



# CITY OF HAVERHILL CITY COUNCIL AGENDA

Tuesday, March 10, 2020 at 7:00 PM

Theodore A. Pelosi, Jr. Council Chambers, 4 Summer St, Room 202

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1. OPENING PRAYER
2. PLEDGE OF ALLEGIANCE
3. APPROVAL OF MINUTES OF PRIOR MEETING
4. ASSIGNMENT OF THE MINUTES REVIEW FOR THE NEXT MEETING
5. COMMUNICATIONS FROM THE MAYOR :
  - 5.1. Communication from Mayor Fiorentini requesting to address council regarding Haverhill's preparedness regarding Coronavirus (COVID-19). Joining him will be Dr. Romie Munday, *Haverhill's Board of Health Chairman*
  - 5.2. Communication from Mayor Fiorentini submitting a power purchase agreement between *Lodestar Energy LLC* and City of Haverhill along with related letter and appearance from Orlando Pacheco, Haverhill's Energy Advisor, to discuss all energy agreements
  - 5.3. Communication from Mayor Fiorentini submitting a 20-year lease agreement between *Kearsarge Energy LLC* and City of Haverhill and *Larfarge Holcim*
  - 5.4. Communication from Mayor Fiorentini submitting a power purchase agreement between *Kearsarge Energy LLC* and City of Haverhill, which includes SMART Solar Credits from the Landfill Solar Project
  - 5.5. Communication from Mayor Fiorentini submitting a Payment in Lieu of Taxes (PILOT) between *Kearsarge Energy LLC* and City of Haverhill
6. COMMUNICATIONS AND REPORTS FROM CITY OFFICERS AND EMPLOYEES:
  - 6.1. Communication from William Pillsbury Jr., Economic Development and Planning Director requesting Zoning Hearing and submitting Ordinance re: Amendments and related updates to City's zoning Ordinance; table of contents, Table 1-table of use and parking regulations, Table 2-table of dimensional and density regulations and map **Planning Board Mar 11<sup>th</sup> Council Hearing April 21<sup>st</sup>**
    - 6.1.1. Ordinance re: Zoning – Code of City of Haverhill, Chapter 255, Zoning; as amended be and is deleted in its entirety and said Ordinance shall be inserted in place thereof **File 10 days**
7. UTILITY HEARING(S) AND RELATED ORDER(S)
  - 7.1. Document 29; Petition from MA Electric Co d/b/a National Grid of North Andover, MA requesting to install 1 So Pole and install feeder monitors on Riverside av – at intersection of Riverside av and Jefferson st; Plan 29361125
  - 7.1.1. Document 29-B; Order – Grant MA Electric Co d/b/a National Grid, pole location for Riverside av
8. HEARINGS AND RELATED ORDERS:
9. PUBLIC PARTICIPATION- REQUESTS UNDER COUNCIL RULE 28



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**10. APPOINTMENTS:**

**10.1. Confirming Appointments**

**10.1.1. Central Business District Parking Commission:**

Karl Brunelle, 50 Washington st-*Chairperson re-appointment*

Joseph Romatelli, 62 Washington st-*re-appointment*

John Tynan, 77 Washington st

**All to be Confirmed**

**10.2. Non-Confirming Appointments**

**10.2.1. Community Affairs Advisory Board: reappointments**

Sharon Sullivan, 20 Westminster av

Anne Vlack, 60 Hancock st

Sheila Callahan, 25 15<sup>th</sup> av

William Lapierre, 1 Hanscom av

Gabriela Peixoto Twaalfhoven, 438 Farrwood dr

Hartell Johnson, 215 Wilson st

Lourdes Lopez, 97 Chadwick st

Juliet Sithole-Berk, 150 Wilson st

**10.3. Resignations**

**11. PETITIONS:**

**11.1.** Petition from Mass Electric Co d/b/a National Grid of North Andover, MA requesting to construct a line of underground election conduits for Park st and Park pl; Plan 29010579 **Hearing March 24<sup>th</sup>**

**11.2.** Petition from Mass Electric Co d/b/a National Grid and Verizon NE requesting joint pole locations on Park st and Park pl; Plan 29010579

**Hearing March 24<sup>th</sup>**

**11.3.** Petition from Thomas Hodgson, Livingston Development Corp requesting to accept a portion of South Pearson st as a Public Way

**Refer to Planning Board  
Council Hearing April 28<sup>th</sup>**

**11.3.1.** Petition from Attorney John McKenna for applicant Amerco Real Estate Co and U-Haul Company of Eastern Massachusetts requesting Special Permit under the POD Ordinance for Storage Containers pursuant to Zoning Ordinance Section 120-16; for the use of more than 2 regulated storage containers for more than 6 months at 211-210 Lincoln av; Rivers Edge Plaza

**Hearing April 14<sup>th</sup>**

**11.4. Applications Handicap Parking Sign:**

**Amusement/Event Applications:**

**11.5. Tag Days:**

**11.5.1. HHS Unified Sports; April 26**



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### 11.6. One Day Liquor License

11.6.1. Crystal Naylor, for one-day Beer and Wine license for wedding at *Winnekenni Castle*, May 30<sup>th</sup>, 2:00 pm to 7:00 pm

11.6.2. Janice Zenevitch, for one-day Beer and Wine license for bridal shower at *Winnekenni Castle*, May 1<sup>st</sup>, 6:30 pm to 9:30 pm

*Both have License Commission and Police approval*

### 11.7. **Annual License Renewals:**

11.7.1. **Hawker Peddlers License 2020 - Fixed locations; renewals**

11.7.2. **Coin-Op License Renewals for Weekly/Sunday 2020**

11.7.3. **Drainlayer License for 2020:**

11.7.3.1. Frank Gibbs – *renewal*

11.7.3.2. John Jablonski “

11.7.3.3. Steve Eddy “

11.7.3.4. Don Kohl “

11.7.3.5. Timothy Roy “

11.7.3.6. Brian Neal – *new*

11.7.4. **Taxi Driver Licenses for 2020**

11.7.4.1. Eric Sayers-1 Fairfield st – *renewal*

11.7.4.2. Nicole Siney-11A Charles st “

11.7.4.3. Peter Loring Jr.-235A River st “

11.7.4.4. Cody Glazier-11 Charles st “ *denied by Police Dept*

11.7.5. **Taxi License:**

11.7.6. **Junk Dealer License**

11.7.7. **Pool Tables**

11.7.8. **Sunday Pool**

11.7.9. **Bowling**

11.7.10. **Sunday Bowling**

11.7.11. **Buy & Sell Second Hand Articles**

11.7.12. **Buy & Sell Second Hand Clothing**

11.7.13. **Pawnbroker license**

11.7.14. **Fortune Teller**

11.7.15. **Buy & Sell Old Gold**

11.7.16. **Roller Skating Rink**

11.7.17. **Sunday Skating**

11.7.18. **Exterior Vending Machines**

11.7.19. **Limousine/Livery License/Chair Cars**



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## 12. MOTIONS AND ORDERS

- 12.1. Order – Appropriate \$207,000 from Sale of non-tax title land and transfer said amount to the following capital project account:

*Rt. 110/108 Intersection Improvements*

- 12.2. Order – Authorize payment of bills of previous and current year departmental appropriations as listed:

<u>Vendor</u>	<u>Amount:</u>	<u>Account:</u>
Grainger	\$ 433,00	School Dept
Teacher-Reimbursement	\$ 139,00	School Dept
Lindamood-Bell	\$ 1,790.00	School Dept
Music Theatre International	\$ 1,850.47	School Dept
Vertical Communications	\$ 215.00	Information Technology
Coppola Inc (3)	\$ 2,675.58	School Dept
Greenet	\$ 150.00	Information Technology

- 12.3 Order – to name pond in *Rock's Village*, formerly owned by the Hull Family, *Hull Pond*

## 13. ORDINANCES (FILE 10 DAYS)

## 14. MONTHLY REPORT

## 15. RESOLUTIONS AND PROCLAMATIONS

## 16. COMMUNICATIONS FROM COUNCILLORS:

- 16.1. Communication from Councillor Macek requesting to introduce Elaine Barker to announce a *Saint Patrick Fundraiser* on March 22<sup>nd</sup>, from 2 to 5 pm at the *American Legion*, 1314 Main st for the benefit of *Sarah's Place Adult Day Health Center*
- 16.2. Communication from Councillor McGonagle requesting to have *Traffic & Safety Committee* review impact of cable wires in the area of 197 Ferry rd causing height restriction problems for trucks
- 16.3. Communication from Councillor Joseph Bevilacqua requesting to recognize *Women's History Month* celebrating the contributions and achievements of women and recognizing those who fought for women's right to vote
- 16.4. Communication from Councillor Michitson proposing a partnered approach (regional, business, academia, medical) to developing next generation broadband infrastructure for all
- 16.5. Communication from Councillor Joseph Bevilacqua requesting a discussion regarding establishing a Sustainable Community Committee with respect to energy and environment



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**17. UNFINISHED BUSINESS OF PRECEDING MEETING:**

**18. COUNCIL COMMITTEE REPORTS AND ANNOUNCEMENTS:**

- 18.1. City Councillor John Michitson submits the Minutes and recommendation of the *Citizen Outreach Committee* meeting held on February 20<sup>th</sup> for acceptance and discussion. Agenda item was Doc 11-R – enable citizens to address options and provide feedback on ways to study *Haverhill's Charter*
- 18.2. City Councillor Colin Lepage submits Minutes and recommendations of the *Administration and Finance Committee* meeting held February 18<sup>th</sup> for acceptance and discussion. Items discussed were Doc 38-I/2019 Solar Ordinance; Doc 89-D/2019 outdoor advertising (billboards) of marijuana products; Doc 11-F Rules and Regulations for City Council
- 18.3. **DOCUMENTS REFERRED TO COMMITTEE STUDY**
- 18.4. **ADJOURN**

JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL**  
**MASSACHUSETTS**

511  
CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda Barrett and Members of the Haverhill City Council

RE: Communication from the Mayor regarding Coronavirus

Dear Madame President and Members of the Haverhill City Council:

I am requesting to address the council regarding Haverhill's preparedness regarding Coronavirus (COVID-19). Joining me will be Dr. Romie Mundy, Haverhill's Board of Health Chairman, to discuss this issue and answer any questions the City Council may have.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf

JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

512  
CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda E. Barrett and Members of the Haverhill City Council

RE: Power Purchase agreement between Lodestar Energy LLC and City of Haverhill

Dear Madame President and Members of the Haverhill City Council:

Please see attached a power purchase agreement between Lodestar Energy LLC and City of Haverhill. Please see attached a letter from Orlando Pacheco, Haverhill's Energy Advisor, regarding this project. Mr. Pacheco will be available at Tuesday's City Council meeting should you have any questions. I recommend approval.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf



# Haverhill

Purchasing Department, Room 105  
Phone: 978-374-2309 Fax: 978-521-4348  
[purchasing@cityofhaverhill.com](mailto:purchasing@cityofhaverhill.com)

February 29, 2020

Mayor James J. Fiorentini  
City Hall  
4 Summer Street  
Haverhill, MA 01830-5875

Dear Mayor:

Attached is the Power Purchase Agreement (PPA) between Lodestar Energy and the City of Haverhill.

The Agreement calls for the City to purchase SMART Solar Credits at a discount rate of 7.5% from the "basic service rate" provided by National Grid. The city is agreeing to purchase 25% all power produced from the Great Barrington project. The estimated commitment is expected to be approximately Eight Hundred and Fifteen Thousand (815,000) kilowatt hours (KWH) annually.

The credits will be applied towards the City/School electric accounts. The agreement contains the same form and language as all the previous Power Purchase Agreements approved by the City Council previously.

Sincerely,

---

Orlando Pacheco  
Energy Manager



**GENERAL TERMS AND CONDITIONS OF  
ENERGY CREDIT PURCHASE AGREEMENT**

*These General Terms and Conditions of Energy Credit Purchase Agreement (the "General Conditions") are dated as of the 3<sup>rd</sup> day of March 2020 and are witnessed and acknowledged by LSE Lepus LLC, a Massachusetts limited liability company ("Provider") and City of Haverhill ("Buyer"), as evidenced by their respective signatures on the last page of this document. Provider and Buyer may be 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 the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"ABC Discount" means the percentage discount set forth on Schedule 2 of the Special Conditions.

"ABC Price" means the price for ABCs set forth on Schedule 2 of the Special Conditions.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means these General Conditions (including the Exhibits attached hereto) and the Special Conditions (including the Schedules and Exhibits thereto).

"Allocated Capacity" has the meaning set forth on Schedule 3 of the Special Conditions.

"Allocated Percentage" means the percentage of Alternative On-Bill Credits to be allocated to Buyer, as set forth on Schedule 3 of the Special Conditions.

"Alternative On-Bill Credit" or "ABC" means a monetary on-bill electricity credit provided by the Utility in accordance with the SMART Program in connection with electricity generated by a solar system qualified under the SMART Program.

"Anticipated Commercial Operation Date" has the meaning set forth on Schedule 1 of the Special Conditions.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 11.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has: (A) applied for or consented to the appointment of, or been made subject to, 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 is 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 its 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 have been entered and continue unstayed and in effect for a period of sixty (60) days.

“Basic Service Rate” has the meaning set forth on Schedule 2 to the Special Conditions.

“Billing Cycle” means the monthly billing cycle established by the Utility with respect to the Host Account.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business. For avoidance of doubt, any reference to “day” and not “Business Day” shall mean a calendar day.

“Buyer” has the meaning set forth in the preamble to these General Conditions.

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

“Commercial Operation” has the meaning set forth in Section 3.3.

“Commercial Operation Date” is the date specified in the notice delivered by Provider to Buyer pursuant to Section 3.3.

“Confidential Information” has the meaning set forth in Section 13.1.

“Construction Start Date” has the meaning set forth on Schedule 1 of the Special Conditions.

“Covenants, Conditions and Restrictions” or “CCRs” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, Environmental Attributes or RPS Class I Renewable Generation Attributes (as defined under the SMART Program), or Green-e® products.

“Estimated Allocated Annual Production” has the meaning set forth in Section 4.2.

“Financing Party” means, as applicable, (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) that has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 8.1.

“General Conditions” has the meaning set forth in the preamble to these General Terms and Conditions of Energy Credit Purchase Agreement.

“Good Industry Practice” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the solar generation industry in the operation and maintenance of equipment similar in size and technology) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have

been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government. “Governmental Authority” shall also include the appointed third party administrator of the SMART Program.

“Host Account” means the Utility account for the Utility meter serving the System.

“Incentive Payment Effective Date” has the meaning set forth in the SMART Tariff.

“Indemnified Parties” has the meaning set forth in Section 14.

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

“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 threatened claims or other matters or in asserting or enforcing any indemnity obligation).

“Mechanically Complete” means that the System (i) has been installed at the Premises, all the direct current components of the System are mechanically and electrically complete, and the System is ready to commence start-up, testing, commissioning and operations once the Utility work and alternating current components of the System are completed and (ii) satisfies requirements under the SMART Program to be considered mechanically complete.

“Operations Year” means each 12-month period beginning on the Incentive Payment Effective Date and each anniversary thereof.

“Party” and “Parties” have the meanings set forth in the preamble to these General Conditions.

“Payment” has the meaning set forth in Section 4.3(b).

“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.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises may include property in multiple locations, and includes the entirety of any structures and underlying real property located at the address(es) described on Schedule 1 of the Special Conditions.

“Provider” has the meaning set forth in the preamble to these General Conditions.

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

“Representatives” has the meaning set forth in Section 13.1.

“SMART Tariff” means the tariff adopted by the Utility substantially in the form of the model “SMART Provision” approved on November 20, 2018 by the Massachusetts Department of Public Utilities (“MA DPU”) in its Docket 17-140.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies and includes the “Incentive Payment” under the SMART Program and all other solar or renewable energy subsidies and incentives but does not include the Value of Energy for the Allocated Percentage and associated ABCs.

“Solar Massachusetts Renewable Target Program” or “SMART Program” means, collectively, and as amended from time to time, the SMART regulation, 225 CMR 20.00 *et. seq.*, the SMART Tariff, orders and guidelines issued by the MA DPU and Massachusetts Department of Energy Resources, and the associated tariff(s) of the Utility.

“Special Conditions” means the applicable Special Terms and Conditions of Energy Credit Purchase Agreement entered into by Provider and Buyer Agreement that references and incorporates these General Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus one and one half percent (1.5%) and (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, generally described on Schedule 1 of the Special Conditions that generates electricity and is constructed on the Premises.

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

“Utility” means the local electric distribution company providing electric distribution and interconnection services to the System at the Premises and providing electric distribution services to Buyer.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the 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 the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement (the “Term”) shall commence on the Effective Date and shall continue for twenty (20) years from the Incentive Payment Effective Date of the System, unless and until terminated earlier pursuant to the provisions of the Agreement.

2.2 Buyer Right to Terminate the Agreement Prior to Incentive Payment Effective Date. Buyer, upon thirty (30) days’ notice to Provider, may terminate this Agreement with no liability whatsoever if Provider:

(b) fails to achieve Mechanical Completion within the Reservation Period (as defined in the SMART Regulations and DOER Guidelines) for the System, as such Reservation Period may be extended pursuant to the SMART Regulations and DOER Guidelines;

(b) fails to achieve Commercial Operation by the ninetieth (90<sup>th</sup>) day after the Anticipated Commercial Operation Date, provided that any such termination notice shall be null and void and this Agreement shall not terminate if Provider establishes that the System has achieved Commercial Operation by the end of the 30-day notice period; and

(c) fails to achieve the Incentive Payment Effective Date by the one hundred eightieth day (180<sup>th</sup>) day after the Anticipated Commercial Operation Date, provided that any such termination notice shall be null and void and this Agreement shall not terminate if Provider establishes that the System has achieved the Incentive Payment Effective Date by the end of the 30-day notice period.

Provider shall inform Buyer in writing not later than five (5) Business Days after it obtains or achieves each of: (i) its Statement of Qualification, (ii) its Reservation Period and any extension of the same, (iii) its Mechanical Completion date, (iv) its Commercial Operation Date and its Incentive Payment Commencement Date.

### 3. SYSTEM OPERATIONS.

3.1 Provider as Owner and Operator. The System will be owned or leased by Provider and will be operated and maintained and, as necessary, repaired and removed, by Provider at its sole cost and expense, consistent with Good Industry Practice.

3.2 Metering. At no cost to Buyer, there will be a separate meter installed and maintained by the Utility which will measure the net amount of electrical energy generated by the System and delivered to the Utility. Provider also may, at its discretion and expense, install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy generated by the System.

3.3 Commercial Operation; Incentive Payment Effective Date. "Commercial Operation" shall occur when the System has been approved for interconnected operation by the Utility and Provider has determined that the System has achieved commercial operation. Provider shall provide Buyer written notice of the Commercial Operation Date. In addition, Provider shall provide Buyer written notice of the Incentive Payment Effective Date.

3.4 SMART Program. Other than as required under Section 8(b) of the DOER's Statement of Qualification Reservation Period Guideline Dated as of September 13, 2018 (the "Off-taker Based Adder Requirements") with respect to offtakers other than Buyer, Provider hereby represents and warrants that it holds the necessary site control, non-discretionary permits and approvals, rights with the Utility under an Interconnection Services Agreement and other rights required to apply for and receive a Statement of Qualification from the Massachusetts Department of Energy Resources qualifying the System as an Alternative On-Bill Credit Generation Unit as defined under the SMART Tariff and as a Community Shared Solar Tariff Generation Unit and an Alternative On-bill Credit Generation Unit under the SMART Regulations. Provider shall meet the Off-taker Based Adder Requirements and obtain DOER's confirmation of the same within the timeframe required under the SMART Regulations. Subject to the terms and conditions of this Agreement, Provider shall take all steps necessary to qualify the System for the SMART Program. In addition to the foregoing, the Parties will work cooperatively and in good faith to effect the transfer of ABC to Buyer's Utility accounts in accordance with all SMART Program requirements under Applicable Law and Utility tariffs, including applicable interconnection and metering requirements (e.g., required utility paperwork). In the event that Buyer's cooperation requires efforts beyond reasonable administrative and ministerial actions (e.g., preparation of information needed to complete required utility paperwork), Buyer may notify Provider and shall not be required to undertake such additional efforts except at Provider's expense.

### 4. PURCHASE AND SALE OF ALTERNATIVE ON-BILL CREDITS; TITLE.

4.1 Purchase and Sale Requirement. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Allocated Percentage of ABCs delivered by the Utility and applied to Buyer's Utility accounts with respect to electricity generated by the System and delivered to the Utility during the Term. Seller shall cause the Utility to apply the Allocated Percentage of ABCs to such Buyer's Utility accounts, including any ABCs that may be attributable to electricity generated by the System and delivered to the Utility prior to the Incentive Payment Effective Date.

4.2 Estimated Allocated Annual Production. The estimated allocated annual production for each Operations Year during the Term ("Estimated Allocated Annual Production") is set forth on Schedule 4 of the Special Conditions.

#### 4.3 Price and Payment.

(a) ABC Price. The ABC Price shall be calculated as specified on Schedule 2 of the Special Conditions. The value of ABCs under the SMART Program will be determined based on the "Value of Energy" as described under Section 7.0(4) of the SMART Tariff and, accordingly, may vary with energy market pricing and the

Utility's fixed Basic Service tariff applicable to the System, which will be revised by the Utility from time to time during the Term. Accordingly, the Buyer understands that the value of ABCs may change from time to time during the Term. Seller covenants and agrees to elect and maintain with the Utility to receive during the Term "fixed rate" Basic Service and shall not elect to receive the "monthly variable" Basic Service rate.

(b) Payment. Buyer shall pay to Provider a monthly payment (the "Payment") with respect to each monthly Billing Cycle of the Term equal to the product of (x) total amount in dollars of ABCs generated from the Allocated Percentage for the relevant Billing Cycle and applied to the Buyer's Utility account(s) times (y) the ABC Price.

(c) Invoice. After the Incentive Payment Effective Date, following Provider's receipt of each monthly bill from the Utility with respect to the ABC applied to the Buyer's Utility account(s), Provider shall invoice Buyer for the Payment. The last invoice shall be for ABCs arising from electricity production only through the last day of the Term.

(d) Time of Payment. Except with respect to amounts disputed pursuant to Section 4.3(f), Buyer shall pay all amounts due hereunder within thirty (30) days after Buyer's receipt of the applicable invoice.

(e) Method of Payment. Buyer shall make all payments under the Agreement by check or electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due (other than payments that Buyer has disputed pursuant to Section 4.3(f)) shall bear interest accruing from the date due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 4.3(g) below, all payments made hereunder shall be non-refundable, 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.

(f) Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under the Agreement with respect to the disputed amount and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Buyer shall not be required to pay any amount disputed in good faith. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date due under such invoice until the date paid. If an amount paid by Buyer is subject to dispute and it is later determined that Buyer was not required to pay such amount, that amount shall accrue interest at the Stated Rate from the date paid and shall be returned to Buyer unless Buyer in writing authorizes Provider to retain that amount plus such interest as a credit against future amounts due under this Agreement.

(g) Billing Adjustments Following Utility Billing Adjustments. If the Utility makes a retroactive adjustment in the quantity of ABCs credited to Buyer's Utility account, Buyer, in the case of an increase in the quantity of ABCs, shall make a corresponding payment to Provider or, in the case of a decrease in the quantity of ABCs, shall receive a corresponding reimbursement from Provider upon receipt of an invoice from Provider.

4.4 Environmental Attributes and Solar Incentives. Buyer's purchase of ABCs does not include Environmental Attributes (which shall be transferred to the Utility pursuant to the SMART Tariff) or Solar Incentives. Buyer disclaims any right to Environmental Attributes or Solar Incentives and shall, at the request of Provider, at no out of pocket cost to Buyer, execute any document or agreement reasonably necessary to confirm the intent of this Section 4.4. Notwithstanding the foregoing, Buyer shall be permitted to make public statements regarding its purchase of ABCs generated by the System under this Agreement in order to verify its progress and/or compliance with its and its Affiliates' climate action plans and related goals and policies.

4.5 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party.

## 5. GENERAL COVENANTS.

### 5.1 Provider's Covenants. Provider covenants and agrees to the following:

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

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating at a commercially reasonable continuous rate in conformance with Good Industry Practice at all times.

(c) Governmental Approvals. Provider shall obtain and maintain and secure at its sole cost all Governmental Approvals required for the construction and operation of the System and to enable Provider to perform its obligations under this Agreement.

(d) Applicable Laws. Provider shall comply in all material respects with all Applicable Laws relating to the construction, operation and removal of the System. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria as are consistent with Good Industry Practice for photovoltaic solar system integrators in the United States.

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

(a) Buyer shall provide to Provider such documentation (including billing statements from the Utility), as it may have or can reasonably obtain and as may be reasonably needed in order for Provider to perform its obligations under this Agreement.

(b) SMART Program Matters. Buyer shall comply with any requirements specified on Schedule 6 of the Special Conditions that are necessary for the System to meet and maintain eligibility under the SMART program, including eligibility for any applicable adders. Buyer understands it [(together with any other anchor customers)]<sup>1</sup> will not be permitted to receive ABCs in excess of that produced by fifty percent (50%) of the capacity (in alternating current) of the System on an annual basis. Buyer agrees to at no out of pocket cost to supply any information and complete any form that may be required to verify eligibility of the System to participate in the SMART Program or receive certain benefits under the SMART Program, or as Provider may otherwise reasonably request to the extent reasonably necessary to perform its obligations under this Agreement. Buyer agrees to complete and to provide to Provider on the Effective Date a Customer Disclosure Form as required under the SMART Regulations.

## 6. REPRESENTATIONS & WARRANTIES.

6.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date 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 the Agreement;

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

(d) the 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; and

(f) its execution and performance of the 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.

6.2 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 5.1, AND THIS SECTION 6 THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY PROVIDER 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 PROVIDER.

#### 7. TAXES AND GOVERNMENTAL FEES.

Provider 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 or operation of the System, including any tax on electric generation or electric generation equipment. Provider shall not be obligated for any taxes payable by or assessed against Buyer based on or related to Buyer's overall income or revenues.

#### 8. FORCE MAJEURE.

8.1 Definition of Force Majeure Event. "Force Majeure Event" means any act or event that is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and which such Party has been unable to overcome with the exercise of due diligence. Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural disaster, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement). A Force Majeure Event shall not be based on the economic hardship of either Party.

#### 8.2 Excused Performance; Tolling.

(a) Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 8 shall as soon as practicable (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of the Force Majeure Event, and (iv) resume performance of its obligations hereunder as soon as practicable



thereafter. Notwithstanding the foregoing, Buyer shall not be excused from making any payments for ABCs delivered to Buyer.

(b) If a Force Majeure Event occurs prior to the Commercial Operation Date, all milestone dates (e.g., Construction Start Date, Anticipated Commercial Operation Date), timeline-based deadlines, or similar requirements shall be tolled from the date of the notice of the Force Majeure Event until the date of the notice of the termination of the Force Majeure Event or, if earlier, six (6) months from the notice of the Force Majeure Event.

8.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the other Party, provided that the terminating Party shall have the right to withdraw such termination notice in the event that the Force Majeure Event ceases prior to the expiration of such 90-day period.

## 9. DEFAULT.

### 9.1 Provider Defaults and Buyer Remedies.

(a) Provider Defaults. Subject to the provisions of Exhibit A, the following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) a Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Buyer any amount owed under the Agreement (other than amounts disputed in good faith) within fifteen (15) days from receipt of notice from Buyer of such past due amount; or
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and diligently pursue a cure within such 30-day period if a longer cure period is needed; provided, however, that Provider shall not be entitled to a cure period in excess of ninety (90) days in total.

(b) Buyer's Remedies. If a Provider Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 10 and the provisions of Exhibit A, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Buyer shall use reasonable efforts to mitigate its damages.

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

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

- (i) a Bankruptcy Event shall have occurred with respect to Buyer;
- (ii) Buyer fails to pay Provider any amount due Provider under the Agreement (other than amounts disputed in good faith pursuant to Section 4.3(f)) within fifteen (15) days from receipt of notice from Provider of such past due amount; or
- (iii) Buyer breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and diligently pursue said cure within such thirty (30) day period if a longer cure period is needed; provided, however, that Buyer shall not be entitled to a cure period in excess of ninety (90) days in total.

(b) Provider's Remedies. If a Buyer Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 10, Provider may terminate this Agreement and upon such

termination, Provider may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Provider shall use reasonable efforts to mitigate its damages.

#### 10. LIMITATIONS OF LIABILITY.

Neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, whether foreseeable or not, arising out of, or in connection with the Agreement.

#### 11. ASSIGNMENT.

11.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an “Assignment”) the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Buyer, Provider may (i) assign this Agreement to an Affiliate, (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction), or (iii) assign this Agreement to a party that acquires ownership of the System or the development rights thereto and which party shall have at least the same or greater financial and technical capabilities to perform Provider’s obligations under this Agreement. In the event that Provider identifies such secured Financing Party on Schedule 5 of the Special Conditions, or in a subsequent notice to Buyer, then Buyer shall comply with the provisions set forth in Exhibit A to these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 11.1. Any assignment by Provider without any required prior written consent of Buyer shall not release Buyer of its obligations hereunder.

11.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party on Schedule 5 of the Special Conditions, or in a subsequent notice to Buyer, then Buyer hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 11.1 of the Agreement;

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider’s interests in this Agreement but not in derogation of any right of Buyer under this Agreement; and

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party 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.

Any Financing Party shall be an intended third-party beneficiary of this Section 11.2.

11.3 Assignment by Buyer. Buyer shall not assign the Agreement or any interest therein, without Provider’s prior written consent, which consent Provider may withhold in its sole discretion; provided, however, that Buyer shall be entitled to request that Provider allocate ABCs to Buyer’s affiliates with the same credit profile as determined by Provider and located within the same service territory of the Utility by delivering ninety (90) days prior written notice to Provider; and provided further that such assignment shall not take effect until after Buyer’s assignee has provided an executed Customer Disclosure Form and any other necessary information and the Utility has accepted a revised AOBC Payment/Credit Form under the SMART Program. The Parties recognize that effectuating a change in the allocation of ABCs depends upon action by the Utility. Any assignment by Buyer without the prior written consent of Provider shall not release Buyer of its obligations hereunder.

#### 12. NOTICES.

12.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may

be) at the addresses set forth on Schedule 5 of the Special Conditions, or at such other address as may be designated in writing in a notice to the other Party from time to time.

12.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified in the Special Conditions when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail.

12.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Buyer. Invoices shall be sent by regular first-class mail postage prepaid or via electronic mail at the electronic mail address provided by Buyer.

### 13. CONFIDENTIALITY.

13.1 Confidentiality Obligation. If either Party provides confidential information and such designation has been expressly communicated to the other Party (it being understood that the terms and conditions of this Agreement shall be deemed to have been designated confidential without further communication), including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Buyer's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees or acquirers be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 13.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Notwithstanding the foregoing, any information designated as confidential shall no longer be considered confidential five (5) years after it has been communicated to the other Party unless the Party disclosing such information to the other renews in writing its assertion of confidentiality and specifies the information considered to be confidential.

13.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or

(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

13.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material, including publicly referring to this Agreement or the matters that are the subject of the Agreement, without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party.

13.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Agreement by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

#### 14. INDEMNITY.

Subject to Section 10, to the extent permitted by Applicable Law, Provider agrees that it shall, on demand, indemnify, defend and hold harmless Buyer, its permitted successors and assigns and their respective directors, trustees, officers, members, employees and other representatives (collectively, the “Indemnified Parties”) from and against any and all Losses incurred by the Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the indemnifying Party’s negligence or willful misconduct. Provider shall not, however, be required to reimburse or indemnify any Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Indemnified Party.

#### 15. MISCELLANEOUS.

15.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Buyer with respect to the subject matter hereof and thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

15.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Buyer.

15.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market 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.

15.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Buyer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

15.5 Limited Effect of Waiver. The failure of Provider or Buyer to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

15.6 Survival. The obligations under Sections 2.2 (Buyer Right to Terminate the Agreement Prior to Commercial Operation), Section 6.2 (Exclusion of Warranties), Section 7 (Taxes and Governmental Fees), Section 9.1(b) (Buyer's Remedies), Section 9.2(b) (Provider's Remedies), Section 10 (Limitations of Liability), Section 12 (Notices), Section 13 (Confidentiality), Section 14 (Indemnity), Section 15 (Miscellaneous), or under other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

15.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Massachusetts without reference to any choice of law principles that would require the application of the law of any state other than the Commonwealth of Massachusetts. The Parties agree that the courts of Massachusetts and the federal courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement by any courts described in this Section 15.7.

15.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

15.9 Relation of the Parties. The relationship between Provider and Buyer shall not be that of partners, agents, or joint ventures of one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Buyer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

15.10 Forward Contract; Bankruptcy Code; Service Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Provider is a "forward contract merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Provider is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor. The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

15.11 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Buyer and their respective successors and permitted assigns.

15.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

15.13 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in these General Conditions and intending to be legally bound hereby, Provider and Buyer have executed these General Conditions by their duly authorized representatives under seal as of the date first above written.

PROVIDER:

**LSE Lepus LLC**

By: \_\_\_\_\_

Name:

Title:

*BUYER:*

**City of Haverhill**

By: \_\_\_\_\_

Name: James J. Fiorentini

Title: Mayor

**Exhibit A**  
**to General Conditions**

**Certain Agreements for the Benefit of Financing Parties**

Buyer acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that Provider may sell or assign the System and/or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Buyer in writing, Buyer agrees as follows:

(a) **Consent to Collateral Assignment.** Buyer consents to either the sale and leaseback or other similar conveyance to a lessor for financing purposes or the collateral assignment by Provider to a lender that has directly or indirectly provided financing of the System, of Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Buyer will deliver to the Financing Party at the address for the Financing Party stated in the Special Conditions (or such other address provided by Provider or Financing Party to Buyer), concurrently with delivery thereof to Provider, a copy of each notice of default given by Buyer under the Agreement, inclusive of a reasonable description of Provider's default. No such notice will be effective absent delivery to the Financing Party pursuant to this paragraph. Buyer will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System, subject to Buyer's rights under this Agreement.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Unless the Financing Party has succeeded to Provider's interests under this Agreement, nothing herein requires the Financing Party to cure any default of Provider under this Agreement or to perform any act, duty or obligation of Provider under this Agreement, but Buyer hereby gives it the option to do so and does not waive its rights to pursue any available remedy for failure to cure a default.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not, in and of itself, constitute a default of the assignment provisions under this Agreement, provided that any assignment of this Agreement in such circumstances is to a party that is acquiring the System (or Provider's leasehold interest in the System).

(d) **Right to Cure.**

i. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and such condition is not cured within the cure periods provided for in this Agreement. The Parties' respective obligations will otherwise remain in effect during any cure period.

ii. If the Financing Party (including any Buyer or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described

in paragraph (d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner and time periods required by this Agreement, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

\* \* \* \* \*



**SPECIAL TERMS AND CONDITIONS OF  
ENERGY CREDIT PURCHASE AGREEMENT**

These Special Terms and Conditions of Energy Credit Purchase Agreement (the "Special Conditions") are made and entered into as of this 3<sup>rd</sup> day of March, 2020 (the "Effective Date"), between LSE Lepus LLC, a Massachusetts limited liability company ("Provider"), and City of Haverhill ("Buyer"). Provider and Buyer may be referred to herein individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

WHEREAS, Provider intends to construct, install, own, operate, and maintain a solar photovoltaic system at the Premises described on Schedule 1;

WHEREAS, the Parties intend that the System will qualify under the SMART Program and will generate Alternative On-Bill Credits ("ABCs");

WHEREAS, Buyer is willing to purchase, the Allocated Percentage (as set forth on Schedule 3 hereof) of the ABCs to be generated by the System and Provider is willing to sell, or cause to be allocated, the Allocated Percentage of the ABCs to be generated by the System to Buyer, under the terms of this Agreement;

WHEREAS, Provider and Buyer acknowledged those certain General Terms and Conditions of Energy Credit Purchase Agreement, dated as of 3rd day of March, 2020 (the "General Conditions"); and

WHEREAS, these Special Conditions constitute the Special Conditions referred to in the General Conditions;

NOW THEREFORE, in consideration of the foregoing recitals, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are hereby incorporated herein as if set forth in their entirety.
2. Schedules. The following are the respective Schedules to the Special Conditions:

Schedule 1	Description of Premises and System
Schedule 2	ABC Price
Schedule 3	Allocated Capacity; Allocated Percentage
Schedule 4	Estimated Allocated Annual Production
Schedule 5	Notice Information

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in these Special Conditions and intending to be legally bound hereby, Provider and Buyer have executed these Special Conditions by their duly authorized representatives under seal as of the Effective Date.

PROVIDER:

**LSE Lepus LLC**

By: \_\_\_\_\_

Name:

Title:

*BUYER:*

**City of Haverhill**

By: \_\_\_\_\_

Name: James J. Fiorentini

Title: Mayor

## **SCHEDULES**

### **Schedule 1: Description of Premises and System**

<b>System Premises:</b>	Monument Valley – Great Barrington, MA
<b>Premises is Owned or Controlled by:</b>	LSE Lepus LLC
<b>System:</b>	Grid-interconnected, ground mounted solar photovoltaic (PV) system
<b>Construction Start Date:</b>	8/1/20
<b>Effective Date:</b>	As defined on the first page of these Special Conditions
<b>Anticipated Commercial Operation Date:</b>	12/31/20

### **Schedule 2 - ABC Price**

For each Billing Cycle in which the System delivers electricity to the Utility, the ABC Price shall be the product of (A) the Value of Energy (as defined in the SMART Tariff) with respect to energy produced by the System and delivered to the Utility during such Billing Cycle (the “Basic Service Rate”), and (B) a number that is equal to one minus the ABC Discount.

The ABC Discount shall be equal to seven and one-half percent (7.5%).

### **Schedule 3 – Allocated Capacity; Allocated Percentage**

Allocated Capacity: Approximately 814,931 kWh

Allocated direct current capacity and corresponding allocated alternating current capacity of System to be confirmed by Provider by the Commercial Operation Date.

Allocated Percentage: Twenty Five Percent (25%)

### **Schedule 4 – Estimated Allocated Annual Production**

Estimated Allocated Annual Production commencing on the Commercial Operation Date with respect to the System shall be at a minimum as follows:

<b>Operations Year</b>	<b>Estimated Allocated Annual Production (kWh)</b>	<b>Operations Year</b>	<b>Estimated Allocated Annual Production (kWh)</b>
1	814,931	11	775,089
2	810,856	12	771,214
3	806,802	13	767,358
4	802,768	14	763,521
5	798,754	15	759,703
6	794,760	16	755,905
7	790,787	17	752,125
8	786,833	18	748,365
9	782,899	19	744,623
10	778,984	20	740,900

The values set forth in the table above are estimates and Provider shall have the right to update the table upon final design of the System.

**Schedule 5 – Notice Information**

**Buyer:**

City of Haverhill  
Attn: Mayor James J. Fiorentini  
4 Summer Street  
Haverhill, MA 01830  
978-374-2300  
Mayor@cityofhaverhill.com

**Provider:**

Lodestar Energy LLC  
Attn: Jeffrey J. Macel  
40 Tower Lane Suite 201  
Avon CT 06001  
806-881-0777  
jmacel@lodestarenergy.com

**GENERAL TERMS AND CONDITIONS OF  
ENERGY CREDIT PURCHASE AGREEMENT**

*These General Terms and Conditions of Energy Credit Purchase Agreement (the "General Conditions") are dated as of the 3<sup>rd</sup> day of March 2020 and are witnessed and acknowledged by LSE Lepus LLC, a Massachusetts limited liability company ("Provider") and City of Haverhill ("Buyer"), as evidenced by their respective signatures on the last page of this document. Provider and Buyer may be 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 the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"ABC Discount" means the percentage discount set forth on Schedule 2 of the Special Conditions.

"ABC Price" means the price for ABCs set forth on Schedule 2 of the Special Conditions.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means these General Conditions (including the Exhibits attached hereto) and the Special Conditions (including the Schedules and Exhibits thereto).

"Allocated Capacity" has the meaning set forth on Schedule 3 of the Special Conditions.

"Allocated Percentage" means the percentage of Alternative On-Bill Credits to be allocated to Buyer, as set forth on Schedule 3 of the Special Conditions.

"Alternative On-Bill Credit" or "ABC" means a monetary on-bill electricity credit provided by the Utility in accordance with the SMART Program in connection with electricity generated by a solar system qualified under the SMART Program.

"Anticipated Commercial Operation Date" has the meaning set forth on Schedule 1 of the Special Conditions.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 11.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has: (A) applied for or consented to the appointment of, or been made subject to, 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 is 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 its 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 have been entered and continue unstayed and in effect for a period of sixty (60) days.

“Basic Service Rate” has the meaning set forth on Schedule 2 to the Special Conditions.

“Billing Cycle” means the monthly billing cycle established by the Utility with respect to the Host Account.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business. For avoidance of doubt, any reference to “day” and not “Business Day” shall mean a calendar day.

“Buyer” has the meaning set forth in the preamble to these General Conditions.

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

“Commercial Operation” has the meaning set forth in Section 3.3.

“Commercial Operation Date” is the date specified in the notice delivered by Provider to Buyer pursuant to Section 3.3.

“Confidential Information” has the meaning set forth in Section 13.1.

“Construction Start Date” has the meaning set forth on Schedule 1 of the Special Conditions.

“Covenants, Conditions and Restrictions” or “CCRs” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, Environmental Attributes or RPS Class I Renewable Generation Attributes (as defined under the SMART Program), or Green-e® products.

“Estimated Allocated Annual Production” has the meaning set forth in Section 4.2.

“Financing Party” means, as applicable, (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) that has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 8.1.

“General Conditions” has the meaning set forth in the preamble to these General Terms and Conditions of Energy Credit Purchase Agreement.

“Good Industry Practice” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the solar generation industry in the operation and maintenance of equipment similar in size and technology) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have

been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government. “Governmental Authority” shall also include the appointed third party administrator of the SMART Program.

“Host Account” means the Utility account for the Utility meter serving the System.

“Incentive Payment Effective Date” has the meaning set forth in the SMART Tariff.

