

**REQUEST FOR PROPOSALS
ENERGY MANAGEMENT SERVICES**

**TOWN OF LEE, MA
AND
TOWN OF LENOX, MA**

1. SOLICITATION AND PROPOSAL PROCESS

The Town of Lee and the Town of Lenox, MA (the “*Issuers*”) are issuing this Request for Proposals (“*RFP*”) to solicit proposals under M.G.L. c. 25A, § 11C, from solar energy developers (“*Respondents or Proposers*”) to:

1. Install, own and operate solar photovoltaic energy systems (“Solar Energy Systems” or “Systems”) at the following Primary locations. A description of the Primary locations is located in Attachment B to this RFP:
 - Primary locations in Lee, MA including:
 - a. Landfill (ground-mounted)
 - b. Water Treatment Plant (ground-mounted)
 - Primary locations in Lenox, MA including:
 - a. Landfill (ground-mounted)
 - b. Wastewater Treatment Plant (ground-mounted)

2. Install, own and operate solar photovoltaic energy systems (“Solar Energy Systems” or “Systems”) at the following Secondary locations. A description of the Secondary locations is located in Attachment B to this RFP:
 - Secondary locations in Lee, MA including:
 - a. Lee Middle and High School (roof-mounted)
 - b. Lee Elementary School (roof-mounted)
 - c. Wastewater Treatment Plant (ground-mounted)
 - Secondary locations in Lenox, MA including:
 - a. Lenox Middle and High School (roof-mounted)
 - b. Lenox Elementary School (roof-mounted)

3. Evaluate Additional locations for solar photovoltaic energy systems, either ground-mounted or roof-mounted. The Issuers have identified locations of potential suitability for solar photovoltaic generation but will consider additional location for this purpose if such locations present sound financial benefits.

Proposers may suggest other possible locations and/or a methodology by which other locations would be added to the locations identified in this RFP and the benefits those additional locations would provide to Issuers. The following additional locations identified by Issuers include (collectively, the “Additional Locations”):

- Municipal locations in Lenox, MA including:
 - a. Two (2) dams (mounted on the face)
4. Furnish Issuers with solar-generated electricity at the Primary locations and/or Secondary locations and Additional locations produced by the Systems under a twenty (20) year energy management services agreement (“EMSA”), inclusive of solar power purchase provisions and solar lease provisions that provides Issuers with the maximum savings and/or offset for its electrical needs without increasing its current liabilities.

It is the desire of the Issuers to site several Solar Energy Systems for the benefit of its citizens, the environment, and reduce reliance on foreign sources of energy. This Request for Proposals is being issued to allow the Issuers to evaluate multiple options and determine the projects and financial arrangements that best meet the Issuers interest.

Issuers are interested in receiving proposals for Primary locations, Secondary locations and Additional locations. The Primary locations, Secondary locations and Additional locations are hereafter referred to as the “Premises”. Respondents are not required to submit proposals for all of the Premises. Issuers will evaluate all proposals and reserve the right to select one or more proposals that provide the best economic solution for each Town.

Proposals from respondents, as required in accordance with all terms and specifications contained herein, will be received by:

Greg Federspiel
Town Manager
Town of Lenox
Lenox Town Hall
6 Walker Street
Lenox, MA 01240
413-637-5500

Proposals are due on August 26, 2011, no later than 4:00 PM.

A Mandatory Pre-Submission Conference will be held on July 26, 2011 at 11:00 AM in Lenox Town Hall. Only prospective respondents attending the Mandatory Pre-Submission Conference will be permitted to submit proposals. Interested respondents are required to R.S.V.P. to Issuers Owner's Agent, Beth Greenblatt of Beacon Integrated Solutions by July 22, 2011 at bgreenblatt@beacon-llc.com. Following the conference, non-mandatory tours of the Premises will be offered by the Issuers.

Proposals must be submitted in a sealed outer package addressed to: Greg Federspiel, Town Manager, Town of Lenox, Lenox Town Hall, 6 Walker Street, Lenox, MA 01240. Within each envelope or package, the respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the proposal on behalf of the respondent.

The proposer's proposal shall include a "*Non-Price Proposal*" and a "*Price Proposal*."

- The Non-Price Proposal (fifteen (15) hard copies and three (3) CD-ROM or thumb drives in Adobe (pdf) format) shall be placed in a separate sealed envelope within the outer package marked with the proposer's *company name*, and plainly marked in the lower left hand corner: "**Solar Energy System Non-Price Proposal-Hold for Public Opening.**"
- The Price Proposal (five (5) hard copies and one (3) CD-ROM or thumb drives in Adobe (pdf) and Microsoft Excel format) shall be placed in a separate sealed envelope within the outer package marked with the proposer's company name and "**Solar Energy System Price Proposal - Hold for Post Evaluation.**"

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

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

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

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

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

All questions pertaining to this RFP should be referred to Beth Greenblatt at bgreenblatt@beacon-llc.com prior to 3:00 PM EDT on August 2, 2011.

One (1) copy of this RFP will be furnished electronically to Respondents upon request. It is the proposer's responsibility to check prior to the Public Opening for any updates issued as a result of questions or changes needed in this RFP.

This RFP contains the following Attachments:

Attachment A – Proposal Forms

Attachment A-1 – Respondent Information Form

Attachment A-2 – Certificate of Non-Collusion

Attachment A-3 – Attestation Regarding Filing of Tax Returns

Attachment B – Description of Premises

Attachment B-1 – Town of Lee, MA

Attachment B-2 – Town of Lenox, MA

Attachment C – Municipal Energy Usage Data

Attachment C-1 – Town of Lee, MA

Attachment C-2 – Town of Lenox, MA

Attachment D – Pricing Bid Forms

Workbook for the Town of Lee, MA

Workbook for the Town of Lenox, MA

Attachment E – Energy Management Services Contract

2. SCHEDULE

Request for Proposals Issued	July 20, 2011
Mandatory Pre-Submission Conference with the Issuers	July 26, 2011
Questions Due to the Issuers	August 2, 2011
Responses to Questions/Addenda Issued by the Issuers	August 10, 2011
Proposals Due to the Issuers	August 26, 2011
Public Opening	August 26, 2011
Anticipated Interviews	Week of September 6, 2011
Anticipated Selection of Most Qualified Proposer	By September 16, 2011

3. GENERAL TERMS AND CONDITIONS

3.1 Receipt and Opening of Proposals. Sealed proposals will be accepted by the Issuers until the time indicated in the schedule in Section 2 above and will then be publicly opened in the presence of at least two witnesses. Issuers will prepare a listing of responses available for public inspection.

3.2 Form of Response. Proposals must be submitted on and in accordance with the forms attached to this RFP in Attachment A-1. No change shall be made in the phraseology of the form or in the item or items mentioned herein. The proposal must contain the name and proper address of the respondent, be signed by a responsible member of the respondent with his/her signature and official title, and include certification of site visitation. Except as otherwise provided in this RFP, responses that are incomplete, contain any omissions, erasures, alterations, additions or irregularities of any kind may be rejected.

Submission of a proposal shall be conclusive evidence that the proposer has examined the Premises and the EMSA and is familiar with all the conditions of this procurement. Upon finding any omissions or discrepancy in the proposal documents, the proposer shall notify the Issuer immediately so that any necessary addenda may be issued. Failure of the proposer to completely investigate the Premises and/or to be thoroughly familiar with the contract documents (including plans, specifications and all addend) shall in no way relieve the proposer from any obligation with respect to the proposal.

3.3 Submission of Non-Price Proposals.

(a) Packages containing responses must be sealed and addressed as specified in Section 1 above.

(b) Any respondent may withdraw or modify its proposal by written request at any time prior to the established time of the Public Opening. Telephone responses, amendments or withdrawals will not be accepted.

(c) After the Public Opening, a respondent may withdraw, but may not modify, its proposal except in a manner that is not prejudicial to the interest of the Issuers or to fair competition. Negligence on the part of the respondent in preparing the proposal confers no rights for the modification of the proposal after it has been opened.

(d) Proposals received prior to the Public Opening will be securely kept unopened. No responsibility will attach to an officer or person for the premature opening of a response not properly addressed and identified.

(e) Any deviation from the requirements of this RFP must be noted in writing and attached as a part of the proposal. The respondent shall indicate the item or part with the deviation and indicate how the response deviates from the requirements.

(f) Any respondent taking exception to, or questioning any of the provisions, procedures, conditions, or specifications herein stated, should clearly articulate such exceptions in the proposal in a separate section entitled "Exceptions".

(g) All substantive inquiries from prospective respondents concerning this RFP must be submitted in writing, electronically to Beth Greenblatt at bgreenblatt@beacon-llc.com and may be shared with other prospective respondents. All responses to substantive questions shall be in writing and will be simultaneously distributed to all recipients of the RFP.

(h) The Issuers may in its discretion waive any and all informalities or allow the respondent to correct them.

3.4 Minimum Qualifications and Requirements. The proposer must demonstrate that it meets the minimum requirements of this RFP by including the following documents:

(a) Documentation evidencing that the respondent is responsible, demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work required by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with M.G.L. c. 149, § 44D.

(b) All certificates of eligibility and update statements required pursuant to M.G.L. c. 25A, § 11C.

(c) Certification of financial interest disclosure and of non-collusion, signed and submitted on the form attached to this RFP as Attachment A-2.

(d) Certification of compliance with state tax laws, reporting of employees and contractors, and withholding and remitting of child support, as required by M.G.L. c. 62C, § 49A, signed and submitted on the form attached to this RFP as Attachment A-3.

(e) Letter of transmittal, signed by an individual authorized to bind the respondent contractually, certifying that the respondent will, if selected to negotiate the contract with the Issuers, be prepared to promptly and actively participate in such negotiations.

(f) Certification that the respondent, if ultimately awarded a contract, will guarantee completion of all work required within due dates or the time periods needed.

3.5 Evaluation of Proposals. The Issuers will utilize an evaluation system, rank the qualified respondents and identify the three most qualified respondents. It is the responsibility of each respondent to provide information, evidence or exhibits that clearly demonstrate the respondent's ability to satisfactorily respond to project requirements and the factors listed on the qualifications forms.

The evaluation process may include verification of references, confirmation of financial information and may include examination of other information as the Issuers deem appropriate. The Issuers will conduct interviews as required by M.G.L. c. 25A, Sec. 11C, and such additional interviews as it may deem necessary to evaluate the respondents. The Issuers may require public presentations by respondents. The Issuers reserves the right to request or obtain additional information about any and all responses.

Proposals shall be evaluated by the Issuers in accordance with Section 9 of this RFP.

Please note that while Issuers anticipate selecting one firm to provide Systems for each of the Premises, Issuers reserve the right to select multiple proposals and respondents based on price proposals evaluations, Proposer's qualifications, experience, capacity to deliver and financial capabilities as determined by the Issuers.

3.6 Submission of Price Proposals.

The **Price Proposal** must include prices and information per Bid Forms as provided in Attachment D. Please note that Issuers require pricing proposals for each of the Town of Lee and the Town of Lenox. Such pricing proposals shall further be provided for each location and consolidated for all locations within each Town. Respondents must all provide a Schedule of Termination Values for all Systems proposed. Such Schedule of Termination Values is provided in Attachment D. Electronic workbooks shall be provided as part of this RFP.

Although Issuers will provide every reasonable form of assistance in terms of site access, the proposer shall be responsible for all project costs including, but not limited to: the furnishing of all materials, services, labor, performance and payment bonds, insurance, and other costs incurred in the performance the contract, signed by an individual authorized to bind the proposer contractually.

In the Price Proposal, proposers shall include both the methodology and cost of any annual energy escalators and shall specifically state whether such escalation factors are tied to specific market indices (and identify those market indices).

Proposers must demonstrate that it has fully incorporated into the offered proposal price all financial benefits realized by the proposer from accelerated depreciation, federal and State tax incentives, local utility incentives, solar renewable energy carve-out credits, ISO-New England forward capacity payments, and others, all as applicable.

Best Price Criteria: The “best” response price will be determined by two factors:

- 1) The greatest total financial return to Issuers over the twenty (20) year period of the agreement. The Issuers are seeking the most beneficial proposal that addresses annual lease payments, discounted electricity pricing or a combination of both that provides the best overall value to Issuers; and
- 2) The highest protection to Issuers against future price risk.

After a composite rating has been assigned for each Non-Price proposal on the basis of the evaluation criteria in Section 9 of this RFP, the Issuers shall then review the Price Proposals and determine the most advantageous proposal, taking into consideration the Non-Price Proposal ratings and the price.

