agreement for any Change in Law other than a Net Metering Rules Failure (as hereinafter defined), Buyer shall pay the Termination Payment. If the Net Metering Rules and SMART Program are repealed or amended, such that neither Net Metering Credits nor Alternative On-Bill Credits are available for a FTM Facility (a "Net Metering Rules Failure"), the Parties shall cooperate to redesign the Facilities to be behind the meter Facilities. The Parties shall share the costs of such redesign and reconstruction of the Facilities equally. If the Parties are unable, despite good faith efforts, to redesign and reconstruct the Facilities as behind the meter Facilities following a Net Metering Rules Failure, either Party may terminate this Agreement without penalty, and Buyer shall have no obligation to pay the Buyer Termination Payment if Buyer elects so to terminate. If this Agreement is terminated by either Party pursuant to this Section 8(d), at Developer's election, Buyer shall negotiate in good faith with Developer for a lease of the Properties to Developer to permit Developer to sell electricity from the Facilities to the LDC or other persons and with market lease payments to Buyer and such other terms and conditions as the Parties shall mutually agree upon.

Section 9. EVENTS OF DEFAULT; REMEDIES

- (a) Events of Default. An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:
 - (i) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after receipt of written notice;

- (ii) Any representation or warranty made by such Party in this Agreement (including the License) is false or misleading in any material respect when made or when deemed made or repeated;
- (iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default); <u>provided</u>, that the Defaulting Party shall have sixty days after receipt of written notice of default to cure the alleged breach, or additional time if the Defaulting Party has diligently commenced and is pursuing a cure of such breach during such sixty (60) day period;
- (iv) such Party becomes Bankrupt, or any assignment shall be made by the Developer or by any guarantor of the Developer for the benefit of creditors, or if a petition is filed by the Developer or by any guarantor of the Developer for adjudication as a Bankrupt, or for reorganization or an arrangement under any provision of the Bankruptcy Act as then in force and effect, or if an involuntary petition under any of the provisions of the Bankruptcy Act is filed against the Developer and such involuntary petition is not discharged within ninety (90) days thereafter, in any of those events the Buyer may terminate this Agreement upon written notice to the Developer;
- (v) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within five (5) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
- (b) Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing beyond applicable notice and cure periods, the other Party (the "Non-Defaulting Party") shall, without limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or applicable Law, but subject to the provisions of Section 19, have the right to any of the following: (a) by notice to the Defaulting Party, to designate a date, not earlier than twenty (20) Business Days after the date such notice is effective, as an early termination date ("Early Termination Date") in respect of this Agreement; (b) to withhold any payments due to the Defaulting Party under this Agreement; and (c) to suspend performance due to the Defaulting Party under this Agreement and (d) exercise all other rights and remedies available at law or in equity to the Non-Defaulting Party.
- (c) <u>Buyer Rights upon Termination for Default.</u> In the event that Buyer is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 9, Buyer shall, at its sole and exclusive option and in its sole and absolute discretion require Developer to remove the Facilities as provided in Section 4 above and pay the Developer Termination Payment plus Costs to Buyer. In the event that Buyer elects either of the foregoing remedies, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to Buyer as a result of termination of this Agreement subject, however, to subsection (h) below.
- (d) <u>Developer Rights upon Termination for Default</u>. In the event that Developer is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 9, Developer shall, at its sole and exclusive option and in its sole and absolute discretion, remove the Facilities and require

Buyer to pay the Termination Payment plus Costs to Developer. In the event that Developer elects the foregoing remedy, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to Developer as a result of termination of this Agreement subject, however, to subsection (h) below.

- (e) <u>Termination Payment Notice</u>. In the event that a Non-Defaulting Party elects to require payment of the Termination Payment or Developer Termination Payment as provided in Section 9 herein, then, the Non-Defaulting Party will notify the Defaulting Party of the amount due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. In the event that the Defaulting Party is the Developer, the Defaulting Party shall pay the applicable termination payment and any amount otherwise due and outstanding under this Agreement to the Non-Defaulting Party within thirty (30) Business Days after the effectiveness of such notice. In the event that the Defaulting Party is the Buyer, Buyer shall pay the Termination Payment as quickly as practicable within applicable internal processing constraints, including claims processing time for Buyer's insurer.
- (f) <u>Closeout Setoffs</u>. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the Defaulting Party under this Agreement, any amounts due and owing to the Defaulting Party under this Agreement.
- (g) Remedies Cumulative. Except as otherwise provided in Sections 9(c) and 9(d), the rights and remedies contained in this Section 9 are cumulative with the other rights and remedies available under this Agreement or at law or in equity.
- (h) <u>Unpaid Obligations</u>. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

