

## ENERGY CREDIT PURCHASE AGREEMENT

This Energy Credit Purchase Agreement is made and entered into as of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between 2 Ice House, LLC, a Massachusetts limited liability company, for itself and any and all assignees permitted hereunder (“**Seller**”), and the Town of Medfield, a Massachusetts municipality (“**Buyer**”). Seller and Buyer may be referred to herein collectively as the “**Parties**” and individually as a “**Party**”.

### Recitals

A. Seller plans to construct at the Property (as defined in the attached Exhibit A) one or more canopy solar photovoltaic generation facilities with an aggregate generating capacity of up to approximately 939 KW DC (720 KW AC) (individually, a “**Facility**” and collectively, the “**Facilities**”).

B. The Parties intend that, pursuant to the SMART Program Rules (as defined below), the Facilities will be both (i) Alternative On-Bill Credit Generation Units (as defined below) and will generate Alternative On-Bill Credits or AOBCs (as defined below) and (ii) Public Entity Solar Tariff Generation Units (as defined below).

C. Pursuant to the SMART Program Rules, Seller (or its designee) will participate in the Utility’s SMART Tariff (as defined below) as a Host Customer of the Facilities and, as such, intends to periodically accrue AOBCs associated with the Electricity generated by the Facilities during the Term.

D. Subject to the terms and conditions of this Agreement, Seller desires to deliver to Eversource East (the “**Utility**”) all of the Electricity generated by the Facilities during the Term and Buyer desires to pay Seller for and receive one hundred percent (100%) of the AOBCs associated such Electricity (the “**Buyer Allocation Percentage**”).

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

### ARTICLE 1 DEFINED TERMS

As used in this Agreement, the following terms, when used in this Agreement and initially capitalized, shall have the following meanings:

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

“**Agreement**” means this Energy Credit Purchase Agreement, including all exhibits and attachments hereto.

“**Allocation Instructions**” has the meaning set forth in Section 7.5(a)(i) of this Agreement.

“**Alternative On-Bill Credit**” or “**AOBC**” has the meaning set forth in the SMART Program Rules.

“**Alternative On-Bill Credit Generation Unit**” has the meaning set forth in the SMART Program Rules.

“**AOBC Price**” has the meaning set forth in Exhibit C attached hereto.

“**Applicable Legal Requirements**” means any Laws which may at any time be applicable to this Agreement, the Facilities, the Facility sites, or any part thereof or to any condition or use thereof, and all leases, permits and other governmental consents which are or may be required for the use and occupancy of the Facility sites or for the installation, operation, maintenance and removal of any of the Facilities.

“**Bankrupt**” means, with respect to a Party: (i) a Party against which a bankruptcy, receivership or other insolvency proceeding is instituted and not dismissed, stayed or vacated within sixty (60) days thereafter; or (ii) a Party that has made a general assignment for the benefit of creditors, become insolvent, or has voluntarily instituted bankruptcy, reorganization, liquidation or receivership proceedings.

“**Billing Cycle**” means the monthly billing cycle established by the Utility (reasonably adjusted by Seller in the event that different Facilities have different Utility billing cycles).

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

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

“**Buyer Allocation Percentage**” has the meaning set forth in the recitals.

“**Buyer Recipient Accounts**” has the meaning set forth in Section 7.2(a).

“**Commercial Operation**,” with respect to a Facility, means that the Facility is ready for regular, daily operation, has been interconnected to the Utility system, has been accepted by the Utility (to the extent required), and is capable of producing Electricity and delivering it to the Delivery Point.

“**Commercial Operation Date**” means the first day on which the last Facility to achieve Commercial Operation, as defined herein, is ready for Commercial Operation, as certified in writing by Seller to Buyer in a notice of Commercial Operation Date pursuant to Section 3.3.

“**Confidential Information**” has the meaning set forth in Section 8.1 of this Agreement.

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

“**Delivery Point**” for each Facility means the Utility Meter behind which such Facility is located.

“**Facility**” has the meaning set forth in the recitals.

“**DOER**” means the Massachusetts Department of Energy Resources or its successors.

“**DPU**” means the Massachusetts Department of Public Utilities or its successors.

“**Early Termination Date**” has the meaning set forth in Section 2.3.

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

“**Electricity**” means the electricity generated by the Facilities and delivered to the Delivery Points, as metered in whole kilowatt-hours (kWh) at the Seller Meters (or, in the absence of a Seller Meter, the Utility Meter).

“**Environmental and Tax Attributes**” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facilities and/or their electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (v) tax credits, incentives or depreciation allowances established under any federal or state law, and (vi) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facilities and/or their electricity generation. For avoidance of doubt, Environmental and Tax Attributes do not include the AOBCs purchased by Buyer under this Agreement.

“**Event of Default**” has the meaning set forth in Article 10.

“**Facilities**” and “**Facility**” have the meanings set forth in the recitals. For avoidance of doubt, the term “Facility” as used in this Agreement may, as the context requires, correspond with the term “Unit” as used in the SMART Program Rules.

“**Financing Party**” has the meaning set forth in Section 16.2(a).

“**Force Majeure**” means any event or circumstance that prevents Seller from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of Seller, and (ii) by the exercise

of reasonable due diligence, Seller is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include but is not limited to the following acts or events: natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; explosions or fires arising from lightning or other causes; acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; strikes or labor disputes; and acts, failures to act or orders of any kind of any Governmental Authorities acting in their regulatory or judicial capacity.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

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

**“Host Account”** means, with respect to a particular Facility, the Utility account with respect to the Utility Meter serving such Facility.

**“Host Customer”** means, with respect to a particular Facility, the owner or authorized agent of a Facility enrolled under the SMART Tariff as an Alternative On-Bill Credit Generation Unit.

**“Interconnection Obligations”** has the meaning set forth in Section 3.4.

**“Interest Rate”** means the lesser of (a) one and one-half percent (1.5%) per month and (b) the maximum rate permitted by applicable law.

**“Invoice”** has the meaning set forth in Section 4.3.

**“kWh”** means kilowatt-hour.

**“Laws”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen.

**“Outside Construction Commencement Date,”** means [                  ], provided that the Outside Construction Commencement Date may be extended by Seller up to eighteen (18) months as long as Seller is diligently pursuing the development of one or more Facilities, and provided further that such period of time shall be extended for a period of time concurrent with the periods of time required for (i) the Utility’s completion of any required Utility System upgrades or resolution of any other Utility delays, including, without limitation,

the Utility's failure to comply with its interconnection tariff, and (ii) the resolution of any challenge to any permit or approval relating to a Facility.

**"Person"** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

**"Public Entity Solar Tariff Generation Unit"** has the meaning set forth in the SMART Program Rules.

**"Representatives"** shall mean a Party's Affiliates, and its Affiliates' successors and assigns, and each of their respective owners, members, directors, officers, employees, independent contractors, agents, attorneys, and other representatives, as well as existing or potential debt or equity financing parties.

**"Seller"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Seller Meter"** means, with respect to each Facility, any and all revenue quality meters installed by Seller at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the amount of Electricity generated by the Facility and delivered to the Delivery Point.

**"SMART Program"** means the Solar Massachusetts Renewable Target Program, as embodied by the SMART Program Rules.

**"SMART Program Rules"** means, collectively and as amended from time to time, the Massachusetts SMART regulations, 225 CMR 20.00 *et seq.*, policies issued from time to time by DOER relating to the SMART Program, orders issued by DPU relating to the SMART Program, and the associated SMART Tariff of the Utility.

**"SMART Tariff"** means the Utility's tariff implementing the SMART Program, as such tariff may be amended from time to time.

**"Statement of Qualification"** means an assurance that a Facility will be an Alternative On-Bill Credit Generation Unit and a Public Entity SMART Tariff Generation Unit upon the Utility's issuance of notice of authorization to interconnect such Facility, subject to the satisfaction of certain requirements between issuance of the Statement of Qualification and such notice of authorization to interconnect.

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

**"Termination Date"** means the earlier to occur of (i) the last day of the Term, (ii) the Early Termination Date, (iii) the date of termination of this Agreement as the result of an Event of Default, and (iv) the date of termination as the result of Force Majeure pursuant to Section 9.2.

“**Utility**” has the meaning set forth in the recitals.

“**Utility Meter**” means, with respect to each Facility, the Utility meter furnished, installed or monitored by the Utility for the purpose of measuring the Electricity delivered by the Utility to the Host Customer and delivered by the Host Customer to the Utility.

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

## **ARTICLE 2** **TERM; CONDITIONS PRECEDENT; EARLY TERMINATION**

2.1 Term. The term of this Agreement (including any extensions, the “**Term**”) shall commence as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date.

2.2 Conditions Precedent. The commencement of the obligation of Seller to provide Electricity to the Delivery Points and to arrange for the allocation to Buyer of AOBCs generated in connection with such Electricity under the provisions of this Agreement, is subject to the fulfillment of each of the following conditions precedent except to the extent waived by Seller:

- (a) Seller shall have obtained all permits and approvals required for the construction and operation of the Facilities;
- (b) a Statement of Qualification shall have been issued with respect to each of the Facilities;
- (c) Seller shall have obtained project financing for the Facilities on terms acceptable to Seller;
- (d) Buyer shall have provided Seller with information required hereunder with respect to the Buyer Recipient Accounts sufficient to permit preparation of the Allocation Instructions;
- (e) the Facilities shall have been interconnected with the Utility in accordance with the requirements of the interconnection service agreement, the SMART Program Rules and Applicable Legal Requirements;
- (f) the first Facility shall have achieved Commercial Operation; and
- (g) no Buyer Default or any event which, with the giving of notice or the lapse of time or both, would become a Buyer Default shall have occurred and be continuing, and Seller shall have received a certificate of a senior official of Buyer to such effect.

2.3 Early Termination. This Agreement may be terminated prior to the expiration of the Term (the “**Early Termination Date**”):

- (a) by Seller, at any time prior to the installation of the first solar module with respect to the Facilities, upon notice to Buyer, in the event that Seller, in its discretion, determines that the development of the Facilities should be abandoned;
- (b) by Seller, at any time prior to the Commercial Operation Date, upon notice to Buyer, in the event that any of the conditions precedent set forth in Section 2.2 has not been satisfied;
- (c) by Buyer, upon thirty (30) days’ notice to Seller delivered no more than thirty (30) days following the Outside Construction Commencement Date, in the event that the Construction Commencement Date has not occurred by the Outside Construction Commencement Date, provided that Buyer may not exercise its right to terminate under this Section 2.3(c) after the earlier of (i) the Construction Commencement Date and (ii) the date on which Seller notifies Buyer that closing of financing for construction of all or a portion of the Facilities has occurred; or
- (d) by either Party in accordance with Section 9.2 or 10.2.

Upon early termination of this Agreement in accordance with this Section 2.3, each Party shall discharge by performance all obligations due to the other Party that arose up to the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE 3** **DEVELOPMENT OF FACILITIES**

3.1 Development of Facilities by Seller. Seller shall undertake commercially reasonable good faith efforts to obtain required permits and financing for, and to construct the Facilities.

3.2 Notice of Facilities and Designated Capacity. Prior to the Commercial Operation Date, Seller shall provide notice to Buyer of the designation of the Facilities and of the Designated Capacity by delivering to Buyer an updated Exhibit A.

3.3 Notice of Commercial Operation. Subject to the provisions of this Agreement, Seller shall notify and represent to Buyer when each Facility has achieved Commercial Operation. Seller shall in the notice of Commercial Operation for the final Facility to achieve Commercial Operation certify to Buyer the Commercial Operation Date.

3.4 Interconnection Requirements. Seller shall be responsible for all costs, fees, charges and obligations of every kind and nature required to connect the Facilities to the Utility

System, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges (“***Interconnection Obligations***”). In no event will Buyer be responsible for any Interconnection Obligations, except as set forth in Section 7.5.

3.5 **Cooperation Regarding Authorizations**. Seller will manage applications for all permits, approvals, registrations and other related matters with the Utility and any Governmental Authority, including the submission of applications described in this Agreement and, to the extent relevant, Seller will do so on behalf of Buyer. Buyer agrees to cooperate with Seller in preparing such applications and securing such permits, approvals and registrations, including, without limitation, timely executing and delivering all documentation required from Buyer relating thereto. Where allowed by law, Buyer hereby designates Seller as its agent in obtaining all permits, approvals, registrations and additional authorizations required of Buyer in connection with this Agreement and the transactions contemplated hereby.

