

CITY OF NEWTON

IN BOARD OF ALDERMEN

PUBLIC FACILITIES COMMITTEE AGENDA

WEDNESDAY, NOVEMBER 4, 2015

7:00 PM
Room 204

ITEMS SCHEDULED FOR DISCUSSION:

Public Hearing continued:

- #133-15 HIS HONOR THE MAYOR requesting authorization to enter into negotiations for the potential lease on city properties for purposes of third-party construction, ownership, and operation of on-site renewable solar energy generation from which the City will purchase electric output and/or net metering credits. [05/11/15 @ 5:00 PM]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

- #144-15(2) COMMUNITY PRESERVATION COMMITTEE recommending the release and appropriation to the Public Buildings Department to complete construction of the Museum Archives and Fire Suppression project, a total of one hundred thirty-two thousand nine hundred forty-three (\$132,943), including: release of \$39,452 in the Board of Aldermen's contingency fund, as created by Board Order #144-15 dated June 15, 2015; and appropriation of \$93,491 from the Community Preservation Fund, as recommended by the Community Preservation Committee on May 27, 2015 but not yet appropriated. [10/16/15 @ 3:09 PM]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

- #284-15 HIS HONOR THE MAYOR requesting authorization to appropriate two hundred fifty thousand dollars (\$250,000) from bonded indebtedness for the purpose of funding mechanical upgrades and interior improvements at the main library. [09/28/15 @ 1:43 PM]

REFERRED TO PUBLIC SAFETY AND PUBLIC FACILITIES COMMITTEES

- #310-10(4) PUBLIC FACILITIES COMMITTEE requesting an amendment to City of Newton Ordinances Chapter 26, Section 8D Trial program for removal of snow and ice from sidewalks. by extending the expiration date of the trial from November 1, 2015 to November 1, 2016. [10/21/15 @ 9:38 PM]

The location of this meeting is handicap accessible and reasonable accommodations will be provided to persons requiring assistance. If you need a special accommodation, *please contact Jini Fairley, at least two days in advance of the meeting: jfairley@newtonma.gov, or 617-796-1253. For Telecommunications Relay Service dial 711.*

#82-15 ALD. SANGIOLO requesting the Public Works Department and the administration determine the cost if the City were to undertake complete sidewalk shoveling throughout the City, such costs might be charged back to residents with a fee. [03/12/15 @ 10:38 AM]

#72-15 PUBLIC FACILITIES COMMITTEE requesting a discussion with the Administration and Department of Public Works about the extent of damage to the City resulting from the recent extreme winter conditions including roadways, sidewalks, infrastructure, buildings and how the City is preparing to cope with the needed repairs. [03/09/15 @ 4:22 PM]

#48-15 ALD. JOHNSON, SANGIOLO & YATES requesting a discussion with the Commissioner of Public Works regarding: (1) short and long term snow clearing of streets and sidewalks, (2) proactive planning relative to potential issues resulting from melting snow, (3) short term plans for addressing potholes, and (4) how the Department of Public Works will use the data gathered from where potholes need to be filled to guide planning for street repairs. [02/23/15 @ 9:31 AM]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#297-15 HIS HONOR THE MAYOR requesting an amendment to the Sewer Fund Revenue Budget by increasing the Estimated Sewer Fund Revenue Budget by one hundred seventeen thousand twenty-nine dollars (\$117,029) and decreasing the anticipated reimbursement from Water Fund by one hundred seventeen thousand twenty-nine dollars (\$117,029). [10/19/15 @ 11:54 AM]
FINANCE VOTED NO ACTION NECESSARY 6-0 ON 10/26/15

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#298-15 HIS HONOR THE MAYOR requesting an amendment to the Water Revenue Budget by increasing surplus revenue and decreasing the revenue forecast from water usage. [10/19/15 @ 11:54 AM]
FINANCE VOTED NO ACTION NECESSARY 6-0 ON 10/26/15

ITEMS NOT SCHEDULED FOR DISCUSSION:

REFERRED TO PUBLIC SAFETY AND PUBLIC FACILITIES COMMITTEES

#314-15 ALD. COTE, HARNEY AND NORTON requesting a review of all public buildings with a priority on schools and the Senior Center to ensure that functioning carbon monoxide detectors, that alert the entire facility are in use.

#313-15 ALD. LAPPIN requesting an update from the Department of Public Works on the second water meter program including: the progress of the inspection and programming of the approximately 900 new outdoor irrigation meters provided by the City to property owners that have yet to be inspected and/or programmed by the City; the process going forward for the issuance, inspection, programming and tracking of second meters; and the notification of residents who already had second meters regarding the process for registering their meters. 10/26/15 @ 7:15 PM]

The following item was filed after the close of the docket and requires a suspension of the Rules to be referred to Committee:

Public hearing to be assigned for November 18, 2015

#102-06(17) CHESTNUT HILL REALTY requesting a modification to Board Order #102-06(14) for a common sewer extension and water main in Lagrange Street by relocating the sewer extension to BRYON ROAD from an existing manhole in Bryon Road extending 190' ± northerly to a proposed manhole in Lagrange Street. [10/29/15 @ 2:21 PM]

REFERRED TO FINANCE AND APPROPRIATE COMMITTEES

#288-15 HIS HONOR THE MAYOR submitting the FY 2017-FY 2021 Capital Improvement Plan pursuant to section 5-3 of the Newton City Charter. [10/01/15 @ 1:53 PM]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

