

**COUNTY OF NORFOLK
COMMONWEALTH OF MASSACHUSETTS
ENERGY MANAGEMENT SERVICES AGREEMENT
FOR SOLAR GUARANTEED ONSITE ENERGY GENERATION**

This Energy Management Services Agreement (hereinafter “*Contract*”) is made and entered into as of October __, 2022 (“*Effective Date*”), by and among the COUNTY OF NORFOLK, a political subdivision of the Commonwealth of Massachusetts (“*County*” and “*Customer*”), the NORFOLK COUNTY AGRICULTURAL HIGH SCHOOL, acting through its Board of Trustees (“*School*” and “*Customer*”) and KEARSARGE AS GM LLC, a Massachusetts limited liability company (“*Contractor*”) for the purpose of furnishing certain equipment and work specified herein (“*Work*”), and assuring the performance of said Work, designed to generate electrical power delivered to Customer and built on County owned property, described in Attachment 1: Description of Premises (hereinafter “*the Premises*”). Customer, County, School and Contractor are sometimes hereinafter referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

SECTION 1: DEFINITIONS

Key terms used within this Contract are defined as follows:

Allocated Percentage. The percentage of AOBC to be allocated to Customer.

Annual System Degradation Factor. The decreased power output factor expressed in percent by which the Guaranteed Annual Electric Output of the System shall decrease from one Guaranteed Performance Year to the next Guaranteed Performance Year.

AOBC. Alternative On-Bill Credit is the applicable monetary value of Electricity calculated by multiplying the Electricity Rate times the kilowatt-hours of Electricity for the Allocated Percentage generated by the Ground Mounted System, determined in accordance with the SMART Rules.

AOBC Rate. The dollar value of an AOBC calculated at the basic service rate then in effect for the Customer’s rate class issued by the LDC.

Applicable Legal Requirements. Any constitutional provision, law, statute, rule, regulation, bylaw, ordinance, code, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, consent or requirement of any federal, state or local governmental or quasi-governmental entity, including, without limitation, any court, judicial or administrative body, taxing authority, regulatory authority, agency, department, commission, board, bureau, administration, service or other instrumentality of any governmental entity, including the Guidelines.

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

Commercial Operation. The System is ready for regular, daily operation, has been connected to the Premises’ electrical system or interconnected to the grid, has undergone testing as provided herein, has been accepted by Customer and County, and is capable of producing Electricity and has been granted permission to operate at full capacity by the Local Distribution Company (LDC).

Commercial Operation Date. The first day on which the System is ready for Commercial Operation, as certified in writing by Contractor to Customer in the Notice of Commercial Operation.

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

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Delivery Point. The agreed location or locations on the Premises where Electricity is to be delivered and received under this Contract.

DOER. The Department of Energy Resources, established by M.G.L. c.25A, §1.

Business Day. A business day shall mean Monday through Friday, exclusive of state and federal legal holidays.

Contractor. The vendor selected by the County to perform the energy management services solicited through an RFQ under 225 CMR 19.00, meaning Kearsarge AS GM LLC.

Electricity. The actual and verifiable amount of electricity generated by the System and delivered to Customer and County at the Delivery Point for use by Customer and County, as metered in whole kilowatt-hours (kWh) at the Metering Device, and that conforms to the applicable LDC and/or authoritative regulatory body standards.

Price. The amount paid by Customer and County to Contractor for each AOBC generated by the Ground Mounted System multiplied by 90% of the AOBC Rate, each as sold by Contractor to Customer and County, as applicable pursuant to this Contract.

EMS Annual Report. A report form required by DOER that must be completed by the County summarizing the energy or water unit and dollar cost savings. The initial report providing estimated savings must be filed along with the EMS contract and thereafter within 90 days after the anniversary of the Guaranteed Energy Performance Period.

Energy Audit. A systematic inspection, verification, and determination of the energy consumption characteristics of a building or facility which:

- (a) identifies the type, size and rate of energy consumption of such building or facility and the major energy using systems of such building or facility;
- (b) determines appropriate energy conservation maintenance and operating procedures; and
- (c) indicates the need, if any, for the acquisition and installation of Energy Conservation Measures or On-site Energy Generation.

Energy Conservation. A modification of, or change in, the operation of real or personal property in a manner likely to improve the efficiency of energy use, and shall include Energy Conservation Measures and any Energy Audits to identify and specify energy and cost savings.

Energy Conservation Measures. Measures involving modifications of maintenance and operating procedures of a building or facility and installations therein, which are designed to reduce energy consumption in such building or facility, or the installation or modification of an installation in a building or facility which is primarily intended to reduce energy consumption.

Energy Conservation Projects. Projects to promote Energy Conservation, including but not limited to energy conserving modification to windows and doors; caulking and weather stripping; insulation, automatic energy control systems; hot water systems; equipment required to operate variable steam, hydraulic and ventilating systems; plant and distribution system modifications, including replacement of burners, furnaces or boilers; devices for modifying fuel openings; electrical or mechanical furnace ignition systems; utility plant system conversions; replacement or modification of lighting fixtures; energy recovery systems; on-site electrical generation equipment using new renewable generating sources as defined in M.G.L. c. 25A, § 11F; and cogeneration systems.

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Energy Management Services (EMS). A program of services, including Energy Audits, Energy Conservation Measures, Energy Conservation Projects or a combination thereof, and building maintenance and financing services, primarily intended to reduce the cost of energy and water in operating buildings, which may be paid for, in whole or in part, by cost savings attributable to a reduction in energy and water consumption that result from such services. The EMS contract may extend for a term not to exceed 20 years. The allowable length of the contract may also reflect the useful life of the cost savings measures.

Energy Savings. A measured reduction in fuel and its costs, energy and its costs, water and its costs, or operating or maintenance costs resulting from the implementation of Energy Conservation Measures or Projects; provided, however, that any payback analysis to evaluate the energy savings of a geothermal energy system to provide heating, cooling or water heating over its expected lifespan shall include gas and electric consumption savings, maintenance savings and shall use an average Escalation Rate based on the most recent information for gas and electric rates compiled by the Energy Information Administration of the United States Department of Energy.

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

Established Baseline. A written description of previous fuel, energy, and water consumption data and operating and maintenance costs for the past three years, including, but not limited to, future capital replacement expenditures avoided as a result of equipment installed or services performed. The description shall be included in the Request for Proposals.

Escalation Rate. If applicable, the percentage by which the Price increases from one Guaranteed Performance Year to the next Guaranteed Performance Year based on the most recent information for gas and electric rates compiled by the Energy Information Administration (EIA) of the United States Department of Energy.

Final Completion. Final Acceptance by the County that the Contractor has fulfilled all of its obligations under this Contract including construction, installation, inspection, testing and commissioning, and that all punch list items are reconciled.

Guarantee of Savings. The written guarantee of a Contractor, warranting the energy savings to be derived from a particular Energy Conservation Measure, Energy Conservation Project, Energy Management Services, or Energy Savings. Such written guarantee shall include a detailed description of the cost of the energy or water conservation or usage measures, all causally connected work, and ancillary improvements provided for in the contract. The guarantee shall state the annual savings expressed in applicable energy units or (if water savings) in gallons per year and be based on dollars saved by reference to established unit rates.

Guarantee of Generation. The written guarantee of a Contractor warranting the particular electrical energy generation to be derived from the On-site Energy Generation unit. Such written guarantee shall: (1) include a detailed description of the equipment to be installed; and (2) state the annual amount of electrical energy to be generated in kilowatt hours per year.

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Guaranteed Maximum Cost. The fixed maximum cost of the Energy Management Services, including: (1) the cost of each energy conservation measure, after installation, startup, and testing; and (2) the total payments made by the County or Customer to a contractor, including but not limited to, the total capital investment and the Contractor's costs. Utility sponsored rebates, tax credits or other incentives, any direct governmental subsidies, interest payments, and energy and water cost savings shall not be deducted from the Guaranteed Maximum Cost.

Guaranteed Performance Year. The consecutive 12-month period commencing on the Commercial Operation Date and every year following for the Term of the Contract.

Guidelines. A set of clarifications, interpretations, and procedures, including forms and model documents, developed and issued by DOER to assist it in determining compliance with 225 CMR 10.00 or 225 CMR 19.00. Each Guideline shall be effective on its date of issuance or on such date as is specified therein, except as otherwise provided in 225 CMR 10.00 or 225 CMR 19.00.

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

Lease Area. The area on the Premises to which the County leases and the School grants access to the Contractor for the purpose of installing and operating the System.

Local Distribution Company (LDC). The regulated electric local distribution company that provides electric distribution service to the municipality in which Customer is located.

LDC System. The electric distribution system operated and maintained by the LDC.

Maximum Price. The maximum not to exceed Price that may be charged under this Contract.

Metering Device. Any and all revenue quality meters installed by Contractor or LDC at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the amount of Electricity generated by the System and delivered to the Delivery Point for use by Customer or otherwise for delivery into the LDC System.

Net Metering. Net metering will have the meaning set forth in 220 CMR 18.02.

On-site Energy Generation. The generation of renewable energy or the cogeneration of electricity and heating or cooling of the System located on or adjacent to a building or structure owned by the County that utilizes some or all of the energy so generated either directly or indirectly through net metering.

Premises. The area leased for the Ground Mounted System for installation, as more particularly described in Attachment 1.

Production Shortfall. The amount, expressed in kWh, by which the actual amount of Electricity generated by the System in any Guaranteed Performance Year is less than the Guaranteed Annual Electrical Output for that specific year.

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Renewable Generation. The electrical energy output of an RPS Class I Renewable Generation Unit or Solar Carve-Out Renewable Generation Unit as defined under 225 CMR 14.00: *Renewable Energy Portfolio Standard – Class I*.