Section 10. INVOICING AND PAYMENT

- (a) <u>Invoicing and Payment</u>. Developer will bill Buyer on a monthly basis and Buyer shall pay such invoice not later than thirty (30) days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day). Each invoice shall state (i) the quantity of Electricity produced by the Facilities and recorded at the Developer Metering Device during such billing period, (ii) the Electricity Price and (iii) the total amount due from Buyer. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the late payment Interest Rate until paid in full.
- (b) <u>Disputed Amounts</u>. A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Agreement at any time within three (3) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment on the applicable payment due date, and to give notice of the objection to the other Party.

(c) Records and Audits. Notwithstanding any other record keeping provision of the Massachusetts General Laws, each Party will keep, for a period not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions during such other Party's normal business hours.

Section 11. REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

- (a) <u>Representations and Warranties</u>. Each Party represents and warrants to the other Party that:
- (i) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, or any Applicable Legal Requirements;
- (ii) this Agreement, and each document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other Applicable Legal Requirements affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;
- (iii) It is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;
- (iv) It is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (v) It understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.
- (b) <u>Buyer Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366</u>. Buyer acknowledges and agrees that, for purposes of this Agreement, Developer is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code (the "*Bankruptcy Code*"), and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

(c) <u>Additional Representations by Buyer.</u>

- (i) Buyer is duly formed and validly existing under Massachusetts law and that the individual(s) executing this Agreement on behalf of Buyer is/are authorized and empowered to bind Buyer.
- (ii) Buyer has the full right, power and authorization to enter into and perform this Agreement and each of Buyer's obligations and undertakings under this Agreement, and Buyer's

execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of Massachusetts law.

- (iii) All consents and approvals necessary to the Buyer's execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery and performance.
- (iv) Buyer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.
- (v) If Buyer's performance under this Agreement depends upon the appropriation of funds by its governing body, and if the governing body fails to appropriate the funds necessary for performance, then the Buyer shall provide written notice to Developer, and Buyer may cancel this Agreement effective at the end of the then-current fiscal year without further obligation except for the payment of the Termination Payment and for any services already performed by Developer prior to the effective date of termination. Buyer covenants to include the payments required to fulfill its obligations under this Agreement in any annual (or other) budget submitted for approval by the appropriate governing body and to take all necessary action to ensure funds are available at all necessary times to satisfy its obligations hereunder.
- (vi) Except as previously disclosed in writing to Developer, to Buyer's knowledge there are no facts, circumstances or other matters that may interfere with or delay the construction and installation of the Facilities.
- (vii) Buyer represents, warrants, and covenants that it is the fee owner of and has good, lawful and marketable title to the Properties free of any liens, encumbrances, restrictions or covenants which may impact Developer's proposed occupancy. Buyer shall deliver to Developer copies of any title policies, deeds, orders of taking or other instruments evidencing the fact of Buyer's fee ownership of the Properties. In the event that any encumbrance, easement, restriction, covenant or similar instrument is found to impact, prohibit or adversely affect Developer's ability to install, maintain or operate the Facilities, or interferes with insolation to the Facilities, Buyer shall make all commercially reasonable efforts to discharge, modify, amend or subordinate any such instrument so that Developer's rights hereunder are not adversely impacted.
- (viii) (1) Buyer is and has been, in compliance with all Environmental Laws; (2) to the knowledge of Buyer, none of the Property is in violation of Environmental Laws; (3) to the knowledge of Buyer, the Facility is not located in, on or around any property where Hazardous Substances or other contamination has been Released into the soil or groundwater in violation of Environmental Laws; (4) Buyer has not received written notice from any governmental authority or of any actual or potential violation of or liability under any Environmental Laws with respect to the Property. To the extent permitted by law, Buyer shall indemnify, protect, defend and hold harmless Developer and any Designated Third Party (defined in Section 19) for any claims which result from Buyer's receipt, handling, use, storage, transportation, generation, discharge, Release and/or disposal of Hazardous Substances in violation of Applicable Legal Requirements in, on or around the Property, including Hazardous Substances existing in, on or around any of the Property prior to Developer's installation of the Facility. As used herein "Environmental Laws" means any law, act, order, by-law, regulation, judgment, decree of or by any Governmental Authority and all licenses and permits which may at any time be applicable to a Party's rights and obligations hereunder and which are for the protection of the environment or human health and safety including but not limited to the Resource

Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act.

