



Water Supply District of Acton

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P.O. BOX 953
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Board of Water Commissioners

Meeting Agenda

Monday, September 12, 2022 @ 6:00 PM

Due to the COVID-19 Pandemic, meetings are being held virtually via Zoom

Please click the link below to join the webinar:

<https://us02web.zoom.us/j/88987710576>

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Webinar ID: 889 8771 0576

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- **Comments from the public**
- **Approve minutes from meeting of 8/29**
- **Appoint one Commissioner to approve warrants while conducting meetings virtually**
- **Update on projects in progress from Jim Cray, Senior Project Manager--Wright-Pierce**

OLD BUSINESS:

- Power Purchase Agreement (PPA) for the Knox Trail solar array
- Per- and Polyfluoroalkyl Substances (PFAS)
 - Current sample data, if available
- Discussion of American Rescue Plan Act (ARPA) request for the Acton Selectboard

NEW BUSINESS:

- Attend the meeting of the Town of Acton Selectboard

Board of Water Commissioners
Meeting Minutes
Acton Water District
693 Massachusetts Avenue, Acton, MA
Monday, August 29, 2022

AGENDA

- A. Comments from the Public
- B. Approve minutes from the meeting of 8/11/22 and 8/15/22
- C. Appoint one Commissioner to approve warrants while conducting meetings virtually

D. OLD BUSINESS:

- 1. Per- and Poly-Fluoroalkyl Substances (PFAS)
 - Current sample data, if available
- 2. Discussion of the American Rescue Plan Act (ARPA)
 - Update on ARPA request for North Acton
 - Discussion of Round 2 ARPA allocations from Town of Acton

E. NEW BUSINESS:

- 1. Discussion of Analysis of Fiscal '23 Revenue and Expense Projections

Due to the Covid-19 stay-at-home order by Governor Charles Baker, the Board of Water Commissioners meeting was not held at the Acton Water District Office; instead, the meeting was held via Zoom Webinar and was recorded. The meeting was called to order at 7:00 PM on Monday, August 29, 2022, by Mr. Stephen Stuntz.

Present at Tonight's Meeting:

Commissioners: Erika Amir-Lin, Barry Rosen, Stephen Stuntz (Chair)

District Treasurer/Collector: Mary Jo Bates

District Counsel: Mary Bassett

Finance Committee: Bill Guthlein

Commissioners Secretary: Lynn Protasowicki

Public Present:

A. Comments from the Public

No comments this evening.

B. Approve Minutes from the Meeting of 8/11/22 and 8/15/22

Mr. Rosen motioned to approve the meeting minutes of August 11, 2022. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Ms. Amir-Lin, Mr. Rosen, and Mr. Stuntz.

Ms. Amir-Lin motioned to approve the meeting minutes of August 15, 2022. Mr. Rosen seconded the motion, and it was unanimously approved by a roll call vote: Ms. Amir-Lin, Mr. Rosen, and Mr. Stuntz.

C. Appoint One Commissioner to Approve Warrants While Conducting Meetings Virtually

Mr. Stuntz motioned to appoint Erika Amir-Lin as the Commissioner to approve warrants while conducting meetings virtually until the next meeting of the Commissioners. Ms. Amir-Lin seconded the motion, and it was unanimously approved by a roll call vote: Mr. Rosen, Ms. Amir-Lin, and Mr. Stuntz.

D. OLD BUSINESS:

1. Per- and Poly-Fluoroalkyl Substances (PFAS)

- Current sample data, if available

Mr. Allen stated that there is no PFAS sample data available tonight. The three water treatment plants currently serving water include: North Acton, South Acton and Central Acton.