Request for Qualifications (RFQ). A written document issued by a Local Governmental Body that invites qualified providers to submit responses outlining their qualifications, the capacity to perform the EMS for the Local Governmental Body, and other information required by 225 CMR 19.00 and the Local Governmental Body.

SMART Rules. Collectively and as may be amended and/or supplemented from time to time, the Solar Massachusetts Renewable Target (SMART) Program regulations 225 CMR 20.00, DPU 17-140-A and such other rules and regulations issued by the Massachusetts Department of Public Utilities, or its successors and the associated tariff of the LDC.

System. The Ground Mounted System as listed in Attachment 1 that Contractor will design, procure, install, test, commission, own, operate, maintain and decommission at the Premises, and as more particularly described on Attachment 4.

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

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

Substantial Completion Date or Commercial Operation Date. The date on which the Contractor warrants by written notice in the form shown in Exhibit F that the System is substantially complete and producing Electricity equal to or greater than the guaranteed electricity generation.

Term. Twenty (20) years from the Commercial Operation Date. If this Contract covers more than one System, the Term shall end on the latest Commercial Operation Date.

Termination Date. The earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Contract as the result of an Event of Default, and (iii) the date of termination pursuant to such other Sections as specifically set forth herein.

Termination Payment. The amount payable by Contractor, its affiliate or owner, to Customer or County in the event of termination of this Contract as a result of an Event of Default by Contractor, or as agreed to by both Parties, as set forth in Attachment 10 attached hereto.

Update Statement. A form developed by DCAM, as defined in 810 CMR 4.01, to be completed by a General Contractor and submitted with all proposals.

SECTION 2: PRICE AND TERMS

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2.01 Purchase and Sale of Electricity

- a) Commencing on the Commercial Operation Date and continuing until the Termination Date, Contractor shall make available to Customer, and Customer shall take delivery of the Allocated Percentage of AOBC as generated by the System.
- b) Customer shall pay Contractor for the Allocated Percentage of AOBC, as delivered to Customer's LDC account, generated by the Ground Mounted System at the Price reflecting a 10% discount off the AOBC Rate. The payment made by Customer to Contractor shall equal the AOBC for the relevant period multiplied by the Price for such period. The Parties agree that in no event shall the Price exceed the Maximum Price as shown on Attachment 6.
- c) Contractor is responsible for local, state, and federal income taxes attributable to Contractor for income received under this Contract.
- d) Contractor is solely responsible for all real property taxes and personal property taxes attributable to the System.
- e) Contractor is responsible for any governmental charges attributable to the sale of Electricity from Contractor to Customer or imposed specifically upon the production of renewable and/or distributed electrical energy, irrespective of whether imposed before, upon or after the delivery of Electricity to Customer at the Delivery Point or to the LDC System.
- f) The Parties will use reasonable efforts to administer this Contract and implement its provisions to minimize Governmental Charges. In the event any of the sales of Electricity hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefore, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

2.02 Payment Terms

- a) All invoices under this Contract will be due and payable not later than forty five (45) days after receipt of the applicable invoice or on the next Business Day. Each Party will make payment by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party.
- b) The Customer or County may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this Contract at any time within three (3) months following the date the invoice (or invoice adjustment) was rendered. Any payments between the parties necessary to resolve any irregularities will be made within thirty days after submission. If, after thirty days, the parties are unable to agree upon the adjustment, the matter shall be submitted to resolution pursuant to Section 3.1: *Dispute Resolution*, and the disputed portion of any additional payment due under this Section shall not be payable until the dispute resolution procedure required in Section 3.1: *Dispute Resolution* has been completed.
- c) Each Party will keep, for a period not less than seven (7) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions during such other Party's normal business hours.

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2.03 Title to Environmental Attributes

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

a) Reporting of Ownership of Environmental Attributes.

Contractor shall take all actions necessary to qualify for, register and report the Environmental Attributes relating to the Electric Output.

b) Further Assurances

At Contractor's request and expense, Customer and/or County shall execute all such documents and instruments reasonably necessary or desirable to effect or evidence Contractor's right, title and interest in and to the Environmental Attributes relating to the Electricity.

If the standards used to qualify the Environmental Attributes to which Contractor is entitled under this Contract are changed or modified, Customer and/or County shall at Contractor's request and expense use all commercially reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.

2.04 System Purchase and Sale Options

a) Purchase Option:

No later than (a) 180 days prior to the end of the Term; or (b) following the Termination Date caused by a Contractor Event of Default occurring at or after ten (10) years following the Commercial Operation Date, Customer shall have the right to provide a notice to Contractor requiring a determination of the Appraised Value.

b) Selection of Independent Appraiser

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

c) Determination of Appraised Value

The selected Independent Appraiser will provide a preliminary determination of the Appraised Value within twenty days to Contractor and Customer and County, together with all supporting documentation that details the calculation of the Appraised Value. The Parties shall each have the right to object to the Appraised Value within twenty (20) Business Days of receiving such Preliminary Determination. The

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objecting Party will provide a written explanation documenting the reasons for its objection. Within ten (10) days after the expiration of such twenty (20) day period, the selected Independent Appraiser shall issue its final determination (the “*Final Determination*”) to Contractor and Customer and County, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the selected Independent Appraiser shall be final and binding on the Parties.

d) Exercise of Purchase Option

Customer or County will have forty-five (45) days to exercise the Purchase Option, at the Appraised Value set forth in the Final Determination. Promptly following receipt of Customer or County’s notice, Contractor shall make the System and the Environmental Attributes, including records relating to the operations, maintenance, and warranty repairs, available to Customer for its inspection during normal business hours.

e) Terms of System Purchase

On the Transfer Date:

- i. Contractor will surrender and transfer to Customer or County all of Contractor’s right, title and interest in and to the System, and the Environmental Attributes, and shall retain all liabilities arising from or related to the System and the Environmental Attributes prior to the Transfer Date.
- ii. Customer or County will pay the Appraised Value, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the System and the Environmental Attributes from and after the Transfer Date.
- iii. Both Parties will execute and deliver a bill of sale and assignment of contract rights containing such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System, and the Environmental Attributes in Customer or County.
- iv. Contractor will deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System and the Environmental Attributes to Customer or County.

2.05 Contract Termination/Decommissioning

This Contract shall terminate on the Termination Date unless otherwise agreed to in writing. Immediately following the Termination Date, the Contractor shall have a period to decommission and remove the System on the same terms and conditions as set forth in Attachment 2, Solar Lease Provisions as follows: up to one hundred eighty (180) days for the Ground Mounted System, which may be postponed and/or extended upon mutual agreement of the Parties to accommodate the timing and scheduling needs of Customer relating to the school year. If the purchase option provision in Section 2.04 is exercised, the Contractor is not required to decommission the System. Contractor will obtain an estimate from its engineer prior to the Commercial Operation Date for the cost of decommissioning and removing the System and Contractor shall provide to the County, as a named beneficiary, an evergreen Letter of Credit from an institutional lender in such amount as of the Commercial Operation Date.

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At the request of County, no more than once every five (5) years, Contractor shall provide an updated estimate of the decommissioning and removal costs.

SECTION 3: GENERAL PROVISIONS

3.01 Dispute Resolution

Disputes regarding changes in and interpretations of the terms or scope of the Contract shall be resolved according to the following procedures:

- a) All disputes by any party shall be made in writing and submitted to the other parties.
- b) Within ten (10) days of receipt of written notice, the parties shall discuss and attempt to settle such dispute through cooperation and negotiation in good faith. Contractor shall not delay, suspend, or curtail performance under the Contract because of any dispute subject to this section.
- c) If the dispute cannot be resolved, any party may demand that the dispute be submitted to mediation, whereby the parties shall within ten (10) days jointly make arrangements for mediation within Norfolk County, Massachusetts with a mutually agreeable mediator whose procedures for mediation shall govern.
- d) The parties shall retain the right to pursue any legal remedies available to each without further delay upon an unsuccessful or unsatisfactory mediation.

3.02 Conditions beyond Control of the Parties

Except as otherwise provided herein, if any party shall be unable to carry out any material obligation under this Contract due to events beyond its control, such as acts of God, governmental or judicial action, insurrections, riots, extended labor disputes, fires, explosions or floods, this Contract shall remain in effect but the affected party's obligations shall be suspended until the uncontrollable event terminates or is resolved, unless the Contract is terminated by mutual consent, in which event, Customer or County shall pay Contractor for all parts of the Work furnished to the date of termination or as otherwise agreed.

3.03 Labor Laws

The Contractor will obey and abide by all laws and regulations of the Commonwealth relating to the employment of labor and public work.

Contractor shall comply with all federal and state laws, rules, and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices. Contractor shall not discriminate in the delivery of services against any person who otherwise meets the eligibility criteria for services, or in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, status as a Vietnam Era Veteran, sexual orientation or for exercising any rights or benefits afforded by law.

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3.04 Prevailing Wage Rate

The Division of Occupational Safety has established a Schedule listing the prevailing minimum wage rates that must be paid to all workers, as applicable, employed under the Contract by either the Contractor or its subcontractors, for the Scope of Work set forth in Exhibit H. Such Schedule shall continue to be the minimum rate of wages payable to workers on this Contract throughout the Term of this Contract. The Contractor shall not have any claim for extra compensation from the County if the actual wages paid to employees on the Contract exceeds the rates listed on the Schedule. The Contractor shall cause a copy of the Schedule to be kept in a conspicuous place at the project site during the Term of this Contract (see M.G.L. c.149 § 27). If reserve police officers are employed by the Contractor they shall be paid the prevailing wage rate of regular police officers (see M.G.L. c.149 §34B).