Section 12. LIMITATIONS

- Limitation of Remedies, Liability and Damages. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to actual direct damages only, and such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived. It is agreed by the Parties that the Termination Payment and Developer Termination Payment are considered to be direct damages. In no event shall either Party be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, including but not limited to, loss of profits or revenue, downtime costs, loss of use of any property, cost of substitute equipment or facilities, whether arising in tort, contract or otherwise. This Section 12 shall survive termination of this Agreement. For greater clarity, the Parties agree that the Termination Payment and Developer Termination Payment do not constitute consequential, incidental, punitive, exemplary or indirect damages. Notwithstanding anything in this Agreement to the contrary, Developer's aggregate liability to Buyer under Agreement shall not exceed the total payments made during the last Contract Year by Buyer; provided, that (a) liabilities covered by Developer's insurance under Section 14 below for bodily injury and property damage shall not be subject to such limitation and are instead limited to the insurance coverage limits set forth in Section 14 (combined single limit and umbrella) for bodily injury or property damage, (b) claims by Buyer for indemnity against third party liability pursuant to Section 15 hereof and (c) any Developer Termination Payment due under this Agreement shall not be subject to such limitation.
- (b) EXCEPT AS EXPRESSLY DISCUSSED IN SECTION 11, THE ELECTRICITY PROVIDED TO BUYER WILL BE AS IS, WHERE IS, AND ALL OTHER WARRANTIES, IMPLIED OR EXPRESS, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY DEVELOPER. BUYER ACKNOWLEDGES THAT ELECTRICITY FROM THE FACILITIES IS INTERMITTENT, AND BUYER IS RESPONSIBLE FOR MEETING ANY AND ALL OF ITS ENERGY NEEDS NOT MET FROM THE FACILITY-GENERATED ENERGY AT BUYER'S SOLE COST AND EXPENSE. BUYER IS RESPONSIBLE FOR INSTALLATION AND OPERATION OF ANY EQUIPMENT ON BUYER'S SIDE OF THE DELIVERY POINT NECESSARY FOR ACCEPTANCE AND USE OF THE ELECTRICITY.

Section 13. FACILITY PURCHASE AND SALE OPTIONS

(a) <u>Grant of Purchase Option</u>. For and in consideration of the payments made by Buyer under this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Developer hereby grants Buyer the right and option to

purchase all of Developer's right, title and interest in and to the Facility Assets on the terms set forth in this Agreement (the "*Purchase Option*"). The Purchase Option shall be exercisable on the 7th, 10th and 15th anniversary of the Commercial Operation Date, or upon expiration of the Initial Term (such date, the "*Purchase Option Date*"). To exercise the option Buyer shall give advance written notice to the Developer during the Exercise Period (defined below) following a Final Determination (defined below).

- (b) <u>Buyer Request for Appraisal of Facilities Value</u>. Not earlier than two hundred and seventy (270) days and not later than one hundred and eighty (180) days prior to the Purchase Option Date, provided Buyer is not then in default, Buyer shall have the right to provide a notice to Developer requiring a determination of the Fair Market Value of the Facilities. Fair Market Value shall be determined pursuant to Section 13(c) and (d) by the Independent Appraiser.
- (c) <u>Selection of Independent Appraiser</u>. Within twenty Business Days after receipt of a notice provided under subsection (b), Buyer and Developer shall mutually agree upon an Independent Appraiser. If Developer and Buyer do not agree upon the appointment of an Independent Appraiser within twenty (20) Business Days, then at the end of such twenty (20) Business Day period, two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Developer and Buyer. Such selection shall be final and binding on Developer and Buyer.
- (d) <u>Determination of Purchase Price</u>. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a determination of the Fair Market Value (the "*Final Determination*") which shall specify the "Final Appraised Value" of the Facilities. Upon making such Final Determination, the selected Independent Appraiser shall provide such Final Determination to Developer and Buyer, together with all supporting documentation that details the calculation of the Final Determination. Except in the case of fraud or manifest error, the Final Appraised Value of the selected Independent Appraiser shall be final and binding on the Parties.
- (e) <u>Calculation of Purchase Price</u>. The "*Purchase Price*" payable by Buyer for the Facility Assets shall be equal to the higher of the Termination Payment or the Final Appraised Value as determined by the Independent Appraiser.
- (f) <u>Costs and Expenses of Independent Appraiser</u>. In the event Buyer purchases the Facilities pursuant to its option in subsection (b) above, Developer and Buyer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser. If Buyer elects not to purchase the Facilities upon receiving the Final Appraised Value, Buyer shall pay all costs of the Independent Appraiser.
- (g) Exercise of Purchase Option. Buyer shall have ninety (90) Business Days from the date of the Final Determination (such period, the "Exercise Period") to exercise the Purchase Option, at the Purchase Price. Buyer must exercise its Purchase Option during the Exercise Period by providing a notice (an "Exercise Notice") to Developer, and specifying a closing date for the purchase and sale of the Facilities (the "Transfer Date"). Once Buyer delivers its Exercise Notice to Developer, such Exercise Notice shall be irrevocable.