3.6 Award and Contract Execution.

Based upon the results of the evaluation of the Non-Price Proposals and interview process (if applicable), a ranking recommendation will be developed and submitted for approval by the respective governing authorities. Issuers will then review the Price Proposals to determine the economic opportunity offered by each proposer.

The top-ranked proposer(s) from list (considering the non-price and price proposals) will be contacted for negotiation of an EMSA. If an agreement cannot be reached, negotiations with other respondents, in order of their ranking, will be conducted until an agreement can be reached. The Issuers reserve the right to waive any and all informalities and to award the proposal on the basis of the above procedures to the respondent it deems most qualified.

All Proposers will be notified in writing of the decision of the Issuers. The successful proposer will execute an EMSA in the form attached hereto in Attachment E. All proposers should review the EMSA and confer with an attorney prior to submitting a proposal in response to this RFP. **Any changes, objections or comments to Attachment E must be specifically noted in the proposal**

submission or will not be considered during negotiations. Issuers reserve the right to reject any requested changes identified by the proposer if not previously agreed upon during the proposal review and interview process.

If the Issuers and the most qualified respondent are unable, within sixty (60) days following the Issuers notice of commencement of negotiations with a respondent (or such longer period of time as the Issuers may deem appropriate), to negotiate a satisfactory contract with that respondent at a price the Issuers determine to be fair, competitive, and reasonable, the Issuers shall continue in compliance with M.G.L. c. 25A, Sec. 11C.

3.7 **EMSA Requirements.** The proposal must demonstrate the respondent's willingness and ability to comply with the following expected contract requirements:

(a) **Guarantee.** The selected proposer will be required to guarantee that the System will produce the guaranteed annual electricity output in each contract year, as adjusted by the accepted annual system degradation factor. On the first anniversary of the commercial operation date and each anniversary of the commercial operation date thereafter during the Term (and any extension thereof), the guaranteed annual electricity output shall be decreased by the accepted annual system degradation factor. Proposers shall determine the expected annual electricity output and commit to an annual guaranteed electricity output.

M.G.L. c. 25A § 11C requires that methods for monitoring and guaranteeing electricity generation produced by the Systems shall conform to the most recent Performance Measurement and Verification Protocol (IPMVP) and standards established by the Federal Energy Management Program of the U.S. Department of Energy. Proposers shall describe in detail its methodology for monitoring, measuring and verifying electricity generation. Issuers shall require that in the event of an electricity output shortfall in any contract year, the selected proposer shall pay Issuers the retail rate for electricity of the local electric distribution company for each kWh of such verified production shortfall. Issuers acknowledge that the calculation of any production shortfall will be based on the system availability as determined using the then-current annual weather data from the weather station at the Pittsfield Municipal Airport in Pittsfield, MA. Such weather data shall document the availability and duration of the sun during the specific annual guarantee period. Any alternative methods for addressing production shortfalls for Issuers consideration must be provided by Proposers in response to this RFP.

(b) **Insurance.** The selected proposers shall be required to provide Issuers with proof of insurance as follows:

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

- ❑ Commercial general liability insurance (form CG 00 01 or equivalent) in a limit of not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applied per job), and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.
- ❑ Minimum additional \$5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.
- ❑ Professional Liability Insurance, covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.
- ❑ Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 bodily injury per person, \$500,000 bodily injury per accident, and \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.
- ❑ Workers' Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employers' Liability limits of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit.

Additional Insurance Requirements for the Selected Firm:

The selected firm will agree that the Commercial General Liability insurance set forth above shall be primary and non-contributing with respect to any insurance carried by the Issuers or the selected firm's subcontractor(s) and that the selected firm's insurance policy shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance. The insurance shall name the Issuers as additional insured's with coverage at least as broad as the coverage provided to the named insured.

The selected firm will agree that the insurance set forth above shall be written on an occurrence basis, unless the Issuers approve in writing, coverage on a claims-made basis.

Certificates of insurance reasonably acceptable to the Issuers that include insurance coverage's required and specified above shall be delivered to the Issuers promptly after execution of the EMSA. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the project.

The certificates and the insurance policies required will contain a provision that coverage's afforded under the policies will not be canceled, modified or allowed to expire until at least thirty (30) days' prior written notice has been given to the Issuers. The Issuers will accept a 10 day notice for cancellation for non-payment of premium as required by insurance company. In the event that any insurance policy providing coverage's required by the EMSA will expire during the term of the EMSA, the selected firm will, not less than fifteen (15) days prior to the policy's expiration date, deliver to the Issuers certificates of insurance evidencing renewal of such policies.

The selected firm hereby agrees and acknowledges that the failure to provide and continue in force any insurance required in accordance with the terms of the EMSA shall constitute a material breach of the EMSA.

(c) *Prevailing Wages.* To the extent applicable, compliance with Massachusetts "prevailing wage" laws.

(d) *Subcontracting.* Except to the extent contemplated in the proposal and permitted in the contract, the contract will prohibit assignment or subcontracting without the Issuers express prior approval.

(e) *Bonding.* The selected firm will be required (upon execution of the EMSA) to provide the Issuers with 100% payment and performance bonds for this project from a surety company licensed to do business in the Commonwealth and whose name appears on United States Treasury Department Circular 570.

(f) *Indemnification.* The EMSA will require that the selected proposer hold harmless and indemnify the Issuers and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys' fees and costs) brought against any of them arising from the contractor's work or any subcontractor's work under the EMSA.

(g) *Compliance with Laws.* The contract will require compliance with all federal, state and municipal laws, ordinances, rules and/or regulations, including labor laws and laws against employment discrimination.

(h) *Governing Law; Venue.* All EMSAs entered into by the Issuers shall be governed by the Laws of the Commonwealth of Massachusetts. Any disputes shall be resolved within the venue of the Commonwealth of Massachusetts.

(i) *Standard Contract Terms.* Any EMSAs resulting from this RFP shall meet the requirements set forth in M.G.L. c. 25A, § 11C and will include, to the extent required by the Issuers, the Issuers standard contract terms.

4. PURPOSE

The Issuers desire to evaluate sites for solar photovoltaic energy systems and purchase solar-generated electricity for use by the Issuers in buildings and facilities located on properties owned by Issuers. A summary of municipal energy consumption is provided in Attachment C for each the Town of Lee and the Town of Lenox. Issuers seek proposals from entities in the business of designing, financing, installing, owning, operating and maintaining solar power electric generation facilities to finance, install, own, operate and maintain solar power electric generation facilities (the “*System*”) on various sites defined by both the Town of Lee and the Town of Lenox (the “*Project*”). Issuers desire to purchase from the selected proposer all of the electricity generated by the Systems for a period of twenty (20) years (the “*Term*”).

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

The selected respondent will be required to demonstrate prior to execution of the EMSA the suitability of Systems at each location, including but not limited to structural integrity of any roof-mounted systems and environmental/code compliance for all Systems.

In addition, Issuers seek assistance in evaluating additional municipal sites for solar photovoltaic energy systems, either ground-mounted or roof-mounted. Proposers are directed to Attachment B for a description of the primary locations as well as potential additional locations identified by Issuers. Respondents may suggest other possible locations and/or a methodology by which other locations would be added to those locations identified in this RFP and the benefits they believe additional sites would provide to Issuers.

It is Issuers expectation that the System(s) will generate sufficient electric generation that will result in net metering benefits to Issuers over the life of the contract.

5. PROJECT SITE AND EXISTING SITE CONDITIONS

5.1 Premises Description. The Premises are described in Attachment B attached to this RFP.

5.2 Site Conditions. Before submitting a proposal, each respondent will be responsible for obtaining such additional studies and data concerning conditions (surface, subsurface and underground facilities) at the Premises or otherwise, which may affect the proposer's ability to promptly negotiate the contract if selected, or which the proposer otherwise reasonably deems necessary to develop a proposal to undertake the Project in accordance with the terms and conditions of this RFP.

6. SCOPE OF WORK TO BE ADDRESSED

6.1 Key Project Elements. The selected respondent and each Issuer will enter into an EMSA in the form of Attachment E, pursuant to which the selected respondent will: (a) obtain from Issuers the right to install, own, operate and maintain the System on the Premises, and (b) sell electric power generated by the System to Issuers.

The selected respondent will be responsible for designing, financing, operating, owning and maintaining the System, and obtaining all necessary permits and approvals (e.g., building permits).

At the end of the Term, the selected respondent will retain ownership of the System and be required to remove the System, unless Issuers decide to either negotiate a new Contract with the selected respondent or exercise any right of purchase that is included in the Contract. The EMSA will include a requirement for the posting of a financial assurance mechanism to ensure that the System is removed.

The EMSA is a standard performance-based contract involving the generation and purchase of guaranteed quantities of electricity at a specified price. The respondent's proposal must include:

- (a) Expected annual electricity output (kWh/year)*;
- (b) Minimum guaranteed annual electricity output (kWh/year)*;

- (c) Annual system degradation factors;
- (d) Annual energy escalator (electric price increase factor); and
- (e) Schedule of termination values with and without removal costs.

** Proposers are required to use the provided Microsoft Excel Workbooks.*

It is expected that the selected respondent will pursue tax credits and incentives, rebates, and other benefits that are available and/or may become available in the future. The respondent's proposal shall include a plan for the disposition and/or assignment of: (a) any environmental or other attributes (such as RECs, SRECs, greenhouse gas offsets, or forward capacity market payments) that are generated in connection with the operation of the Systems; (b) any tax credits or incentives generated in connection with the operation of the Systems; and (c) any grants or rebates obtained in connection with the installation of the Systems. The proposal shall address how it will allocate any financial impacts on its Price Proposal caused by changes in law.

Proposers shall be required to provide, install, own, operate and maintain metering equipment in accordance with specifications and requirements set forth by the local utility distribution company ("LDC") for the purpose of interconnection and net metering. The selected respondent will be required to obtain at its sole cost all approvals and agreements required for interconnection of the System to the LDC System. The selected respondent shall be required to maintain and test the metering device in accordance with applicable LDC requirements for the purpose of interconnection and net metering.

The generation capacity of the Systems generally should not exceed the expected "base load" electricity consumption requirements of Issuers municipal facilities. To the extent that generation is not coincident with the Issuers load, the proposal must include a plan for the disposition of any power in excess of what will be purchased by Issuers (e.g., net metering, offsets, or sale into the wholesale power market grid).

The respondent's proposal must include a plan to collect energy data at the facilities to assist Issuers in evaluating the performance of the System(s) and to document performance in accordance with the guarantee.

6.2 Role of Issuers. To facilitate the development of the Project, it is expected that the contract will require Issuers to:

- (a) Provide reasonable access to the Premises to obtain data (whether required or reasonably requested by the respondent);

- (b) Grant to the selected respondent sufficient access and occupancy rights to allow the selected respondent to undertake the Project at the Premises;
- (c) Provide access for the installation, maintenance, and ongoing operation of the System;
- (d) To the extent reasonable and appropriate, provide information to the selected respondent to assist in securing any permits for the Project, including but not limited to local board approvals; and
- (e) Cooperate with the selected respondent to the extent reasonable and appropriate on remaining issues with respect to access, construction and interconnection.

7. PROPOSAL REQUIREMENTS

Contents must include:

7.1 Transmittal Letter. Each proposer's response should include a transmittal letter signed by a party authorized to make a formal proposal on behalf of the proposer. The letter shall clearly indicate that the proposer has carefully read all the provisions in the RFP and should include a brief overview of the respondent's proposal. Transmittal letters must also acknowledge receipt and understanding of any Addenda associated with the Project.

7.2 Qualifications.

Company Profile:

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

Licensing:

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

Insurance:

- (a) Provide evidence of the insurance limits held by firm demonstrating respondent's ability to comply with the insurance requirements set forth in Section 3.7 (b) of this RFP.
- (b) Financially viable insurance rating.

Project Team:

- (a) Team leader identification for the entire proposal, including full contact information, office location and key qualifications and professional credentials.
- (b) Identification of each business entity, person or firm involved in the proposal and their role (design, installation, permitting, equipment supply by component, operations and maintenance, etc.)
- (c) Resumes of personnel directly involved with the development of the proposed Systems. Provide evidence of NABCEP-certified INSTALLER, Professional Engineer (P.E.), and Master Electrician.