3.6 **Title**. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the Facilities and all Environmental and Tax Attributes shall be and remain with Seller.

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

4.1 **Purchase and Sale of AOBCs**. Commencing on the date the first Facility achieves Commercial Operation and continuing throughout the remainder of the Term, Seller shall arrange for allocation to Buyer of, and Buyer shall pay for, a percentage of the AOBCs equal to the Buyer Allocation Percentage.

4.2 **Price**. The purchase price of each AOBC shall be calculated in accordance with Exhibit C.

4.3. **Invoicing and Payment**. During each monthly Billing Cycle, Seller shall provide Buyer with an invoice (the “***Invoice***”) for the Buyer Allocation Percentage of the AOBCs with respect to Electricity delivered to the Delivery Points during the prior Billing Cycle at the AOBC Price. Buyer will remit payment of the amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to both Parties) within thirty (30) days following Buyer’s receipt of each such Invoice. Any amounts not paid by the due date will be deemed late, will be subject to a five percent (5%) late fee, and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

4.4 **Invoice Disputes**. In the event of a good faith dispute regarding any Invoice, Buyer shall pay the undisputed amount of such Invoice and shall seek to resolve the dispute in accordance with the dispute resolution procedures set forth in Article 14. Upon resolution of the dispute, any required refund or additional payment shall be made within thirty (30) days of such resolution along with interest accrued at the Interest Rate from and including the date of the original payment (with respect to a refund) or original due date (with respect to an additional payment). Any dispute by Buyer with respect to an Invoice or an adjustment thereof

is waived unless, within six (6) months after the invoice is rendered or such adjustment is made, Buyer notifies Seller of such dispute and states the basis for such dispute. Upon Buyer's request with respect to an Invoice, Seller, within ten (10) days, shall provide Buyer with information necessary to permit Buyer to replicate Seller's computation of the invoiced amount.

4.5 Governmental Charges. There shall be added to each Invoice, as separate items, a surcharge equal to the proportionate part of any Governmental Charges incurred by Seller multiplied by the Buyer Allocation Percentage. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event of a potentially applicable exemption or exclusion from one or more Governmental Charges, either Party shall, promptly upon the other Party's request therefor, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion.

4.7 Title and Risk of Loss. Title to and risk of loss of the Electricity will pass from Seller to the Utility at the applicable Delivery Point. Title to and risk of loss of the Buyer Allocation Percentage of the AOBCs will pass from Seller to Buyer upon the appearance of such AOBCs on the Utility invoices issued with respect to the Host Account.

4.8 Creditworthiness. Buyer has been issued one or more municipal bond credit ratings within the twelve (12) month period preceding the Effective Date and provided Seller with true and accurate copies of such credit rating documents. In the event of Seller's request from time to time during the Term, Buyer agrees to promptly provide to Seller copies of any subsequent municipal bond credit rating documents. In addition and not in limitation of the foregoing, if at any time during the Term, Seller determines that Buyer's municipal bond credit rating (long-term financial obligations) falls below [BBB] (or the equivalent in a successor municipal bond credit rating system), Buyer has experienced any material adverse change in its financial condition or has made two or more late payments, Seller shall have the right to require that the Parties undertake good faith negotiations to promptly agree on reasonable credit arrangements to ensure prompt payment of amounts payable under this Agreement. Such credit arrangements may include, without limitation, Buyer's agreement to make a cash deposit, post a letter of credit at a financially sound bank or other financial institution, or make a prepayment for AOBCs to be supplied under this Agreement.

4.9 Records and Audits. Each Party will keep, for a period of not less than two (2) years after the expiration or termination of this Agreement records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for all transactions hereunder. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions hereunder during such other Party's normal business hours.

## **ARTICLE 5**

### **TITLE TO ENVIRONMENTAL AND TAX ATTRIBUTES AND CAPACITY**

Other than the AOBCs that are allocated to the Buyer Recipient Accounts under the SMART Program Rules, as between Seller and Buyer, Environmental and Tax Attributes and

any rights or credits relating to the generating capacity of the Facilities shall remain the property of Seller and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Seller in its sole discretion and for its sole benefit. Buyer shall, upon Seller's request, take whatever actions are reasonably necessary from time to time in order for the Seller to claim the benefits of all Environmental and Tax Attributes and capacity rights or credits other than the AOBCs allocated to the Buyer Recipient Accounts.

## **ARTICLE 6** **METERS; BILLING ADJUSTMENTS**

6.1 **Metering Equipment.** The Parties acknowledge that Seller shall arrange for the Utility to furnish and install the Utility Meters and for the Host Customer to serve as the Utility's customer of record with respect to the Utility Meters. Seller shall be responsible for arranging compliance with any Utility customer requirements relating to Utility access to the Utility Meters. In addition, Seller may install, own, operate, and maintain one or more Seller Meters.

6.2 **Meter Accuracy.**

(a) **Utility Meter Accuracy.** Upon the request of Buyer, Seller shall seek to arrange for testing by the Utility of the accuracy of the Utility Meters.

(b) **Seller Meter Accuracy.** Seller, at its sole cost, shall test the Seller Meters in accordance and compliance with the manufacturer's recommendations and shall provide the results of such tests to Buyer. No more than once per calendar year, Buyer shall have the right to require Seller to conduct an audit of all Seller Meter data upon reasonable notice, and any such audit shall be at Buyer's sole cost (except as set forth below). If testing of a Seller Meter pursuant to the foregoing indicates that the meter is in error by more than two percent (2%), then Seller shall promptly repair or replace the Seller Meter at no cost to Buyer (and, if testing has been performed at Buyer's request, Seller and not Buyer shall bear the cost of such testing). For avoidance of doubt, if Seller has already conducted such an audit during a calendar year on its own initiative or at the request of another entity, Seller shall not be required to conduct an additional audit during the same calendar year.

(c) **Discrepancy Between Seller and Utility Meters.** If at any time there is a discrepancy between a Utility Meter and the corresponding Seller Meter, including without limitation a discrepancy associated with a billing adjustment described in Section 6.3, Seller, at Buyer's request, will use commercially reasonable good faith efforts to investigate and remedy such discrepancy in consultation with the Utility.

6.3 **Billing Adjustments Following Utility Billing Adjustments.** If as a result of a Utility billing adjustment the quantity of AOBCs for any period is decreased, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Buyer Allocation Percentage of the relevant portion of such AOBCs. If as a result of such adjustment the quantity of AOBCs for any period is increased, Buyer shall pay for the Buyer Allocation Percentage of the relevant portion of such AOBCs.

## ARTICLE 7

### REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

7.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

- (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Laws;
- (b) this Agreement, and each document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;
- (c) all such persons as are required to be signatories to or otherwise execute this Agreement on its behalf under all applicable Laws have executed and are authorized to execute this Agreement in accordance with such Laws;
- (d) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;
- (e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (f) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

7.2 Additional Representations and Warranties of Buyer. In addition and without limiting any other provision herein, Buyer represents and warrants to Seller that:

- (a) those of Buyer's existing utility accounts identified in Exhibit B attached hereto (the "**Buyer Recipient Accounts**") are accounts with the Utility; and
- (b) Buyer, to the best of its knowledge after reasonable inquiry, has provided to Seller complete and correct records of its electricity usage and costs with respect to the Buyer Recipient Accounts.

7.3 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 Seller 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, Seller 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.

7.4 No Advice. The Parties acknowledge and agree that Seller is not acting as a consultant or advisor to Buyer for any purpose and that Buyer is making its own decision to enter into this Agreement based solely on its own analysis and the advice of its own advisors.

7.5 Covenants of Buyer.

(a) SMART Program Matters.

(i) Allocation of AOBCs. Seller shall prepare the Utility’s AOBC Payment/Credit Forms (the “**Allocation Instructions**”), and Buyer shall cooperate fully with Seller’s preparation of such documents. At Seller’s request, Buyer shall promptly take any action and execute any documents, as required, to facilitate the allocation to the Buyer Recipient Accounts of the Buyer Allocation Percentage of the AOBCs accruing to the Host Customer of the Facilities.

(ii) SMART Qualification. Buyer shall not take any action that would adversely affect any Facility’s qualification, or the nature of such qualification, for participation in the SMART Program as both an Alternative On-bill Credit Generation Unit and Public Entity Solar Tariff Generation Unit.

(iii) Third-party AOBCs. Buyer may enter into one or more agreements with third parties for the purchase of AOBCs, provided that Buyer shall not allocate or permit to be allocated any AOBCs generated by any other source to the Buyer Recipient Accounts if such allocation would affect Buyer’s ability to comply with its obligations under this Agreement, provided further that, whether or not such effect is anticipated, Buyer shall provide at least thirty (30) days’ notice to Seller prior to undertaking or permitting any such allocation.

(iv) Consolidated Billing of Electricity Charges. In order to facilitate Buyer’s ability to use AOBCs allocated to the Buyer Recipient Accounts, Buyer shall arrange for the charges for its electricity purchases from competitive electricity suppliers (if any) to be billed through its Utility invoices. Notwithstanding the foregoing, Buyer shall have the right not to arrange for such consolidated billing but Buyer acknowledges that in such event it will only be able to use the AOBCs to offset those charges that appear on invoices issued by the Utility and not charges that appear separately on invoices issued by a competitive supplier.

(b) Interconnection Matters. In order to fulfill the Utility’s requirements for interconnecting to the Utility System an energy generating facility that is located on the

property of another party, Seller shall be party to the interconnection service agreement and Buyer agrees, promptly following Seller's request, to enter into a landowner consent agreement with the Utility in the form attached as an exhibit to the Utility's interconnection tariff (the "***Landowner Consent Agreement***").

(c) **Uniform Procurement Act Exemption Filings.** **Buyer shall strictly comply with the provisions of G.L. c. 30B, § 1(b)(33), which requires that, within fifteen (15) days of the signing of a contract for energy or energy related services by a covered public entity, the procuring public entity shall submit to the DPU, the Department of Energy Resources, and the Office of the Inspector General a copy of the contract and a report of the process used to execute the contract.** Buyer shall promptly deliver to Seller a complete copy of such filings together with satisfactory evidence that the filings have been timely made.

(d) **No Resale of Electricity.** This Agreement is an agreement by Buyer to receive and pay for AOBCs. Nevertheless, to the extent that this Agreement is deemed to constitute an agreement for the purchase of Electricity, the Electricity deemed to be purchased by Buyer from Seller under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the Utility pursuant to the SMART Program Rules), without prior approval of Seller, which approval shall not be unreasonably withheld, and Buyer shall not take any action which would cause Buyer or Seller to become a utility or public service company.

(e) **No Right to Enter or Use Property.** Buyer shall not have, nor shall it assert, any right under this Agreement to use the Facilities or enter upon or use the property on which the Facilities are located.

(f) **No Assertion that Seller is a Utility.** Buyer shall not assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, or is otherwise subject to rate regulation.

(g) **Contingent Allocation of Utility Cash Payment.** In the event that, with respect to one or more of the Facilities, the Utility becomes entitled to, and elects to, make cash payments to the Host Customer in the amount of the AOBCs in lieu of allocating the AOBCs to the Buyer Recipient Accounts, Buyer's obligation hereunder to pay for the Buyer Allocation Percentage of the Electricity shall remain in effect but Seller shall instead cause the Host Customer to deliver to Buyer a portion of such cash payments equal to the Buyer Allocation Percentage.

## **ARTICLE 8** **CONFIDENTIALITY**

8.1 **Duty of Confidentiality.** To the extent permitted by law, all terms of this Agreement and all information provided by a Party or its representatives to the other Party (the "***Confidential Information***") shall be confidential and shall not be disclosed by the receiving Party without the disclosing Party's prior written consent, except that Seller may disclose

Confidential Information to its Representatives. Neither Party shall be prevented from disclosing information which: (i) is or becomes publicly known through no fault of the receiving Party; (ii) is independently developed by the receiving Party without use of the other Party's confidential information; (iii) is required to be disclosed pursuant to applicable law, government regulation or order or by the requirements of any securities exchange, or is requested to be disclosed by a governmental authority or agency or any self-regulatory organization (including, without limitation, any stock exchange authority), provided the receiving Party gives the disclosing Party reasonable prior notice of such requirement and affords such Party the opportunity to seek a protective order or other appropriate means to safeguard the confidentiality of such information.