- (h) Terms of Facilities Purchase. On the Transfer Date (a) Developer shall surrender and transfer to Buyer all of Developer's right, title and interest in and to the Facility Assets, and shall retain all liabilities arising from or related to the Facility Assets prior to the Transfer Date, (b) Buyer shall pay the Purchase Price, by wire transfer and shall assume all liabilities arising from or related to the Facility Assets from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment and assumption of contract rights containing no representations or warranties, except as to title, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the Facilities in Buyer on an AS IS, WHERE IS basis, and (ii) deliver such other commercially reasonable ancillary documents as may be reasonably necessary to complete the sale of the Facility Assets to Buyer.
- (i) <u>Transfer Date</u>. The closing of any sale of the Facilities (the "*Transfer Date*") pursuant to this Section 13 will occur no later than thirty (30) Business Days following the date of the Exercise Notice.

Section 14. INSURANCE

- (a) The Developer shall provide and maintain throughout the Term the following insurance with companies that are authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required.
 - i. Workers' Compensation Insurance as required by the laws of the Commonwealth of Massachusetts and employer's liability insurance in the amount of \$500,000 by accident, each accident/\$500,000 by disease, each employee/\$500,000 by disease, policy limit.
 - ii. Commercial General Liability Insurance, \$1,000,000 each occurrence and \$2,000,000 aggregate limit. Commercial General Liability insurance shall include personal injury liability, broad form property damage liability, products/completed operations liability and broad form contractual liability.
 - iii. Automobile Liability Insurance Combined single limit of \$1,000,000.
 - iv. Professional Liability Insurance, covering errors and omissions, \$1,000,000 each occurrence and \$2,000,000 aggregate limit.
 - v. Excess Liability Insurance, Umbrella Form \$2,000,000 each occurrence and \$2,000,000 aggregate, which shall be following form, providing coverage over commercial general liability insurance, automobile liability insurance, and employer's liability under workers' compensation insurance.
 - vi. The Buyer shall be named as an additional insured on each such policy of Commercial General Liability Insurance, and Automobile Liability Insurance.
 - vii. Developer shall provide written notice to Buyer at least thirty (30) days prior to the effective date of any cancellation or material amendment of such policies.

- viii. Certificates evidencing such insurance shall be furnished to Buyer upon execution of this Agreement. Such certificates shall not merely name the types of policy provided, but shall specifically refer to this Agreement and shall state that such insurance is as required by this Agreement.
- ix. Certificates evidencing such insurance shall be furnished to Buyer on the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term.
- (b) Buyer shall maintain during the Term the coverage set forth in subsections (a) (i) and (a) (ii) and (a) (v).
- (c) Developer may satisfy the insurance obligations above by ensuring that its subcontractors provide and maintain such insurance coverage.

Section 15. INDEMNIFICATION

To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Buyer and all of its officers, employees, boards, commissions, and representatives from and against all claims, causes of action, suits, costs, damages, and liability of any kind ("Losses") from or to third parties which arise out of the performance of Developer's work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions of the Developer, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts Developer is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Buyer, but the Developer's obligation to pay Losses shall be reduced in proportion to the percentage by which the Buyer's negligent or intentional acts, errors or omissions caused the Losses.