“Indemnified Parties” has the meaning set forth in Section 14.

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

“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 threatened claims or other matters or in asserting or enforcing any indemnity obligation).

“Mechanically Complete” means that the System (i) has been installed at the Premises, all the direct current components of the System are mechanically and electrically complete, and the System is ready to commence start-up, testing, commissioning and operations once the Utility work and alternating current components of the System are completed and (ii) satisfies requirements under the SMART Program to be considered mechanically complete.

“Operations Year” means each 12-month period beginning on the Incentive Payment Effective Date and each anniversary thereof.

“Party” and “Parties” have the meanings set forth in the preamble to these General Conditions.

“Payment” has the meaning set forth in Section 4.3(b).

“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.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises may include property in multiple locations, and includes the entirety of any structures and underlying real property located at the address(es) described on Schedule 1 of the Special Conditions.

“Provider” has the meaning set forth in the preamble to these General Conditions.

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

“Representatives” has the meaning set forth in Section 13.1.

“SMART Tariff” means the tariff adopted by the Utility substantially in the form of the model “SMART Provision” approved on November 20, 2018 by the Massachusetts Department of Public Utilities (“MA DPU”) in its Docket 17-140.



“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies and includes the “Incentive Payment” under the SMART Program and all other solar or renewable energy subsidies and incentives but does not include the Value of Energy for the Allocated Percentage and associated ABCs.

“Solar Massachusetts Renewable Target Program” or “SMART Program” means, collectively, and as amended from time to time, the SMART regulation, 225 CMR 20.00 *et. seq.*, the SMART Tariff, orders and guidelines issued by the MA DPU and Massachusetts Department of Energy Resources, and the associated tariff(s) of the Utility.

“Special Conditions” means the applicable Special Terms and Conditions of Energy Credit Purchase Agreement entered into by Provider and Buyer Agreement that references and incorporates these General Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus one and one half percent (1.5%) and (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, generally described on Schedule 1 of the Special Conditions that generates electricity and is constructed on the Premises.

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

“Utility” means the local electric distribution company providing electric distribution and interconnection services to the System at the Premises and providing electric distribution services to Buyer.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the 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 the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement (the “Term”) shall commence on the Effective Date and shall continue for twenty (20) years from the Incentive Payment Effective Date of the System, unless and until terminated earlier pursuant to the provisions of the Agreement.

2.2 Buyer Right to Terminate the Agreement Prior to Incentive Payment Effective Date. Buyer, upon thirty (30) days’ notice to Provider, may terminate this Agreement with no liability whatsoever if Provider:

(b) fails to achieve Mechanical Completion within the Reservation Period (as defined in the SMART Regulations and DOER Guidelines) for the System, as such Reservation Period may be extended pursuant to the SMART Regulations and DOER Guidelines;

(b) fails to achieve Commercial Operation by the ninetieth (90<sup>th</sup>) day after the Anticipated Commercial Operation Date, provided that any such termination notice shall be null and void and this Agreement shall not terminate if Provider establishes that the System has achieved Commercial Operation by the end of the 30-day notice period; and

(c) fails to achieve the Incentive Payment Effective Date by the one hundred eightieth day (180<sup>th</sup>) day after the Anticipated Commercial Operation Date, provided that any such termination notice shall be null and void and this Agreement shall not terminate if Provider establishes that the System has achieved the Incentive Payment Effective Date by the end of the 30-day notice period.

Provider shall inform Buyer in writing not later than five (5) Business Days after it obtains or achieves each of: (i) its Statement of Qualification, (ii) its Reservation Period and any extension of the same, (iii) its Mechanical Completion date, (iv) its Commercial Operation Date and its Incentive Payment Commencement Date.

### 3. SYSTEM OPERATIONS.

3.1 Provider as Owner and Operator. The System will be owned or leased by Provider and will be operated and maintained and, as necessary, repaired and removed, by Provider at its sole cost and expense, consistent with Good Industry Practice.

3.2 Metering. At no cost to Buyer, there will be a separate meter installed and maintained by the Utility which will measure the net amount of electrical energy generated by the System and delivered to the Utility. Provider also may, at its discretion and expense, install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy generated by the System.

3.3 Commercial Operation; Incentive Payment Effective Date. “Commercial Operation” shall occur when the System has been approved for interconnected operation by the Utility and Provider has determined that the System has achieved commercial operation. Provider shall provide Buyer written notice of the Commercial Operation Date. In addition, Provider shall provide Buyer written notice of the Incentive Payment Effective Date.

3.4 SMART Program. Other than as required under Section 8(b) of the DOER’s Statement of Qualification Reservation Period Guideline Dated as of September 13, 2018 (the “Off-taker Based Adder Requirements”) with respect to offtakers other than Buyer, Provider hereby represents and warrants that it holds the necessary site control, non-discretionary permits and approvals, rights with the Utility under an Interconnection Services Agreement and other rights required to apply for and receive a Statement of Qualification from the Massachusetts Department of Energy Resources qualifying the System as an Alternative On-Bill Credit Generation Unit as defined under the SMART Tariff and as a Community Shared Solar Tariff Generation Unit and an Alternative On-bill Credit Generation Unit under the SMART Regulations. Provider shall meet the Off-taker Based Adder Requirements and obtain DOER’s confirmation of the same within the timeframe required under the SMART Regulations. Subject to the terms and conditions of this Agreement, Provider shall take all steps necessary to qualify the System for the SMART Program. In addition to the foregoing, the Parties will work cooperatively and in good faith to effect the transfer of ABC to Buyer’s Utility accounts in accordance with all SMART Program requirements under Applicable Law and Utility tariffs, including applicable interconnection and metering requirements (e.g., required utility paperwork). In the event that Buyer’s cooperation requires efforts beyond reasonable administrative and ministerial actions (e.g., preparation of information needed to complete required utility paperwork), Buyer may notify Provider and shall not be required to undertake such additional efforts except at Provider’s expense.

### 4. PURCHASE AND SALE OF ALTERNATIVE ON-BILL CREDITS; TITLE.

4.1 Purchase and Sale Requirement. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Allocated Percentage of ABCs delivered by the Utility and applied to Buyer’s Utility accounts with respect to electricity generated by the System and delivered to the Utility during the Term. Seller shall cause the Utility to apply the Allocated Percentage of ABCs to such Buyer’s Utility accounts, including any ABCs that may be attributable to electricity generated by the System and delivered to the Utility prior to the Incentive Payment Effective Date.

4.2 Estimated Allocated Annual Production. The estimated allocated annual production for each Operations Year during the Term (“Estimated Allocated Annual Production”) is set forth on Schedule 4 of the Special Conditions.

#### 4.3 Price and Payment.

(a) ABC Price. The ABC Price shall be calculated as specified on Schedule 2 of the Special Conditions. The value of ABCs under the SMART Program will be determined based on the “Value of Energy” as described under Section 7.0(4) of the SMART Tariff and, accordingly, may vary with energy market pricing and the

Utility's fixed Basic Service tariff applicable to the System, which will be revised by the Utility from time to time during the Term. Accordingly, the Buyer understands that the value of ABCs may change from time to time during the Term. Seller covenants and agrees to elect and maintain with the Utility to receive during the Term "fixed rate" Basic Service and shall not elect to receive the "monthly variable" Basic Service rate.

(b) Payment. Buyer shall pay to Provider a monthly payment (the "Payment") with respect to each monthly Billing Cycle of the Term equal to the product of (x) total amount in dollars of ABCs generated from the Allocated Percentage for the relevant Billing Cycle and applied to the Buyer's Utility account(s) times (y) the ABC Price.

(c) Invoice. After the Incentive Payment Effective Date, following Provider's receipt of each monthly bill from the Utility with respect to the ABC applied to the Buyer's Utility account(s), Provider shall invoice Buyer for the Payment. The last invoice shall be for ABCs arising from electricity production only through the last day of the Term.

(d) Time of Payment. Except with respect to amounts disputed pursuant to Section 4.3(f), Buyer shall pay all amounts due hereunder within thirty (30) days after Buyer's receipt of the applicable invoice.

(e) Method of Payment. Buyer shall make all payments under the Agreement by check or electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due (other than payments that Buyer has disputed pursuant to Section 4.3(f)) shall bear interest accruing from the date due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 4.3(g) below, all payments made hereunder shall be non-refundable, 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.

(f) Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under the Agreement with respect to the disputed amount and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Buyer shall not be required to pay any amount disputed in good faith. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date due under such invoice until the date paid. If an amount paid by Buyer is subject to dispute and it is later determined that Buyer was not required to pay such amount, that amount shall accrue interest at the Stated Rate from the date paid and shall be returned to Buyer unless Buyer in writing authorizes Provider to retain that amount plus such interest as a credit against future amounts due under this Agreement.

(g) Billing Adjustments Following Utility Billing Adjustments. If the Utility makes a retroactive adjustment in the quantity of ABCs credited to Buyer's Utility account, Buyer, in the case of an increase in the quantity of ABCs, shall make a corresponding payment to Provider or, in the case of a decrease in the quantity of ABCs, shall receive a corresponding reimbursement from Provider upon receipt of an invoice from Provider.

4.4 Environmental Attributes and Solar Incentives. Buyer's purchase of ABCs does not include Environmental Attributes (which shall be transferred to the Utility pursuant to the SMART Tariff) or Solar Incentives. Buyer disclaims any right to Environmental Attributes or Solar Incentives and shall, at the request of Provider, at no out of pocket cost to Buyer, execute any document or agreement reasonably necessary to confirm the intent of this Section 4.4. Notwithstanding the foregoing, Buyer shall be permitted to make public statements regarding its purchase of ABCs generated by the System under this Agreement in order to verify its progress and/or compliance with its and its Affiliates' climate action plans and related goals and policies.

4.5 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party.

## 5. GENERAL COVENANTS.

### 5.1 Provider's Covenants. Provider covenants and agrees to the following:

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

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating at a commercially reasonable continuous rate in conformance with Good Industry Practice at all times.

(c) Governmental Approvals. Provider shall obtain and maintain and secure at its sole cost all Governmental Approvals required for the construction and operation of the System and to enable Provider to perform its obligations under this Agreement.

(d) Applicable Laws. Provider shall comply in all material respects with all Applicable Laws relating to the construction, operation and removal of the System. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria as are consistent with Good Industry Practice for photovoltaic solar system integrators in the United States.

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

(a) Buyer shall provide to Provider such documentation (including billing statements from the Utility), as it may have or can reasonably obtain and as may be reasonably needed in order for Provider to perform its obligations under this Agreement.

(b) SMART Program Matters. Buyer shall comply with any requirements specified on Schedule 6 of the Special Conditions that are necessary for the System to meet and maintain eligibility under the SMART program, including eligibility for any applicable adders. Buyer understands it [(together with any other anchor customers)]<sup>1</sup> will not be permitted to receive ABCs in excess of that produced by fifty percent (50%) of the capacity (in alternating current) of the System on an annual basis. Buyer agrees to at no out of pocket cost to supply any information and complete any form that may be required to verify eligibility of the System to participate in the SMART Program or receive certain benefits under the SMART Program, or as Provider may otherwise reasonably request to the extent reasonably necessary to perform its obligations under this Agreement. Buyer agrees to complete and to provide to Provider on the Effective Date a Customer Disclosure Form as required under the SMART Regulations.

## 6. REPRESENTATIONS & WARRANTIES.

6.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date 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 the Agreement;

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

(d) the 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; and

(f) its execution and performance of the 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.

6.2 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 5.1, AND THIS SECTION 6 THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY PROVIDER 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 PROVIDER.

#### 7. TAXES AND GOVERNMENTAL FEES.

Provider 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 or operation of the System, including any tax on electric generation or electric generation equipment. Provider shall not be obligated for any taxes payable by or assessed against Buyer based on or related to Buyer's overall income or revenues.

#### 8. FORCE MAJEURE.

8.1 Definition of Force Majeure Event. "Force Majeure Event" means any act or event that is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and which such Party has been unable to overcome with the exercise of due diligence. Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural disaster, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement). A Force Majeure Event shall not be based on the economic hardship of either Party.

#### 8.2 Excused Performance; Tolling.

(a) Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 8 shall as soon as practicable (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of the Force Majeure Event, and (iv) resume performance of its obligations hereunder as soon as practicable

thereafter. Notwithstanding the foregoing, Buyer shall not be excused from making any payments for ABCs delivered to Buyer.

(b) If a Force Majeure Event occurs prior to the Commercial Operation Date, all milestone dates (*e.g.*, Construction Start Date, Anticipated Commercial Operation Date), timeline-based deadlines, or similar requirements shall be tolled from the date of the notice of the Force Majeure Event until the date of the notice of the termination of the Force Majeure Event or, if earlier, six (6) months from the notice of the Force Majeure Event.

8.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then either Party shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the other Party, provided that the terminating Party shall have the right to withdraw such termination notice in the event that the Force Majeure Event ceases prior to the expiration of such 90-day period.

## 9. DEFAULT.

### 9.1 Provider Defaults and Buyer Remedies.

(a) Provider Defaults. Subject to the provisions of Exhibit A, the following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) a Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Buyer any amount owed under the Agreement (other than amounts disputed in good faith) within fifteen (15) days from receipt of notice from Buyer of such past due amount; or
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and diligently pursue a cure within such 30-day period if a longer cure period is needed; provided, however, that Provider shall not be entitled to a cure period in excess of ninety (90) days in total.

(b) Buyer's Remedies. If a Provider Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 10 and the provisions of Exhibit A, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Buyer shall use reasonable efforts to mitigate its damages.

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

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

- (i) a Bankruptcy Event shall have occurred with respect to Buyer;
- (ii) Buyer fails to pay Provider any amount due Provider under the Agreement (other than amounts disputed in good faith pursuant to Section 4.3(f)) within fifteen (15) days from receipt of notice from Provider of such past due amount; or
- (iii) Buyer breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and diligently pursue said cure within such thirty (30) day period if a longer cure period is needed; provided, however, that Buyer shall not be entitled to a cure period in excess of ninety (90) days in total.

(b) Provider's Remedies. If a Buyer Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 10, Provider may terminate this Agreement and upon such

termination, Provider may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Provider shall use reasonable efforts to mitigate its damages.

#### 10. LIMITATIONS OF LIABILITY.

Neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, whether foreseeable or not, arising out of, or in connection with the Agreement.

#### 11. ASSIGNMENT.

11.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an “Assignment”) the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Buyer, Provider may (i) assign this Agreement to an Affiliate, (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction), or (iii) assign this Agreement to a party that acquires ownership of the System or the development rights thereto and which party shall have at least the same or greater financial and technical capabilities to perform Provider’s obligations under this Agreement. In the event that Provider identifies such secured Financing Party on Schedule 5 of the Special Conditions, or in a subsequent notice to Buyer, then Buyer shall comply with the provisions set forth in Exhibit A to these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 11.1. Any assignment by Provider without any required prior written consent of Buyer shall not release Buyer of its obligations hereunder.

11.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party on Schedule 5 of the Special Conditions, or in a subsequent notice to Buyer, then Buyer hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 11.1 of the Agreement;

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider’s interests in this Agreement but not in derogation of any right of Buyer under this Agreement; and

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party 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.

Any Financing Party shall be an intended third-party beneficiary of this Section 11.2.

11.3 Assignment by Buyer. Buyer shall not assign the Agreement or any interest therein, without Provider’s prior written consent, which consent Provider may withhold in its sole discretion; provided, however, that Buyer shall be entitled to request that Provider allocate ABCs to Buyer’s affiliates with the same credit profile as determined by Provider and located within the same service territory of the Utility by delivering ninety (90) days prior written notice to Provider; and provided further that such assignment shall not take effect until after Buyer’s assignee has provided an executed Customer Disclosure Form and any other necessary information and the Utility has accepted a revised AOBC Payment/Credit Form under the SMART Program. The Parties recognize that effectuating a change in the allocation of ABCs depends upon action by the Utility. Any assignment by Buyer without the prior written consent of Provider shall not release Buyer of its obligations hereunder.

#### 12. NOTICES.

12.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may

be) at the addresses set forth on Schedule 5 of the Special Conditions, or at such other address as may be designated in writing in a notice to the other Party from time to time.

12.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified in the Special Conditions when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail.

12.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Buyer. Invoices shall be sent by regular first-class mail postage prepaid or via electronic mail at the electronic mail address provided by Buyer.

### 13. CONFIDENTIALITY.

13.1 Confidentiality Obligation. If either Party provides confidential information and such designation has been expressly communicated to the other Party (it being understood that the terms and conditions of this Agreement shall be deemed to have been designated confidential without further communication), including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Buyer's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees or acquirers be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 13.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Notwithstanding the foregoing, any information designated as confidential shall no longer be considered confidential five (5) years after it has been communicated to the other Party unless the Party disclosing such information to the other renews in writing its assertion of confidentiality and specifies the information considered to be confidential.

13.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or



(d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

13.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material, including publicly referring to this Agreement or the matters that are the subject of the Agreement, without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party.

13.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Agreement by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

#### 14. INDEMNITY.

Subject to Section 10, to the extent permitted by Applicable Law, Provider agrees that it shall, on demand, indemnify, defend and hold harmless Buyer, its permitted successors and assigns and their respective directors, trustees, officers, members, employees and other representatives (collectively, the "Indemnified Parties") from and against any and all Losses incurred by the Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the indemnifying Party's negligence or willful misconduct. Provider shall not, however, be required to reimburse or indemnify any Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Indemnified Party.

#### 15. MISCELLANEOUS.

15.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Buyer with respect to the subject matter hereof and thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

15.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Buyer.

15.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market 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.

15.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Buyer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

15.5 Limited Effect of Waiver. The failure of Provider or Buyer to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

15.6 Survival. The obligations under Sections 2.2 (Buyer Right to Terminate the Agreement Prior to Commercial Operation), Section 6.2 (Exclusion of Warranties), Section 7 (Taxes and Governmental Fees), Section 9.1(b) (Buyer's Remedies), Section 9.2(b) (Provider's Remedies), Section 10 (Limitations of Liability), Section 12 (Notices), Section 13 (Confidentiality), Section 14 (Indemnity), Section 15 (Miscellaneous), or under other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

15.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Massachusetts without reference to any choice of law principles that would require the application of the law of any state other than the Commonwealth of Massachusetts. The Parties agree that the courts of Massachusetts and the federal courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement by any courts described in this Section 15.7.

15.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

15.9 Relation of the Parties. The relationship between Provider and Buyer shall not be that of partners, agents, or joint ventures of one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Buyer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

15.10 Forward Contract; Bankruptcy Code; Service Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Provider is a "forward contract merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Provider is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor. The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

15.11 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Buyer and their respective successors and permitted assigns.

15.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

15.13 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in these General Conditions and intending to be legally bound hereby, Provider and Buyer have executed these General Conditions by their duly authorized representatives under seal as of the date first above written.

PROVIDER:

**LSE Lepus LLC**

By: \_\_\_\_\_

Name:

Title:

*BUYER:*

**City of Haverhill**

By: \_\_\_\_\_

Name: James J. Fiorentini

Title: Mayor

**Exhibit A**  
**to General Conditions**

**Certain Agreements for the Benefit of Financing Parties**

Buyer acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that Provider may sell or assign the System and/or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Buyer in writing, Buyer agrees as follows:

(a) **Consent to Collateral Assignment.** Buyer consents to either the sale and leaseback or other similar conveyance to a lessor for financing purposes or the collateral assignment by Provider to a lender that has directly or indirectly provided financing of the System, of Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Buyer will deliver to the Financing Party at the address for the Financing Party stated in the Special Conditions (or such other address provided by Provider or Financing Party to Buyer), concurrently with delivery thereof to Provider, a copy of each notice of default given by Buyer under the Agreement, inclusive of a reasonable description of Provider's default. No such notice will be effective absent delivery to the Financing Party pursuant to this paragraph. Buyer will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System, subject to Buyer's rights under this Agreement.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Unless the Financing Party has succeeded to Provider's interests under this Agreement, nothing herein requires the Financing Party to cure any default of Provider under this Agreement or to perform any act, duty or obligation of Provider under this Agreement, but Buyer hereby gives it the option to do so and does not waive its rights to pursue any available remedy for failure to cure a default.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not, in and of itself, constitute a default of the assignment provisions under this Agreement, provided that any assignment of this Agreement in such circumstances is to a party that is acquiring the System (or Provider's leasehold interest in the System).

(d) **Right to Cure.**

i. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and such condition is not cured within the cure periods provided for in this Agreement. The Parties' respective obligations will otherwise remain in effect during any cure period.

ii. If the Financing Party (including any Buyer or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described

in paragraph (d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner and time periods required by this Agreement, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

\* \* \* \* \*

**SPECIAL TERMS AND CONDITIONS OF  
ENERGY CREDIT PURCHASE AGREEMENT**

These Special Terms and Conditions of Energy Credit Purchase Agreement (the “Special Conditions”) are made and entered into as of this 3<sup>rd</sup> day of March, 2020 (the “Effective Date”), between LSE Lepus LLC, a Massachusetts limited liability company (“Provider”), and City of Haverhill (“Buyer”). Provider and Buyer may be referred to herein individually as a “Party” and collectively as the “Parties”.

**WITNESSETH:**

WHEREAS, Provider intends to construct, install, own, operate, and maintain a solar photovoltaic system at the Premises described on Schedule 1;

WHEREAS, the Parties intend that the System will qualify under the SMART Program and will generate Alternative On-Bill Credits (“ABCs”);

WHEREAS, Buyer is willing to purchase, the Allocated Percentage (as set forth on Schedule 3 hereof) of the ABCs to be generated by the System and Provider is willing to sell, or cause to be allocated, the Allocated Percentage of the ABCs to be generated by the System to Buyer, under the terms of this Agreement;

WHEREAS, Provider and Buyer acknowledged those certain General Terms and Conditions of Energy Credit Purchase Agreement, dated as of 3rd day of March, 2020 (the “General Conditions”); and

WHEREAS, these Special Conditions constitute the Special Conditions referred to in the General Conditions;

NOW THEREFORE, in consideration of the foregoing recitals, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are hereby incorporated herein as if set forth in their entirety.
2. Schedules. The following are the respective Schedules to the Special Conditions:

Schedule 1	Description of Premises and System
Schedule 2	ABC Price
Schedule 3	Allocated Capacity; Allocated Percentage
Schedule 4	Estimated Allocated Annual Production
Schedule 5	Notice Information

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in these Special Conditions and intending to be legally bound hereby, Provider and Buyer have executed these Special Conditions by their duly authorized representatives under seal as of the Effective Date.

PROVIDER:

**LSE Lepus LLC**

By: \_\_\_\_\_

Name:

Title:

*BUYER:*

**City of Haverhill**

By: \_\_\_\_\_

Name: James J. Fiorentini

Title: Mayor

## **SCHEDULES**

### **Schedule 1: Description of Premises and System**

<b>System Premises:</b>	Monument Valley – Great Barrington, MA
<b>Premises is Owned or Controlled by:</b>	LSE Lepus LLC
<b>System:</b>	Grid-interconnected, ground mounted solar photovoltaic (PV) system
<b>Construction Start Date:</b>	8/1/20
<b>Effective Date:</b>	As defined on the first page of these Special Conditions
<b>Anticipated Commercial Operation Date:</b>	12/31/20

### **Schedule 2 - ABC Price**

For each Billing Cycle in which the System delivers electricity to the Utility, the ABC Price shall be the product of (A) the Value of Energy (as defined in the SMART Tariff) with respect to energy produced by the System and delivered to the Utility during such Billing Cycle (the “Basic Service Rate”), and (B) a number that is equal to one minus the ABC Discount.

The ABC Discount shall be equal to seven and one-half percent (7.5%).

### **Schedule 3 – Allocated Capacity; Allocated Percentage**

Allocated Capacity: Approximately 814,931 kWh

Allocated direct current capacity and corresponding allocated alternating current capacity of System to be confirmed by Provider by the Commercial Operation Date.

Allocated Percentage: Twenty Five Percent (25%)

### **Schedule 4 – Estimated Allocated Annual Production**

Estimated Allocated Annual Production commencing on the Commercial Operation Date with respect to the System shall be at a minimum as follows:



<b>Operations Year</b>	<b>Estimated Allocated Annual Production (kWh)</b>	<b>Operations Year</b>	<b>Estimated Allocated Annual Production (kWh)</b>
1	814,931	11	775,089
2	810,856	12	771,214
3	806,802	13	767,358
4	802,768	14	763,521
5	798,754	15	759,703
6	794,760	16	755,905
7	790,787	17	752,125
8	786,833	18	748,365
9	782,899	19	744,623
10	778,984	20	740,900

The values set forth in the table above are estimates and Provider shall have the right to update the table upon final design of the System.

**Schedule 5 – Notice Information**

**Buyer:**

City of Haverhill  
Attn: Mayor James J. Fiorentini  
4 Summer Street  
Haverhill, MA 01830  
978-374-2300  
Mayor@cityofhaverhill.com

**Provider:**

Lodestar Energy LLC  
Attn: Jeffrey J. Macel  
40 Tower Lane Suite 201  
Avon CT 06001  
806-881-0777  
jmacel@lodestarenergy.com

JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

513  
CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda E. Barrett and Members of the Haverhill City Council

RE: Lease agreement between Kearsarge Energy LLC, the City of Haverhill and Larfarge Holcim

Dear Madame President and Members of the Haverhill City Council:

Please see attached a 20 year lease agreement between Kearsarge Energy LLC, City of Haverhill and Larfarge Holcim. Please see attached a letter from Orlando Pacheco, Haverhill's Energy Advisor, regarding this project. Mr. Pacheco will be available at Tuesday's City Council meeting should you have any questions. I recommend approval.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf



# Haverhill

Purchasing Department, Room 105  
Phone: 978-374-2309 Fax: 978-521-4348  
[purchasing@cityofhaverhill.com](mailto:purchasing@cityofhaverhill.com)

February 29, 2020

Mayor James J. Fiorentini  
City Hall  
4 Summer Street  
Haverhill, MA 01830-5875

Dear Mayor:

Attached is the Lease Agreement between Kearsarge Energy LLC, the City of Haverhill, and Larfarge Holcim.

The Agreement stipulates that the property will be leased for a period of at least 20 years with 2 optional 5 year renewal periods. The lease proceeds will be divided equally between the City of Haverhill and Larfarge Holcim as the joint owners of the property.

The initial lease payment will start at \$81,000 with a 2% annual escalation. These revenues are above any beyond compensation received in the PILOT Agreement.

The documents have been reviewed and approved by both the City's outside counsel, Michael Leon of Nutter, McClennen & Fish LLP and General Counsel for Larfarge Holcim and are approved as to form.

Sincerely,

---

Orlando Pacheco  
Energy Manager

## SOLAR LEASE

**THIS GROUND LEASE AGREEMENT** (this “*Lease*”) made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “*Effective Date*”), by and between the City of Haverhill, Massachusetts (“*Haverhill*”), Aggregate Industries – Northeast Region, Inc. (“*Aggregate*”), collectively, “*Landlord*” or “*Landlord Parties*”) and Kearsarge Haverhill LLC, a Massachusetts limited liability company (“*Tenant*”). Landlord and Tenant may also be referred to individually as a “*Party*” or collectively as the “*Parties*.”

The parties agree as follows:

### **1. LEASE OF PROPERTY.**

Landlord owns that certain real property located in Haverhill, Essex County, Massachusetts, identified as Assessor’s Tax Parcel Numbers:

776-788-20	Aggregate Industries – Northeast Region, Inc.
776-788-21	City of Haverhill
776-788-24	City of Haverhill
776-788-26 (“Lot 26”)	Aggregate Industries – Northeast Region, Inc.

as well as certain real property located in Groveland, Essex County, Massachusetts, identified as Assessor’s Tax Parcel Numbers

32-020	Aggregate Industries – Northeast Region, Inc.
32-021	Aggregate Industries – Northeast Region, Inc.

together with any buildings and improvements thereon (collectively, the “*Property*”). Landlord hereby leases to Tenant a portion of the Property comprised of a parcel of land located in Haverhill and Groveland, Massachusetts containing approximately ~~XX~~ acres more or less as shown on a plan entitled Proposed Conditions Plan - Overall in Haverhill, Massachusetts surveyed for Kearsarge Haverhill LLC prepared by Tighe&Bond dated October 16, 2019 and attached hereto as **EXHIBIT 1** together with an easement for access over Yemma Road (“*Access Easement*”) and for the Interconnection and battery storage equipment pad as shown on **EXHIBIT 1** (the “*Leased Premises*”). (See updated plan, legal description and acreage is in process **final plan should show leased area in bold outline, as well as the areas on Lot 26 that will be used**)

### **2. PERMITTED USE.**

(a) Tenant may erect, maintain, own, and operate on the Leased Premises improvements, personal property, and facilities, including, but not limited to solar modules, racking, inverters transmission and distribution lines, circuit breakers, meters, conduits, cabling, wires, communication systems, interconnection facilities, control boxes, battery storage and such other appurtenances, and any other equipment and related

facilities for a 3.6 MW AC solar facility system and a 9,000kWh battery system (together, the “**System**”) excluding any structures set forth in the City of Haverhill Request for Proposals, RFP004.18 (the “**Haverhill RFP**”), any additional improvements to be approved, such approval not be unreasonably withheld, conditioned, or delayed by the Landlord Parties, provided the same are necessary for or incidental to the installation, operation and maintenance of the System, the generation of energy by the System, and sale of the energy generated by the System as described in Kearsarge Energy’s response to the Haverhill RFP dated October 2, 2017 (the “**Intended Use**”). Such Intended Use includes the right to test, survey and run and review title on the Property and any other items necessary for the Intended Use as more particularly set forth in Section 5. Landlord and Tenant agree that **EXHIBIT 1** shows the location of the System by Tenant on the Leased Premises, and that it does not limit Tenant’s rights under this paragraph to modify the location of the System within the Leased Premises, subject to the terms of this Lease and to the approval of the Landlord Parties, which shall not be unreasonably withheld, conditioned, or delayed. Landlord’s execution of this Lease constitutes Landlord’s approval of **EXHIBIT 1** and the approval of Tenant’s right, subject to other provisions of this Lease, to install other equipment that may be necessary for or incidental to the installation, operation and maintenance of the System, including without limitation solar modules, mounting substrates, supports and weights, wiring and connections, power inverters, service equipment, metering equipment, and utility interconnections. Tenant has the right to make other necessary or incidental improvements, alterations, or additions on the System and/or Leased Premises appropriate for the Intended Use without Landlord’s written approval.

(b) System Use. Tenant agrees to comply with all applicable governmental laws, rules, statutes and regulations, relating to its use of the System on the Leased Premises, provided, however, if at any time Tenant’s Intended Use is restricted by any land use law or zoning ordinance (or interpretation thereof) presently enacted (or rendered), or subsequently enacted (or rendered) after the date that this Lease is executed, by a governmental authority, and prohibits Tenant’s ability to utilize the System and/or Leased Premises for the Intended Use (an “**Adverse Legal Change**”), Tenant shall have the right to terminate this Lease upon thirty (30) days prior written notice to Landlord. Tenant has the right in its sole discretion to modify, supplement, repair, replace, and/or upgrade all or part of the equipment for the System at any time during the Term of this Lease after sending written notice to Landlord. Tenant shall not use the Leased Premises for any purpose other than the Intended Use without the written consent of the Landlord. Tenant shall work with Landlord to ensure that others having a right of access over the Access Easement, as defined in Section 1, and the Tenant shall have shared access to coordinate installation and construction activities, including the Northern Construction defined in Section 10(b)(vi), any Landlord work on Lot 26, and to allow Landlord’s continued use of the Access Easement without unreasonable interference. In the event Tenant violates any law, rule, statute, regulation, or permit condition, Tenant, at its sole expense, shall be responsible for any resulting fines, fees, charges, and/or claims.

(c) Construction Standards. Any and all improvements to be constructed, erected or maintained on or at the Leased Premises shall be constructed, erected and maintained

in accordance with any constitutional provision, law, statute, rule, regulation, bylaw, ordinance, code, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, consent or requirement of a governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority, whether now existing or enacted hereafter and affecting the System, the Intended Use, or the Leased Premises ("**Applicable Laws**") and Governmental Approvals (defined in Section 5), including, but not limited to, local building permits and the Post-Closure Use Permit (the "**DEP Permit**") required for the Intended Use being located on the capped southern mound ("**Landfill Cap**") of the former Haverhill Municipal Landfill (the "**Landfill**") and a part of the former ash dump located on Lot 26 (the "**Lot 26**") as issued by and in accordance with the Commonwealth of Massachusetts Department of Environmental Protection ("**DEP**"). Tenant's construction, operation and maintenance of any and all improvements on or at the Leased Premises shall at all times comply with all applicable federal, state, and local laws (including the local Zoning By-law), rules and regulations as they may be enacted or amended from time to time and will be done in a good and workmanlike manner. Tenant will be responsible for obtaining, at its sole cost and expense, all approvals, and permits necessary for the construction of any and all improvements on or at the Leased Premises, and the operation and maintenance of said improvements on or at the Leased Premises, including, without limitation, any special permits and variances required by local authorities including the City of Haverhill, and approvals and authorizations required by the state and federal authorities, if any, including but not limited to the DEP Permit and any other permits from the DEP relative to construction on the Landfill and Lot 26.

(d) Construction Costs. Tenant will pay all costs and expenses incurred in connection with the design, construction, maintenance and operation of the System and any and all related improvements on or at the Leased Premises, including utility connections and the cost of electricity and other utilities Tenant consumes in its construction, maintenance and operational activities at the rate charged by the servicing utility company, for which Tenant will make payments directly to said company. Notwithstanding the foregoing, in connection with constructing the System, Tenant may incur directly or indirectly a variety of site development costs including, but not limited to, costs of labor, materials, contractors and subcontractors, costs relative to plan generation, survey costs, costs of disposal, costs of construction of the System, costs of bringing utilities service to the Leased Premises, and other costs. Tenant shall indemnify the Landlord Parties from all claims and damages asserted or raised as a result of Tenant's contractor, subcontractors, or consultants' activities in connection with the design, construction, maintenance and operation of the System and any and all related improvements on or at the Leased Premises or the Access Easement as set forth in Section 9.

(e) Right to Observe Work: Landlord, whether by its employees or a retained, independent inspection firm, shall have free access to the Leased Premises to observe the construction of the System during all working hours of the Tenant's contractor at the Leased Premises, subject to compliance with all safety rules and regulations for the

Leased Premises, whether reasonably promulgated by the Tenant or as may be required by Federal or Massachusetts law. Landlord shall have the right to observe any and all work performed and tests, conducted on the Leased Premises, so long as said observation is done in a manner which does not interfere with the timely and orderly prosecution of the construction. Any comments from the Landlord's observer may be provided in written form and in a timely manner to the Tenant. At no time shall the Landlord direct the Tenant, its subcontractors, or employees in the performance of their work; Tenant is entirely responsible for the means and methods associated with such work. The Landlord's observation of the work performed and tests conducted in no way excuses the obligation of the Tenant to construct the System in accordance with the Haverhill RFP, the DEP Permit, and this Lease.

(f) Removal: Upon expiration or earlier termination of this Lease, Tenant shall remove the System and restore the Leased Premises in accordance with Section 23 of this Lease.

(g) Design of System: Tenant shall design the System to comply with specifications included in all Applicable Laws and Governmental Approvals, and as otherwise mutually agreed to in writing, by the Landlord and Tenant. If, during the Term, Landlord requests, for Landlord's convenience, the relocation of overhead wires and/or appurtenant equipment or access ways to accommodate future use by the Landlord of the Property outside the Leased Premises, so long as any such change will materially benefit a Party without material detriment to the other Party, and is otherwise permitted by Applicable Laws, Governmental Approvals and the utility, the Parties commit to each other in good faith to make commercially reasonable efforts to cooperate and assist each other to relocate such equipment or access ways and to amend this Lease to conform to such changes as necessary; provided that if such relocation is required by the local utility, or as a result of any Applicable Law or Governmental Approvals (including, but not limited to, the DEP), or pursuant to the order of any court or governmental agency having jurisdiction, or as a result of Tenant's failure to comply with the terms of this Lease, Tenant shall perform such relocation in accordance with such utility requirement, law, regulation, or order and/or the terms of this Lease, as the case may be, at the sole cost of Tenant. If such relocation is at the request of Landlord, Tenant shall perform the work but at the sole cost and expense of Landlord.

(h) Title to System. The System and all alterations, additions, improvements or installations made thereto by Tenant and all Tenant property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Tenant (the "***Tenant Property***"). Tenant and/or Tenant's Financing Parties, defined below, shall be the legal and beneficial owner(s) of the System and Tenant Property at all times. In no event shall any of Tenant Property be deemed a Landlord fixture, nor shall Landlord, nor anyone claiming by, through or under Landlord (including but not limited to any present or future mortgagee of the Leased Premises) have any rights in or to Tenant Property at any time except as otherwise provided herein. Landlord shall have no development or other interest in the System or any System assets or other equipment or Tenant Property installed on the Property, and Tenant may remove



all or any portion of the System or any System assets or Tenant Property at any time and from time to time as further provided in this Lease. Without limiting the generality of the foregoing, Landlord 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. Further, Landlord acknowledges and agrees that Tenant is the exclusive owner of all electricity and all environmental attributes attributable to the System. Landlord and Tenant acknowledge that the Leased Premises and the System are and will remain taxable. Tenant shall be responsible for the portion of real estate, personal and/or property taxes attributable to the System and Tenant Property. Any applicable real estate, personal property or other taxes may be governed by a Payment in Lieu of Tax Agreement to be entered into between the parties pursuant to G.L. c. 59, § 38H(b), and subject to M.G.L. c. 60, Collection of Local Taxes.

(i) Security Interests in the Leasehold Estate and System.

(i) Tenant shall at all times have the right to encumber by mortgage to secure debt, deed of trust, or other instrument in the nature thereof as security for any debt, all of Tenant's leasehold interest in the Leased Premises (the "***Leasehold Estate***"), together with its rights and interests in and to all improvements, the System, and Tenant Property, and fixtures now or hereafter placed on the Leased Premises by Tenant (a "***Leasehold Mortgage***"), provided however, that any such Leasehold Mortgage shall be subordinate and inferior to Landlord's rights title, privileges, liens and interests in the Property and provided that Tenant shall, in no event, have the right to, in any way, encumber Landlord's fee simple title and reversionary interest in and to the Property. The right to mortgage set forth herein shall include the right to mortgage Tenant's leasehold interest in the Leased Premises in connection with a "sale-leaseback" of said leasehold interest. Any such mortgagee or other entity making a Leasehold Mortgage or otherwise providing capital to Tenant (or an affiliate of Tenant) shall be deemed a "***Financing Party***" or collectively "***Financing Parties***").

(ii) Upon a Financing Party notifying the Landlord in writing that any such mortgage or other instrument in the nature thereof has been given and executed by Tenant, then Landlord hereby acknowledges the Leasehold Mortgage by Tenant to the Financing Party of Tenant's right, title and interest in, to and under this Lease; acknowledges the Financing Party shall have the right but not the obligation to exercise any and all rights of Tenant in this Lease; and acknowledges it has been advised that Tenant has granted a security interest in the System to one or more Financing Parties, and that such Financing Parties have relied upon the characterization of the System as personal property, as agreed in this Lease, in accepting such security interest as collateral for its financing of the System. Any Financing Party shall be an intended third-party beneficiary of this Section 2(g).

(iii) A Financing Party shall, through Tenant, furnish Landlord with the address to which it desires copies of notices to be mailed and Landlord hereby agrees that it will mail to such person or entity at the address so given, duplicate copies of any and all suits filed by Landlord against Tenant and duplicate copies of any and all written notices of default which Landlord may, from time to time, give or serve upon Tenant

under the terms of this Lease or otherwise related hereto. Landlord shall not be in default for failure to give notices to a Financing Party, and such failure shall not affect the validity of notices properly given to Tenant.

(iv) A Financing Party shall have the absolute right to: (a) assign any lien on or security interest in the Lease or Tenant's Leasehold Estate (its "**Lender's Lien**"); (b) enforce its Lender's Lien; (c) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the Leasehold Estate; (d) take possession of and operate the System or any portion thereof and perform any obligations to be performed by Tenant, or cause a receiver to be appointed to do so; (e) assign or transfer the Leasehold Estate to a third party; or (f) exercise any rights of Tenant hereunder. Landlord's consent shall not be required for any of the foregoing. Upon acquisition of the Leasehold Estate by a Financing Party or any other third party purchaser who purchases at a foreclosure sale, Landlord shall recognize the Financing Party or such other party (as the case may be) as Tenant's proper successor, Financing Party or such other party shall recognize Landlord as the existing landlord, and this Lease shall remain in full force and effect.

(v) Financing Party shall have the right, but not the obligation, at any time before this Lease is terminated to pay any amount or do any act or thing required of Tenant by the terms of this Lease; and all payments so made and all acts or things so done and performed by any such Financing Party in accordance with the provisions of this Lease, shall be as effective to prevent any termination of the rights of Tenant hereunder as the same would have been if done and performed by Tenant instead of any such Financing Party. Landlord agrees that no Financing Party shall be deemed to incur any liability or obligation under this Lease except and to the extent that Financing Party has acquired the Leasehold Estate created by the Lease or has otherwise assumed such liabilities or obligations. The Financing Party shall be entitled to receive notice of any default by Tenant, provided that Tenant or Financing Party shall have first delivered to Landlord a notice of its interest in the Leasehold Mortgage as set forth in clause (iii), above. If any notice shall be given of the default of Tenant and Tenant has failed to cure such default within the cure period provided in this Lease, then any Financing Party, which has given notice as above provided, shall be entitled to receive an additional notice from Landlord that Tenant has failed to cure such default and such Financing Party shall have thirty (30) days after such additional notice to cure any such default or, if such default cannot be cured within thirty (30) days, to diligently commence curing within such time and pursue such cure to completion within such time Tenant would have been allowed, but as measured from the date of such additional notice.