#224-15 HIS HONOR THE MAYOR requesting authorization to appropriate two million dollars (\$2,000,000) from bonded indebtedness for the purpose of funding Newton's share of the cost of the repairs to the Elliot Street Bridge, which the City co-owns with the Town of Needham. [09/01/15 @ 8:46 AM]

REFERRED TO PROGRAMS&SERVICES AND PUBLIC FACILITIES COMMITTEES

#201-15 ALD. SANGIOLO requesting a discussion with the Commissioner of Public Buildings, the Commissioner of Parks and Recreation, and the Executive Department regarding the condition of the property located at 246 Dudley Road (Kennard Estate) and how much, if any, repairs and upgrades will be needed as the City relocates the Parks and Recreation Department to that location. [09/01/15 @ 4:00 PM]

#200-15 ALD. LAREDO requesting that the Department of Public Works provide an update on the creation of a strategic plan for the improvement of streets and sidewalks in the City. [08/13/15 @ 11:20 AM]

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

#141-15 ALD. BROUSAL-GLASER, SANGIOLO, HESS-MAHAN, COTE, NORTON AND ALBRIGHT requesting a discussion with the Director of Urban Forestry, a representative of the Department of Public Works and a representative of the Law Department about tracking and improving the condition of the gas utility infrastructure in Newton, new state statutes governing infrastructure repairs, coordination of increased repair work with city operations, the status of negotiations with National Grid to compensate for tree deaths resulting from gas leaks, and the possibility of creating a utilities working group to monitor progress on these and related issues. [05/26/15 @ 2:52 PM]

REFERRED TO PROG & SERV AND PUBLIC FACILITIES COMMITTEES

- #140-15 PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES requesting that the School Department and/or the Executive Department provide updates on the progress of the potential purchase of the Aquinas site as well as short and long-term plans for uses and operations at the site. [05/20/15 @ 8:53 PM]
- #100-15 ALD. NORTON, SANGIOLO, LEARY, AND ALBRIGHT requesting that the Administration pursue municipal aggregation of energy purchasing with the goals of reducing and/or stabilizing electricity costs for resident, businesses and the City; and requiring the purchase of Class 1 RECs at some percentage above the level required by the Massachusetts Renewable Portfolio Standard. [04/06/15 @ 9:12 AM]

REFERRED TO PS&T, PUBLIC FACILITIES AND FINANCE COMMITTEES

- #85-15 ALD. SANGIOLO requesting discussion with the Director of Transportation and the Transportation Coordinator to determine whether a fee could be imposed on all residents who own automobiles in the City. Such fee to be placed into a transportation fund to pay for roadway and sidewalk improvements. Residents would get a parking sticker in return for each automobile they have registered with the City that would enable them to bypass parking restrictions in the City except for Tow Zones and Fire Hydrants and any other emergency zones determined by the Police and Fire Departments.
- #83-15 ALD. CROSSLEY, GENTILE, & ALBRIGHT requesting a discussion and update from the Administration on the following energy related items: status of municipal power purchasing contracts for gas and electricity; status of the Power Purchase Agreement including solar PV rooftop installations, power offset (cost benefit) to date and review of potential future projects; and an update on municipal energy consumption including the recent Green Communities report filed with the Department of Energy Resources. [03/26/15 @ 9:19 AM]
- #47-15 ALD. RICE AND YATES requesting establishment of a pilot storm water treatment program for the streets in Waban between Quinobequin Road and Chestnut Street including but not limited to Amherst Road, Radcliffe Road and Tamworth Road. [02/11/15 @ 9:13 AM]

REFERRED TO PUB FACIL, PROG & SERV, AND PS&T COMMITTEES

- #46-15 ALD. JOHNSON & CICCONE, requesting a discussion with the Commissioner of Department of Public Works and the School Department to determine and discuss parking options including use of school properties based on the current municipal parking lot programs including the issuance of permits. [02/11/15 @ 1:35 PM]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

- #455-14 HIS HONOR THE MAYOR recommending amendment to Chapter 29, Section 80 **Sewer/Stormwater use charge.** of the City of Newton Ordinances to create a storm water rate fee structure based upon square footage of impervious surface area.
- #328-14 ALD. ALBRIGHT, DANBERG, & LAREDO requesting a review of double poles in Newton including a random sampling of ten double on the north side and ten double poles on the south side of Newton to determine which utility is holding up the removal of double poles. [08/19/14 @ 9:16 AM]
- #189-14 PUBLIC FACILITIES COMMITTEE requesting periodic updates on the Zervas Elementary School Project. [04/17/14 @ 10:48 PM]
- #188-14 PUBLIC FACILITIES COMMITTEE requesting periodic updates on the Cabot Elementary School Project. [04/17/14 @ 10:48 PM]

REFERRED TO PROGRAMS & SERVICES AND PUBLIC FACILITIES COMMITTEES

- #119-14 ALD. ALBRIGHT AND CROSSLEY requesting discussion with the Inspectional Services Department to explain the development of short and long term plans to identify and correct buildings, sidewalks, playgrounds, etc...that do not conform to American Disability Act (ADA) standards. The discussion should include information on how improvements will be incorporated into the Capital Improvement Plan or if less than \$75,000 into a comprehensive budget plan to correct ADA deficiencies. [03/12/14 @ 4:18 PM]
- #62-14 ALD. CROSSLEY, HESS-MAHAN, ALBRIGHT AND SALVUCCI requesting a report from the administration on the status of the City strategy to meet its obligations as a Department of Energy Resources Green Community, to reduce municipal energy consumption by 20% over five years, particularly regarding advancing the implementation of the building energy audits program recommending energy efficiency measures in existing buildings, and how that strategy is incorporated into the capital improvement plan. [02/24/14 @ 6:35 PM]
- #417-13 PUBLIC FACILITIES COMMITTEE requesting that the Administration provide updates on the progress of the Angier Elementary School project. [11/21/13 @ 9:16 AM]
- #131-13 ALD. CROSSLEY, FULLER, SALVUCCI, JOHNSON, CICCONE requesting periodic updates and discussion, at the discretion of the members of the Public Facilities Committee or the Commissioner of Public Works, on the condition functioning, operations and management of all elements of the City sewer, water and storm water systems including the following:
- Water meters