3.05 Appropriations.

The Customer and County reasonably believe that funds can be obtained sufficient to make all payments due to Contractor under this Contract. The Customer and County hereby covenant that it will make reasonable and diligent efforts to obtain and maintain funds from which such payments may be made, including making provisions for such payments to the extent necessary in each annual or supplementary budget submitted for the purpose of obtaining funds, and using reasonable efforts to have such portion of the budget approved. Nothing herein shall obligate the Customer to institute legal action before any court, to commence proceedings before any forum, or to institute proceedings in the nature of mandamus against any public official in attempting to obtain said funds.

In the event either Customer or County or both are not granted an appropriation of funds at any time during the term of this Contract and operating funds are not otherwise available to Customer or County to pay the amounts due under this Contract and the non-appropriation did not result from any act or omission by Customer or County, Customer or County shall have the right to terminate this Agreement on the last day of the fiscal period for which appropriations were received without penalty or expense to Customer, except for the portion of amounts already accrued which are due and payable for which funds shall have been appropriated and budgeted. At least thirty (30) days prior to the end of Customer's and County's current fiscal year, Customer's or County's Director (or legal counsel) shall certify in writing to Contractor that (a) funds have not been appropriated for the upcoming fiscal period, (b) said non-appropriation did not result from any act or failure to act by Customer, (c) Customer has exhausted all funds legally available for performance under this Contract for the upcoming fiscal year, and (d) Customer is terminating the Contract effective the last day of the fiscal period for which appropriations were received.

3.06 Laws, Regulations, Ordinances, and Standard Practices

Contractor shall perform its obligations hereunder in compliance with all applicable federal, state, and local laws, regulations, ordinances and by-laws, including applicable licensing and permitting requirements, in accordance with sound engineering and safety practices, and in compliance with all reasonable rules or policies of the County and Customer relative to the properties. Contractor shall be responsible for obtaining all governmental permits, licenses, consents, and authorizations as may be required to perform its obligations hereunder (see Section 4.9: *Permits and Fees* regarding permits and fees pertaining to the Work).

This Contract is made and shall be interpreted and enforced in accordance with the laws of the Commonwealth of Massachusetts. If any provision of this Contract shall be determined to be invalid or unenforceable under applicable law, such provision shall, insofar as possible, be construed or applied in such manner as will permit enforcement; otherwise this Contract shall be construed as if such provision had never been made part thereof.

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The Parties agree to notify each other within twenty-four (24) hours upon becoming aware of an inspection under, or any alleged violation of, the Occupational Safety and Health Act or any other provision of Federal, State or local law, relating in any way to the undertakings of any Party under this Contract.

3.07 Patents and Patent Rights

The Contractor shall indemnify and hold the County harmless from all claims and actions due to any actual or asserted infringement upon patent rights in any equipment, material, or process used by Contractor in connection with this Contract.

3.08 Access and Inspection

County shall have access to inspect the Work and the books, records, and other compilations of data that pertain to this Contract. Records shall be kept on a generally recognized accounting basis and calculations kept on file in legible form. Records shall be saved or archived for a period of three (3) years after the Termination Date of this Contract and shall be kept or made available within Massachusetts.

Contractor shall have access (upon reasonable notice to the County and Customer) to inspect the property to assess the condition and operation of material and equipment installed and shall maintain an adequate inspection system and perform such inspections as will ensure that the work performed under the Contract conforms to Contract requirements according to Attachment 7: Operations and Maintenance Schedule. The Contractor shall maintain complete inspection records and make them available to the Customer.

All Work is subject to inspection and testing at all places and at all reasonable times before acceptance to ensure strict compliance with the terms of the Contract. Contractor shall replace or correct work, without charge, found not to conform to the Contract. If the Contractor does not promptly replace or correct rejected work, the Customer may, by contract or otherwise, replace or correct the work and charge the cost to the Contractor or terminate for default the Contractor's right to proceed.

Notwithstanding inspection and acceptance by the County or any provision concerning the conclusiveness thereof, the Contract warrants that all services performed will, at the time of acceptance, be free from defects in workmanship and conform to the requirements of this Contract.

3.09 Ownership of Documents

All drawings, reports and other materials prepared by Contractor specifically in performance of this Contract shall become the property of the County.

3.10 Intentionally Omitted

3.11 Certificates

Contractor certifies as follows:

- a) **Certificate of Authorization:** If Contractor is a limited liability company, each person executing this Contract on behalf of the Contractor hereby covenants, represents and warrants that Contractor is a duly organized limited liability company and is authorized to do business in the Commonwealth of Massachusetts (a copy of evidence thereof to be supplied to the County upon request); and that each

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person executing this Contract on behalf of the Contractor is an officer of Contractor and that he or she is duly authorized to execute, acknowledge and deliver this Contract to the County, a copy of a manager's certificate to this effect is attached hereto as Exhibit A: Manager's Certificate.

- b) **Tax Compliance Certification:** Pursuant to M.G.L. c.62C §49A(b), each person signing this Contract on behalf of the Contractor hereby certifies, under the penalties of perjury, that to the best of his/her knowledge and belief, the Contractor has complied with any and all applicable state tax laws attached hereto as Exhibit B: Tax Compliance Certificate.
- c) **Certificate of Non-collusion:** The undersigned certifies under penalties of perjury that this Contract has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity of group of individuals attached hereto as Exhibit C: Certificate of Non-collusion.
- d) **Covenants:** Contractor covenants that: (1) it presently has no financial interest and shall not acquire any such interest direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Contract or which would violate M.G.L. c.268A, as amended from time-to-time, (2) in the performance of this Contract, no person having such an interest shall be employed by the Contractor, and, (3) no partner or employee of the Contractor is related by blood or marriage to any Commissioner or employee of the Customer.
- e) **County Certification:** The County certifies that it is duly authorized to execute, acknowledge and deliver this Contract under the provisions of 225 CMR 10.00 or 225 CMR 19.00, to retain Contractor to design, acquire, install and assist in the maintenance of the installed equipment to accomplish the energy conservation measures and to provide other services, as more fully set forth herein, subject to all the terms and conditions of this Contract.

3.12 Representations and Warranties

Each party hereto represents and warrants to the others that (i) it has adequate power and authority to enter into this Contract and to perform its obligations hereunder and that (ii) it possesses full authority to execute and deliver this Contract and that it does not contravene any applicable law, rule or regulation.

3.13 Assignment

Contractor shall not assign, transfer, convey, or otherwise dispose of this Contract, or any part hereof, or his right, title or interest in the same or any part thereof, without the prior written notice to the County, and such notice shall include the financial information of any unrelated third party for the County's review and approval. Notwithstanding the foregoing, Contractor may, as of right, collaterally assign this Contract to a party providing financing for the project, including an affiliate under common control of Contractor. Contractor shall not assign by power-of-attorney, or otherwise, any of the moneys due or to become due and payable under this Contract, without the prior written notice to the County.

3.14 Complete Contract

This Contract, together with any documents incorporated herein by attachment or by reference, shall constitute the entire and exclusive Contract among the parties. This Contract may not be amended or modified except in writing and executed by the County, Customer and the Contractor.

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It is understood and agreed that the following documents, attachments, exhibits, schedules and any amendments and/or addenda, comprise the total Contract:

- Attachment 1: Description of the Premises
- Attachment 2: Site Lease
- Attachment 3: Rent Payments
- Attachment 4: Description of System
- Attachment 5: Scope of Work
- Attachment 6: Cost and Generation
- Attachment 7: Operations and Maintenance Schedule
- Attachment 8: Commissioning Plan
- Attachment 9: Project Schedule
- Attachment 10: Termination Payment Schedule

SECTION 4: THE WORK

4.01 Time for Performance and Final Completion

Contractor will commence Work within sixty (60) days of County sending the Contractor a Notice to Proceed. Contractor shall substantially complete Work according to Attachment 9: *Project Schedule*. Extension of dates to commence or complete Work is at the reasonable sole discretion of the County. Approval for an extension of dates to commence or complete Work shall not be unreasonably withheld. Also, within one hundred and twenty (120) days of County sending the Contractor a Notice to Proceed, the Contractor must deliver a ninth through twelfth grade curriculum in solar energy that confirms to Common Core and Next Generation State Science Standards. Said curriculum should, at a minimum include (a) real time online monitoring; and (b) software that will allow students to see real-time, the current and historical power and energy output on any computer. The Ground Mounted System will be designed as an Agricultural Solar Tariff Generation Unit under the SMART Rules, which allows the School to plant and maintain crops under the System and own the yield from the crops.

If Contractor is delayed in the commencement or completion of any part of the Work due to events beyond Contractor's control and without the fault or negligence of the Contractor, including but not limited to fire, flood, extended labor disputes, unusual delays in deliveries, unavoidable casualties, abnormal adverse weather, war, pandemics and acts of God, or due to County's actions or failure to perform its obligations under this Contract or to cooperate with the Contractor in the timely completion of the Work, then Contractor will notify County in writing of the existence, extent of, and reasons for such delay. Contractor shall have no claim for additional compensation because of such delays but Contractor and County may extend the Contract time by revision for such reasonable time, as they shall agree.

4.02 Specifications of Work

Contractor's obligations hereunder are specified in Attachment 4: *Description of System* and related drawings and plans and any subsequent revisions thereto, as approved by the County. Excluded from the Work are any modifications or alterations to the properties not expressly included within the Work. The requirements of all applicable laws, regulations and codes of federal, state, and local town or city government shall be met at all times. All Work shall be performed in a professional, competent and workmanlike manner.