8.2 Publicity. Except to the extent required by law, without the prior written consent of the other Party, neither Party shall make any public comment, statement, or communication with respect to this Agreement. If either Party is required by law to make any such disclosure, it must first provide to the other Party the content of the proposed disclosure, the reasons that such disclosure is required, and the time and place that the disclosure will be made. Notwithstanding the foregoing, following the execution of this Agreement, Seller may in its discretion prepare and issue a press release or other form of public announcement, the form of which shall be delivered to Buyer prior to release, disclosing the existence of this Agreement. Without limiting the generality of the foregoing, all public statements made by or on behalf of either Party must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental and Tax Attributes and any related reporting rights.

8.3 Survival of Confidentiality and Publicity Provisions. The obligations of the Parties under this Article will survive for a period of two (2) years from and after the termination or expiration of this Agreement.

## **ARTICLE 9 FORCE MAJEURE**

9.1 Performance Excused by Force Majeure. To the extent Seller is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement, then Seller will be excused from, the performance of such obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). Seller will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that Seller is not required to settle any strikes, lockouts or similar disputes except on terms acceptable to Seller in its sole discretion. During the period in which, and to the extent that, obligations of Seller are excused by Force Majeure, Buyer will not be required to perform or resume performance of its obligations to Seller corresponding to the obligations of Seller excused by Force Majeure.

9.2 Termination Due to Force Majeure. In the event of a Force Majeure that prevents, in whole or in material part, the performance of Seller for a period of twelve (12) calendar months or longer, either Party may, upon thirty (30) days' notice to the other Party, terminate this Agreement, whereupon the Parties shall each discharge by performance all

obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

## ARTICLE 10 EVENTS OF DEFAULT; REMEDIES

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

- (a) such Party’s failure to make, when due, any payment required under this Agreement if such failure is not remedied within seven (7) days after receipt of notice of such failure;
- (b) such Party’s failure to comply with any other material provision of this Agreement if such failure is not remedied within sixty (60) days after notice and demand by the non-defaulting Party to cure the same or such longer period as may be reasonably required to cure, provided that the defaulting Party diligently continues until such failure is fully cured; or
- (c) such Party becomes Bankrupt.

10.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or applicable law, but subject to the provisions of Article 16 with respect to a Seller Event of Default, shall have the right to (i) terminate this Agreement, upon thirty (30) days’ notice to the Defaulting Party, (ii) withhold any payments due to the Defaulting Party under this Agreement, (iii) suspend performance due to the Defaulting Party under this Agreement, and (iv) exercise all other rights and remedies available at law and in equity to the non-defaulting Party, including recovery of all reasonably foreseeable damages, whether direct or indirect. For Seller, such damages may include, without limitation, (i) lost revenues in connection with any failure by Buyer to make purchases from Seller hereunder in accordance with the terms hereof, (ii) lost revenues in connection with any inability of Seller to sell Environmental or Tax Attributes associated with such Electricity or the reduction in value of such Environmental or Tax Attributes, and (iii) accelerated payments, fees, damages and penalties under Seller’s financing agreements. In addition and without limiting the foregoing, if Seller is the non-defaulting Party, Seller shall have the right to sell electricity and associated AOBCs produced by the Facilities to persons other than Buyer and recover from Buyer any loss in revenues resulting from such sales. Each Party agrees that it has a duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party’s default under this Agreement.

10.3 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

10.4 Unpaid Obligations. The non-defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the non-defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 11** **CERTAIN RIGHTS AND OBLIGATIONS FOLLOWING** **TERMINATION OR EXPIRATION**

11.1 General. Following termination of this Agreement by either Party that is not occasioned by the other Party's default, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

11.2 Utility and Regulatory Matters. Upon the termination or expiration of this Agreement for any reason, Buyer shall promptly take all actions and execute all documents, as may be necessary or reasonably requested by Seller, to facilitate the amendment of the Allocation Instructions so as to terminate as soon as practicable the allocation of AOBCs to the Buyer Recipient Accounts, and Buyer hereby grants Seller the right to act as Buyer's attorney-in-fact to take the actions required by Buyer in this sentence. To the extent that the Utility does not permit termination of allocation of AOBCs to the Buyer Recipient Accounts (as modified from time to time) as of the effective date of termination or expiration of this Agreement and instead requires termination of such allocation as of a later date, Buyer's purchase and payment obligations hereunder shall survive with respect to Electricity delivered by Seller to the Delivery Point and corresponding with AOBCs allocated to the Buyer Recipient Accounts.

## **ARTICLE 12** **INDEMNIFICATION**

12.1 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party and its members, managers, officers, employees, agents, representatives and independent contractors, from and against all costs, claims, and expenses incurred by the other Party in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (i) the gross negligence or willful misconduct of the indemnifying Party, its agents or employees or others under the indemnifying Party's control or (ii) an Event of Default of the indemnifying Party. The indemnifying Party further agrees, if requested by the indemnified party, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article. Should the indemnifying Party defend any such claim against the indemnified party, it shall have full control of such defense, in its reasonable discretion. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of an indemnified party.

12.2 Claim Procedure. If the indemnified party seeks indemnification pursuant to this Article, it shall notify the indemnifying Party of the existence of a claim, or potential claim, as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the indemnifying Party that it will assume the defense and indemnification of such claim, the indemnifying Party may assert any defenses which are or would otherwise be available to the indemnified party.

12.3 Limitation on Buyer Indemnity to the Extent Prohibited by State Law. Notwithstanding any provision contained herein, the provisions of this Article 12 shall not apply to Buyer to the extent limited by Section 7 of Article 2 of the Amendments to the Massachusetts Constitution, which prohibits municipalities from pledging their credit without prior legislative authority.

12.4 Survival of Indemnity Claims. In addition, notwithstanding any provision contained herein, the provisions of this Article shall survive the termination or expiration of this Agreement for a period of two (2) years with respect to any claims which occurred or arose prior to such termination or expiration.

## **ARTICLE 13 LIMITATIONS**

### **13.1 Limitation of Liability.**

(a) No Liability to Third Parties. Buyer and Seller agree that this Agreement is not intended for the benefit of any third party (other than Financing Parties) and that Seller shall not be liable to any third party by virtue of this Agreement.

(b) Limitations on Damages. Except as expressly provided in this Agreement, it is specifically agreed and understood that neither Party will be responsible to the other for any special or punitive damages whatsoever arising out of this Agreement or anything done in connection herewith. This Section 13.1(b) shall apply whether any such damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty or otherwise.

13.2 Limitation on Warranties. Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose. Without limiting the foregoing, Seller does not warrant or guarantee the amount of Electricity to be generated by the Facilities or the quantity of associated AOBCs available hereunder.

## ARTICLE 14

### GOVERNING LAW; DISPUTE RESOLUTION

14.1 Governing Law. This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws.

#### 14.2 Dispute Resolution.

(a) The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties.

(b) Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Manager of Seller and the Town Administrator of Buyer (or the individuals then serving as chief executives of the Parties), who shall use their respective good faith efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.

(c) In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute may mutually agree to submit the dispute to mediation. The period for mediation shall commence upon the appointment of the mediator, shall not exceed ninety (90) days from the time the dispute arises, unless such time period is modified by written agreement of the Parties involved in the dispute, and the mediation shall be conducted in accordance with procedures mutually agreed to by the Parties. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute.

(d) In the event that the Parties cannot resolve a dispute by informal negotiations or mediation (or in the event that the Parties do not agree to submit the dispute to mediation), sole venue for judicial enforcement shall be the Superior Court for Norfolk County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Each Party consents to such venue and expressly waives any objections to venue it might otherwise be able to raise.

(e) In any judicial action, the Prevailing Party (as defined below) shall be entitled to payment from the opposing party of its reasonable costs and fees, including

but not limited to reasonable attorneys' fees, expert witness fees and travel expenses, arising from the civil action. As used herein, the phrase "***Prevailing Party***" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

## **ARTICLE 15** **ASSIGNMENT; BINDING EFFECT**

15.1 General Prohibition on Pledge or Assignment. Except as provided in this Agreement, neither Party may pledge or assign its rights hereunder without the prior written consent of the other Party which shall not be unreasonably withheld or delayed.

15.2 Permitted Assignments by Seller. Notwithstanding anything to the contrary herein, Seller may assign all or a portion of its rights and obligations hereunder to (i) an Affiliate of Seller or, provided that Seller (or its contractor) retains responsibility for the day to day operation of the Facilities, to any other Person in connection with financing of the Facilities, or (ii) to the purchaser of all or substantially all of the assets of Seller, or to an entity that acquires ownership of one or more of the Facilities or, prior to the construction of one or more of the Facilities, the development rights thereto. In the event of any such assignment, Seller shall provide notice to Buyer of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or, as of the effective date of such assignment, will have assumed) all or a portion of Seller's rights and obligations under this Agreement. In addition, in the event of an assignment under clause (ii) above, promptly following Buyer's request, Seller and/or such assignee shall reasonably demonstrate to Buyer the assignee's ability (itself or through use of the services of qualified third parties) to perform its obligations under this Agreement, provided that the assignee shall not be required to possess ability that exceeds that of Seller immediately prior to such assignment. Buyer agrees to promptly execute any document reasonably requested of Seller in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof. Following an assignment permitted under this Section 15.2, except to the extent provided by the terms of such assignment and except to the extent that the assignee has assumed only a portion of Seller's rights and obligations hereunder, Seller shall have no liability arising under this Agreement after the effective date of such assignment.

15.3 Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to and inure to the benefit of, the Parties and their permitted heirs, successors and assigns.

## **ARTICLE 16** **FINANCING AND RELATED MATTERS**

16.1 Special Seller Assignment Rights. Notwithstanding any contrary provisions contained in this Agreement, including, without limitation, Article 15, Buyer specifically agrees, without any further request for prior consent, to permit Seller to assign, transfer or pledge its rights under this Agreement as collateral for the purpose of obtaining financing or refinancing in connection with the Facilities, and to sign any agreements reasonably requested by Seller or its debt or equity financing parties to acknowledge and evidence such agreement,

provided that any such assignment shall not relieve Seller of its obligations under this Agreement.

## 16.2 Financing Party Rights.

(a) Notice to Financing Party. Buyer agrees to give copies of any notice provided to Seller by Buyer to any assignee or transferee permitted pursuant to Section 16.1 of which it has notice (each, a “**Financing Party**”) of any event or occurrence which, if uncured, would result in a Seller Event of Default.

(b) Exercise of Seller Rights. Any Financing Party, as collateral assignee and if allowed pursuant to its contractual arrangements with Seller, shall have the right in the place of Seller to exercise any and all rights and remedies of Seller under this Agreement. Such Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement.

(c) Performance of Seller Obligations. Without limiting the foregoing or any other provision hereof, a 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 Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Seller under this Agreement or (unless such party has succeeded to Seller’s interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives such party the option to do so.

(d) Exercise of Remedies. Upon the exercise of remedies, including any sale of one or more of the Facilities by a Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Party (or any transferee or 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 constitute a default under this Agreement and Buyer shall continue to perform its obligations hereunder in favor of the assignee or transferee as if such party had thereafter been named as Seller under this Agreement. Thereafter, the Financing Party (or its agent or designee, transferee or assignee) shall have the right to exercise in the place of Seller any and all rights and remedies of Seller under this Agreement.

(e) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of a Financing Party made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with such party or its assignee having substantially the same terms and conditions as this Agreement.

(f) Third Party Beneficiary. Buyer agrees and acknowledges that each Financing Party is a third party beneficiary of the provisions of this Article.

16.3 Cooperation Regarding Financing. Buyer agrees that it shall reasonably cooperate with Seller and its financing parties in connection with any financing or refinancing of all or a portion of the Facilities. In furtherance of the foregoing, as Seller or its financing parties request from time to time, Buyer agrees to (i) execute any consents to assignment or acknowledgements (including, without limitation, an acknowledgment for the benefit of one or more particular Financing Parties or prospective Financing Parties of the accommodations set forth in this Article 16), (ii) deliver such estoppel certificates as an existing or prospective Financing Party may reasonably require, (iii) furnish such information as Seller and its financing parties may reasonably request and (iv) provide such opinions of counsel as may be reasonably requested by Seller and/or an existing or prospective Financing Party in connection with a financing, refinancing or sale of one or more of the Facilities.