2. Discussion of the American Rescue Plan Act (ARPA)

- Update on ARPA request for North Acton
- Discussion of Round 2 ARPA allocations from Town of Acton

Ms. Amir-Lin stated that the Acton Selectboard discussed at their meeting last Monday night that they are opening up discussion for reserved money. There was a certain amount of money that was reserved last year, and they are ready to open that money. They would like the District to put in an updated request. Mr. Allen has been in discussion with the Town Manager and gave him a few projects that they would like to be funded including any funding related to PFAS, Kelley's Corner, and the Great Road water supply. Ms. Amir-Lin stated that the Selectboard will have the ARPA discussion on their next meeting so it would be good to put in our request now. Ms. Amir-Lin asked if we should go back and say that we haven't received any of our allocation and we would like to re-request all that money back into Kelley's Corner. Mr. Allen would be in favor of an additional ask for Kelley's Corner. Mr. Rosen recommends that we should ask for a million dollars for Kelley's Corner. Mr. Stuntz asked what is the total cost for the Kelley's Corner contract? Mr. Allen stated it came in at \$2.24 million or \$2.4 million with contingency. Mr. Stuntz stated that we should ask for \$1.3 million.

Mr. Rosen suggested that the Board write a letter to the Selectboard with our request. Mr. Allen will write the letter and Board can review and sign.

No updates on the ARPA request for the design of the North Acton PFAS filtration system.

Other Old Business:

Made a formal offer to Christine McCarthy and she will start on September 15th as Assistant District Treasurer/Collector. Mary Jo Bates will train her through October 15th and will then be available thereafter as needed for questions until she has fully retired (date to be determined).

E. NEW BUSINESS:

1. Discussion of Analysis of Fiscal '23 Revenue and Expense Projections

Mr. Rosen had some concerns about the expenses that are increasing for FY'23. He went through slides which showed his concerns. He discussed the following:

- Gas and diesel fuel has risen exponentially
- Electricity is on the rise
- Electricity rates in MA are about 63% higher than the rest of the country
- FY 22 delta between our revenue and expenses was about \$930K and if you look at our FY 23 delta between our forecasted revenue and forecasted expense it's about \$621K. This is not factored in for the additional DOT expense for revenue that will be required for Kelley's Corner project. The day-to-day

operations of our existing facilities and vehicles will cost us more. On September 1st new electrical rates will kick in. We need to be concerned about the operation costs of new facilities including pilots we run, the mitigation we implement, and any wells that come online because we run everything on electricity.

Based on our projections our revenue may be ok with the cost increase that we added to our rates and the current demand. There is a need for us to carefully examine our expense. Possibly prioritize how we spend our money. We may have to make some choices in the future. We have a need for our Treasurer to keep an eye on things especially when the fuel and electrical bills come in with rates changing in September and alert us of any drastic changes and increases.

Mr. Allen stated that most of our electrical load is being supplied from the output of the Lawsbrook solar array per the Alternative on-bill credit agreement. He also enrolled the South Acton Water Treatment Plant in the Acton Power Choice Basic Program that will begin in September.

Mr. Stuntz motioned to adjourn the open meeting at 7:40 PM. Mr. Rosen seconded the motion, and it was unanimously approved by a roll call vote: Ms. Amir-Lin, Mr. Rosen, and Mr. Stuntz

Next meeting: September 12, 2022



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Town of Acton Selectboard
Acton Town Hall
472 Main Street
Acton, MA 01720

Honorable Selectboard:

This letter is to express the Acton Water District's needs related to the use of Acton's funds from the American Rescue Plan Act (ARPA). In 2021, the Selectboard voted to approve \$1,000,000 (One Million dollars) of Acton's ARPA funds for the District to address the remediation of Per- and Polyfluoroalkyl Substances (PFAS) contamination at the District's North Acton Water Treatment Plant (NAWTP); \$450,000 for the design of the PFAS filtration system planned there, and \$550,000 to be held in reserve. We understand that the Selectboard is reevaluating the allocation of Acton's ARPA funds and has requested additional input from the District related to such.

Currently, we are in the process of designing the PFAS filtration system for the NAWTP with planned construction beginning in early 2023, piloting filtration technologies for the South Acton Water Treatment Plant (SAWTP) and plan to pilot PFAS filtration technologies for the newly commissioned Central Acton Water Treatment Plant (CAWTP) later this year. We have submitted Project Evaluation Forms (PEFs) for construction of the PFAS systems for both the SAWTP and CAWTP to the Massachusetts State Revolving Fund (MA SRF) for the 2023 Intended Use Plan (IUP). Funds related to the remediation of PFAS contamination will remain among the District's highest priorities for several years to come. Appropriation of said funds will be through borrowing from the MA SRF program through the MA Clean Water Trust, or on the open market as needed and approved by District vote. This debt will have a significant impact on the District's ratepayers for the next 20-30 years.