- Implementation of the ten project area strategic plan to remove infiltration in the City sewer system
- Implementation of the long range strategic plan to repair and replace City water mains, especially to correct for fire flow
- Status of the City's Private Inflow Removal Program to resolve and disconnect illegal storm water connections to the City sewer system
- Current billing practices
- Rates analyses needed to facilitate an informed comparison of billing options to include the following options either alone or in combination: seasonal rates, second meters, tiered rates, frequency of billing, low income credits. [03/23/13 @ 11:13 AM]

REFERRED TO PUBLIC FACILITIES AND FINANCE COMMITTEES

- #41-13 ALD. CROSSLEY, FULLER AND SALVUCCI requesting a discussion with the administration to review how the city inventories, plans for, budgets and accounts for needed smaller capital expenditures (currently set at under \$75,000), which are excluded from the Capital Improvement Plan (CIP); how to make these non-CIP capital maintenance items visible, and how to integrate them with the overall planning, CIP, and budgeting processes. [01/14/13 @ 5:02 PM]

REFERRED TO PROG. & SERV AND PUBLIC FACILITIES COMMITTEES

- #36-12 ALD. CROSSLEY & FULLER requesting Home Rule legislation or an ordinance to require inspections of private sewer lines and storm water drainage connections prior to settling a change in property ownership, to assure that private sewer lines are functioning properly and that there are no illegal storm water connections to the city sewer mains.
- A) Sewer lines found to be compromised or of inferior construction would have to be repaired or replaced as a condition of sale;
- B) Illegal connections would have to be removed, corrected, and re-inspected in accordance with current city ordinances and codes, as a condition of sale.
- [01/24/12 @ 8:07 AM]

REFERRED TO PS&T AND PUBLIC FACILITIES COMMITTEES

- #413-11 ALD. CICCONE, SALVUCCI, GENTILE & LENNON updating the Public Facilities and Public Safety & Transportation Committees on the progress of renovations to the city's fire stations. [11-17-11 @ 11:07 AM]

REFERRED TO PS&T, PUBLIC FACILITIES AND FINANCE COMMITTEES

- #310-10(2) ALD. DANBERG, BLAZAR, KALIS, SCHWARTZ, ALBRIGHT, HESS-
(#409-12) MAHAN, RICE, COTE, LEARY, AND NORTON requesting amendments to Sec. 26-8D of the City of Newton Ordinances to modify and make permanent the trial program for removal of snow and ice from sidewalks and to provide for enforcements and fines for violations. [09/10/14 @ 2:12 PM]

#367-09 PUBLIC FACILITIES COMMITTEE requesting discussion with the Law Department on how to resolve the dispute with NStar regarding whose responsibility it is to repair the streetlight connection between the manhole and the base of the streetlight. [10/21/09 @ 9:00 PM]

#253-07 ALD. LINSKY ALBRIGHT, JOHNSON, HARNEY, SANGIOLO, SALVUCCI, MANSFIELD, BURG, SCHNIPPER requesting (1) a review as to how provisions of applicable ordinances, specifically 5-58, were implemented during the course of the Newton North project, and (2) consider proposed revisions of 5-58 including, but not limited to:

- (a) timely provision of documentation by the public building department to the Board of Aldermen and Design Review Committee;
- (b) establishment of liaison committees to facilitate communications and input from neighborhoods affected by projects subject to this ordinance;
- (c) approval of final design plans by the Board of Aldermen of projects subject to this ordinance;
- (d) oversight during the construction phase of projects subject to this ordinance by appropriate Board committee(s) both in respect to approval of change orders as well as design changes; and
- (e) generation of a required record detailing the entire construction process by the public building department to guide present and future oversight of projects subject to this ordinance.
- (f) establishment of a committee to provide oversight for public building construction and renovation during all phases of planning, design and construction. [08/07/07 @ 3:12 PM]

Respectfully submitted,

Deborah Crossley, Chairman



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#133-15
Telephone
(617) 796-1100
Facsimile
(617) 796-1113
TDD/TTY
(617) 796-1089
E-mail
swarren@newtonma.gov

May 11, 2015

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board docket for consideration a request to authorize the administration to enter into negotiations for the potential lease on city property for purposes of third party construction, ownership and operation of on-site renewable solar energy generation from which the City will purchase electric output and/or net metering credits.

Thank you for your consideration of this matter.

Sincerely,

Setti D. Warren
Mayor

RECEIVED
Newton City Clerk
2015 MAY 11 PM 5:00
David A. Olson, CMC
Newton, MA 02459



City of Newton



DEPARTMENT OF PUBLIC WORKS

OFFICE OF THE COMMISSIONER
1000 Commonwealth Avenue
Newton Centre, MA 02459-1449

Setti D. Warren
Mayor

May 6, 2015

Honorable Mayor Setti D. Warren
City of Newton
City Hall
1000 Commonwealth Avenue
Newton Center, MA 02459

RECEIVED
Newton City Clerk
2015 MAY -7 PM 2:11
David A. Olson, CMC
Newton, MA 02459

Re: Use of Property for On-Site Renewable Solar Generation Facilities

Dear Mayor Warren:

Pursuant to Section 2-7 of the Newton City Code of Ordinances and in my capacity as Commissioner of Public Works, I have made a policy decision that the following city properties (or portions thereof) under my jurisdiction, custody and control of the Department of Public Works are available for potential lease for purposes of third party construction, ownership and operation of on-site renewable solar energy generation from which the City will purchase electric output and/or net metering credits.