(vi) If any event of a termination of this Lease because of (a) a default of Tenant that is of such a nature that it cannot be cured by any bona fide Financing Party prior to ripening into a default hereunder; (b) or because of rejection or other termination under the bankruptcy laws that cannot reasonably be prevented by any such Financing Party, or (c) because of Tenant's uncured non-monetary default as long as Financing Party is making commercially reasonable efforts to cure such default, Landlord shall, subject to approval of Landlord, grant to such bona fide Financing Party the right to enter

into a new lease with Landlord the provisions of which shall be identical to this Lease, and with a lease term to expire at the time of that the Term, as later defined, of this Lease would have expired had it not been terminated, and which Lease shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Landlord, such right to be communicated by Landlord to said bona fide Financing Party prior to or within one (1) week after such termination ("**Mortgagee Termination Notice**") with said Financing Party having thirty (30) days after receipt of such notice to give notice to Landlord that it will exercise its right to enter into such a new lease (and if such notice has not been given within that period, it shall be conclusively deemed that said grantee, mortgagee or trustee has declined to enter into such a new lease) and provided that said Financing Party shall contemporaneously pay to Landlord any and all sums owed by Tenant and unpaid to Landlord pursuant to this Lease through and including the date of commencement of such new lease, and perform all other unperformed obligations of Tenant that are capable of being performed. Landlord hereby approves Cambridge Savings Bank and any Financing Party meeting the Financial Capacity set forth in Section 17. Said Financing Party shall prepare, execute and deliver said new lease to Landlord within thirty (30) days after it has exercised its right therefore by notice to Landlord; provided, however, that the Tenant's obligation to pay Rent thereunder shall be effective as of the date of receipt of the Mortgage Termination Notice.

(vii) Any mortgage or instrument in the nature thereof given by Tenant may, if Tenant so desires, be so conditioned as to provide that as between any such Financing Party and Tenant, said Financing Party, on making good any such default or defaults on the part of Tenant, shall be thereby subrogated to any and all of the rights of Tenant under the terms and provisions of this Lease.

(viii) No termination, surrender material amendment of this Lease shall be binding upon a Financing Party, if any, without the prior written consent of such Financing Party or as otherwise permitted herein. Notwithstanding the preceding sentence, nothing set forth in this paragraph shall be deemed to limit Landlord's rights or remedies hereunder, including termination of this Lease with respect thereto, after providing the notices and opportunities to cure provided for herein.

(ix) This Lease may, subject to and without waiver of the terms of this Lease, be assigned or transferred to any party (having the same financial capacity as Tenant and the ability to fulfill all obligations of Tenant under this Lease) as a result of foreclosure or transfer in lieu of foreclosure. Any such Financing Party or transferee of the Leasehold Estate of Tenant hereunder pursuant to foreclosure, assignment in lieu of foreclosure or other proceedings may, upon such acquisition, but subject to and without waiver of the terms of this Lease, sell and assign the Lease on such terms and to such persons and organizations as are acceptable to such Financing Party and such persons and organizations are deemed acceptable to the Landlord Parties, provided that such assignee has the same financial capacity and ability to fulfill all obligations of Tenant under this Lease and has delivered to Landlord its written agreement to be bound by all of the provisions of this Lease and has provided a Letter of Credit in accordance with Section 23 herein. Notwithstanding the foregoing, any such assignment shall be subject to all of

the terms of this Lease.

(x) A Financing Party shall be entitled to the benefit of an SNDA as set forth in Section 10 and an Estoppel as set forth in Section 24(g).

(j) DEP Permit. Tenant acknowledges that the Leased Premises consist of the Landfill Cap and a part of Lot 26 and that Tenant must obtain from the DEP, at Tenant's sole cost and expense, among other Governmental Approvals, the DEP Permit to allow Tenant to use the Leased Premises and a part of Lot 26 for the Intended Use. Tenant agrees that, notwithstanding anything to the contrary in this Lease, Tenant, its employees, officers, representatives, agents, contractors, consultants, licensees and invitees (a) shall not conduct any activities on the Leased Premises that will, or are reasonably likely to, penetrate the Landfill Cap material or otherwise threaten the integrity of the Landfill Cap or cause the Landfill or Lot 26 to be out of compliance with any Governmental Approval or any Applicable Laws; (b) shall not violate any Applicable Laws, including but not limited to Environmental Laws, the DEP Permit, and any laws, regulations, and codes, applicable to the Landfill, (c) shall comply with Tenant's Landfill Obligations (defined in Article 14), at Tenant's sole cost and expense, and (d) shall not interfere with or disrupt Landlord's Activities (as defined in Section 10).

(k) Clean and Sanitary Condition. During the Term, Tenant shall not permit any refuse to accumulate at the Leased Premises so as to constitute a fire or health hazard or unsafe condition on or in the Leased Premises, and shall keep the Leased Premises in a clean and sanitary condition. Notwithstanding any other provision of this Lease to the contrary, if Tenant fails within seventy-two (72) hours of receipt of written notice from Landlord of any unclean or unsanitary condition on or in the Leased Premises, Landlord shall have the right, but not the obligation, to enter upon the Leased Premises and put the same in a clean and sanitary condition. In such event, Tenant shall forthwith reimburse Landlord for all costs and expenses incurred by Landlord in doing so.

### 3. TERM.

(a) The lease term will commence upon the day this Lease Agreement is executed by Landlord Parties and Tenant, and will expire on the last day of the month of the twentieth annual anniversary of the Commercial Operation Date (the "**Term**"), unless terminated earlier in accordance with the provisions of this Lease. Upon mutual agreement of the Parties, the Term may be extended for two additional terms of five (5) years (the "**Extension Terms**"). Should Tenant wish to extend the Lease Term by an Extension Term, Tenant shall send Notice, as provided herein, of its desire to extend the Term to the Landlord Parties six (6) months prior to expiration of the Term or the Extension Term and the Landlord Parties shall have three (3) months to issue their decision on the request. The Tenant must obtain any permits or approvals required for an Extension Term. The "**Commercial Operation Date**" is the date on which testing indicates the System is capable of generating electric energy for four (4) continuous hours measured at the physical location where the System connects to the local utility's electrical grid, using such instruments and meters as have been installed for such

purposes, and the interconnection to the local utility's electrical grid and all required reviews and approvals have been provided by the local electric utility. Tenant shall provide written notice to Landlord within ten (10) days of achieving the Commercial Operation Date, confirming both the Commercial Operation Date and annual Rent due date. In the event the Commercial Operation Date has not occurred within 365 days of the Effective Date, and Tenant has not requested in writing an extension from Landlord, Landlord may terminate this Lease and neither party shall have further recourse at law or in equity. If Tenant has not achieved mechanical completion within 365 days of the Effective Date, and Landlord and Tenant have not agreed to an extension of time, Landlord may terminate this Lease in its sole discretion and neither party shall have further recourse at law or in equity.

#### 4. LEASE RENT.

(a) Tenant will pay the Landlord Parties the annual rental payment initially in the amount of \$40,500 upon the commencement of site work and construction and in the amount of \$81,000 annually with an annual 2% escalator (hereinafter "**Rent**") beginning on the Commercial Operation Date and on each anniversary of the Commercial Operation Date thereafter, as shown on **EXHIBIT 2**. Each annual rental payment shall be paid directly to the Landlord Parties, with half going to Haverhill and half going to Aggregate.

#### 5. APPROVALS AND INSPECTIONS.

(a) Landlord agrees that Tenant's ability to use the Leased Premises is contingent upon its suitability for the Intended Use and Tenant's ability to obtain all governmental licenses, permits, approvals or other relief required of or deemed necessary by Tenant for the Intended Use, including a Site Plan Approval Permit and construction permits (collectively referred to as "**Governmental Approvals**"). Landlord authorizes Tenant to prepare, execute and file all required applications to obtain Governmental Approvals for Tenant's Intended Use under this Lease. Excluding Governmental Approvals from the City of Haverhill or any of its boards, committees, departments, or offices or the like, Landlord agrees to reasonably cooperate with Tenant in Tenant's efforts to apply for and obtain all such approvals and agreements, including without limitation executing, as owner of the Property, such applications and authorizations as may be reasonably required by the applicable authority on a timely basis, but at no cost to Landlord, provided Tenant shall have no obligation to pay or reimburse Landlord for any costs or expenses incurred by Landlord in connection with its review of said documents, applications or authorizations.

(b) Tenant has the right to obtain a title report or commitment for a Leasehold Estate title policy from a title insurance company of its choice and to have the Leased Premises surveyed by a surveyor of its choice, all at Tenant's sole cost and expense.

(c) Tenant may also obtain, at Tenant's sole cost and expense, geotechnical, load bearing, engineering procedures, environmental investigation or other tests or reports ("**Tests**") on, over, and under the Property, necessary to determine if Tenant's Intended

Use will be compatible with Tenant's engineering specifications, System design, operations or Governmental Approvals. Tenant will indemnify Landlord against all costs (including reasonable attorney's fees), claims, and damages relating to the conducting of said Tests and inspections, excepting requirements contained within applicable environmental reporting guidelines and any resulting remediation required of Landlord. Tenant shall restore the Leased Premises to the same condition as it existed prior to Tenant having conducted the Tests, having fully remedied, at the Tenant's own expense, any resulting conditions that place the Landlord in violation of any existing laws or permits.

(d) Tenant's satisfactory inspections of the Property's title and condition and Tenant obtaining all Governmental Approvals are each a condition precedent to Tenant's obligations under this Lease (the "***Conditions Precedent***"). If Tenant is unsatisfied with the results of the inspection and Tests, in Tenant's sole and absolute discretion, or if Tenant is unable to obtain all of the Governmental Approvals in form and substance acceptable to Tenant despite the exercise of all reasonable efforts to obtain such approvals, in Tenant's sole and absolute discretion, or if prior to commencement of construction of the System, despite the exercise of all reasonable efforts: (i) Tenant has not received a block allotment in the SMART program, then Tenant may terminate this Lease, in which event the termination shall be effective when the notice is given, and the Parties shall be released from further liability at law or equity pursuant this Lease.

## **6. TERMINATION.**

This Lease may be terminated by the nondefaulting party on thirty (30) days prior written notice, if the other party remains in default under Paragraph 15 of this Lease after the expiration of applicable cure periods.

## **7. INSURANCE.**

(a) Tenant shall carry during the Term of this Lease and any extension or renewal thereof workers' compensation insurance as required by Massachusetts law.

(b) Tenant shall carry during the Term of this Lease and any extension or renewal thereof commercial general liability insurance in the amount of not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general aggregate, with a \$10,000,000 million umbrella policy, with the Landlord Parties named as additional insured parties. Tenant shall ensure that Tenant's selected engineering, procurement and construction subcontractor shall carry during the construction of the System professional liability insurance in the amount of not less than one million (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) general aggregate.

(c) Commercial general liability insurance shall include contractual liability insurance. The policy of commercial general liability insurance shall name the Landlord as an additional insured. All certificates and policies shall contain the following provisions: Notwithstanding any other provision herein, should any of the above policies

be cancelled or materially amended before the expiration date thereof, Tenant shall immediately notify Landlord. Tenant shall forthwith, but at least within five (5) business days of notice of cancellation secure replacement and retroactive insurance coverage in compliance with the requirements of this Lease and provide notice of same to Landlord.

(d) Tenant shall provide to the Landlord current certificates of insurance from the insurance carrier for each such policy of insurance stating the limits of liability and the expiration date of the policy. Renewal Certificates shall be filed with the Landlord at least ten (10) days prior to the expiration of the required policies. Certificates evidencing all such coverage shall be provided to the Landlord ten (10) days prior to the commencement of construction, and upon the renewal of any such coverage. Each such certificate shall specifically refer to this Lease and shall state that such insurance is as required by this Lease. Failure to provide or to continue in force such insurance shall be deemed a material breach of this Lease and shall be grounds for immediate termination. Said insurance shall include: Workers Compensation and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from Leased Premises, operations, independent Contractors, personal injury, contractual liability. All Certificates of Insurance shall be on the "MIIA" or "ACORD" Certificate of Insurance form, shall contain true transcripts from the policies, authenticated by the proper officer of the Insurer, evidencing in particular those insured, the extent of coverage, the location and operations to which the insurance applies, the expiration date and the above-mentioned notice clauses. All insurance shall be written on an occurrence basis. Coverages shall be maintained without interruption from date of the Lease until date of final payment and termination of any coverage required to be maintained after payment.

(e) Tenant shall obtain and maintain during the Term of this Lease insurance coverage issued by companies licensed to do business in the Commonwealth of Massachusetts.

(f) If the System or Leased Premises shall be damaged or destroyed, in whole or in part, by fire, earthquake, the elements, Act of God or any other casualty, Tenant may, at Tenant's sole discretion, either (1) restore or rebuild the System to a complete and presentable condition and appearance as Tenant desires, although not necessarily of the same size, arrangement or architectural appearance, or (2) terminate this Lease effective as of the date that the System or Leased Premises were damaged or destroyed and place the Leased Premises in the same condition, reasonable wear and tear excluded as the Leased Premises was in at the execution of this Lease, and all improvements, equipment, structures and appurtenances shall be removed on or before the expiration of one hundred twenty (120) days, after which time the Landlord shall be permitted to use the letter of credit or issuing funds described in Section 23 therefore.

(g) Landlord shall maintain throughout the Term, at its sole cost and expense, insurance substantially of the kind and substantially in the amount that it currently maintains for the Property, if any, and shall provide a certificate or other reasonable evidence of such insurance to Tenant prior to commencement of construction of the System.

(h) For any claims resulting from or relating to Tenant's use of the Leased Premises, including the installation, operation, maintenance, repair, or removal of the System, Tenant's insurance coverage shall be primary.

## **8. INTERFERENCE.**

(a) Landlord will not grant, after the date of this Lease, a lease, license or any other right to any third party for use of the Leased Premises under any circumstances, or for use of the Property if such use of the Property may in any way materially and adversely affect or materially or unreasonably interfere with Tenant's System or Intended Use. Landlord will notify Tenant and receive Tenant's written approval, prior to granting any third party the right to access or use the Property except for the Access Road, and Tenant may withhold such consent if in its reasonable discretion it determines such third party will interfere with Tenant's operation of the System or diminish the superiority of Tenant's accessibility to light and solar energy resources.

(b) Excluding Landlord Activities (defined in Section 10), Landlord will not use, nor will Landlord permit its employees, tenants, licensees, invitees or agents to use, any portion of the Property in any way that interferes with the operations of Tenant or the rights of Tenant under this Lease or has a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System or operation thereof, so long as Leased Premises is unaffected. Landlord will exercise all reasonable efforts to cause any such interference to cease upon not more than twenty-four (24) hours' notice from Tenant. In the event any such interference does not cease within the aforementioned cure period then the parties acknowledge that Tenant will suffer irreparable injury, that an award of damages alone would be inadequate to remedy such a breach, and therefore, Tenant will have the right, in addition to any other rights that it may have at law or in equity, for Landlord's breach of this Lease, to seek to enjoin such interference, to equitable relief, including specific performance, or to terminate this Lease upon written notice to Landlord.

(c) Tenant acknowledges and accepts that the Landlord shall have continued access to the Leased Premises for the purpose of monitoring and maintaining the gas releases and wells on the Leased Premises under the DEP Landfill closure permit of the Landlord or Applicable Law, and any other activity necessary or convenient to maintain or monitor the Landfill and Landfill Cap. Notwithstanding the foregoing provisions of this Section 8 and for avoidance of doubt, Tenant shall in no way install, operate and maintain its System as to interfere with any Landlord's Activities to undertake said maintenance and monitoring of the Landfill, the conduct of which shall at no time be considered interference with Tenant under this Agreement, except as specifically set forth in Section 11(e). Landlord and Tenant agree that once the approval of the design and location of the System is mutually agreed upon in Section 2(f) and installed in accordance therewith, the System installation will be deemed not to interfere with Landlord's Activities.



## **9. INDEMNIFICATION.**

(a) To the extent permitted by law, Tenant agrees to and shall protect, defend, indemnify, and hold harmless Landlord, officers, directors, agents and employees, from and against any and all damages, liability, claims, or causes of action, proceedings, demands, losses, costs, expenses and judgments of every nature and description (including reasonable attorney's fees) in favor of any party that may arise in whole or in part out of, or in connection with, the acts and omissions of Tenant, its employees, agents, subcontractors, material men, invitees, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable ("*Tenant Parties*"), and their actions or failure to act under this Lease, or otherwise resulting from negligence of any Tenant Parties, except to the extent attributable to the sole negligence of Landlord, its employees agents or independent contractors. Tenant agrees to investigate and defend against any such liability, claims, or causes of action in favor of any party, arising out of Tenant's negligent actions or negligent failure to act under this Lease or resulting from the negligence of Tenant, its subcontractors, agents or employees. Tenant agrees to investigate and defend against any such liability, claims, or causes of action at its sole expense.

(b) To the extent permitted by law, Landlord agrees to hold harmless Tenant, officers, agents and employees, from and against any and all damages, liability, claims, or causes of action, proceedings, demands, losses, costs, expenses and judgments of every nature and description (including reasonable attorney's fees) in favor of any party that may arise in whole or in part out of, or in connection with or arising directly out of Landlord's, its employees, agents, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and their actions or failure to act under this Lease, or resulting from negligence by Landlord, its subcontractors, agents or employees, except to the extent attributable to the negligence of Tenant, its employees agents or independent contractors.

(c) The provisions of this Paragraph will survive the expiration or termination of this Lease.

## **10. WARRANTIES AND COVENANTS.**

(a) Tenant and Landlord each acknowledge, represent, and covenant that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Lease and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents:

(i) Aggregate owns an undivided interest in fee simple in the lots identified as Assessor's Tax Parcel Numbers 776-788-20 and 776-788-26. Haverhill owns an undivided interest in fee simple in the lots identified as Assessor's Tax Parcel Numbers 776-788-21 and 776-788-24.

(ii) its execution and delivery of, and performance of its obligations under this Lease have been duly authorized by Haverhill City Council vote on ~~XXX~~.

(iii) As of the date hereof, Landlord has no outstanding or existing mortgages on the Property.

(iv) There are no outstanding written leases, purchase or sale agreements or other agreements to which Landlord is a signatory, including rights to purchase, or restrictions encumbering, or in any way affecting the Leased Premises other than National Grid's rights to Assessor's Tax Parcel 776-788-26, and no person that would prevent or interfere with any of Tenant's rights under this Lease;

(v) Landlord has no knowledge of any pending proceedings in eminent domain, or for a sale in lieu thereof, affecting the Property or Leased Premises or any portion thereof.

(vi) Subject to the use of the Property and Leased Premises as Landfill and Landfill Cap, and the obligations of Landlord and Landlord Parties under Applicable Laws and Governmental Approvals in connection with the maintenance, repair, monitoring and testing of the Landfill Cap, Landfill and Lot 26, (collectively, "***Landlord Activities***"), and the terms of the Lease, and so long as Tenant is not in default of the Lease, Landlord also covenants that Tenant shall have quiet and peaceful possession of the Leased Premises without hindrance to or interference with or molestation of Tenant's quiet enjoyment thereof by Landlord, throughout the Term. Notwithstanding the foregoing, Tenant acknowledges and agrees that the Landlord Parties may undertake substantial construction and landfill capping activities directly to the north of the Leased Premises, including Lot 26, which will involve substantial truck and heavy equipment activity, placement of materials and the generation of dust and noise for an extensive period of time (the "***Northern Construction***"), as long as such does not prevent Tenant's Intended Use.

(vii) Excluding the Landlord Activities, Landlord will not conduct activities on the Property or Leased Premises that have a reasonable likelihood of materially and adversely affecting the System or operation thereof. The System shall be operated, maintained and repaired by Tenant at its sole cost and expense; provided, that any repair or maintenance costs incurred by Tenant as a result of Landlord's breach of this Section 10(b)(vii) shall be promptly reimbursed to Tenant by Landlord.

(c) Tenant represents:

(i) it is experienced in the operation, development and construction of the System for its Intended Use and has done so successfully in other locations of similar size and on landfills.

(ii) it knows and understands that the System will be built upon all or a portion of the Landfill Cap and Landfill, which is governed by DEP regulations regarding closed landfills, and agrees that the Leased Premises is subject to all applicable permits, laws, and regulations and the Tenant takes this Lease subject thereto.

(iii) its execution and performance of this Lease will not violate any bylaws, rules, agreements, articles of organization or votes of the company or the provisions of any mortgage, lease or other agreement binding on the Tenant.

(iv) the person(s) signing this Lease have full authority to execute this Lease and after said execution it shall be binding upon the Tenant.

(v) the Tenant will comply with all Applicable Laws, including Environmental Laws, applicable to the Leased Premises and the Property and will comply with all terms and conditions of the DEP Permit and Tenant's Landfill Obligations (defined in Article 14).

(vi) notwithstanding anything to the contrary in this Lease but subject to Tenant's right to terminate this Lease under Section 5(d), Tenant accepts the Leased Premises "as is" and with any and all defects, and without benefit of any services, facilities, improvements or modifications to be made by Landlord, and without any representation or warranty of any kind by Landlord, and without any recourse against Landlord as to the title to and the nature, condition or usability of the Leased Premises, or as to the use(s) to which the Property and Leased Premises or any part thereof have been put except as otherwise detailed in this lease.

(d) Runs with Land; SNDA. This Lease and the easements and other rights granted herein shall run with the Property and survive any transfer of the Property. If the Property is to be encumbered by an instrument to be given by Landlord in order to secure a debt, mortgage or other security interest, Landlord shall require the holder of such instrument to sign a mutually agreeable subordination, non-Disturbance and attornment agreement executed on behalf of any and all mortgagee(s) or beneficiaries of deeds of trust securing such a loan (the "**SNDA**"). The SNDA shall be commercially reasonable in form and substance, and shall include language similar to the following: So long as Tenant is not in default of this Lease, (i) such mortgagee(s) or beneficiaries shall recognize and consent to Tenant's rights under this Lease; (ii) Tenant shall continue to enjoy the uninterrupted possession of the Leased Premises and such other rights as are granted hereunder; (iii) such mortgagees or beneficiaries shall have no right to receive any proceeds of insurance for condemnation owed to Tenant under the terms of this Lease; (iv) shall acknowledge that such mortgagees or beneficiaries shall not gain any

interest in the System or Tenant's Property, including without limitation by virtue of the transfer or by performance or breach of this Lease; and (v) shall waive any lien such mortgagees or beneficiaries may have in and to the System and Tenant's Property. Tenant shall cause such SNDA to be recorded in the appropriate county office, and deliver a recorded copy to Landlord.

## **11. ENVIRONMENTAL.**

(a) Definitions. The following terms, whenever set forth in initial capitals in this Lease, shall have the meaning set forth in this Article, unless otherwise expressly provided in this Lease:

*"Environmental Laws"* means any applicable federal, state or local statute, law, ordinance rule, regulation, code, license, permit, authorization, approval, consent, order, judgment, decree, injunction, directive, requirement by, of, or agreement with any governmental agency, existing as of the date this Lease is fully executed and as amended thereafter, or adopted in the future, relating to: (a) the protection, preservation or restoration of the environment (including, without limitation, air, water, vapor, surface water, ground water, drinking water supply, surface land, subsurface land, plant and animal life, or any other natural resource), or to human health and safety; (b) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of, Hazardous Substances; (c) any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligation for injuries or damages related or incidental to, or threatened as a result of, the presence of or exposure to any Hazardous Substance, and (d) any common law or equitable doctrine currently existing and as amended, enacted, issued or adopted in the future which are or become applicable to the Property and/or the Landfill.

*"Hazardous Substance"* means any substance, whether liquid, solid, or gas, that is listed, defined, designated, or classified as toxic, hazardous, radioactive, or dangerous under any Environmental Laws, whether by type or by quantity.

(b) Tenant shall not introduce, release or discharge, or cause the introduction, release or discharge of, any Hazardous Substances in, on over, or under the Property or Leased Premises. In the event Tenant becomes aware of any such Hazardous Substances, it shall immediately notify the Landlord in writing of the type and location of such Hazardous Substances.

(c) Landlord Representations. Landlord represents warrants and covenants to Tenant with regard to the Leased Premises only:

(i) the Leased Premises is closed in full compliance with Massachusetts applicable regulations, specifically 310 CMR 19.000, however, the Leased Premises remains part of an ongoing federal Comprehensive Environmental Response, Compensation and Liability Act mitigation and

remediation program administered by DEP which includes the Landlord Activities;

(ii) Landlord has no knowledge of and has not received any notice or claim of any present, uncured violation of any Environmental Laws, including that the Landfill Cap is in disrepair, beyond the scope of the ongoing Landlord Activities; and,

(iii) Landlord shall continue to comply with all applicable Environmental Laws.

(d) Landlord or Tenant Default. If either party defaults in any of the provisions set forth in this Article, and fails to cure such default within thirty (30) days after receipt from the non-defaulting party specifying the failure, or if such default is not capable of being cured within thirty (30) days, fails to diligently commence to cure such default within thirty (30) days and if such efforts are not prosecuted to completion with reasonable diligence, then the non-defaulting party shall have the right to terminate this Lease and all of its obligations hereunder by giving written notice to the defaulting party, reserving, however, in the event of such termination, the non-defaulting parties right to collect damages as a result of such breach by defaulting party and to seek indemnification from the defaulting party under subsections (e) and (f), as applicable. Further, in the event of such Lease termination, the defaulting party shall reimburse the non-defaulting party for its costs and expenses incurred in connection with this Lease, including, without limitation, reasonable legal fees and construction and engineering fees and expenses, fines, and reconstruction work.

(e) Landfill Maintenance. The Landlord Parties may, in their absolute discretion, maintain, monitor, repair or improve the Leased Premises as they see fit in performing the Landlord Activities, Landlord covenants to provide reasonable notice of any such Landlord Activities to Tenant and perform any such Landlord Activities with a minimum of interference with Tenant's Intended Use of the System and the Leased Premises. In the event that the function of Tenant's System and the Leased Premises is materially impaired as a result of any Landlord Activities, whether or not required by any governmental agency or third party, Landlord shall abate (in part or in full, as applicable) the Rent for the Leased Premises during the period that Tenant's Intended Use of the Leased Premises is materially impaired. In the event the Landlord's Activities do not interfere with the Intended Use, the Landlord shall not be required to abate any Rent of the Tenant hereunder. In the event that the Landfill Cap requires repair or replacement during the Lease Term through no fault of Tenant, the Tenant shall, at Landlord's sole cost and expense, remove portions of the System as necessary for the repair or replacement work to be performed. Landlord shall provide Tenant with at least ninety (90) days advance written notice of any such repair or replacement work, except in the event of an emergency or order of any court or governmental authority, in which event Landlord shall provide notice as soon as practicable. During the period of such removal, those portions of the System that are removed from their original location may be temporarily stored off-site by Tenant, or the Landlord may designate a location for the temporary storage on other Landlord property, if available. Such storage shall be

undertaken by Tenant at Landlord's sole cost and expense and shall conform with industry and manufacturer's requirements for the proper storage of any such equipment.

(f) Landlord Indemnity. Unless the Hazardous Substances are present solely as a result of the acts of Tenant, its contractors or employees, to the extent permitted by law, the Landlord Parties hereby agree and do hold harmless Tenant, its directors, officers, employees and agents from and against (a) any and all liability, obligations, losses damages, penalties, claims, demands, settlements, judgments, environmental response, remedial or inspection costs fines, civil penalties and actions, suits, costs, taxes, charges, expenses and disbursements, including, without limitation, reasonable legal fees and expenses of whatever kind or nature (hereinafter called "**Claims**"), imposed on, incurred by, or reserved against Tenant in any way relating to the pre-existing condition of the Leased Premises or arising out of the existence or presence of any Hazardous Substance or underground storage tank(s) on, under or from the Leased Premises, and (b) any and all Claims in any way related to or arising out of the removal, treatment, storage, disposal, disposition, mitigation, cleanup or remedying of the Hazardous Substances on the Leased Premises. This indemnification shall include, without limitation, Claims arising out of any violations of the Landlord Parties' violations of applicable Environmental Laws, regardless of any actual or alleged fault, negligence, willful misconduct, gross negligence, breach of warranty or strict liability on the part of Landlord Parties. Without limitation, this indemnification shall also include any and all Claims incurred due to any investigation or remediation of the Leased Premises mandated by Environmental Laws or any governmental agency, unless such investigation or remediation arises as a result of Tenant's acts or omissions. This indemnity is in addition to the other indemnities by Landlord contained in this Lease.

(g) Tenant Indemnity. Commencing on the Effective Date, Tenant, at Tenant's expense, shall comply with all Environmental Laws pertaining to Tenant's Intended Use and other acts and omissions on the Leased Premises. Tenant hereby shall indemnify and hold harmless Landlord, its directors, officers employee and agents from and against (i) any and all liability, obligations, losses, damages, penalties, claims demands, settlements, judgments, environmental response remedial or inspection costs, fines, civil penalties and actions, suits, costs, taxes, charges, expenses and disbursements, including without limitation reasonable legal fees and expenses of any kind or nature (hereinafter called "**Claims**"), imposed on, incurred by, or reserved against Landlord in any way relating to or arising out of the existence, presence, or release of any Hazardous Substance or underground storage tank(s) on, under or from the Leased Premises solely or in part as a result of the acts of any Tenant Parties; and (ii) any and all Claims in any way related to or arising out of the removal, treatment, storage, disposal, disposition, mitigation, cleanup or remedying of the Hazardous Substances on the Leased Premises solely or in part as a result of the acts of any Tenant Parties; provided, however, that under no circumstances will Tenant have any obligations concerning the Landfill or a condition existing or threatened as of the Effective Date not caused or exacerbated as a result of the acts of any Tenant Parties, except as otherwise specified herein. This indemnification obligation shall include, without limitation, Claims arising out of any violations of applicable Environmental Laws, regardless of any actual or alleged fault, negligence, willful

misconduct, gross negligence, breach of warranty or strict liability on the part of Tenant, except as otherwise set forth in this subsection (g). Without limitation, this indemnification shall also include any and all Claims incurred due to any investigation or remediation of the Leased Premises mandated by Environmental Laws or any governmental agency solely or in part as a result of the acts of Tenant, its contractors or employees. This indemnity is in addition to the other indemnities by Tenant contained in this Lease.

(h) Tenant Not Landfill Operator. The Parties understand and agree that solely by virtue of Tenant's acceptance of this Lease and the demise of the Leased Premises, its entry upon the Landfill in accordance with the provisions of this Lease, its use of the Leased Premises in accordance with the provisions of this Lease for the Intended Use, or its performance of any other lawful act permitted to be undertaken hereunder, neither Tenant nor any of its respective members, partners, officials, agents, contractors, employees, financing parties, lenders, directors, officers, successors or assigns shall be deemed by Landlord to have, in any way, become an Operator of the Landfill (as such term is defined in 310 CMR 19.006 or as any comparable term is defined in any other applicable statute or regulation), or shall be deemed by Landlord to have assumed any liability or obligation for the operation, closure, maintenance, monitoring or repair of the Landfill (except Tenant's Landfill Obligations) or with respect to materials of any type or description (including Hazardous Substances or landfill gas) deposited, stored or received on or within the Landfill by any person other than the Tenant and its permitted successor, permitted assigns, lenders, agents, employees, contractors or subcontractors after the Effective Date, except to the extent that the Tenant shall comply with the DEP Permit which Tenant shall obtain from DEP to install, operate and maintain the Intended Use on the Leased Premises.

## **12. ACCESS.**

(a) At all times throughout the Term of this Lease, so long as it is in compliance with local laws and regulations, and at no additional charge to Tenant, Tenant and its employees, agents, and subcontractors, will have twenty-four (24) hour, seven days per week access to and over the Leased Premises for the installation, maintenance and operation of the System and any utilities serving the Leased Premises and for one hundred and eighty (180) days after expiration or termination of the Lease to remove the System(s) and in the areas indicated on **EXHIBIT 1** as the "Access Areas".

(b) Landlord hereby acknowledges that the Leased Premises shall be for a solar power generation facility and, notwithstanding anything to the contrary contained herein, and except in the case of an emergency and except for the conduct of the Landlord Activities, Landlord and its agents and employees shall not access the System or Leased Premises unless accompanied by a representative of Tenant. If Tenant fails to respond to Landlord's request for access within ten business days, Landlord is granted access.

## **13. SYSTEM AS PERSONAL PROPERTY**

All portions of the System brought onto the Property by Tenant will be and remain Tenant's personal property. Landlord covenants and agrees that no part of the System constructed, erected or placed on the Property by Tenant will become, or be considered as being affixed to or a part of, the Property, it being the specific intention of the Landlord that all improvements of every kind and nature constructed, erected or placed by Tenant on the Property will be and remain the property of Tenant and may be removed by Tenant at any time during the Term and shall be removed by Tenant at the end of the Term as set forth herein, subject to Section 23, unless the parties agree otherwise in writing as an amendment hereto.

#### **14. MAINTENANCE, UTILITIES.**

(a) Tenant will keep and maintain the Leased Premises in good condition, reasonable wear and tear and damage from the elements excepted, which includes mowing the grass within the Leased Premises which includes a portion of the Landfill and Landfill Cap. Tenant shall maintain the Access Easement surfaces in good repair in the areas of and from Tenant's use and as may be required in the DEP Permit. Any repairs needed to the Access Easement due to Landlord's use, including from the Northern Construction will be the sole responsibility of Landlord at its sole cost and expenses. During the tenure and areas where both Landlord and Tenant are jointly using the Access Easement, each party shall be responsible for making its own repairs.

(b) Tenant will be solely responsible for and promptly pay all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Leased Premises.

(c) Landlord shall give Tenant prompt notice if it becomes aware, through the practice of any routine observation of the area, of any damage to or defective condition of the System and/or Leased Premises, provided that Landlord is not under any obligation to observe, investigate or monitor the System or the Leased Premises for any such damage or condition, and provided further that the good faith failure of Landlord to observe any such damage or condition or provide notice of the same to Tenant shall not constitute a breach of this Lease by Landlord.

(d) Landlord acknowledges and agrees that access to sunlight ("**Insolation**") is essential to the value to Tenant of the Leasehold Estate granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, except to the extent of any activities required by Applicable Laws, Landlord shall not permit any interference with Insolation on and at the Leased Premises, the Property, or any adjoining real property owned by Landlord. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Property, or adjoining real property owned by Landlord, that could adversely affect Insolation levels, permit the growth of foliage that could adversely affect Insolation levels, or directly emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation other than as may arise naturally or from vehicles. Subject to Applicable Laws, Landlord hereby grants to Tenant the right to trim and to cut down and



clear away any trees and foliage now or hereafter located on the Leased Premises which now or hereafter in the reasonable opinion of Tenant may adversely affect Insolation levels, subject to the Tenant obtaining all approvals required from governmental authorities. Notwithstanding any other provision of this Lease, the parties agree that Tenant would be harmed by a breach of the provisions of this section, that an award of damages would be inadequate to remedy such breach, and that Tenant shall be entitled to seek equitable relief, including specific performance, to compel compliance with the provisions hereof, however, Tenant shall provide Landlord with ten (10) days prior notice to taking any action to exercise the rights granted under this subsection (d).

(e) Tenant also acknowledges and agrees that the DEP Permit may impose certain terms, conditions and requirements which are related to the Tenant's Intended Use of the Leased Premises and/or the installation, construction and/or operation of the System and which would not have been imposed on Landlord were it not for this Lease, and that Tenant shall, notwithstanding anything to the contrary in this Lease, be responsible for those conditions and requirements, as well as for the routine mowing and control of vegetation within the Leased Premises as set forth in this Section 14 and in order to comply with any DEP permits and its maintenance requirements (hereinafter collectively referred to as "Tenant's Landfill Obligations").

## **15. DEFAULT AND RIGHT TO CURE.**

(a) The following will be deemed a default by Tenant and a breach of this Lease:

(i) non-payment of Rent if such rent remains unpaid for more than thirty (30) days after receipt of written notice of such failure to pay from Landlord; or

(ii) Tenant's failure to perform or continue to perform once commenced, as applicable, any other term or condition under this Lease within forty-five (45) days after receipt of written notice from Landlord specifying the failure.

No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity. Notwithstanding the foregoing, Tenant shall pay the real property taxes in the name of Aggregate when due.

(b) The following will be deemed a default by Landlord and a breach of this Lease: Landlord's failure to perform any material term or material condition under this Lease within forty-five (45) days after receipt of written notice from Tenant specifying the failure. No such default, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains

in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity.

(c) Cures - Rights, Costs and Damages. If either party 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 cure periods, the non-defaulting party, without being under any obligation to do so and without waiving such default, may remedy such default for the account of the defaulting party, (i) 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 (ii) in any other case only provided the defaulting party shall fail to remedy such default within the applicable cure period set out above. All costs reasonably incurred by the non-defaulting party to remedy such default (including, without limitation, all reasonable attorney's fees), shall be at the expense of the defaulting party.

## **16. CONSTRUCTION AND OPERATION OF PERMITTED USE**

(a) General Description. Except as otherwise specified herein, the System shall consist of the improvements that Tenant deems necessary or desirable for the Intended Use.

(b) Completion Requirements. Tenant will cause the construction of the System to be performed and completed in a good, careful, proper and workmanlike manner, and in accordance with good engineering practices and all Applicable Laws and Governmental Approvals. The System will, when completed and during operations, comply with all Applicable Laws and Government Approvals.

(c) Compliance with DEP Landfill Permits. Tenant shall ensure that construction of the System complies with all DEP permit(s) related to the protection of the Landfill cap, including the DEP Permit, and all Applicable Laws and regulations. Tenant shall indemnify and hold the Landlord harmless for any damage, caused to the Landfill, including the Landfill cap, to the extent the same is a result of the installation, maintenance, or other connection to the System, and any fines or penalties imposed by DEP as a result of such damage. In the event of such damage, Tenant shall repair, to DEP standards and approval, any and all portions of the Landfill or the Landfill cap at its sole cost and expense in a prompt and timely fashion.

(d) Interconnection with Electric Distribution Grid. Tenant will apply at its sole cost for all approvals and agreements required for Tenant's interconnection of the System to the utility. As owner of the Property, Landlord shall cooperate with Tenant in Tenant's efforts to apply for and obtain all such approvals and agreements, including without limitation, executing, as owner of the Property, such applications and authorizations as may be reasonably required by the applicable authority (on a timely basis but in no event more than fifteen (15) business days after Landlord's receipt of Tenant's request therefor) at no cost to Landlord, provided Tenant shall have no obligation to pay or reimburse Landlord for any costs or expenses incurred by Landlord in connection with Landlord's

review of said documents, applications or authorizations in the normal course of Landlord's business as a permit-granting authority. Tenant will promptly inform Landlord of all significant developments related to such interconnection matters. Tenant shall ensure that the placement of wires and poles will not interfere with the Landlord Parties' use of or remediation of Assessor's Parcel 776-788-26 or access to the northern mound of the Landfill.

(e) As-Built Plans. Within ninety (90) days following Commercial Operation Date, Tenant shall prepare and deliver to Landlord detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

(f) Inspection and Entry. During the course of construction and completion of the System and any substantial alteration thereto, Tenant shall maintain all plans, shop drawings, and specifications relating to such construction which Landlord, its agents or contractors may examine during business hours upon reasonable prior notice solely for the purpose of determining whether the work conforms to the agreements contained or referenced in this Lease. In addition, during the Term of this Lease, Landlord may at any time and from time to time, upon reasonable prior notice to Tenant in compliance with Section 12 hereof, enter upon the Leased Premises and inspect the System for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease. Landlord shall exercise such right in a manner that does not disrupt Tenant's business operations on the Leased Premises.

(g) From time to time the Landlord or its agents will need to access the Leased Premises to perform Landlord Activities, including monitoring requirements for regulatory compliance activities as required by DEP. Except in the event of emergency, the Landlord shall provide no less than 48 hours' notice to Tenant of its need for access. All such access shall be in compliance with Section 12 hereof. Tenant shall not unreasonably deny access by the Landlord for said Landlord Activities.

(h) Notwithstanding the foregoing or anything to the contrary in this Lease, Tenant shall provide Landlord's Department of Public Works (or such other board, department or official designated by Landlord) a copy of any keys to any locks at the Leased Premises and System (x) for use in the event of an emergency, in which event Landlord's Fire Department or other emergency service providers shall be entitled to gain access to the Leased Premises and System, and shall provide notice to Tenant of such access as soon as practicable before or after such access; and (y) for the conduct, by Landlord, of the Landlord Activities.

## **17. ASSIGNMENT/SUBLEASE.**

Tenant shall not assign, sublet or otherwise transfer or encumber all or any part of Tenant's interest in this Lease without the prior written consent of the Landlord, which consent shall not be unreasonably conditioned, withheld or delayed, unless such assignee satisfies the criteria listed below. Any assignee must post a similar Letter of Credit as set

forth in Section 23 for the Decommissioning Costs identified herein and comply with the DEP Permit and obtain any required transfer approval from DEP. No assignment/sublease of this Lease may occur without Tenant first curing any default. Notwithstanding the foregoing, Tenant may assign this Lease or sublet all or any part of the Leased Premises without the consent of Landlord to (i) a parent, subsidiary or affiliated corporation, partnership or other affiliated business entity (which shall be an entity which directly or indirectly, controls or is controlled by Tenant or Tenant's parent company or which is under common control with Tenant, Tenant's parent or any other affiliate of Tenant), (ii) a third party in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Tenant, or (iii) in connection with a financing of the System. Upon the approval of Landlord, which approval shall not be unreasonably withheld, Tenant may assign the Lease to a proposed assignee or purchaser of the System or the assets of Tenant with commensurate financial capacity (the "*Financial Capacity*") and technical and operational experience consistent with the Intended Use of Tenant as of the Effective Date, including experience operating a solar facility on a landfill. A sale of any or all of the shares of Tenant (or its parent, if applicable) shall not be considered an assignment of this Lease and shall not require consent of Landlord, provided that Tenant has paid any and all Rent due and personal property taxes due. Tenant shall provide prior written notice to Landlord of any proposed assignment or sale permitted by this Section 17 before the effective date of such assignment or sale, and at least fifteen (15) business days in advance if Landlord's consent is required. Any permitted assignee shall agree to be bound by all terms and conditions contained in this Lease.

## **18. NOTICES.**

(a) All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered, or by email. Email notices shall require confirmation of receipt. Notice will be addressed to the parties at the addresses set forth below. Either party hereto may change the place for the giving of notice to it by thirty (30) days written notice to the other as provided herein.