Due to the water infrastructure improvements at Kelley's Corner being "Non-qualified" work, and thus not eligible for inclusion in the cost of the larger project, the District is using internal funds, borrowed and appropriated, to complete that portion. As part of the recently bid, July 6, 2022, construction project for Kelley's Corner the water portion of the bid came in much higher than projected by Massachusetts Department of Transportation's (MA DOT) engineering consultant. DOT's consultant projected a cost of \$1,670,000 for the water infrastructure improvements. However, the final bid came in at \$2,243,530. The District currently has a budget shortfall for this project. We respectfully request \$1,300,000 from Acton's ARPA funds to supplement our appropriated funds of \$1,100,000 to make up the entire \$2,400,000 (including a 5% construction contingency) to allow us to complete the water improvements without taking on any additional debt burden. This will allow us to reserve the majority of future debt to address PFAS contamination, providing some relief to the ratepayers. Since this is the only opportunity to make improvements to the water infrastructure in this corridor prior to surficial improvements, we consider this aspect of the project critical to the sustainability of Kelley's Corner. Thank you for your consideration of this request. Please let us know if you have any questions or require anything additional.

Very respectfully,
The Board of Water Commissioners

Stephen Stuntz, Chair

Erika Amir-Lin, Commissioner

Barry Rosen, Commissioner

SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (this “Agreement”) is entered into this 12th day of September 2022, by and between WeBo Solar Partners, LLC, a Delaware limited liability company (“Seller”) and the Water Supply District of Acton, established by chapter 326 of the acts of 1912, as amended (“Buyer”). Seller and Buyer are each referred to herein individually as a “party” and collectively as the “parties.”

1. DEFINITIONS.

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

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

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

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

(d) “Agreement” means this Solar Power Purchase Agreement and the exhibits and schedules hereto.

(e) “Annual Actual Insolation” means for each year during the Term, the annual actual insolation in units of kWh/m² measured using the on-site DAS or if no on-site pyranometer exists using reference location agreed to by the Parties in their reasonable discretion.

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

(g) “Annual Expected Insolation” means for each year during the Term, the expected insolation in units of kWh/m² at the Site calculated using PVSYST modeled with meteorological parameters reasonably selected by Seller.

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

(i) “Bankruptcy Event” means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any

bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

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

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

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

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

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

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

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

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

(r) “Default Termination Fee” means a fee equal to the amount set forth in Schedule 3 for the applicable Contract Year.¹

¹ Note to Draft: Seller to provide.

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

(t) “Delivery Point” means the point at which the System is interconnected with the Buyer’s electrical infrastructure serving the Premises, as identified on Exhibit B.²

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

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

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

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

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

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

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

(bb) “kWh Rate” means the Net Metering Credit Rate (calculated in \$ per kWh) minus \$0.01 per kWh.

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

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

(ee) “Net Metering Credit” means the credit associated with the Delivered Energy not consumed by Buyer at the Premises, as calculated pursuant to the Net Metering Rules, and (x)

² Note to Draft: Seller to attach One-Line Diagram illustrating Delivery Point.

credited to Buyer by the Utility on its monthly invoice for electric service at the Retail Service Address, or (y) transferred to Buyer by Seller after being issued to Seller by the Utility, in each case, in accordance with the Net Metering Rules; and excluding, for the avoidance of doubt, any Solar Incentives, Environmental Attributes, or credits or payments for capacity or ancillary services; provided, however, that Seller shall be entitled in its sole discretion to transfer the Environmental Attributes from the System to the Utility in accordance with the Program.

(ff) “Net Metering Credit Rate” means the monetary value, expressed as \$ per kWh, of the Net Metering Credit associated with the Delivered Energy in the applicable month, as calculated in accordance with 220 C.M.R. 18.04(4).

(gg) “Net Metering Rules” means M.G.L. c. 164, §§ 138 through 140, the Net Metering regulations adopted by the Massachusetts Department of Public Utilities at 220 C.M.R. 18.00 et seq. and any successor thereto and the Net Metering tariff of the Utility, as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

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

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

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

(kk) “Premises” has the meaning set forth on Schedule 1.