The city properties potentially available for lease are located at:

1. DPW buildings at 60 and 70 Elliot Street- truck ports, car ports and roof mounted solar
2. Closed Landfill at Rumford Avenue-ground mounted solar

The procedures under Section 2-7(9) should be followed in the event that the Executive Department chooses to submit a proposal for such lease(s) to the Board of Aldermen for authorization to negotiate such lease(s) of city-owned property.

Respectfully submitted,

David F. Turocy
Commissioner
Department of Public Works

cc: Scott Lennon, President, Board of Aldermen ✓

Appendix C- Newton Solar PV Sites

for more information go to the assessors web site at, <http://assessing.newtonma.gov/NewtonMAWebApp/>

	<u>LOCATION</u>	<u>PROJECT DESCRIPTION</u>	<u>JURISDICTION</u>	<u>COMMENTS</u>
1	Dept of Public Buildings: 52 Elliot Street, 02461	car ports and roof mounted	Dept. of Public Buildings	Roof in fair condition
2	DPW: 60 Elliot Street, 02461	roof mounted	Dept. of Public Works	Roof condition TBD
3	DPW: 70 Elliot Street, 02461	truck ports, car ports and roof mounted	Dept. of Public Works	Roof in fair to poor condition.
4	Newton South High School: 140 Brandeis Rd, 02549	roof mounted	Dept. of Public Buildings	Roof may have structural limitations.
5	Library Parking lot : 330 Homer St, 02459	car ports	School Committee	
6	Landfill: Rumford Ave, 02466	ground mounted	Dept. of Public Works	under separate RFP
7	Angier School: 1697 Beacon St., 02468	roof mounted	Dept. of Public Buildings	Bldg under construction. Opens in January 2016.
8	Oak Hill School: 130 Wheeler Rd, 02459	roof mounted	Dept. of Public Buildings	Roof in fair condition.
9	Lower Falls Com. Center : 545 Grove St, 02453	roof mounted	Dept. of Public Buildings	New roof.
10	Bowen School: 280 Cypress St., 02459	roof mounted	Dept. of Public Buildings	South roof in good condition. North roof in fair to poor condition.
11	Fire Station 10 and wires Building: 755 Dedham St., 02459	roof mounted	Dept. of Public Buildings	New construction.
12	Zervas School (new construction): 30 Beethoven Avenue, 02469	car ports and roof mounted	Dept. of Public Buildings	To be built in 2016-17.
13	City Hall, 1000 Commonwealth Ave., 02459	roof mounted	Dept. of Public Buildings	Slate roof. Historical bldg.

Proposer must provide a separate cost proposal for each of the four Alternatives below.

Alternate #1	Alternate #2	Alternate #3	Alternate #4
1. Site Prep costs included in kwh price to City.	1. Site prep costs as a separate lump sum cost to the City.	1. Site Prep costs included in kwh price to City.	1. Site prep costs as a separate lump sum cost to the City.
2. Development only on flat area of site.	2. Development only on flat area of site.	2. Development on flat area and south slope area of site.	2. Development on flat area and south slope area of site.
-	-	-	-
-	-	-	-

DRAFT LANDFILL LEASE AGREEMENT

This Landfill Lease Agreement (“Lease”) is dated as of December 18, 2014 (the “Effective Date”), and is entered into by and between City of Newton, Massachusetts, a municipal corporation and political subdivision of the Commonwealth of Massachusetts, with a principal office at 1000 Commonwealth Avenue, Newton, MA 02459(hereinafter, “Lessor”), and _____, a _____ corporation, with principal office at _____ (hereinafter “Lessee”) (each a “Party” and together, the “Parties”).

WHEREAS, real property owned by Lessor which is all or part of the former (now capped) City of Newton municipal landfill located at Rumford Avenue and includes within it the lesser leased premises (the “Property”) and any access rights and Easements (such leased premises, access rights, and Easements, the “Premises”), is more particularly described in the attached Exhibit A;

WHEREAS, Lessee desires to obtain the exclusive right to occupy a portion of the Premises and to enjoy all the rights necessary for Lessee to occupy the Premises and, at its sole cost, to develop, design, engineer, access, construct, monitor, install, own, maintain and operate the System to be located on the Premises, as well as all the rights necessary or desirable for Lessee to sell the energy generated by such System and any and all other credits, solar renewable energy credits, and any other environmental financial attributes created as a result of such energy generation; and

WHEREAS, Simultaneously with the execution of this Lease, Lessor and Lessee have executed an energy management services agreement for on-site solar renewable energy generation (the “PSA”), pursuant to which Lessee receives 100 percent of the electrical output of the System and corresponding Net Metering Credits.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, Lessee and Lessor hereby agree to the foregoing recitals and as follows:

1. Definitions. Capitalized terms not otherwise defined in this Lease have the meanings assigned to them in Exhibit B, or if not defined in said exhibit, as defined in the PSA.