(b) Notice shall be made to the following:

Landlord: Haverhill DPW  
40 South Porter Street  
Haverhill, MA 01835  
Attn: Deputy DPW Director

Aggregate Industries – Northeast Region, Inc.  
1715 Broadway  
Saugus, MA 01906  
Attn: Regional Manager of Land and Environment

With required copy to:

8700 W. Bryn Mawr Ave., Suite 300  
Chicago, IL 60631  
Attn: Legal Department

with a copy to:

Mayor  
City of Haverhill  
4 Summer Street  
Haverhill, MA 01830

City Solicitor  
City of Haverhill  
4 Summer Street  
Haverhill, MA 01830

Tenant: Kearsarge Haverhill LLC  
Attn: Andrew Bernstein  
1200 Soldiers Field Road, Suite 202  
Boston, MA 02134

With a copy to:

Sherin and Lodgen LLP  
101 Federal Street, 31<sup>st</sup> Floor  
Boston, MA 02110  
Attn: Bethany Bartlett, Esq.

## **19. SEVERABILITY.**

If any term or condition of this Lease is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially and adversely affects this Lease for either Party, then this Lease may be terminated by the affected party on ten (10) days prior written notice to the other party hereto.

## **20. CONDEMNATION.**

In the event Landlord or Tenant receives notification of any condemnation proceedings affecting the Property, Landlord or Tenant, as the case may be, will exercise reasonable efforts to provide notice of the proceeding to the other Party within forty-eight (48) hours, provided that the good faith failure to provide such notice shall not constitute

a default of this Lease. If a condemning authority takes all of the System and/or Leased Premises, or a portion sufficient, in Tenant's reasonable determination, to render the System and/or Leased Premises unsuitable for Tenant's Intended Use and Tenant provides written notice to Landlord of Tenant's determination, this Lease will terminate as of the date the title vests in the condemning authority, and Landlord and Tenant may each assert claims against the condemning authority for just and adequate compensation for their respective losses in accordance with Applicable Laws.

## **21. CASUALTY.**

Landlord and Tenant will provide notice to the other of any casualty affecting the Leased Premises as soon as reasonably practicable, but no later than within twenty-four (24) hours of such Party becoming aware of the casualty. Tenant shall provide written notice to Landlord, DEP, and any other applicable regulatory authority of any release by Tenant of oil and/or Hazardous Substance (as defined in the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6921 et seq., applicable state laws, and any regulations adopted pursuant to either of the foregoing) excluding the storage of customary amounts of materials commonly and lawfully stored in the type of improvements located on the Property as soon as reasonably possible, but no later than within twenty-four (24) hours of such release or, if shorter, the period required by DEP for the reporting of such release to DEP. Landlord shall promptly repair the damage to the Property, unless directly or indirectly caused by the Tenant in which case the Tenant shall restore and repair. Tenant shall promptly repair the damage to the System if Tenant determines in its reasonable discretion the System can be restored, and Landlord shall equitably abate the rent for a commercially reasonable period until the System has been restored or, if earlier, the date when the System could have been restored if Tenant had (but failed to) exercised reasonable diligence in performing such repairs. If, however, the Tenant determines the damage to the System is irreparable, Tenant may terminate this Lease after written notice to Landlord.

## **22. LIENS.**

(a) Landlord hereby waives any and all lien rights it may have, statutory or otherwise, concerning the System or any portion thereof. The System shall be deemed personal property for purposes of this Lease, regardless of whether any portion is deemed real or personal property under applicable law, and Landlord hereby consents to Tenant's right to remove all or any portion of the System if Tenant vacates the Property.

(b) Mechanic's Liens. Tenant shall not create, or suffer to be created or to remain, and shall promptly discharge, any mortgage, liens (including mechanic's, laborer's or materialman's lien) or any other encumbrances (each a "***Lien***" and collectively "***Liens***") upon the Property, Leased Premises or the System or the income therefrom and Tenant will not suffer any other matter or thing arising out of Tenant's use and occupancy of the Leased Premises whereby the estate, rights and interests of Landlord in the Property or Leased Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this Lease.

(c) If any Lien shall at any time be filed against the Property or Leased Premises as a result of the Intended Use or any other activities of any Tenant Parties in connection with this Lease, or as a result of the System, Tenant, within a reasonable time after Tenant becomes aware of the filing thereof or, if Tenant contests such Lien, after the unsuccessful conclusion of such contest, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord 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 Landlord and costs and expenses reasonably incurred by Landlord in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Landlord's making of the payment of the cost and expenses, shall be paid by Tenant to Landlord within ten (10) business days of Landlord's invoice therefor.

(d) Landlord shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, liens (including mechanics', labor or materialman's lien), charge, security interest, or other encumbrances (each a "**Lien**" and collectively "**Liens**") on or with respect to the System or any interest therein. If Landlord breaches its obligations under this section, Landlord shall (i) promptly notify Tenant in writing, (ii) and promptly cause such Lien to be discharged and released of record without cost to Tenant. If Landlord shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Tenant 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 Tenant and costs and expenses reasonably incurred by Tenant in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Tenant's making of the payment of the cost and expenses, shall be paid by Landlord to Tenant within ten (10) Business Days of Tenant's invoice therefor.

(e) If there is any mortgage or fixture filing against the Property or Leased Premises which could reasonably be construed as attaching to the System(s) as a fixture of the Property or Leased Premises, Landlord shall provide a disclaimer (of the System as a fixture) or obtain, for mortgages granted by Landlord, an SNDA, as described in Section 10(d), from such mortgagee. Landlord consents to the filing by Tenant, on behalf of Landlord, of a disclaimer of the System(s) as a fixture of the Property or Leased Premises in the office where real estate records are customarily filed in the jurisdiction of the Property.

## **23. REMOVAL AND RESTORATION; SECURITY; AND PURCHASE OPTION.**

(a) Removal and Restoration. Upon the expiration or earlier termination of the Lease, Tenant shall, within 180 days of such expiration or termination, at its sole cost, remove and, in accordance with Applicable Laws, dispose of the System and all Tenant

Property, and shall restore the Leased Premises to their original condition, reasonable wear and tear and damage from the elements excepted and in a condition free of trees and other vegetation as removed during construction of the System and in accordance with the terms of this Lease, unless DEP in requires more stringent restoration of the Leased Premises, in which event Tenant shall comply with all DEP requirements as to the restoration of the Leased Premises (the "Removal"). If the Tenant has not commenced such work within 90 days of the expiration or earlier termination of the Lease, the Landlord Parties shall have the right to self-perform the Removal and restoration work and to draw upon the Letter of Credit to pay for the costs of Removal and restoration work.

(b) Removal and Other Security. No later than thirty (30) days after the Commercial Operation Date, Tenant shall deliver to the Landlord, at the Tenant's sole cost and expense, an irrevocable standby letter of credit ("**Letter of Credit**") in an amount equal to \$355,000.00, which represents 100% of the estimated removal and restoration costs as agreed upon by the Parties ("**Decommissioning Costs**"). The Letter of Credit must name the Landlord Parties as the beneficiaries thereunder and otherwise be in form and substance satisfactory to the Landlord Parties, be issued by a party acceptable to the Landlord Parties (Landlord Parties hereby deem Cambridge Savings Bank, and a substitute lending institution with similar financial capacity, as acceptable). In addition, the Letter of Credit (and any substitute Letter) shall contain "evergreen" provisions under which it will automatically renew, without amendment, for successive one (1) year periods unless the issuer provides prior written notice of termination to the Landlord Parties no less than thirty (30) days prior to the expiration of the then current one (1) year period.

The Tenant covenants and agrees to take all necessary actions to maintain the Letter of Credit in effect until such time as the Letter of Credit is no longer required to be in effect in accordance with the terms of this Lease because Removal and all restoration work are complete; subject to the Letter of Credit being (i) reduced by any draws made by the Landlord Parties and (ii) reduced or increased by amendment as required or permitted hereunder.

Notwithstanding anything to the contrary contained herein, if the issuer of the Letter of Credit issues a written notice of termination as provided above, the Tenant shall, no later than ten (10) business days prior to the termination date of the Letter of Credit, provided a substitute letter of credit, in form substantially similar to the Letter of Credit to replace the Letter and in the stated amount required under this Lease. No later than thirty (30) days prior to any such termination date of any substitute Letter of Credit then in effect, the Tenant shall provide the Landlord Parties with a replacement Letter of Credit.

The Letter of Credit shall allow for (i) draws to be made upon presentation of a signed draw request in the form attached thereto and (ii) one draw in the entire amount or multiple partial draws upon a certification from the Landlord Parties that the Landlord Parties are permitted to make a draw upon the Letter of Credit in accordance with this



Lease and the amount being drawn is then due to the Landlord Parties pursuant to this Lease. The issuer of the Letter of Credit shall not have the right to inquire as to the basis for any draw or require instruction or authorization from any party other than the Landlord Parties or be permitted to withhold a draw requested by the Landlord Parties as a result of any instruction from any other party, including the Tenant.

The Landlord Parties shall have the right to draw against the Letter of Credit to secure payment of Decommissioning Costs required under the Lease and to secure payment of Rent under the Lease. If the Tenant fails to provide the Landlord Parties with evidence of the renewal or extension of the Letter of Credit by thirty (30) days prior to notice of its expiration date, the Landlord Parties shall be entitled to draw on the entire sum of the Letter of Credit and shall hold the funds as security throughout the Term of the Lease and any Extension Terms plus the earlier of: (x) one year after such expiration or termination, or (y) completion of Removal; to secure payment of the Decommissioning Costs, with any excess funds being released to Tenant, as applicable. Such funds shall be held by the Landlord Parties in an interest-bearing account in the name of the Landlord Parties with interest accruing thereon for the benefit of the Tenant. The Landlord Parties shall be entitled to withdraw funds from the account upon the same terms and conditions as they would have been entitled to make a draw upon the Letter of Credit for Decommissioning Costs. The applicable portion of the funds held in the account shall be promptly returned to the Tenant upon the delivery of a substitute Letter of Credit to the Landlord Parties in the stated amount then required under the Lease or if, in accordance with the terms of this Lease, the Landlord Parties would have been required to return the Letter of Credit to the Tenant.

Decommissioning Costs shall be evaluated once every five years. Failure to secure such renewal or extension shall constitute a default of Tenant under the Lease.

c) Purchase Option. Tenant grants to Landlord (jointly or separately) an option to purchase the System upon expiration of the Term of this Lease Agreement (the "**Purchase Option**") for a purchase price (the "**Purchase Option Price**") equal to the fair market value of the System. Not less than three (3) months prior to the expiration of the Term, Landlord must provide written notice to Tenant of Landlord's intent to exercise its Purchase Option. Within thirty (30) days of receipt of Landlord's notice Tenant shall have prepared by an Independent Appraiser, a determination of fair market value. ("**Independent Appraiser**" shall mean 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.) If Landlord does not accept the fair market value as determined by the Independent Appraiser, then the Parties shall mutually select an alternate Independent Appraiser to determine a second opinion of the fair market value of the System. Such Independent Appraiser shall act reasonably and in good faith to determine fair market value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by such Independent Appraiser shall be averaged with the first Independent Appraiser's valuation and shall be binding upon the Parties in the absence of fraud or manifest error. Tenant shall be

responsible for the fees and expenses of the Independent Appraiser and Landlord shall be responsible for the fees and expenses of the alternate Independent Appraiser. Within ten (10) Business Days of the determination of fair market value, Landlord shall confirm or retract its decision to exercise the Purchase Option. In the event Landlord confirms its intent to exercise the Purchase Option, (i) the Parties will promptly execute all documents necessary to (A) cause title to the System to pass to Landlord, free and clear of any liens immediately subsequent to the purchase, (B) assign all warranties for the System to Landlord, and (C) transfer all right, title and interest in and to the environmental attributes related to the System arising on and after such date of conveyance and which Tenant has not previously contracted to sell, and if applicable Tenant shall assign to the Landlord, and Landlord shall assume, all of Tenant's rights and obligations under any forward sale contract related to such environmental attributes, and (ii) Landlord will pay the Purchase Option Price to Tenant. In the event Landlord retracts its exercise of, or fails to timely confirm, the Purchase Option, all provisions of this Agreement shall continue in full force and effect without regard to the actions taken under this section.

## **24. MISCELLANEOUS.**

(a) Amendment; Waiver. This Lease cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of Tenant. No provision of this Lease may be waived except in a writing signed by the Party making the waiver. Forbearance or indulgence in any form or manner by a Party shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to that Party. No waiver by either Party of any default or breach of this Lease shall constitute a waiver of any subsequent default or breach of a similar or different nature.

(b) Short Form Lease. Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum of Lease. Either party may record this memorandum at any time, in its absolute discretion.

(c) Bind and Benefit; No Third Party Beneficiaries. The terms and conditions contained in this Lease will run with the Property and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns. There are no third party beneficiaries under this Lease, and no right or cause of action shall accrue to any other party not a signatory to this Lease.

(d) Entire Agreement. This Lease and the attachments and exhibits attached constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements.

(e) Governing Law / Forum. This Lease will be governed by the laws of the Commonwealth of Massachusetts, without regard to conflicts of law. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth, Franklin County or the federal district court sitting in

the Commonwealth, which shall have exclusive jurisdiction thereof. This paragraph shall not be construed to limit any other legal rights of the parties other than as expressly provided in this paragraph.

(f) Interpretation. Unless otherwise specified, the following rules of construction and interpretation apply:

(i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof;

(ii) use of the term “including” will be interpreted to mean “including but not limited to”;

(iii) whenever a party’s consent is required under this Lease, except as otherwise stated in the Lease or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed;

(iv) attachments and exhibits are an integral part of this Lease and are incorporated by reference into this Lease; and

(v) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) Estoppels. Either Party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing stating, to the actual knowledge of such Party without waiver of rights (i) that this Lease has not been amended and is in full force and effect (or, if amended, stating the nature of such amendment and certifying this Lease, as so amended, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, (ii) the date of commencement and termination of the Term, (iii) the date to which rental and other charges hereunder are paid currently without any offset or defense thereto (or stating such offset or defense), (iv) the amount of rental and all other charges hereunder, if any, paid in advance, (v) that there are not, to such Party’s actual knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed, and in the event the Tenant requires the Landlord to make any other representation which are of such other matters as the requesting party shall reasonably request, then. For all requests made on Landlord under this section, Tenant shall reimburse the Landlord for reasonable attorneys’ fees associated therewith. In the event that Tenant requests that Landlord provide such an estoppel, it shall not be unreasonable for Landlord to request of Tenant a similar estoppel, with which request Tenant shall comply.

(h) No Option. The submission of this Lease for examination or consideration does not constitute a reservation of or option for the Property. This Lease will become effective as an Agreement only upon the legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

(i) Additional Terms Regarding Landlord. Notwithstanding anything to the contrary in this Lease, the following provisions shall control over any inconsistent provisions in this Lease:

(i) Landlord shall not be required to execute documents or instruments subsequent to the execution of this Lease that will materially or unreasonably increase Landlord's risk or obligations under this Lease, or result in the waiver of any of Landlord's rights, remedies or defenses under this Lease or at law or in equity, or require Landlord to make any statements of fact that are not within the actual knowledge, without duty of inquiry, of Landlord's City Solicitor.

(ii) Any requirement that Landlord cooperate with or assist Tenant or take any action, or execute any documents, shall not require Landlord to improperly interfere with or improperly influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Landlord.

(ii) This Lease shall be subject to all Applicable Laws.

(iii) Landlord does not waive any of the rights, remedies, defenses and immunities afforded Landlord, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Landlord hereby reserves.

(iv) Nothing in this Lease shall interfere with the Haverhill Assessor in the evaluation, calculation, assessment and collection of taxes in accordance with Applicable Laws, including the characterization of the System for tax purposes.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

IN WITNESS WHEREOF, the Parties have executed this Lease as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020, (the “*Effective Date*”).

**Landlord**

City of Haverhill, Massachusetts

By its City Council

By: \_\_\_\_\_  
\_\_\_\_\_, Councilman  
Chairperson

By: \_\_\_\_\_  
\_\_\_\_\_, Council

By: \_\_\_\_\_  
\_\_\_\_\_, Council

**Landlord**

Aggregate Industries – Northeast Region, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

**Tenant**

Kearsarge Haverhill LLC

By its Manager, Kearsarge Solar LLC

By: \_\_\_\_\_  
Andrew Bernstein, Manager, Kearsarge Solar LLC

**EXHIBIT 1**  
**Leased Premises**

## EXHIBIT 2

### Rent

<b>Haverhill Annual Lease Schedule</b>	
(2% escalator)	
Construction Period	\$ 40,500
Year 1	\$ 81,000
Year 2	\$ 82,620
Year 3	\$ 84,272
Year 4	\$ 85,958
Year 5	\$ 87,677
Year 6	\$ 89,431
Year 7	\$ 91,219
Year 8	\$ 93,044
Year 9	\$ 94,904
Year 10	\$ 96,802
Year 11	\$ 98,739
Year 12	\$ 100,713
Year 13	\$ 102,728
Year 14	\$ 104,782
Year 15	\$ 106,878
Year 16	\$ 109,015
Year 17	\$ 111,196
Year 18	\$ 113,420
Year 19	\$ 115,688
Year 20	\$ 118,002
<b>Total (20 years without construction stub period:</b>	
	<b>\$ 1,968,087</b>

Extension Terms	Rent
Year 21	\$120,362.04
Year 22	\$122,769.28
Year 23	\$125,224.67
Year 24	\$127,729.16
Year 25	\$130,283.74
Year 26	\$132,889.42
Year 27	\$135,547.21
Year 28	\$138,258.15
Year 29	\$141,023.31
Year 30	\$143,843.78







JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

5,4  
CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda E. Barrett and Members of the Haverhill City Council

RE: Power Purchase agreement between Kearsarge Energy LLC and City of Haverhill

Dear Madame President and Members of the Haverhill City Council:

Please see attached a power purchase agreement between Kearsarge Energy LLC and City of Haverhill which includes SMART Solar Credits from the Landfill Solar Project. Please see attached a letter from Orlando Pacheco, Haverhill's Energy Advisor, regarding this project. Mr. Pacheco will be available at Tuesday's City Council meeting should you have any questions. I recommend approval.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf



# Haverhill

Purchasing Department, Room 105  
Phone: 978-374-2309 Fax: 978-521-4348  
[purchasing@cityofhaverhill.com](mailto:purchasing@cityofhaverhill.com)

February 29, 2020

Mayor James J. Fiorentini  
City Hall  
4 Summer Street  
Haverhill, MA 01830-5875

Dear Mayor:

Attached is the Power Purchase Agreement (PPA) between Kearsarge Energy LLC and the City of Haverhill.

The Agreement calls for the City to purchase SMART Solar Credits at a discount rate of 7.5% from the "basic service rate" provided by National Grid. The city is agreeing to purchase all power produced from the Landfill Solar Project. The estimated production is expected to be approximately Four Million Three Hundred and Twenty Thousand (4,320,000) kilowatt hours (KWH) annually.

The credits will be applied towards the City/School electric accounts. The agreement contains the same form and language as all the previous Power Purchase Agreements approved by the City Council previously.

Sincerely,

---

Orlando Pacheco  
Energy Manager

**GENERAL TERMS AND CONDITIONS OF  
ENERGY CREDIT PURCHASE AGREEMENT**

*These General Terms and Conditions of Energy Credit Purchase Agreement (the "General Conditions") are dated as of 3rd day of March 2020 and are witnessed and acknowledged by Kearsarge Haverhill LLC, a Massachusetts limited liability company ("Provider") and City of Haverhill ("Buyer"), as evidenced by their respective signatures on the last page of this document. Provider and Buyer may be 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 the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"ABC Price" means the price for ABCs set forth on Schedule 2 of the Special Conditions.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means these General Conditions (including the Exhibits attached hereto) and the Special Conditions (including the Schedules and Exhibits thereto).

"Allocated Capacity" has the meaning set forth on Schedule 3 of the Special Conditions.

"Allocated Percentage" means the percentage of Alternative On-Bill Credits to be allocated to Buyer, as set forth on Schedule 3 of the Special Conditions.

"Alternative On-Bill Credit" or "ABC" means a monetary on-bill electricity credit provided by the Utility in accordance with the SMART Program in connection with electricity generated by a solar system qualified under the SMART Program.

"Anticipated Commercial Operation Date" has the meaning set forth on Schedule 1 of the Special Conditions.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 11.1.

"Bankruptcy Event" means with respect to a Party, that either:

(i) such Party has: (A) applied for or consented to the appointment of, or been made subject to, 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 is 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 read-

justment of its 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 have been entered and continue unstayed and in effect for a period of sixty (60) days.

“Basic Service Rate” has the meaning set forth on Schedule 2 to the Special Conditions.

“Billing Cycle” means the monthly billing cycle established by the Utility with respect to the Host Account.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business. For avoidance of doubt, any reference to “day” and not “Business Day” shall mean a calendar day.

“Buyer” has the meaning set forth in the preamble to these General Conditions.

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

“Commercial Operation” has the meaning set forth in Section 3.3.

“Commercial Operation Date” is the date specified in the notice delivered by Provider to Buyer pursuant to Section 3.3.

“Confidential Information” has the meaning set forth in Section 13.1.

“Construction Start Date” has the meaning set forth on Schedule 1 of the Special Conditions.

“Covenants, Conditions and Restrictions” or “CCRs” means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

“Effective Date” has the meaning set forth in the Special Conditions.

“Environmental Attributes” shall mean, without limitation, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags, tradable renewable credits, Environmental Attributes or RPS Class I Renewable Generation Attributes (as defined under the SMART Program), or Green-e® products.

“Estimated Allocated Annual Production” has the meaning set forth in Section 4.2.

“Financing Party” means, as applicable, (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) that has made or will make a loan to or otherwise provide financing to Provider (or an Affiliate of Provider) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 8.1.

“General Conditions” has the meaning set forth in the preamble to these General Terms and Conditions of Energy Credit Purchase Agreement.

“Good Industry Practice” means the practices, methods and acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the solar generation industry in the operation and maintenance of equipment similar in size and technology) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.

“Governmental Approval” means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government. “Governmental Authority” shall also include the appointed third party administrator of the SMART Program.

“Host Account” means the Utility account for the Utility meter serving the System.

“Incentive Payment Effective Date” has the meaning set forth in the SMART Tariff.

“Indemnified Parties” has the meaning set forth in Section 14.

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

“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 threatened claims or other matters or in asserting or enforcing any indemnity obligation).

“Mechanically Complete” means that the System (i) has been installed at the Premises, all the direct current components of the System are mechanically and electrically complete, and the System is ready to commence start-up, testing, commissioning and operations once the Utility work and alternating current components of the System are completed and (ii) satisfies requirements under the SMART Program to be considered mechanically complete.

“Operations Year” means each 12-month period beginning on the Incentive Payment Effective Date and each anniversary thereof.

“Party” and “Parties” have the meanings set forth in the preamble to these General Conditions.

“Payment” has the meaning set forth in Section 4.3(b).

“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.

“Premises” means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises may include property in multiple locations, and includes the entirety of any structures and underlying real property located at the address(es) described on Schedule 1 of the Special Conditions.

“Provider” has the meaning set forth in the preamble to these General Conditions.

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

“Representatives” has the meaning set forth in Section 13.1.

“SMART Tariff” means the tariff adopted by the Utility substantially in the form of the model “SMART Provision” approved on November 20, 2018 by the Massachusetts Department of Public Utilities (“MA DPU”) in its Docket 17-140.

“Solar Incentives” means any accelerated depreciation, installation or production-based incentives, investment tax credits and subsidies and includes the “Incentive Payment” under the SMART Program and all other solar or renew-

able energy subsidies and incentives but does not include the Value of Energy for the Allocated Percentage and associated ABCs.

“Solar Massachusetts Renewable Target Program” or “SMART Program” means, collectively, and as amended from time to time, the SMART regulation, 225 CMR 20.00 *et. seq.*, the SMART Tariff, orders and guidelines issued by the MA DPU and Massachusetts Department of Energy Resources, and the associated tariff(s) of the Utility.

“Special Conditions” means the applicable Special Terms and Conditions of Energy Credit Purchase Agreement entered into by Provider and Buyer Agreement that references and incorporates these General Conditions.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus one and one half percent (1.5%) and (b) the maximum rate allowed by Applicable Law.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, generally described on Schedule 1 of the Special Conditions that generates electricity and is constructed on the Premises.

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

“Utility” means the local electric distribution company providing electric distribution and interconnection services to the System at the Premises and providing electric distribution services to Buyer.

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the 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 the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to “Articles” and “Sections” refer to Articles and Sections of these General Conditions.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement (the “Term”) shall commence on the Effective Date and shall continue for twenty (20) years from the Incentive Payment Effective Date of the System, unless and until terminated earlier pursuant to the provisions of the Agreement.

2.2 Buyer Right to Terminate the Agreement Prior to Incentive Payment Effective Date. Buyer, upon thirty (30) days’ notice to Provider, may terminate this Agreement with no liability whatsoever if Provider:

(b) fails to achieve Mechanical Completion within the Reservation Period (as defined in the SMART Regulations and DOER Guidelines) for the System, as such Reservation Period may be extended pursuant to the SMART Regulations and DOER Guidelines;

(b) fails to achieve Commercial Operation by the ninetieth (90<sup>th</sup>) day after the Anticipated Commercial Operation Date, provided that any such termination notice shall be null and void and this Agreement shall not terminate if Provider establishes that the System has achieved Commercial Operation by the end of the 30-day notice period; and

(c) fails to achieve the Incentive Payment Effective Date by the one hundred eightieth day (180<sup>th</sup>) day after the Anticipated Commercial Operation Date, provided that any such termination notice shall be null and void and this Agreement shall not terminate if Provider establishes that the System has achieved the Incentive Payment Effective Date by the end of the 30-day notice period.

Provider shall inform Buyer in writing not later than five (5) Business Days after it obtains or achieves each of: (i) its Statement of Qualification, (ii) its Reservation Period and any extension of the same, (iii) its Mechanical Completion date, (iv) its Commercial Operation Date and its Incentive Payment Commencement Date.

### 3. SYSTEM OPERATIONS.

3.1 Provider as Owner and Operator. The System will be owned or leased by Provider and will be operated and maintained and, as necessary, repaired and removed, by Provider at its sole cost and expense, consistent with Good Industry Practice.

3.2 Metering. At no cost to Buyer, there will be a separate meter installed and maintained by the Utility which will measure the net amount of electrical energy generated by the System and delivered to the Utility. Provider also may, at its discretion and expense, install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy generated by the System.

3.3 Commercial Operation; Incentive Payment Effective Date. “Commercial Operation” shall occur when the System has been approved for interconnected operation by the Utility and Provider has determined that the System has achieved commercial operation. Provider shall provide Buyer written notice of the Commercial Operation Date. In addition, Provider shall provide Buyer written notice of the Incentive Payment Effective Date.

3.4 SMART Program. Other than as required under Section 8(b) of the DOER’s Statement of Qualification Reservation Period Guideline Dated as of September 13, 2018 (the “Off-taker Based Adder Requirements”) with respect to offtakers other than Buyer, Provider hereby represents and warrants that it holds the necessary site control, non-discretionary permits and approvals, rights with the Utility under an Interconnection Services Agreement and other rights required to apply for and receive a Statement of Qualification from the Massachusetts Department of Energy Resources qualifying the System as an Alternative On-Bill Credit Generation Unit as defined under the SMART Tariff and as a Community Shared Solar Tariff Generation Unit and an Alternative On-bill Credit Generation Unit under the SMART Regulations. Provider shall meet the Off-taker Based Adder Requirements and obtain DOER’s confirmation of the same within the timeframe required under the SMART Regulations. Subject to the terms and conditions of this Agreement, Provider shall take all steps necessary to qualify the System for the SMART Program. In addition to the foregoing, the Parties will work cooperatively and in good faith to effect the transfer of ABC to Buyer’s Utility accounts in accordance with all SMART Program requirements under Applicable Law and Utility tariffs, including applicable interconnection and metering requirements (e.g., required utility paperwork). In the event that Buyer’s cooperation requires efforts beyond reasonable administrative and ministerial actions (e.g., preparation of information needed to complete required utility paperwork), Buyer may notify Provider and shall not be required to undertake such additional efforts except at Provider’s expense.

### 4. PURCHASE AND SALE OF ALTERNATIVE ON-BILL CREDITS; TITLE.

4.1 Purchase and Sale Requirement. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the Allocated Percentage of ABCs delivered by the Utility and applied to Buyer’s Utility accounts with respect to electricity generated by the System and delivered to the Utility during the Term. Seller shall cause the Utility to apply the Allocated Percentage of ABCs to such Buyer’s Utility accounts, including any ABCs that may be attributable to electricity generated by the System and delivered to the Utility prior to the Incentive Payment Effective Date.

4.2 Estimated Allocated Annual Production. The estimated allocated annual production for each Operations Year during the Term (“Estimated Allocated Annual Production”) is set forth on Schedule 4 of the Special Conditions.

#### 4.3 Price and Payment.

(a) ABC Price. The ABC Price shall be calculated as specified on Schedule 2 of the Special Conditions. The value of ABCs under the SMART Program will be determined based on the “Value of Energy” as described under Section 7.0(4) of the SMART Tariff and, accordingly, may vary with energy market pricing and the



Utility's fixed Basic Service tariff applicable to the System, which will be revised by the Utility from time to time during the Term. Accordingly, the Buyer understands that the value of ABCs may change from time to time during the Term. Seller covenants and agrees to elect and maintain with the Utility to receive during the Term "fixed rate" Basic Service and shall not elect to receive the "monthly variable" Basic Service rate.

(b) Payment. Buyer shall pay to Provider a monthly payment (the "Payment") with respect to each monthly Billing Cycle of the Term equal to the product of (x) total amount of ABCs generated from the Allocated Percentage for the relevant Billing Cycle and applied to the Buyer's Utility account(s) times (y) the ABC Price.

(c) Invoice. After the Incentive Payment Effective Date, following Provider's receipt of each monthly bill from the Utility with respect to the ABC applied to the Buyer's Utility account(s), Provider shall invoice Buyer for the Payment. The last invoice shall be for ABCs arising from electricity production only through the last day of the Term.

(d) Time of Payment. Except with respect to amounts disputed pursuant to Section 4.3(f), Buyer shall pay all amounts due hereunder within thirty (30) days after Buyer's receipt of the applicable invoice.

(e) Method of Payment. Buyer shall make all payments under the Agreement by check or electronic funds transfer in immediately available funds to the account designated by Provider from time to time. All payments that are not paid when due (other than payments that Buyer has disputed pursuant to Section 4.3(f)) shall bear interest accruing from the date due until paid in full at a rate equal to the Stated Rate. Except for billing errors or as provided in Section 4.3(g) below, all payments made hereunder shall be non-refundable, 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.

(f) Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, Buyer shall not be deemed in default under the Agreement with respect to the disputed amount and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. Buyer shall not be required to pay any amount disputed in good faith. If an amount disputed by Buyer is subsequently deemed to have been due pursuant to the applicable invoice, interest shall accrue at the Stated Rate on such amount from the date due under such invoice until the date paid. If an amount paid by Buyer is subject to dispute and it is later determined that Buyer was not required to pay such amount, that amount shall accrue interest at the Stated Rate from the date paid and shall be returned to Buyer unless Buyer in writing authorizes Provider to retain that amount plus such interest as a credit against future amounts due under this Agreement.

(g) Billing Adjustments Following Utility Billing Adjustments. If the Utility makes a retroactive adjustment in the quantity of ABCs credited to Buyer's Utility account, Buyer, in the case of an increase in the quantity of ABCs, shall make a corresponding payment to Provider or, in the case of a decrease in the quantity of ABCs, shall receive a corresponding reimbursement from Provider upon receipt of an invoice from Provider.

4.4 Environmental Attributes and Solar Incentives. Buyer's purchase of ABCs does not include Environmental Attributes (which shall be transferred to the Utility pursuant to the SMART Tariff) or Solar Incentives. Buyer disclaims any right to Environmental Attributes or Solar Incentives and shall, at the request of Provider, at no out of pocket cost to Buyer, execute any document or agreement reasonably necessary to confirm the intent of this Section 4.4. Notwithstanding the foregoing, Buyer shall be permitted to make public statements regarding its purchase of ABCs generated by the System under this Agreement in order to verify its progress and/or compliance with its and its Affiliates' climate action plans and related goals and policies.

4.5 Title to System. Throughout the duration of the Agreement, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party.

## 5. GENERAL COVENANTS.

5.1 Provider's Covenants. Provider covenants and agrees to the following:

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

(b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of operating at a commercially reasonable continuous rate in conformance with Good Industry Practice at all times.

(c) Governmental Approvals. Provider shall obtain and maintain and secure at its sole cost all Governmental Approvals required for the construction and operation of the System and to enable Provider to perform its obligations under this Agreement.

(d) Applicable Laws. Provider shall comply in all material respects with all Applicable Laws relating to the construction, operation and removal of the System. All work shall be performed by licensed professionals, as may be required by Applicable Law, and in accordance with such methods, acts, guidelines, standards and criteria as are consistent with Good Industry Practice for photovoltaic solar system integrators in the United States.

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

(a) Buyer shall provide to Provider such documentation (including billing statements from the Utility), as it may have or can reasonably obtain and as may be reasonably needed in order for Provider to perform its obligations under this Agreement.

(b) SMART Program Matters. Buyer shall comply with any requirements specified on Schedule 6 of the Special Conditions that are necessary for the System to meet and maintain eligibility under the SMART program, including eligibility for any applicable adders. Buyer agrees to at no out of pocket cost to supply any information and complete any form that may be required to verify eligibility of the System to participate in the SMART Program or receive certain benefits under the SMART Program, or as Provider may otherwise reasonably request to the extent reasonably necessary to perform its obligations under this Agreement. Buyer agrees to complete and to provide to Provider on the Effective Date a Customer Disclosure Form as required under the SMART Regulations.

6. REPRESENTATIONS & WARRANTIES.

6.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date 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 the Agreement;

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

(d) the 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; and

(f) its execution and performance of the 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.

6.2 EXCLUSION OF WARRANTIES. EXCEPT AS EXPRESSLY SET FORTH IN SECTIONS 3.1, 5.1, AND THIS SECTION 6 THE INSTALLATION WORK, SYSTEM OPERATIONS AND PERFORMANCE PROVIDED BY PROVIDER 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 PROVIDER.

## 7. TAXES AND GOVERNMENTAL FEES.

Provider 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 or operation of the System, including any tax on electric generation or electric generation equipment. Provider shall not be obligated for any taxes payable by or assessed against Buyer based on or related to Buyer's overall income or revenues.

## 8. FORCE MAJEURE.

8.1 Definition of Force Majeure Event. "Force Majeure Event" means any act or event that is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and which such Party has been unable to overcome with the exercise of due diligence. Subject to the foregoing conditions, "Force Majeure Event" shall include without limitation the following acts or events: (i) natural disaster, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; and (iv) strikes or labor disputes (except strikes or labor disputes caused solely by employees of the Provider or as a result of such party's failure to comply with a collective bargaining agreement). A Force Majeure Event shall not be based on the economic hardship of either Party.

### 8.2 Excused Performance; Tolling.

(a) Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 8 shall as soon as practicable (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of the Force Majeure Event, and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. Notwithstanding the foregoing, Buyer shall not be excused from making any payments for ABCs delivered to Buyer.

(b) If a Force Majeure Event occurs prior to the Commercial Operation Date, all milestone dates (e.g., Construction Start Date, Anticipated Commercial Operation Date), timeline-based deadlines, or similar requirements shall be tolled from the date of the notice of the Force Majeure Event until the date of the notice of the termination of the Force Majeure Event or, if earlier, six (6) months from the notice of the Force Majeure Event.

8.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous

period of one hundred eighty (180) days, then either Party shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the other Party, provided that the terminating Party shall have the right to withdraw such termination notice in the event that the Force Majeure Event ceases prior to the expiration of such 90-day period.

## 9. DEFAULT.

### 9.1 Provider Defaults and Buyer Remedies.

(a) Provider Defaults. Subject to the provisions of Exhibit A, the following events shall be defaults with respect to Provider (each, a "Provider Default"):

- (i) a Bankruptcy Event shall have occurred with respect to Provider;
- (ii) Provider fails to pay Buyer any amount owed under the Agreement (other than amounts disputed in good faith) within fifteen (15) days from receipt of notice from Buyer of such past due amount; or
- (iii) Provider breaches any material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Provider fails to so cure, or (B) Provider fails to commence and diligently pursue a cure within such 30-day period if a longer cure period is needed; provided, however, that Provider shall not be entitled to a cure period in excess of ninety (90) days in total.

(b) Buyer's Remedies. If a Provider Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 10 and the provisions of Exhibit A, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Buyer shall use reasonable efforts to mitigate its damages.

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

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

- (i) a Bankruptcy Event shall have occurred with respect to Buyer;
- (ii) Buyer fails to pay Provider any amount due Provider under the Agreement (other than amounts disputed in good faith pursuant to Section 4.3(f)) within fifteen (15) days from receipt of notice from Provider of such past due amount; or
- (iii) Buyer breaches any material term of the Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and diligently pursue said cure within such thirty (30) day period if a longer cure period is needed; provided, however, that Buyer shall not be entitled to a cure period in excess of ninety (90) days in total.

(b) Provider's Remedies. If a Buyer Default has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 10, Provider may terminate this Agreement and upon such termination, Provider may exercise any other remedy it may have at law or equity or under the Agreement. In the event of such termination, Provider shall use reasonable efforts to mitigate its damages.

## 10. LIMITATIONS OF LIABILITY.

Neither Party shall be liable to the other Party or its Indemnified Persons for any special, punitive, exemplary, indirect, or consequential damages, whether foreseeable or not, arising out of, or in connection with the Agreement.

## 11. ASSIGNMENT.

11.1 Assignment by Provider. Provider shall not sell, transfer or assign (collectively, an “Assignment”) the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Buyer, Provider may (i) assign this Agreement to an Affiliate, (ii) assign this Agreement as collateral security in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback transaction), or (iii) assign this Agreement to a party that acquires ownership of the System or the development rights thereto and which party shall have at least the same or greater financial and technical capabilities to perform Provider’s obligations under this Agreement. In the event that Provider identifies such secured Financing Party on Schedule 5 of the Special Conditions, or in a subsequent notice to Buyer, then Buyer shall comply with the provisions set forth in Exhibit A to these General Terms and Conditions. Any Financing Party shall be an intended third-party beneficiary of this Section 11.1. Any assignment by Provider without any required prior written consent of Buyer shall not release Buyer of its obligations hereunder.

11.2. Acknowledgment of Collateral Assignment. In the event that Provider identifies a secured Financing Party on Schedule 5 of the Special Conditions, or in a subsequent notice to Buyer, then Buyer hereby:

(a) acknowledges the collateral assignment by Provider to the Financing Party, of Provider’s right, title and interest in, to and under the Agreement, as consented to under Section 11.1 of the Agreement;

(b) acknowledges that the Financing Party as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to Provider’s interests in this Agreement but not in derogation of any right of Buyer under this Agreement; and

(c) acknowledges that it has been advised that Provider has granted a first priority perfected security interest in the System to the Financing Party and that the Financing Party 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.

Any Financing Party shall be an intended third-party beneficiary of this Section 11.2.

11.3 Assignment by Buyer. Buyer shall not assign the Agreement or any interest therein, without Provider’s prior written consent, which consent Provider may withhold in its sole discretion; provided, however, that Buyer shall be entitled to request that Provider allocate ABCs to Buyer’s affiliates with the same credit profile as determined by Provider and located within the same service territory of the Utility by delivering ninety (90) days prior written notice to Provider; and provided further that such assignment shall not take effect until after Buyer’s assignee has provided an executed Customer Disclosure Form and any other necessary information and the Utility has accepted a revised AOBC Payment/Credit Form under the SMART Program. The Parties recognize that effectuating a change in the allocation of ABCs depends upon action by the Utility. Any assignment by Buyer without the prior written consent of Provider shall not release Buyer of its obligations hereunder.

## 12. NOTICES.

12.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth on Schedule 5 of the Special Conditions, or at such other address as may be designated in writing in a notice to the other Party from time to time.

12.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified in the Special Conditions when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day

after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail.

12.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Buyer. Invoices shall be sent by regular first-class mail postage prepaid or via electronic mail at the electronic mail address provided by Buyer.

### 13. CONFIDENTIALITY.

13.1 Confidentiality Obligation. If either Party provides confidential information and such designation has been expressly communicated to the other Party (it being understood that the terms and conditions of this Agreement shall be deemed to have been designated confidential without further communication), including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Buyer's business ("Confidential Information") to the other or, if in the course of performing under the Agreement or negotiating the Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants, and Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees or acquirers be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of the Agreement (but not its execution or existence) shall be considered Confidential Information for purposes of this Article, except as set forth in Section 13.3. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Notwithstanding the foregoing, any information designated as confidential shall no longer be considered confidential five (5) years after it has been communicated to the other Party unless the Party disclosing such information to the other renews in writing its assertion of confidentiality and specifies the information considered to be confidential.

13.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that:

- (a) becomes publicly available other than through the receiving Party;
- (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement;
- (c) is independently developed by the receiving Party; or
- (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

13.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material, including publicly referring to this Agreement or the matters that are the subject of the Agreement, without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any

aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party.

13.4 Enforcement of Confidentiality Obligation. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Agreement by the receiving Party or its Representatives or other Person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Article. To the fullest extent permitted by Applicable Law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Article, but shall be in addition to all other remedies available at law or in equity.

#### 14. INDEMNITY.

Subject to Section 10, to the extent permitted by Applicable Law, Provider agrees that it shall, on demand, indemnify, defend and hold harmless Buyer, its permitted successors and assigns and their respective directors, trustees, officers, members, employees and other representatives (collectively, the “Indemnified Parties”) from and against any and all Losses incurred by the Indemnified Parties to the extent arising from or out of any claim for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of the indemnifying Party’s negligence or willful misconduct. Provider shall not, however, be required to reimburse or indemnify any Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Indemnified Party.

#### 15. MISCELLANEOUS.

15.1 Integration; Exhibits. The Agreement, together with the Exhibits and Schedules attached thereto and hereto, constitute the entire agreement and understanding between Provider and Buyer with respect to the subject matter hereof and thereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits and Schedules attached thereto and hereto are integral parts hereof and are made a part of the Agreement by reference. In the event of a conflict between the provisions of these General Conditions and any applicable Special Conditions, the provisions of the Special Conditions shall prevail.