(ll) “Production Meter” means the revenue quality meter installed, operated and maintained by the Utility to measure electricity generated by the System and delivered to the Premises at the Delivery Point, as identified on Exhibit B.³

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

(nn) “Renewable Energy Certificate” means: (1) any “GIS Certificate” representing a “Generation Attribute” all as described in 225 C.M.R. 14.02, as may be amended from time to time or as further defined or supplemented by Applicable Law, (2) any “Clean Peak Energy Certificate” as described in 225 C.M.R. 21.00, et seq..

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

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

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

(rr) “Site” means the Buyer’s Premises as further described on Schedule 1 to this

³ Note to Draft: Seller to attach One-Line Diagram illustrating Production Meter.

Agreement.

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

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

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

(vv) “Solar Massachusetts Renewable Target Program” or “Program” means the rules for the Solar Massachusetts Renewable Target (“SMART”) Program as set forth in 225 C.M.R. 20.00 et seq. promulgated pursuant to Chapter 75 of the Acts of the Commonwealth of Massachusetts of 2016, and the rules and regulations issued pursuant thereto (including the Tariff and the Net Metering Rules), as may be amended from time to time or as further defined or supplemented by Applicable Law.

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

(xx) “System Operations” means Seller’s operation, maintenance and repair of the System performed in accordance with the requirements herein.

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

(zz) “Term” has the meaning set forth in Section 2.1.

(aaa) “Utility” means the distribution company set forth on Schedule 1.

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

2. TERM AND TERMINATION.

2.1 Term. The term (the “Term”) of this Agreement shall commence on the date of this Agreement and shall continue for twenty five (25) years from the Commercial Operation Date, unless and until terminated earlier pursuant to the provisions of this Agreement; provided, however, that Seller

may, upon the provision of written notice to Buyer no less than ninety (90) days prior to expiration of the current Term, and provided that the Site Lease is also extended duly extended for a coterminous period, elect to extend the Term for two (2) additional terms of five (5) years each upon the same terms and conditions set forth herein.

2.2 Seller Conditions of this Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Seller may (in its sole discretion) terminate this Agreement upon written notice delivered to Buyer before the Commercial Operations Date, in which case neither Party shall have any liability to the other except for any such liabilities that may have accrued prior to such termination; provided, that Seller shall remove the System from the Site and restore the Premises to its condition prior to commencement of any Installation Work.

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

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

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

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

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

(f) A Buyer Default has occurred.

2.3 Right to Terminate this Agreement. In addition to other termination rights of a Party set forth herein, (a) Buyer may terminate this Agreement with no payment of any termination fee if the Seller has not commenced Installation Work at the Site within two (2) years following the date hereof, or (b) Seller may terminate this Agreement effective one hundred eighty (180) days following delivery of written notice to Buyer if there has been a material adverse change in (i) the Program, Net Metering Rules or Applicable Law, or (ii) the regulatory environment or availability of Solar Incentives for the System.

3. SYSTEM OPERATIONS.

3.1 Seller as Seller and Operator. Throughout the Term, Seller or Seller's Lender shall be the legal and beneficial owner of the System at all times, the System shall remain the personal property of Seller or Seller's Lender, and the System will be operated and maintained in accordance with the Tariff and the Net Metering Rules and, as necessary, repaired by Seller at its sole cost and expense. Buyer will

not have access to the System for any purpose. Buyer will have no ownership, possession right or control of the System, and will have no rights or obligations with respect to the operation and maintenance of the System. This Agreement does not convey to Buyer any right, title or interest in or to any portion of any property (tangible or intangible, real or personal) underlying or comprising any portion of the System or any Solar Incentives or Environmental Attributes.

3.2 Obligations of Parties. The Parties will work cooperatively and in good faith, but at no expense to Buyer, to meet all Program requirements under Applicable Law and the Tariff and the Net Metering Rules, including applicable interconnection and Net Metering Credit requirements. The Parties agree that commencing on the Commercial Operation Date (a) Seller shall deliver all of the Delivered Energy to the Premises at the Delivery Point, (b) Buyer shall accept all of such Delivered Energy at the Delivery Point, and (c) Buyer (or its designee) shall be entitled to any and all Net Metering Credits resulting from such delivery to the extent not consumed by Buyer at the Premises. All right, title and interest in and risk of loss to Delivered Energy shall pass from Seller to Buyer at the Delivery Point.