2. Premises and Related Rights.

a) Subject to receipt of the first Rent payment and the terms of this Lease, Lessor hereby agrees to lease the Premises to Lessee to occupy, and to develop, design, engineer, construct, access, monitor, install, own, operate and maintain thereon the System for the generation and distribution of electrical power (the “Permitted Use”), and for no other purpose. Lessor hereby also agrees, subject to City of Newton approval, to grant to Lessee and the applicable utility company for a period coterminous with the Lease, a non-exclusive easement for access, ingress, egress, and utilities to the Premises to the extent reasonably necessary to install,

interconnect, operate or gain access to the System or the Premises (the “Easements”). The Parties agree that, notwithstanding anything to the contrary in this Lease, the exact location of the Premises and Easements shall be as mutually agreed to by the Parties and shown on a formal plan, stamped by a registered engineer, to be produced by Lessee at its sole expense upon receipt of all Governmental Approvals necessary for construction of the System, but in all events before such construction commences. The Parties agree to amend this Lease to incorporate said plan into Exhibit A.

b) Subject to City of Newton approval, Applicable Laws and Governmental Approvals and the terms of this Lease, Lessee shall have the right, at Lessee’s expense, to install utilities at locations reasonably approved by Lessor and to improve the present utilities on the Property if such installation or improvement is necessary for the Permitted Use.

c) Lessee acknowledges that the Premises consist of, a capped landfill, and that Lessee must obtain at its sole cost and expense, among other Governmental Approvals, a Post-Closure Use Permit (the “DEP Permit”) from the Massachusetts Department of Environmental Protection (“DEP”) to allow Lessee to use the Premises for the Permitted Use. Lessee also acknowledges and agrees that the DEP Permit may impose certain conditions and requirements which are related to the Lessee’s use of the Premises and/or the installation, construction and/or operation of the System and which would not have been imposed on Lessor were it not for this Lease, and that Lessee shall be responsible for those conditions and requirements, as well as for the routine mowing of the landfill and control of vegetation within the Premises in order to comply with any DEP requirements (hereinafter collectively referred to as “Lessee’s Landfill Obligations”). Lessee agrees that, notwithstanding anything to the contrary in this Lease, it (a) shall not conduct any activities on the Premises that will, or are reasonably likely to, penetrate the landfill capping material or otherwise threaten the integrity of the landfill cap, or cause the landfill to be out of compliance with any Governmental Approvals or Applicable Laws; (b) shall not violate Applicable Laws, including but not limited to the DEP Permit and any laws, regulations, codes, and agreements with respect to the landfill, (c) shall comply with Lessee’s Landfill Obligations, at Lessee’s sole cost and expense, and (d) shall not interfere with or disrupt (i) Lessor’s use of the Property as a capped municipal landfill, and the obligations of Lessor and Lessor Parties under Applicable Laws and Governmental Approvals in connection with the maintenance, repair, monitoring, and testing of the landfill cap and area (collectively, “Lessor Activities”) or (ii) access to the Property, and/or (iii) Lessor’s performance of any duties required of Lessor under Applicable Laws and Governmental Approvals, including but not limited to any laws, regulations, codes, and agreements with respect to the landfill. To the extent that the DEP Permit requires Lessor to satisfy any of the Lessee’s Landfill Obligations, Lessee shall pay Lessor for the cost thereof in advance, failing which Lessor may pay for such costs using such amounts as may otherwise be due Lessee under the PSA, notwithstanding anything to the contrary in the PSA or this Lease.

d) The City retains any and all rights to portions of the premises not utilized for the System for contemplated uses by the City including but not limited to composting facilities, and _____

e) Landfill and Landfill Cap.

i. Excluding Lessee's Landfill Obligations set forth above and maintenance obligations under Section 13 of this Lease and any other obligations of Lessee expressly set forth in the Lease, Lessor shall be responsible for any monitoring activities and other obligations with respect to the landfill and the landfill cap located on the Property under Applicable Laws, including without limitation any Side Slope Repair (as defined below) described in subparagraph (ii) below.

3. Rents.

a) Lessee shall pay annual rent payments to Lessor for lease of the Premises ("Base Rent") in the amount of \$_____ per year with a ____% escalator, which shall be due annually in advance beginning on the Commercial Operations Date and on every one (1) year anniversary thereof during the Lease Term.

b) Lessee agrees to pay, as "Additional Rent," any and all real estate taxes assessed on the Premises or any part thereof, levies, personal property taxes, betterments or assessments, fees or charges, of whatever nature, that are assessed or chargeable during the Term of this Lease in relation to the Premises, Lessee's use thereof, and/or the System. "Base Rent" and "Additional Rent" shall hereinafter be collectively referred to as "Rent."

c) All payments becoming due under this Lease and not paid when due shall bear interest at 12 percent per annum from the applicable due date until received by Lessor.

d) Lessee acknowledges and agrees that except as expressly provided in this Lease, Lessee shall have the sole responsibility with regard to the Premises. All payments of Rent shall be absolutely net to the Lessor so that this Lease shall yield to the Lessor the Rent herein specified free of any taxes, assessments, charges, impositions or deductions of any kind charged, assessed or imposed on or against the Premises. Other than as expressly set forth herein, the Lessor shall not be expected or required to pay any such charge, assessment or imposition, maintain, or furnish any services to the Premises, or be under any obligation or liability hereunder, except as expressly set forth herein. Any and all costs, expenses and obligations of any kind relating to the Premises or the condition thereof, including, without limitation, all maintenance, alterations, repairs, restoration, reconstruction and replacements as hereinafter provided, which may arise or become due under this Lease, shall be paid by Lessee at Lessee's sole cost and expense.