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4.03 Construction Procedures, Changes to Work and Coordination

Contractor shall supervise and direct the Work using its best ability, skill, attention, and oversight. Contractor, in consultation with County, shall be responsible for the construction means, methods, techniques, sequences, and procedures. The Customer and County will review all proposed modifications to the Premises and systems and must approve of them prior to commencement of any work; such approval will not be unreasonably withheld. No change to the scope or specifications of Work shall be made without the written consent of the County, in the form of a revision to the *Scope of Work*. If Contractor fails to correct Work that is not in accordance with the specifications or persistently fails to meet specifications herein, County, by written order signed personally or by its authorized agent, may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

Contractor shall perform the Work in such a manner as to not harm the structural integrity or operating systems of any building or facility and any easements and shall repair and restore any damage caused by the Work at Contractor's expense.

Contractor will not create (or allow to continue) any condition deemed to endanger health or safety as defined in Section 5.01: *Workmanship* and if such a condition exists County shall have the right to exercise the remedies described therein.

Contractor shall supply to the Customer and County the telephone number of a responsible person who may be contacted during non-work hours for emergencies arising in connection with or affecting the Work.

Contractor and its employees, subcontractors and agents shall not smoke on the Premises or within any building, including basements on the School's campus.

4.04 Relationship with Maintenance Staff

Contractor shall cooperate with County's and Customer's operating and maintenance personnel and coordinate the Work on a planned and programmed basis. Contractor shall deliver its preventive maintenance schedule to the County as set forth in Attachment 7 and it shall be solely responsible for all maintenance on the System in accordance with required safety measures.

4.05 Material and Equipment Installed

The County shall make the final determination whether any material or equipment installed is as specified in Contractor's Response to the /RFQ, which is incorporated in this Contract by reference and *Scope of Work*. No substitution of any material or equipment specified shall be made without the written consent of the County in the form of a revision to the Scope of Work, and any such substitution shall be at least equal in quality, finish, durability, serviceability and performance for the purpose intended.

Contractor shall install and, when applicable, operate and maintain, equipment in a manner consistent with the equipment manufacturers' literature, specifications and instructions.

Prior to the installation of the System, the Contractor shall submit design documents. The installation of the System shall not commence until the County accepts the design documents in writing, which must be within five (5) business days of receipt or such documents will be deemed approved. All electrical, and structural design drawings shall be stamped by a Massachusetts registered professional engineer for each corresponding trade if applicable.

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4.06 Disposal

Contractor will be responsible for proper disposal of all non-hazardous materials and construction demolition debris. Disposal plans must be documented, and appropriate transportation and disposal documents prepared before disposal commences and actual disposal must be documented immediately after disposal.

Demolition debris can only be disposed of at a DEP and Board of Health licensed municipal sanitary landfill or DEP/EPA licensed recycling facility. The landfill or recycling facility must be permitted to receive the type of waste involved.

Hazardous waste can only be disposed of by a person licensed for special waste disposal.

In the event that friable asbestos is encountered and must be disturbed during the course of this Contract, the Contractor will notify the Customer and County immediately. All work in the affected area shall cease until the Parties agree upon a remediation plan. This will not affect the savings allocation, but an extension of the completion date may be granted equal to the time lost. Contractor will take into account all available asbestos studies provided by the Customer and County during the audit phase of the project.

4.07 Subcontracting

Contractor may subcontract part of the Work in Contractor's Response to the RFQ, and updated in Attachment 5/Scope of Work with the written consent of the County in the form of a revision to the *Scope of Work*, substitute a subcontractor for one so identified or, if no subcontractor for a certain trade or task has been so identified, engage one. Contractor shall be responsible for the conduct, acts and omissions, whether intentional or unintentional, of its subcontractor, employees, agents, invitees or suppliers. Nothing in this Contract shall create any contractual relationship between any subcontractor, employee, agent, invitee or supplier and the County. Contractor shall pay promptly when due all charges for labor and materials in connection with the Scope of Work done by Contractor or anyone claiming under Contractor so that the Premises shall at all times be free of all liens arising from such Scope of Work. However, in the event a lien is filed against the County's property, Contractor shall be solely responsible for taking the steps necessary to obtain a discharge of any lien filed and Contractor shall indemnify and hold the County harmless with respect to any lien filed in connection with the Scope of Work.

4.08 Equipment Location and Access

Premises may be occupied during construction. Contractor shall take all necessary precautions to ensure the public safety and convenience of the occupants during construction. The Contractor shall complete the Work in accordance with the schedule in Attachment 9: Project Schedule. Contractor must use sufficient personnel and adequate equipment to complete the Work. The Work must be completed in a continuous uninterrupted operation between the hours of 8:00 AM and 4:30 PM on Monday through Friday, unless otherwise authorized in writing by the Customer and County. No Work is to be done on holidays, or Sundays other than for emergencies or unless agreed to in writing.

The Contractor is responsible for the security of partially completed work and for materials or equipment stored at County properties. Only materials and equipment intended and necessary for immediate use shall be brought into the buildings. Equipment and unused materials shall be removed from each building by the end of each workday. The Customer and/or County shall provide if available, without charge, a mutually satisfactory location or locations for the storage and operation of materials and equipment and the performance of the Work, including a location for staging and mobilization.

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Flammables and combustibles shall be stored only in accordance with Fire Prevention Regulations (527 CMR 1.00-50.00). In the event that the neither the Customer nor County is unable to provide a satisfactory location then Contractor shall provide and pay for suitable storage.

4.9 Permits and Fees

Contractor shall secure and pay for any and all permits and governmental fees, licenses, and inspections that are required by federal, state, or town or city governments for proper performance and completion of the Work.

Subsequent to receipt of a Notice to Proceed, the Contractor shall provide a listing of all anticipated permits required to implement the Scope of Work described in Attachment 5: Scope of Work.

4.10 Utilities

Contractor shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. County shall have no duty or liability to Contractor with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by Customer, County or any third party, nor shall Customer or County have any liability to Contractor (including, without limitation, liability for lost revenue) arising from Customer's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security.

4.11 Concealed or Unknown Conditions

If Contractor finds conditions during the Work that are subsurface or otherwise concealed physical conditions that differ materially from those indicated on the drawings or are unknown physical conditions of an unusual nature that differ materially from those conditions ordinarily found to exist and generally recognized as inherent in similar construction activities, Contractor shall notify County of such conditions promptly, prior to significantly disturbing the same, and in no event later than one (1) Business Day after first observing the conditions.. If such conditions differ materially and cause an increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall submit a written estimate of the material and labor cost increase and time delay. If the County concurs with the need and time delay, the Parties shall make an equitable adjustment to the time for performance and Final Completion, or both only upon execution of a Contract Amendment. Contractor shall not be entitled to damages for delay.

4.12 Casualty, Condemnation, Damage

If any fire, flood, other casualty, or condemnation renders a portion of any property described in Attachment 1: Description of the Premises unsuitable for habitation or destroys a substantial part of the area within which the Work is to be performed or which the Work affects, the Parties may terminate or modify this Contract by mutual agreement.

4.13 Shutdown of Services

Contractor hereby acknowledges that continuous operation of services and access to the property or common areas is essential to the operation of the County or School's buildings on the County's properties. If any such service, or access to the property, or any common area is to be discontinued for any period of time in order to perform the

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Work, Contractor will give the Customer and County as much notice in writing as is practicable, but in no event less than seven (7) days in which event the Customer and/or County shall, by written response, approve unconditionally or with conditions such shutdown of services. Such conditional approval may include a requirement for the Contractor to provide and pay for temporary services, may limit the time for which services or access may be shut down, or may require other actions, accommodations, or expenditures on the part of the Contractor. With respect to fire alarm or other fire protections, Contractor shall also notify the local fire department of any shutdown of service and notify the fire department when such service is restored.

The Customer and County acknowledge that such shutdowns may be necessary to perform the Work from time to time and will not withhold approval unreasonably. The Customer and County agree to communicate with occupants on plans to shut down services or access and temporary measures, if any, which will be made.

4.14 Interconnection with Electric Distribution Grid.

Contractor will obtain at its sole cost all approvals and agreements required for Contractor's interconnection of the System to the LDC System. Contractor will promptly inform County of all significant developments relating to such interconnection matters.

4.15 Indemnification and Limitation of Liability

Contractor shall be responsible for the Work and take all precautions for preventing injuries to persons and property in or about the Work and shall bear the costs of all losses or damages resulting from or because of the Work. The Contractor shall pay or cause payment to be made for all labor performed or furnished and for all material used or employed in carrying out this Contract. Contractor shall assume the defense of, indemnify and hold harmless the County, their officers and agents from all claims relating to the following:

- a) Labor performed or furnished and materials used or employed for the Work,
- b) Inventions, patents and patent rights used in and in doing the Work,
- c) Injuries to any person received or sustained by or from the Contractor and its employees, subcontractors and its employees, any agents, suppliers and invitees in doing the Work, or as a consequence of any improper materials, implements of labor used or employed therein, and
- d) Any act, omission, or neglect of the Contractor and any employees, subcontractors and employees, agents, suppliers and invitees.

Nothing herein shall relieve or limit the Contractor of liability for losses and damages to person or property because of its operations. The Contractor shall indemnify and hold the County harmless from all liability, including reasonable attorneys' fees and legal costs, associated with or resulting from the Contractor's operations.

4.16 Commercial Operation

- a) Substantial Completion

Upon the Substantial Completion Date, the Contractor will provide a Delivery and Acceptance Certificate in the form of Exhibit F: *Delivery and Acceptance Certificate* for the System. Within ten Business Days of receipt, the County will sign and return the Certificate indicating either acceptance or rejection of the Substantial Completion Date.