3.3 Output Guaranty.

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

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

(c) In the event that the Delivered Energy for any Contract Year is less than the Guaranteed Output for that Contract Year (the amount of difference being the “Performance Difference”), then Seller shall pay Buyer an amount equal to the product of (i) the Performance Difference multiplied by (ii) the Rate Difference. Payment shall be made within thirty (30) days following receipt of written notice from Buyer of the amount due. “Rate Difference” means the positive difference, if any, between (1) the Buyer’s costs for electricity delivered to the Premises at the Delivery Point by the Utility (or weighted average of the same) during the relevant Contract Year, adjusted to reflect a value denominated in \$ per kWh in such Contract Year, *minus* (2) Buyer’s kWh Rate for the relevant Contract Year.

3.4 Environmental Attributes, Solar Incentives, and Capacity Rights. Buyer’s purchase does not include Environmental Attributes, Solar Incentives, or any credits or payments for electric capacity or ancillary services that are or may become available. Buyer disclaims any right to Solar Incentives, Environmental Attributes, or credits or payments for electric capacity or ancillary services that are or may become available, and shall, at the request of Seller, execute any document or agreement reasonably necessary to fulfill the intent of this Section, including but not limited to

consents or assignments of Clean Peak and Connected Solutions revenue (which may be paid directly to Buyer) to Seller. Buyer agrees not to make any statement contrary to Seller's ownership of all Environmental Attributes, Solar Incentives, and credits or payments for electric capacity or ancillary services associated with the System.

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

4. HOST CUSTOMER; CLASS II NET METERING FACILITY. The Parties hereby acknowledge and agree that it is the Parties' intent for the System to be classified as a "Class II Net Metering Facility of a Municipality or Other Governmental Entity", and for Buyer to qualify as a "Host Customer", in each case pursuant to 220 C.M.R. 18.00 et seq. and any successor thereto. Each Party further agrees that, upon the request of the other Party and without further consideration, such Party shall execute and deliver to the requesting Party such documents and take such action as the requesting Party reasonably requests to consummate more effectively the intent and purpose of this Section 4.

5. PRICE AND PAYMENT.

5.1 Consideration. In consideration for Seller's delivery of the Delivered Energy to the Premises and Buyer's right to receive Net Metering Credits corresponding with such Delivered Energy as may not be consumed by Buyer at the Premises but is delivered to the Utility in accordance with the Net Metering Rules, Buyer shall pay Seller a monthly payment (the "Payment") for such Delivered Energy commencing on the Commercial Operation Date and continuing through the Term, equal to the product of (x) of the volume of Delivered Energy in kWh during such month multiplied by (y) the kWh Rate. Buyer understands that the kWh Rate is based on the Net Metering Credit Rate and that, because the Net Metering Credit Rate will change from time to time, the kWh Rate will increase and decrease during the Term.

5.2 Invoices. Seller shall invoice Buyer on or before the last Business Day of each calendar month (each such date on which an invoice is issued by Seller to Buyer, an "Invoice Date") for the Payment in respect of Delivered Energy produced and delivered to the Delivery Point during the calendar month that preceded the month in which the invoice is issued. Buyer's first invoice under this Agreement shall be for the first full calendar month after the Commercial Operation Date during which Delivered Energy is delivered to the Delivery Point and may include charges for test energy delivered to the Premises at the Delivery Point prior to the Commercial Operation Date.

5.3 Time of Payment. Buyer shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date. Interest will be charged on late Payments at the Interest Rate until Buyer has fully paid the past due balance.

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

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer

shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Payment of the disputed amount shall not be required until the dispute is resolved in accordance herewith. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Interest Rate on such amount from the date becoming past due under such invoice until the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments.