4. Term and Termination; Holdover.

a) The initial term of this Lease shall commence on the Effective Date, and terminate on the first December 31 following the twentieth anniversary of the Commercial Operations Date (the "Expiration Date"), unless earlier terminated in accordance with the provisions of this Lease (the "Initial Term" together with any "Renewal Term," referred to as the "Term" or "Lease Term"). This Lease may be extended upon mutual agreement of the parties for up to an additional ____ () years (the "Renewal Term"), provided that the total term, whether or not renewed, has been approved by the City of Newton.

b) Notwithstanding anything to the contrary herein, Lessee may terminate this Lease for the same reasons for which the PSA may be terminated by the Provider in the PSA, and

Lessor may terminate this Lease for the same reasons for which the PSA may be terminated by the Customer in the PSA; and in the event the PSA is terminated pursuant to said sections, this Lease shall also terminate simultaneously therewith.

c) If this Lease is terminated for any reason, subject to Lessor's right to exercise the Purchase Option under Article XIII of the PSA, Lessee shall, at its sole cost and expense, remove the System and restore the Premises in accordance with Section 5 hereof. In connection with such removal and restoration, Lessee and its Affiliates and subcontractors shall have a license to access the Premises for the purpose of completing the removal and restoration.

d) Holdover. If Lessee or any party claiming by, through or under Lessee, retains possession of the Premises or any part thereof after the expiration or termination of this Lease, then Lessor may, at its option, serve written notice upon Lessee that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or, except during any removal of the System pursuant to Section 5 below, (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Lessee hereby agrees that the provisions of this Section shall not constitute a waiver by Lessor of any right of re-entry as set forth in this Lease or as allowed by law; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Lessor's right to terminate this Lease for Lessee's breach of the Lease. This Section 4(d) is in addition to and not a limitation of any other rights and remedies available to Lessor under this Lease, at law or in equity.

5. Removal of System at Expiration; System Survey. Unless Lessor has exercised the Purchase Option, upon the expiration or earlier termination of the Lease, Lessee shall, at its sole cost, remove the System and restore the Premises to their original condition by the Removal and Restoration Date. In the event Lessee fails to complete the removal of the System and restoration of the Premises by the Removal and Restoration Date, Lessor shall have the right (but not the obligation), at its option, in its sole discretion, to cause the removal of the System by a qualified contractor and complete restoration of the Premises by drawing on Lessee's Decommissioning Bond. Within sixty (60) days after the Commercial Operations Date, Lessee, at Lessee's expense, shall commission an as-built plan of the System by an independent, certified professional engineer to confirm that the System has been sited, installed and constructed in accordance with the terms of this Lease and the PSA. Lessee shall furnish a copy of the System as-built plan to Lessor promptly upon completion of such plan.

6. System Construction, Bonds, Design Plans and Specifications, and Related Requirements.

a) Bonds. Prior and as a condition precedent to commencement of construction of the System by Lessee, Lessee shall furnish the Decommissioning Bond to the Lessor. In addition, prior to the Construction Commencement Date, Lessee shall also furnish a Performance and Labor and Materials Payment Bond covering construction and installation of the System and payment of all work and materials furnished to Lessee for the same in an amount equal to 100 percent of the cost of construction of the System. Each bond shall be issued by a surety who is licensed to do business in Massachusetts and satisfactory to the Lessor, whose name appears on United States Treasury Department Circular 570, and who is rated AM Best A+ XII or better. Failure to provide and maintain the aforesaid bonds shall constitute a material breach of the Lease.

b) Governmental Approvals. Lessee shall also obtain and pay for all Governmental Approvals and provide all notices to any Governmental Authority required by Applicable Law, the Lease and PSA. Further, no later than thirty (30) days before Construction Commencement Date of the System, Lessee shall provide to Lessor for Lessor's review and approval of Lessor's Board of Health or its designee, which shall not be unreasonably withheld, copies of all design plans and specifications for the work. If Lessor fails to approve or object to the plans and specifications within ten (10) Business Days, the plans and specifications shall be deemed approved. This review and approval process is in addition to and not a limitation of any other processes required by a Governmental Authority or as a condition of obtaining a Governmental Approval.

c) System Design and Construction. Lessee shall, at its sole cost and expense, cause the System to be designed, engineered, permitted, installed, constructed and removed, and shall perform any other work at the Premises expressly permitted by the terms of this Lease, including but not limited to repairs or modifications to the System, in accordance with all Applicable Laws, Governmental Approvals, good industry practices, the requirements of any Governmental Authority (including without limitation the DEP) and Local Electric Utility, and any and all applicable manufacturer's warranties and instructions. Lessee shall be responsible for the security of all materials and equipment and safety of all persons at the Premises, and shall remove all debris at the end of each day during construction. Lessee shall schedule and coordinate all work to (and Lessee shall) avoid interference with the Lessor's Activities.

d) Pre-Construction Meeting and Updates. Lessee shall conduct a pre-construction meeting with Lessor at least fourteen (14) days before commencement of any construction activities. During design and construction of the System, Lessee shall keep Lessor informed on a weekly basis regarding the progress, scheduling, and coordination of the work via a written update provided via email, and shall conduct weekly progress meetings with representatives of Lessor. Meetings shall take place at designated City offices.