15.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Buyer.

15.3 Industry Standards. Except as otherwise set forth herein, for the purpose of the Agreement the normal standards of performance within the solar photovoltaic power generation industry in the relevant market 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.

15.4 Cumulative Remedies. Except as set forth to the contrary herein, any right or remedy of Provider or Buyer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

15.5 Limited Effect of Waiver. The failure of Provider or Buyer to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

15.6 Survival. The obligations under Sections 2.2 (Buyer Right to Terminate the Agreement Prior to Commercial Operation), Section 6.2 (Exclusion of Warranties), Section 7 (Taxes and Governmental Fees), Section 9.1(b) (Buyer’s Remedies), Section 9.2(b) (Provider’s Remedies), Section 10 (Limitations of Liability), Section 12 (Notices), Section 13 (Confidentiality), Section 14 (Indemnity), Section 15 (Miscellaneous), or under other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement, shall survive the expiration or termination of this Agreement for any reason.

15.7 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the Commonwealth of Massachusetts without reference to any choice of law principles that would require the application of the law of any state other than the Commonwealth of Massachusetts. The Parties agree that the courts of Massachusetts and the federal courts sitting therein shall have jurisdiction over any action or proceeding arising under the Agreement to the fullest extent permitted by Applicable Law. The Parties waive to the fullest extent permitted by Applicable Law any objection it may have to the laying of venue of any action or proceeding under this Agreement by any courts described in this Section 15.7.

15.8 Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

15.9 Relation of the Parties. The relationship between Provider and Buyer shall not be that of partners, agents, or joint ventures of one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Buyer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

15.10 Forward Contract; Bankruptcy Code; Service Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a “forward contract” within the meaning of the United States Bankruptcy Code, and that Provider is a “forward contract merchant” within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Provider is not a “utility” as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor. The Parties intend that this Agreement be treated as a “service contract” within the meaning of Section 7701(e) of the Internal Revenue Code.

15.11 Successors and Assigns. This Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Provider and Buyer and their respective successors and permitted assigns.

15.12 Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

15.13 Facsimile Delivery. This Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, “pdf” delivery of the signature page of a counterpart to the other Party.

*[Remainder of page intentionally left blank.]*



IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in these General Conditions and intending to be legally bound hereby, Provider and Buyer have executed these General Conditions by their duly authorized representatives under seal as of the date first above written.

PROVIDER:

**Kearsarge Haverhill LLC**

**By Its Manager, Kearsarge Solar LLC**

By: \_\_\_\_\_

Name:

Title:

*BUYER:*

**City of Haverhill**

By: \_\_\_\_\_

Name: James J. Fiorentini

Title: Mayor

**Exhibit A**  
**to General Conditions**

**Certain Agreements for the Benefit of Financing Parties**

Buyer acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that Provider may sell or assign the System and/or may secure Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Buyer in writing, Buyer agrees as follows:

(a) **Consent to Collateral Assignment.** Buyer consents to either the sale and leaseback or other similar conveyance to a lessor for financing purposes or the collateral assignment by Provider to a lender that has directly or indirectly provided financing of the System, of Provider's right, title and interest in and to this Agreement.

(b) **Notices of Default.** Buyer will deliver to the Financing Party at the address for the Financing Party stated in the Special Conditions (or such other address provided by Provider or Financing Party to Buyer), concurrently with delivery thereof to Provider, a copy of each notice of default given by Buyer under the Agreement, inclusive of a reasonable description of Provider's default. No such notice will be effective absent delivery to the Financing Party pursuant to this paragraph. Buyer will not mutually agree with Provider to terminate the Agreement without the written consent of the Financing Party.

(c) **Rights Upon Event of Default.** Notwithstanding any contrary term of this Agreement:

i. The Financing Party, as collateral assignee, shall be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System, subject to Buyer's rights under this Agreement.

ii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Unless the Financing Party has succeeded to Provider's interests under this Agreement, nothing herein requires the Financing Party to cure any default of Provider under this Agreement or to perform any act, duty or obligation of Provider under this Agreement, but Buyer hereby gives it the option to do so and does not waive its rights to pursue any available remedy for failure to cure a default.

iii. Upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the Financing Party shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not, in and of itself, constitute a default of the assignment provisions under this Agreement, provided that any assignment of this Agreement in such circumstances is to a party that is acquiring the System (or Provider's leasehold interest in the System).

(d) **Right to Cure.**

i. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right, and such condition is not cured within the cure periods provided for in this Agreement. The Parties' respective obligations will otherwise remain in effect during any cure period.

ii. If the Financing Party (including any Buyer or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described

in paragraph (d)(i) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner and time periods required by this Agreement, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

\* \* \* \* \*

**SPECIAL TERMS AND CONDITIONS OF  
ENERGY CREDIT PURCHASE AGREEMENT**

These Special Terms and Conditions of Energy Credit Purchase Agreement (the "Special Conditions") are made and entered into as of this 3rd day of March, 2020 (the "Effective Date"), between Kearsarge Haverhill LLC, a Massachusetts limited liability company ("Provider"), and City of Haverhill ("Buyer"). Provider and Buyer may be referred to herein individually as a "Party" and collectively as the "Parties".

**WITNESSETH:**

WHEREAS, Provider intends to construct, install, own, operate, and maintain a solar photovoltaic system at the Premises described on Schedule 1;

WHEREAS, the Parties intend that the System will qualify under the SMART Program and will generate Alternative On-Bill Credits ("ABCs");

WHEREAS, Buyer is willing to purchase, the Allocated Percentage (as set forth on Schedule 3 hereof) of the ABCs to be generated by the System and Provider is willing to sell, or cause to be allocated, the Allocated Percentage of the ABCs to be generated by the System to Buyer, under the terms of this Agreement;

WHEREAS, Provider and Buyer acknowledged those certain General Terms and Conditions of Energy Credit Purchase Agreement, dated as of \_\_\_ day of \_\_\_\_\_, 2020 (the "General Conditions"); and

WHEREAS, these Special Conditions constitute the Special Conditions referred to in the General Conditions;

NOW THEREFORE, in consideration of the foregoing recitals, mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Incorporation of General Conditions. The General Conditions are hereby incorporated herein as if set forth in their entirety.
2. Schedules. The following are the respective Schedules to the Special Conditions:

Schedule 1	Description of Premises and System
Schedule 2	ABC Price
Schedule 3	Allocated Capacity; Allocated Percentage
Schedule 4	Estimated Allocated Annual Production
Schedule 5	Notice Information

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in these Special Conditions and intending to be legally bound hereby, Provider and Buyer have executed these Special Conditions by their duly authorized representatives under seal as of the Effective Date.

PROVIDER:

**Kearsarge Haverhill LLC**

By Its Manager, Kearsarge Solar LLC

By: \_\_\_\_\_

Name:

Title:

*BUYER:*

**City of Haverhill**

By: \_\_\_\_\_

Name: James J. Fiorentini

Title: Mayor

## **SCHEDULES**

### **Schedule 1: Description of Premises and System**

<b>System Premises:</b>	Old Groveland Road, Haverhill, MA
<b>Premises is Owned or Controlled by:</b>	Kearsarge Haverhill LLC
<b>System:</b>	Grid-interconnected, landfill mounted ballasted solar photovoltaic (PV) and energy storage system
<b>Anticipated Construction Start Date:</b>	8/1/20
<b>Effective Date:</b>	As defined on the first page of these Special Conditions
<b>Anticipated Commercial Operation Date:</b>	12/31/20

### **Schedule 2 - ABC Price**

For each Billing Cycle in which the System delivers electricity to the Utility, the ABC Price per unit will be the the Value of Energy (as defined in the SMART Tariff) with respect to energy produced by the System and delivered to the Utility during such Billing Cycle (the "Basic Service Rate") minus \$0.0075.

### **Schedule 3 – Allocated Capacity; Allocated Percentage**

Allocated Capacity: Approximately 4,320,000 kWh

Allocated direct current capacity and corresponding allocated alternating current capacity of System to be confirmed by Provider by the Commercial Operation Date.

Allocated Percentage: One Hundred Percent (100%)

### **Schedule 4 – Estimated Allocated Annual Production**

Estimated Allocated Annual Production commencing on the Commercial Operation Date with respect to the System shall be at a minimum as follows:

<b>Operations Year</b>	<b>Estimated Allocated Annual Production (kWh)</b>	<b>Operations Year</b>	<b>Estimated Allocated Annual Production (kWh)</b>
1	4,320,000	11	4,108,796
2	4,298,400	12	4,088,252
3	4,276,908	13	4,067,811
4	4,255,523	14	4,047,471
5	4,234,246	15	4,027,234
6	4,213,075	16	4,007,098
7	4,192,009	17	3,987,062
8	4,171,049	18	3,967,127
9	4,150,194	19	3,947,292
10	4,129,443	20	3,927,555

The values set forth in the table above are estimates and Provider shall have the right to update the table upon final design of the System.

**Schedule 5 – Notice Information**

<b><u>Buyer:</u></b> City of Haverhill Attn: Mayor James J. Fiorentini 4 Summer Street Haverhill, MA 01830 978-374-2300 Mayor@cityofhaverhill.com	<b><u>Provider:</u></b> Kearsarge Haverhill LLC Attn: Andrew Bernstein 1200 Soldiers Field Rd Suite 202 Boston MA 02134 617-393-4222 abernstein@kearsargeenergy.com
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JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

5.5  
CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda E. Barrett and Members of the Haverhill City Council

RE: Payment in Lieu of Taxes (PILOT) between Kearsarge Energy LLC and City of Haverhill

Dear Madame President and Members of the Haverhill City Council:

Please see attached a Payment in Lieu of Taxes (PILOT) between Kearsarge Energy LLC and City of Haverhill. Please see attached a letter from Orlando Pacheco, Haverhill's Energy Advisor, regarding this project. Mr. Pacheco will be available at Tuesday's City Council meeting should you have any questions. I recommend approval.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf



# Haverhill

Purchasing Department, Room 105  
Phone: 978-374-2309 Fax: 978-521-4348  
[purchasing@cityofhaverhill.com](mailto:purchasing@cityofhaverhill.com)

February 29, 2020

Mayor James J. Fiorentini  
City Hall  
4 Summer Street  
Haverhill, MA 01830-5875

Dear Mayor:

Attached is the Payment in Lieu of Tax Agreement (PILOT) between Kearsarge Energy LLC and the City of Haverhill.

The Agreement assesses Kersarge a Personal Property Tax of \$12,000 Megawatt (MW-DC) with a 2.5% escalation clause for the initial 20 year lease period.

The project is currently designed at 3.4 MW-DC, which would translate to an initial payment of \$40,800.

The PILOT agreement contains the same form and language as all the previous PILOT agreements approved by the City Council.

Sincerely,

---

Orlando Pacheco  
Energy Manager

---

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES**

**between**

**KEARSARGE HAVERHILL LLC**

**and**

**CITY OF HAVERHILL**

**dated as of March \_\_, 2020**

---

## AGREEMENT FOR PAYMENT IN LIEU OF TAXES

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PROPERTY (this "Agreement") is made and entered into as of March 3, 2020 by and between **Kearsarge Haverhill LLC**, a Massachusetts limited liability company ("Developer"), and the **City of Haverhill**, a municipal corporation duly established by law and located in Essex County, Commonwealth of Massachusetts (the "City"). Developer and the City are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer plans to build and operate a solar photovoltaic generating facility and ancillary equipment (the "Project") with an expected nameplate capacity of approximately 3.6 megawatts ("MW"), direct current ("DC"), and 2.8 megawatts ("MW"), alternating current ("AC"), on an approximately \_\_\_\_\_ acre leased-area of land located at Old Groveland Road, Haverhill, Massachusetts, as more particularly described in Exhibits A and A-1 (the "Property");

**WHEREAS**, the Parties acknowledge the obligation to assess and tax the Property in accordance with G.L. c.59, §2B;

WHEREAS, Mass. Gen. Laws ch. 59 §38H authorizes the Town to enter into an agreement for a negotiated payment in lieu of taxes imposed on real and personal property;

WHEREAS, it is the intention of the Parties that Developer make annual payments to the City for the Term (as defined below) of this Agreement in lieu of all real and personal property taxes on the Project and Property;

WHEREAS, except as provided herein, the Parties intend that, during the term of the Agreement, Developer will not be assessed for personal or real property taxes for the Project or Property, and this Agreement will provide for the exclusive payments in lieu of such taxes during the term hereof; provided, however, that this Agreement does not include and shall not affect any other taxes or fees that may be owed now or in the future by Developer and Property Owner, including, but not limited to, property taxes for the Property (including buildings and, excluding the Project, fixtures and improvements located thereon), and taxes for personal property other than the Project, which taxes, if any, shall continue to be assessed by the City in accordance with applicable laws and regulations.

NOW THEREFORE, in exchange for the mutual commitments set forth herein and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Payment in Lieu of Real and Personal Property Taxes. Developer agrees to make payments to the City in lieu of all real and personal property taxes which might otherwise be assessed against the Project and the Property (the "PILOT Payments") for a period of twenty (20) consecutive fiscal tax years, commencing with fiscal tax year following the first January 1 on or after the Completion Date (as defined below) (the "Term"). The PILOT Payments shall be based on a rate of Twelve Thousand Dollars (\$12,000) per MW DC. Based on a system size of 3.6 MW DC, the PILOT Payments shall for an annual amount starting at Forty Three Thousand and Two Hundred Dollars

(\$43,200) with an annual 2.5% escalator for the duration of the Term. The PILOT Payments have been summarized in Exhibit B. Developer shall pay the PILOT Payment in four equal quarterly installments based on an annual bill issued by the City to the Developer. Except as may be expressly set forth herein, the Parties agree that the PILOT Payments shall not be increased or decreased for any reason, including on account of an inflation factor. Developer shall have no liability for any personal and real property taxes with respect to the Project or Property except for the PILOT Payments, and the City will not (i) seek to invalidate this Agreement; (ii) impose any lien on or encumber the Project or Property (or the improvements thereon) except as is expressly provided herein; or (iv) take any affirmative action in support of the bifurcation of the taxation of real and personal property. In accordance with the provisions of G.L. c.59, §2B the Parties agree that Property must be assessed taxes. Accordingly, the City shall assess taxes upon the Property. Payment of said assessment shall be made from a portion of the annual PILOT Payment received by the City. The City has discretion to allocate the PILOT Payments between real property and personal property.

The "Completion Date" shall be that date determined by Developer on which the Project is first ready for regular, daily operation, has been interconnected to the system of the local electric distribution company ("LDC"), has been accepted by the LDC (to the extent required), and is capable of producing electricity. Developer shall provide the City with written notice of the Completion Date.

2. Inventory. Attached as Exhibit C is an inventory of all personal property and real property comprising and incorporated into the Project and/or Property as of the Completion Date (the "Inventory").

3. Assignment; Recording. This Agreement will be binding upon and inure to the benefit of Developer and its successors and assigns as owners of the Project, and the rights and obligations created hereunder will run with the Project and the Property. Without limiting the foregoing, except to the extent prohibited by the G.L. c. 59, § 38H (b) and/or regulations promulgated pursuant thereto, Developer may, without the prior consent of the City, pledge, collaterally assign or assign its rights and obligations under this Agreement to (i) any affiliate of Developer; or (ii) to any party that has provided or is providing financing to Developer for the construction, operation and/or maintenance of the Project; or (iii) to an entity no less creditworthy than Developer to whom Developer has sold or transferred all its interests in the Project. A Notice of this Agreement will be recorded in the applicable Registry of Deeds promptly following its execution.

4. Termination. Developer may terminate this Agreement upon ten (10) days' written notice to City in the event (i) the Project ceases commercial operation and is decommissioned; or (ii) the Developer's rights to use or access the Property is terminated for any reason; or (iii) this Agreement, or any material portion of this Agreement, is determined or declared by a court or agency of competent jurisdiction to be illegal, void, or unenforceable.

5. Water and Sewer Rates and Fees. The City agrees that it will not charge Developer water and sewer rates or connection fees greater than the prevailing rates and fees applicable to other commercial users in the City. In the event that the City ever privatizes, leases, sells or otherwise transfers its water or sewer system or its waste water treatment plant to a private owner or operator, this provision will be binding on such successor owner or operator.

6. Payment Collection. All rights and remedies available to the City for the

collection of taxes shall apply to the payments in lieu of taxes hereunder, including, but not limited to, the rights and remedies provided in G.L. c.59 and G.L. c.60, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein. The provisions of the General Laws, including but not limited to G.L. c.59 and G.L. c.60, will govern the establishment of liens and the collection of any payments in lieu of taxes provided for in this Agreement as though said payments were real and personal property taxes due and payable to the Town.

7. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates, documents, consents or approvals, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement or is otherwise entitled to request or require hereunder.

8. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service, or by certified mail, return receipt requested. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

If to Developer:

Kearsarge Haverhill LLC  
Attn: Andrew Bernstein  
1200 Soldiers Field Road, Suite 202  
Boston, MA 02134

If to Lender:

As may be identified by Developer, from time to time.

If to City:

City of Haverhill  
4 Summer Street  
Room 100  
Haverhill, MA 01830  
Attn.: Mayor of Haverhill

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

9. Force Majeure. As used herein, "Force Majeure" includes, without limitation, acts of God including floods, winds, storms, earthquake, fire or other natural calamity; acts of war or other civil insurrection or terrorism; or taking by eminent domain by any governmental entity (other than the City) of all or a portion of the Property or the Project.

If an event of Force Majeure occurs during the Term and as a result of such event of Force Majeure the Project or Property is partially or wholly damaged or destroyed or otherwise rendered inoperable or unusable for its intended purposes (“Damaged”), then for the period of time following the event of Force Majeure during which the Project or Property is so Damaged, the PILOT Payments will be eliminated or reduced proportionate to the Damage. The Parties hereby agree that such proportionate damage will be determined solely by the entity providing property loss and damage insurance to the Developer.

10. Recordkeeping; Approvals. The City shall timely comply with any recordkeeping, filing or other requirements mandated by the Massachusetts Department of Revenue in connection with the Department’s implementation of the PILOT Statute. The City represents and warrants that it has taken all votes and received all authorizations and/or approvals necessary to cause this Agreement to be a valid and binding obligation on the City. A copy of the minutes evidencing such vote(s) or authorizations is attached hereto as Exhibit D.

11. Lender’s Right to Cure. The City shall send a copy of any notice of default sent to Developer to any secured lender providing financing to Developer in connection with the Project (as identified in Section 13 hereof, the “Lender”) by certified mail at the same time such notice is sent to Developer, and where this Agreement expressly provides for a cure of said default, no such notice of default to Developer shall be effective unless and until a copy of such notice has been delivered to Lender, and the applicable cure period, beginning on the date of such delivery, has expired. Lender shall have the same time and rights to cure any default as Developer, and the City shall accept a cure by Lender as if such cure had been made by Developer, provided said cure is made in accordance with the provisions of this Agreement.

12. Miscellaneous. The Parties agree that this Agreement was negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project and Property, to the extent that such value is determinable as of the date of this Agreement. Each Party was represented by counsel in the negotiation and preparation of this Agreement. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them. The City and Developer shall act in good faith to carry out and implement this Agreement. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. This Agreement may be executed in counterparts that, taken together, will constitute a single document.

*[Signature Page to Follow]*

EXECUTED under seal by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

**City of Haverhill**

By: \_\_\_\_\_  
Name: James J. Fiorentini  
Title: Mayor

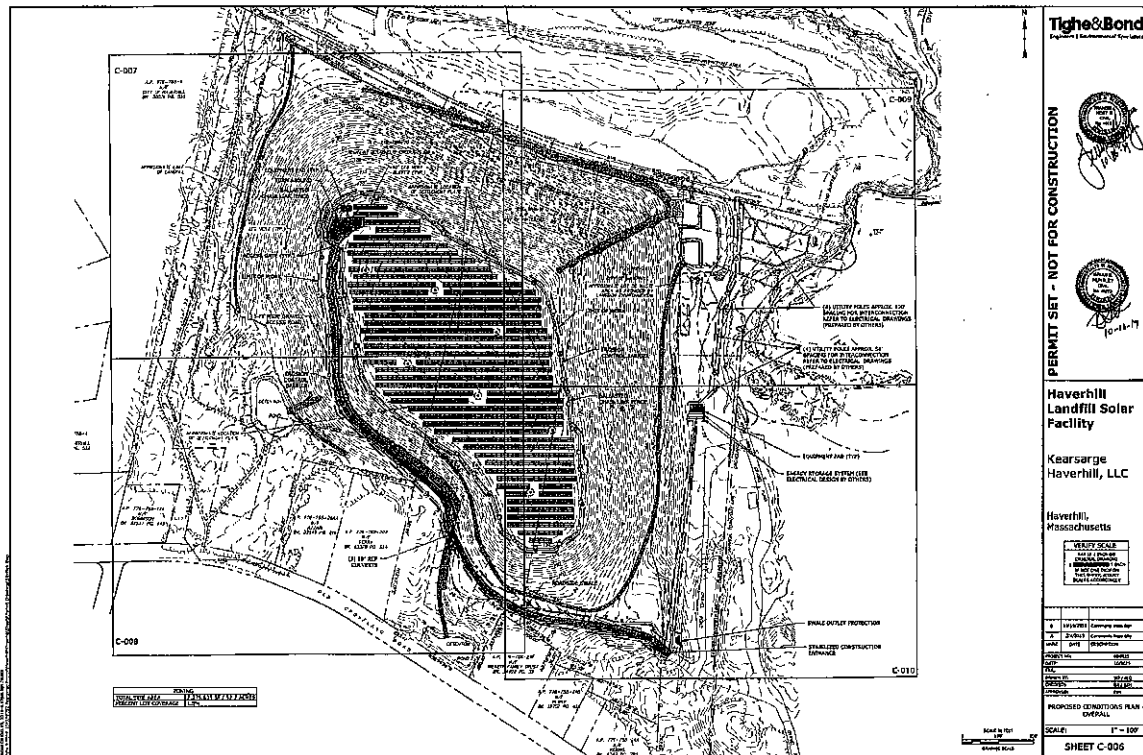
**Kearsarge Haverhill LLC**

By its Manager, Kearsarge Solar LLC

By: \_\_\_\_\_  
Andrew Bernstein, Manager, Kearsarge Solar LLC



**Sketch Plan of Property (Attached)**



**Exhibit A-1**

**Legal Description of Property**

**EXHIBIT B**

\$12,000 per MW with a 2.5% escalator. Assuming Project size of 3.4 MW DC, the payments would be per the following schedule. Project size is subject to adjustment per

<b>Contract Year</b>	<b>\$/MW (DC)</b>	<b>Annual Payment</b>
1	\$ 12,000	\$ 40,800
2	\$ 12,240	\$ 41,616
3	\$ 12,485	\$ 42,448
4	\$ 12,734	\$ 43,297
5	\$ 12,989	\$ 44,163
6	\$ 13,249	\$ 45,046
7	\$ 13,514	\$ 45,947
8	\$ 13,784	\$ 46,866
9	\$ 14,060	\$ 47,804
10	\$ 14,341	\$ 48,760
11	\$ 14,628	\$ 49,735
12	\$ 14,920	\$ 50,730
13	\$ 15,219	\$ 51,744
14	\$ 15,523	\$ 52,779
15	\$ 15,834	\$ 53,835
16	\$ 16,150	\$ 54,911
17	\$ 16,473	\$ 56,010
18	\$ 16,803	\$ 57,130
19	\$ 17,139	\$ 58,272
20	\$ 17,482	\$ 59,438

the terms of the Agreement.

20	\$ 17,482	\$ 59,438
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## **EXHIBIT C**

### **Description of the Project/Inventory**

#### **SYSTEM SPECIFICATIONS**

##### Scope:

1. Design and install solar ground mounted arrays on property located at 1305 Broadway in Haverhill, MA as further described in Exhibit A (Site Plan)
2. Install Inverters and disconnect switch.
3. Conduit.
4. Complete interconnection / Point of Common Coupling (POCC) in coordination with Utility.

Module: Hyundai HIS-M315TI 315 Watt Modules OR Equivalent

Inverter: SunGrow SG-36KU and SunGrow SG-60KU-M OR Equivalent

##### Major Components (Personal Property):

- Ground mounted Module Racks
- (4,388) Hyundai HIS-M315TI 315 Watt Modules or Equivalent
- (1) x SunGrow SG-36KU Inverter or Equivalent

- (16) x SunGrow SG-60KU-M Inverter or Equivalent

All ancillary Components (e.g., telecommunications lines and equipment, security components such as lighting and fencing, storage structures for equipment)

**Exhibit D**  
**Meeting Minutes**  
**(Attached)**



Hearing April 21, 2020

# Haverhill

Economic Development & Planning  
Phone: 978-374-2330 Fax: 978-374-2315  
wpillsbury@cityofhaverhill.com

6.1

March 6, 2020

TO: City Council President Melinda Barrett and members of the Haverhill City Council

FROM: William Pillsbury, Jr. Economic Development and Planning Director

**SUBJECT: Zoning amendment—Recodification/Update of the Haverhill Zoning Ordinance, table of contents, Table 1-table of use and parking regulations, Table 2--table of dimensional and density regulations and map**

On behalf of the City of Haverhill I am pleased to submit the Recodification and related updates to the city of Haverhill's Zoning Ordinance. This update prepared by Attorney Mark Bobrowski with the input of a zoning review committee has been in the works and under review for several years and is the result of substantial input from a wide variety of constituencies. The changes contained herein bring the City's zoning ordinance language up to date and make it consistent with best practices and recent legal considerations.

The attached incorporates a number of revisions requested at the recent council mayor workshop.

As Planning director, I request that the council refer the ordinance to the Planning Board for a hearing to be held on March 11, and for the city council to hold a hearing on the ordinance on April 21st, 2020.

**Recommendation: Refer the ordinance to the Planning Board for a hearing on March 11 and schedule a hearing for the city council on April 21, 2020**

Questions contact – Nahum Forgette 781-423-3072

**PETITION FOR POLE AND WIRE LOCATIONS**

North Andover, Massachusetts

To the City Council  
Of Haverhill, Massachusetts

Massachusetts Electric Company d/b/a NATIONAL GRID requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

Riverside Ave. - National Grid to install (1) SO pole # 36-50 on Riverside Ave. beginning at a point approximately 75 feet north of the centerline of the intersection of Riverside Ave. and Jefferson St. and continuing approximately 75 feet in a north direction. Install new SO Pole # 36-50 in public ROW. Install feeder monitors.

Location approximately as shown on plan attached.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked – Riverside Ave. - Haverhill, Massachusetts.

**29361125**

Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

Massachusetts Electric Company d/b/a

NATIONAL GRID

BY

Engineering Department

*Dan. [Signature]*

IN CITY COUNCIL: February 11 2020

VOTED: that COUNCIL HEARING BE HELD MARCH 10 2020

Attest:

City Clerk

January 30, 2020

29  
Hearing March 10  
2020  
711



# CITY OF HAVERHILL



City Clerk's Office

Date: February 24 2020

To: "Abutters/Interested Party" Pole location

Pole Location: Riverside av

Notice is hereby given under Ch 166 of MGL and amendments thereto, of the application to the City Council of

**Applicant:** Mass Electric d/b/a NATIONAL GRID

for a location and its poles and wires thereon, and the necessary supporting and strengthening fixtures and wires in

**Location:** Riverside av 29361125

**Plan:** 29361125 Questions: Nahum Forgette 781-423-3072

and the Room 202 of the City Council, City Hall, and the

**Date:** March 10 2020

**Time:** 7:00 pm

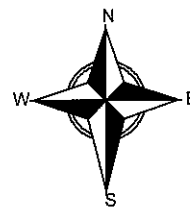
are the place and time fixed for hearing said company and all parties interested in said applications.

By order of the City Council

City Clerk

PETITION SKETCH  
TOWN OF HAVERHILL  
ESSEX COUNTY

The exact location of said facilities to be established by and upon the installation and erection of the facilities thereof



Lot# 3  
PID 418-183-3  
Lands of Bertoni, Robert E Etal

Lot# 12  
PID 418-183-7A  
Lands of Bertoni, Robert E Etal

Lot# Riverside Ave  
PID 418-187-2  
Lands of NE Power Co.

JEFFERSON ST (0376)

P 36-50  
CL=13'

RIVERSIDE AVE (0025)

LEGEND

- ⊗ Pole (Joint) - existing
- × Pole (Sole NG) - existing
- × Pole (Sole NG) - install
- - - Property Line
- EOP (Road)
- - - Centerline

WR\_29361125

PETITION SKETCH

NOT TO SCALE

DESIGNER: Forgette, Nahum  
DATE: 1/24/20  
WORK ORDER #: 14-19-29361125

Petition Sketch for the Install of New J/O  
Pole 36-50 in Public ROW, Riverside Ave,  
Haverhill MA

nationalgrid



January 30, 2020

The City Council of Haverhill, Massachusetts

To whom it may concern:

Enclosed please find a petition of NATIONAL GRID, covering NATIONAL GRID pole location(s)

If you have any questions regarding this permit, please contact:

Nahum Forgette 781-423-3072

Please notify National Grid's Lisa Ayres of the hearing date / time.

National Grid: Lisa Ayres; 1101 Turnpike Street; North Andover, MA 01845; # 978-725-1418

If this petition meets with your approval, please return an executed copy to:

National Grid Contact: Lisa Ayres; 1101 Turnpike Street; North Andover, MA 01845.

Very truly yours,

A handwritten signature in cursive script that reads "Dave Johnson/lla".

Dave Johnson  
Supervisor, Distribution Design

Enclosures

29-B

Ngrid

7.1.1

Questions contact – Nahum Forgette 781-423-3072

# ORDER FOR POLE AND WIRE LOCATIONS

In the City of Haverhill, Massachusetts

Notice having been given and public hearing held, as provided by law,

## IT IS HEREBY ORDERED:

that Massachusetts Electric Company d/b/a NATIONAL GRID and be and it is hereby granted a location for and permission to erect and maintain poles and wires to be placed thereon, together with such sustaining and protecting fixtures as said Company may deem necessary, in the public way or ways hereinafter referred to, as requested in petition of said Company dated the 30th day of January 2020.

All construction under this order shall be in accordance with the following conditions:

Poles shall be of sound timber, and reasonable straight, and shall be set substantially at the points indicated upon the plan marked – Riverside Ave. - Haverhill, Massachusetts.

**29361125** Filed with this order:

There may be attached to said poles such wires, cables, and fixtures as needed in their business and all of said wires and cables shall be placed at a height of not less than twenty (20) feet from the ground.

The following are the public ways or part of ways along which the poles above referred to may be erected, and the number of poles which may be erected thereon under this order:

Riverside Ave. - National Grid to install (1) SO pole # 36-50 on Riverside Ave. beginning at a point approximately 75 feet north of the centerline of the intersection of Riverside Ave. and Jefferson St. and continuing approximately 75 feet in a north direction. Install new SO Pole # 36-50 in public ROW. Install feeder monitors.

I hereby certify that the foregoing order was adopted at a meeting of the City Council of the City/Town of \_\_\_\_\_, Massachusetts held on the \_\_\_\_\_ day of \_\_\_\_\_ 20 .

Massachusetts

City/Town Clerk.

20 .

For hearing March 10 2020

Received and entered in the records of location orders of the City/Town of  
Book Page

Attest:  
City/Town Clerk

I hereby certify that on 20 , at o'clock, M  
at a public hearing was held on the petition of

Massachusetts Electric Company d/b/a NATIONAL GRID for permission to erect the poles, wires,  
and fixtures described in the order herewith recorded, and that we mailed at least seven days before  
said hearing a written notice of the time and place of said hearing to each of the owners of real  
estate (as determined by the last preceding assessment for taxation) along the ways or parts of  
ways upon which the Company is permitted to erect  
poles, wires, and fixtures under said order. And that thereupon said order was duly adopted.

City/Town Clerk.

.....  
.....  
.....  
.....

Board or Council of Town or City, Massachusetts

#### CERTIFICATE

I hereby certify that the foregoing is a true copy of the location order and certificate of  
hearing with notice adopted by the of the City of  
Massachusetts, on the day of 20 , and recorded with the  
records of location orders of the said City, Book , Page . This certified copy  
is made under the provisions of Chapter 166 of General Laws and any additions thereto or  
amendments thereof.

Attest:  
City/Town Clerk

B

Haverhill

2,1,1

Questions contact -- Nahum Forgette 781-423-3072

**ORDER FOR POLE AND WIRE LOCATIONS**

In the City of Haverhill, Massachusetts

Notice having been given and public hearing held, as provided by law,  
IT IS HEREBY ORDERED:

that Massachusetts Electric Company d/b/a NATIONAL GRID and be and it is hereby granted a location for and permission to erect and maintain poles and wires to be placed thereon, together with such sustaining and protecting fixtures as said Company may deem necessary, in the public way or ways hereinafter referred to, as requested in petition of said Company dated the 30th day of January 2020.

All construction under this order shall be in accordance with the following conditions:

Poles shall be of sound timber, and reasonable straight, and shall be set substantially at the points indicated upon the plan marked -- Riverside Ave. - Haverhill, Massachusetts.

**29361125** Filed with this order:

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Riverside Ave. - National Grid to install (1) SO pole # 36-50 on Riverside Ave. beginning at a point approximately 75 feet north of the centerline of the intersection of Riverside Ave. and Jefferson St. and continuing approximately 75 feet in a north direction. Install new SO Pole # 36-50 in public ROW. Install feeder monitors.

I hereby certify that the foregoing order was adopted at a meeting of the City Council of the City/Town of \_\_\_\_\_, Massachusetts held on the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_.

Massachusetts

City/Town Clerk.

20 \_\_\_\_\_

020201  
March  
For Hearing

Received and entered in the records of location orders of the City/Town of  
Book Page

Attest:  
City/Town Clerk

I hereby certify that on 20 , at o'clock, M  
at a public hearing was held on the petition of

Massachusetts Electric Company d/b/a NATIONAL GRID for permission to erect the poles, wires, and fixtures described in the order herewith recorded, and that we mailed at least seven days before said hearing a written notice of the time and place of said hearing to each of the owners of real estate (as determined by the last preceding assessment for taxation) along the ways or parts of ways upon which the Company is permitted to erect poles, wires, and fixtures under said order. And that thereupon said order was duly adopted.

City/Town Clerk.

.....  
.....  
.....  
.....

Board or Council of Town or City, Massachusetts

#### CERTIFICATE

I hereby certify that the foregoing is a true copy of the location order and certificate of hearing with notice adopted by the of the City of Massachusetts, on the day of 20 , and recorded with the records of location orders of the said City, Book , Page . This certified copy is made under the provisions of Chapter 166 of General Laws and any additions thereto or amendments thereof.

Attest:  
City/Town Clerk

JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CIHAVERHILL.MA.US

10.1.1

March 5, 2020

City Council President Melinda Barrett & Members of the City Council

**RE: Central Business District Parking Commission Appointments**

Dear Mr. President and Members of the Haverhill City Council:

I am reactivating the Central Business District Parking Commission. As you may recall, on February 11<sup>th</sup>, I appointed Nomsa Ncube and Councilor William Macek and on February 25<sup>th</sup>, I appointed Josiah Morrow to this Commission.

Please be advised that I hereby re-appoint Karl Brunelle, 50 Washington Street, #1-C, Haverhill as Chairperson and Joseph Romatelli of 62 Washington Street, Apt. # 11, Haverhill to the Central Business District Parking Commission. Also, please be advised that I am appointing John Tynan of 77 Washington Street, Haverhill to the Central Business District Parking Commission.

These re-appointments and appointment are confirming appointments and I recommend your approval. These appointments take effect upon confirmation and expire on March 12, 2023.

A meeting of the Central Business District Parking Commission has been scheduled on Thursday, March 14<sup>th</sup> at 6:00 PM at City Hall in Room 301.

Sincerely,

James J. Fiorentini  
Mayor

JJF/lyf



JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

10.2.1  
CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda E. Barrett & Members of the City Council

**RE: Community Affairs Advisory Board Reappointments**

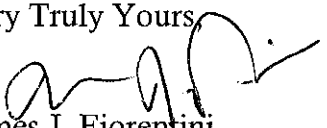
Dear Council President Barrett and Members of the City Council:

I hereby reappoint the following members to the Community Affairs Advisory Board (CAAB):

- Sharon Sullivan, 20 Westminster Avenue
- Anne Vlack, 60 Hancock Street
- Sheila Callahan, 27 15th Avenue
- William Lapierre, 1 Hanscom Avenue
- Gabriela Peixoto Twaalfhoven, 438 Farrwood Drive
- Hartell Johnson, 215 Wilson Street
- Lourdes Lopez, 97 Chadwick Street
- Juliet Sithole-Berk, 150 Wilson Street

These re-appointments are effective immediately and expire 8-31-2020.

Very Truly Yours,

  
James J. Fiorentini  
Mayor

JJF/lyf

①

Park St + Park Pl

Hearing march 24  
2020

Questions contact – Joe Ientile 978-766-3114

Petition of the Massachusetts Electric Company d/b/a NATIONAL GRID  
Of NORTH ANDOVER, MASSACHUSETTS  
For Electric Conduit Location:

111

To the City Council of Haverhill, Massachusetts

Respectfully represents the Massachusetts Electric Company d/b/a NATIONAL GRID of North Andover, Massachusetts, that it desires to construct a line of underground electric conduits, including the necessary sustaining and protecting fixtures, under and across the public way or ways hereinafter named.

Wherefore it prays that after due notice and hearing as provided by law, it be granted permission to excavate the public highways and to run and maintain underground electric conduits, together with such sustaining and protecting fixtures as it may find necessary for the transmission of electricity, said underground conduits to be located substantially in accordance with the plan filed herewith marked – Park St. - Haverhill, Massachusetts.

The following are the streets and highways referred to:

**29010579** Park St. - National Grid to install approximately 3 +/- feet of concrete encased conduit beginning at a point approximately 4 feet south of the centerline of the intersection of Park St. and Park Pl. and continuing approximately 3 feet in a south direction.

Location approximately as shown on plan attached.

Massachusetts Electric Company d/b/a  
NATIONAL GRID

BY

Dave Johnson/lla

Engineering Department

Dated: January 17, 2020

Electric Conduit Location

# **nationalgrid**

February 14, 2020

The City Council of Haverhill, Massachusetts

To Whom It May Concern:

Enclosed please find a petition of NATIONAL GRID covering the installation of underground facilities.

If you have any questions regarding this permit, please contact:

Joe Ientile 978-766-3114

If this petition meets with your approval, please return an executed copy to:

National Grid: Lisa Ayres; 1101 Turnpike Street; North Andover, MA 01845; # 978-725-1418

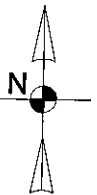
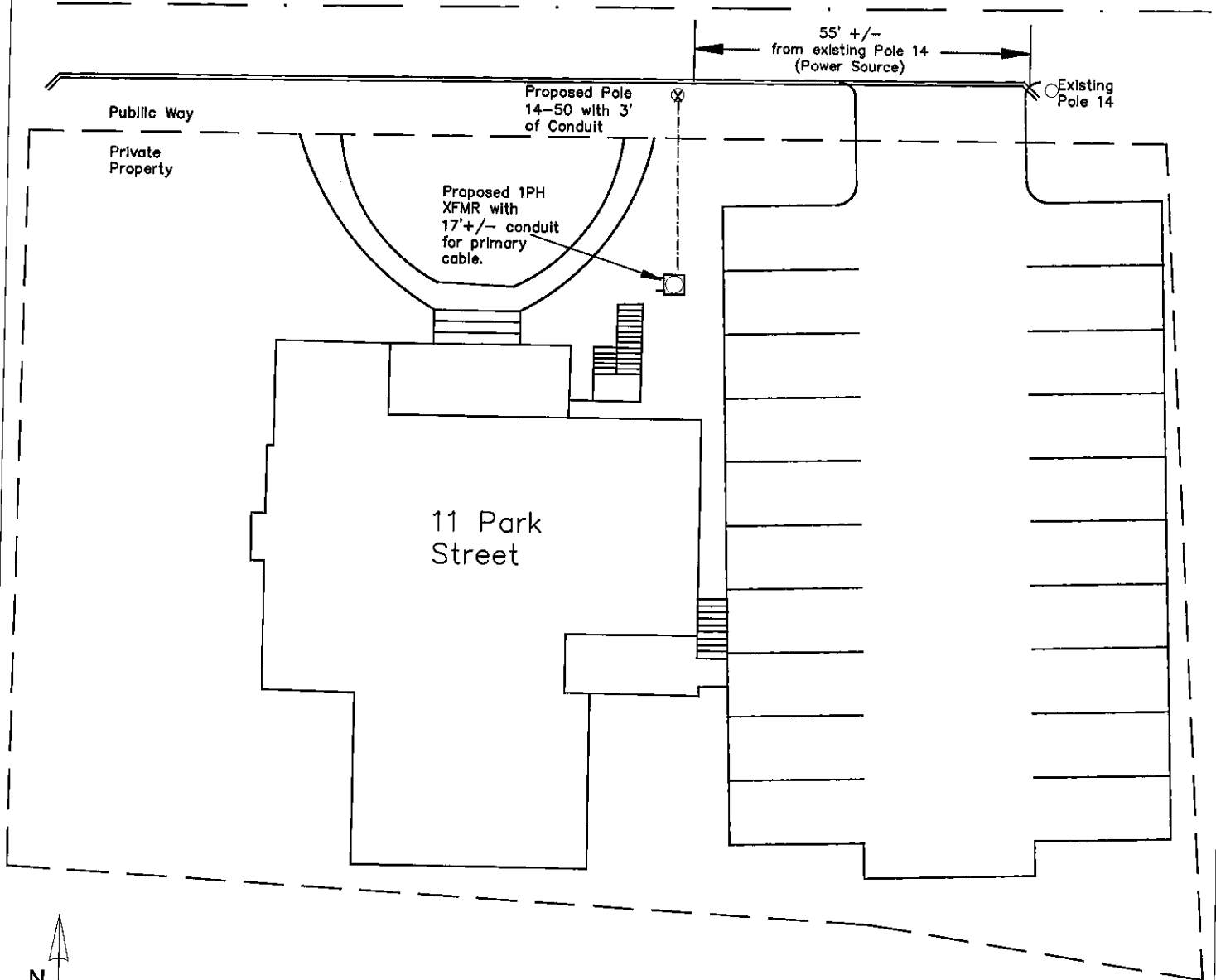
Very truly yours,

A handwritten signature in cursive script that reads "Dave Johnson".