16.4 Right to Cure.

(a) Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given each Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and such party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to be less than an additional thirty (30) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) If, pursuant, to an exercise of remedies by a Financing Party, such party or its assignee (including any purchaser or transferee) shall acquire control of the Facilities and this Agreement and shall, within the time periods described in the preceding subsection, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

16.5 Amendments and Accommodations. At Seller's request, Buyer shall agree to amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Financing Party or provide separate accommodations as may be reasonably requested by an existing or proposed Financing Party; provided, however, that the foregoing undertaking shall not obligate Buyer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Buyer, under this Agreement (except for providing such notices and additional cure periods to Financing Parties with respect to Seller Events of Default as an existing or proposed Financing Party may reasonably request).

## ARTICLE 17 CHANGE IN LAW

In the event that a change in Law occurs, including without limitation, a change in the SMART Program Rules, or the administration or interpretation thereof by DOER, DPU or the Utility (a “**Change in Law**”), which (a) materially restricts the ability of Seller to deliver Electricity generated by one or more of the Facilities to the Utility or the ability of Buyer to receive AOBCs, or (b) otherwise materially impacts the ability of either Party to perform its obligations under this Agreement, including changes in Law that result in a material increase in Seller’s costs of construction and installation, or continuing operation of, one or more of the Facilities, then, upon a Party’s receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within thirty (30) days following the date of the notice of Change in Law, Seller may terminate this Agreement without penalty.

## ARTICLE 18 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Seller to: 2 Ice House, LLC  
128 Warren Street  
Lowell, MA 01852  
Attention: John Porter

with a copy to: Klavens Law Group, P.C.  
20 Park Plaza, #402  
Boston, MA 02116  
Facsimile: (888) 248-7594  
Attention: Jonathan S. Klavens, Esq.

if to Buyer to: Town of Medfield  
Town House  
459 Main Street  
Medfield, MA 02052  
Attention: Town Administrator

with a copy to: *[insert notice information]*

if to a Financing Party, to the address and contact person of which Buyer has been given notice pursuant to this Article 18.

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any Party may change its address and contact person for the purposes of this Article 18 by giving notice thereof in the manner required herein.

## **ARTICLE 19** **MISCELLANEOUS**

19.1 Survival. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of Articles 5, 8, 10, 11, 12, 13, 14, 16, 18, and 19 shall survive the termination or expiration of this Agreement.

19.2 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

19.3 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its negotiating and entering into this Agreement, including without limitation, all attorneys' fees and expenses.

19.4 Relationship of Parties. Seller will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to make any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any similar relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.

19.5 Waiver. No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

19.6 Cooperation. Each Party acknowledges that this Agreement may require approval or review by third parties and agrees that it shall use commercially reasonable efforts to cooperate in seeking to secure such approval or review. The Parties further acknowledge that the performance of each Party's obligations under this Agreement may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

19.7 Severability. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

19.8 Joint Work Product. This Contract shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof.

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

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

19.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Agreement.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of the date first above written.

**SELLER:**

**2 ICE HOUSE, LLC**

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

Name: John Porter

Title: Manager

**BUYER:**

**TOWN OF MEDFIELD**

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

Name:

Title:

Approved as to Appropriation:

By:

\_\_\_\_\_

Name:

Title: {municipal treasurer/accountant}

Approved as to Form:

By:

\_\_\_\_\_

Name:

Title: {municipal counsel}

*[NOTE: Amend or add signatories for Buyer as necessary and appropriate]*

## **Exhibit A**

### **PROPERTY; DELIVERY POINTS**

#### Property

The Property shall be the real property located at 2 Ice House Road, Medfield, MA 02052.

#### Delivery Points

The locations at the Property where Electricity is to be delivered from the Facility and received under this Agreement shall be the Utility Meter on such Property behind which each Facility is located.

## **Exhibit B**

### **RECIPIENT BUYER ACCOUNT INFORMATION**

#### Buyer Recipient Account Information

[All Utility electricity accounts of Buyer.][The following Utility electricity accounts of Buyer and/or its Affiliates:]

Upon Seller's request, in order to facilitate Seller's preparation of the initial Allocation Instructions, Buyer shall promptly provide Seller with the following information regarding each such account:

- Utility customer name
- Account billing address
- Utility account number
- Annual Utility electricity charges
- Annual kWh usage
- Percentage of Buyer Allocation Percentage to be allocated to such account

Without reducing the Buyer Allocation Percentage, Buyer may from time to time request an adjustment in the proportionate percentages of AOBCs to be allocated to each individual Buyer Recipient Account, and may remove or add individual Buyer Recipient Accounts, by providing such written request to Seller. Buyer acknowledges that any such request cannot be inconsistent with its obligations under the Agreement, including without limitation, its obligations under Section 7.5. Seller expressly agrees that a "Buyer Recipient Account" need not be an account in the name of Buyer provided that, in such event, Buyer will remain liable to Seller for payment for any AOBCs allocated to any such Buyer Recipient Account. For avoidance of doubt, any Buyer Recipient Account must be in the name of a Municipality or Other Governmental Entity (as those terms are defined in the SMART Program Rules).

Seller shall promptly review such request and coordinate with the Host Customer with respect to the filing with the Utility of amended Allocation Instructions pursuant to the then-applicable SMART Program Rules. The Parties acknowledge that the timing of the Utility's implementation of such an adjustment to the percentages set forth on the Allocation Instructions shall be in the control of the Utility and Buyer may continue to receive allocations of AOBCs under previously agreed percentages until the Utility has implemented the requested amendments. Seller shall use commercially reasonable efforts to facilitate the Utility's implementation of such amendments.

## **Exhibit C**

### **CALCULATION OF AOBC PRICE**

For each Billing Cycle in which AOBCs appear on the Host Account for a Facility, the price per AOBC (the “*AOBC Price*”) shall be equal to the Electricity (in kWh) delivered in that Billing Cycle multiplied by an amount equal to the AOBC Rate minus one and a quarter cent (\$0.0125). For purposes hereof, “*AOBC Rate*” means, with respect to a particular Billing Cycle, the dollar value of an AOBC accruable to the Host Customer of the Facility for that Billing Cycle. (Under the current SMART Tariff, the dollar value of an AOBC is equal to the Basic Service rate applicable to the Facility’s rate class in effect during that Billing Cycle. The Basic Service rate is set by the Utility, with the approval of DPU, and varies over time.)

## ENERGY CREDIT PURCHASE AGREEMENT

This Energy Credit Purchase Agreement is made and entered into as of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between 2 Ice House, LLC, a Massachusetts limited liability company, for itself and any and all assignees permitted hereunder (“**Seller**”), and the Town of Medfield, a Massachusetts municipality (“**Buyer**”). Seller and Buyer may be referred to herein collectively as the “**Parties**” and individually as a “**Party**”.

### Recitals

A. Seller plans to construct at the Property (as defined in the attached Exhibit A) one or more roof mounted solar photovoltaic generation facilities with an aggregate generating capacity of up to approximately 1012.32 KW DC (766.6 KW AC) (individually, a “**Facility**” and collectively, the “**Facilities**”).

B. The Parties intend that, pursuant to the SMART Program Rules (as defined below), the Facilities will be both (i) Alternative On-Bill Credit Generation Units (as defined below) and will generate Alternative On-Bill Credits or AOBCs (as defined below) and (ii) Public Entity Solar Tariff Generation Units (as defined below).

C. Pursuant to the SMART Program Rules, Seller (or its designee) will participate in the Utility’s SMART Tariff (as defined below) as a Host Customer of the Facilities and, as such, intends to periodically accrue AOBCs associated with the Electricity generated by the Facilities during the Term.

D. Subject to the terms and conditions of this Agreement, Seller desires to deliver to Eversource East (the “**Utility**”) all of the Electricity generated by the Facilities during the Term and Buyer desires to pay Seller for and receive one hundred percent (100%) of the AOBCs associated such Electricity (the “**Buyer Allocation Percentage**”).

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

### ARTICLE 1 DEFINED TERMS

As used in this Agreement, the following terms, when used in this Agreement and initially capitalized, shall have the following meanings:

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

“**Agreement**” means this Energy Credit Purchase Agreement, including all exhibits and attachments hereto.

“**Allocation Instructions**” has the meaning set forth in Section 7.5(a)(i) of this Agreement.

“**Alternative On-Bill Credit**” or “**AOBC**” has the meaning set forth in the SMART Program Rules.

“**Alternative On-Bill Credit Generation Unit**” has the meaning set forth in the SMART Program Rules.

“**AOBC Price**” has the meaning set forth in Exhibit C attached hereto.

“**Applicable Legal Requirements**” means any Laws which may at any time be applicable to this Agreement, the Facilities, the Facility sites, or any part thereof or to any condition or use thereof, and all leases, permits and other governmental consents which are or may be required for the use and occupancy of the Facility sites or for the installation, operation, maintenance and removal of any of the Facilities.

“**Bankrupt**” means, with respect to a Party: (i) a Party against which a bankruptcy, receivership or other insolvency proceeding is instituted and not dismissed, stayed or vacated within sixty (60) days thereafter; or (ii) a Party that has made a general assignment for the benefit of creditors, become insolvent, or has voluntarily instituted bankruptcy, reorganization, liquidation or receivership proceedings.

“**Billing Cycle**” means the monthly billing cycle established by the Utility (reasonably adjusted by Seller in the event that different Facilities have different Utility billing cycles).

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

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

“**Buyer Allocation Percentage**” has the meaning set forth in the recitals.

“**Buyer Recipient Accounts**” has the meaning set forth in Section 7.2(a).

“**Commercial Operation**,” with respect to a Facility, means that the Facility is ready for regular, daily operation, has been interconnected to the Utility system, has been accepted by the Utility (to the extent required), and is capable of producing Electricity and delivering it to the Delivery Point.

“**Commercial Operation Date**” means the first day on which the last Facility to achieve Commercial Operation, as defined herein, is ready for Commercial Operation, as certified in writing by Seller to Buyer in a notice of Commercial Operation Date pursuant to Section 3.3.

“**Confidential Information**” has the meaning set forth in Section 8.1 of this Agreement.

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

“**Delivery Point**” for each Facility means the Utility Meter behind which such Facility is located.

“**Facility**” has the meaning set forth in the recitals.

“**DOER**” means the Massachusetts Department of Energy Resources or its successors.

“**DPU**” means the Massachusetts Department of Public Utilities or its successors.

“**Early Termination Date**” has the meaning set forth in Section 2.3.

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

“**Electricity**” means the electricity generated by the Facilities and delivered to the Delivery Points, as metered in whole kilowatt-hours (kWh) at the Seller Meters (or, in the absence of a Seller Meter, the Utility Meter).

“**Environmental and Tax Attributes**” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facilities and/or their electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (v) tax credits, incentives or depreciation allowances established under any federal or state law, and (vi) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facilities and/or their electricity generation. For avoidance of doubt, Environmental and Tax Attributes do not include the AOBCs purchased by Buyer under this Agreement.

“**Event of Default**” has the meaning set forth in Article 10.

“**Facilities**” and “**Facility**” have the meanings set forth in the recitals. For avoidance of doubt, the term “Facility” as used in this Agreement may, as the context requires, correspond with the term “Unit” as used in the SMART Program Rules.

“**Financing Party**” has the meaning set forth in Section 16.2(a).

“**Force Majeure**” means any event or circumstance that prevents Seller from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of Seller, and (ii) by the exercise

of reasonable due diligence, Seller is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include but is not limited to the following acts or events: natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; explosions or fires arising from lightning or other causes; acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; strikes or labor disputes; and acts, failures to act or orders of any kind of any Governmental Authorities acting in their regulatory or judicial capacity.

**“Governmental Authority”** means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

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

**“Host Account”** means, with respect to a particular Facility, the Utility account with respect to the Utility Meter serving such Facility.

**“Host Customer”** means, with respect to a particular Facility, the owner or authorized agent of a Facility enrolled under the SMART Tariff as an Alternative On-Bill Credit Generation Unit.

**“Interconnection Obligations”** has the meaning set forth in Section 3.4.

**“Interest Rate”** means the lesser of (a) one and one-half percent (1.5%) per month and (b) the maximum rate permitted by applicable law.

**“Invoice”** has the meaning set forth in Section 4.3.

**“kWh”** means kilowatt-hour.

**“Laws”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen.

**“Outside Construction Commencement Date,”** means [                  ], provided that the Outside Construction Commencement Date may be extended by Seller up to eighteen (18) months as long as Seller is diligently pursuing the development of one or more Facilities, and provided further that such period of time shall be extended for a period of time concurrent with the periods of time required for (i) the Utility’s completion of any required Utility System upgrades or resolution of any other Utility delays, including, without limitation,

the Utility's failure to comply with its interconnection tariff, and (ii) the resolution of any challenge to any permit or approval relating to a Facility.