7. Access to Premises.

a) Commencing on the Effective Date and throughout the Lease Term, Lessee shall have the exclusive right, subject to advance written notice to Lessor and the right of Lessor to have one or more representatives accompany Lessee, and subject to the provisions of this Lease, including without limitation Section 2(c), and excluding subsurface or destructive testing, to enter upon the Premises to perform tests, inspections, surveys and investigations reasonably necessary for construction of the System ("Tests"), provided that Lessee shall indemnify, hold harmless and defend Lessor from and against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of the Tests, and provided further that Lessee shall restore the areas of the Tests to their original condition. Lessee shall also have the right, after the Effective Date, to enter upon the Premises, subject to and in accordance with the terms of this Lease, to design, engineer, construct, install, operate, maintain, test, upgrade and repair the System on the Premises. While on the Property, Lessee shall take all precautions against any injury and damage to persons, the Property, and any and all adjacent property and structures. Lessor shall provide and designate space, if available, on the Property for the temporary construction lay-down, storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and temporary facilities reasonably necessary during the furnishing, installation, interconnection, testing, commissioning, deconstruction, disassembly,

decommissioning and removal of the System, provided that Lessee shall, on a daily basis, remove trash and debris from the space so designated, and shall restore the space to its original condition promptly after such temporary use, and shall, to the same extent as provided above with respect to Tests, indemnify, hold harmless and defend Lessor from and against any and all claims etc. arising out of Lessee's construction activities.

b) Lessee and Lessee Parties shall at all times exercise reasonable care and conduct themselves in accordance with Applicable Laws and in a professional manner when on the Property, and shall comply with the reasonable requests of Lessor, including, but not limited to, when entering and exiting the Premises, and in its storage of equipment and materials at the Premises. Lessee and Lessee Parties shall not obstruct access to the Property, and shall not interfere with or disrupt Lessor's use of the Property as a capped municipal landfill, and Lessor's (or any existing tenants') use of the portions of the Property that are beyond and not included in the boundaries of the Premises (the "Reserved Property"), or with operations therein. In addition and subject to the right of "24/7" access provided to the Board of Health and DEP under Section 14 of this Lease, Lessor shall from time to time, upon two (2) Business Days' notice, have access to inspect the Premises during the Lease Term (including, without limitation, during construction and installation of the System), and shall also be provided access to the books, records, and compilations of data, which pertain to the performance of the obligations, provisions and requirements of this Lease and the PSA, which records shall be accurately kept, including without limitation on a generally recognized accounting basis, and all calculations shall be kept on file in legible form; provided that Lessor shall comply with Lessee's reasonable site safety requirements during any visit to the Premises, and provided further that in the event of an emergency, Lessor may enter the Premises without the need to provide a two-Business-Day notice, but shall, in such event, provide oral or written notice to Lessee as soon as practicable.

8. Lessee's Ownership of System. The System is personal property, and shall not attach to or be deemed a part of, or a fixture to, the Premises or Property. Lessee shall be the legal and beneficial owner of the System at all times and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or Property. Lessor acknowledges and agrees that Lessee is the exclusive owner of all Environmental Financial Attributes attributable to the System.

9. Representation and Warranties of the Parties as to Authorization and Enforceability

Each Party represents and warrants that the execution of this Lease has been duly authorized, does not require any further consent or approval of any other Person other than the Governmental Approvals required to be obtained under the PSA and Lease, and that this Lease constitutes a legal and valid obligation of such Party in accordance with Applicable Law.

10. Representations, Warranties and Covenants of the Lessor

a) Lessor's Title to Premises. Lessor represents, warrants and covenants that Lessor has a lawful fee simple interest in title to the Property, including the Premises. Subject to the Lessor Activities and the terms of the Lease and PSA, Applicable Law and Governmental Approvals, and so long as Lessee is not in default of the Lease, Lessor also covenants that Lessee shall have quiet enjoyment of the Premises, throughout the Lease Term. Lessor's exercise of its rights under the Lease and PSA shall not be considered a breach of the covenant of quiet

enjoyment notwithstanding anything to the contrary in the Lease. Lessor may sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property, in whole or in part, without any approval of Lessee necessary, upon thirty (30) days' prior notice thereof to Lessee, which notice shall identify the transferee if known, the area of the Property to be so transferred and the proposed date of transfer, if known. Lessor agrees that this Lease and the Easements shall run with the Premises and survive any future transfer of all or any portion of the Premises.

b) No Interference With and Protection of System. Excluding the Lessor Activities, Applicable Law and Governmental Approvals, Lessor will not conduct activities on, in or about the Premises that will cause material damage to the System or operation thereof. The System shall be operated, maintained and repaired by Lessee at its sole cost and expense.

c) Non-Disturbance Agreements. Lessor shall obtain a non-disturbance agreement ("NDA") in favor of Lessee from any third party who in the future obtains, with Lessor's permission, an interest in the Property or Premises, including, without limitation, any lenders to Lessor, which NDA shall: (i) acknowledge and consent to the Lessee's rights to the Premises and the System under this Lease; (ii) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease; (iii) acknowledge that the third party's interest in the Premises (if any) is subject to Lessee's interest under this Lease; (iv) waives any lien the third party may have in and to the System; and (v) agrees not to disturb Lessee's possession of the Premises.

d) Liens. Lessor shall not create any mortgage, lien (including mechanics', labor or materialman's lien), security interest, or similar encumbrance on or with respect to the System or any interest therein.

e) Representations Regarding Security Interest in System. Lessor acknowledges and understands that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the "*Security Interest*") in the System.

f) Utilities. Lessee shall be responsible for obtaining and paying for all utilities used at the Premises, including, without limitation, electricity and, if used, water; separate meters for such utilities shall be installed and maintained at Lessee's sole cost and expense, and Lessee shall be responsible for all utility and other related expenses.