- b) Final Completion

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At least thirty days in advance of the scheduled date of Final Completion, the Contractor will meet with the County to assess the progress and remaining Work to complete the System. If the Contractor is unable to complete the System within the scheduled time remaining then the County may request that the Contractor accelerate the Work.

SECTION 5: PERFORMANCE AND EVALUATION SUBSEQUENT TO WORK

5.01 Workmanship

Contractor warrants that all equipment, materials and Work shall be free from defects in material, manufacture, workmanship and performance as set forth by the catalogs, bulletins and specifications included within Response to the RFQ, or this Contract, whichever is appropriate.

Contractor shall correct defective equipment, materials or Work within a reasonable period of time, but no less than seventy two (72) hours, unless such defect is a condition deemed to endanger health or safety or is a fire hazard, County may correct any defect and Contractor shall reimburse County for its reasonable expenses incurred in performing such correction. Conditions which are deemed to endanger under the State Sanitary Code (105 CMR 410.000) or are fire hazards under Fire Prevention Regulations (527 CMR 1.00-50.00) shall be addressed promptly and jointly, if necessary, by Contractor, assuring that immediate precautions are taken to avoid risk to persons or property, imminent measures are taken to prevent deterioration of condition, occupants are alerted to any dangers or hazards, and steps for final correction taken within twenty four (24) hours.

5.02 Measurement and Verification of Electricity Generated

- a) The Contractor or LDC shall provide, install, own, operate, and maintain the Metering Device. Contractor shall maintain and test the Metering Device in accordance with applicable requirements and the manufacturer's specifications. County and School shall provide copies of their Local Distribution Company billing statements as requested by Contractor in order to confirm the appropriate rates in completing Attachments 1 and 6.
- b) Meter readings will be conclusive as to the amount of Electricity generated by the System; provided, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to, or registers inaccurately, measurement of Electricity shall be determined in the following sequence:
 - i. by estimating by reference to historical data for quantities measured during periods of similar conditions when Metering Device was registering accurately; or
 - ii. if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it will be assumed that the period of such inaccuracy was equal to (1) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (2) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, provided, however, that the period covered by the correction shall not exceed three months.

5.03 Performance and Guarantees

Contractor guarantees the following:

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- a) That the System will produce 85% of the final as built size of the System (the Guaranteed Annual Electric Output in each Guaranteed Performance Year, as adjusted by the Annual System Degradation Factor). On the first anniversary of the Commercial Operation Date and each anniversary of the Commercial Operation Date thereafter during the Term, the Guaranteed Annual Electric Output shall be decreased by the Annual System Degradation Factor.
- b) The Contractor or LDC shall bear the cost of the annual testing of the Metering Device and the preparation of the Metering Device test reports.
- c) Calculations for verified electricity generation will be made at least annually according to the most recent version of the Federal Energy Management Program (FEMP) Measurement and Verification Guidelines using Option B with continuous direct measurement of energy generated taken at the System level.
- d) The value of a shortfall shall be calculated as the difference between the Price and the AOBC Rate as applicable in the year that the shortfall occurs with no ceiling price.

5.04 Performance Remedies

- a) Contractor shall be bound to the Guaranteed Annual Electrical Output. If, during the Term of this Contract, the electricity generated is less than the Guaranteed Annual Electrical Output (shortfall), Contractor shall be required to pay or credit the Customer for its Allocated Percentage in an amount equal to the difference between the kWh cost for the AOBC Rate and the Price for the AOBC.
In the event that a Production Shortfall exists in any Guaranteed Performance Year, Contractor shall pay to Customer, within thirty (30) days of the end of such Guaranteed Performance Year, the amount calculated above for such Production Shortfall.
- b) Contractor shall bear the risk of any System Loss, except to the extent such System Loss results from the gross negligence of Customer or its agents, representatives, vendors, visitors, employees, contractors, or invitees.
- c) In the event of any System Loss that results in less than total damage, destruction or loss of the System, this Contract will remain in full force and effect and Contractor will, at Contractor's sole cost and expense repair or replace the System as quickly as practicable.
- d) In the event of any System Loss that, in the reasonable judgment of Contractor, results in total damage, destruction or loss of the System, Contractor shall, within twenty Business Days following the occurrence of such System Loss, notify Customer whether Contractor is willing to repair or replace the System.
- e) In the event that Contractor notifies Customer that Contractor is not willing to repair or replace the System, this Contract will terminate automatically upon the effective date of such notice and Contractor shall promptly remove the System from the Premises with ten Business Days.
- f) In the event that Contractor notifies Customer that Contractor is willing to repair or replace the System, this Contract will remain in full force and effect and Contractor will repair or replace the System as quickly as practicable.

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5.06 Operation and Maintenance

According to Attachment 7: Operations and Maintenance Plan.

5.07 As-built Plans.

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

SECTION 6: OBLIGATIONS OF THE PARTIES

6.1 Obligations of the Contractor

Contractor acknowledges and agrees that Contractor's obligations hereunder are in the capacity of providing professional services for the purposes described in the Preamble to this Contract and in said capacity is expected to provide, engineering, design, monitoring, construction management including general contracting as necessary, and other related services including legal services as agreed between Contractor and Customer as may normally be incidental to these types of professional services. Contractor acknowledges and agrees that any other functions including but not limited to manufacturer's representative, dealer or distributor of equipment, materials or commodity specified herein or as subcontractor, or ownership in whole or in part or financially affiliated with a contractor which performs such other function shall constitute a conflict of interest which shall constitute a material breach of this Contract unless 1) fully disclosed in the Response to the RFQ, and 2) accepted by the Customer under terms which are specified in the Contract. Contractor acknowledges and agrees that this paragraph applies to all its officers and employees.

The following events or conditions shall constitute a breach by the Contractor and shall give the County the right, without an election of remedies, to proceed and/or terminate this Contract by delivery of written notice declaring termination, upon which event the Contractor shall be liable to the Customer for any and all damages sustained by the County, as set forth on Attachment 10:

- a) Any attempt by the Contractor to increase the Contract Price for reasons other than those related to changes in the Work.
- b) Any failure by the Contractor to provide quarterly monitoring reports.
- c) Any failure by the Contractor to remedy a shortfall in the Guaranteed Annual Electrical Output.
- d) Any representation or warranty furnished by the Contractor in Contractor's Response to the RFQ, the System engineering plans and drawings, or this Contract which is false or misleading in any material respect when made.
- e) The filing of bankruptcy by the Contractor or by Contractor's creditors, an involuntary assignment for the benefit of creditors, or the liquidation of the Contractor.
- f) Any failure by the Contractor to perform or comply with any other material term or condition of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to Contractor demanding that such failure be cured or, if cure cannot

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be effected in thirty (30) days, the Contractor fails to begin to cure and proceed to completion thereof as quickly as is reasonably possible.

- g) Contractor shall take good care of the Lease Area and the System, conduct all required maintenance and make all repairs thereto, interior and exterior, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Premises and the System in first class order, repair, and condition.
- h) Customer shall have no duty or liability to Contractor with respect to the maintenance, repair, or security of the Premises, the System or any Lease Area for access.
- i) Nothing in this Contract shall limit Customer's ability to maintain the Premises in a reasonable manner consistent with Customer's current and past practices.

6.2 Obligations of the County and Customer

County agrees to respond to all proposed revisions and related requests on a timely basis for the expeditious design, implementation and monitoring of the System.

Each of the following events or conditions shall constitute a breach by County or Customer, as applicable and shall give the Contractor the right, without an election of remedies to proceed pursuant to Section 3.01 and terminate this Contract by delivery of written notice declaring termination, upon which event the County shall be liable to the Contractor for all Work furnished to date:

- a) Any failure by the Customer or County, without cause, to authorize payment due more than forty-five (45) days after receipt of the invoice.
- b) Any representation by County in the RFQ and this Contract is false or misleading in any material respect when made.
- c) Any failure by the County or Customer to perform or comply with any other material terms or conditions of this Contract, including breach of any covenant contained herein, provided that such failure continues for thirty (30) days after written notice to the County or Customer demanding that such failure be cured or, if cure cannot be effected in thirty (30) days, the County or Customer begins to cure and proceed to completion thereof as quickly as is reasonably possible.
- d) Any failure by County to deliver the EMS Annual Report a form of which is attached as Exhibit G (which Contractor shall prepare) to DOER as required, after any notice from DOER and cure period, which causes Contractor to lose any incentive payment or its Statement of Qualification from DOER.

SECTION 7: INSURANCE AND BOND REQUIREMENTS

7.01 Worker's Compensation Insurance

Workers Compensation Coverage A	Statutory Minimum
Employer's Liability Coverage B	\$1,000,000 each accident \$1,000,000 disease per employee \$1,000,000 disease policy

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7.02 Comprehensive General Liability

Bodily Injury and Property Damage	\$2,000,000 each occurrence, \$4,000,000 aggregate
Products & Completed Operations	\$2,000,000 aggregate
Personal & Advertising Injury	\$2,000,000 each occurrence

This policy shall include coverage relating to explosion, collapse, and underground property damage and contractual liability coverage. Contractor shall provide a certificate of insurance naming the County as an additional insured evidencing the required limits listed above. The completed operations coverage shall be maintained for a period of two (2) years after the Substantial Completion Date as set forth in Exhibit F. All such insurance coverages may be achieved through a combination of primary and excess insurance.