Safety:

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

Capital Finance Structure:

- (a) Provide a description of the relevant financing structure for the proposed Project. Detail any unique features that the firm's model offers in comparison to traditional third-party financing structures.
- (b) Provide a list of five (5) solar PV systems installed by the firm in the Northeast and operating under a power purchase agreement, including the rated capacity in kW per project, length of contract, project name and description, and term remaining on contract.
- (c) Provide evidence that the firm has the ability to secure financing for the total installed cost of the System proposed in response to this RFP. This should be in the form of a commitment letter from the anticipated funding source.

7.3 Solar Project Experience

- (a) List the number, size (in kW DC) and location of PV projects completed in Massachusetts or the Northeast within the past 3 years over 250 kW in size.
- (b) List the total capacity (in kW DC) of operational solar PV installations completed by the firm to date.

- (c) Discuss firm's approach and success in incorporating "renewable energy" into educational curriculum.
- (d) List the total capacity (in kW DC) of solar PV systems installed in the Northeast via the following methods:
 - Roof-mounted systems
 - Carport/Shade Structure mounted systems
 - Ground-mounted systems
- (e) List firm's direct experience with installed solar PV module technologies including brand, module rating and technology type (crystalline, thin-film, etc.). If the firm has any proprietary and/or exclusive corporate affiliation to any materials, equipment, or manufacturers related to the System, please state those relationships.
- (f) Provide a listing of all Massachusetts solar PV projects implemented under M.G.L. c. 25A § 11I or 11C and identify whether those projects were contracted under a power purchase agreement/lease agreement or a design-build energy management services agreement.
- (g) Discuss in detail Respondents direct experience interconnecting into LDC distribution system.

7.4 References

- (a) Describe currently operating non-residential grid-connected PV systems greater than 250 kW DC that the firm installed and commissioned within the past three (3) years. A minimum of 5 completed projects must be listed. For each, provide the following information:
 - System Size (kW DC).
 - Host Customer's and/or Owner's name with contact person's name, email, address, phone number.
 - Location.
 - Date completed
 - Indicate if the installation was for multiple sites.
 - Any other installation-specific information that may be relevant.
- (b) Briefly describe any currently contracted yet incomplete projects including project size (in kW DC), customer name and contact, and projected completion date.
- (c) List at least one example of a large (at least 100 kW) installation within 100 miles of Lee, MA that could be visited for a representative sample of the firm's work.
- (d) DCAM certification in energy management or electrical categories.

7.5 Proposed Solar PV System for Each of the Premises

- (a) System Components: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at a minimum modules, inverters and mounting system). Specification sheets for any proposed technologies are encouraged. Proposals shall list the specific system components for each of the Premises.
- (b) Design: Include Preliminary Drawings for each of the Premises for the proposed solution that include at a minimum:
 - System size (in kW DC and kW AC)
 - List of all proposed equipment including mounting system
 - Location of modules (including tilt)
 - Location of inverters
 - Discussion whether the System sizing and configuration is based on a structural analysis or engineering study by a licensed engineer or based on a calculated load analysis.
 - Any other site-specific information that will aid in overall evaluation.
- (c) Structural Issues: Proposers must discuss for each of the Premises its process for handling snow accumulation on roof-mounted systems. Specifically, Issuers require a detailed explanation of roles and responsibilities assessing snow loads and for snow removal.
- (d) Schedule: Include a Preliminary Project Implementation Schedule that accounts for milestones in the Design, Construction and Closeout Stages. Milestones should include (at a minimum):
 - Award & Contract Negotiation
 - Design Period
 - Permitting
 - Installation
 - LDC Interconnection
 - System Commissioning (Energizing)
 - Delivery of Closeout Documentation
- (e) Interconnection: Please describe Respondent's approach to interconnecting the system to Western Massachusetts Electric Company and National Grid distribution systems. Respondent shall be required to complete all requirements of the specific interconnection process according to tariff requirements.

7.6 System Performance Monitoring, Warranty and Service (O&M) for Each of the Premises

- (a) Monitoring Solution: Indicate how the firm will provide system performance monitoring via a data acquisition system (DAS). Provide a detailed description of the DAS system and provide a detailed description of the end-user interface.
- (b) Warranties: Describe any warranties associated with the install, including full system coverage and/or warranties associated with individual components. Discuss whether such warranties pass to Issuers upon transfer of ownership.
- (c) Operations & Maintenance Services: The Proposer will provide Operation & Maintenance (O&M) services for the full term of the Contract.
 - Describe the proposed O&M procedures for the System, detailing duties performed and if the EMSA will be maintained by the selected respondent or a third-party provider.
 - Briefly describe the firm’s experience providing such services for similar installations and name the key personnel in charge of handling O&M services.
- (d) Provide a list of systems that are currently under O&M contract with the firm, including the number of MWs per project, length of contract, ownership relationship and project name.

8. PRELIMINARY PROJECT SCHEDULE

Following are key milestones for the Project. Expected dates for their completion should be provided in the response to this RFP. Proposers are encouraged to provide sufficient.

Milestone	Milestone Date (to be provided by proposer)
Initial Design and Structural/Engineering Analysis	
Permitting	
Completion of Balance of System Design	
Secure System Equipment and Assets	
Substantial Completion	

LDC Interconnection	
System Commissioning/Commercial Operation	
Delivery of Closeout Documentation	

9. MINIMUM EVALUATION CRITERIA

At a minimum, respondents shall meet the following requirements:

9.1 Minimum Criteria Requirements

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

- (a) Bond Capability - Proposers shall provide evidence of bond capability of at least the value of the construction from a surety company licensed to do business in the Commonwealth and whose name appears on the U.S. Treasury Department Circular 570. Please provide the cost of fee Proposer will include in its electricity pricing for the performance and payment bonds as a percentage of the construction costs.
- (b) Form of legal entity and year entity was established. List any other legal names of the firm.
- (c) Describe any changes in ownership status over the past five (5) years.
- (d) List ultimate parent company, if applicable.
- (e) Financial Statements – Please submit a detailed financial report prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the firm. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding three years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10-K along with, as applicable, detailed unaudited statements for the submitting firm. Non-public firms may attach either unaudited financial statements or copies of tax forms and schedule that are filed with the Internal Revenue Service where applicable.
- (f) Lawsuits and Disputes – Discuss whether your firm has ever been involved in a lawsuit or dispute regarding a contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit(s) or

litigation. Further, please discuss whether your firm has been barred from providing performance based energy services or other services in any states.

- (g) Minimum Prior Experience - Proposers must have successfully completed at least 2 ground-mounted solar PV installations within the past two (2) years at landfills sized at a minimum of 250 kW.

Criteria	Supplied
Minimum Requirements	Y/N
Proposal Completeness and Adherence to Format	Y/N
Department of Capital Asset Management (DCAM) Certificate of Eligibility [1]	Y/N
Department of Capital Asset Management (DCAM) Update Statement [1]	Y/N
Debarment Statement	Y/N
Evidence of Bond Capability	Y/N
Form of Legal Entity; Other Entity Names	Y/N
Changes in Ownership	Y/N
Parent Company	Y/N
Federal Tax Identification Number	Y/N
Financial Statements	Y/N
Lawsuits and Disputes	Y/N
Minimum Prior Experience	Y/N

[1] DCAM certification and documentation is required for all Prime Proposers.

9.2 General Criteria Requirements

Proposals that meet the above Minimum Requirements will be evaluated against the criteria categories listed below. Proposers are encouraged to reference Section 7 of this RFP for specific proposal requirements that form the basis of Issuers evaluation.

- (a) Approach and Schedule - The proposal shall include an explanation of how the respondent will approach the various tasks, including scheduling, methods and sources. Proposals should, among other things, describe the quality of the products proposed, a methodology for determining guaranteed energy savings (meaning electricity production), and a proposed timeframe for performance of the contract.
- (b) Respondent Qualifications and Experience - Specialized experience is required in a series of work areas. Qualifications must clearly demonstrate full knowledge, understanding, and experience in the methods, techniques and

guidelines required for the performance of the required work. All elements within this factor are of equal importance.

- (c) Capacity and capability of the respondent to perform the work on schedule and be responsive Issuers concerns should be clear.
- (d) Personnel Qualifications and Availability - Specialized experience is required of the proposed project personnel to undertake the work assignments. Qualifications must clearly demonstrate the capability, academic background, training, certifications and experience of the proposed personnel (not just of the respondent). The availability of the proposed staff is also of crucial importance and must be demonstrated. Specific project responsibility of staff to be assigned to the Projects must be included, as well as professional background and caliber of previous experience of key persons and of each consultant to be assigned to the Project. An office location for each staff member must be provided.

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

- (e) Performance Record of Respondent - A list of references of at least three (3) recent solar PV projects sized no less than 100 kW. References must include telephone number and affiliation, as well as a brief explanation of referenced work to permit comparisons with the nature, magnitude and complexity of the Project. The respondent shall indicate the individuals on staff who had responsibility for each project and whether or not these people are still employed by the respondent.
- (f) Project Understanding - The respondent must demonstrate a comprehension of the role and function of this contract in meeting the needs of Issuers. In addition to the understanding of the scope and approach, the respondent must demonstrate the following, which will be considered in the selection:
 - Knowledge of current issues and state-of-the-art technologies.
 - Experience demonstrated on similar projects.
 - Demonstrated expertise and ability for rapid turnaround and flexibility on short-term projects.
 - Capability to effectively direct multiple simultaneous work assignments.

- Ability to integrate and utilize interdisciplinary study teams effectively on assignments requiring a variety of skills and expertise from in-house resources.
 - Ability to provide the necessary skills and expertise from in-house resources.
 - Demonstrated understanding of structural requirements and environmental conditions and issues.
- (g) Local Knowledge/Experience - The respondent must demonstrate knowledge of the locality as evidenced by prior work experience in Massachusetts and/or the New England region.
- (h) Relevant Specific Knowledge/Experience - Landfill closure, permitting and redevelopment experience. Given that several of the selected sites are within municipal landfill sites, the respondent must clearly demonstrate experience in permitting and redevelopment with respect to environmentally complex sites, including landfills. Issuers are considering other potential sites for ground-mounted or roof-mounted solar in each of the Towns of Lee and Lenox. The respondent should clearly demonstrate experience in identifying municipal sites for solar energy projects and conducting feasibility studies.
- (i) Energy and Environmental Experience - Energy and environmental policy experience. Issuers believes that expert knowledge of relevant energy and environmental laws and regulations (including the Massachusetts Green Communities Act), and experience with implementation of programs related to such laws and regulations, will facilitate the appropriate and efficient planning, structuring, financing and implementation of the Project. The respondent should demonstrate such knowledge and experience.
- (j) Leveraging Project Educational Value - The Issuers are interested in using the Project as an educational tool for schoolchildren and/or community groups. The respondent must demonstrate its experience and explain its approach with respect to leveraging the educational value of solar energy systems.
- (k) Ability to Contribute to Local Economic Development - The Issuers believe that solar energy development can contribute to economic development and job creation/job retention in the Berkshire County area. The respondent must demonstrate its willingness to contribute to the local economy including the use of local businesses and workers.

Points will be allocated based on the Proposer’s response to the specific information requested in this RFP. The following point system will be applied to the responses and graded based on a scale of unacceptable to superior. The information provided in the non-price and pricing proposals combined with the information provided from references will form the basis of the Issuers evaluation.

The follow criteria will be used to evaluate the respondent’s non price proposal:

	Available Points	Rating	Points Received
Approach and Schedule	5		
Respondent’s Qualifications and Experience	15		
Personnel Qualifications and Availability	15		
Performance Record of Respondent	20		
Project Understanding	10		
Local Knowledge and Experience	5		
Relevant Specific Knowledge and Experience	15		
Energy and Environmental Experience	5		
Leveraging Project Educational Value	5		
Ability to Contribution to Local Economic Development	5		
Total	100		

The above criteria will be weighted using the grading system below:

Weighting	Description
0%	Unacceptable - The Proposer did not address the criterion.
20-40%	Not Advantageous - The Proposer addressed the criterion minimally. The detail was insufficient and/or little understanding for the subject was exhibited.
41-60%	Advantageous - The Proposer addressed the criterion adequately ranging from some capability to basic capability for the subject. Information provided was either inconsistent or was missing critical detail where needed.
61-80%	Highly Advantageous - The Proposer addressed the criterion well, had a thorough understanding of the subject and provided a solid presentation of the information requested in the category and its subsections.
100%	Superior - The Proposer addressed the criterion thoroughly, exhibited a superior understanding of the topic and the information supplied demonstrated an outstanding capability in this area.