**"Person"** means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

**"Public Entity Solar Tariff Generation Unit"** has the meaning set forth in the SMART Program Rules.

**"Representatives"** shall mean a Party's Affiliates, and its Affiliates' successors and assigns, and each of their respective owners, members, directors, officers, employees, independent contractors, agents, attorneys, and other representatives, as well as existing or potential debt or equity financing parties.

**"Seller"** has the meaning set forth in the introductory paragraph of this Agreement.

**"Seller Meter"** means, with respect to each Facility, any and all revenue quality meters installed by Seller at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the amount of Electricity generated by the Facility and delivered to the Delivery Point.

**"SMART Program"** means the Solar Massachusetts Renewable Target Program, as embodied by the SMART Program Rules.

**"SMART Program Rules"** means, collectively and as amended from time to time, the Massachusetts SMART regulations, 225 CMR 20.00 *et seq.*, policies issued from time to time by DOER relating to the SMART Program, orders issued by DPU relating to the SMART Program, and the associated SMART Tariff of the Utility.

**"SMART Tariff"** means the Utility's tariff implementing the SMART Program, as such tariff may be amended from time to time.

**"Statement of Qualification"** means an assurance that a Facility will be an Alternative On-Bill Credit Generation Unit and a Public Entity SMART Tariff Generation Unit upon the Utility's issuance of notice of authorization to interconnect such Facility, subject to the satisfaction of certain requirements between issuance of the Statement of Qualification and such notice of authorization to interconnect.

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

**"Termination Date"** means the earlier to occur of (i) the last day of the Term, (ii) the Early Termination Date, (iii) the date of termination of this Agreement as the result of an Event of Default, and (iv) the date of termination as the result of Force Majeure pursuant to Section 9.2.

“**Utility**” has the meaning set forth in the recitals.

“**Utility Meter**” means, with respect to each Facility, the Utility meter furnished, installed or monitored by the Utility for the purpose of measuring the Electricity delivered by the Utility to the Host Customer and delivered by the Host Customer to the Utility.

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

## **ARTICLE 2** **TERM; CONDITIONS PRECEDENT; EARLY TERMINATION**

2.1 Term. The term of this Agreement (including any extensions, the “**Term**”) shall commence as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until the twentieth (20th) anniversary of the Commercial Operation Date.

2.2 Conditions Precedent. The commencement of the obligation of Seller to provide Electricity to the Delivery Points and to arrange for the allocation to Buyer of AOBCs generated in connection with such Electricity under the provisions of this Agreement, is subject to the fulfillment of each of the following conditions precedent except to the extent waived by Seller:

- (a) Seller shall have obtained all permits and approvals required for the construction and operation of the Facilities;
- (b) a Statement of Qualification shall have been issued with respect to each of the Facilities;
- (c) Seller shall have obtained project financing for the Facilities on terms acceptable to Seller;
- (d) Buyer shall have provided Seller with information required hereunder with respect to the Buyer Recipient Accounts sufficient to permit preparation of the Allocation Instructions;
- (e) the Facilities shall have been interconnected with the Utility in accordance with the requirements of the interconnection service agreement, the SMART Program Rules and Applicable Legal Requirements;
- (f) the first Facility shall have achieved Commercial Operation; and
- (g) no Buyer Default or any event which, with the giving of notice or the lapse of time or both, would become a Buyer Default shall have occurred and be continuing, and Seller shall have received a certificate of a senior official of Buyer to such effect.

2.3 Early Termination. This Agreement may be terminated prior to the expiration of the Term (the “**Early Termination Date**”):

- (a) by Seller, at any time prior to the installation of the first solar module with respect to the Facilities, upon notice to Buyer, in the event that Seller, in its discretion, determines that the development of the Facilities should be abandoned;
- (b) by Seller, at any time prior to the Commercial Operation Date, upon notice to Buyer, in the event that any of the conditions precedent set forth in Section 2.2 has not been satisfied;
- (c) by Buyer, upon thirty (30) days’ notice to Seller delivered no more than thirty (30) days following the Outside Construction Commencement Date, in the event that the Construction Commencement Date has not occurred by the Outside Construction Commencement Date, provided that Buyer may not exercise its right to terminate under this Section 2.3(c) after the earlier of (i) the Construction Commencement Date and (ii) the date on which Seller notifies Buyer that closing of financing for construction of all or a portion of the Facilities has occurred; or
- (d) by either Party in accordance with Section 9.2 or 10.2.

Upon early termination of this Agreement in accordance with this Section 2.3, each Party shall discharge by performance all obligations due to the other Party that arose up to the Early Termination Date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE 3** **DEVELOPMENT OF FACILITIES**

3.1 Development of Facilities by Seller. Seller shall undertake commercially reasonable good faith efforts to obtain required permits and financing for, and to construct the Facilities.

3.2 Notice of Facilities and Designated Capacity. Prior to the Commercial Operation Date, Seller shall provide notice to Buyer of the designation of the Facilities and of the Designated Capacity by delivering to Buyer an updated Exhibit A.

3.3 Notice of Commercial Operation. Subject to the provisions of this Agreement, Seller shall notify and represent to Buyer when each Facility has achieved Commercial Operation. Seller shall in the notice of Commercial Operation for the final Facility to achieve Commercial Operation certify to Buyer the Commercial Operation Date.

3.4 Interconnection Requirements. Seller shall be responsible for all costs, fees, charges and obligations of every kind and nature required to connect the Facilities to the Utility

System, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges (“***Interconnection Obligations***”). In no event will Buyer be responsible for any Interconnection Obligations, except as set forth in Section 7.5.

3.5 **Cooperation Regarding Authorizations**. Seller will manage applications for all permits, approvals, registrations and other related matters with the Utility and any Governmental Authority, including the submission of applications described in this Agreement and, to the extent relevant, Seller will do so on behalf of Buyer. Buyer agrees to cooperate with Seller in preparing such applications and securing such permits, approvals and registrations, including, without limitation, timely executing and delivering all documentation required from Buyer relating thereto. Where allowed by law, Buyer hereby designates Seller as its agent in obtaining all permits, approvals, registrations and additional authorizations required of Buyer in connection with this Agreement and the transactions contemplated hereby.

3.6 **Title**. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the Facilities and all Environmental and Tax Attributes shall be and remain with Seller.

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

4.1 **Purchase and Sale of AOBCs**. Commencing on the date the first Facility achieves Commercial Operation and continuing throughout the remainder of the Term, Seller shall arrange for allocation to Buyer of, and Buyer shall pay for, a percentage of the AOBCs equal to the Buyer Allocation Percentage.

4.2 **Price**. The purchase price of each AOBC shall be calculated in accordance with Exhibit C.

4.3. **Invoicing and Payment**. During each monthly Billing Cycle, Seller shall provide Buyer with an invoice (the “***Invoice***”) for the Buyer Allocation Percentage of the AOBCs with respect to Electricity delivered to the Delivery Points during the prior Billing Cycle at the AOBC Price. Buyer will remit payment of the amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to both Parties) within thirty (30) days following Buyer’s receipt of each such Invoice. Any amounts not paid by the due date will be deemed late, will be subject to a five percent (5%) late fee, and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

4.4 **Invoice Disputes**. In the event of a good faith dispute regarding any Invoice, Buyer shall pay the undisputed amount of such Invoice and shall seek to resolve the dispute in accordance with the dispute resolution procedures set forth in Article 14. Upon resolution of the dispute, any required refund or additional payment shall be made within thirty (30) days of such resolution along with interest accrued at the Interest Rate from and including the date of the original payment (with respect to a refund) or original due date (with respect to an additional payment). Any dispute by Buyer with respect to an Invoice or an adjustment thereof

is waived unless, within six (6) months after the invoice is rendered or such adjustment is made, Buyer notifies Seller of such dispute and states the basis for such dispute. Upon Buyer's request with respect to an Invoice, Seller, within ten (10) days, shall provide Buyer with information necessary to permit Buyer to replicate Seller's computation of the invoiced amount.

4.5 Governmental Charges. There shall be added to each Invoice, as separate items, a surcharge equal to the proportionate part of any Governmental Charges incurred by Seller multiplied by the Buyer Allocation Percentage. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event of a potentially applicable exemption or exclusion from one or more Governmental Charges, either Party shall, promptly upon the other Party's request therefor, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion.

4.7 Title and Risk of Loss. Title to and risk of loss of the Electricity will pass from Seller to the Utility at the applicable Delivery Point. Title to and risk of loss of the Buyer Allocation Percentage of the AOBCs will pass from Seller to Buyer upon the appearance of such AOBCs on the Utility invoices issued with respect to the Host Account.

4.8 Creditworthiness. Buyer has been issued one or more municipal bond credit ratings within the twelve (12) month period preceding the Effective Date and provided Seller with true and accurate copies of such credit rating documents. In the event of Seller's request from time to time during the Term, Buyer agrees to promptly provide to Seller copies of any subsequent municipal bond credit rating documents. In addition and not in limitation of the foregoing, if at any time during the Term, Seller determines that Buyer's municipal bond credit rating (long-term financial obligations) falls below [BBB] (or the equivalent in a successor municipal bond credit rating system), Buyer has experienced any material adverse change in its financial condition or has made two or more late payments, Seller shall have the right to require that the Parties undertake good faith negotiations to promptly agree on reasonable credit arrangements to ensure prompt payment of amounts payable under this Agreement. Such credit arrangements may include, without limitation, Buyer's agreement to make a cash deposit, post a letter of credit at a financially sound bank or other financial institution, or make a prepayment for AOBCs to be supplied under this Agreement.

4.9 Records and Audits. Each Party will keep, for a period of not less than two (2) years after the expiration or termination of this Agreement records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for all transactions hereunder. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions hereunder during such other Party's normal business hours.

## **ARTICLE 5**

### **TITLE TO ENVIRONMENTAL AND TAX ATTRIBUTES AND CAPACITY**

Other than the AOBCs that are allocated to the Buyer Recipient Accounts under the SMART Program Rules, as between Seller and Buyer, Environmental and Tax Attributes and

any rights or credits relating to the generating capacity of the Facilities shall remain the property of Seller and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Seller in its sole discretion and for its sole benefit. Buyer shall, upon Seller's request, take whatever actions are reasonably necessary from time to time in order for the Seller to claim the benefits of all Environmental and Tax Attributes and capacity rights or credits other than the AOBCs allocated to the Buyer Recipient Accounts.

## **ARTICLE 6** **METERS; BILLING ADJUSTMENTS**

6.1 **Metering Equipment.** The Parties acknowledge that Seller shall arrange for the Utility to furnish and install the Utility Meters and for the Host Customer to serve as the Utility's customer of record with respect to the Utility Meters. Seller shall be responsible for arranging compliance with any Utility customer requirements relating to Utility access to the Utility Meters. In addition, Seller may install, own, operate, and maintain one or more Seller Meters.

6.2 **Meter Accuracy.**

(a) **Utility Meter Accuracy.** Upon the request of Buyer, Seller shall seek to arrange for testing by the Utility of the accuracy of the Utility Meters.

(b) **Seller Meter Accuracy.** Seller, at its sole cost, shall test the Seller Meters in accordance and compliance with the manufacturer's recommendations and shall provide the results of such tests to Buyer. No more than once per calendar year, Buyer shall have the right to require Seller to conduct an audit of all Seller Meter data upon reasonable notice, and any such audit shall be at Buyer's sole cost (except as set forth below). If testing of a Seller Meter pursuant to the foregoing indicates that the meter is in error by more than two percent (2%), then Seller shall promptly repair or replace the Seller Meter at no cost to Buyer (and, if testing has been performed at Buyer's request, Seller and not Buyer shall bear the cost of such testing). For avoidance of doubt, if Seller has already conducted such an audit during a calendar year on its own initiative or at the request of another entity, Seller shall not be required to conduct an additional audit during the same calendar year.

(c) **Discrepancy Between Seller and Utility Meters.** If at any time there is a discrepancy between a Utility Meter and the corresponding Seller Meter, including without limitation a discrepancy associated with a billing adjustment described in Section 6.3, Seller, at Buyer's request, will use commercially reasonable good faith efforts to investigate and remedy such discrepancy in consultation with the Utility.