7.03 Vehicle Liability

Contractor shall provide the following minimum coverage with respect to the operations of the any employee, including coverage for owned, non-owned, and hired vehicles:

Bodily Injury	\$2,000,000 each person
Property Damage	\$2,000,000 each accident \$4,000,000 aggregate

7.04 Property Coverage

Contractor shall provide the following coverage against loss or damage by fire and against loss or damage covered by the special perils insurance endorsement on all Work:

Special Perils	100% full replacement cost
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Upon completion of Work at Customer buildings, Contractor shall provide an installation floater, in the full amount of the replacement cost, for the requirements set forth above. The policy or policies shall specifically state that they are for the benefit and payable to the Contractor, and all persons furnishing labor or labor and materials for the Work, as their interests may appear.

7.05 Customer and County as Additional Insured

The County and School shall be named as additional insured on the Contractor's Liability Policies.

7.06 Certificates of Insurance, Policies

Certificates of insurance, acceptable to the Customer and County, shall be submitted to the Customer and County upon the execution of this Contract and shall be renewed upon expiration of the policies. Certificates shall indicate that the coverage required by section 7.01 through 7.05 is in effect. If the Customer is damaged by Contractor's failure to maintain such insurance, then Contractor shall be responsible for all reasonable costs or damages attributable thereto. Certificates shall note the thirty-day cancellation notice requirement of Section 7.07. All policies shall be issued by companies authorized to write that type of insurance under the laws of the Commonwealth of Massachusetts.

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7.07 Cancellation

Cancellation of any insurance required by this Contract, whether by the insurer or the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and the Customer at least thirty days prior to the effective date thereof.

7.08 Bonds

Contractor shall provide evidence to the County with 100 % payment and performance bonds within thirty (30) days of the Construction Commencement Date. The Contractor shall furnish a certified copy and duplicate of a performance bond, with any project financier as co-beneficiary. Performance and payment bonds shall secure 100% of the construction costs for each System cited.

The performance and payment bonds shall remain in effect during the total construction period for the System. The construction period shall include all time required for installation, testing, measuring initial performance, and agency acceptance of each installed System. The performance bond may be released upon County acceptance of each Contractor-installed System evidenced by the Delivery and Acceptance Certificate. The payment bond shall be released upon receipt of satisfactory evidence that all subcontractors, laborers, etc., have been paid in full.

7.09 Notice

All notices under this Contract will be made to the persons and addresses as specified below, as may be updated by the Parties. All notices will be made in writing and will be delivered by: (i) hand delivery with a receipt confirming that delivery was made to the proper address and the date thereof; (ii) overnight delivery by a nationally recognized carrier which issues a receipt for such delivery; or (iii) facsimile or e-mail with confirmation receipt of delivery.

Contractor: Kearsarge AS GM LLC
1380 Solders Field Road, Suite 3900
Boston, MA 02135
Attn: Andrew J. Bernstein
Fax: (617) 608-9020
Email: abernstein@kearsargeenergy.com

County: Norfolk County Commissioners
614 High Street
Dedham, MA 02027
Attn: John J. Cronin, County Director (or subsequent County Director)
Email: jcronin@norfolkcounty.org

**COUNTY OF NORFOLK
COMMONWEALTH OF MASSACHUSETTS
ENERGY MANAGEMENT SERVICES AGREEMENT
FOR SOLAR GUARANTEED ONSITE ENERGY GENERATION**

Contract Signatures

IN WITNESS THEREOF, the parties have each caused this Contract to be executed in triplicate on the dates set forth below (the last of which shall be considered the date of execution hereof) by their duly authorized representatives.

KEARSARGE AS GM LLC
By: Kearsarge Solar LLC, its manager

NORFOLK COUNTY

Name _____

Name _____

By _____

By _____

Title _____

Title _____

Date _____

Date _____

NORFOLK COUNTY AGRICULTURAL SCHOOL

Name _____

By _____

Title _____

Date _____

**COUNTY OF NORFOLK
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ATTACHMENT 1: DESCRIPTION OF THE PREMISES

Ground Mounted System

Address: 400 Main Street, Walpole, MA

Property Description:

Ground area at 400 Main Street, Walpole, MA

Location and Property Description of the Lease Area:

A ground mounted system with energy storage located on a portion of the Premises: 9.0 acres of land owned by Norfolk County with improvements on it and addressed as 400 Main Street, Walpole, MA as shown as portions of the following recorded & registered land parcels depicted on plans entitled: "Plan of Land in Walpole, Mass", Plan Number 971 of 1969 in Plan Book 226, and "Plan of Land in Walpole, Mass", Plan Number 69 of 1973 in Plan Book 235, and Land Court Case Plan 11282A, Lot A. The 9.0 acres leased area will include portions of the following Town of Walpole Assessor Maps-parcel numbers 13-169, 13-167, 13-166 and 18-21.

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ATTACHMENT 2: SOLAR LEASE PROVISIONS

County (for and in consideration of the covenants and agreements on the part of Contractor contained herein and in the Contract) does by means of a lease unto Contractor, and Contractor does hereby take from County and Customer, upon and subject to the conditions hereinafter expressed, the Lease Area (“*Area*”) on the Premises for the sole and exclusive purpose of constructing, operating, maintaining, repairing and removing the System.

SECTION 1: USE OF THE AREA

Contractor’s use of the Area is subject to the following:

- a) Present and future zoning laws, ordinances, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises; the condition and state of repair of the Premises as the same may be on the Effective Date; and full compliance by the Contractor in all respects with all Applicable Legal Requirements.
- b) Contractor accepts the Area in the current condition or state without any representation or warranty, express or implied in fact or by law, by Customer and without recourse to Customer, by County and without recourse to County, as to the nature, condition, usability, the use or uses to which the Area or the Premises or any part thereof may be put. Customer and County will not be required to furnish any services or facilities or to make any repairs or alterations in or to the Area or the Premises.
- c) Notwithstanding the above, the Parties agree that Contractor shall not be liable for any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date, except to the extent arising from or related to Contractor’s negligence or willful misconduct.
- d) Contractor, County and Customer acknowledge and agree that County and Customer shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease or the ownership, construction, operation, maintenance, repair, or removal of the System.
- e) Except with the prior express written consent of Customer and County, Contractor shall not use the Premises for any use other than the installation, operation, maintenance, repair, and removal of the System, including the right to trim trees and vegetation to minimize shading of the System.

SECTION 2: TERM

The Lease Term shall be twenty (20) years after the Commercial Operation Date.

SECTION 3: RENT

Contractor will pay County annual rent, payable in arrears, in equal quarterly installments, on or before the first day of each quarter, in the amount set forth in Respondent’s Response for the Ground Mounted System. See Attachment 3: Contractor’s Response for Rent Payments.

SECTION 4: CONSTRUCTION AND OPERATION OF PERMITTED USE

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- a) Contractor will arrange for the construction of the System in a good, careful, proper and workmanlike manner in accordance with good engineering practices, the Request for Qualifications which resulted in the Contract (the “RFQ”), and with all Applicable Legal Requirements. The System will, when completed, comply with all Applicable Legal Requirements and the RFQ.
- b) Contractor and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the System, and to any documents, materials and records of Customer and County relating to the Premises that Contractor reasonably requests in conjunction with these activities. Contractor will schedule a pre-mobilization meeting and provide the County with a construction schedule of the Work to be done on the Premises at least one-week before any work is commenced on the Premises. Contractor shall provide Customer and County at least forty-eight (48) hours oral notice of all activities conducted by or on behalf of Contractor on the Premises relating to the System. During any such activities, Contractor, and its sub-contractors, agents, consultants and representatives shall comply with Customer’s reasonable safety and security procedures (as may be promulgated from time to time), and Contractor and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Customer’s activities.

SECTION 5: RIGHT TO INSPECT AND ENTER

- a) During the course of construction and completion of the System and any substantial alteration thereto, Contractor shall maintain all plans, shop drawings, and specifications relating to such construction which Customer, County, their agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the Work conforms to the agreements contained or referenced in this lease. Customer or County may, upon reasonable prior notice to Contractor, enter upon the Area and inspect the System for the purpose of ascertaining their condition or whether Contractor is observing and performing the obligations assumed by it under this lease, all without hindrance or molestation from Contractor.
- b) County shall, upon five (5) Business Days’ prior notice to Contractor, have the right, at County’s expense, to examine, during normal business hours and at Contractor’s place of business, the books of account and other records in Contractor’s possession, custody, or control pertaining to Contractor’s obligations hereunder or under the Contract.
- c) Customer and County shall promptly notify Contractor of any matter it is aware of pertaining to any damage to or loss of the use of the System(s) or that could reasonably be expected to affect adversely the System(s).

SECTION 6: INDEMNIFICATION

- a) Contractor shall indemnify and save harmless Customer and County (including, its officers, employees, and agents) from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys’ fees, that may be imposed upon or incurred by or asserted against Customer and County by reason of any of the following occurrences during the Term:
 - i. any breach by Contractor of its obligations, covenants, representations or warranties contained in this lease or made pursuant thereto;
 - ii. any work or thing done in, on or about the Premises or any part thereof by Contractor, its agents, contractors, servants, employees, or invitees;

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- iii. any negligence on the part of Contractor or any of its agents, contractors, servants, employees, subtenants, lessees or invitees in, on or about the Premises or in connection with the System;
- iv. any accident, injury, or damage to any person or property occurring in, on or about the Premises or any part thereof, except to the extent caused by the negligence or intentional misconduct of Customer, County or any of their officers, employees or agents; and
- v. any failure on the part of Contractor or any of its agents, contractors, servants, employees, subtenants, lessees or invitees in, on or about the Premises to fully comply with the Applicable Legal Requirements.

In case any action or proceeding is brought against Customer or County because of any such claim, Customer or County may elect that Contractor defend such action or proceeding. Upon written notice from Customer or County of such election, Contractor shall defend such action or proceeding at Contractor's expense to the reasonable satisfaction of Customer or County.