10. ATTACHMENTS

Attachment A – Proposal Forms

- Attachment A-1 – Respondent Information Form
- Attachment A-2 – Certificate of Non-Collusion
- Attachment A-3 – Attestation Regarding Filing of Tax Returns

Attachment B – Description of Premises

- Attachment B-1 – Town of Lee, MA
- Attachment B-2 – Town of Lenox, MA

Attachment C – Municipal Energy Usage Data

- Attachment C-1 – Town of Lee, MA
- Attachment C-2 – Town of Lenox, MA

Attachment D – Pricing Bid Forms

Please use Microsoft Excel workbooks provided separately

Attachment E – Draft Energy Management Services Contract

**ATTACHMENT A-1
RESPONDENT INFORMATION FORM**

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

Signature: _____

Name: _____

Title: _____

Respondent Information

Name of Respondent: _____

Address: _____

Name of Primary Contact: _____

Title of Primary Contact: _____

Primary Contact Phone Number: _____

Primary Contact Fax Number: _____

Primary Contact Email Address: _____

Addenda Acknowledgement: _____

**ATTACHMENT A-2
CERTIFICATE OF NON-COLLUSION**

The undersigned certifies, under penalties of perjury, that this statement of qualifications has been made and submitted in good faith and without collusion or fraud with any other person.

As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

(Signature)

(Name of person signing qualifications)

(Name of business)

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

Pursuant to M.G.L. c. 62C, § 49A, I certify under the penalties of perjury that the undersigned respondent, to the best of his/her knowledge and belief, has filed all state tax returns and paid all state taxes required under law.

Social Security Number or
Federal Identification Number

Signature of Individual or Officer

Date

Name of Corporation

**ATTACHMENT B-1
DESCRIPTION OF PREMISES**

TOWN OF LEE, MA

The sites identified by the Town of Lee, MA for the installation of solar PV systems include:

PRIMARY LOCATIONS

1. Closed Landfill, Woodland Road, Ground-mounted Potential
Closed in the mid 1990s, the landfill contains approximately 9 acres. There are about 3 acres of flat surface at the top. A Northeast Utilities' electrical substation is located on Woodland Road across from the landfill. Reservation: Integrity of the landfill cap.
2. Water Treatment Plant, 310 Reservoir Road, Ground-mounted Potential
A photovoltaic array is located on the roof of the plant and a ground-mounted array was designed for but not installed on the adjacent slope due funding constraints. The slope design included 108 panels capable of producing 30 kW.

SECONDARY LOCATIONS

1. Lee Elementary School, 310 Greylock Street, Roof-mounted Potential
Built in 2001, the school is a 74,690 square foot, two story building constructed of masonry block and brick veneer. The roof is flat with metal decking supported by steel trusses and beams. The roof covering is a membrane over rigid insulation.
Reservations: Adequacy of structure to support the weight of the installation, membrane integrity and the cost to replace the membrane.
2. Lee Middle and High School, 310 Greylock Street, Roof-mounted potential
Built in 1961 and completely renovated and expanded in 2002, the school is a 145,124 square foot, two story building constructed of masonry block and brick veneer. Most of the roofs are flat with metal decking supported by steel trusses and beams. There is a slope roof over the gym constructed of wood decking supported by wood laminated beams. The flat roofs are covered by membrane over rigid insulation and the pitched roof is covered by asphalt shingles. Reservations: Adequacy of structure to support the weight of the installation, membrane/shingle integrity and the cost to replace the membrane/shingles.

3. Wastewater Treatment Plant, 385 Pleasant Street, Ground-mounted Potential
An open field in front of the plant contains approximately 2 acres. A Northeast Utilities' electrical substation is located on an abutting property. Reservation: Field is heavily used for youth soccer. A comparable replacement field would have to be developed.

ADDITIONAL POTENTIAL LOCATIONS

1. Others as identified by Proposer

SUPPLEMENTAL INFORMATION

1. Orthophotograph of Lee Landfill, Tighe & Bond, April 2010
2. Clean Energy Audit for Lee Elementary School and Middle-High School, CET &
3. Precision Decisions, February 2009
4. Site Plans – To be provided
5. Environmental Permits – To be provided as necessary and available
6. Landfill End-Use Reports - To be provided as necessary and available
7. Structural Reports - To be provided as necessary and available

**ATTACHMENT B-1
DESCRIPTION OF PREMISES**

TOWN OF LENOX, MA

The sites identified by the Town of Lenox, MA for the installation of solar PV systems include:

PRIMARY LOCATIONS

1. Capped Landfill, End of Willow Creek Road, Lenox Ground-mounted Potential

Situated on 5.5+ acre site, this capped landfill was closed in 1981 and covered with a 2-foot soil cover system in conformance with the regulations in effect at the time. This site is located in Western Massachusetts Electric Company (“WMECO”) service territory and a WMECO transformer abuts the property.

2. Wastewater Treatment Plant, 239 Crystal Street, Lenox, Ground-mounted Potential

This facility has available 3-4 acre area for ground-mounted PV system. This site is located in Western Massachusetts Electric Company (“WMECO”) service territory.

SECONDARY LOCATIONS

1. Lenox Memorial Middle and High School, 197 East Street, Lenox, MA, Roof-mounted potential

The 111,200 square foot building, located in NationalGrid service territory, was built in 1968 and renovated in 1999.

2. Morris Elementary School, 129 West Street, Lenox, Roof-mounted potential

The 59,000 square foot building, located in NationalGrid territory was built in 1960 and renovated in 1999.

ADDITIONAL POTENTIAL LOCATIONS

1. Upper and Lower Root Reservoir Dams, 471 Reservoir Road, Lenox

Two dams with south facing slopes for ground-mounted PV system (need to review ability to place systems on the slope of the dams); treatment plant at base of Lower Root Reservoir is connected to Western Massachusetts Electric Company grid.

2. Others as identified by Proposer

SUPPLEMENTAL INFORMATION

1. Site Plans - To be provided as necessary and available
2. Environmental Permits - To be provided as necessary and available
3. Landfill End-Use Reports - To be provided as necessary and available
4. Structural Reports - To be provided as necessary and available

ATTACHMENT C-1
MUNICIPAL ENERGY USAGE DATA
TOWN OF LEE, MA

Department	Building	Address	Building Size Sq. Ft.	Account #	FY 2009 kWh Usage	FY 2010 kWh Usage
Ambulance	Ambulance	177 Main St.	4,501	703502021	40,043	34,568
Fire	Central Station	189 Main St.	5,696	782391049	21,093	20,049
Fire	South Lee Station	Main St., S. Lee 01260	2,924	568561062	14,356	14,038
Public Works	Cemetary	170 Greylock St.		352661037	508	508
Public Works	Playground	Housatonic St.		622091031	573	486
Public Works	Quonset Hut	47 Railroad St.	3,200	520471020	982	1,564
Public Works	Streetlights	59 Main St.		91502021	24,316	24,700
Public Works	Streetlights	57 Park St.		124634080	10,046	12,397
Public Works	Streetlights	(No address)		144381035	128,778	164,231
Public Works	Streetlights	179 Main St.		302502059	23,839	24,264
Public Works	Streetlights	32 Main St.		344502067	26,704	26,579
Public Works	Streetlights	1 Park St.		406634097	4,091	5,149
Public Works	Streetlights	1 Canal St.		762502052	6,013	5,425
Public Works	Streetlights	100 Housatonic St.		871634044	6,930	6,125
Public Works	Streetlights	145 Housatonic St.		971634043	5,496	5,566
School	Lee ES	310 Greylock St.	220,000	813602018	327,250	318,814
School	Lee MHS	300 Greylock St.	125,800	804661007	654,711	583,987
Library	Library	100 Main St.	7,498	213391048	78,880	75,432
Town Government	Airoldi Garage	47 Railroad St.	8,280	48391080	29,050	29,975
Town Government	Airoldi Building	47 Railroad St.	7,956	768291056	28,150	23,608
Town Government	Memorial Hall	32 Main St.	10,040	403391048	97,435	93,619
Wastewater	Pump Stations	565 Laurel St.		201202058	4,260	5,369
Wastewater	Pump Stations	Pleasant St.		481791069	33,185	34,297
Wastewater	Pump Stations	Pleasant St.		496791088	15,280	14,438
Wastewater	Pump Stations	1280 Main St., S. Lee		753791037	25,221	25,469
Wastewater	Sewer Treatment Plant	379 Pleasant St.	13,665	925934077	1,106,640	1,116,000
Water	Pump Stations	140 Fairview St.		106302052	289	357
Water	Pump Stations	250 Reservoir Rd.		256502048	5,233	3,335
Water	Pump Stations	300 Reservoir Rd.		398391003	7,597	3,488
Water	Pump Stations	Pleasant St.		620302018	5,084	4,072
Water	Pump Stations	45 Reservoir Rd.		206502064	7,890	8,960
Water	Water Treatment Plant	310 Reservoir Rd.	4,312	545502056	218,960	206,910
Total					2,958,883	2,893,779

ATTACHMENT C-2

MUNICIPAL ENERGY USAGE DATA

TOWN OF LENOX, MA

LOCATION	BUILDING SIZE GROSS SQUARE FEET	ANNUAL CONSUMPTION (kWh)	ANNUAL CONSUMPTION (kWh)	2010 CONSUMPTION BY PROVIDER (kWh)	
		2009	2010	National Grid	WMECO
Lenox Memorial Middle and High School	111,200	630,600	687,000	687,000	NA
Lenox Morris Elementary School	59,000	452,000	440,640	440,640	NA
Waste Water Treatment Plant	1260	328,896	389,760	No Information Provided	
Waste Water Pump Stations	700	607,725	640,869	165,068	475,801
Water Treatment Plant	2500	410,773	418,804	5,090	413,714
Street Lights		138,744	138,114	120,838	17,276
Town Hall	11,948	150,382	157,285	157,285	
Community Center	12,381	40,800	44,000	44,000	
Fire Stations	Central, 3541 Lenox Dale, 1911 New Lenox, 2592	46,165	45,592	23,880 7,096 NA	NA NA 14,616
TOTALS		2,806,085	2,962,064	1,650,897	921,407

ATTACHMENT D

PRICING BID FORMS

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

1. Pricing for each location for the Town of Lee
2. Combined pricing for all locations for the Town of Lee
3. Schedule of Termination Values for the Town of Lee
4. Pricing for each location for the Town of Lenox
5. Combined pricing for all locations for the Town of Lenox
6. Schedule of Termination Values for the Town of Lenox

Proposers shall provide pricing for Primary and Secondary Locations. Optional proposals are encouraged for the Additional Locations identified by Issuers and other locations identified by Proposer.

TOWN OF LEE, MA

SUMMARY PRICING FOR ALL SYSTEMS

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 1 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 2 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 3 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 4 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 5 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 6 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LEE, MA

PRICING FOR SYSTEM 7 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.00000		\$0.000
2			\$0.00000		\$0.000
3			\$0.00000		\$0.000
4			\$0.00000		\$0.000
5			\$0.00000		\$0.000
6			\$0.00000		\$0.000
7			\$0.00000		\$0.000
8			\$0.00000		\$0.000
9			\$0.00000		\$0.000
10			\$0.00000		\$0.000
11			\$0.00000		\$0.000
12			\$0.00000		\$0.000
13			\$0.00000		\$0.000
14			\$0.00000		\$0.000
15			\$0.00000		\$0.000
16			\$0.00000		\$0.000
17			\$0.00000		\$0.000
18			\$0.00000		\$0.000
19			\$0.00000		\$0.000
20			\$0.00000		\$0.000

TOWN OF LEE, MA

Early Termination Occurs in Year:	Early Termination Fee (including costs of removal)	Early Termination Fee (excluding costs of removal)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
At expiration	\$0	\$1

TOWN OF LENOX, MA

SUMMARY PRICING FOR ALL SYSTEMS

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 1 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 2 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 3 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 4 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 5 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 6 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.0000		\$0.00
2			\$0.0000		\$0.00
3			\$0.0000		\$0.00
4			\$0.0000		\$0.00
5			\$0.0000		\$0.00
6			\$0.0000		\$0.00
7			\$0.0000		\$0.00
8			\$0.0000		\$0.00
9			\$0.0000		\$0.00
10			\$0.0000		\$0.00
11			\$0.0000		\$0.00
12			\$0.0000		\$0.00
13			\$0.0000		\$0.00
14			\$0.0000		\$0.00
15			\$0.0000		\$0.00
16			\$0.0000		\$0.00
17			\$0.0000		\$0.00
18			\$0.0000		\$0.00
19			\$0.0000		\$0.00
20			\$0.0000		\$0.00