Dave Johnson  
Supervisor, Distribution Design

Enclosures

# Park Street



## JOINT OWNED POLE PETITION

✕ Proposed NGRID Pole Locations

○ Existing NGRID Pole Locations

□ 1Ph Transformer

— Conduit and Cable

**nationalgrid**  
And  
Verizon New England, Inc.

Date: 1-9-2020

Work Request Number: 29010579

To Accompany Petition  
Dated:

To The: City Of Haverhill

DISTANCES ARE APPROXIMATE

For  
Proposed: Installation of Pole 14-50 and conduit Location: 11 Park Street



# City of Haverhill

City Clerk's Office

Date: March 9 2020

TO: Abutters/Interested Parties.....

Notice is hereby given under MGL, Ch. 166 and amendments thereto, of the application to the City Council of...Mass Electric, National Grid of North Andover for underground electric conduit location on

...Park st Plan 29010579

...Questions: Joe Ientile 978-766-3114

Hearing will be held in the City Council Chambers, Room 204, Haverhill City Hall, on Tuesday, March 24, 2020 at 7 o'clock P.M. for the company(s) and all parties interested in said application.

**By order of the City Council**

.....  
City Clerk

②  
park st  
&  
park place

Hearing March 24  
2020

Questions contact Joe Ientile 978-766-3114

**PETITION FOR JOINT OR IDENTICAL POLE LOCATIONS**

North Andover, Massachusetts

112

To the City Council  
Of Haverhill, Massachusetts

Massachusetts Electric Company d/b/a NATIONAL GRID and Verizon New England, Inc requests permission to locate poles, wires, and fixtures, including the necessary sustaining and protecting fixtures, along and across the following public way:

Park St. - National Grid to install (1) JO Pole on Park St. beginning at a point approximately 0 feet south of the centerline of the intersection of Park St. and Park Pl. and continuing approximately 4 feet in a south direction.

Location approximately as shown on plan attached.

Wherefore it prays that after due notice and hearing as provided by law, it be granted a location for and permission to erect and maintain poles and wires, together with such sustaining and protecting fixtures as it may find necessary, said poles to be erected substantially in accordance with the plan filed herewith marked -- Park St. - Haverhill, Massachusetts.

29010579

Also, for permission to lay and maintain underground laterals, cables, and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as each of said petitioners may desire for distributing purposes.

Your petitioner agrees to reserve space for one cross-arm at a suitable point on each of said poles for the fire, police, telephone, and telegraph signal wires belonging to the municipality and used by it exclusively for municipal purposes.

Massachusetts Electric Company d/b/a  
NATIONAL GRID  
BY Dave Johnson/lla  
Engineering Department

VERIZON NEW ENGLAND, INC.  
BY Karen Levesque  
Manager / Right of Way

January 17, 2020



February 14, 2020

City Council of Haverhill, Massachusetts

To Whom It May Concern:

Enclosed please find a petition of NATIONAL GRID and VERIZON, covering joint NATIONAL GRID-VERIZON pole location(s)

If you have any questions regarding this permit, please contact:

Joe Ientile 978-766-3114

Please notify National Grid's Lisa Ayres of the hearing date / time.

If this petition meets with your approval, please return an executed copy to each of the above-named Companies.

National Grid: Lisa Ayres, 1101 Turnpike Street; North Andover, MA 01845  
978-725-1418

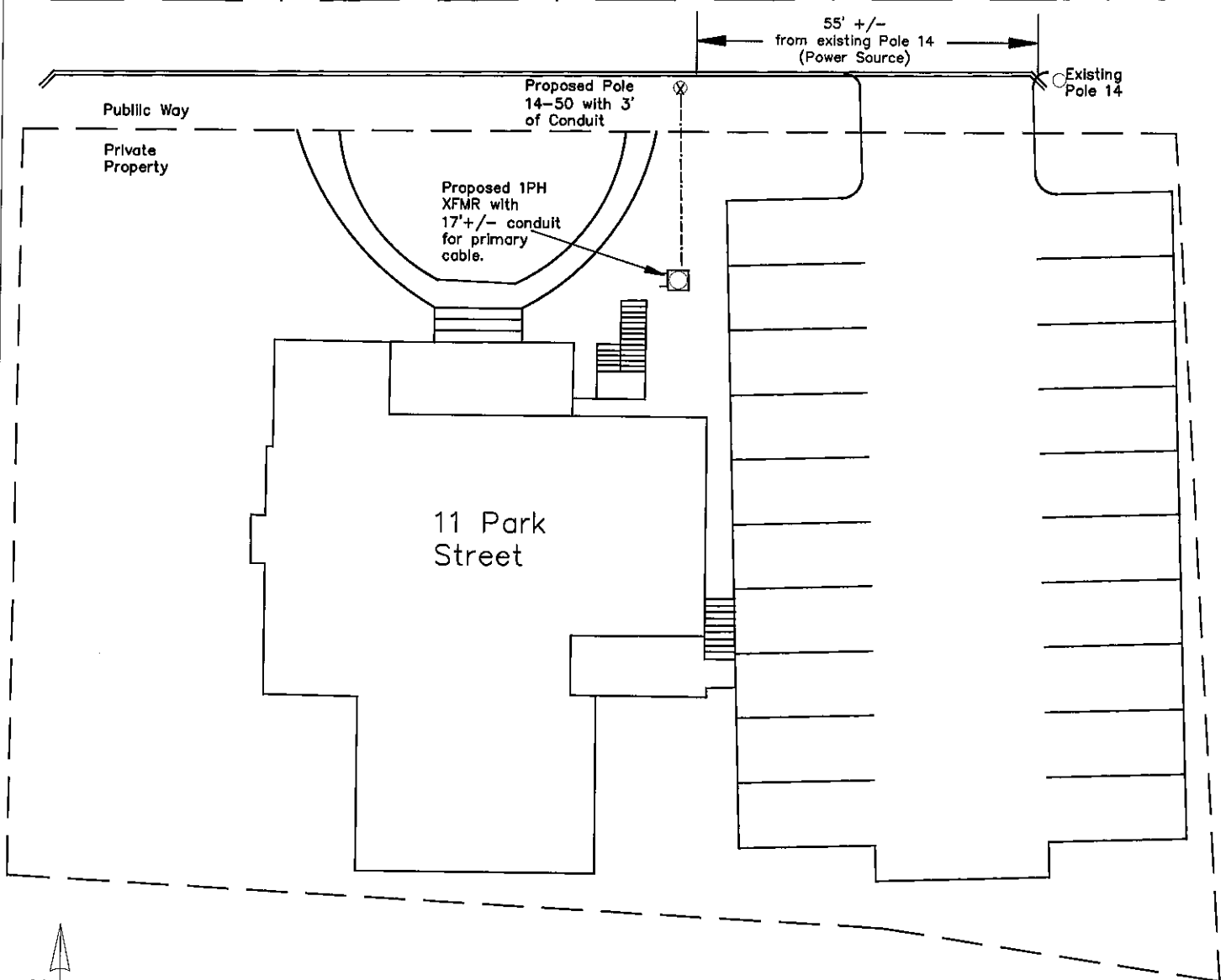
Very truly yours,

A handwritten signature in cursive script that reads "Dave Johnson/cla".

Dave Johnson  
Supervisor, Distribution Design

Enclosures

# Park Street



## JOINT OWNED POLE PETITION

⊗ Proposed NGRID Pole Locations

○ Existing NGRID Pole Locations

□ 1Ph Transformer

— Conduit and Cable

DISTANCES ARE APPROXIMATE

**nationalgrid**  
And  
**Verizon New England, Inc.**

Date: 1-9-2020

Work Request Number: 29010579

To Accompany Petition  
Dated:

To The: City Of Haverhill

For  
Proposed: Installation of Pole 14-50 and conduit Location: 11 Park Street



# CITY OF HAVERHILL



City Clerk's Office

Date: March 9, 2020

To: "Abutters/Interested Party" Joint Pole location

Pole Location: intersection of Park st and Park Place

Notice is hereby given under Ch 166 of MGL and amendments thereto, of the application to the City Council of

Applicant: Mass Electric d/b/a NATIONAL GRID

for a location and its poles and wires thereon, and the necessary supporting and strengthening fixtures and wires in

Location: intersection of Park st and Park Place

Plan: 29010579 Questions: Joe lentile 978-766-3114

and the Room 202 of the City Council, City Hall, and the

Date: March 24 2020

Time: 7:00 pm

are the place and time fixed for hearing said company and all parties interested in said applications.

By order of the City Council

City Clerk

Hearing April 28, 2020

**Street Acceptance, Discontinuance,  
Naming, Renaming or Alteration****63476**

Status: Active

Submitted: Oct 14, 2019

**Applicant**

Thomas Hodgson

978-815-4847

@ livingstonedev@icloud.com

Thomas Hodgson  
1985 Salem St  
North Andover, MA  
01845Livingstone  
Development Corp.**Project Information****Specific Type of Request**

Street Acceptance

**Proposed Street Name**

South Pearson St

**Current Street Name**

South Pearson St

**What is Your Role in this Process?**

Developer

11,3

**Hearing Waiver****Agreement**

Yes

**Agreement & Signature**

Yes

true

**Office Use Only****City Council Initial Decision**

--

**City Council Final Decision**

--

**Planning Board Decision**

--

**City Council Meeting Date**

--

**Planning Board Meeting Date**

--

**Attachments (4)**

pdf Site Plan

Oct 09, 2019

docx Legal Description of Land

Oct 09, 2019

pdf "As-Built" Plan

Oct 09, 2019

pdf Petition to City Council

Oct 09, 2019

☐ **Water Department Review**☐ **Board Clerk Publishes Notice**

☐ **Board Clerk Prepares Agenda**

☐ **Board Clerk Places First Ad**

**Board Clerk Places Second Ad**

☐ **Board Clerk Notifies Abutters**

☐ Planning Board Member Review - PaulH

☐ Planning Board Member Review - KarenB☐ **Planning Board Member Review - AlisonC**☐ **Planning Board Member Review - KenC**☐ Planning Board Member Review - April/D☐ Planning Board Member Review - BobD☐ Planning Board Member Review - BillE☐ Planning Board Member Review - KarenP☐ Planning Board Member Review - NateR

3/3

Att: Petition for Street Acceptance  
South Pearson Street,  
Livingstone Development Corp.

Dear Ms. Lynch,

It appearing that the common convenience and necessity require it, Livingstone Development Corp. is petitioning that the portion of the following street, herein described, be accepted as a Public Way:

South Pearson Street (Legal Description):

A certain parcel of land located on the easterly side of South Pearson Street, Haverhill, Essex County, Massachusetts being shown as "South Pearson, for acceptance" on a plan entitled "Street Acceptance of South Pearson Street in Haverhill, Ma. by Christiansen & Sergi, A Division of The Morin-Cameron Group, Inc., dated March 5, 2019.

Beginning at the northwest corner at a stone bound with drill hole on the easterly side of the existing public portion of South Pearson Street.

Thence N 84°04'11" E a distance of 39.35' to a stone bound with drill hole;

Thence with a curve turning to the right with an arc length of 37.34', with a radius of 55.00', with a delta angle of 38°54'09", with a chord bearing of S 65°31'52" E, with a chord length of 36.63' to a point;

Thence with a compound curve turning to the right with an arc length of 168.39', with a radius of 50.00', with a delta angle of 192°57'40", with a chord bearing of S 50°24'18" W, with a chord length of 99.36' to a drill hole set with lead plug on the existing public portion of South Pearson Street;

Thence along the existing public portion of South Pearson Street N 73°18'36" E a distance of 10.60' to a point;

Thence along the existing public portion of South Pearson Street N 04°51'44" W a distance of 71.65' to a stone bound with drill hole and the point of beginning.

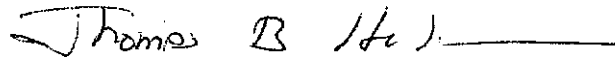
Meaning and intending to describe that parcel labeled as "South Pearson Street For Acceptance" on said plan, and on file at the Haverhill Engineering office as Plan 2B 3717, file #16314, and previously recorded at the Southern Essex District Registry of Deeds as Plan Book 472 Plan 28.

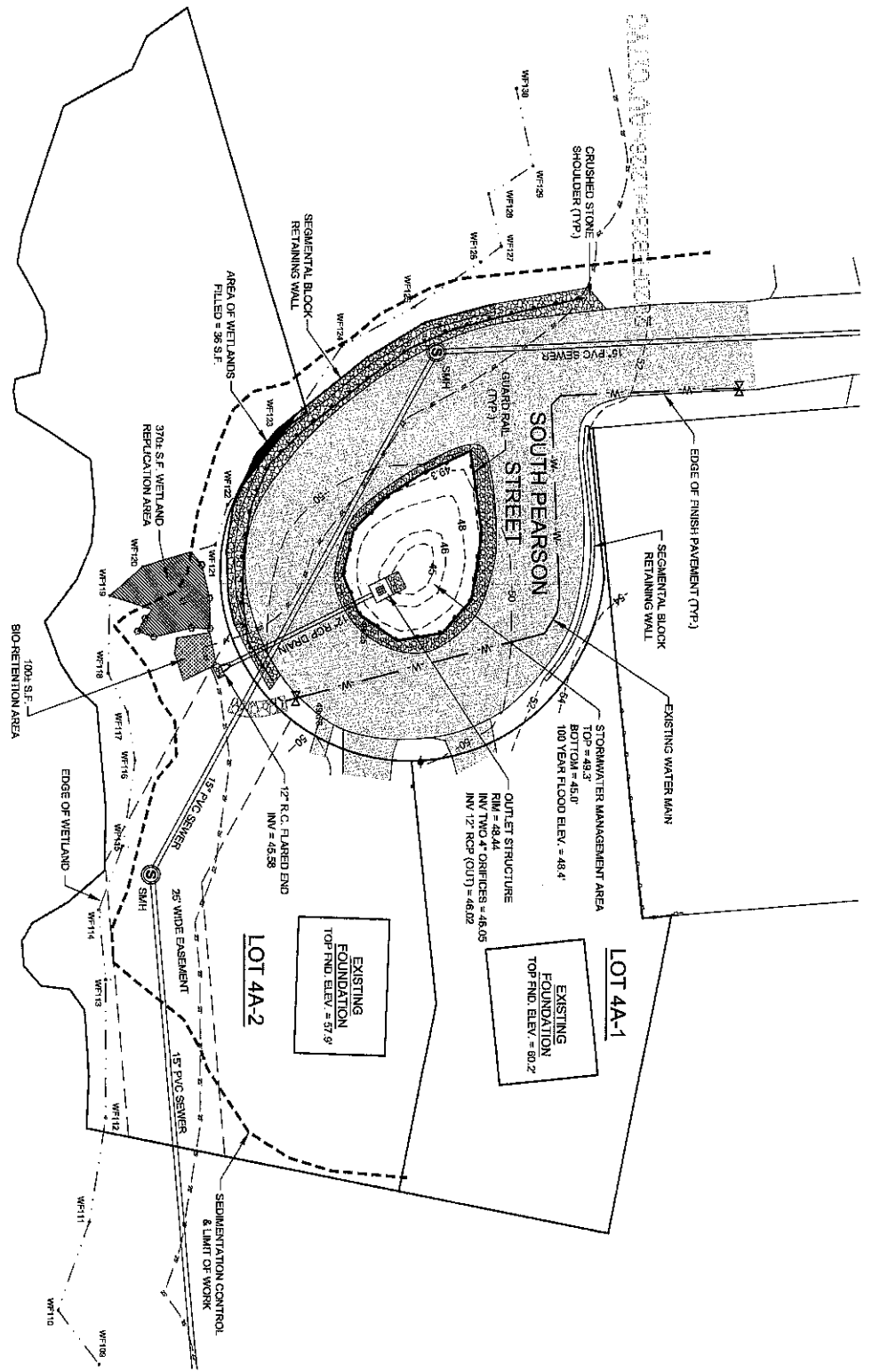
20200505 12:23:49 VOTIVE

We have submitted documentation as required in the City's online homepage Engineering Department section. Kindly advise as to any further documentation or information you may require.

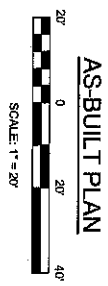
Thank you again for kind assistance in this matter.

Very truly yours,

\_\_\_\_\_



STORMWATER MANAGEMENT AREA STORAGE AREAS			
ELEVATION (FT.)	DESIGN SURFACE AREA (SF)	AS-BUILT SURFACE AREA (SF)	
45.0	105	112	
46.0	258	267	
48.0	759	774	
49.3	1,211	1,310	



NOTES:  
1. THE CONDITIONS SHOWN HEREON ARE BASED ON AN AS-BUILT SURVEY PERFORMED ON JUNE 16, 2016.



**CSI** PROFESSIONAL ENGINEERS & LAND SURVEYORS  
**CHRISTIANSEN & SERGI, INC.**  
160 SUMNER ST. HAVERHILL, MA 01830 WWW.CSI-ENG.COM  
TEL 978-373-0510 FAX 978-372-3960 COPYRIGHT 2017

FINAL ROADWAY AS-BUILT PLAN  
FOR  
SOUTH PEARSON STREET  
IN  
HAVERHILL, MASS.  
DATE: AUGUST 16, 2017  
REVISED: DECEMBER 10, 2018

4B 3362

16351

April 14, 2020

**JOHN J. McKENNA  
ATTORNEY AT LAW  
572 BOSTON ROAD, SUITE 6  
BILLERICA, MA. 01821  
978-663-2170  
FAX 978-663-2596**

Cell # 978-930-1275

11.3.1

February 27, 2020

City of Haverhill  
City Council  
City Hall – 4 Summer Street  
Haverhill, MA 01832

Special permit  
under POO ordinance

**RE: Amerco Real Estate Company  
U-Haul Company of Eastern Massachusetts  
211-219 Lincoln Avenue, Haverhill, MA  
Request for Permit for Storage Containers pursuant to  
Zoning Ordinance Section 120-16**

Dear City Council:

Please be advised that I represent Amerco Real Estate Company and U-Haul Company of Eastern Massachusetts regarding the above referenced request for a permit pursuant to Section 120 Section 16 of the City of Haverhill Zoning Ordinances for the use of more than two regulated storage containers for more than six months. The applicant has a purchase and sale agreement to purchase a portion of the 11 acre parcel at 211-219 Lincoln Avenue shown on Assessors Map 408, Block 2, Lot 5. The parcel currently contains the CVS building along Lincoln Avenue with the former Building 19 in the rear of the property.

The proposal includes proposed 2,000 square feet of self-storage containers in the parking area by Lincoln Avenue, 4,000 square feet self-storage containers in the parking lot on the property line in front of the Former Building 19 along the boundary with the shopping mall and 2,000 square feet of self-storage containers on the northwesterly corner of the parking lot

behind CVS. I have attached thirty copies of the site plan and thirty sets of specifications. The proposed storage units require a permit from the City Council.

U-Haul desires to renovate the former Building 19 site into 81,000 square feet of self-storage, 10,000 square feet of warehousing, and 2,600 square feet of showroom. U-Haul proposes to park trucks for rent in a shunting format in the area of the parking lot behind the CVS building. The location of the self-storage containers is crucial to U-Haul's business plan for the success of the self-storage facility.

There currently exists a dimensional variance and special permit for usage as a storage facility. The Applicant will comply with the conditions imposed upon the grant of the variance of the Special permit and variance. The Applicant will also grant an easement for public access along the Merrimack River frontage to Connect Riverside Park trail system with Riverside Avenue and will grant an easement for parking in the parking Lot adjacent to Riverside Park.

Thank you for your attention to this matter, I am available for any questions or concerns.

Please include this request for permit on your next available agenda. *The Applicant waives the 65 day hearing requirement.*

Very truly yours,

  
John J. McKenna, Esq.



**Linda Koutoulas**

---

**From:** billcoxlaw@aol.com  
**Sent:** Tuesday, March 03, 2020 3:59 PM  
**To:** Linda Koutoulas  
**Subject:** Re: Pod storage

**See highlighted section below. It requires a permit from the Council with 7 days written notice to all abbuters by regular mail.**

§ 120-16. Residential or nonresidential accessory uses: storage containers and structures.  
[Added 6-5-2018 by Doc. 73]

**A. Definitions.**

**PODS**

Portable storage containers intended to be transported to a designated location for storage purposes (typically known as "PODS®," "MODS," etc.).

**METAL-FRAMED TRAILERS OR CONTAINERS, WITHOUT WHEELS**

Metal frames or totally metal boxes primarily used, intended for, or suitable for the transportation of cargo by road, rail or ship.

**MEMBRANE STRUCTURES**

Membrane structures, including tents and canopies, erected on a location for a short- or long-term storage or accessory purpose relating to motor or recreational vehicles or personal property.

**REGULATED STORAGE CONTAINER(S)**

PODS®, metal-framed trailers or containers, without wheels, and membrane structures.

**B. The residential or nonresidential accessory uses of regulated storage containers are permitted as follows:** With the prior issuance of a regulated storage container permit from the City's Inspectional Service Department, the use of not more than two regulated storage containers for up to six consecutive months in a calendar year at a residential or nonresidential location is permitted. **The use of more than two regulated storage containers, or the use of a regulated storage container for more than six months, shall require the issuance of a permit by the City Council. Prior to hearing any application for a permit, seven days' written notice of the application and the hearing date shall be sent to all immediate abutters by regular mail.** Regulated storage containers must comply with all accessory setbacks requirements of Chapter 255 of this Code.

**C. Upon notification of a violation of this section, an owner of the real property upon which the regulated storage container(s) is located shall have 48 hours to remove the offensive regulated storage container(s) from the property. Any owner of a building who fails to comply with this section shall thereafter be subject to a fine of \$100 per day from the original date of written notice from the Building Inspector and/or Local Building Inspector for each day the regulated storage container(s) remains on the property.**

Sincerely,

*Bill*

**William D. Cox, Jr., Esq.**  
**145 South Main Street**  
**Bradford, MA 01835**  
**(978) 373-2360**



CITY OF HAVERHILL  
BOARD OF APPEALS FOR ZONES  
CITY HALL - 4 SUMMER STREET

**NOTICE OF DECISION**

YOU ARE HEREBY NOTIFIED OF THE DECISION OF THE BOARD OF APPEALS ON THE APPLICATION OF:

Norwood Group (Owner: Two Nineteen Lincoln Avenue Trust)

APPLICANT AND (OWNER IF DIFFERENT)

211-219 Lincoln Avenue

408

2

5 & 5A

SITE LOCATION

ASSESSOR'S MAP BLOCK PARCEL NUMBER

DEED OF PROPERTY RECORDED IN: SOUTHERN ESSEX

BOOK: 50732

PAGE: 231

This was filed with the Board on February 22, 2019 as signified by the City Clerk's date stamp.  
The BOARD, as authorized by §15, Chapter 40A of the M.G.L. held a PUBLIC HEARING on:  
March 20, 2019

DATE OF HEARING (CONTINUANCE IF APPLICABLE)

The BOARD'S DECISION by vote to GRANT ~~REUSE~~ said application is as follows:  
RECORD OF PROCEEDINGS: SEE BELOW MOTION\*:

STIPULATION (S):

SECOND: Vathally

VOTE ON MOTION (WITH ~~APPLICABLE~~ STIPULATIONS):

BOARD	YES	NO	ABSTAIN	ABSENT	NOT SITTING
CHAIRPERSON MORIARTY	✓				
MEMBER SORAGHAN	✓				
MEMBER SULLIVAN	✓				
MEMBER VATHALLY	✓				
MEMBER LAPLUME				✓	
ASSOC. MEMBER BEVILACQUA <u>AB</u>					
ASSOC. MEMBER BROWN				✓	

THE BOARD CITES THE FOLLOWING AS REASON(S) FOR ITS DECISION

The Board (Members Soraghan, Vathally, Sullivan, Bevilacqua, and Chairman Moriarty) granted the Dimensional Variance for the frontage and the Special Permit for usage on a vote of 5-0. The Board determined that the request for a Special Permit was consistent with the rules and regulations as they relate to Special Permits. With stipulations:

1. No use of the dock and no access on Riverside Avenue
2. The business hours of operation to be 9a to 6p, extension of hours of 7a to 9a and 6p to 9p on a case by case
3. Provide formal easement for public parking adjacent to Riverside Park
4. Provide a formal easement for public access and trail development across land of the applicant along the Merrimack River frontage to connect Riverside park trail system and Riverside Avenue.

Motion: Soraghan  
Seconded: Vathally

An Appeal of this Decision shall be made pursuant to §17 of Chapter 40A and shall be filed with Superior or District Court within twenty (20) days after the date of filing of the above cited decision with the Office of the City Clerk. Procedural appeals shall be taken in accordance with §17 of Chapter 40A.

March 20, 2019

DATE

[Signature]  
[Signature]

CHAIRPERSON

[Signature]  
Louis Bevilacqua  
Joseph P. Sullivan

2019-03-27 14:00:00 HAV CITY

\*See record of evidence, findings of fact and detailed record of proceedings of the Board of Appeals presented at the hearing and filed with the City Clerk and Planning Board, which is being incorporated herein by reference and considered a part thereof.

Norwood Group (Owner: Two Nineteen Lincoln Avenue Trust)  
116 south River Road, Bedford, NH 03110

**CERTIFICATION OF DECISION**

I, the City Clerk of the City of Haverhill, hereby certify that the Board of Appeals DECISION AND NOTICE OF DECISION on the application of:

Norwood Group (Owner: Two Nineteen Lincoln Avenue Trust)

APPLICANT AND (OWNER IF DIFFERENT)

For a Special Permit and/or Variance for the location at:

211-219 Lincoln Avenue  
STREET NAME AND NUMBER

And that;

Has been filed with this Office on:

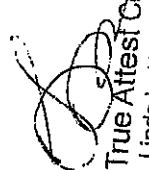
- (1) Twenty (20) days from the date the decision was filed have elapsed and this Office within the 20-day appeal has received no appeal notice to the District or Superior Court.  
(2) If an appeal has been taken, notice has been received that said appeal has been dismissed or denied.  
(3) The application was denied.

The Board Clerk will file in this office, evidence that the DECISION, NOTICE OF DECISION, and CERTIFICATION OF DECISION of the Board has been duly recorded and indexed in the Grantor Index under the name of the owner of record (registered land to be noted on the Owner's Certificate of Title) and the Essex County South District Registry of Deeds.

A fee of ten dollars (\$10.00) has been paid by the applicant and a copy of this Certification will be transmitted to the Board of Appeals.

  
CITY CLERK

\_\_\_\_\_  
DATE

  
True Attest Copy  
Linda L. Koutoulas

I hereby agree to record this DECISION, NOTICE OF DECISION, and CERTIFICATION OF DECISION at the Registry of Deeds as required and in compliance with Chapter 40A of the M.G.L.

I agree to file evidence with the City Clerk attesting that said DECISION, NOTICE OF DECISION and CERTIFICATION OF DECISION has been duly recorded as cited above.

Lannie Patel   
BOARD OF APPEALS CLERK

4-18-19  
DATE

NOTE: IF THE RIGHTS AUTHORIZED BY VARIANCE, CERTAIN SPECIAL PERMITS, AND FINDINGS OF THE BOARD OF APPEALS ARE NOT EXERCISED WITHIN ONE YEAR OF THE GRANT OF SUCH BOARD'S ACTIONS, SAID RIGHTS SHALL LAPSE.



Application No. \_\_\_\_\_

Appeal No. \_\_\_\_\_

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

CITY OF HAVERHILL  
BOARD OF APPEALS  
CITY HALL - 4 SUMMER ST.

**PETITION FOR VARIANCE under the ZONING ORDINANCE**

**APPLICATION FOR SPECIAL PERMIT under the ZONING ORDINANCE**

Notice: This application must be typewritten; filed in duplicate and accompanied by a plan of the affected premises, a copy of the refusal by the Building Inspector or other authority.

To the Board of Appeals,

DATE February 22, 2019 (DATE FIELD)

The undersigned, petitions the Board of Appeals to vary, in the manner and for the reasons hereinafter set forth, the application of the provisions of the zoning ordinance to the following described premises.

APPLICANT: Norwood Group 116 South River Road, Bedford NH 03110  
Full Name Address

OWNER: Two Nineteen Lincoln Ave Trust 233 Needham St., Newton, MA 02464  
Full Name Address

LESSEE: n/a  
Full Name Address

1. LOCATION OF PREMISES: 211-219 Lincoln Ave  
Street Number Name of Street

2. ASSESSORS PLAT: 408 2 5 & 5A  
Plat No. Block No. Lot No.

2A. DEED OF PROPERTY RECORDED IN: Southern Essex REGISTRY

BOOK: 50732 PAGES: 231

3. DIMENSIONS OF LOT: Lot A: 123.36' Lot B: 222.97' Lot A: 970' Lot B: 270' Lot A: 464.267' Lot B: 63.533'  
Frontage Depth Square Feet

4. ZONING DISTRICTS IN WHICH PREMISES ARE LOCATED? CH

5. HOW LONG HAVE YOU OWNED ABOVE PREMISES? 1981 - approx 38 years

6. HOW MANY BUILDINGS ARE NOW ON THE LOT? 2

7. GIVE SIZE OF EXISTING BUILDINGS CVS is 13,103 sf approx. dim of 138' x 96'  
Building 19 is 95,214 sf approx. dim of 380' x 248'

PROPOSED BUILDINGS: n/a

8. STATE PRESENT USE OF PREMISES: CVS and vacant building

9. STATE PROPOSED USE OF PREMISES: CVS and storage / warehouse

10. GIVE EXTENT OF PROPOSED ALTERATIONS: total rehab of vacant building

11. HAS THERE BEEN A PREVIOUS APPEAL UNDER ZONING ON THESE PREMISES? no

12. NUMBER OF FAMILIES FOR WHICH BUILDING IS TO BE ARRANGED? n/a

NOTE: IF THE APPLICANT IS NOT THE OWNER, A WRITTEN STATEMENT MUST BE SUBMITTED FROM THE OWNER INDICATING THAT IT IS PERMISSIBLE TO SEEK A VARIANCE FOR SPECIAL PERMIT FOR THE PROPERTY.

NOTE: IF YOUR HOUSE IS NOT CLEARLY NUMBERED, THE BOARD OF APPEALS MAY NOT BE ABLE TO LOCATE YOUR PROPERTY, AND THIS COULD CAUSE YOU UNNECESSARY DELAY.

**Exhibit A**

**Legal Description**

Those two parcels of land situated in Haverhill, in the County of Essex and Commonwealth of Massachusetts, bounded and described as follows:

**FIRST PARCEL:**

NORTHWESTERLY by the southeasterly line of Lincoln Avenue one hundred forty six and 33/100 (146.33) feet;

NORTHEASTERLY on two lines measuring together nine hundred fifty five and 78/100(955.78) feet;

NORTHWESTERLY two hundred (200) feet; and

SOUTHWESTERLY forty seven and 57/100 (47.57) feet by lot 2, as shown on plan hereinafter mentioned;

NORTHWESTERLY one hundred forty five (145) feet;

SOUTHWESTERLY eighty (80) feet;

NORTHWESTERLY twenty (20) feet, and

SOUTHWESTERLY one and 54/100 (1.54) feet by lot 3, as shown on said plan;

NORTHWESTERLY by lot 4, as shown on said plan, thirteen and 61/100 (13.61) feet;

NORTHEASTERLY by land now or formerly of the City of Haverhill, by the end of Riverside Avenue and by land now or formerly of Mary N. LeGacy, measuring on the upland about two hundred twenty five (225) feet;

SOUTHEASTERLY by the Merrimack River; and

SOUTHWESTERLY by other land now or formerly of said City of Haverhill, measuring on the upland about thirteen hundred nine (1309) feet.

All of said boundaries, except the water line, are determined by the Court to be located as shown upon plan numbered 26922-A, drawn by Clinton F. Goodwin, Engineer, dated July 1957, as modified and approved by the Court, filed in the Land Registration Office, a copy of a portion of which is filed with original Certificate of Title 27386 in said Registry, and the above described land is shown as lot 1, sheet 1, thereon.

Said lot 1 is subject to that certain Notice of Activity and Use Limitation dated February 8, 2001

and filed with said Land Court as Document No. 378444.

SECOND PARCEL:

NORTHWESTERLY by the southeasterly line of Lincoln Avenue two hundred (200) feet;

NORTHEASTERLY by lots 3 and 1, shown on above mentioned plan, on two lines measuring together eight hundred sixty and 62/100 (860.62) feet; and

SOUTHEASTERLY two hundred (200) feet; and

SOUTHWESTERLY on two lines measuring together nine hundred fifty five and 78/100 (955.78) feet by said lot 1.

Being shown as lot 2, sheets 1 and 2, on said plan.

THERE IS EXCLUDED FROM THIS LEGAL DESCRIPTION THE APPROXIMATELY 1.46 ACRE PARCEL OF LAND AND ALL IMPROVEMENTS THEREON NOW UNDER A GROUND LEASE WITH CVS TO BE LEGALLY SUBDIVIDED FROM THE PARCELS DESCRIBED ABOVE PRIOR TO THE CLOSING AND DESCRIBED IN SECTION 1(i) of THIS AGREEMENT AS THE "EXCLUDED PARCEL".

13. PROVISIONS OF THE ZONING ORDINANCE UNDER WHICH PETITION FOR VARIANCE IS MADE:

In making its decision, the Board shall specifically find that all of the following conditions have been met: (Findings must be made on all three to have a valid decision). (1) That there are unique circumstances relate to the soil conditions, soil shape, or topography which specifically affect the land or structure in question, but not affecting generally the Zoning District in which the land or structure is located; (2) That the literal enforcement of the ordinance would involve substantial hardship, financial or otherwise; (3) That desirable relief may be granted without substantially derogating from the intent and purpose of the zoning ordinance or by-law. (See zoning ordinance for additional requirements for the granting of a variance).

13A. STATE REASONS FOR VARIANCE:

Applicant is seeking a dimensional variance, parcel has 125' of frontage where 175' is required.

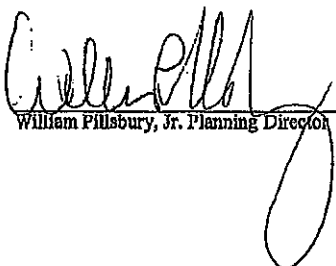
14. PROVISION OF ZONING ORDINANCE UNDER WHICH APPLICATION FOR SPECIAL PERMIT MADE:

14A. STATE REASONS FOR SPECIAL PERMIT:

No application will be acted upon unless the application has been reviewed and signed by the Building Inspector; Filing Fee has been paid to the City Treasurer; is accompanied by a list of "parties in interest" for the property as certified by the City Assessor; time stamped by the City Clerk; and all other requirements completed.

I hereby agree to pay to the City of Haverhill, any additional necessary fee connected with this application.

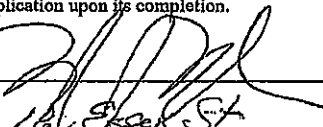
I hereby authorize the Clerk of the Board of Appeals to file this application upon its completion.

  
William Pillsbury, Jr. Planning Director

Signature

Address

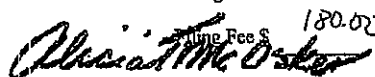
Phone No.

  
181 Park St  
978 373 5003

I have reviewed this application  
With respect to the responses to  
Questions 4, 13-14A

Building Inspector

Filing Fee: \$180.00

  
180.00

City Treasurer

FOR QUESTIONS 13A & 14A, ATTACH ADDITIONAL SHEET IF NECESSARY

Revised 2/22/2019







# Haverhill

11,511

City Clerk's Office, Room 118  
Phone: 978-374-2312 Fax: 978-373-8490  
cityclerk@cityofhaverhill.com

Date: 3/2/2020

Honorable President and Members of the Municipal Council:

The undersigned respectfully asks to receive a license for **TAG DAYS**  
pursuant to Chapter 227 of Haverhill City Code

Organization: HHS, Haverhill Unified Sports Applicant's Name: Phonda Gates

Applicant's Residence (must be Haverhill resident): 26 Marina Dr

Applicant's Signature: [Signature]

**(3 CONSECUTIVE DAYS ONLY)**

Date of Tag Day Request(s): 4/26/2020

Canister: \_\_\_\_\_ Tag: ✓ Fee: \$ 0

**ON STREET LOCATIONS ARE NO LONGER PERMITTED – SEE DOC. 47 OF 2017**

OFF STREET LOCATIONS - PLEASE SPECIFY

Heavily Bradford  
Auffy's Diner  
Market Basket (3)

**\*A LETTER FROM THE PRIVATE PROPERTY OWNER GRANTING PERMISSION FOR  
USE OF THE LISTED LOCATIONS IS REQUIRED AT THE TIME OF THE APPLICATION**

*A sample of the badge being used by those tagging and a sample of the tag being issued by the  
Organization must be filed with the City Clerk's Office at the time of the application*

Recommendation by Police Chief: ✓ Approved  
\_\_\_\_\_ Denied

Office Use Only

[Signature]

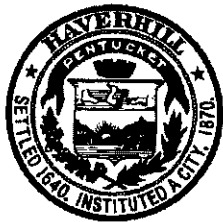
Police Chief

In Municipal Council, \_\_\_\_\_

Attest:

\_\_\_\_\_  
City Clerk

11,6,1



# Haverhill

City Clerk's Office, Room 118  
4 Summer Street Haverhill, MA 01830  
Phone: 978-374-2312 Fax: 978-373-8490  
[License\\_comm@cityofhaverhill.com](mailto:License_comm@cityofhaverhill.com)  
[www.ci.haverhill.ma.us](http://www.ci.haverhill.ma.us)

## ONE DAY LIQUOR LICENSE

### Business/ Organization Information

Business/Organization Name: \_\_\_\_\_

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

### Individual Applicant Information

Individual's Name: Crystal Naylor  
Home Address: 44 Abington Ave #2 Peabody MA 01960  
Telephone: 978 210 3143

Is the Applicant a US Citizen? Yes ☒ No ☐

E-Mail Address: crystal.naylor@gmail.com

### Event Information

Date of Event: 5/30/20  
Start Time: 2 pm End Time: 7 pm  
Location of Event: Winnekenni Castle  
Purpose of Event: wedding  
Will there be music or entertainment? Yes ☒ No ☐  
Is the event being catered? Yes ☒ No ☐  
Name of Caterer: The Party Connection  
Approximate number of People Attending  
Adults: ~80 Children: 0

### Type of License (circle one)

One-Day All-Alcohol    One-Day Beer and Wine    Charitable Wine Pouring    Charitable Wine Auction

### Purchase and Service

**Alcohol for a one day license cannot be donated. The alcohol must be purchased. All receipts for purchase of alcohol must be submitted to the Clerk's Office by 4:00 PM the last business day before the event**



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[www.ci.haverhill.ma.us](http://www.ci.haverhill.ma.us)

Where is the liquor being purchased from? MVDC, Seaboard, Martignetti

**All alcohol must be purchased through a licensed wholesaler. If the above-listed business is not a licensed wholesaler, then this application will not be approved**

Who will be serving the alcohol? Butlers + Bars

The server must be certified in safe service of alcohols (commonly referred to as TIPS certified) Please attach a copy of the certification for each server listed above.

Please attach a copy of the liquor liability insurance held by the server/applicant

**If the server does not have liquor liability insurance, then the application will not be approved**

## Determination of License Requirements

Is the event held by, or held for the benefit of a business or non-profit group?

	Yes	No
Business:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Non-Profit:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will there be a cash bar?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there an entrance fee or donation required?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the event open to the general public?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If the answer to ANY of these questions is YES:**

- A One-Day Special License is required. License applications must be put before the License Commission.
- If the event is on city property, approval from City Council and the Mayor is also required.
- The licensee must purchase all alcohol from a *licensed wholesaler*.
- *A copy of the receipts for alcohol purchases are due to the City Clerk's office no later than 4 pm on the workday before the event.*

**I certify under the pains and penalties of perjury that the above information is true and that I will comply with all applicable Alcohol Control Laws of the State of Massachusetts and policies and regulations of the City of Haverhill.**

Signature: Cynthia Nayn

Please contact the City Clerk's Office for any licensing questions



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[www.ci.haverhill.ma.us](http://www.ci.haverhill.ma.us)

## Official Use Only

Approval

*[Signature]* *2/16/20*  
Chief of Police Date

*[Signature]* *3/5/2020*  
License Commission Date

\_\_\_\_\_  
City Council (City Property) Date

\_\_\_\_\_  
Mayor (City Property) Date

Additional Conditions for License: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_



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License\_email@cityofhaverhill.com  
www.ci.haverhill.ma.us

## ONE DAY LIQUOR LICENSE

### Business/ Organization Information

Business/Organization Name: \_\_\_\_\_  
Address: \_\_\_\_\_

### Individual Applicant Information

Individual's Name: Janice Zenevitch  
Home Address: 5 Morgan Drive Methuen MA 01844  
Telephone: 978 3 82 8936  
Is the Applicant a US Citizen? Yes ☒ No ☐  
E-Mail Address: newenglandspirite@comcast.net

### Event Information

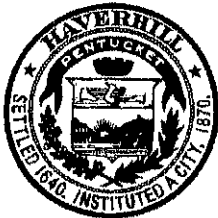
Date of Event: 5/11/20  
Start Time: 630 pm End Time: 930 pm  
Location of Event: Winnetkeni Castle  
Purpose of Event: Ladies Bridal Shower  
Will there be music or entertainment? Yes ☐ No ☒  
Is the event being catered? Yes ☒ No ☐  
Name of Caterer: Simply Perfect Catering (Pattie Crimmins)  
Approximate number of People Attending  
Adults: 55 Children: 5

### Type of License (circle one)

One-Day All-Alcohol ☒ One-Day Beer and Wine ☐ Charitable Wine Pouring ☐ Charitable Wine Auction ☐

### Purchase and Service

**Alcohol for a one day license cannot be donated. The alcohol must be purchased. All receipts for purchase of alcohol must be submitted to the Clerk's Office by 4:00 PM the last business day before the event**



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License: [comm@cityofhaverhill.com](mailto:comm@cityofhaverhill.com)  
[www.ci.haverhill.ma.us](http://www.ci.haverhill.ma.us)

Where is the liquor being purchased from? Horizon, Martigneth & (MVOC) Merrimack Valley Distributing Center  
**All alcohol must be purchased through a licensed wholesaler. If the above-listed business is not a licensed wholesaler, then this application will not be approved**

Who will be serving the alcohol? Butlers & BARS Methuen MA

The server must be certified in safe service of alcohols (commonly referred to as TIPS certified) Please attach a copy of the certification for each server listed above.