6.3 **Billing Adjustments Following Utility Billing Adjustments.** If as a result of a Utility billing adjustment the quantity of AOBCs for any period is decreased, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Buyer Allocation Percentage of the relevant portion of such AOBCs. If as a result of such adjustment the quantity of AOBCs for any period is increased, Buyer shall pay for the Buyer Allocation Percentage of the relevant portion of such AOBCs.

## ARTICLE 7

### REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

7.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

- (a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Laws;
- (b) this Agreement, and each document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;
- (c) all such persons as are required to be signatories to or otherwise execute this Agreement on its behalf under all applicable Laws have executed and are authorized to execute this Agreement in accordance with such Laws;
- (d) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;
- (e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and
- (f) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

7.2 Additional Representations and Warranties of Buyer. In addition and without limiting any other provision herein, Buyer represents and warrants to Seller that:

- (a) those of Buyer's existing utility accounts identified in Exhibit B attached hereto (the "**Buyer Recipient Accounts**") are accounts with the Utility; and
- (b) Buyer, to the best of its knowledge after reasonable inquiry, has provided to Seller complete and correct records of its electricity usage and costs with respect to the Buyer Recipient Accounts.

7.3 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 Seller 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, Seller 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.

7.4 No Advice. The Parties acknowledge and agree that Seller is not acting as a consultant or advisor to Buyer for any purpose and that Buyer is making its own decision to enter into this Agreement based solely on its own analysis and the advice of its own advisors.

7.5 Covenants of Buyer.

(a) SMART Program Matters.

(i) Allocation of AOBCs. Seller shall prepare the Utility’s AOBC Payment/Credit Forms (the “**Allocation Instructions**”), and Buyer shall cooperate fully with Seller’s preparation of such documents. At Seller’s request, Buyer shall promptly take any action and execute any documents, as required, to facilitate the allocation to the Buyer Recipient Accounts of the Buyer Allocation Percentage of the AOBCs accruing to the Host Customer of the Facilities.

(ii) SMART Qualification. Buyer shall not take any action that would adversely affect any Facility’s qualification, or the nature of such qualification, for participation in the SMART Program as both an Alternative On-bill Credit Generation Unit and Public Entity Solar Tariff Generation Unit.

(iii) Third-party AOBCs. Buyer may enter into one or more agreements with third parties for the purchase of AOBCs, provided that Buyer shall not allocate or permit to be allocated any AOBCs generated by any other source to the Buyer Recipient Accounts if such allocation would affect Buyer’s ability to comply with its obligations under this Agreement, provided further that, whether or not such effect is anticipated, Buyer shall provide at least thirty (30) days’ notice to Seller prior to undertaking or permitting any such allocation.

(iv) Consolidated Billing of Electricity Charges. In order to facilitate Buyer’s ability to use AOBCs allocated to the Buyer Recipient Accounts, Buyer shall arrange for the charges for its electricity purchases from competitive electricity suppliers (if any) to be billed through its Utility invoices. Notwithstanding the foregoing, Buyer shall have the right not to arrange for such consolidated billing but Buyer acknowledges that in such event it will only be able to use the AOBCs to offset those charges that appear on invoices issued by the Utility and not charges that appear separately on invoices issued by a competitive supplier.

(b) Interconnection Matters. In order to fulfill the Utility’s requirements for interconnecting to the Utility System an energy generating facility that is located on the

property of another party, Seller shall be party to the interconnection service agreement and Buyer agrees, promptly following Seller's request, to enter into a landowner consent agreement with the Utility in the form attached as an exhibit to the Utility's interconnection tariff (the "***Landowner Consent Agreement***").

(c) **Uniform Procurement Act Exemption Filings.** **Buyer shall strictly comply with the provisions of G.L. c. 30B, § 1(b)(33), which requires that, within fifteen (15) days of the signing of a contract for energy or energy related services by a covered public entity, the procuring public entity shall submit to the DPU, the Department of Energy Resources, and the Office of the Inspector General a copy of the contract and a report of the process used to execute the contract.** Buyer shall promptly deliver to Seller a complete copy of such filings together with satisfactory evidence that the filings have been timely made.

(d) **No Resale of Electricity.** This Agreement is an agreement by Buyer to receive and pay for AOBCs. Nevertheless, to the extent that this Agreement is deemed to constitute an agreement for the purchase of Electricity, the Electricity deemed to be purchased by Buyer from Seller under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the Utility pursuant to the SMART Program Rules), without prior approval of Seller, which approval shall not be unreasonably withheld, and Buyer shall not take any action which would cause Buyer or Seller to become a utility or public service company.

(e) **No Right to Enter or Use Property.** Buyer shall not have, nor shall it assert, any right under this Agreement to use the Facilities or enter upon or use the property on which the Facilities are located.

(f) **No Assertion that Seller is a Utility.** Buyer shall not assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, or is otherwise subject to rate regulation.

(g) **Contingent Allocation of Utility Cash Payment.** In the event that, with respect to one or more of the Facilities, the Utility becomes entitled to, and elects to, make cash payments to the Host Customer in the amount of the AOBCs in lieu of allocating the AOBCs to the Buyer Recipient Accounts, Buyer's obligation hereunder to pay for the Buyer Allocation Percentage of the Electricity shall remain in effect but Seller shall instead cause the Host Customer to deliver to Buyer a portion of such cash payments equal to the Buyer Allocation Percentage.

## **ARTICLE 8** **CONFIDENTIALITY**

8.1 **Duty of Confidentiality.** To the extent permitted by law, all terms of this Agreement and all information provided by a Party or its representatives to the other Party (the "***Confidential Information***") shall be confidential and shall not be disclosed by the receiving Party without the disclosing Party's prior written consent, except that Seller may disclose

Confidential Information to its Representatives. Neither Party shall be prevented from disclosing information which: (i) is or becomes publicly known through no fault of the receiving Party; (ii) is independently developed by the receiving Party without use of the other Party's confidential information; (iii) is required to be disclosed pursuant to applicable law, government regulation or order or by the requirements of any securities exchange, or is requested to be disclosed by a governmental authority or agency or any self-regulatory organization (including, without limitation, any stock exchange authority), provided the receiving Party gives the disclosing Party reasonable prior notice of such requirement and affords such Party the opportunity to seek a protective order or other appropriate means to safeguard the confidentiality of such information.

8.2 Publicity. Except to the extent required by law, without the prior written consent of the other Party, neither Party shall make any public comment, statement, or communication with respect to this Agreement. If either Party is required by law to make any such disclosure, it must first provide to the other Party the content of the proposed disclosure, the reasons that such disclosure is required, and the time and place that the disclosure will be made. Notwithstanding the foregoing, following the execution of this Agreement, Seller may in its discretion prepare and issue a press release or other form of public announcement, the form of which shall be delivered to Buyer prior to release, disclosing the existence of this Agreement. Without limiting the generality of the foregoing, all public statements made by or on behalf of either Party must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental and Tax Attributes and any related reporting rights.

8.3 Survival of Confidentiality and Publicity Provisions. The obligations of the Parties under this Article will survive for a period of two (2) years from and after the termination or expiration of this Agreement.

## **ARTICLE 9 FORCE MAJEURE**

9.1 Performance Excused by Force Majeure. To the extent Seller is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement, then Seller will be excused from, the performance of such obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). Seller will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that Seller is not required to settle any strikes, lockouts or similar disputes except on terms acceptable to Seller in its sole discretion. During the period in which, and to the extent that, obligations of Seller are excused by Force Majeure, Buyer will not be required to perform or resume performance of its obligations to Seller corresponding to the obligations of Seller excused by Force Majeure.

9.2 Termination Due to Force Majeure. In the event of a Force Majeure that prevents, in whole or in material part, the performance of Seller for a period of twelve (12) calendar months or longer, either Party may, upon thirty (30) days' notice to the other Party, terminate this Agreement, whereupon the Parties shall each discharge by performance all

obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

## ARTICLE 10 EVENTS OF DEFAULT; REMEDIES

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

- (a) such Party’s failure to make, when due, any payment required under this Agreement if such failure is not remedied within seven (7) days after receipt of notice of such failure;
- (b) such Party’s failure to comply with any other material provision of this Agreement if such failure is not remedied within sixty (60) days after notice and demand by the non-defaulting Party to cure the same or such longer period as may be reasonably required to cure, provided that the defaulting Party diligently continues until such failure is fully cured; or
- (c) such Party becomes Bankrupt.

10.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or applicable law, but subject to the provisions of Article 16 with respect to a Seller Event of Default, shall have the right to (i) terminate this Agreement, upon thirty (30) days’ notice to the Defaulting Party, (ii) withhold any payments due to the Defaulting Party under this Agreement, (iii) suspend performance due to the Defaulting Party under this Agreement, and (iv) exercise all other rights and remedies available at law and in equity to the non-defaulting Party, including recovery of all reasonably foreseeable damages, whether direct or indirect. For Seller, such damages may include, without limitation, (i) lost revenues in connection with any failure by Buyer to make purchases from Seller hereunder in accordance with the terms hereof, (ii) lost revenues in connection with any inability of Seller to sell Environmental or Tax Attributes associated with such Electricity or the reduction in value of such Environmental or Tax Attributes, and (iii) accelerated payments, fees, damages and penalties under Seller’s financing agreements. In addition and without limiting the foregoing, if Seller is the non-defaulting Party, Seller shall have the right to sell electricity and associated AOBCs produced by the Facilities to persons other than Buyer and recover from Buyer any loss in revenues resulting from such sales. Each Party agrees that it has a duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party’s default under this Agreement.

10.3 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

10.4 Unpaid Obligations. The non-defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the non-defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 11** **CERTAIN RIGHTS AND OBLIGATIONS FOLLOWING** **TERMINATION OR EXPIRATION**

11.1 General. Following termination of this Agreement by either Party that is not occasioned by the other Party's default, the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

11.2 Utility and Regulatory Matters. Upon the termination or expiration of this Agreement for any reason, Buyer shall promptly take all actions and execute all documents, as may be necessary or reasonably requested by Seller, to facilitate the amendment of the Allocation Instructions so as to terminate as soon as practicable the allocation of AOBCs to the Buyer Recipient Accounts, and Buyer hereby grants Seller the right to act as Buyer's attorney-in-fact to take the actions required by Buyer in this sentence. To the extent that the Utility does not permit termination of allocation of AOBCs to the Buyer Recipient Accounts (as modified from time to time) as of the effective date of termination or expiration of this Agreement and instead requires termination of such allocation as of a later date, Buyer's purchase and payment obligations hereunder shall survive with respect to Electricity delivered by Seller to the Delivery Point and corresponding with AOBCs allocated to the Buyer Recipient Accounts.

## **ARTICLE 12** **INDEMNIFICATION**

12.1 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party and its members, managers, officers, employees, agents, representatives and independent contractors, from and against all costs, claims, and expenses incurred by the other Party in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (i) the gross negligence or willful misconduct of the indemnifying Party, its agents or employees or others under the indemnifying Party's control or (ii) an Event of Default of the indemnifying Party. The indemnifying Party further agrees, if requested by the indemnified party, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article. Should the indemnifying Party defend any such claim against the indemnified party, it shall have full control of such defense, in its reasonable discretion. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of an indemnified party.

12.2 Claim Procedure. If the indemnified party seeks indemnification pursuant to this Article, it shall notify the indemnifying Party of the existence of a claim, or potential claim, as soon as practicable after learning of such claim, or potential claim, describing with reasonable particularity the circumstances giving rise to such claim. Upon written acknowledgment by the indemnifying Party that it will assume the defense and indemnification of such claim, the indemnifying Party may assert any defenses which are or would otherwise be available to the indemnified party.

12.3 Limitation on Buyer Indemnity to the Extent Prohibited by State Law. Notwithstanding any provision contained herein, the provisions of this Article 12 shall not apply to Buyer to the extent limited by Section 7 of Article 2 of the Amendments to the Massachusetts Constitution, which prohibits municipalities from pledging their credit without prior legislative authority.

12.4 Survival of Indemnity Claims. In addition, notwithstanding any provision contained herein, the provisions of this Article shall survive the termination or expiration of this Agreement for a period of two (2) years with respect to any claims which occurred or arose prior to such termination or expiration.

## ARTICLE 13 LIMITATIONS

### 13.1 Limitation of Liability.

(a) No Liability to Third Parties. Buyer and Seller agree that this Agreement is not intended for the benefit of any third party (other than Financing Parties) and that Seller shall not be liable to any third party by virtue of this Agreement.