To the extent permitted by law, Buyer shall indemnify and hold harmless Developer from and against any and all Losses from or to third parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Buyer, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of Developer, but the Buyer's obligation to pay Losses shall be reduced in proportion to the percentage by which the Developer's negligent or intentional acts, errors or omissions caused the Losses.

The provisions of this section shall survive the expiration or earlier termination of the Agreement.

Section 16. RESERVED

Section 17. DISPUTE RESOLUTION

Disputes regarding changes in and interpretations of the terms or scope of the Agreement and denials of or failures to act upon claims shall be resolved according to the following procedures:

- (a) <u>Notice of Dispute/Negotiated Resolution</u>. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy claim or dispute. During the twenty (20) Business Day period following a party's receipt of said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute.
- (b) In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, cannot be settled or resolved amicably by the Parties during the twenty (20) Business Day period of good faith negotiations provided for above, then either or any Party hereto may resort to any and all available judicial proceedings in a court of competent jurisdiction.

Section 18. NOTICES

(a) <u>Notices</u>. All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

If to the Buyer:

If to the Developer: Westwood Schools Solar 2 LLC

111 Speen Street, Suite 410 Framingham, MA 01701

Attention: Michael Bakas, Senior Vice President

With a copy to: Ameresco, Inc.

111 Speen Street, Suite 410 Framingham, MA 01701 Attention: General Counsel

(b) <u>Emergency</u>. The Parties shall designate certain individual(s) as their respective points of contact to be available in emergencies (either Party may change the individuals by providing written notice of same in accordance with the provisions of this section).

Section 19. ASSIGNMENT; BINDING EFFECT; FINANCING PROVISIONS

- (a) <u>Assignment; Binding Effect</u>. Except as provided in this Agreement, neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- (b) Permitted Assignment by Developer. Notwithstanding anything to the contrary herein, Developer may assign all or a portion of its rights and obligations hereunder to (i) to one or more Affiliates of Developer, (ii) to any person succeeding to all or substantially all of the assets of Developer, (iii) to an entity that acquires the Project or, prior to the construction of the Project, the development rights thereto (each, a "Permitted Transfer"). In the event of any such assignment, Developer shall provide advance written notice to Buyer of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or as of the closing of such transaction will assume) all or a portion of the Developer's rights and obligations under this Agreement. Buyer agrees to promptly execute any document reasonably requested in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof. If such assignment is a full assignment of all of Developer's rights, and obligations under this Agreement, then Developer shall have no further liability arising under this Agreement after the effective date of the assignment.

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

- (c) Buyer agrees that this Agreement (including without limitation the license provisions) shall survive any transfer of the Properties. In furtherance of the foregoing, Buyer agrees that it shall cause any purchaser, assignee, or mortgagee of the Properties to execute and deliver to Developer an assignment and assumption of this Agreement simultaneously with the transfer of the Properties to such purchaser, assignee or mortgagee. Such assignment and assumption agreement shall contain an acknowledgement by the purchaser, assignee or mortgagee that it has no interest in the Facilities and shall not gain any interest in the Facilities by virtue of the transfer, other than the rights of Buyer hereunder.
- (d) <u>Financing Provisions</u>. Notwithstanding any contrary provisions contained in this Agreement, including without limitation Section 19(a) and 19(b), Buyer specifically agrees, without any further request for prior consent but with advance written notice to Buyer, to permit Developer to assign, transfer or pledge its rights under this Agreement and its rights and title to the Facilities for the purpose of obtaining financing or refinancing in connection with the Project (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction) and to sign any agreement reasonably requested by Developer or its lenders to acknowledge and evidence such agreement. The Buyer agrees to cooperate with Developer in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the financing parties so long as such amendment or addition does not in any way materially alter or amend the rights and obligations of the Buyer herein.
 - (e) <u>Third Party Rights</u>.