TOWN OF LENOX, MA

PRICING FOR SYSTEM 7 LOCATED AT: _____

(Input in gray shaded areas only)

Year	Unit Price (\$/kWh)	Escalation Rate (%)	Extended Price (\$/kWh)	Guaranteed Minimum Output (kWh/yr)	Annual Cost (\$)
1			\$0.00000		\$0.000
2			\$0.00000		\$0.000
3			\$0.00000		\$0.000
4			\$0.00000		\$0.000
5			\$0.00000		\$0.000
6			\$0.00000		\$0.000
7			\$0.00000		\$0.000
8			\$0.00000		\$0.000
9			\$0.00000		\$0.000
10			\$0.00000		\$0.000
11			\$0.00000		\$0.000
12			\$0.00000		\$0.000
13			\$0.00000		\$0.000
14			\$0.00000		\$0.000
15			\$0.00000		\$0.000
16			\$0.00000		\$0.000
17			\$0.00000		\$0.000
18			\$0.00000		\$0.000
19			\$0.00000		\$0.000
20			\$0.00000		\$0.000

TOWN OF LENOX, MA

Early Termination Occurs in Year:	Early Termination Fee (including costs of removal)	Early Termination Fee (excluding costs of removal)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
At expiration	\$0	\$1

ATTACHMENT E

ENERGY MANAGEMENT SERVICES CONTRACT (EMSA”)

ENERGY MANAGEMENT SERVICES CONTRACT

THIS ENERGY MANAGEMENT SERVICES CONTRACT (“*Agreement*”) is made and entered into as of this ___ day of _____ (the “*Effective Date*”), by and between _____, a _____ of the Commonwealth of Massachusetts (“*User*”) and _____, a _____ corporation (“*Owner*”). User and Owner are sometimes hereinafter referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, User desires to purchase solar-generated electricity for use by User in one or more buildings located on the property of the User (the “*Premises*”), all as set forth in Exhibit A attached hereto;

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

WHEREAS, Owner proposes to finance, install, own, operate and maintain solar energy facilities (the “*Systems*”) on the Premises, as more particularly set forth in Exhibit B attached hereto, on the Site:

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

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

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

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

ARTICLE 1: DEFINED TERMS; RULES OF INTERPRETATION

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

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

“*Agreement*” means this Energy Management Services Contract, including all Exhibits and attachments hereto.

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

“*Applicable Legal Requirements*” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Premises or the System, or any part thereof or to any condition or use thereof, and all licenses, permits and other governmental consents which are or may be required for the use and occupancy of the Premises for the installation, operation, maintenance and removal of the System.

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

“*Bankrupt*” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the

appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to its which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“***Business Day***” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“***Commercial Operation***” means that the System is ready for regular, daily operation, has been connected to the Premises’ electrical system, has undergone testing as provided herein, has been accepted by User and (to the extent required, the LDC), is in compliance with Applicable Legal Requirements in all respects, and is capable of producing Electricity.

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

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

“***Construction Commencement Date***” means the date of commencement of actual preparation or construction activities on the Premises in connection with the installation of the System.

“***Costs***” means (i) all reasonable attorneys’ 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 System from the Premises; provided that in the case of clauses (i) and (ii), the relevant Party uses commercially reasonable effort to mitigate such Costs.

“***Decommissioning Assurance***” means adequate financial assurance, in a form reasonably satisfactory to User and in the amount set forth in Exhibit C hereto that is established and thereafter maintained by Owner upon and after the Commercial Operation Date, to fully cover the cost of decommissioning the System and restoring the Premises as specified in the SLP.

“***Delivery Point***” means the agreed location or locations on the Premises where Electricity is to be delivered and received under this Agreement, as further set forth in Exhibit A attached hereto.

“***Early Termination Date***” shall have the meaning ascribed to it in Section 8.2.

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

“***Electricity***” means the actual and verifiable amount of electricity generated by the Systems and delivered to User at the Delivery Point for use by User on the Premises, as metered in whole kilowatt-hours (kWh) at the Metering Device, and that conforms to the applicable LDC and/or authoritative regulatory body standards. The Electricity delivered to User at the Delivery Point shall be deemed to be equal to the electric energy measured at the Metering Device; actual energy losses between the Metering Device and the Delivery Point shall not affect the Electricity.

“***Electricity Price***” shall mean the amount paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto.

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

“***Environmental Attributes***” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) financial based incentives under any federal or State initiatives, (ii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iii) Solar Renewable Energy Credits or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iv) tax credits, incentives or depreciation allowances established under any federal or State law, and (v) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Electricity generated by the System during the Term and in which Owner has good and valid title.

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

“***Excess Electricity***” means any Electricity produced by the System in excess of the instantaneous usage requirements of User.

“***Force Majeure***” means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of the Claiming Party, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) User’s inability to economically use Electricity purchased hereunder, or (ii) Owner’s ability to sell Electricity at a price greater than the Electricity Price under this Agreement.

“***Governmental Authority***” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to User), and any agency, department, commission, board, bureau, 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, licenses, 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 Electricity Output***” means the minimum amount of electricity that is guaranteed by the Owner to be generated by the System in a Contract Year, as set forth in Exhibit D.

“***Hazardous Materials***” 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 who is a member of a national accounting, engineering or energy consulting firm qualified by education, certification, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to, Owner, any Affiliate of Owner, or User.

“**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 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) the maximum rate permitted by Applicable Legal Requirements. In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by User and reasonably acceptable to Owner. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

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

“**LDC Commodity Rate**” shall mean the commodity rate charged by the LDC for Electricity in the municipality in which User is located.

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

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

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

“**Maximum Electricity Price**” means the maximum Electricity Price, paid by User to Owner for each kWh of Electricity sold by Owner to User pursuant to this Agreement, as set forth in Exhibit C attached hereto.

“**Metering Device**” means any and all utility revenue quality meters installed by Owner at or before the Delivery Point necessary or appropriate for the registration, recording, and transmission of information regarding the amount of Electricity generated by the System and delivered to the Delivery Point for use by User or otherwise for delivery into the LDC System.

“**MTC**” means the Massachusetts Technology Collaborative.

“**Net Metering**” shall have the meaning set forth in M.G.L. c.164, s.138 and 220 CMR 11.04.

“**Net Metering Credit**” shall mean the applicable credit paid to an eligible Class I, Class II, Class III, or Neighborhood net metering facility, as the case may be, as set forth in M.G.L. c.164, s.138-140.

“**Outside Construction Commencement Date**” means [_____] days after the Effective Date.

“**Outside Commercial Operation Date**” means the later of (i) [_____] days after the Construction Commencement Date, or (ii) [_____] days after the Effective Date.

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

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

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

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

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

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

“**SLP**” means the lease for the use of the Premises granted by User to Owner, the provisions of which are set forth in Exhibit E attached hereto.

“**SPPP**” means the solar power purchase provisions set forth in Exhibit C attached hereto.

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

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

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

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

“**Termination Date**” means the earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Agreement as the result of an Event of Default, and (iii) the date of termination pursuant to Sections 7.1(d) (i) or 7.3 herein.

“**Termination Payment**” means an amount payable by a Party to the other Party in the event of termination of this Agreement, as set forth in Exhibit F attached hereto.

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

ARTICLE 2: TERM AND TERMINATION

2.1 Term. The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date. Notwithstanding the foregoing, the User shall have the right to terminate the Agreement in accordance with this Article.

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

2.2 Termination.

(a) Termination for Cause. For the purpose herein, Events of Default as defined in Section 8.1 of this Agreement shall also be defined as events of Termination for Cause and if either Party defaults and fails to cure such default within the time period specified in Section 8.1, then the non-defaulting Party shall have the right to terminate this Agreement by giving written notice to the defaulting Party of such termination and specifying the effective date thereof, said written notice to be given at least ten (10) days before the effective date of such termination. Notwithstanding the above, the defaulting Party shall not be relieved of liability to the non-defaulting Party for damages sustained by the defaulting Party for personal injury, property damage or otherwise by virtue of any termination of this Agreement, and, if non-defaulting Party is the USER, the Customer may withhold any payments to the OWNER for the purpose of a set-off until such time as the exact amount of damages to the USER from the OWNER is determined.

(b) Termination for the Convenience of the USER. Seventy two (72) months after the acceptance of the System, the USER may terminate this Agreement without cause, by written notice from the USER to the OWNER. Upon receipt of written notice, the Agreement will terminate at the end of the calendar year, or such shorter period as defined in the notice of termination, and the USER will compensate the OWNER in accordance with the Termination Payment Schedule. Upon Termination for the Convenience of the User, the USER shall exercise its Option to Purchase the System and shall compensate OWNER in accordance with the Termination Payment Schedule. USER shall provide OWNER one hundred eighty (180) days written notice to terminate this Agreement, effective the end of the calendar year. User shall pay to Owner the appropriate Termination Payment as set forth on Exhibit F, as well as having the right to elect to purchase the System at a price set forth as Purchase Option, as provided in Exhibit F. Notwithstanding the above, OWNER shall not be relieved of liability to the USER for damages sustained by the USER for personal injury, property damage or otherwise by virtue of any termination of this Agreement, and the USER may withhold any payments to the OWNER for the purpose of a set-off until such time as the exact amount of damages to the USER from the OWNER is determined.

(c) Termination for the Convenience of the OWNER. The OWNER may terminate this Agreement without cause upon sixty (60) calendar day's written notice. In this event, the USER is obligated to compensate the OWNER for all services up through the termination date, or such shorter period as defined in the notice of termination. In the event of termination or suspension for convenience, neither Party shall have the right to recover indirect, consequential, incidental, lost opportunity or lost profit damages.

2.3 Achievement of Commercial Operation. Owner shall commence construction of the System by the Outside Construction Commencement Date, and achieve Commercial Operation of the System by the Outside Commercial Operation Date (the

“Milestone Dates”).

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

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

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

3.3 Construction, Maintenance, and Monitoring of System by Owner. Owner shall, at its sole cost and expense, (i) construct, operate, and maintain the Systems in accordance with Applicable Legal Requirements, in good condition and repair in accordance with applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer’s warranties, instruction and specifications, applicable requirements of the insurance policies maintained by User (copies of which to be provided to Owner) or Owner with respect to the System, and the terms of this Agreement, all as further set forth in Exhibits B, C, D and E attached hereto, and (ii) monitor the System performance to ensure that any System malfunction causing a loss of Electricity will be discovered and rectified in accordance with industry standards.

3.4 Operations Manual; Training. Owner shall deliver to User an operations, maintenance and parts manual covering the System. In addition, Owner will train User’s representative(s) on business-as-usual maintenance and monitoring operations of the System and on emergency preparedness and response. Notwithstanding the foregoing, User shall have no right to perform any maintenance or repair on the System without Owner’s prior written consent, except in the case of an emergency where immediate action on the part of User is reasonably necessary for safety reasons.

3.5 Contingencies to Commence Construction. The Owner’s obligation to construct and operate the System and to otherwise perform its obligations under this Agreement are conditioned on the following: (i) the successful procurement of all permits, contracts, agreements and equipment required for the installation of the System; (ii) the approval by any necessary Governmental Authority for installation, operation of the System and sale and delivery of Electricity to User; and (iii) the approval and execution of all agreements required for the interconnection of the System with the LDC. Owner shall assume full responsibility and costs to secure all necessary permits, contracts, agreements, equipment and approvals by Governmental Authorities and the LDC. In the event the

benefits and activities are not obtained or completed within thirty (30) days of the Effective Date, either Party shall have the option to terminate the Agreement for convenience, upon written notice to the other Party, pursuant to Article 2.2 (b) and (c) of this Agreement.

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

3.7 Removal of the System. Except as otherwise provided herein, Owner shall, within thirty (30) days following the end of the Term and at Owner’s sole cost and expense, remove the System from the Premises and restore the Premises to its original condition, normal wear and tear excluded.

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

3.9 Massachusetts Solar Renewable Portfolios Standard Carve Out.

(a) The Parties acknowledge and agree that Owner shall act as the agent of User solely for the purpose of submitting any and all information and applications required for the User to participate in the Massachusetts Renewable Portfolio Standard Solar Carve Out.

(b) In connection with the above, User shall assign any incentive payment obtained from the Solar Carve Out to Owner, and Owner shall use such payment to defray the capital cost of the System and reduce the price for Electricity that is charged by Owner to the User.