SECTION 7: MISCELLANEOUS

7.01 Quiet Enjoyment

- a) Customer and County covenant that so long as no Event of Default has occurred and is continuing, Contractor shall quietly have and enjoy exclusive use of the Lease Area during the Term, subject to the County and School's rights of access of record and as agreed upon among the Parties. Customer, County and School's rights of entry and inspection pursuant to Article 6 of this lease shall not be considered a breach of the covenant of quiet enjoyment. Subject to the specific provisions of this lease permitting the same, Customer, County and School shall have the right to enter upon the Premises at reasonable times and no such entry that complies with the provisions of this lease permitting the same shall be considered a breach of the covenant of quiet enjoyment.
- b) Contractor shall operate, maintain, and repair the System in a manner that will not obstruct or interfere with County's and School's use of the Premises or the rights of any other occupants of the Premises and Contractor will not injure or annoy any occupants of the Premises. In the event interference occurs, Contractor agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the County or School. Contractor will use its best efforts to maintain its System in a manner that does not interfere with the Premises or improvements to the Premises. Contractor may construct, reconstruct, modify, or alter the System so long as such activities do not materially interfere (including shading) with the operation of the Premises.
- c) If requested by Customer, County or School, Contractor shall conduct checks of the Criminal Offender Record Information (CORI) maintained by the Massachusetts Criminal History Facilities Board, and the Sex Offender Record Information (SORI) maintained by the Massachusetts Sex Offender Registry Board for any officer or employee of the Contractor or of a subcontractor or any person who will work on the System on the Premises. The County or School may refuse to allow any such person to work on the Premises if the County or School, in its reasonable discretion, determines that such employee is not suitable for work at the Premises based upon the results of such CORI or SORI. All Contractor employees and subcontractor employees who will work on the Premises shall initiate a CORI and SORI search by completing forms and presenting identification at the location designated by the County and School.

7.02 No Limitation of Regulatory Authority

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The Parties acknowledge that nothing in this Contract shall be deemed to be an agreement by County to issue or cause the issuance of any approval or permit, or to limit or otherwise affect the ability of the County or any regulatory authority of the County to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

7.03 Subordination to Existing Leases, Easements and Rights of Way

Contractor acknowledges and understands that this Lease and all rights of Contractor are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the Customer and County with respect to the Premises. County and Customer agree to assist Contractor in obtaining any estoppels, consents, non-disturbance agreements or such other customary agreements reasonably requested by Contractor's financing party. Customer and County reserve the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, which do not unreasonably interfere (including shading) with Contractor's use of the Premises and the operation of the System, with prior written notice to Contractor.

7.04 Hazardous Materials

Contractor agrees to comply with all applicable laws pertaining to the use, storage, and disposal of Hazardous Materials ("*Environmental Laws*") at the Premises. Contractor shall indemnify, defend and hold harmless Customer and County and their agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, reasonable attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Contractor or Contractor's representatives at the Premises. In addition, Contractor shall reimburse Customer and County for any and all costs related to investigation, clean up and/or fines incurred by Customer or County for non-compliance with Environmental Laws that are caused by Contractor or Contractor's representatives at the Premises. Customer and County reserve the right to inspect the Area for purposes of verifying compliance with these Hazardous Materials requirements.

County and Customer shall indemnify, defend and hold harmless Contractor and their agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, reasonable attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws or Hazardous Materials in existence on the Premises as of the Effective Date.

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ATTACHMENT 3: CONTRACTOR'S RESPONSE FOR RENT PAYMENT

Contractor agrees to pay the County annual rent for the Ground Mounted System in the amount of \$31,500 per year with a 1.5% annual escalator throughout the Term, payable in quarterly installments in arrears.

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ATTACHMENT 4: DESCRIPTION OF THE SYSTEM

SOLAR ENERGY SYSTEM: Module Manufacturer: Hanwha Solar or equivalent

 Module rated output (watts): 520 or
 higher _____

 Module warranty: 25 years _____

 Nameplate Capacity of system: 1.0 MW (AC) _____

 Approximate Annual Energy Production of system:
 2,079,000 _____ kWh

 Derate factor: _0.5% _____

 Location: 400 Main Street, Walpole, MA

 Preliminary Specifications: Ground Mounted
 System

SOLAR ENERGY SYSTEM ASSETS: Mounting Systems: Steel post or screw system

 Tracking Devices: ATI tracker or equivalent _____

 Inverters: Power Electronics _____

 Tilt: Tracker _____

 Azimuth: 180 (North South Orientation) _____

 % shaded: 10.8% _____

 Data monitoring system: Also Energy or equivalent

 Electrical installation company: TBD _____

 Integrators: N/A _____

 Related Equipment: Various _____

 Electric Lines: Electrical Interconnection by
 Eversource _____

 Permits: Future Building / Electrical Permit

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Contracts: Engineering, Procurement and
Construction Contract _____

**BATTERY ENERGY STORAGE SYSTEM: Equipment to be determined, 1 MW/2MWh DC
coupled system consistent with SMART Rules**

ATTACHMENT 5: SCOPE OF WORK

(Include current list of Subcontractors)

Weston and Sampson

(To be updated when available)

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ATTACHMENT 6: COST AND GENERATION

GUARANTEED ANNUAL ELECTRIC OUTPUT	85% of the annual System output calculated per Allocated Percentage to Customer
ALLOCATED PERCENTAGE	100%
ANNUAL SYSTEM DEGRADATION FACTOR	.5% per year
ELECTRIC PRICE INCREASE FACTOR (if applicable)	Not applicable
MAXIMUM PRICE	90% of AOBC Rate
LOCAL DISTRIBUTION COMPANY (LDC)	Eversource
AOBC RATE	Varies based on LDC Rates
PERFORMANCE BOND AMOUNT (100% of project cost)	100% of construction
DECOMMISSIONING ASSURANCE AMOUNT (if applicable)	Contractor will obtain an estimate from its engineer along with a letter of expense and will provide a Letter of Credit in such amount prior to the Commercial Operation Date.

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Year	Estimated Annual Output (kWh)	Guaranteed Production (kWh)	Estimated Cost (\$/ kWh (if applicable) ¹	Total Estimated Cost (\$/yr) ^{2U}
1	2,079,000	1,767,150	0.126	222,661
2	2,068,605	1,758,314	0.128	224,871
3	2,058,262	1,749,523	0.130	227,103
4	2,047,971	1,740,775	0.132	229,357
5	2,037,731	1,732,071	0.134	231,633
6	2,027,542	1,723,411	0.136	233,932
7	2,017,404	1,714,794	0.138	236,254
8	2,007,317	1,706,220	0.140	238,599
9	1,997,281	1,697,689	0.142	240,967
10	1,987,294	1,689,200	0.144	243,358
11	1,977,358	1,680,754	0.146	245,774
12	1,967,471	1,672,350	0.148	248,213
13	1,957,634	1,663,989	0.151	250,676
14	1,947,846	1,655,669	0.153	253,164
15	1,938,106	1,647,390	0.155	255,677
16	1,928,416	1,639,154	0.158	258,215
17	1,918,774	1,630,958	0.160	260,777
18	1,909,180	1,622,803	0.162	263,366
19	1,899,634	1,614,689	0.165	265,980
20	1,890,136	1,606,615	0.167	268,619

Note 1 Estimated Cost = 90% Estimated AOBC Value based on the Allocated Percentage AOBC Value will vary month to month based on published utility rates

Note 2 Total estimated cost based on the Estimated Annual Output x Estimated Cost

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ATTACHMENT 7: OPERATIONS AND MAINTENANCE SCHEDULE

Contractor provide detailed schedule of ongoing operation and maintenance of installed system.

DAILY AND PERIODIC REMOTE OPERATIONS AND MONITORING

Description	Action
1. Daily and intraday review of site alerts and equipment notifications	Daily: Coordinate O&M team site visits as necessary, and insure that issues are corrected expeditiously
2. Review site video camera as necessary to establish real-time site conditions	Daily: Review
3. Verify inverter and meter performance to expected	Daily: Coordinate investigation of any unexplained variance to expected
4. Verify total site output to expected	Daily: Coordinate investigation of any variance to expected
5. Verify storage battery performance and equipment status, if applicable	Daily: Coordinate response to variance
6. Periodically analyze string, combiner, and inverter performance on a comparative basis, site-wide to identify underperformance related to blown fuses and other subtle performance issues	Periodically: Coordinate investigation of any variance to expected

PROCEDURES FOR ALL SITE VISITS

Description	Action
1. Validate integrity of fencing, if applicable	Coordinate O&M team site visits as necessary, and assure that issues are corrected expeditiously
2. Evaluate general condition of vegetation, shading	Recommend maintenance
3. Verify the integrity of ballasts and rooftop materials	Recommend maintenance/additional evaluation
4. Verify the integrity and check integrity of panels	Recommend maintenance
5. Note obvious wire maintenance issues, if any	Recommend maintenance
6. Perform equipment-specific or site-specific checks as necessary, on both the PV array and the DSS	As required