- (1) <u>Notice to Designated Third Party</u>. Buyer agrees to give copies of any notice provided to Developer by Buyer under Section 9 to any assignee or transferee permitted pursuant to Section 19 (each, a "Designated Third Party").
- (2) Exercise of Developer Rights. Any Designated Third Party, as collateral assignee and if allowed pursuant to its contractual arrangements with Developer, shall have the right in the place of Developer, to any and all rights and remedies of Developer under this Agreement. Such Designated Third Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement, subject to the terms of this Agreement.
- (3) Performance of Developer Obligations. A Designated Third party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Developer hereunder or cause to be cured any default of Developer hereunder in the time and manner provided by and subject to the terms of this Agreement. Nothing herein requires the Designated Third Party to cure any default of Developer under this Agreement or (unless such party has succeeded to the Developer's interests under this Agreement) to perform any act, duty or obligation of Developer under this Agreement, but Buyer hereby gives such party the option to do so, provided any such cure, act, duty or obligation is performed in accordance with the terms of this Agreement.
- (4) Exercise of Remedies. Upon the exercise of secured party remedies, including any sale of one or more of the Facilities by a Designated Third Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Developer to the Designated Third Party (or any assignee of the Designated Third Party) in lieu thereof, the Designated Third Party shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of secured party remedies shall not constitute a default under this Agreement, unless the act of exercising such remedy itself constitutes an Event of Default.
- (5) Buyer agrees that each Designated Third Party is a third party beneficiary of the provisions of this Section.
- (6) Buyer shall not exercise any rights to terminate or suspend this Agreement unless it shall have given the Designated Third Party a copy of prior written notice of its intent to terminate or suspend this Agreement specifying the condition giving rise to such right, and the Designated Third Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within ninety (90) days after Developer's cure period expires with respect to payment defaults and one hundred twenty (120) days with respect to all other defaults. The parties' respective obligations will otherwise remain in effect during any cure period.
- (7) If pursuant to an exercise of remedies by a Designated Third Party, such party of its assignee shall acquire control of the Facilities and this Agreement, and shall within the time periods describe in the preceding paragraph (6) cure all defaults capable of being cured under this Agreement existing as of the date of such change in control in the manner required by this

Agreement, then such person or entity shall no longer be in default under this Agreement and this Agreement shall continue in full force and effect.

(f) Buyer agrees to cooperate with Developer and its financing parties in connection with any financing or refinancing of all or a portion of the Facilities. In furtherance of the foregoing, as Developer or its financing parties request from time to time, Buyer agrees, subject to the other provisions of this Agreement, to (i) execute any consents to assignment or acknowledgements, (ii) negotiate and deliver such reasonable estoppel certificate as an existing or prospective Designated Third Party may reasonably require, and (iii) furnish such reasonable information as Developer and its financing parties may reasonably request.

Section 20. MISCELLANEOUS

- (a) Amendment and Restatement; Contract Drafting. The Parties acknowledge that they jointly participated in the drafting of this Agreement, jointly participated in the choice of language used in this Agreement, and have each reviewed all of the terms of this Agreement. This document has not been proffered by one Party to the exclusion of the other Party. If any ambiguous word or phrase is found in this Agreement, the canon of construction requiring that any such word or phrase be construed against the drafter shall not be applied to determine the true meaning of that ambiguous word or phrase.
- (b) <u>Waiver</u>. No action or failure to act by either party shall constitute a waiver of a right or duty afforded to the other party under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing. No forbearance or indulgence in any form or manner by either party shall be construed as a waiver or in any way limit the legal or equitable remedies available to the other party. No waiver by one party of any default or breach by the Developer shall constitute a waiver of any subsequent default or breach by the other party.
- (c) <u>Severability</u>. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. Any provisions adjudged to be invalid or unenforceable shall be severed from the Agreement and the remaining provisions shall continue in full force and effect to the extent permitted by law. The Parties shall negotiate promptly and in good faith to fashion contractual provisions to be observed in place of any provisions adjudged to be invalid or unenforceable to achieve as nearly as possible the commercial results contemplated by this Agreement.
- (d) <u>Headings</u>. The headings of Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Sections.
- (e) <u>Entire Agreement; Amendment</u>. This Agreement and any Exhibits referenced herein shall constitute the entire agreement of the Parties as to the subject matter addressed herein. There are no other agreements between the Parties concerning the subject matter of this Agreement. This Agreement and its Exhibits may not be altered, modified, supplemented, terminated or discharged except by way of an instrument in writing executed by both Parties.