(c) During the Term of this Agreement, Owner shall at all times comply with any obligations or requirements that are imposed on an “Installer” by the Solar Carve Out, including but not limited to those concerning reporting requirements, minimum technical requirements, minimum insurance requirements, minimum energy efficiency requirements, and any requirement to pay prevailing wages.

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

4.1 Purchase and Sale of Electricity.

(a) Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Owner shall make available to User, and User shall take delivery of at the Delivery Point, all of the Electricity generated by the System.

(b) Notwithstanding the provisions of Section 4.1(a) above, in the event that the System produces Excess Electricity, then the Parties agree that:

(i) if the System and User are eligible for Net Metering, and at the election of User, then (a) User shall purchase such Excess Electricity at the Electricity Price, (b) Owner shall transmit such Excess Electricity into the LDC System on behalf of and for the account of User, and (c) User shall be entitled to any and all Net Metering Credits issues by the LDC in response to such transmission; and

(ii) if the System and User are not eligible for Net Metering, or if User elects not to utilize the provisions of subsection 4.1(b) (i) above, then (a) User shall not purchase such Excess Electricity, and (b) Owner may sell such Excess Electricity into the LDC System on behalf of and for its own account.

4.2 Price for Electricity.

(a) Except as set forth in Section 4.1(b) above, User shall pay Owner for the Electricity, as metered at the Metering Device, at the applicable Electricity Price. The payment to be made by User to Owner shall equal the Electricity for the relevant period multiplied by the Electricity Price for such period.

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

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

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

4.3 Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Owner to User at the Delivery Point. Owner warrants that it will deliver the Electricity to User at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

4.4 Governmental Charges.

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

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

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

(d) Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions 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.

4.5 Guaranteed Annual Electricity Output.

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

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

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

Rate for each kWh of such Production Shortfall less any allowable actual net metering credits pursuant to the provisions of 4.6 (a) below.

4.6 Net Metering.

(a) Upon mutual agreement of User and Owner and if appropriate, User agrees to apply for and obtain all available net metering credits with the LDC; all such net metering credits attributed to the System received by the User from the LDC shall be assigned to and inure for the benefit of the User as set forth in this Agreement; provided however, at User's discretion, annual net metering credits may be applied by User to offset Owner's shortfall of guaranteed annual electric output in a given annual period. User and Owner shall cooperate and provide information to third parties as may be required by the LDC or by Applicable Legal Requirements regarding, among other things, metering, system upgrades, insurance, interconnection, safety and power quality standards.

(b) Upon request of Owner, User agrees to execute a "Net Metering Agreement" for the benefit of the User to provide for credit and calculation of such net metering credits as may be allowed under the Net Metering Regulations.

(c) Owner agrees to install, at its cost, all required Metering and other devices necessary for User to execute a Net Metering Agreement with the LDC.

ARTICLE 5: ENVIRONMENTAL ATTRIBUTES

5.1 Title to Environmental Attributes. All Environmental Attributes relating to the System or the Electricity will be and remain property of Owner. Owner shall have all right, title, and interest in and to any and all Environmental Attributes that relate to the Electricity during the Term, and User shall have no right, title or interest in or to any such Environmental Attributes.

5.2 Reporting of Ownership of Environmental Attributes. Owner shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Electric Output. User shall not report to any Person that any Environmental Attributes relating to the Electric Output belong to any Person other than Owner.

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

expense use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

ARTICLE 6: METERING DEVICE AND METERING

6.1 Metering Equipment. The Parties acknowledge and agree that Owner shall provide, install, own, operate and maintain the Metering Device. Owner shall maintain and test the Metering Device in accordance with Applicable Legal Requirements, but on no less than an annual basis.

6.2 Measurements. Readings of the Metering Device shall be conclusive as to the amount of Electricity delivered to User; *provided*, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 6.3, or registers inaccurately, measurement of Electricity shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Metering Device was registering accurately; or (b) if no reliable information exists as to the period of time during which such 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 under Section 6.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, *provided, however*, that, in the case of clause (ii), the period covered by the correction under Section 6.3 shall not exceed six months.

6.3 Testing and Correction.

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

(b) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

(i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing.

(ii) Owner shall, within fifteen (15) days after receiving such notice from User, or User shall, within such time after having received such notice from Owner, advise the other Party in writing as to its position concerning the accuracy of such Metering Device and state reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the Metering Device to be tested.

(iv) If the Metering Device is found to be inaccurate by not more than 2%, any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 6.3(b) (i) shall bear the cost of inspection and testing of the Metering Device.

(v) If the Metering Device is found to be inaccurate by more than 2% or if such Metering Device is for any reason out of service or fails to register, then (a) Owner shall promptly cause any 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 as provided in Section 6.2, and (c) Owner shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Electricity for any period is decreased (such quantity, the “*Electricity Deficiency Quantity*”), Owner shall reimburse User for the amount paid by User in consideration for the Electricity Deficiency Quantity, and shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Electricity for any period is increased (such quantity, the “*Electricity Surplus Quantity*”), User shall pay for the Electricity Surplus Quantity at the Electricity Price applicable during the applicable Contract Year.

**ARTICLE 7: LOSS, DAMAGE OR DESTRUCTION OF SYSTEM;
FORCE MAJEURE**

7.1 System Loss.

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

(b) In the event of any System Loss that results in less than total damage, destruction or loss of the System, this Agreement will remain in full force and effect and Owner will, at Owner's sole cost and expense, subject to Section 7.1(c) below, repair or replace the System as quickly as practicable.

(c) To the extent that any System Loss that results in less than total damage, destruction or loss of the System, and is caused by User Misconduct, User shall promptly upon demand therefore from Owner pay any and all costs and expenses of such repair or replacement.

(d) In the event of any System Loss that, in the reasonable judgment of Owner, results in total damage, destruction or loss of the System, Owner shall, within twenty (20) Business Days following the occurrence of such System Loss, notify User whether Owner is willing, notwithstanding such System Loss, to repair or replace the System.

(i) In the event that Owner notifies User that Owner is not willing to repair or replace the System, this Agreement will terminate automatically effective upon the effectiveness of such notice and Owner shall promptly remove the System from the Premises in accordance with Section 3.7. If such System Loss has been caused, in total or partially, by User Misconduct, User shall, within ten (10) Business Days following such termination, pay to Owner, as liquidated damages and not as a penalty, the Termination Payment applicable as of such termination date. If such System Loss has not been caused, in total or partially, by User Misconduct, Owner shall, within ten (10) Business Days following such termination, pay to User as liquidated damages and not as a penalty, the Termination Payment applicable as of such termination date.

(ii) In the event that Owner notifies User that Owner is willing to repair or replace the System, the following shall occur, (a) this Agreement will remain in full force and effect, (b) Owner will repair or replace the System as quickly as practicable, and (c)

if such System Loss has been caused, in total or partially, by User Misconduct, User shall promptly upon demand therefore from Owner pay any and all costs and expenses of such repair or replacement.

7.2 Performance Excused by Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “*Claiming Party*”) gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The 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.

7.3 Termination Due to Force Majeure. If a Claiming Party claims a Force Majeure for a consecutive period of six (6) calendar months or longer, the non-Claiming Party may terminate this Agreement, in whole or in part, without any liability to the Claiming Party as a result of such termination and Owner shall promptly remove the System from the Premises.

ARTICLE 8: EVENTS OF DEFAULT; REMEDIES

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

(a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within five (5) Business Days after receipt of written notice;

(b) any representation or warranty made by such Party in this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is

not remedied, if capable of being remedied, within twenty (20) Business Days after receipt of written notice;

(d) such Party becomes Bankrupt;

(e) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within three (3) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party, or (ii) the occurrence of a default by the insurer of such Party under any insurance policy provided hereunder;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of such Party under this Agreement;

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

(h) failure to comply with the terms of the SLP.

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

8.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the “***Non-Defaulting Party***”) shall, without (except as otherwise provided in Section 8.3) limiting the rights or remedies available to the Non-Defaulting Party under this Agreement or applicable Law, have the right: (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. In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date.

8.3 User Rights upon Termination for Default. In the event that User is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, User shall, at its sole and exclusive option and in its sole and absolute discretion, either (a) require Owner to remove the System as provided in Section 3.7 above and pay the Termination Payment, or (b) exercise the Purchase Option provided in Section 12.1 below and require the

Owner to pay the Termination Payment. In the event that User elects either of the foregoing remedies, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to User as a result of termination of this Agreement subject, however, to Section 8.8 below. Owner's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived by User.

8.4 Owner Rights upon Termination for Default. In the event that Owner is the Non-Defaulting Party and elects to terminate this Agreement as provided in Section 8.2, Owner shall, at its sole and exclusive option and in its sole and absolute discretion, remove the System and require User to pay the Termination Payment to Owner. In the event that Owner elects the foregoing remedy, such express remedy and any associated measure of damages shall be the sole and exclusive remedy available to Owner as a result of termination of this Agreement subject, however, to Section 8.8 below. User's liability shall be limited as set forth in such provision and all other remedies or damages at law or in equity are waived by Owner.

8.5 Termination Payment Notice. In the event that a Non-Defaulting Party elects to require payment of the Termination Payment as provided in Section 8.3 or 8.4, then, as soon as practicable after calculation of the Termination Payment by such Party, the Non-Defaulting Party will notify the Defaulting Party of the amount of the Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. The Defaulting Party shall pay the 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.

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

8.7 Remedies Cumulative. Except as provided in Sections 7.1, 7.3, 8.3 and 8.4, the rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

8.8 Unpaid Obligations. The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount

payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE 9: INVOICING AND PAYMENT

9.1 Invoicing and Payment. All invoices under this Agreement will be due and payable not later than [_____] (__) days after receipt of the applicable invoice (or, if such day is not a Business Day, then on the next Business Day). Each Party will make payment by electronic funds transfer, 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.

9.2 Disputed Amounts. 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 (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this Agreement, and to give notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the date paid.

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

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

9.5 Records and Audits. 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.

ARTICLE 10: REPRESENTATIONS AND WARRANTIES; USER ACKNOWLEDGEMENT

10.1 Representations and Warranties. Each Party represents and warrants to the other Party that: (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Legal Requirements; (b) this Agreement, 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; (c) 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; (d) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and (e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

10.2 User Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366. User acknowledges and agrees that, for purposes of this Agreement, Owner is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code (the "*Bankruptcy Code*"), and User agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein User is a debtor.

ARTICLE 11: LIMITATIONS

11.1 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 direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

11.2 Limitation on Warranties. Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

ARTICLE 12: SYSTEM PURCHASE AND SALE OPTIONS

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

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

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

12.4 Determination of Purchase Price.

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

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

Determination) to Owner and User, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the selected Independent Appraiser shall be final and binding on the Parties.

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

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

12.7 Exercise of Purchase Option.

(a) User shall have twenty (20) Business Days from the date of the Final Determination (such period, the “*Exercise Period*”), to exercise the Purchase Option, at the Purchase Price set forth in the Final Determination. User must exercise its Purchase Option during the Exercise Period by providing a notice (an “*Exercise Notice*”) to Owner. Once User delivers its Exercise Notice to Owner, such exercise shall be irrevocable.

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

12.8 Terms of System Purchase. On the Transfer Date (a) Owner shall surrender and transfer to User all of Owner’s right, title and interest in and to the System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the System and the Environmental Attributes prior to the Transfer Date, (b) User shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System and the Environmental Attributes from and after the Transfer Date, and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System, and the Environmental Attributes in User, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System and the Environmental Attributes to User.

12.9 Transfer Date. The closing of any sale of the System (the “*Transfer Date*”) pursuant to this Article will occur no later than thirty (30) Business Days following the date of the Exercise Notice.

ARTICLE 13: CONFIDENTIALITY

13.1 Confidentiality.

(a) Neither Party will use any Confidential Information for any purpose except such Party’s performance under this Agreement. Furthermore, neither Party will disclose any Confidential Information to any third party (other than (and then only for purposes permitted by this Agreement) the Party’s or the Party’s Affiliates’ officers, employees, lenders, counsel, accountants or advisors (collectively, “*Representatives*”) who have a need to know such information for the purposes permitted by this section and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein) except in order to comply with the requirements of any applicable Law or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a Governmental Entity; *provided, however*, that each Party will use reasonable efforts to prevent or limit any such disclosure. “*Confidential Information*” means any non-public confidential or proprietary information of a Party or its Affiliates or any of its or their Representatives relating to this Agreement and the System and revealed to the other Party or its Affiliates or any of its or their Representatives during the Term.

(b) The obligations of the Parties under this Article will survive for a period of two (2) years from and after the termination of this Agreement.