(b) Limitations on Damages. Except as expressly provided in this Agreement, it is specifically agreed and understood that neither Party will be responsible to the other for any special or punitive damages whatsoever arising out of this Agreement or anything done in connection herewith. This Section 13.1(b) shall apply whether any such damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty or otherwise.

13.2 Limitation on Warranties. Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose. Without limiting the foregoing, Seller does not warrant or guarantee the amount of Electricity to be generated by the Facilities or the quantity of associated AOBCs available hereunder.

## ARTICLE 14

### GOVERNING LAW; DISPUTE RESOLUTION

14.1 Governing Law. This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws.

#### 14.2 Dispute Resolution.

(a) The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties.

(b) Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the Manager of Seller and the Town Administrator of Buyer (or the individuals then serving as chief executives of the Parties), who shall use their respective good faith efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.

(c) In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute may mutually agree to submit the dispute to mediation. The period for mediation shall commence upon the appointment of the mediator, shall not exceed ninety (90) days from the time the dispute arises, unless such time period is modified by written agreement of the Parties involved in the dispute, and the mediation shall be conducted in accordance with procedures mutually agreed to by the Parties. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute.

(d) In the event that the Parties cannot resolve a dispute by informal negotiations or mediation (or in the event that the Parties to not agree to submit the dispute to mediation), sole venue for judicial enforcement shall be the Superior Court for Norfolk County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Each Party consents to such venue and expressly waives any objections to venue it might otherwise be able to raise.

(e) In any judicial action, the Prevailing Party (as defined below) shall be entitled to payment from the opposing party of its reasonable costs and fees, including

but not limited to reasonable attorneys' fees, expert witness fees and travel expenses, arising from the civil action. As used herein, the phrase "***Prevailing Party***" shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

## **ARTICLE 15** **ASSIGNMENT; BINDING EFFECT**

15.1 General Prohibition on Pledge or Assignment. Except as provided in this Agreement, neither Party may pledge or assign its rights hereunder without the prior written consent of the other Party which shall not be unreasonably withheld or delayed.

15.2 Permitted Assignments by Seller. Notwithstanding anything to the contrary herein, Seller may assign all or a portion of its rights and obligations hereunder to (i) an Affiliate of Seller or, provided that Seller (or its contractor) retains responsibility for the day to day operation of the Facilities, to any other Person in connection with financing of the Facilities, or (ii) to the purchaser of all or substantially all of the assets of Seller, or to an entity that acquires ownership of one or more of the Facilities or, prior to the construction of one or more of the Facilities, the development rights thereto. In the event of any such assignment, Seller shall provide notice to Buyer of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or, as of the effective date of such assignment, will have assumed) all or a portion of Seller's rights and obligations under this Agreement. In addition, in the event of an assignment under clause (ii) above, promptly following Buyer's request, Seller and/or such assignee shall reasonably demonstrate to Buyer the assignee's ability (itself or through use of the services of qualified third parties) to perform its obligations under this Agreement, provided that the assignee shall not be required to possess ability that exceeds that of Seller immediately prior to such assignment. Buyer agrees to promptly execute any document reasonably requested of Seller in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof. Following an assignment permitted under this Section 15.2, except to the extent provided by the terms of such assignment and except to the extent that the assignee has assumed only a portion of Seller's rights and obligations hereunder, Seller shall have no liability arising under this Agreement after the effective date of such assignment.

15.3 Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to and inure to the benefit of, the Parties and their permitted heirs, successors and assigns.

## **ARTICLE 16** **FINANCING AND RELATED MATTERS**

16.1 Special Seller Assignment Rights. Notwithstanding any contrary provisions contained in this Agreement, including, without limitation, Article 15, Buyer specifically agrees, without any further request for prior consent, to permit Seller to assign, transfer or pledge its rights under this Agreement as collateral for the purpose of obtaining financing or refinancing in connection with the Facilities, and to sign any agreements reasonably requested by Seller or its debt or equity financing parties to acknowledge and evidence such agreement,

provided that any such assignment shall not relieve Seller of its obligations under this Agreement.

## 16.2 Financing Party Rights.

(a) Notice to Financing Party. Buyer agrees to give copies of any notice provided to Seller by Buyer to any assignee or transferee permitted pursuant to Section 16.1 of which it has notice (each, a “**Financing Party**”) of any event or occurrence which, if uncured, would result in a Seller Event of Default.

(b) Exercise of Seller Rights. Any Financing Party, as collateral assignee and if allowed pursuant to its contractual arrangements with Seller, shall have the right in the place of Seller to exercise any and all rights and remedies of Seller under this Agreement. Such Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement.

(c) Performance of Seller Obligations. Without limiting the foregoing or any other provision hereof, a 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 Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Seller under this Agreement or (unless such party has succeeded to Seller’s interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives such party the option to do so.

(d) Exercise of Remedies. Upon the exercise of remedies, including any sale of one or more of the Facilities by a Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Financing Party (or any transferee or 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 constitute a default under this Agreement and Buyer shall continue to perform its obligations hereunder in favor of the assignee or transferee as if such party had thereafter been named as Seller under this Agreement. Thereafter, the Financing Party (or its agent or designee, transferee or assignee) shall have the right to exercise in the place of Seller any and all rights and remedies of Seller under this Agreement.

(e) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of a Financing Party made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with such party or its assignee having substantially the same terms and conditions as this Agreement.

(f) Third Party Beneficiary. Buyer agrees and acknowledges that each Financing Party is a third party beneficiary of the provisions of this Article.

16.3 Cooperation Regarding Financing. Buyer agrees that it shall reasonably cooperate with Seller and its financing parties in connection with any financing or refinancing of all or a portion of the Facilities. In furtherance of the foregoing, as Seller or its financing parties request from time to time, Buyer agrees to (i) execute any consents to assignment or acknowledgements (including, without limitation, an acknowledgment for the benefit of one or more particular Financing Parties or prospective Financing Parties of the accommodations set forth in this Article 16), (ii) deliver such estoppel certificates as an existing or prospective Financing Party may reasonably require, (iii) furnish such information as Seller and its financing parties may reasonably request and (iv) provide such opinions of counsel as may be reasonably requested by Seller and/or an existing or prospective Financing Party in connection with a financing, refinancing or sale of one or more of the Facilities.

16.4 Right to Cure.

(a) Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given each Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and such party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to be less than an additional thirty (30) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) If, pursuant, to an exercise of remedies by a Financing Party, such party or its assignee (including any purchaser or transferee) shall acquire control of the Facilities and this Agreement and shall, within the time periods described in the preceding subsection, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

16.5 Amendments and Accommodations. At Seller's request, Buyer shall agree to amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Financing Party or provide separate accommodations as may be reasonably requested by an existing or proposed Financing Party; provided, however, that the foregoing undertaking shall not obligate Buyer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Buyer, under this Agreement (except for providing such notices and additional cure periods to Financing Parties with respect to Seller Events of Default as an existing or proposed Financing Party may reasonably request).

## ARTICLE 17 CHANGE IN LAW

In the event that a change in Law occurs, including without limitation, a change in the SMART Program Rules, or the administration or interpretation thereof by DOER, DPU or the Utility (a “**Change in Law**”), which (a) materially restricts the ability of Seller to deliver Electricity generated by one or more of the Facilities to the Utility or the ability of Buyer to receive AOBCs, or (b) otherwise materially impacts the ability of either Party to perform its obligations under this Agreement, including changes in Law that result in a material increase in Seller’s costs of construction and installation, or continuing operation of, one or more of the Facilities, then, upon a Party’s receipt of notice of such Change in Law from the other Party, the Parties shall promptly and in good faith negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within thirty (30) days following the date of the notice of Change in Law, Seller may terminate this Agreement without penalty.

## ARTICLE 18 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Seller to: 2 Ice House, LLC  
128 Warren Street  
Lowell, MA 01852  
Attention: John Porter

with a copy to: Klavens Law Group, P.C.  
20 Park Plaza, #402  
Boston, MA 02116  
Facsimile: (888) 248-7594  
Attention: Jonathan S. Klavens, Esq.

if to Buyer to: Town of Medfield  
Town House  
459 Main Street  
Medfield, MA 02052  
Attention: Town Administrator

with a copy to: *[insert notice information]*

if to a Financing Party, to the address and contact person of which Buyer has been given notice pursuant to this Article 18.

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any Party may change its address and contact person for the purposes of this Article 18 by giving notice thereof in the manner required herein.

## **ARTICLE 19** **MISCELLANEOUS**

19.1 Survival. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of Articles 5, 8, 10, 11, 12, 13, 14, 16, 18, and 19 shall survive the termination or expiration of this Agreement.

19.2 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

19.3 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its negotiating and entering into this Agreement, including without limitation, all attorneys' fees and expenses.

19.4 Relationship of Parties. Seller will perform all services under this Agreement as an independent contractor. Nothing herein contained shall be deemed to make any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any similar relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.

19.5 Waiver. No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

19.6 Cooperation. Each Party acknowledges that this Agreement may require approval or review by third parties and agrees that it shall use commercially reasonable efforts to cooperate in seeking to secure such approval or review. The Parties further acknowledge that the performance of each Party's obligations under this Agreement may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

19.7 Severability. If any section, sentence, clause, or other portion of this Agreement is for any reason held invalid or unconstitutional by any court, federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

19.8 Joint Work Product. This Contract shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof.

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

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

19.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Agreement.

*[Remainder of Page Intentionally Left Blank]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized representatives under seal as of the date first above written.

**SELLER:**

**2 ICE HOUSE, LLC**

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

Name: John Porter

Title: Manager

**BUYER:**

**TOWN OF MEDFIELD**

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

Name:

Title:

Approved as to Appropriation:

By:

\_\_\_\_\_

Name:

Title: {municipal treasurer/accountant}

Approved as to Form:

By:

\_\_\_\_\_

Name:

Title: {municipal counsel}

*[NOTE: Amend or add signatories for Buyer as necessary and appropriate]*

## **Exhibit A**

### **PROPERTY; DELIVERY POINTS**

#### Property

The Property shall be the real property located at 2 Ice House Road, Medfield, MA 02052.

#### Delivery Points

The locations at the Property where Electricity is to be delivered from the Facility and received under this Agreement shall be the Utility Meter on such Property behind which each Facility is located.

## **Exhibit B**

### **RECIPIENT BUYER ACCOUNT INFORMATION**

#### Buyer Recipient Account Information

[All Utility electricity accounts of Buyer.][The following Utility electricity accounts of Buyer and/or its Affiliates:]

Upon Seller's request, in order to facilitate Seller's preparation of the initial Allocation Instructions, Buyer shall promptly provide Seller with the following information regarding each such account:

- Utility customer name
- Account billing address
- Utility account number
- Annual Utility electricity charges
- Annual kWh usage
- Percentage of Buyer Allocation Percentage to be allocated to such account

Without reducing the Buyer Allocation Percentage, Buyer may from time to time request an adjustment in the proportionate percentages of AOBCs to be allocated to each individual Buyer Recipient Account, and may remove or add individual Buyer Recipient Accounts, by providing such written request to Seller. Buyer acknowledges that any such request cannot be inconsistent with its obligations under the Agreement, including without limitation, its obligations under Section 7.5. Seller expressly agrees that a "Buyer Recipient Account" need not be an account in the name of Buyer provided that, in such event, Buyer will remain liable to Seller for payment for any AOBCs allocated to any such Buyer Recipient Account. For avoidance of doubt, any Buyer Recipient Account must be in the name of a Municipality or Other Governmental Entity (as those terms are defined in the SMART Program Rules).

Seller shall promptly review such request and coordinate with the Host Customer with respect to the filing with the Utility of amended Allocation Instructions pursuant to the then-applicable SMART Program Rules. The Parties acknowledge that the timing of the Utility's implementation of such an adjustment to the percentages set forth on the Allocation Instructions shall be in the control of the Utility and Buyer may continue to receive allocations of AOBCs under previously agreed percentages until the Utility has implemented the requested amendments. Seller shall use commercially reasonable efforts to facilitate the Utility's implementation of such amendments.

## **Exhibit C**

### **CALCULATION OF AOBC PRICE**

For each Billing Cycle in which AOBCs appear on the Host Account for a Facility, the price per AOBC (the “*AOBC Price*”) shall be equal to the Electricity (in kWh) delivered in that Billing Cycle multiplied by an amount equal to the AOBC Rate minus one and a quarter cent (\$0.0125). For purposes hereof, “*AOBC Rate*” means, with respect to a particular Billing Cycle, the dollar value of an AOBC accruable to the Host Customer of the Facility for that Billing Cycle. (Under the current SMART Tariff, the dollar value of an AOBC is equal to the Basic Service rate applicable to the Facility’s rate class in effect during that Billing Cycle. The Basic Service rate is set by the Utility, with the approval of DPU, and varies over time.)