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ANNUAL MAINTENANCE PROCEDURES FOR THE PV ARRAY

Components & Equipment	Description	Action
PV Modules	Check for dust & debris on module surface	Wash or wipe clean with water
	Check for physical damage on all PV modules	Replace damaged PV modules
	Check for loose or disconnected cable terminations between PV module wiring	Retighten or reconnect wiring
	Check cable condition	Replace worn cables if necessary
	Check for shading obstructions on all PV modules	Identify source and remove
	Check for fading/discoloration, burn marks, seal condition, frame damage or rust	Log and report conditions to Site Operator
PV Inverters	Check functionality – e.g. auto disconnect upon loss of grid power supply, error & ground fault LED indicators	Consult inverter manufacturer for repair or replacement parts
	Check ventilation condition	Clear dirt, dust or debris from ventilation system
	Check for abnormal operating temperature	Consult inverter manufacturer for repair or replacement parts
	Check for abnormal noises – i.e. irregular humming or rattling	Consult inverter manufacturer for repair
	Inspect inverter structure(s) and enclosure(s) (seals, rust, damage, door condition, switch/handle condition, locks)	Log and report conditions to Site Operator
Cables	Check for cable conditions – i.e. wear and tear	Replace worn cables if necessary
	Check cable terminals for burnt marks, hot spots or loose connections	Tighten connections or replace if necessary
Combiner Boxes	Check cable terminals – e.g. wear and tear, loose connections or burn marks	Tighten or replace if necessary
	Check for placards and signage	Replace if necessary
	Check for physical damage	Replace if necessary
	Check for blown fuses inside the Combiner Box	Replace blown fuses
	Check for water leaks inside the Combiner Box	Replace combiner box or repair to prevent future water leaks
Bonding & Grounding	Check grounding cable and bonding connection conditions	Replace worn cables if necessary
	Check the physical grounding/bonding connection	Retighten connection if necessary
	Check continuity of grounding and bonding conductors	Troubleshoot or replace if necessary
Disconnect Switches	Check functionality	Replace or repair as necessary
PV Module Racking System	Check for corrosion	Treat corroded areas or consult racking manufacturer/installer
	Check for damage to racking system	Replace or repair damaged parts
	Check for ballast displacement	Correct if necessary
Pole Mounted Equipment	Check for damage or irregularities – e.g. damage from weather related incidents, blown fuses, lightning marks, etc.	Replace or repair damaged equipment

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Transformers	<p>Operator will be responsible for attending the site to check the terminations, etc. for the main transformer</p> <p>Any alarms raised by the public or the DAS should be immediately forwarded directly to Site Operator for action</p> <p>Check fluid levels</p>	Log and report conditions to Site Operator
Roof	<p>Check integrity of panel support systems; identify water pooling issues; inspect for dirt and debris; check for obvious structural issues on the roof.</p> <p>Check nearby vegetation for potential roof shading if applicable.</p>	

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ATTACHMENT 8: COMMISSIONING PLAN

System Commissioning shall commence following Mechanical Completion.

System Commissioning shall include all of the following aspects as a minimum:

1. A clear definition of the means, methods and locations for the safe de-energization and isolation of equipment before, during and after System Commissioning.
2. Necessary Personal Protective Equipment (PPE)
3. A step-by-step commissioning process checklist, which shall clearly define; the purpose of each step, the expected result of each step, and the pass/fail criteria for each step. The checklist shall require that the time and date of each step, and the result of each step (pass/fail and/or numeric measurement) be recorded at the time of the step. Each step shall also be annotated with the initials of the person performing the step.

As a minimum, the Commissioning Plan shall incorporate the following tests and elements:

1. Module Flash Test data as performed and supplied by manufacturer.
2. Operating Current Check:
 - o The operating current of all strings shall be measured when their associated inverter is operating to verify the strings are functioning as expected, e.g., no open circuits/missing or blown combiner box string fuses. The test should be done when irradiance is relatively stable and >400 W/m² to provide consistent data for statistical comparison. The string current shall be measured and recorded. The average measured operating string current for each combiner box shall be calculated. If the measured operating current of an individual string differs by more than 10% from other circuits within the combiner, the test segment wiring should be carefully examined and repaired as necessary.
3. Verification of the correct operation of all DC and AC electrical disconnection and isolation devices
4. Verification of the correct operation and programming of each inverter, including; startup sequencing, operational performance (including MPPT tracking), shutdown on loss of DC voltage, anti-islanding shutdown on loss of AC voltage, shutdown on internal AC and DC disconnect operation. The inverter commissioning activities shall be completed following the manufacturers recommendations.
5. Verification of correct and satisfactory DC voltage and current at each inverter
6. Verification of correct and satisfactory AC voltage and current at each inverter output.
 - o Inverter current output will be assessed by comparing the current output obtained from the DAS/SCADA system across inverters after weighting the current by the nameplate DC power feeding each inverter. Inverters that are producing current 8% or more below the average of the other inverter outputs shall be investigated in the field.
7. Verification of correct and satisfactory AC voltage at each transformer output
8. Verification of correct and satisfactory operation of each load center and convenience outlet
9. Verification of the energization and correct operation and communication of all energy monitoring system (“EMS”) devices, including; pyrometers, temperature sensors, data loggers, inverter performance monitoring kWh meters, billing kWh meters, modems, routers and optical fiber equipment and links

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ATTACHMENT 9: PROJECT SCHEDULE

Contractor to provide detailed construction project schedule to be inserted once final designs are completed

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ATTACHMENT 10: TERMINATION PAYMENT SCHEDULE

**Termination Schedule for
Ground Mounted System**

Year	Termination Value
1	605,342
2	597,529
3	588,373
4	577,758
5	565,555
6	551,630
7	535,833
8	518,006
9	497,975
10	475,555
11	450,543
12	422,721
13	391,854
14	357,687
15	319,946
16	278,333
17	232,527
18	182,180
19	126,919
20	66,338

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**EXHIBIT "A"
MANAGER'S CERTIFICATE**

I, Andrew J. Bernstein _____, on behalf of Kearsarge Solar LLC the sole member of Kearsarge AS GM LLC (the "Company") duly formed and existing in the Commonwealth of Massachusetts

DO HEREBY CERTIFY:

That I am the Manager of Kearsarge Solar LLC, the manager of the Company duly organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts and that I have custody of the records of such Company; and that as

of the date herein below recited, Andrew J. Bernstein is the Manager of such Company and is authorized to execute and deliver this document in the name and on behalf of the Company for the following purpose:

construction, ownership and operation of a ground mount solar facility

IN WITNESS WHEREOF, I have hereunto set my hand of such Company this ____ day of _____, 2022

KEARSARGE SOLAR LLC

Andrew J. Bernstein, Manager

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

_____, 2022

On this ___ day of _____, 2022, before me, the undersigned notary public, personally appeared the above named Andrew J. Bernstein, as Manager of Kearsarge Solar LLC, the manager and sole member of Kearsarge AS GM LLC, and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on this document, and acknowledged the foregoing instrument to be executed as his/her free act and deed, before me:

Notary Public:
My Commission Expires:

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**EXHIBIT "B"
ATTESTATION REGARDING FILING OF TAX RETURNS**

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am (or the corporation is) in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.
Signed under the pains and penalties of perjury.

84-2142691

Social Security Number or Federal Identification Number

Signature of Individual or Officer
Title (if any): Manager of Kearsarge Solar LLC

_____, 2022
Date

Kearsarge AS GM LLC
Name of Corporation (if applicable)

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**EXHIBIT “C”
CERTIFICATE OF NON-COLLUSION**

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

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

(Signature)

Title (if any) Manager of Kearsarge Solar LLC

Kearsarge AS GM LLC

Name of Company (if applicable)

Date , 2022

**COUNTY OF NORFOLK
COMMONWEALTH OF MASSACHUSETTS
ENERGY MANAGEMENT SERVICES AGREEMENT
FOR SOLAR GUARANTEED ONSITE ENERGY GENERATION**

7. This section must be signed by the individual(s) or organizations(s) entering into this real property transactions with the public agency names in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Printed name: Andrew J. Bernstein_____

Title: Manager, Kearsarge Solar LLC_____

Date: _____

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**EXHIBIT “E”
FEDERAL DEBARRMENT/SUSPENSION**

The undersigned certifies under penalties of perjury that they have not been debarred or suspended from any federal agency in the participation of any bidding or contractual agreement involving federal funds according to the provisions of the A-102 Common Rule and OMB Cost Circular A-87 as applicable.

The undersigned further certifies under penalties of perjury that they have not been debarred or suspended or otherwise prohibited from any state or local agency.

Signature of Person signing Response

Andrew J. Bernstein

Name of Person signing Response (Print Please)

_____, 2022
Date

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EXHIBIT "F"

DELIVERY AND ACCEPTANCE CERTIFICATE

DELIVER BY EMAIL

[DATE]
COUNTY
ADDRESS

RE: SUBSTANTIAL COMPLETION / COMMERCIAL OPERATION DATE

TO WHOM IT MAY CONCERN:

CONTRACTOR HEREBY CERTIFIES THAT THE [SYSTEM] HAS ACHIEVED SUBSTANTIAL COMPLETION AND THE SUBSTANTIAL COMPLETE DATE IS [INSERT DATE] AT WHICH TIME THE SYSTEM BEGUN COMERCIAL OPERATION.

RESPECTFULLY SUBMITTED,

[CONTRACTOR]

WE HEREBY ACCEPT THE ABOVE SUBSTANTIAL COMPLETION DATE.

[COUNTY]

BY:
ITS:

**COUNTY OF NORFOLK
COMMONWEALTH OF MASSACHUSETTS
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EXHIBIT "G"

EMS ANNUAL REPORT

Expected and Guaranteed energy production by System based on final system size of _____ DC

Annual Degradation: _____

	Performance Year	Estimated Annual Output	Electricity Price Increase Factor (if applicable)	Cost per kWh	Guaranteed Electricity Generation	Verified Annual Electricity Generation	Total cost, Year # (\$/yr)	Energy Cost Savings
Start date:	1							

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EXHIBIT “H”

PREVAILING WAGE

Prevailing wage scope of work will include any necessary civil work which directly effects and/or permanently alters the Lease Area.