(c) Owner and User⁴ acknowledge and agree to collaborate in promoting the Project benefits to the public through Owner or User initiated efforts.

ARTICLE 14: DISPUTE RESOLUTION AND ARBITRATION

14.1 Notice of Dispute/Negotiated Resolution. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Agreement, or the breach hereof, 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 said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party

may, during said twenty (20) Business Day period, request the utilization of the services of a professional mediator, and the other Party or parties to this dispute shall cooperate with such request and share equally the reasonable costs of such mediator.

14.2 Mediation.

(a) Any controversy or claim arising out of or relative to this Agreement or the breach thereof, not adjusted or disposed of by mutual agreement between the Parties or pursuant to Section 14.1 above, may be submitted to mediation; provided both Parties mutually agree. The mediator for any such mediation shall be mutually agreed to by the Parties, with agreement not to be unreasonably withheld. All mediation costs and fees are to be shared equally among the Parties.

(b) All mediation proceedings shall be held in Berkshire County, Massachusetts.

ARTICLE 15: NOTICES

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

User:

Owner:

ARTICLE 16: ASSIGNMENT; BINDING EFFECT

16.1 Assignment; Binding Effect.

(a) Owner shall not, without the prior written consent of User, which consent will not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void; provided, however, that Owner may, with only prior notice to User, assign, pledge or transfer all or any part of, or any right or obligation under this Agreement for security purposes in connection with any financing or other financial arrangements regarding the System (each, a “*Permitted Transfer*”); *provided further, however*, that assignee shall assume all of Owner’s obligations under this Agreement in writing. Owner shall deliver notice of any Permitted Transfer to User in writing as soon as reasonably practicable.

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

ARTICLE 17: LIMITATION OF LIABILITY

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

ARTICLE 18: MISCELLANEOUS

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

this Agreement, the canon of construction requiring that any such word or phrase be construed against the drafter shall not be applied to determine the true meaning of that ambiguous word or phrase.

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

18.3 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof. Any provisions adjudged to be invalid or unenforceable shall be severed from the Agreement and the remaining provisions shall continue in full force and effect. The Parties shall 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.

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

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

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

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

18.8 Consent to Service of Process. Each Party hereby consents to service of process in the Commonwealth of Massachusetts in respect of actions, suits or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

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

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

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

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

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

18.14 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement or the attached SLP shall be deemed to be an agreement by User to issue or cause the issuance of any Approval, or to limit or otherwise affect the ability of the User or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

18.15 Survivorship. The provisions of Sections 3.7, 3.8, 8.7, 8.8, 9.5, 11.1, 11.2, 13.1, 14.1 through 14.8, 15.1, 17.1, 18.1, 18.7, 18.8, 18.10, 18.11, 18.13, Exhibit C, Exhibit E, Exhibit F, and Sections 1.2, 3.5, 4.9, 5.1, 5.2, 5.3, 6.2, 7.1, 7.2, 8.3, 8.4, shall survive the expiration or earlier termination of this Agreement.

18.16 Insurance. During the course of construction and operation of the System, Owner will carry and/or cause Owner's contractor(s) to purchase and maintain for the term of the EMSA or longer as may be required by the EMSA, from a company or companies

lawfully authorized to do business in the Commonwealth and having a rating no lower than A- (Excellent) from A.M. Best's Key Rating Guide (latest edition in effect at the date of the EMSA and at the time of renewal of any policies required by the EMSA), the following insurance:

- (a) Commercial general liability insurance (form CG 00 01 or equivalent) in a limit of not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applied per job), and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.
- (b) Minimum additional \$5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.
- (c) Professional Liability Insurance, covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.
- (d) Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 bodily injury per person, \$500,000 bodily injury per accident, and \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.
- (e) Workers' Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employers' Liability limits of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit.
- (f) *Additional Insurance Requirements for the Selected Firm:*

Owner agrees that the Commercial General Liability insurance set forth above shall be primary and non-contributing with respect to any insurance carried by the Issuers or the selected firm's subcontractor(s) and that the selected firm's insurance policy shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance. The Commercial General Liability insurance shall name the Issuers as

additional insured's with coverage at least as broad as the coverage provided to the named insured.

Owner agrees that the insurance set forth above shall be written on an occurrence basis, unless the Issuers approve in writing, coverage on a claims-made basis.

Certificates of insurance reasonably acceptable to the Issuers that include insurance coverage's required and specified above shall be delivered to the Issuers promptly after execution of the EMSA. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the project.

The certificates and the insurance policies required will contain a provision that coverage's afforded under the policies will not be canceled, modified or allowed to expire until at least thirty (30) days' prior written notice has been given to the Issuers. The Issuers will accept a 10 day notice for cancellation for non-payment of premium as required by insurance company. In the event that any insurance policy providing coverage's required by the EMSA will expire during the term of the EMSA, the selected firm will, not less than fifteen (15) days prior to the policy's expiration date, deliver to the Issuers certificates of insurance evidencing renewal of such policies.

Owner hereby agrees and acknowledges that the failure to provide and continue in force any insurance required in accordance with the terms of the EMSA shall constitute a material breach of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have executed this ENERGY MANAGEMENT SERVICES CONTRACT under seal as of the day and year first above written.

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

EXHIBIT A

DESCRIPTION OF THE PREMISES

TOWN OF _____, MA

Address(s):

Legal Description:

Description of the Lease Area:

The Lease Area shall further include such additional space within the Building [*****to be defined**] and on the roof of the Building for the installation, operation and maintenance of utility lines, cables, conduits, transformers, wires, meters, monitoring equipment and other necessary and convenient equipment and appurtenances (collectively, the “ **Cabling Space** ”) running between and among the Floor Space, the Rooftop Space, the Delivery Point [*****all to be defined**], and all necessary electrical and other utility sources located within the Building or on the Property, together with the non-exclusive right of ingress and egress from a public right-of-way, seven (7) days a week, twenty four (24) hours a day, over the Premises and in and through the Building to and from the Premises for the purpose of installation, operation, inspection, maintenance, repair and improvements of the System.

The Floor Space, Rooftop Space, Delivery Point and Cabling Space are hereinafter collectively referred to as the “ **Lease Area** ” and are as shown on the *Site Plan of Lease Area* attached to this Exhibit A. In the event there are not sufficient electric and other necessary utility sources located within the Building or on the Premises to enable Owner to transmit Electricity generated by the System to the Delivery Point, User agrees to grant Owner or the LDC the right to install such utilities on, over and/or under the Premises and through the Building as necessary for Owner to operate the System, provided, however, the location of such utilities shall be as reasonably designated by User.

EXHIBIT B

DESCRIPTION OF THE SYSTEM

EXHIBIT B

DESCRIPTION OF THE SYSTEM

TOWN OF _____, MA

SYSTEM 1: _____

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

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

DESCRIPTION OF THE SYSTEM

TOWN OF _____, MA

SYSTEM 2: _____

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

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

DESCRIPTION OF THE SYSTEM

TOWN OF _____, MA

SYSTEM 3: _____

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

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

EXHIBIT C

SOLAR POWER PURCHASE PROVISIONS

TOWN OF _____, MA

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

OVERALL TERM PRICING

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

EXHIBIT D

PERFORMANCE OBLIGATIONS

TOWN OF _____, MA

Nameplate Rated Capacity:

System 1: _____

System 2: _____

System 3: _____

Overall Performance Obligations

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

EXHIBIT E

SOLAR LEASE PROVISIONS (“SLP”)

The terms and conditions of the Agreement are by this reference incorporated herein as though fully set forth herein and all capitalized terms not otherwise defined herein shall have the same definition as set forth in the Agreement. In the event of any discrepancy between the terms of the Agreement and the terms of this Lease, the terms of the Agreement shall govern this Lease, unless expressly provided otherwise herein.

ARTICLE 1: THE PREMISES

1.1 Premises. User, for and in consideration of the covenants and agreements on the part of Owner contained herein and in the Agreement, does hereby lease unto Owner, and Owner does hereby take from User, upon and subject to the conditions hereinafter expressed, the Lease Area on the Premises for the sole and exclusive purpose of constructing, operating, maintaining, repairing and removing the System. Owner’s use of the Lease Area is subject to the following:

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

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

(c) full compliance by the Owner in all respects with all Applicable Legal Requirements.

1.2 As-Is Lease of the Premises. Owner accepts the Lease Area after a full and complete examination thereof, as well as the title thereto and knowledge of its present uses and non-uses. Owner accepts the Lease Area in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by User and without recourse to User, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Lease Area or the Premises or any part thereof may be put. User shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Lease Area or the Premises. Notwithstanding the above, the Parties agree that Owner shall not be liable for any conditions on the Premises arising from or related to acts or

omissions occurring prior to the Effective Date, except to the extent arising from or related to Owner's negligence or willful misconduct.

1.3 Ownership of the System.

(a) Title to System. Subject to the rights provided to User pursuant to other terms hereof, the System and all alterations, additions, improvements or installations made thereto by Owner and all Owner property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Owner ("***Owner Property***"). In no event shall any Owner Property be deemed a fixture, nor shall User, nor anyone claiming by, through or under User (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Owner Property at any time except as otherwise provided herein. User shall have no ownership or other interest in the System or any System Assets or other equipment or personal property of Owner installed on the Premises, and Owner may remove all or any portion of the System or any System Assets at any time and from time to time as further provided in the Agreement. Without limiting the generality of the foregoing, User hereby waives any statutory or common law lien that it might otherwise have in or to the System and other System Assets or any portion thereof.

(b) Security Interests in System. Except as otherwise provided herein and in the Agreement, User acknowledges and agrees that Owner may grant or cause to be granted to a lender a security interest in the System(s) and in Owner's rights to payment under the Agreement, and User expressly disclaims and waives any rights in the System at law or in equity pursuant to this lease. Any security interest shall be subordinate to the interest of the User in the Premises and subject to the terms and conditions of this Agreement.

1.4 No Expenditures. Owner and User acknowledge and agree that User shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease or the ownership, construction, operation, maintenance, repair, or removal of the System.

1.5 No Additional Use. Except with the prior express written consent of User, Owner shall not use the Premises for any use other than the installation, operation, maintenance, repair and removal of the System.

ARTICLE 2: PERFORMANCE OF OWNER'S OBLIGATIONS

2.1 Cures - Rights, Costs and Damages. If Owner shall default in the performance of any material covenant, term, provision, limitation, or condition contained in this lease beyond the expiration of all applicable notice and grace periods (hereafter, collectively, a "*Triggering Event*"), User, without being under any obligation to do so and without waiving such default, may remedy such other default for the account of Owner, immediately upon notice in the case of emergency or if necessary to protect public health or safety, or to avoid forfeiture of a material right, or in any other case only provided Owner shall fail to remedy such default within thirty (30) days, or such longer period as may be required due to the nature of such default (provided Owner has commenced and is diligently prosecuting a cure), after User notifies Owner in writing of User's intention to remedy such other default. All costs reasonably incurred by User to remedy such default (including, without limitation, all reasonable attorney's fees), shall be at the expense of Owner.

2.2 Step-in Rights/Step-out. Regardless of whether User exercises its rights pursuant to Section 2.1 of this SLP, User shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements, to take possession of the System and to operate the System upon the occurrence of a Triggering Event until Owner demonstrates to the reasonable satisfaction of User that the events giving rise to the Triggering Event have been cured, and that Owner has taken all reasonably necessary steps to ensure that such events shall not re-occur. User shall not be liable to Owner for any damages, losses or claims sustained by or made against Owner as a result of User's exercise of possession and operational control of the System except to the extent such damages, losses or claims result from the negligence or willful misconduct of User.

ARTICLE 3: OWNER'S DUTY TO MAINTAIN

3.1 Maintenance; Repairs.

(a) Owner shall take good care of the Lease Area and the System, conduct all required maintenance and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the System in first class order, repair and condition ("*Owner's Maintenance Obligations*").

(b) User shall have no duty or liability to Owner with respect to the maintenance, repair or security of the Premises, the System or any access areas.

(c) Nothing in this Agreement shall limit User's ability to maintain the Premises in a reasonable manner consistent with User's current and past practices.

(d) Notwithstanding the foregoing in Section 3.1(c) above, User acknowledges, agrees, and accepts that activities conducted by or on behalf of Owner on the Premises relating to the System may interfere with User's maintenance of the Premises or User's conduct of business thereon. Owner agrees to take all commercially reasonable measures to minimize such interferences.