- (f) <u>Good Faith</u>. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.
- (g) Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts, without resort to any principles of law that would call for the application of the laws of any other jurisdiction. Each of the Parties consents to the jurisdiction of the state or federal courts of the Commonwealth of Massachusetts with respect to all disputes arising under or out of this Agreement.
- (h) <u>Consent to Service of Process</u>. Each Party hereby consents to service of process in the Commonwealth of Massachusetts in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.
- (i) <u>Counterparts</u>. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile transmission is binding upon the other Party as an original.
- (j) <u>No Third Party Beneficiaries</u>. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind other than each successor, permitted assignee and any Designated Third Party.
- (k) Relationship of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein. The Developer shall provide services under this Agreement as an independent contractor with the Buyer and not as an employee of the Buyer. No employee, agent or representative of the Developer shall be entitled to receive any benefits of employment with the Buyer, including without limitation salary, overtime, vacation pay, holiday pay, sick leave, health insurance, life insurance, pension or deferred compensation.
- (l) <u>Authority to Speak</u>. Neither Party shall represent or purport to represent that it speaks for the other party vis-à-vis the media or the public at-large without the other party's express, written consent in advance.
- (m) <u>No Limitation of Regulatory Authority</u>. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Buyer to issue or cause the issuance of any Approval.
- (n) <u>Survivorship</u>. The provisions of Sections 4(h), 9(h), 12, 15, 16 shall survive the expiration or earlier termination of this Agreement.
- (o) <u>Complete Agreement</u>. It is understood and agreed that this Agreement, together with the following exhibits, and any amendments and/or addenda thereto, comprise the total Agreement:

Exhibit A: Description of the Property

Exhibit B: Preliminary Description of Facilities

Exhibit C: Agreement Provisions

City/Town of Westwood

Exhibit D: Reserved

Exhibit E: Termination Payment
Exhibit F: Developer Termination Payment
Exhibit G: Safety and Security Requirements

[SIGNATURE PAGE FOLLOWS]

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

BUYER:	DEVELOPER:
TOWN OF WESTWOOD	WESTWOOD SCHOOLS SOLAR 2 LLC By: Ameresco, Inc, its sole member
By:	By: [SIGNATURE]
Superintendent, Westwood Public Schools	Printed Name:
By:	Printed Title:
Printed:	
Town Administrator	

EXHIBIT A DESCRIPTION OF PREMISES

Name:		
Address:		
Site Photo:		

EXHIBIT B PRELIMINARY DESCRIPTION OF FACILITIES

ľ	Name:				
A	Address:				
ľ	Net Metered: Yes/No*				
5	SMAR	RT Generation Unit (FTM/BTM):			
		ect to availability and subject to review and evaluation by the Parties to			
		itually beneficial designation as Net Metered vs AOBC.			
The fina	ıl Facil	lities Description shall be the final As-Built drawings to be provided after			
Comme	rcial C	Operation Date. The information below is preliminary and subject to change.			
Gen	eral F	acilities Description:			
oen.		uchices 2 coerapions			
	1.	Facilities Size DC:			
	2.	Facilities Size AC:			
Sola	r PV	Panels:			
	1.	Manufacturer:			
	2.	Model Number:			
	3.	Module Wattage:			
	4.	Panel Count:			
	5.	Type:			
	6.	Array tilt:			
	7.	Warranty Information:			
Inve	erters:				
	1.	Manufacturer:			
	2.	Model Number:			
	3.	Number and size to be installed:			
	4.	String size and Quantity:			
	5.	Warranty Information:			
Mou	ınting	Facilities:			
	1.	Manufacturer:			
	2.	Model Number:			

3. Type:	3. Type:	
----------	----------	--

Data Acquisition Facilities (DAS):

1. Manufacturer: Draker, A BlueNRGY, Ltd. Company

2. Model: Draker PV 2000 G5 Configuration #4

Solar PV Facilities Layout:

Electrical Facilities Layout:

EXHIBIT A

EXHIBIT C AGREEMENT PROVISIONS

Electricity Price

- A. Guaranteed Annual Electric Output
- B. Specified Rate

EXHIBIT D

Target Buyer Accounts

(if applicable)

EXHIBIT E – TERMINATION PAYMENT

EXHIBIT F Developer Termination Payment

If Buyer is entitled to a Developer Termination Payment, then such Developer Termination Payment shall be in an amount not to exceed the then present value (discounted at the prevailing prime rate of interest as published in the <u>Wall Street Journal</u> on the day preceding the date of determination) of the cash flow equal to the product of:

(A) the Savings Offset Value, multiplied by:

(B) the number of days remaining in the Term as to each Contract Year times the Guaranteed Annual Electric Output in each such remaining Contract Year.