Please attach a copy of the liquor liability insurance held by the server/applicant

**If the server does not have liquor liability insurance, then the application will not be approved**

## Determination of License Requirements

Is the event held by, or held for the benefit of a business or non-profit group?

	Yes	No
Business:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Non-Profit:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Will there be a cash bar?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is there an entrance fee or donation required?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the event open to the general public?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If the answer to ANY of these questions is YES:**

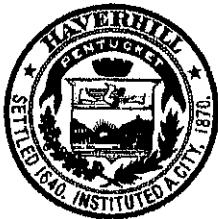
- A One-Day Special License is required. License applications must be put before the License Commission.
- If the event is on city property, approval from City Council and the Mayor is also required.
- The licensee must purchase all alcohol from a *licensed wholesaler*.
- *A copy of the receipts for alcohol purchases are due to the City Clerk's office no later than 4 pm on the workday before the event.*

I certify under the pains and penalties of perjury that the above information is true and that I will comply with all applicable Alcohol Control Laws of the State of Massachusetts and policies and regulations of the City of Haverhill.

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

*Jamie Genciveth*

Please contact the City Clerk's Office for any licensing questions



# Haverhill

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[www.ci.haverhill.ma.us](http://www.ci.haverhill.ma.us)

## Official Use Only

Approval

*[Signature]* *1/30/20*  
Chief of Police Date

*Joseph C. Edwards* *31512020*  
License Commission Date

\_\_\_\_\_  
City Council (City Property) Date

\_\_\_\_\_  
Mayor (City Property) Date

Additional Conditions for License: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



# Haverhill

License Commission, Room 118  
4 Summer Street, Haverhill, MA 01830  
Phone: 978-420-3623 Fax: 978-373-8490  
License\_comm@cityofhaverhill.com

Janice Zenevitch  
5 Morgan Drive  
Methuen MA 01844

January 30, 2020

**Re: Upcoming License Commission Meeting: Presence Required**

Dear Janice Zenevitch:

An item has been added to the agenda for the next upcoming License Commission meeting for the following:

**Agenda Item:**            **One Day Wines and Malt only License for Ladies Bridal Shower at Winnekenni Castle on May 1, 2020**

**Next Meeting:**        **Thursday, February 6, 2020 at 6:00 p.m.**  
**Haverhill City Hall**  
**Room 202**  
4 Summer Street  
Haverhill, MA 01830

Please remember that if the license is approved, the terms of this license require that you purchase the alcohol from the authorized wholesaler listed on your license application. The receipts for the purchase of the alcohol must be received by the City Clerk's Office by the end of business on the last business day before your event.

Please let us know if you have any questions.

Sincerely,

Laura Angus  
License Commission Clerk





# Haverhill

License Commission, Room 118  
4 Summer Street, Haverhill, MA 01830  
Phone: 978-420-3623 Fax: 978-373-8490  
License\_comm@cityofhaverhill.com

Janice Zenevitch  
5 Morgan Drive  
Methuen MA 01844

February 7, 2020

**Re: Upcoming License Commission Meeting: Presence Required**

Dear Janice Zenevitch:

An item has been added to the agenda for the next upcoming License Commission meeting for the following:

**Agenda Item:**                    **One Day Wines and Malt only License for Ladies Bridal Shower at Winnekenni Castle on May 1, 2020**

**Next Meeting:**                    **Thursday, March 5, 2020 at 6:00 p.m.**  
**Haverhill City Hall**  
**Room 202**  
4 Summer Street  
Haverhill, MA 01830

Please remember that if the license is approved, the terms of this license require that you purchase the alcohol from the authorized wholesaler listed on your license application. The receipts for the purchase of the alcohol must be received by the City Clerk's Office by the end of business on the last business day before your event.

Please let us know if you have any questions.

Sincerely,

  
Laura Angus  
License Commission Clerk

3/5/2020

Drainlayer's License

DL-20-11

Status: Active

Submitted: Feb 26, 2020

Applicant

Frank Gibbs  
603-382-8249  
igibbsconstruction@yahoo.com

*renewal*

Applicant Information

Applicant Cellphone  
603-234-4210

Applicant License Number

License Status

Applicant Address  
87 Smith Corner Road

Applicant State

NH

City Council Approval Date

Business Name

Business Name  
Gibbs Construction Inc

Business Address

87 Smith Corner Road

Business State

NH

Business Fax  
603-382-3249

Are You Doing Work on City Property?

No

Insurance Information

Bond Expiration Date

03/23/2020

Right-of-Way Bond Expiration Date

3/5/2020

Attachments (3)

pdf Drainlayer Bond

Feb 26, 2020

pdf Certificate of Liability Insurance

Feb 26, 2020

pdf Workmen's Compensation Affidavit

Feb 26, 2020

Timeline

☐ Drainlayer License Fee

Status: Paid February 26th 2020, 10:52 am

☐ City Clerk Approval

Status: Completed March 4th 2020, 2:27 pm

Assignee: Judy Stros

☐ City Engineer Approval

Status: Completed March 5th 2020, 12:45 pm

Assignee: John Peltis

☐ City Council Approval

Status: In Progress

Assignee: Judy Stros

☐ Drainlayer License Issued

Status: Pending

Business Phone

603-382-8249

Business City

Newton

Business Zip

03858

Type of License

Renewal

Taxpayer Identification Number (TIN)

02-0377532

Liability Insurance Expiration Date

07/21/2020

Workman's Compensation Expiration Date

07/21/2020

3/5/2020

Drainlayer's License

DL-20-12

Status: Active

Submitted: Feb 26, 2020

Applicant Information

Applicant Cellphone

9788153958

Applicant Address

167 Willow ave

Applicant State

Ma

City Council Approval Date

Applicant

John Jablonski

9788154843

zackj@jablonski@yahoo.com

renewal

11.7.3.2

Are You a Licensed Drainlayer?

No

Applicant City

Haverhill

Applicant Zip

01935

Do you Work on City Property?

Yes

Business Name

Business Name

Jablonski & Sons, Inc

Business Address

206 Kenosha st

Business State

Ma

Business Fax

9783729870

Are You Doing Work on City Property?

Yes

Business Phone

9783727136

Business City

Haverhill

Business Zip

01830

Type of License

Renewal

Taxpayer Identification Number (TIN)

---

Insurance Information

Bond Expiration Date

04/01/2020

Right-of-Way Bond Expiration Date

04/01/2020

Liability Insurance Expiration Date

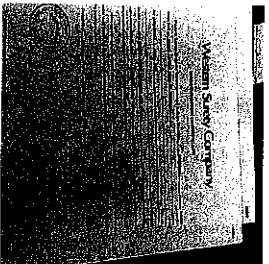
05/26/2020

Workman's Compensation Expiration Date

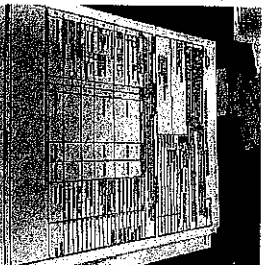
05/26/2020

Attachments (4)

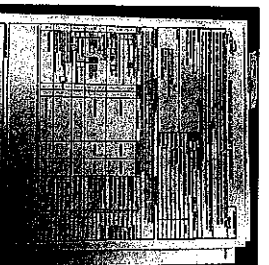
3/5/2020



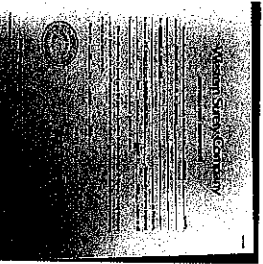
Drainlayer Bond  
Feb 26, 2020



Certificate of Liability Insurance  
Feb 26, 2020



Workman's Compensation Affidavit  
Feb 26, 2020



Street Opening Bond  
Feb 26, 2020

Timeline

☐ Drainlayer License Fee

Status: Paid February 28th 2020, 12:55 pm

☐ City Clerk Approval

Status: Completed March 4th 2020, 2:26 pm

Assignee: Judy Sicco

☐ City Engineer Approval

Status: Completed March 5th 2020, 12:45 pm

Assignee: John Pelis

☐ City Council Approval

Status: In Progress

Assignee: Judy Sicco

☐ Drainlayer License Issued

Status: Pending

3/6/2020

Drainlayer's License

55825

Status: Active

Submitted: Jan 22, 2019

Applicant

Steve Eddy  
5088627377  
@sjelnc27@gmail.com

11.9.3.3

Not Renewed

Applicant Information

Applicant Cellphone  
978-914-3604

Applicant License Number  
CS-084453

License Status  
Active

Applicant Address

Applicant State

City Council Approval Date

Are You a Licensed Drainlayer?  
Yes

License Type  
Construction Supervisor

License Expiration Date  
06/27/2020

Applicant City

Applicant Zip

Do you Work on City Property?

Business Name

Business Name  
SJE Landscaping, Inc.

Business Address  
113 Pelham Street

Business State  
MA

Business Fax

Are You Doing Work on City Property?

Business Phone

Business City  
Methuen

Business Zip  
01844

Type of License  
Renewal

Taxpayer Identification Number (TIN)

Insurance Information

Bond Expiration Date

Liability Insurance Expiration Date

Right-of-Way Bond Expiration Date

Workman's Compensation Expiration Date

3/6/2020

Timeline

☐ Drainlayer License Payment  
Status: Paid January 5th 2020, 5:17 pm

☐ City Clerk Approval  
Status: Completed January 31st 2020, 11:30 am  
Assignee: Judy Stros

☐ City Engineer Approval  
Status: Completed March 5th 2020, 3:56 pm  
Assignee: John Pettis

☐ City Council Approval  
Status: In Progress  
Assignee: Judy Stros

☐ Drainlayer License Issued  
Status: Pending

John Pettis March 5th 2020, 12:50:46 pm  
Not on November list but comes in as renewal, please see if ever pulled permit  
Tara Lynch March 5th 2020, 1:58:59 pm  
He has only pulled 1 permit, it was for 28 Offer SL in 2007

20200105-0800-187-111110

3/6/2020

Drainlayer's License

DL-20-8

Status: Active

Submitted: Feb 11, 2020

Applicant

don Kohl

9783759318

donkohl@yahoo.com

Don Kohl

renewed

Applicant Information

Applicant Cellphone

978-375-9318

Applicant Address

114 GROTON RD

Applicant State

MA

City Council Approval Date

Are You a Licensed Drainlayer?

No

Applicant City

CHELMSFORD

Applicant Zip

01863

Do you Work on City Property?

No

Business Name

Business Name

KOHL ENT INC.

Business Address

114 GROTON RD

Business State

MA

Business Fax

N/A

Are You Doing Work on City Property?

No

Business Phone

978-375-9318

Business City

CHELMSFORD

Business Zip

01863

Type of License

Renewal

Taxpayer Identification Number (TIN)

04-3237602

Insurance Information

Bond Expiration Date

02/11/2021

Right-of-Way Bond Expiration Date

No

Liability Insurance Expiration Date

10/21/2020

Workman's Compensation Expiration Date

06/20/2020

Attachments (3)

pdf Drainlayer Bond

Feb 11, 2020

3/6/2020

Certificate of Liability Insurance

Feb 11, 2020

Workman's Compensation Affidavit

Feb 11, 2020

Timeline

Drainlayer License Fee

Status: Paid February 11th 2020, 12:51 pm

don Kohl February 11th 2020, 12:54:01 pm

am i now supposed to wait for a response by email or should i mail all the originals to the clerks office . thanks don kohl

City Clerk Approval

Status: Completed February 25th 2020, 9:22 am

Assignee: Judy Sirois

don Kohl February 24th 2020, 12:55:00 pm

Good afternoon The people from the rehab are asking me to find out if there is an estimated date that the drain layers license may be issued for scheduling reasons. Thanks Don Kohl

City Engineer Approval

Status: Completed March 5th 2020, 3:55 pm

Assignee: John Pettis

John Pettis March 5th 2020, 12:48:22 pm

Not on November list, but comes up as renewal, please see if ever pulled permit

Tara Lynch March 5th 2020, 2:11:20 pm

Don Kohl has pulled several permits in the past, and has been a drainlayer since 1995. The most recent permit he pulled was in 2011.

City Council Approval

Status: In Progress

Assignee: Judy Sirois

Drainlayer License Issued

Status: Pending

2020-03-05 09:02:50 AM UTC-05:00



3/5/2020

Drainlayer's License

**DL-20-13**

Status: Active

Submitted: Mar 04, 2020

Applicant

Brian Neal

603-234-6946

brian17ma@yahoo.com

*NEW*

**Applicant Information**

Applicant Cellphone  
603-234-6946

Applicant Address  
13 Birmun Woods Rd

Applicant State  
NH

City Council Approval Date

Are You a Licensed Drainlayer?  
No

Applicant City  
Stratham

Applicant Zip  
03885

Do you Work on City Property?  
No

**Business Name**

Business Name  
Brian Neal Excavating LLC

Business Address  
13 Birmun Woods Rd

Business State  
NH

Business Fax

Business Phone  
603-234-6946

Business City  
Stratham

Business Zip  
03885

Type of License  
New (First Time)

Taxpayer Identification Number (TIN)  
273001212

Are You Doing Work on City Property?  
No

**Insurance Information**

Liability Insurance Expiration Date  
10/23/2020

Right-of-Way Bond Expiration Date  
02/27/2021

**Attachments (5)**

pdf Drainlayer Bond  
Mar 04, 2020

3/5/2020

pdf Certificate of Liability Insurance

Mar 04, 2020

pdf Workmen's Compensation Affidavit

Mar 04, 2020

pdf 2 Letters of Recommendation - NEW APPLICANTS ONLY

Mar 04, 2020

pdf BN Letter2.pdf

Mar 04, 2020

**Timeline**

☐ Drainlayer License Fee  
Status: Paid March 4th 2020, 12:10 pm

☐ City Clerk Approval  
Status: Completed March 4th 2020, 12:12 pm  
Assignee: Judy Sirois

☐ City Engineer Approval  
Status: Completed March 5th 2020, 12:54 pm  
Assignee: Tara Lynch

☐ City Council Approval  
Status: In Progress  
Assignee: Judy Sirois

☐ Drainlayer License Issued  
Status: Pending

City of Haverhill

Taxi Driver License - C. 330 sec. 20

11.7.4.1

Honorable President and Members of the Haverhill City Council

The undersigned respectfully asks that they be given a license to drive a taxi in the City of Haverhill

Name: ERIC SAYERS

Address: 1 FAIRFIELD ST. HAVERHILL (HOME) 83C So. WEBSTER ST. BRADFORD 01835 (MAILING)

Applicant phone number: 978-476-9462

Any driver of vehicle(s) must provide name, address, DOB, SS# and Driver's license # - fill out on back.

Office use only

New/ Renew (circle one)

Fee: \$50 - annual fee

50.00

In Municipal Council, \_\_\_\_\_, 20\_\_

Attest: \_\_\_\_\_ City Clerk

Approve ✓

Denied \_\_\_\_\_

[Signature]  
Police Chief

Please complete back side of this application



City of Haverhill

11.7.4.2

Taxi Driver License – Ch.230 sec.20

Honorable President and Members of the Haverhill City Council:

The undersigned respectfully asks that he/she may receive a license to drive a taxi in the City of Haverhill

Name: Nicole Siney

Address: 11 A CHARLES ST Haverhill MASS

Applicant phone number: 978-398-5703

Any driver of vehicle(s) must provide name, address, DOB, SS# and Driver's license # - fill out on back.

03/26/1993 025-76-5644 S05245605

Office use only

New/ Renew (circle one)

Fee: \$50 – annual fee January 1 2020 to December 31st 2020

In Municipal Council

20

Attest

City Clerk

Approve

Denied

Police Chief

Please complete back side of this application

City of Haverhill

11,7,4,3

Taxi Driver License – Ch.230 sec.20

Honorable President and Members of the Haverhill City Council:

The undersigned respectfully asks that he/she may receive a license to drive a taxi in the City of Haverhill

Name: PETER EDWARD LONING JR

JAN 30 2020

Address: 735 A RIVER ST

Applicant phone number: 978 601 3196

Any driver of vehicle(s) must provide name, address, DOB, SS# and Driver's license # - fill out on back.

Office use only

New/Renew (circle one)

Fee: \$50 – annual fee January 1 2020 to December 31st 2020

In Municipal Council, \_\_\_\_\_

20

Attest \_\_\_\_\_

City Clerk

Approve \_\_\_\_\_

Denied \_\_\_\_\_

\_\_\_\_\_  
Police Chief

Please complete back side of this application

City of Haverhill

Taxi Driver License – Ch.230 sec.20

11.7.4.4

Honorable President and Members of the Haverhill City Council:

The undersigned respectfully asks that he/she may receive a license to drive a taxi in the City of Haverhill

Name: Cody Glazer

Address: 11 Charles St

Applicant phone number: 978 519 2679

Any driver of vehicle(s) must provide name, address, DOB, SS# and Driver's license # - fill out on back.

Office use only

New/Renew (circle one)

Fee: \$50 – annual fee

50.00

In Municipal Council

20

Attest:

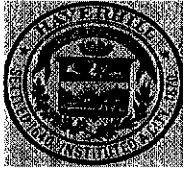
City Clerk

Approve

Denied

Police Chief

Please complete back side of this application



Document  
CITY OF HAVERHILL  
In Municipal Council

12.1

Ordered:

That the City appropriate the sum of \$207,000 from Sale of non-tax title land and transfer said amount to the following capital project account:

Rt.110/108 intersection improvements

**JAMES J. FIORENTINI**  
MAYOR



**CITY OF HAVERHILL**  
**MASSACHUSETTS**

CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Melinda Barrett and Members of the Haverhill City Council

RE: Order to transfer \$207,000.00 from Sale of Non-Tax Land to Capital Project Account

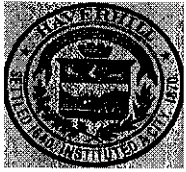
Dear Mr. President and Members of the Haverhill City Council:

Please find attached an order to transfer \$207,000.00 from sale of non-tax land to Capital Project Account for Route 110/Route 108 intersection roadway and public safety improvements. I recommend approval.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf



Document

CITY OF HAVERHILL

In Municipal Council

12.2

Ordered:

That in accordance with General Laws, Chapter 44, Section 64, authorize the payment of bill(s) of the previous years and to further authorize the payment from current year departmental appropriations as listed below:

<u>Vendor</u>	<u>Amount</u>	<u>Account</u>
Grainger	\$ 433.00	School Department
Teacher-Reimbursement	\$ 139.00	School Department
Lindamood-Bell	\$ 1,790.00	School Department
Music Theatre International	\$ 1,850.47	School Department
Vertical Communications	\$ 215.00	Information Technology
Coppola Inc (3)	\$ 2,675.58	School Department
Greenet	\$ 150.00	Information Technology

JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL  
MASSACHUSETTS**

CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President Barrett and Members of the Haverhill City Council

RE: FY2019 Bills

Dear Madame President and Members of the Haverhill City Council:

Attached, please find an order to pay bills from the previous fiscal year:

Vendor	Amount	Account
Grainger	\$ 433.00	School Department
Teacher Reimbursement	\$ 139.00	School Department
Lindamood-Bell	\$ 1,790.00	School Department
Music Theater International	\$ 1,850.47	School Department
Vertical Communications	\$ 215.00	Information Technology
Coppola, Inc. (3)	\$ 2,675.58	School Department
Greenet	\$ 150.00	Information Technology

**TOTAL** \$ 7,253.05

I recommend approval.

Very truly yours,

**James J. Fiorentini, Mayor**

JJF/lyf



31 CABOT RD.  
WOBURN, MA 01801-1003  
www.grainger.com

PAGE 1 OF 1

## INVOICE

GRAINGER ACCOUNT NUMBER 855347613  
INVOICE NUMBER 9911190164  
INVOICE DATE 09/20/2018  
DUE DATE 11/04/2018  
AMOUNT DUE \$433.00

SHIP TO  
ATTN: LORRAINE TURELL  
BURNHAM  
45 FOUNTAIN ST  
HAVERHILL MA 01830-4003

PO NUMBER: 191926  
CALLER: RICK WHITCOMB  
CUSTOMER PHONE: 9787944773  
ORDER NUMBER: 1331899109  
INCO TERMS: FOB ORIGIN

BILL TO  
CITY OF HAVERHILL  
4 SUMMER ST  
HAVERHILL MA 01830-5841

Pay invoices online at:  
[www.grainger.com/invoicing](http://www.grainger.com/invoicing)  
Sign up for paperless invoicing at:  
[www.grainger.com/paperlessinvoicing](http://www.grainger.com/paperlessinvoicing)

THANK YOU! FEI NUMBER 36-1150280  
FOR QUESTIONS ABOUT THIS INVOICE OR ACCOUNT CALL 1-800-472-4643

PO LINE #	ITEM #	DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
	417Y84	PORTABLE POWER PACK,8-51/64" W,12VDC MANUFACTURER # GB70  Delivery #:6409682052 Date: 09/20/2018 Carrier: UPS GROUND No:of Pkgs:1 Wt: 11.200 Trk #:1Z5413WR0305648457 SHIPPED FROM: DC BORDENTOWN 010 400 BORDENTOWN-HEDDING RD,BORDENTOWN,NJ 08505	2	216.50	433.00

THIS PURCHASE IS GOVERNED EXCLUSIVELY BY GRAINGER'S TERMS OF SALE, INCLUDING: (I) DISPUTE  
RESOLUTION REMEDIES, AND (II) CERTAIN WARRANTY AND DAMAGES LIMITATIONS AND DISCLAIMERS  
IN EFFECT AT THE TIME OF THE ORDER, WHICH ARE INCORPORATED BY REFERENCE HEREIN. GRAINGER'S  
TERMS OF SALE ARE AVAILABLE AT [WWW.GRAINGER.COM](http://WWW.GRAINGER.COM)  
PRODUCT RETURN INSTRUCTIONS ARE AVAILABLE AT [WWW.GRAINGER.COM/RETURNS](http://WWW.GRAINGER.COM/RETURNS)

INVOICE SUB TOTAL 433.00

These items are sold for domestic consumption. If exported, purchaser assumes full responsibility for compliance with US  
export controls. Diversion contrary to US law prohibited.  
Reprint

PAY THIS INVOICE; NO STATEMENT WILL BE SENT. PAYMENT TERMS Net 45 days IN U.S. DOLLARS. AMOUNT DUE \$433.00

PLEASE DETACH THIS PORTION AND RETURN WITH YOUR PAYMENT

BILL TO:

CITY OF HAVERHILL  
4 SUMMER ST  
HAVERHILL MA 01830-5841  
UNITED STATES OF AMERICA

REMIT TO:

GRAINGER  
DEPT. 854239100  
PALATINE, IL 60038-0001

854239100991119016410000433001000000010000000100000018110470

X

ACCOUNT NUMBER

855347613

DATE

09/20/2018

INVOICE NUMBER

9911190164

AMOUNT DUE

\$433.00

FOR COMMENTS OR CHANGE OF ADDRESS, ENTER INFORMATION ON REVERSE SIDE



2/24/2020

Mail - Howell, Krysten - Outlook

Date: Mon, Apr 8, 2019, 13:36

Subject: Your testing registration receipt

To: Kathleen Lucia <[kelucia.tats@gmail.com](mailto:kelucia.tats@gmail.com)>

Thank you for registering for the Massachusetts Tests for Educator Licensure. Your registration details are listed below and have also been added to your account.

Purchases

-----

\$139.00 Reading Specialist (08)

Payments

-----

\$139.00 Credit card payment

For up-to-date information about this registration and your testing account, visit  
<http://www.mtel.nesinc.com>.

Please do not reply to this message, as it was sent from an unattended mailbox.

Kathleen Lucia

# Massachusetts Tests for Educator Licensure®

MEPID: 51551202

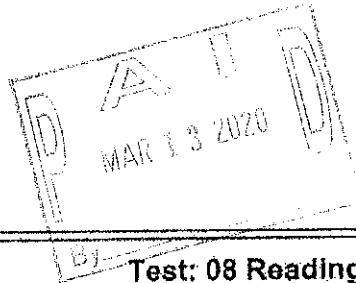
Test Date: May 28, 2019

See page 2 for an explanation of how to read your score report.

KATHLEEN E LUCIA has met the qualifying score on the following test(s)  
as of June 18, 2019:  
08 Reading Specialist

KATHLEEN E LUCIA  
5 DOW DRIVE  
HAVERHILL, MA 01832

Your scores have been reported to the Massachusetts  
Department of Elementary and Secondary Education and the  
following Massachusetts institution:  
• Endicott College



Test: 08 Reading Specialist

Status: Met the Qualifying Score

Minimum Qualifying Score: 240

Your Score\*: ---

Subarea/Section Name	Range of Number of Items in Subarea	Description of Your Subarea Performance			
		For Multiple-Choice Items: You Answered Correctly			
		Most or all Items	Many of the Items	Some of the Items	Few or no Items
Reading Processes and Development	31 or more			✓	
Reading Assessment	11 to 20		✓		
Reading Instruction	11 to 20	✓			
Prof'l Knowledge & Roles of the Reading Specialist	11 to 20	✓			
		For Open-Response Items: Your Responses Were			
		Thorough	Adequate	Limited	Weak
Integration of Knowledge and Understanding	2		✓		

Examined and allowed for

MAR 13 2020

1010000.4.2357.6650.33.135.00.10

AMOUNT  
AUDITOR

\*Your Score: Scores for candidates who have met the qualifying score of 240 and above are not reported.

Cautions: Although examinees do not pass or fail individual test subareas/sections, the performance information above may be useful in understanding individual areas of strength and weakness. This information should be interpreted with caution since subareas/sections contain varying numbers of test items.



This barcode contains unique candidate information.

MAT-SR-LABER.L07



# LINDAMOOD-BELL LEARNING PROCESSES

416 Higuera Street, San Luis Obispo, CA 93401  
Phone: 805-541-3836 - Fax: 805-541-9332

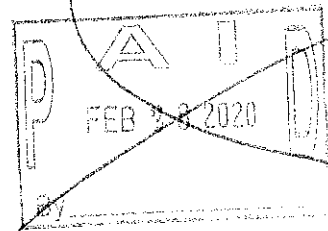
## INVOICE

Invoice No.: 7923975A  
Invoice Date: 6/25/19  
Customer ID: CITYHAV1  
PO Number: 196123  
Reg Number:

Page: 1 of 1

City of Haverhill  
School Department  
City Hall, Room 104  
4 Summer St.  
Haverhill, MA 01830-5875

Terms		Project	Location		
Net 30		27SUMRET19 Summer Online Workshops East 2019	Online		
Item No.	Description	Qty.	Price	Amount	
OL-VV	Online-Visualizing & Verbalizing -- 6/25/2019 - 6/27/2019 Kristen Assad	1.00	895.000	895.00	
OL-VV	Online-Visualizing & Verbalizing -- 6/25/2019 - 6/27/2019 Maria Horsman	1.00	895.000	895.00	



**Please Remit Payment to:**  
Lindamood - Bell Learning Processes  
Attn: Accounts Receivable  
416 Higuera Street  
San Luis Obispo, CA 93401

Invoice Amount	1,790.00
Payments\Credits	0.00
<b>Invoice Balance</b>	<b>1,790.00</b>

# MUSIC THEATRE INTERNATIONAL

INVOICE

423 West 55th Street, 2nd floor • New York, NY 10019 • (c) 212.541-4684 (f) 212.397.4684 • licensing@mtishows.com • mtishows.com

HAVERHILL HIGH SCHOOL  
ATTN: CITY OF HAVERHILL PUBLIC SCHOOLS  
137 MONUMENT STREET

\*\*\*\*\*  
INVOICE #: \* 663523-999 \*  
\*\*\*\*\*

CYNTHIA

HAVERHILL MA 01830-3877  
UNITED STATES  
Attn: ACCOUNTS PAYABLE / JOSEPH GORI

CO#: 002  
Promo:  
Date: 2/21/20 1

Show: 000329 MARY POPPINS  
Perf: 4/05/18 - 4/07/18

AMATEUR

Tax ID:

Cust#: 19439 Order#: 9470466 -000329

Close Date: 5/15/2018

Cash Due Date: 12/08/17

P.O.#: 183205

CHARGE/DESCRIPTION	QTY	RATE	AMOUNT
Royalty	4	275.00	1,100.00
Additional Rental			400.00
Rental Fee	1	595.00	595.00
Additional Material	1	75.00	75.00
VIDEO LICENSE			
Shipping Charges			70.47
Handling Charge			10.00
Security Refundable			400.00-
Security Fee			400.00
=====			
Sub Total----->:			2,250.47
Payment----->:			400.00-
Balance Due---->:			1,850.47

Vertical Communications, Inc



Invoice  
#2063243  
10/19/2017

Vertical Communications, Inc  
1000 Holcomb Woods Parkway  
Roswell GA 30076  
770-446-3100

Customer Number 015341  
Terms Net 30  
Due Date 11/18/2017  
Customer PO  
Sales Rep  
Sales Order Sales Order #1493703

Bill To  
HAVERHILL CITY HALL  
4 SUMMER STREET  
STE 312 ATTN: ACCTS PAYABLE  
HAVERHILL MA 01830

Ship To  
WEN FROM HIQ COMPUTERS  
HAVERHILL CITY HALL  
4 SUMMER STREET  
STE 312  
HAVERHILL MA 01830

Work Requested Date: 10/6/2017

Work Requested: 10/6/17: contact is Linda L. Koutoulas PH: 978-374-2312

PLEASE CONTACT HER BY EMAIL AT: LKoutoulas@cityofhaverhill.com

We have elections on Oct 10 and Nov 7. Can we have our phones turned on at 6 am to Midnight both those days?

Work Performed: Stephen Fitzgerald 10/9/17: Accessed system remotely and made program changes as requested.

Item	Quantity	Description	Amount
Vertical Service	1	Vertical Service	\$0.00
LBRZ1ST1STHRT&M	1	Zone 1 1st Hour Labor 1x Time - T&M	\$215.00

Subtotal	\$215.00
Tax Total (0%)	\$0.00
Total	\$215.00
Amount Paid	\$0.00
Amount Due	\$215.00

All amounts owing under this invoice have been assigned to FGI Worldwide LLC. Unless otherwise directed by FGI Worldwide LLC, all amounts payable hereunder are to be paid as follows:

Wire Instructions:  
Beneficiary: Vertical Communications  
Credit Account: 4018975340  
SWIFT: CTZIUS33  
ABA: 021313103  
Bank: Citizens Bank  
Bank Address: 1 Citizens Drive, Riverside RI, 02915

Check Instructions:  
Vertical Communications Inc.  
PO Box #654180  
Dallas, TX 75265-4180

As of July 1, 2018 an additional convenience fee of 3% will be added to final invoice if amount due is paid by credit card.  
Invoice may not include deposits made within the last 7 days.

COPPOLA INC.

21 SOUTH CENTRAL STREET  
BRADFORD, MA 01835

# Invoice

Date	Invoice #
11/14/2017	2430

Bill To
Haverhill High School 137 Monument Street Haverhill MA 01830

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
16	HHS TO NECCO SEPTEMBER	60.18	962.88
		<i>190371</i> <i>OK to pay</i> <i>E. Green</i> <i>4/23/18</i>	
Total			\$962.88

COPPOLA INC.

21 SOUTH CENTRAL STREET  
BRADFORD, MA 01835

# Invoice

Date	Invoice #
11/14/2017	2431

Bill To
Haverhill High School 137 Monument Street Haverhill MA 01830

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
15	HHS TO NEECO OCTOBER	60.18	902.70
		<i>190371</i> <i>OK to pay</i> <i>Green</i> <i>4/23/19</i>	
		<b>Total</b>	\$902.70

21 SOUTH CENTRAL STREET  
BRADFORD, MA 01835

Date	Invoice #
1/23/2018	2474

Bill To
Haverhill High School 137 Monument Street Haverhill MA 01830

P.O. No.	Terms	Project

Quantity	Description	Rate	Amount
9	HHS late bus transportation December  190371 OK do pay G. Sandoval 4/23/19	90.00	810.00
		Total	\$810.00



Greenet  
6 Merrill Street, Unit 7  
Salisbury, MA 01952  
9784998700  
support@greenet.net  
www.greenet.net

## Invoice

BILL TO  
Ed English  
City of Haverhill  
4 Summer St  
Rm 312  
Haverhill, MA 01830

INVOICE #	DATE	TOTAL DUE	DUE DATE	TERMS	REMARKS
12474	12/01/2018	\$150.00	12/01/2018	Due on receipt	

DESCRIPTION	QTY	RATE	AMOUNT
DNS Hosting for US Domains Yearly service fee	1	120.00	120.00
Register/Renew domain name ci.haverhill.ma.us	1	30.00	30.00

Thank you for your purchase. Invoices with overdue balances will be charged a finance charge of 1.5% per month.

BALANCE DUE

**\$150.00**

1038110  
1022934

Thank you for your payment  
for inv 14292. However,  
this 2018 invoice remains  
seriously past due. If  
you think this has been  
paid please provide a  
copy of the cancelled  
check.

Thank you.



DOCUMENT

## CITY OF HAVERHILL

In Municipal Council

12,3

ORDERED:

**In that the Hull family settled in Rocks Village in the 19th century and lived there until Jeffrey Hull sold his house and land to provide street access for the Bradfields Development, and, in that the pond which was once part of the Hull estate currently has no name, be it so ordered that said pond, as shown on the attached map which is incorporated herein, shall forever be named "Hull Pond", and that "Hull Pond" shall appear as the designated name for said pond on any future maps.**

**This name is commemorative only and in no way changes or conveys the rights and privileges of any of the current owners of said pond, nor does it grant the Hull family or any other person(s) access to the pond, other than those specified under covenants of the Bradfields Development in which said pond is located.**

Enter Owner, Address or ID

Advanced Search

Parcel Number	Owner Name
No parcel is selected	



JAMES J. FIORENTINI  
MAYOR



**CITY OF HAVERHILL**  
**MASSACHUSETTS**

CITY HALL, ROOM 100  
FOUR SUMMER STREET  
HAVERHILL, MA 01830  
PHONE 978-374-2300  
FAX 978-373-7544  
MAYOR@CITYOFHAVERHILL.COM  
WWW.CI.HAVERHILL.MA.US

March 6, 2020

City Council President John A. Michitson and Members of the Haverhill City Council

RE: Order to name pond in Rock's Village, formerly owned by the Hull Family, Hull Pond

Dear Mr. President and Members of the Haverhill City Council:

Please find attached an order to name pond in Rock's Village, formerly owned by the Hull Family, Hull Pond. I recommend approval.

Very truly yours,

**James J. Fiorentini**  
Mayor

JJF/lyf

**CITY COUNCIL**

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**PRESIDENT**

**COLIN F. LEPAGE**

**VICE PRESIDENT**

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**WILLIAM J. MACEK**



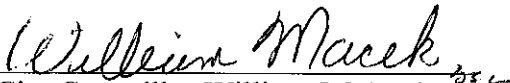
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citycncl@cityofhaverhill.com

March 2, 2020

TO: Madame President and Members of the City Council:

Councillor William J. Macek requests to introduce Elaine Barker to announce a Saint Patrick Fundraiser on March 22, 2020 from 2 to 5 p.m., at the American Legion, 1314 Main St., Haverhill. The event is being held for the benefit of Sarah's Place Adult Day Health Center.

  
City Councillor William J. Macek

**CITY COUNCIL**

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*VICE PRESIDENT*  
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February 28, 2020

TO: Mr. President and Members of the City Council:

Councillor Michael McGonagle requests to have the Traffic and Safety Committee review the impact of cable wires in the area of 197 Ferry Road causing height restriction problems for trucks.

  
City Councillor Michael McGonagle

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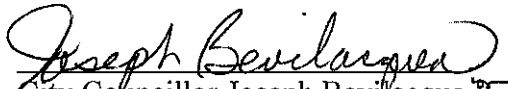
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March 2, 2020

TO: Madame President and Members of the City Council:

Councillor Joseph Bevilacqua would like to recognize Women's History Month celebrating the contributions and achievements of women and recognizing those who fought for women's right to vote.

  
City Councillor Joseph Bevilacqua

**CITY COUNCIL**

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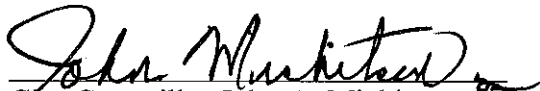
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March 6, 2020

TO: Madame President and Members of the City Council:

Councillor John Michitson proposes a partnered approach (regional, business, academia, medical) to developing next generation broadband infrastructure for all.

  
City Councillor John A. Michitson



## NOTICE TO PROPOSERS

Notice is hereby given that on April 2, 2013 at 9:00 A.M. (Eastern Standard Time) sealed proposals will start to be considered by the Triangle J Council of Governments and NC Next Generation Networks for:

### THE PROVISION OF AN OPEN ACCESS NEXT GENERATION COMMUNICATIONS NETWORK(S)

Specifications and instructions for this Request for Proposals are attached to this Notice. Additional copies may be obtained at the offices of the Triangle J Council of Governments located at 4307 Emperor Boulevard, Suite 110, Durham, NC 27703, or viewed, downloaded and/or printed at the following website: <http://www.tjcog.org/nc-next-generation-networks.aspx>. Office hours are 8:30 am to 5:00 pm, Monday through Friday.

POSTED: February 1, 2013

## 1. Glossary of Terms

<b>NC Next Generation Network (NCNGN):</b>	the name for the following municipalities and their respective Chambers of Commerce seeking development of Network(s): Cary*, Chapel Hill/Carrboro, Durham, Raleigh, and Winston-Salem with support of Duke University, NC State University, UNC Chapel Hill and Wake Forest University/Wake Forest Baptist Medical Center University
<b>Next generation:</b>	schedule of plans beginning with 100 mbps wireless up to 1 gbps or higher wired symmetric service
<b>Network(s):</b>	next-generation communications network solutions
<b>Open access:</b>	reasonable and non-discriminatory access arrangements that (i) ensure equivalence of price and non-price terms and conditions for all retail services providers and (ii) permit such providers to differentiate their product offerings
<b>Requesting Entities (REs):</b>	participating municipalities
<b>Service Area:</b>	Cary*, Carrboro, Chapel Hill, Durham, Raleigh, Winston-Salem
<b>Vendor(s):</b>	business entity or entities which respond(s) to this RFP

*\* The town of Cary's participation is pending their February 13, 2013 town council meeting.*

## **Introduction and Overview**

The Triangle J Council of Governments and NC Next Generation Networks (NCNGN) are issuing this Request for Proposals pursuant to G.S. § 143.129.8, *et seq.* to develop the next-generation broadband infrastructure needed to meet the technological needs of current and future businesses, public institutions, educational institutions, and local residents. We are seeking network solutions and business models that are innovative, preparing our region for the future while serving the needs of today, and seek opportunities to best use existing public investments in currently underutilized government fiber and broadband assets to provide the maximum benefit to the public.

Vendors or coalitions of vendors are sought to achieve the following goals and objectives:

### **Goals**

1. Create a gigabit, fiber network to foster innovation, drive job creation, stimulate economic growth, and serve new areas of development in the community;
  - a. covers those areas prioritized in each community's Schedule with a negotiated plan for building out the remainder of each community;
  - b. provides a comprehensive broadband infrastructure that can be expanded upon to serve other areas of the region; and
  - c. provides service for a minimum of five (5) years from the date of first operation.
2. Provide an open access architectural framework that maximizes wholesale and retail service delivery and competition;
  - a. provides non-discriminatory interconnects.
3. Provide a flexible menu of optional retail services
  - a. offers supported retail broadband services with a guaranteed sustained minimum schedule of service ranging from a preferred 1 gbps with other options such as high speed wireless for certain market areas as well as temporary solutions with a timeline for permanent installation of the preferred solution; supports high quality voice, data, and video services, and telehealth solutions.
4. Use public-private assets to reduce the digital divide, enhance workforce knowledge and skills, promote economic development, enhance access for anchor

institutions, and serve other targeted social purposes identified by the participating municipalities;

- a. provides free or heavily discounted services to specified low-income neighborhoods (see each community's Schedule for a list of neighborhoods within each RE jurisdiction) and anchor institutions;
  - b. creates a working relationship between local governmental units, vendors, and non-profit organizations to fund hardware and educational services for low-income residents, the elderly, and other underserved populations; and
  - c. establishes free wireless networks in parks and public spaces in areas adjacent to the wired network.
5. Provide high speed internet service over a wired or wireless network at a substantial discount from current market prices.
- a. enables low wholesale access prices that reflect underlying costs while allowing Vendor(s) to earn a return on investment commensurate with the risks involved.

These goals support longstanding regional efforts to sustain and enhance our role as one of the research and technology hubs of the nation. To further these goals, the participating municipalities and associated governmental agencies may offer a variety of supporting assets, including access to existing, municipally-owned fiber; state and municipal rights-of-way; coordination with planned construction; colocation spaces; and the potential migration of existing service contracts for municipalities and off-campus university and healthcare facilities.

### **1.1 Network(s) Background**



(117 page document provided by email)

The objective of this Request for Proposal ("RFP") is to enable the participating municipalities ("Requesting Entities" or "REs") to engage, either collectively or individually, with one or more Vendors ("a business entity or entities which respond(s) to this RFP") to design, build, operate, support, and manage one or more open access, next-generation communications network solutions (the "Network(s)") that will enhance coverage and capacity to businesses, homes, governments, and institutions within and between those areas shown on Schedule 1.1 (the "Service Area"). "Next generation" service is defined as a schedule of plans beginning with 100 mbps wireless up to 1 gbps or higher wired symmetric service. Preference will be given to Vendors offering higher network speeds.