**Cultural Alliance of Medfield (CAM)**  
**For Board of Selectmen, Dec. 1, 2020**

**CAM Objective:**

- Build on the success of the movie nights at MSH by partnering with well-established non-profit music organizations in the Greater Boston area to provide a 2021 outdoor music series at the State Hospital.

**Ask for Today:**

- Provide feedback, questions, and/or concerns regarding the general concepts presented tonight for a live music series at MSH.
- Give a greenlight for CAM to develop and present a more detailed proposal, including resources required, logistics, and answers to preliminary questions/concerns from the BoS.

**Benefits:**

- Continue to activate and build awareness for the MSH projects and generate revenue for the Town and CAM.
- Forge partnerships with other established non-profit music organizations to expand the potential audience and reach for CAM fundraising for the Chapel.
- Support local businesses by offering food and beverage concession opportunities.
- Provide Medfield residents access to diverse live music programming in a COVID responsible manner.

**Time frame:** Mid May through early November 2021

**Projected schedule/location:**

- 12 to 14 shows total (2 to 3 per month) kicking off Memorial Day weekend
- Events will be held primarily during the day/late afternoon to avoid noise and traffic concerns at night.
- Location at MSH is expected to be the same as movie night.
- Preliminary discussions with Passim and sound/staging companies also uncovered opportunities for other potential programming including a folk music festival or larger musical acts/night concerts.

**Target audience size:**

- 150 cars
- Without cars (when allowed): 300 to 500 people

**Possible Non-Profit Music Partners (bold= contacted and interested)**

- **Passim**- Cambridge
- **TCAN**- Natick
- **Celebrity Series of Boston** - Boston
- Berklee- Boston

**Issues CAM is Researching**

- Costs and approach for staging, sound and lights
- “Day of”- Event Management/logistics
- Electricity - option to pull from trailer versus generator(s)
- Budget Projections (sponsorships, insurance, programs, logistics)
- Traffic
- COVID restrictions (ongoing and subject to change)
- Facilities (restroom, concession options)
- Outreach and discussions with other non-profit music organizations

**Questions:**

- Town property use fees
- Possibility of leaving staging up (May-October)
- Permitting and liquor license
- Openness to explore other opportunities:
  - Weekend music and art festival
  - 2-4 larger nighttime concerts (500 to 1,000 individuals)
- Electricity— upgrade trailer power (if viable) to reduce cost of generator

## Cemetery Commissioners

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Frank Iafolla	2021		3		
Thomas Sweeney	2022		3		
Al Manganello	2020		3		
David Temple, Associate	2020		1		
Paul Hogan, Associate	2020		1		

## Bay Colony Rail Trail Advisory Committee

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Christian Donner	2020		1		
<b>Paula Crear (NEW APPOINTEE)</b>	NEW		1		
Graham Plonski	2020		1		
Robert Horgan	2020		1		

## Committee to Study Memorials

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Jon Cogan	2020		1		
Jane Lomax	2020		1		
David F. Temple	2020		1		
<b>Tom Sweeney (NEW MEMBER)</b>	NEW				
Michelle Doucette	2020		1		

## Council on Aging

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Richard Ryder	2021		3		
Katie Robinson	2021		3		
Heidi Groff	2022		3		
Perry C. Constas	2022		3		
Robert Heald	2020		3		

## Memorial Day Committee

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Lorrie Guindon	2020		1		
Chief Michelle Guerette	2020		1		
Chief William Carrico	2020		1		
Albert J. Manganello	2020		1		
William H. Mann	2020		1		
Ann B. Thompson	2020		1		
Gustave Murby	2020		1		
Michelle Doucette	2020		1		
Ronald C. Griffin	2020		1		
Evelyn Clarke	2020		1		
Jerry Kazanjian	2020		1		
Frank Iafolla	2020		1		

## Board of Water and Sewerage

Member	Term Expires	Note	Length of Term		Notes
Randy Karg	2021		3		
Christian Carpenter	2022		3		
William Harvey	2020		3		

## Affordable Housing Trust

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Jim Brand (Chair)	2020		2		
Brett Heyman	2020		2		
Michael Marcucci	2021		2		
Ann Thompson	2021		2		
Kerry McCormack	2021		2		
Newton Thompson	2022		2		
Greg Sandormirsky	2022		2		

**Americans with  
Disability  
Compliance Review  
Committee**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
Maurice Goulet	2021		3		
Kristine Trierweiler	2020		3		
Amy Colleran	2021		3		
Tina Cosentino	2022		3		
William Carrico	2020				
Ann B. Thompson	2022		3		

**Board of Health**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>		<b>Notes</b>
Carol Read	2021		3		
Robert Abernathy, Associate	2021		3		
Holly Rand	2020		3		
Steve Resch	2022		3		
Melissa Coughlin	2023		3		
Kathleen Thompson	2022				

**Enterprise Fund  
Committee**

**Advertise for Citizen at Large**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
Georgia Colivas	2020		1		
Maurice Goulet	2020		1		
Kristine Trierweiler	2020		1		
Joy Ricciuto	2020		1		
Christian Carpenter	2020		1		
Bill Harvey	2020		1		

**Permanent Planning and Building  
Committee**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
Timothy Bonfatti	2022		3		
Thomas Erb	2020		3		
Michael Quinlan	2021		3		
Walter Kincaid	2020		3		
Mike Weber	2021		3		
Kristine Trierweiler, <i>Ex Officio</i>	2022		3		

**Zoning Board of Appeals**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
William McNiff	2023		3		
Michael W. Whitcher	2022		3		
John J. McNicholas	2021		3		
Jared Spinelli, Associate	2020		1		
Charles H. Peck, Associate	2020		1		
Jared Gustafson, Associate	2020		1		

## Historic District Commission

Member	Term Expires	Note	Length of Term	Reappoint	Notes
David R. Sharff	2021		3		
Bradley Phipps	2021		3		
Michael Taylor	2022		3		
John Maiona	2022		3		
Connie Sweeney	2020		3		

## Permanent Planning and Building Committee

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Timothy Bonfatti	2022		3		
Thomas Erb	2020		3		
Michael Quinlan	2021		3		
Walter Kincaid	2020		3		
Mike Weber	2021		3		
Kristine Trierweiler, <i>Ex Officio</i>	2022		3		

## Medfield Energy Committee

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Lee Alinsky, RESIGNATION	2022		3		
Marie Nolan RESIGNATION	2021		3		
Penni Conner	2022		3		
Paul Fechtelkotter	2020		3		
Fred Davis	2020		3		
Cynthia Greene	2021		3		
David Temple	2021		3		
Jim Nail NEW MEMBER			3		
Alec Stevens NEW MEMBER			3		
Hildrun Passas NEW MEMBER			3		
Megan Sullivan NEW MEMBER			3		
Robert Winograd NEW MEMBER			3		
Patricia Pembroke NEW MEMBER			3		
David Stephenson NEW MEMBER			3		Non-resident
Kristine Trierweiler, <i>Ex Officio</i>	2020		1		
Osler P. Peterson, <i>Ex Officio</i>	2020		1		

## Open Space and Recreation Committee

Member	Term Expires	Note	Length of Term	Reappoint	Notes
Robert Aigler	2020		1		
Jonathan Hinrichs	2020		1		
Eric O'Brien, Associate	2019		1		
Michael Perloff, Associate	2019		1		
Mel Seibolt, Associate	2019		1		

**Transfer Station and  
Recycling Committee**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
Nancy Irwin	2020		1		
Kimberly Schubert	2020		1		
Jackie Alford	2020		1		
Andrea Costello	2020		1		
Cheryl Dunlea	2020		1		
Barbara Meyer	2020		1		
Megan Sullivan	2020		1		
Annette Wells	2020		1		
Maurice Goulet, <i>Ex Officio</i>	2020		1		
Robert Kennedy, Jr, <i>Ex Officio</i>	2020				
Kristine Trierweiler, <i>Ex Officio</i>	2020		1		

**Kingsbury Pond  
Committee**

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
Richard Judge	2020		1		
Ann Krawec	2020		1		
George Dealy	2020		1		
Garrett Graham	2020		1		
Greg Testa	2020		1		
Michael Thompson	2020		1		
Sharon Judge	2020		1		
Paul Trumbour	2020		1		
Kristine Trierweiler, <i>Ex Officio</i>	2020		1		

**Historical  
Commission**

**Authorization**

**Annual Questionnaire**

No

<b>Member</b>	<b>Term Expires</b>	<b>Note</b>	<b>Length of Term</b>	<b>Reappoint</b>	<b>Notes</b>
Ancelin Wolfe	2021		3		
William Haspidis	2021		3		
Vacant Seat	2022				
Maria C. Baler	2022		3		
Caitlin Struble	2022		3		
David F. Temple	2020		3		
John Day	2020		3		
Robert Gregg	2020	Associate	1		
David R. Sharff	2020	Associate	1		
Michael R. Taylor	2020	Associate	1		
John A. Thompson	2020	Associate	1		
Marc Eames	2020	Associate	1		
Cheryl O'Malley	2020	Associate	1		

**Conservation Commission**

<b>Member</b>	<b>Term Expires</b>		<b>Length of Term</b>		<b>Notes</b>
Robert Kennedy, Jr.	2021		3		
Robert Aigler	2022		3		
Mary McCarthy	2022		3		
Deborah Bero	2020		3		
Michael Perloff	2020		3		
Richard Hooker, <b>Resigned</b>	2021		3		
George Darrell	2021		3		
Catherine Scott, <b>NEW MEMBER</b>	2021		Fill vacancy		
Kirsten Poler, <b>NEW Associate Member</b>	2021		1		

Alcohol Licenses

Avenue  
Basil  
Bullard's  
Jing's Garden  
Kingsbury Club  
Medfield Package Store  
Noon Hill Grille  
Palumbo Liquors  
Takara  
Nosh & Grog

Wine & Beer

Medfield Wine Shoppe  
Gulf Resources/Medfield Commons

Farmer's Brewery Pouring Permit

Seventh Wave  
Zelus Beer Company

Common Victualler

Avenue  
Basil  
Jing's Garden  
Kingsbury Club  
Noon Hill Grill  
Nosh & Grog  
Takara

Amusement

Basil  
Jing's Garden  
Kingsbury Club  
Noon Hill Grill  
Nosh & Grog

Blue Moon  
Casa Bella  
China Sky  
Cutlets  
Donut Express  
Italian Groceria  
Medfield Donuts  
Medfield Donuts II  
Medfield House of Pizza  
Medfield Subway  
Papa Gino's  
Royal Pizza  
Starbucks  
The Village Griddle

From: **Christine McCue** <[christine.mccue@verizon.net](mailto:christine.mccue@verizon.net)>

Date: Tue, Nov 24, 2020 at 2:54 PM

Subject: Sign request for Dec. 1 Selectmen meeting - Lowell Mason House Holiday Concert

To: Evelyn Clarke <[eclarke@medfield.net](mailto:eclarke@medfield.net)>

Cc: Thomas Scotti <[thomas.scotti@verizon.net](mailto:thomas.scotti@verizon.net)>, <[evakendrick@comcast.net](mailto:evakendrick@comcast.net)>, Osler Peterson <[Osler.Peterson@oslerpeterson.com](mailto:Osler.Peterson@oslerpeterson.com)>

Hi Evelyn,

I'm writing as a volunteer on behalf of Lowell Mason House to get Board of Selectmen permission at its Dec. 1 meeting for signs to be placed in usual town locations to help promote the virtual Lowell Mason House Holiday Concert on Dec. 5. It's quite possible only a couple of locations will ultimately be used – most likely Transfer Station, North & Main, and/or South St. & Rte. 27.

Lowell Mason House, Medfield TV, and First Parish Unitarian Universalist Medfield (where Lowell Mason was music director) are working in collaboration on the virtual event that will air on Medfield TV at 7 p.m. on Dec. 5.

(Despite the Dec. 5 official broadcast date, there might be a desire to keep the sign in place a couple of weeks beyond that day with an adjusted message to promote the recording. Hopefully that would be okay. I figured it was better to build in flexibility with the request!)

Thank you,

Chris McCue Potts

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