6. GENERAL COVENANTS.

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

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

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

(c) Interconnection Fees. Seller shall be responsible for all costs, fees, charges and obligations required to connect the System to the Utility distribution system ("Interconnection Obligations"), including any fees associated with system upgrades and operation and maintenance carrying charges, as provided in the interconnection procedures of the Utility ("Interconnection Procedures"). In no event shall Buyer be responsible for any Interconnection Obligations; provided, that Buyer shall be responsible for improving and maintaining the Buyer's electrical systems at the Premises in good working order reasonably satisfactory to Seller for purposes of the delivery and receipt of Delivered Energy at the Delivery Point, consumption by Buyer at the Premises and delivery to the Utility in exchange for a Net Metering Credit of any Delivered Energy not consumed by Buyer at the Premises as and when delivered.

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

(e) Buyer's Account Information. Seller shall be responsible for providing Buyer's Account Information to the Utility, in accordance with the Tariff and the Net Metering Rules. Seller shall take care to preserve the privacy expectations of Buyer, including by not publicly disclosing Buyer's Account Information. Seller shall not disclose such information to third parties, other than to the Utility or Governmental Authorities in connection with the Program, unless Buyer has provided explicit informed consent or such disclosure is in accordance with the terms of Section 12.1 or compelled by Applicable Law. Each of Seller and Buyer shall execute and deliver to one another and to the Utility such documentation as may be reasonably required for the Utility to transfer the Net Metering Credit to Buyer.

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

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

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

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

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

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

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

(c) Site Lease. Buyer shall maintain, preserve and protect the Site Lease in full force and effect.

(d) Insurance Coverage. Buyer shall maintain insurance coverage sufficient to repair, restore or rebuild the Premises in the event of significant damage or loss in the use of the Premises.

7. REPRESENTATIONS & WARRANTIES.

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

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

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

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

(d) this Agreement constitutes its legal, valid and binding obligation enforceable

against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

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

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

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

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

(a) Buyer has been given the opportunity to ask questions of, and receive answers from, Seller concerning the terms and conditions of this Agreement and other matters pertaining to this Agreement, and has been given the opportunity to obtain such additional information necessary in order for Buyer to evaluate the merits and risks of the purchase of Delivered Energy to the extent Seller possesses such information or can acquire it without unreasonable effort or expense;

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

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

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

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

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

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

7.4 Exclusion of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE SITE LEASE, THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY SELLER TO BUYER PURSUANT TO THIS AGREEMENT SHALL BE "AS-IS WHERE-IS." NO OTHER WARRANTY TO BUYER OR ANY OTHER PERSON, WHETHER EXPRESS, IMPLIED OR STATUTORY, IS MADE AS TO THE

INSTALLATION, DESIGN, DESCRIPTION, QUALITY, MERCHANTABILITY, COMPLETENESS, USEFUL LIFE, FUTURE ECONOMIC VIABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SYSTEM OR ANY OTHER SERVICE PROVIDED HEREUNDER OR DESCRIBED HEREIN, OR AS TO ANY OTHER MATTER, ALL OF WHICH ARE EXPRESSLY DISCLAIMED BY SELLER.

7.5 Taxes And Governmental Fees. Seller shall be responsible for all income, gross receipts, ad valorem, personal property or real property or other similar taxes and any and all franchise fees or similar fees assessed against it due to its ownership of the System (collectively, the “Seller Taxes”). Seller shall not be obligated for any taxes payable by or assessed against Buyer based on or related to Buyer’s overall income or revenues, the Site or the Premises, as applicable. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, or Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller. The Parties acknowledge and agree that to the extent that any taxes are assessed on the generation, sale, delivery or consumption of Delivered Energy, Seller may, in its reasonable discretion, equitably adjust upward the kWh Rate to account for any allocation to Seller of such taxes.

8. FORCE MAJEURE.

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

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

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

9. DEFAULT.

9.1 Seller Defaults and Buyer Remedies.

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

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

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

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

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

(i) withhold any other payments due Seller under this Agreement until the Seller Default is cured and, if and when such Seller Default is cured, offset such withheld amounts by any reasonable costs incurred by Buyer in connection with such Seller Default, including reasonable attorneys' fees; provided, however, that this Section 9.1(b)(i) shall in no case provide Buyer the right to withhold payments due Seller for any Delivered Energy, or