The initial implementation(s) will incorporate those capabilities deemed appropriate through collaborative planning between the local government representatives and

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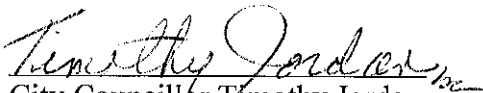
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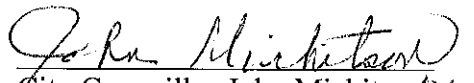
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March 6, 2020

TO: Madame President and Members of the City Council:

Councillors Jordan & Michitson request a discussion about the need for a five year plan for the police and fire departments.

  
City Councillor Timothy Jordan

  
City Councillor John Michitson

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March 6, 2020

TO: President and Members of the City Council:

Councillor Bevilacqua requests a discussion regarding the establishment of a Sustainable Community Committee with respect to energy and environment.

  
City Councillor Joseph Bevilacqua

**CITY COUNCIL**

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**CITY OF HAVERHILL**

**HAVERHILL, MASSACHUSETTS 01830-5843**

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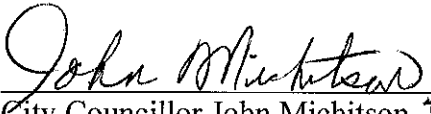
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March 2, 2020

TO: Madame President and Members of the City Council:

City Councillor John Michitson submits the attached Minutes and recommendations of the Citizen Outreach Committee meeting that was held on Feb. 20, 2020 for acceptance and discussion. Agenda item was Doc. 11-R - enable citizens to address options and provide feedback on ways to study Haverhill's Charter.

  
City Councillor John Michitson

## **CITY COUNCIL**

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### **MINUTES OF THE CITIZENS OUTREACH COMMITTEE MEETING HELD ON FEBRUARY 20, 2020**

A Citizens Outreach Committee meeting was held on Thursday, February 20, 2020 at 6:00PM in the City Council office, Room 204.

Committee Members: Committee Chairperson John Michitson, Vice President LePage, Councillors Sullivan and Jordan.

President Barrett and Councillor Macek also attended.

Attendees: Mayor Fiorentini, State Representative Vargas, School Committee Member Wood and 30 citizens attended \*

The following Document Item #11-R was discussed:

1. Communication from Councillor John Michitson requesting to propose Citizens Outreach Committee meeting to enable citizens to address options and provide feedback on ways to study Haverhill's Charter, including but not limited to Ward Representation on City Council, in preparation for related Administration and Finance Committee meeting.

Three themes emerged from Citizens Outreach Committee meeting on possible Charter changes. Here are the three major themes:

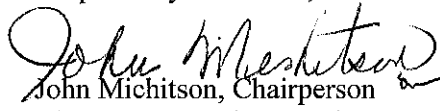
- a. Ballot question this Fall - for change to Ward & At Large Councillors only (hybrid option); rationale: simplify process with single question, do full blown Charter Commission in future; many favored 11 Councillors (7 Ward, 4 At Large) but some did not want to change number of City Councillors (7 Ward, 2 At Large.) Many said that Ward representation would ensure that every neighborhood has a voice. Some noted that that current barriers to run for office would be lowered if new candidates could focus solely on one ward instead of a city-wide campaign. It was stated that the City of Lowell had a law suit that forced the City to change to Ward and At Large City Councilors and School Committee members (hybrid option);
- b. Ballot question this Fall - for both Ward & At Large Councillors and School Committee; rationale: schools can benefit as well;
- c. Ballot question for full blown Charter Review. Some citizens favored a longer but deeper process. Rationale: not enough time to properly inform citizens on pros and cons for options a. and b. above for this Fall. Many cited other related issues in City to consider, such as term limits, longer terms of office (e.g. 4 years for Mayor and City Council), and alternatives to the current strong Mayor form of government in Haverhill to better balance power between Mayor and City Council.



Mayor Fiorentini stated that he preferred only a single ballot question on Ward & At Large Councillors (hybrid option,) but he left open the possibility of an additional ballot question on the School Committee hybrid option. He also supported a full blown Charter Review following this November's election if that is what citizens preferred. Mayor Fiorentini stated that he would be submitting an order for a ballot question on an upcoming the City Council agenda. State Representative Vargas wanted to add a second ballot question this Fall on the School Committee hybrid option, to ensure that all neighborhoods have a voice. School Committee member Wood did not want to change the current School Committee structure.

A motion was subsequently made, seconded and voted in favor by all Committee members to adjourn.

Respectfully submitted,

  
John Michitson, Chairperson  
Citizens Outreach Committee  
Haverhill City Council

March 2, 2020

JAM/bsa

c: Mayor Fiorentini  
Councillors

\*Attendees: Milton Taylor, Dana Lovell, Susan Kane, Lee Kane, Penelope Davis, Jon Goldfield, Ken Quimby, Gary Huber, Dee O'Neil, Richard Katsiare, Christine Kwitchoff, Amy Maciel, Karen McNamara, Stephen Costa, Graciela Trilla, Porfirio Matias, Ismael Matias, Fermin De La Crus, Mike Anasi, John Bachmann, Demet Haksever, Jon & Alison Campell, Stephen Gordon, Bill Luz, Jeff Grassie, Joanna Dix, Jean Sanders, Kathy Rurak, John Grant

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March 6, 2020

TO: Madame President and Members of the City Council:

City Councillor Colin LePage submits the attached minutes and recommendations of the Administration and Finance Committee meeting held on Feb. 18, 2020 for acceptance and discussion. Items discussed were Doc. 38-I/2019 Solar Ordinance; Doc. 89D/2019 outdoor advertising (billboards) of marijuana products; Doc. 11-F Rules and Regulations for City Council.

  
City Councillor Colin LePage

## CITY COUNCIL

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## CITY OF HAVERHILL HAVERHILL, MASSACHUSETTS 01830-5843

### MINUTES OF THE ADMINISTRATION AND FINANCE COMMITTEE MEETING HELD ON FEBRUARY 18, 2020

An Administration and Finance Committee Meeting was held on Tuesday, February 18, 2020 at 7:00 P.M. in the City Council office, Room 204.

Committee Members: Committee Chairperson Colin LePage, Councillor John Michitson, Councillor Mary Ellen Daly O'Brien, Councillor William Macek. Council President Melinda Barrett, Councillor Thomas Sullivan also attended

Department Heads: City Solicitor William Cox,

Attendees: Stephen Costa, Gary Shahinian, John Grant - WHAV

The meeting began at 7:04 P.M. and the following items were discussed:

- 1.) **Doc.38-I/19** – Communication from Councillor Macek to refer City's Ch. 255 – Zoning, Article XVIII, Solar Energy Systems, Sec. 255-185 thru 255-194 to Administration & Finance Committee; *The Committee and the City Solicitor reviewed the newly revised Solar Energy Systems (section 7.8) of Chapter 255 - Zoning, submitted by the City Solicitor and Attorney Bobrowski as requested at the August 5, 2019 meeting. Committee members offered a few minor edits, additions and typographical corrections to sections 7.8.4 General Requirements, 7.8.5 Review, 7.8.6 Dimensional Requirements, 7.8.7 Design and Performance Standards, 7.8.8 Safety and Environmental Standards, and the possible inclusion of listing in Section 7.8 the reference of Section 10.1.4 Development Review. The suggested edits will be forwarded by the City Solicitor for inclusion in the proposed ordinance and further reviewed at the Mayor-Council Workshop on Zoning scheduled for February 26, 2020 as well as at a subsequent Planning Board meeting and City Council meeting regarding Zoning, passed unanimously.*
- 2.) **Doc. 89-D/19** – Communication from Councillors LePage, Michitson and Jordan requesting discussion on reducing the exposure of persons under 21 years of age to outdoor advertising (billboards) of marijuana products as well as zoning regulations pertaining to smoke and/or vapor stores in Haverhill; *Concerning the matter of outdoor advertising (billboards), the Committee was informed by the City Solicitor that he has received a response (voicemail; but no discussion at this time) from the Cannabis Control Commission (CCC) concerning the City Council's request for an opinion (9/10/19 Council meeting) regarding the City's authority to enforce CCC Regulations, specifically Prohibited Practices such as "Advertising, marketing and branding by means of television, radio, internet, mobile applications, social media, or other electronic communication, billboard or outdoor advertising, or print publication, unless at least 85% of the audience is reasonably expected to be 21 years of age or older as determined by reliable and current audience composition data." The City Solicitor informed that he will update and inform the Committee when he has discussed the matter with the CCC. Councillor LePage updated the Committee on the City Council's request (9/17/19 Council meeting) for State Legislation to ban marijuana advertising on billboards. He informed that Senator DiZoglio filed Bill S.2461 and that they both submitted oral and written testimony supporting such legislation on January 28<sup>th</sup> to the Joint Committee on Cannabis Policy at the State House.*

*Concerning the matter of zoning regulations pertaining to smoke and/or vapor stores in Haverhill, after a brief discussion on the matter, the Committee requested that the City Solicitor research and review zoning ordinances and the table of use and parking regulations pertaining to this matter, and schedule a future meeting (date to be determined) with the Committee to review those findings, passed unanimously.*

- 3.) Doc. 11-F** – Communication from Councillor LePage requesting a discussion regarding the Rules and Regulations for the City Council; *The Committee received and reviewed an email of proposed changes from Councillor Bevilacqua as well as proposed additions and deletions of such Rules were suggested and discussed by all present. Proposed changes are to: Rule 1, Rule 2, Rule 3, Rule 4, Rule 11, Rule 12, Rule 20, Rule 27, Rule 28, Rule 31, Rule 32, Rule 34, Rule 36 and Rule 39. \* A motion was made to send the proposed amendments to the City Solicitor for review of language and legality and then back for full Council review and approval, passed unanimously.*

The following Committee Study list documents were reviewed for disposition:

- **Doc. 38-F** – Communication from Councillors Barrett and LePage requesting to discuss double poles in the City; *item to remain on study list with recommendation to be moved to new Long Term (Recurring Matters) Study List as described in Rules 11 and 28 of the Rules and Regulations of the City Council.*
- **Doc. 26-E** – City of Haverhill – Mayor’s Recommendations, Capital Improvement Program – 2016-2020; *item to remain on study list with recommendation to be moved to new Long Term (Recurring Matters) Study List as described in Rules 11 and 28 of the Rules and Regulations of the City Council.*
- **Doc. 82** – Ordinance re: Vehicles & Traffic – Amend Ch. 240-18, Article XVI, Central Business District Parking – Fees, Rate and Terms; *item to remain on study list with recommendation to be moved to new Long Term (Recurring Matters) Study List as described in Rules 11 and 28 of the Rules and Regulations of the City Council.*
- **Doc. 82-B** – Ordinance re: Vehicles & Traffic – Amend Ch. 240-18, Article XVI, Central Business District Parking – Chart; *item to remain on study list with recommendation to be moved to new Long Term (Recurring Matters) Study List as described in Rules 11 and 28 of the Rules and Regulations of the City Council.*
- **Doc. 89-O** – Communication from Councillor LePage requesting to introduce Dr. Maddox to present the Mass Prevention Alliance position on restricting youth access & exposure to pro-marijuana and social normalizing from billboard and outdoor advertising; *item to be removed from the Council Study List as it is also included in Doc. 89-D/19, passed unanimously.*

The meeting adjourned at 8:48 P.M.

Respectfully submitted,

Handwritten signature of Colin LePage in black ink, with the initials "bsr" written below the signature.

Colin LePage, Chairperson  
Administration and Finance Committee  
Haverhill City Council

March 6, 2020

CL/bsa

\*Council Rules 2020 DRAFT

c: Mayor James J. Fiorentini  
City Council

## **RULES AND REGULATIONS OF THE CITY COUNCIL**

### **ORGANIZATION**

**Rule 1.** The City Council shall meet for organization at ten o'clock in the forenoon on the first Monday of January following the regular municipal election and the members of the City Council shall severally make oath, before the City Clerk or a justice of the peace, to perform faithfully the duties of their respective office, except any member-elect not present shall make oath at the first regular meeting of the City Council thereafter which s/he attends.

For the purpose of organization, the City Clerk shall be temporary Chair until the President and Vice President are elected. The City Clerk shall open nominations and each candidate shall be nominated by name only and require a second to be considered. No other comment or information shall be made during the open nomination period. Once completed, the City Clerk shall close nominations and call the roll for elections. President nominee(s) must have a minimum of one year's experience on the Haverhill City Council to qualify for election.

The City Council shall, by majority vote of all members elected, elect a President and Vice President from its own members; and the persons elected shall likewise make oath to perform faithfully the duties of the respective offices to which they are so elected at the same meeting, except any member-elect not present shall make oath at the first regular meeting of the City Council thereafter which s/he attends.

The following year, the first Tuesday of January at 7:00 o'clock P.M., the members of the City Council shall meet for the purpose of organization for the election of President and Vice President in the same manner as the inaugural election.

Within the first sixty (60) days of each calendar year, the members of the City Council shall vote to approve, amend, add, disapprove or delete from its Rules and Regulations. The City Council may also amend, add or delete from its rules throughout the year through a process of having an agenda item referred to Administration & Finance receiving Administration & Finance recommendation and majority approval of the full City Council.

### **REGULAR MEETINGS**

**Rule 2.** Regular meetings of the City Council shall be held every Tuesday at 7:00 o'clock P.M. except in June there shall be a meeting on the first, third and fourth Tuesday except when June has five Tuesdays then it will be first, third and fifth. From July until the second Tuesday after Labor Day, the Council shall meet every other week beginning with the second Tuesday of July. In September, starting with the second Tuesday after Labor Day, the Council shall return to its regular weekly schedule. Additionally, in any year that the Mayor should choose to deliver his/her State of the City address on a Tuesday night at 7:00P.M., the City Council meeting scheduled for that week shall be appropriately cancelled in advance. The meeting(s) scheduled for the ~~Tuesday after the President's Day holiday in February~~, Tuesday before Thanksgiving and the Tuesday of the Christmas holiday week shall ~~be cancelled-not be included in the Councils annual calendar of meetings.~~ The meetings shall be held in the City Council Chambers, City Hall, unless a majority of the full Council votes to hold a meeting at an alternative location at least six days prior to such change. The City Council may at any meeting, by a majority vote, discontinue or add any further meetings ~~herein before-not~~ scheduled-so long as such action is

April 9, 2019

posted at least forty-eight (48) hours in advance in compliance with the Massachusetts Open Meeting Law (M.G.L. c.30A sections 18-25).

## **HOLIDAYS**

Rule 2A. Whenever the day set by these rules for any meeting of the City Council shall fall upon or immediately after a Monday holiday, then such meeting shall not be included in the Councils annual calendar of meetings.~~be cancelled by order of the Council.~~

## **MEETINGS OPEN TO PUBLIC**

Rule 3. Except in the case of executive sessions, all meetings of the City Council and of City Council Committees thereof shall be open to the public, and the presiding officer of the City Council shall in his/her sole discretion provide that citizens shall have up to three (3) minutes, unless a longer period is deemed necessary by the presiding Councillor to be heard at any such meeting in regard to any matter considered there. All meetings of the City Council shall conform to the Massachusetts Open Meeting Law (M.G.L. c.30A sections 18-25).

## **SPECIAL MEETINGS**

Rule 4. The President, or in his/her absence the Vice President, of the City Council, or any three members thereof, may at any time call a special meeting by causing written notices, stating the time of holding such meeting and signed by the person or persons calling the same, to be delivered in hand or by electronic communication to each member of the City Council at least -forty-eight (48) hours before the time of such meeting-, and posted per the Massachusetts Open Meeting Law.

Every notice for a special meeting shall specify the subject to be acted upon and the place and time where the meeting is to take place.

## **QUORUM**

Rule 5. Five (5) members of the City Council shall constitute a quorum.

## **REMOTE PARTICIPATION**

Rule 6. Remote participation of City Council meetings shall be conducted in accordance with the Code of the City of Haverhill, Chapter 66, Article III.

## **PRESIDING OFFICER**

Rule 7. The President, if present, shall preside at the meetings. In the absence of the President, the Vice President of the City Council shall preside or, in the absence of both, the next available Councillor in a downward sequential order as determined by the voting results of the last City Council election shall preside if s/he desires during the absence of both the President and the Vice President.

## **VACANCY IN THE OFFICE OF PRESIDENT OR VICE PRESIDENT**

Rule 8. If the office of President becomes vacant, the Vice President shall assume duties of the President or if the office of Vice President becomes vacant, the City Council, in the manner provided in Rule 1, shall at the next regularly scheduled meeting elect one of its members to fill such office for the unexpired term, provided that no such vacancy shall be filled so long as there is a vacancy in the City Council.

### **DUTIES OF PRESIDING OFFICER**

Rule 9. The presiding officer shall preserve decorum and order, may speak to points of order in preference to other members; shall decide all questions of order, subject to any appeal to the City Council, regularly seconded; and no other business shall be in order until the question on the appeal shall have been decided. The vote upon the appeal from the ruling of the chair shall be by roll call and shall stand unless a majority of the votes are to the contrary. The chair shall be allowed to vote on any question of appeal.

The presiding officer or his/her designee shall report all votes and the presiding officer shall then declare the result, and if the result be in doubt, may call for a roll call vote. Such declaration, if not the result of a roll call, shall stand unless it is reversed by a roll call called for by any member.

### **RELINQUISHING THE CHAIR**

Rule 10. When the presiding officer desires to relinquish the chair, s/he shall call upon the Council Vice President, and, if not present, s/he shall call upon the next available Councillor in a downward sequential order as determined by the voting results of the last City Council election but such substitution shall not continue beyond the will of the presiding office so relinquishing the chair or beyond any adjournment, except as hereafter provided. For practical and logistical purposes, at all Council meetings the Vice President shall sit to the immediate right hand of the President, (chair 4) and Councillors 3, 4 and 5 shall occupy chairs 1, 2 and 3 in descending order of election.

If the presiding officer wishes to present an agenda item or participate in any subject under debate, s/he shall relinquish the chair as above provided and shall not resume the chair until that particular agenda item is concluded.

The presiding officer may, however, express a final opinion on any subject in which debate has concluded, without relinquishing the chair.

### **COMMITTEES**

Rule 11. The President of the City Council shall appoint all standing committees, all special committees, shall fill any committee vacancy and designate the rank of the members of each committee unless specifically directed otherwise by a majority of the council. There shall be the following standing committees:

1. Administration & Finance Committee (A&F): Department of Finance & Records; and Law

2. Natural Resources & Public Property Committee (NRPP): Water and Wastewater; Energy Conservation; Conservation Commission; ~~Department of~~ Public Buildings; Assessors; Parks and Playgrounds
3. Planning & Development Committee (P&D): Department of Community Planning and Development; Planning Department; Engineering.
4. Public Health, Safety & Works Committee (Public Safety): Department of Law Enforcement; Department of Fire Safety Services; Public Works; Public Health.
5. Citizens Outreach Committee: Constituent and Neighborhood Groups

The City Councillor responsible for initiating an item at an official Council meeting, which is then forwarded to the Mayor, City Department Head(s) or Committee(s) for further study and review, is personally and solely responsible for facilitating all necessary steps for that item's final disposition. -The procuring Councillor must also make him/herself available at all of the Committee meeting(s) upon which said item is to be reviewed. The Committee Chairperson shall make reasonable efforts to set the meeting date(s) to accommodate the procuring Councillors schedule. However, if the Chairperson believes that the issue at hand cannot be delayed, a meeting may be called without the procuring Councillor in attendance. In which case, the item can be acted upon, continued or disposed. Failure or inability of procuring Councillor to attend the meeting to which the item is scheduled to be heard shall result in said item being dealt with without the procuring Councillors participation or being continued ~~tabled~~ to the next meeting of the Committee.

~~The~~Each Committee Chairperson shall ensure items referred to Committee be reported on as soon as reasonably possible after item is referred. On any item submitted to Committee of the City Council, the President shall have final authority as to which Committee or to which department an item will be forwarded to. Any item submitted to Committee of the City Council shall be reported back to the City Council with recommendation(s) for action, if any whenever reasonably possible. The City Council Vice President shall work to ensure that whenever reasonable, items referred to Committee be reported on within 60 days of referral by the Committee Chairperson. Items that cannot be reported out or acted upon in 60 days may be transferred to a long term study list as detailed in Rule 28.

The meetings of the standing committees of the City Council shall be held on Mondays, Wednesdays or Thursdays no earlier than 7:00 PM. in the City Council office, Room 204, except in cases where the subject matter to be discussed is deemed by the Committee Chairperson to be more appropriate at another day, time or place. All Committee meetings shall be scheduled in compliance with the Massachusetts Open Meeting Law.

### **SUFFICIENCY OF VOTE**

Rule 12. The affirmative vote of a majority of all the members elected to the City Council shall be necessary for the passage of any order, ordinance, resolution, or vote except as noted herein or otherwise provided by the General Laws. The affirmative vote of a majority of the members present shall be sufficient to adjourn any meeting of the City Council.

### **COUNCIL VOTES NECESSARY PLAN A**



	Annual Budget	Majority	5 votes
	Salary Appropriation	Majority	5 votes
	Salary Ordinance (increase)	2/3	6 votes
	Loan Orders	2/3	6 votes
	Transfer from one department to another (C.44 S.33B)	2/3	6 votes
	Transfer within department	Majority	5 votes
	Eminent Domain	2/3	6 votes
*	Zoning ordinances and amendments	2/3	6 votes
**	Zoning Special Permits	2/3	6 votes
present	Suspend Rules	<u>3/4 Majority</u>	of Councillors
	To amend a document	Majority	5 votes
	To rescind a document	2/3	6 votes
	To expunge a document	2/3	6 votes
	To override a Mayor's veto	2/3	6 votes
	Motion to censure	2/3	6 votes
	<u>To table a matter without a quorum present</u>	Majority	of Councillors present
*	If a petition signed by the owners of 20% of the property abutting is presented to the Clerk prior to the close of the hearing, protesting a change, the document requires 7 votes, (see G.L. C.40A s.5)		
**	Cluster Residential Development, Planned Unit Development and Multifamily dwellings (see G.L. c.40A), Used and New Car Dealerships (see Zoning Regulations Ch.255-16, Table of Use and Parking Regulations)		

### **EVERY MEMBER SHALL VOTE EXCEPT AS PROVIDED IN THIS RULE**

**Rule 13.** Every member present when a question is put shall vote, unless any Councillor for special reason(s) or a conflict of interest stated at the introduction of an agenda item shall be excused from voting. Any Councillor who declares an intent not to participate in an agenda item shall leave the Council Chambers until such time as the agenda item has concluded. No member shall leave the Council Chambers without permission of the chair if his/her presence is necessary to make a quorum.

### **MANNER OF VOTING YES - NO - VOICE VOTE**

**Rule 14.** Final votes of the City Council shall be by individual voice vote by YES or NO and shall be entered on the records. The presiding officer shall always vote last.

With the exception of votes for orders, ordinances and Council votes necessary under the Plan A form of government, the President may proceed by voice vote of the City Council unless objected to by another member of the City Council in which case the vote shall be recorded as stated above.

Notwithstanding the language contained in Rule 12, no member shall vote on any question or serve on any committee where his/her private right is immediately concerned, distinct from the public interest.

Rule 15. Prior to the announcement by the Chair of the result of a roll call vote, any Councillor may ask to have his/her name called again in order to record him/herself differently.

### **GAINING THE FLOOR**

Rule 16. Every Councillor, when wishing to speak, shall raise his/her hand respectfully or, if available, signal the Chair by some other acceptable manner, asserting his/her desire to gain the floor and wait until s/he is recognized.

### **EVERY ORDER OR RESOLUTION MUST BE ENDORSED**

Rule 17. No order or resolution shall be received or acted upon unless endorsed by a member of the Council and properly seconded.

### **WITHDRAWING NOTICE**

Rule 18. After a motion is stated or read by the Chair and properly seconded, it shall be deemed to be in possession of the Council, and shall be disposed of by vote, but the mover or seconder may withdraw it at any time before a decision or amendment.

### **PETITIONS ONCE REJECTED**

Rule 19. Except as otherwise might be provided specifically in the Massachusetts General Laws, whenever final action on any order, ordinance, petition, question, discussion, or public participation has been taken by the City Council, no further order, ordinance, petition question, discussion, or public participation which in substance is the same as heretofore acted upon, shall be resubmitted to the Council within six months from the time of the Council's previous action thereon unless two-thirds of the Council consents in writing for its resubmission.

Nothing in this rule shall be intended to waive provisions of Rules 23 and 24 and said rule shall not be considered inconsistent with said rules numbered 23 and 24.

### **ORDINANCE AND BOND ORDERS REFERRED TO CITY SOLICITOR**

Rule 20. Every ordinance and every order for a bond issue shall upon its first reading or filing and, before its passage, be referred to the City Solicitor, who shall forthwith examine the same as to its legality and notify the Council of his/her findings.

That it be a standing rule of this Council that no final or definite action be passed by this Council in the matter of abatement of betterment assessments until such time as the legality of a proposed abatement be approved by the City Solicitor.

### **MUNICIPAL EMPLOYEE CONTRACTS AND SALARY ORDINANCES**

Rule 21. All municipal collective bargaining agreements and other employment contracts sent to the City Council by the Mayor shall be placed on file with no further action taken, except as to the appropriation of funds necessary to fund the collective bargaining agreements and employment contracts. The approval of any change or alteration to a salary ordinance which requires an increase in wages or other financial benefits to employees shall not be acted on until such time as a financial disclosure form, agreed to by the Mayor and City Council, signed by the Auditor, Department Head and the Human Resources Director is provided to the Council.

### **ENACTING STYLE**

Rule 22. All by-laws passed by the City Council shall be entitled ordinances and the enacting style be "Be it ordained by the City Council of the City of Haverhill". In all votes by which the City Council expresses anything by order or by command, the enacting style shall be "Ordered:" and in all votes by which the City Council expresses opinions, principles, facts or purposes, the enacting style shall be "Resolved".

Rule 23. When a question is under debate, the chair will receive motions in accordance with Order of Precedence outlined in "Robert's Rules of Order".

### **PREVIOUS QUESTION**

Rule 24. The previous question shall be put in the following form: "Move the main question." Once seconded, all further amendment or debate of the main question shall be suspended until the previous question is decided.

On the previous question, not exceeding five minutes shall be allowed for debate, which shall be confined to giving reasons why the main question should not be put, and no member shall speak more than two minutes.

### **RECONSIDERATION**

Rule 25. After a vote has been taken, it shall be in order for any member voting with the prevailing side to move reconsideration thereof at the same meeting at which the vote was taken, or to file with the City Clerk, not later than twelve o'clock noon of the second business day following such meeting, written notice of a motion to reconsider such vote. After receiving such written notice of reconsideration, the Clerk shall place it on the calendar for the next regular meeting or for any intervening special meeting, provided the same is included in the call thereof.

Whenever a written notice of a motion to reconsider has been filed as aforesaid, the Clerk shall notify all of the members of the City Council and any parties that spoke at the Council meeting when the original vote was taken. In the case of a question decided by a tie vote, the prevailing side shall be considered to be the one in whose favor the question was decided. Not more than one motion for reconsideration of any vote shall be entertained, and no vote upon either of the following motions shall be reconsidered: viz: to adjourn; to lay on the table; to take from the table and the previous question.

### **KEEPER OF THE RECORD**

**Rule 26.** The Clerk or her/his designee shall attend and keep the records of all meetings of the Council. S/he shall record the names of the members present, and shall have the care and custody of the city records, and all documents, maps, plans and papers pertaining to the business of the City Council. The City Council Administrative Assistant or her/his designee shall assume the duties of the Clerk in her/his absence.

### **PAPERS MUST BE FILED BEFORE 11:00 A.M. FRIDAY BEFORE MEETING**

**Rule 27.** All papers of whatever description which may require action by the City Council shall be presented to the City Clerk not later than 11:00 A.M. on the Friday preceding the day of each regular meeting, except when such preceding day is a holiday or City Hall is closed, then they shall be presented at the same hour on the Thursday preceding the day of the meeting. Papers presented after that hour on such day will not be considered until the next meeting, unless admission is approved by three-quarters (3/4) of the City Council a majority of Councillors present.

### **CLERK SHALL PREPARE A LIST OF ALL MATTERS**

**Rule 28.** The City Clerk in cooperation with the Council President shall prepare a list of all matters to come before the City Council at each meeting in accordance with the established order of business and shall deliver to the Council office for each Councillor, a copy of the same on the same day that the agenda is prepared.

As part of the agenda for each meeting, on a separate sheet in a suitable format, there shall be a list of all orders, documents, reports and communications which have been referred to a Council committee for report or action, along with the date submitted to the committee.

**Rule 28A.** No business or document scheduled to come before the City Council may be removed or omitted from the agenda prior to a meeting.

**Rule 28B.** The City Council shall allow for re-reading of all back up material related to any Ordinance before the vote is taken for passage.

**Rule 28C.** The President of the City Council shall not allow any communication or other matter to be placed on the agenda that does not conform with the City Council's Rules and Regulations or, if not governed by a rule or regulation, that does not conform with Robert's Rules of Order. The City Council President or presiding officer shall have oversight and discretion of the content of the final agenda to ensure compliance with the Massachusetts Open Meeting Law (M.G.L.c.30A sections 18-25). Agenda items must be sufficiently specific to reasonably inform the public of the issues to be discussed at the meeting. And if in the sole determination of the presiding officer that specificity is lacking, the matter may be delayed until such information is obtained.

### **PUBLIC PARTICIPATION**

**Rule 29A.** Any Haverhill resident, organization or taxpayer may request through the President, or any other member, to be placed on the agenda for the next regularly scheduled meeting to speak about a matter or concern, provided it is related to issues that are within the

Council's jurisdiction. The person shall be allowed up to three (3) minutes to speak, which time may be expanded or limited at the discretion of the presiding officer.

Rule 29B. Any Haverhill resident, organization or taxpayer may request, in writing, to speak to the City Council at the next regularly scheduled meeting by filing a completed request form with the City Clerk's Office. Request forms may be obtained at the City Clerk's Office or downloaded from the City of Haverhill Official web site. Requests to speak must be about a matter or concern that is related to issues that are within the Council's jurisdiction, and the written request to speak must contain details of the intended topic of discussion, and be specific enough to comply, in the opinion of the Council's presiding officer, with the Massachusetts Open Meeting Law. Any request form filed with the City Clerk's Office that appears to be complete will then be forwarded to the City Council's presiding officer in order to seek approval to place the request item on the next regular meeting agenda. In the event that a request to speak form is incomplete, vague or lacking, in the opinion of the Council's presiding officer, and requires additional time to obtain enough detail so that the item when placed on an agenda will adequately inform the general public as to the specific topic to be discussed and thereby complying with the Massachusetts Open Meeting Law, such delay may cause the request to be held until such time that sufficient additional information is added to the request. The responsibility to provide sufficient detail on the request forms and thereby prevent any delay in filing shall be the sole responsibility of the requesting party. The person making the request shall be allowed up to three (3) minutes to speak, which time may be expanded or limited at the discretion of the presiding officer. Note: for other methods of public participation, see Rules 3, 29A and 36.

## **EXAMINATION OF RECORDS OF PREVIOUS MEETING**

Rule 30. At each meeting of the Council, the records for the meeting shall be referred to a member thereof (excepting to the President) for examination; and for the next Council meeting s/he shall report the results thereof to the Chair who shall accept the minutes for the file unless objected by any City Councillor whereupon the Chair shall then place before the meeting the question of approval of the same.

## **ORDER OF BUSINESS**

Rule 31. At every regular meeting of the City Council the order of business shall be as follows:

1. Opening Prayer, and additional information at the discretion of the presiding officer
2. Pledge of Allegiance
3. Approval of the records of previous meeting
4. -Assignment of minutes review for next meeting
5. Communications from the Mayor
6. Communications from Councillors to introduce an individual(s) to address the Council
86. Communications and Reports from City Officers and Employees
97. Utility hearing(s) and related order(s)
108. Hearings and related Orders
79. Public Participation – Requests under Council Rule 29B
110. -Appointments
124. Petitions

- 132. Motions and Orders
- 143. Communications from Councillors
- 154. Unfinished business of preceding meetings
- 165. Resolutions and Proclamations
- 176. Council committee reports and announcements

The above shall not be departed from except by permission of the presiding officer.

Any public hearing that is expected to exceed more than two hours in duration in the opinion of the City Council President, may be scheduled by the President as a special meeting to be held other than at the time of a regularly scheduled City Council meeting, provided that special Council meeting can be televised by the local cable channel.

### PASSAGE AT ONE SESSION

Rule 32. Except as otherwise might be provided specifically in the Massachusetts General Laws, any ordinance after having been placed on file for at least 10 days and approved to legality by the City Solicitor, and any order or resolution may be passed through all its stages of legislation at one session, provided that no member of the Council objects thereto; but if any member of the Council objects, the measure shall be postponed for that meeting.

### PARLIAMENTARY PRACTICE

Rule 33. In all matters of parliamentary practice not provided for in these rules or the Massachusetts Open Meeting Law (~~M.G.L. c.30A sections 18-25~~), the City Council shall use "Robert's Rules of Order", the latest edition, as a guide.

Rule 34. Insofar as these rules are not of statutory source or origin, the same may be suspended at any meeting by a majoritythree-quarters (3/4) vote of all Councillors present, but not otherwise. Suspension of rules shall apply only for the subject matter under consideration and must be stated in detail prior to voting for said suspension of rules. A suspension of the rules to add an item to the agenda for discussion must be of exigent circumstances. Exigent circumstances shall not include any matter which could have been added to an amended agenda prior to the commencement of the meeting, in compliance with the Open Meeting Law.

Upon completion of process as stated in Rule 1 these rules may be amended or repealed by the vote of five Councillors, but said amendment or repeal shall not be effective until the next regular meeting.

If any action is taken inconsistent with these rules, the same shall be construed to have been taken in suspension thereof provided there is a majoritythree-quarters (3/4) consentvote of all Councillors presentmembers of the Council, or there is no objection raised prior to the meeting being adjourned.

### COUNCIL BUDGET

Rule 35. Prior to the President's submission of the Council annual budget to the Mayor, the President shall seek input from each Councillor and each Councillor shall be allowed to provide his/her input into the City Council budget request.

## **HEARINGS**

Rule 36. All public hearings of the City Council will have the following guidelines. The proponent or petitioner will have up to thirty (30) minutes to make their presentation. The opposition will have up to thirty (30) minutes to make their presentation. Each side, proponent and opposition, will have up to five (5) minutes each for rebuttal after initial presentations. Anyone wishing to speak in favor of or against the proponent or petitioner shall be allowed up to three (3) minutes, in addition to the thirty (30) minutes each side is given to present. At the discretion of the presiding officer, a speakers' time may be extended or limited ~~due to repetitious information~~.

If a petitioner needs more time for a presentation, the presiding officer may at his/her discretion allow for additional time for any proponent or petitioner to complete a presentation, provided that an equal amount of time be granted to the opposition.

## **INDOCTRINATION OF NEW COUNCILLORS**

Rule 37. It shall be the responsibility of the Council President to hold indoctrination for all new Councillors within thirty days of the final election. This also includes making available to Councillors Robert's Rules of Order in the City Council office and any other information that is pertinent for a smooth transition.

## **INTRADEPARTMENTAL COMMUNICATION**

Rule 38. Any individual Councillor or the Council body may make a formal request for information or ask pertinent questions of the Mayor, City Department Heads, Boards or Commissions pursuant to a matter placed on the Council meeting agenda provided, that, in all cases, the information requested or questions asked, be in accordance with the following manner:

The City Council at any time may request from the Mayor specific information on any municipal matter within its jurisdiction, and may request him/her to be present to answer written questions relating thereto at a meeting to be held not earlier than one week from the date of the receipt by the Mayor of said questions. The Mayor shall personally, or through a designated representative, the head of a department or a member of a board, attend such meeting and publicly answer all such questions. The person so attending shall not be obliged to answer questions relating to any other matter. The Mayor may attend and address the City Council in person or through the head of a department, or a member of a board, upon any subject.

## **USE OF CITY COUNCIL STATIONERY**

Rule 39. The use of City Council stationery with official letterhead shall be afforded to the Council President to communicate with any City Department, citizens, private businesses or State and Federal entities as s/he deems necessary. However, any communication issued by any other Council member on said stationery with respect to an issue previously, presently or potentially under the auspices of the City Council, Mayor or any commission, committee,

authority, board, task force or any other decision making body on the local, state or federal level, must be brought through the Council Administrative Assistant and must be copied and approved by the Council President before such letter is sent by mail, email, hand delivery or any other delivery process.

The Council President shall be responsible for alerting each newly elected Councillor of this rule during the orientation period outlined in Rule 37.

### **SPECIAL ELECTION AND BALLOT QUESTIONS**

Rule 40. Whenever the City Council votes for any special election or question to be placed on a ballot, the City Clerk shall immediately enter into the agenda for the following week an agenda item that would require providing a copy of the certified mail receipt to each Councillor. This would prove that the proper departments in local or state government have been notified of the special election or of the ballot question.

### **MOTIONS TO CENSURE**

Rule 41. A communication to place a motion to censure a member of the City Council on the agenda must be filed with the City Clerk in a timely manner and must be in writing and signed by no less than six members of the City Council and must specify egregious behavior and/or conduct unbecoming of a City Councillor.



## CITY COUNCIL

MELINDA E. BARRETT

*PRESIDENT*

COLIN F. LEPAGE

*VICE PRESIDENT*

JOSEPH J. BEVILACQUA

JOHN A. MICHITSON

THOMAS J. SULLIVAN

TIMOTHY J. JORDAN

MICHAEL S. MCGONAGLE

MARY ELLEN DALY O'BRIEN

WILLIAM J. MACEK



CITY HALL, ROOM 204  
4 SUMMER STREET  
TELEPHONE: 978 374-2328  
FACSIMILE: 978 374-2329  
www.ci.haverhill.ma.gov  
citycncl@cityofhaverhill.com

## CITY OF HAVERHILL HAVERHILL, MASSACHUSETTS 01830-5843

### DOCUMENTS REFERRED TO COMMITTEE STUDY

38-F	Communication from Councillors Barrett and LePage requesting to discuss double poles in the City	A & F	3/15/16 9/6/16, 11/3/16, 1/17/17, 5/11/17, 10/24/17 3/6/19
38-W	Communication from Councillor Barrett requesting to give an update on response from MBTA/Keolis & US EPA about idling trains in Bradford	Citizen Outreach	4/5/16 1/31/17
26E	City of Haverhill – Mayor’s Recommendations, Capital Improvement Program – 2016-2020	A & F	5/31/16 11/3/16, 5/11/2017, 7/25/17, 2/15/18 3/6/19, 4/17/19
10-B	Communication from President Michitson asking to request from Mayor status of facility improvements to public buildings and parks to comply with American w/ Disabilities Act (ADA)	Citizen Outreach	1/3/17 1/31/17, 8/15/17
10-U	Communication from President Michitson requesting discussion on next steps to provide comprehensive long range plan for Haverhill	Citizen Outreach	1/31/17 8/15/17, 4/23/18
38-D	Communication from Councillors Sullivan and Barrett requesting an update on City’s emergency management plan and status of working generators in all public building in City	Public Safety	3/20/18 1/23/19
82	Ordinance re: Vehicles & Traffic – Amend Ch. 240-108, Article XVI, Central Business District Parking – Fees, Rate and Terms	A & F	7/10/18
82-B	Ordinance re: Vehicles & Traffic – Amend Ch. 240-108, Article XVI, Central Business District Parking – Chart	A & F	7/10/18
93-L	Communication from President Michitson requesting to introduce Dave Labrode to discuss street tree plantings	NRPP	8/7/18 2/28/19
38-I	Communication from Councillor Macek to refer City’s Ch. 255 – Zoning, Article XVIII, Solar Energy Systems, Sec. 255-185 thru 255-194 to Administration & Finance Committee	A & F	3/12/19 4/3/19, 8/5/19
13-Y	Communication from Councillor LePage to discuss accounting of revenue funds received from Licensed Marijuana establishments & their allocation to mitigate costs and impacts to city	A & F	3/12/19 8/5/19
38-J	Communication from Councillor Macek requesting a discussion about reserve parking spaces at City Hall designated for Registry of Motor Vehicles	NRPP	3/19/19
79-F	Communication from Councillor Sullivan requesting to introduce Kathleen Fitts, Gale Park Assoc. to request the city replace the Gale Park Fountain in fiscal year 20	NRPP	6/25/19
79-T	Communication from Councillors Sullivan and Barrett re: discussion with VINFEN & Haverhill Police Dept. regarding incident in neighborhood of 20 Westland Ter. group home on 7/5 and steps being taken to better supervise residents and reduce police calls to residence	Public Safety	7/23/19

### **DOCUMENTS REFERRED TO COMMITTEE STUDY**

89-D	Communication from Councillors LePage, Michitson, Jordan requesting discussion on reducing exposure of persons under 21 yrs. of age to outdoor advertising (billboards) of marijuana products and zoning regulations pertaining to smoke and/or vapor stores in Haverhill	A & F	7/23/19 8/6/19
89-K	Communication from Councillor Macek requesting open discussion relative to the process for Establishing a Charter Commission to review the current City of Haverhill Charter	Citizen Outreach A & F	8/6/19
89-O	Communication from Councillor LePage requesting to introduce Dr. Maddox to present the Mass Prevention Alliance position on restricting youth access & exposure to pro-marijuana and social normalizing from billboard and outdoor advertising	A & F	9/10/19
89-U	Communication from Councillor LePage re: applying for Community Compact Best Practices Program grant for benefit of city and its residents	Citizen Outreach A & F	9/17/19
89-V	Communication from Councillor McGonagle requesting a discussion about school bus safety	Public Safety	9/17/19
11	Communication from Councilor Jordan requesting to introduce Steve Costa of Citizens for Haverhill Fire to discuss Mayor's CIP and occupational cancer	Public Safety	1/7/20
11-F	Communication from Councillor LePage requesting a discussion regarding the Rules and Regulations for the City Council	A&F	1/7/20
11-S	Communication from Councillor Sullivan requesting a discussion regarding a property owner's request to lease or purchase City land abutting their property at 256 Whittier Rd.	NRPP	2/4/20