3.2 Utilities. Owner shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. User shall have no duty or liability to Owner with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by User or any third party, nor shall User have any liability to Owner (including, without limitation, liability for lost revenue) arising from User's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Owner desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by User, Owner may do so at Owner's expense subject to the approval of User, which shall not be unreasonably withheld.

3.3 Compliance with Laws; Professional Standards. Owner, at Owner's expense, shall diligently and fully comply with all Applicable Legal Requirements. In addition, Owner shall ensure that the System is operated and maintained in a professional manner by appropriately trained and qualified individuals

3.4 Performance and Payment Bonds. No later than the thirty (30) days following the Effective Date, Owner shall provide (or cause its contractor or other third party to provide) User with performance and payment bonds from an issuer with a Best's rating of not less than "A" and in a form and amount reasonably acceptable to User (the "**Bonds**"), which Bonds shall be in an amount sufficient to secure Owner's obligations with respect to the construction of the System under this Agreement or, prior to completion of construction and commissioning of the System, Owner's removal and restoration obligations under this Agreement, in the amount set forth in the SPPP. The Bonds shall remain in effect until sixty (60) days after delivery by Owner to User of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by User, (b) User has provided notice to Owner of a dispute regarding the completion of the System in accordance with the provisions of this lease, in which case the Bonds shall remain in effect until the resolution of

such dispute, (c) User provides the issuer of the Bonds written notice authorizing the expiration of the Bonds, or (d) this lease is terminated pursuant to the provisions hereof and Owner has fulfilled its removal and restoration obligations under the Agreement.

3.5 Decommissioning Assurance. Upon the issuance of the Notice of Commercial Operation, Owner shall establish and maintain thereafter adequate financial assurance, in a form subject to the reasonable approval of User, to fully cover the cost of decommissioning the System and restoring the Premises as specified in this lease and the Agreement (such assurance, the “*Decommissioning Assurance*”). Depending on the circumstances, and subject to User’s approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide User with adequate rights to access the Decommissioning Assurance in the event of Owner’s failure to comply with its System removal and Premises restoration obligations under the Agreement.

3.6 Re-Roofing (if roof-mounted System(s)). If re-roofing is contemplated by User, Owner agrees that it shall bear the cost of moving the System, if necessary, once during the Term to allow User to re-roof the Building. This will include removing the System from the roof, storing the System components at Owner’s expense or as arrangements allow for storage at the Building, and re-installing the System as per the approved design and plans. Owner agrees that it will defend, indemnify and hold harmless User for the cost of any damages incurred as a result of Owner’s removal, storage, and re-installation of the System. Owner agrees to reinstall the System in a manner that will not jeopardize the warranty of the new roof as installed.

ARTICLE 4: CONSTRUCTION AND OPERATION OF PERMITTED USE

4.1 General Description. Except as otherwise specified herein, the System shall consist solely of the improvements described in *Exhibit B* of the Agreement.

4.2 Governmental Approval. Except as otherwise specified herein, or otherwise obtained prior to the Effective Date, Owner will obtain at its sole cost all approvals and permits required under the Applicable Legal Requirements for Owner’s use of the Premises and for the System from any Governmental Authority having jurisdiction in the matter. Owner will promptly inform User of all significant developments relating to the issuance of such approvals or permits. User will reasonably cooperate with Owner in procuring such approvals; provided, however, that the parties acknowledge and agree that this Agreement does not impose an affirmative obligation on the User to issue or procure any approval or to engage in any action or inaction inconsistent with the proper exercise of the User’s regulatory authority. If any changes in such plans and/or specifications are required by any

Governmental Authority, then Owner shall submit such changes, if any, to User for its approval, which shall not be unreasonably conditioned, withheld or delayed.

4.3 Construction Commences Promptly. Owner shall commence the construction of the System promptly following the Effective Date and will proceed diligently and continuously thereafter until completion, subject to a Force Majeure Event.

4.4 Completion Requirements. Owner will arrange for the construction of the System in a good, careful, proper and workmanlike manner in accordance with good engineering practices, the Request for Proposals which resulted in the Agreement (the “*RFP*”), and with all Applicable Legal Requirements. The System will, when completed, comply with all Applicable Legal Requirements and the RFP.

4.5 Insurance. During the course of construction and operation of the System, Owner will carry and/or cause Owner’s contractor(s) to purchase and maintain for the term of the EMSA or longer as may be required by the EMSA, from a company or companies lawfully authorized to do business in the Commonwealth and having a rating no lower than A- (Excellent) from A.M. Best’s Key Rating Guide (latest edition in effect at the date of the EMSA and at the time of renewal of any policies required by the EMSA), the following insurance:

- (g) Commercial general liability insurance (form CG 00 01 or equivalent) in a limit of not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applied per job), and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.
- (h) Minimum additional \$5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.
- (i) Professional Liability Insurance, covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.
- (j) Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non-owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 bodily injury

per person, \$500,000 bodily injury per accident, and \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.

- (k) Workers' Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employers' Liability limits of \$500,000 each accident, \$500,000 disease-each employee and \$500,000 disease-policy limit.

(l) *Additional Insurance Requirements for the Selected Firm:*

Owner agrees that the Commercial General Liability insurance set forth above shall be primary and non-contributing with respect to any insurance carried by the Issuers or the selected firm's subcontractor(s) and that the selected firm's insurance policy shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance. The Commercial General Liability insurance shall name the Issuers as additional insured's with coverage at least as broad as the coverage provided to the named insured.

Owner agrees that the insurance set forth above shall be written on an occurrence basis, unless the Issuers approve in writing, coverage on a claims-made basis.

Certificates of insurance reasonably acceptable to the Issuers that include insurance coverage's required and specified above shall be delivered to the Issuers promptly after execution of the EMSA. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the project.

The certificates and the insurance policies required will contain a provision that coverage's afforded under the policies will not be canceled, modified or allowed to expire until at least thirty (30) days' prior written notice has been given to the Issuers. The Issuers will accept a 10 day notice for cancellation for non-payment of premium as required by insurance company. In the event that any insurance policy providing coverage's required by the EMSA will expire during the term of the EMSA, the selected firm will, not less than fifteen (15) days prior to the policy's expiration date, deliver to the Issuers certificates of insurance evidencing renewal of such policies.

Owner hereby agrees and acknowledges that the failure to provide and continue in force any insurance required in accordance with the terms of the EMSA shall constitute a material breach of this Agreement.

4.6 Interconnection with Electric Distribution Grid. Owner will obtain at its sole cost all approvals and agreements required for Owner's interconnection of the System to the LDC System. Owner will promptly inform User of all significant developments relating to such interconnection matters.

4.7 Access to and Use of the Premises. Owner and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the System, and to any documents, materials and records of User relating to the Premises that Owner reasonably requests in conjunction with these activities. Owner shall provide User reasonable notice of all activities conducted by or on behalf of Owner on the Premises relating to the System. During any such activities, Owner, and its sub-contractors, agents, consultants and representatives shall comply with User's reasonable safety and security procedures (as may be promulgated from time to time), and Owner and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with User's activities.

4.8 As-built Plans. Within ninety (90) days following the issuance of the Notice of Commercial Operation, Owner shall prepare and deliver to User detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

4.9 Removal of the System. Upon expiration or termination of the Agreement, Owner shall at its sole cost and expense remove from the Premises the System, and any associated equipment or other personal property owned by Owner, and restore the Premises to its original condition.

ARTICLE 5: MECHANIC'S LIENS

5.1 No Liens. Owner shall not create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien upon the Premises or the System or the income therefrom and Owner will not suffer any other matter or thing arising out of Owner's use and occupancy of the Premises whereby the estate, rights and interests of User in the Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this lease.

5.2 Discharge. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or the System, Owner, within ten (10) days after notice to Owner of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Owner shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, User may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by User and costs and expenses reasonably incurred by User in connection therewith, together with interest thereon at the Interest Rate from the respective dates of User's making of the payment of the cost and expenses, shall be paid by Owner to User within ten (10) Business Days of User's invoice therefor.

5.3 User's Obligations. User shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System(s) or any interest therein.

ARTICLE 6: RIGHT TO INSPECT AND ENTER

6.1 Inspection and Entry. During the course of construction and completion of the System and any substantial alteration thereto, Owner shall maintain all plans, shop drawings, and specifications relating to such construction which User, its agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the agreements contained or referenced in this lease. User may, upon reasonable prior notice to Owner, enter upon the Lease Area and inspect the System for the purpose of ascertaining their condition or whether Owner is observing and performing the obligations assumed by it under this lease, all without hindrance or molestation from Owner.

6.2 Examination of Books of Account. User shall, upon five (5) Business Days' prior notice to Owner, have the right, at User's expense, to examine, during normal business hours and at Owner's place of business, the books of account and other records in Owner's possession, custody, or control pertaining to Owner's obligations hereunder or under the Agreement.

6.3 Notice of Damage. User shall promptly notify Owner of any matter it is aware of pertaining to any damage to or loss of the use of the System(s) or that could reasonably be expected to adversely affect the System(s).

ARTICLE 7: INDEMNIFICATION

7.1 Indemnification of User. Owner shall indemnify and save harmless User and its officers, employees, and agents (collectively, the “*User Indemnified Parties*”) from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys’ fees, that may be imposed upon or incurred by or asserted against any User Indemnified Party by reason of any of the following occurrences during the Term:

(a) any breach by Owner of its obligations, covenants, representations or warranties contained in this lease or made pursuant thereto;

(b) any work or thing done in, on or about the Premises or any part thereof by Owner, its agents, contractors, servants, employees, or invitees;

(c) any negligence on the part of Owner or any of its agents, contractors, servants, employees, subtenants, licensees or invitees in, on or about the Premises or in connection with the System;

(d) any accident, injury, or damage to any person or property occurring in, on or about the Premises or any part thereof, except to the extent caused by the negligence or intentional misconduct of User or any of its officers, employees or agents; and

(e) any failure on the part of Owner or any of its agents, contractors, servants, employees, subtenants, licensees or invitees in, on or about the Premises to fully comply with the Applicable Legal Requirements.

In case any action or proceeding is brought against any User Indemnified Party by reason of any such claim, User may elect that Owner defend such action or proceeding. Upon written notice from User of such election, Owner shall defend such action or proceeding at Owner’s expense to the reasonable satisfaction of User.

7.2 Survival. The provisions of this Article 7 shall survive the expiration or earlier termination of the Agreement.

ARTICLE 8: MISCELLANEOUS

8.1 Quiet Enjoyment.

(a) User covenants that so long as no Event of Default has occurred and is continuing, Owner shall quietly have and enjoy the Lease Area during the Term. User’s

exercise of self-help pursuant to Article 2 of this lease and rights of entry and inspection pursuant to Article 6 of this lease shall not be considered a breach of the covenant of quiet enjoyment. Subject to the specific provisions of this lease permitting the same, User shall have the right to enter upon the Premises at reasonable times for purposes related to the System of this lease and no such entry which complies with the provisions of this lease permitting the same shall be considered a breach of the covenant of quiet enjoyment.

(b) Owner shall operate, maintain and repair the System in a manner that will not obstruct or interfere with User's use of the Premises or the rights of any other occupants of the Premises and Owner will not injure or annoy any occupants of the Premises. In the event interference occurs, Owner agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the User. Owner will use its best efforts to maintain its System in a manner that does not interfere with the Premises or improvements to the Premises. User may construct, reconstruct, modify or make alterations to the Premises so long as such activities do not materially interfere (including shading) with the operation of the System.

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

8.3 Subordination to Existing Leases, Easements and Rights of Way. Owner acknowledges and understands that the Agreement, this SLP, and all rights of Owner are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the User with respect to the Premises. User reserves the right to grant additional licenses, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere (including shading) with Owner's use of the Premises and the operation of the System.

8.4 Hazardous Materials. Owner agrees to comply with all applicable laws pertaining to the use, storage and disposal of Hazardous Materials ("*Environmental Laws*") at the Premises. Owner shall indemnify, defend and hold harmless User and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Owner or Owner's representatives at the Premises. In addition, Owner shall reimburse User for any and all costs related to investigation, clean up

and/or fines incurred by User for non-compliance with Environmental Laws that are caused by Owner or Owner's representatives at the Premises. User reserves the right to inspect the Leased Area for purposes of verifying compliance with these Hazardous Materials requirements.

EXHIBIT F

SCHEDULE OF TERMINATION VALUES

Early Termination Occurs in Year:	Early Termination Fee (including costs of removal)	Early Termination Fee (excluding costs of removal)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
At expiration	\$0	\$1