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

9.2 Buyer Defaults and Seller's Remedies.

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

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

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

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

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

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

(i) terminate this Agreement, and maintain the System in place pursuant to the Site Lease, which shall survive such termination and sell and deliver Delivered Energy to one or more persons other than Buyer, provided, however, that no termination shall be effective under this Section unless: (A) Seller has delivered to Buyer a notice of its intent to terminate this Agreement, which such notice shall describe the Buyer Default that has occurred and is continuing ("Seller Termination Notice"); (B) sixty (60) days have passed since Buyer's receipt of the applicable Seller Termination Notice; and (C) Buyer has not cured the Buyer Default set forth in the applicable Seller Termination Notice as of the time of termination, and provided further that, in the event of such termination, Seller shall use reasonable efforts to mitigate its damages;

(ii) terminate this Agreement pursuant to clause (i) above, and, provided that the Termination Fee Precondition is satisfied, collect the Default Termination Fee and remove the System from the Site and Premises; and

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

As used herein, "Termination Fee Precondition" shall mean that, following the termination of this Agreement pursuant to this Section 9.2(b), Seller has used commercially reasonable efforts, for a period of no less than ninety days (90) days, to execute an agreement with a replacement purchaser for the photovoltaic energy generated by the System on terms reasonably acceptable to Seller, but, despite such commercially reasonable efforts, is unable to execute such an agreement.

10. LIMITATIONS OF LIABILITY.

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

10.2 Except for the Parties' indemnity obligations under Section 10.1 above with respect to third party claims, any breach of Section 12 or in the event of fraud or willful misconduct by an

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

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

11. ASSIGNMENT.

11.1 Assignment by Seller. Seller may assign this Agreement along with all of Seller's rights and obligations to any Affiliate, Lender, or Qualified Third Party without prior notice, for any purpose, including in the event of an acquisition, corporate reorganization, merger or sale of substantially all of its assets to another entity, or assignment of this Agreement as collateral security in connection with any financing of the System (including pursuant to a tax equity transaction); provided that for assignments to Qualified Third Parties (other than Lenders), Seller shall provide Buyer with information documenting that the assignee has comparable experience in operating and maintaining solar systems comparable to the System. In the event that Seller identifies such secured Lender, then Buyer shall comply with the provisions set forth in **Section 11.2** and **Exhibit A** to this Agreement. Any Lender shall be an intended third-party beneficiary of this Section, Seller shall notify Buyer of any assignment under this Section within thirty (30) days following the date of the assignment.

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

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

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

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

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

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

11.3 Assignment by Buyer.

(a) Buyer shall not assign this Agreement or any interest herein, without the prior

written consent of Seller, which consent shall not be unreasonably withheld, conditioned or delayed so long as such assignment would not materially reduce the economic benefits of this Agreement to Seller.

12. CONFIDENTIALITY.

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

13. MISCELLANEOUS.

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

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

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

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

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

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

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

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

13.9 Severability. Subject to Section 13.4, if any provision contained herein is invalid, illegal or unenforceable in any respect under any Applicable Law or decision, the scope of such provision shall be reduced to the extent necessary to make it enforceable or, if such reduction is not

possible for any reason, such provision shall be severed from this Agreement entirely without effect upon the balance hereof and the validity, legality and enforceability of the remaining provisions shall not be affected or impaired in any way, and the Parties shall so far as practicable execute such additional documents in order to give effect to any provision hereof which is determined to be invalid, illegal or unenforceable.

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

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

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

Buyer:

Attn: Chris Allen
Water Supply District of Acton
P.O. Box 953
693 Massachusetts Avenue
Acton, MA 01720
chris@actonwater.com

Seller:

Attn: Peter Bay
WeBo Solar Partners, LLC
5 Commerce Avenue
West Lebanon, NH 03784
peter.bay@edf-re.com

With a copy to

Mary E. Bassett, Esq.
McWalter, Barron & Boisvert, LLP
30 Monument Square
Concord, MA 01742
mary@marybassettlaw.com

Lender:

[To be provided by Seller when known]

[Signature Page Follows]

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

“SELLER”: WeBo Solar Partners, LLC

By: EDF Renewables Distributed Solutions, Inc., its Manager

By: _____

Name:

Title:

“BUYER”: Water Supply District of Acton

By: _____

Name: Christopher Allen

Title: District Manager

SCHEDULE 1

Description of System

System Site Location:	Buyer's buildings and other structures installed and operating at 284 High Street and 16 Knox Trail, Acton, MA 01720 (the "Premises")
System Size:	1,485 kW (AC) (representing an initial estimate, which may vary depending on the final design of the System)
System Designation Under the Net Metering Rules	Class II Net Metering Facility of a Municipality or Other Governmental Entity
Utility:	Eversource East
Retail Service Address:	284 High Street, Acton, MA 01720

SCHEDULE 2

Annual Expected Production Output

Contract Year in Term	Annual Expected Performance Output	Contract Year in Term	Annual Expected Performance Output
1	1,887,000.00	19	1,724,198.860
2	1,877,565.000	20	1,715,577.866
3	1,868,177.175	21	1,706,999.976
4	1,858,836.289	22	1,698,464.976
5	1,849,542.108	23	1,689,972.652
6	1,840,294.397	24	1,681,522.788
7	1,831,092.925	25	1,673,115.174
8	1,821,937.461	26	1,664,749.598
9	1,812,827.773	27	1,656,425.850
10	1,803,763.634	28	1,648,143.721
11	1,794,744.816	29	1,639,903.003
12	1,785,771.092	30	1,631,703.488
13	1,776,842.237	31	1,623,544.970
14	1,767,958.025	32	1,615,427.245
15	1,759,118.235	33	1,607,350.109
16	1,750,322.644	34	1,599,313.359
17	1,741,571.031	35	1,591,316.792
18	1,732,863.176		

SCHEDULE 3

Default Termination Fee

Contract Year in Term	<u>Default Termination Fee</u>	Contract Year in Term	<u>Default Termination Fee</u>
1	\$7,171,968	19	\$2,972,431
2	\$7,012,810	20	\$2,677,760
3	\$6,711,002	21	\$2,581,687
4	\$6,339,715	22	\$2,469,989
5	\$5,925,408	23	\$2,348,965
6	\$5,783,440	24	\$2,217,611
7	\$5,622,241	25	\$2,075,364
8	\$5,446,062	26	\$1,922,919
9	\$5,256,520	27	\$1,759,325
10	\$5,054,755	28	\$1,584,305
11	\$4,842,377	29	\$1,397,343
12	\$4,648,728	30	\$1,198,055
13	\$4,443,372	31	\$985,581
14	\$4,226,385	32	\$759,483
15	\$3,996,156	33	\$519,158
16	\$3,760,686	34	\$264,028
17	\$3,511,853	35	(\$0)
18	\$3,249,545		

EXHIBIT A

Certain Agreements for the Benefit of the Financing Parties

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

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

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

E. At Seller's request, Buyer agrees to execute and deliver to Lender and Seller such acknowledgment consent as may be required by Lender and in which Buyer acknowledges and confirms that the legal and beneficial ownership of the System remains in Seller, or its affiliate, and that the System is the property of Seller, or its affiliate.

3. Lender's Right to Cure. Regardless of any contrary terms in this Agreement:

A. Buyer will not terminate or suspend this Agreement unless Buyer has given the Lender prior written notice of Buyer's intent to terminate or suspend this Agreement describing the event giving rise thereto, including any alleged Seller Default, and provide the Lender with the opportunity to cure any such Seller Default within sixty (60) days after such notice or any longer period provided for in this Agreement. If the Seller Default reasonably cannot be cured by the Lender within the period established under this Agreement, and the Lender commences and continuously pursues the cure of such Seller Default within that period, the period for cure will be extended for a reasonable period of time under the circumstances, but not to exceed an additional thirty (30) days. Seller's and Buyer's respective obligations will otherwise remain in effect during the cure period.

B. If the Lender or its lawful assignee (including any buyer or transferee) acquires title to or control of Seller's assets and within the applicable time period cures all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third party, then the Lender or such third party buyer or transferee will no longer be in default under this Agreement, and this Agreement will continue in full force and effect.

C. At the request of Lender and/or its assignee, Buyer agrees to execute and deliver any document, instrument, or statement (but not including any payment) required by law or otherwise as reasonably requested by Lender or its assignee in order to create, perfect, continue, or terminate the security interest in favor of Lender in all assets of Seller, and to secure the obligations evidences by the Security Interest.

EXHIBIT B

Depiction of System and Delivery Point