11. Representations, Warranties and Covenants of Lessee.

a) Regulatory Status. Lessee represents and warrants that it is not an electric public utility, investor owned utility, a municipal utility, a merchant power plant or electrical corporation as defined under the laws of the Commonwealth of Massachusetts.

b) Liens. Except for the Lender's Security Interest or ownership of Lessee's interest in this Lease, Lessee's personal property or the System, Lessee shall not directly or indirectly cause, create, incur, assume or, if arising out of Lessee's activities or omissions at the Premises or pursuant to this Lease, suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Property or Premises and agrees to discharge or bond, at its sole expense, any

such encumbrance or interest that attaches to the Property or Premises. In addition to, and not in limitation of, any other rights and remedies available to Lessor, Lessee shall save, hold harmless, and indemnify Lessor from and against any and all damages, claims, liabilities, losses, costs and expenses, including reasonable attorneys' fees, arising out of any such liens etc. and any failure of Lessee to comply with this Section.

c) Subcontractors. Lessee shall be fully responsible to Lessor for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Lessee for or in connection with this Lease and the PSA, and of any person for whom Lessee is responsible. Nothing contained in this Lease shall create any contractual relation between any such subcontractor or person and Lessor.

d) Statutory Filings. Lessee shall file a "Disclosure Statement" as described in M.G.L. c. 7C, § 38; and a "Tax Certificate" as described in M.G.L. c. 62C, § 49A.

e) Notice of Damage or Emergency. Lessee shall immediately notify Lessor if Lessee becomes aware, through discovery or receipt of notice or otherwise, (i) of any damage to or loss of the use of the System, Property, or Premises; (ii) of any event or circumstance that poses an imminent risk to human health, the environment, the System, Property, or Premises; or (iii) of any interruption or material alteration of the energy supply to or from the Premises or the System.

f) Condition of Premises. Notwithstanding anything to the contrary in this Lease and in the PSA, but subject to Lessee's right to terminate the Lease and the PSA under Section 6.2 of the PSA, Lessee accepts the Premises "as is" and "with all defects," without benefit of any services, facilities, improvements or modifications to be made by Lessor, without any representation or warranty of any kind by Lessor, and without any recourse against Lessor as to the title to and the nature, condition or usability of the Premises, or as to the use(s) to which the Property and Premises or any part thereof have been put, including, without limitation, the Lessor Activities and the uses described in Section 2(c) of this Lease.

12. Hazardous Substances. Lessee shall not introduce, use or exacerbate, or cause to be introduced, used or exacerbated, any Hazardous Substances on, in or under the Premises or Property. If Lessee becomes aware of any such Hazardous Substances, it shall promptly notify the Lessor of the type and location of such Hazardous Substances in writing. In addition to, and not in limitation of, any other rights and remedies available to Lessor, Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all Environmental Claims, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that Lessor may suffer or incur due to Lessee's failure to comply with this Section 12 or with Environmental Laws. This indemnification obligation specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority, and is in addition to, and not a limitation of, any other rights and remedies available to Lessor.

13. Maintenance.

a) Maintenance Standards. The System shall be operated and maintained and, as necessary, repaired by Lessee at its sole cost and expense in accordance with the terms of this Lease, Applicable Law, good industry practice, Governmental Approvals and the requirements of

any Governmental Authority and the Local Electric Utility, and any applicable manufacturer's warranties and recommendations. In its operation, maintenance, repair and removal of the System, Lessee shall not interfere with Lessor Activities and shall, throughout the Lease Term, comply with Applicable Laws and Governmental Approvals.

b) System Modifications. Throughout the Lease Term, Lessee shall have the right, subject to the terms of this Lease and the PSA, Applicable Laws, and Governmental Approvals (i) to add to, remove or modify the System or any part thereof, (ii) to perform (or cause to be performed) all tasks reasonably necessary or appropriate to carry out the activities permitted in this Lease, including, but not limited to, the right to clean, repair, replace and dispose of all or a part of the System, all at the sole cost and expense of Lessee, without prior notice to or consent of Lessor except as otherwise expressly provided in the Lease or PSA; provided that, notwithstanding the foregoing, before Lessee performs any material or substantial additions or modifications to the System other than the like-kind replacement of existing equipment, it shall provide Lessor with plans and specifications for such modifications for Lessor's approval in the same manner as was required for the initial installation of the System under Section 6 of this Lease. Notwithstanding anything to the contrary in the Lease including the foregoing, other than with respect to the construction of the System in accordance with Section 6 of this Lease, under no circumstances will Lessee make any changes, extensions, alterations, additions, or other modifications to the Property or Premises.

c) Security Measures and Access. Lessee, at its expense, shall install, implement and maintain all security measures required by Applicable Laws, and may, in addition to those measures, use any and all appropriate means of restricting third-party access to the System and Premises, including without limitation, the construction of a fence. Keys to any locks shall be provided to the City of Newton Board of Health, which together with its Health Agent(s) and consultants and representatives of the DEP, shall have unrestricted "24/7" access to the Premises for health-and-safety and landfill-related purposes notwithstanding anything to the contrary in this Lease, including, without limitation, Section 7(b) of this Lease.

d) Lessee shall, at its sole cost and expense, comply with Lessee's Landfill Obligations, and keep and maintain the Premises and Property in clean, good and safe order and condition, including, but not limited to, by removing all Lessee's trash and waste from the Premises and Property and remove any snow and ice from the Premises, and Lessee shall not commit, or permit its agents, employees, representatives or invitees to commit waste to the Premises.

e) If Lessee or Lessee Parties damage the Premises or Property (including, but not limited to, the landfill or landfill cap), or any other property of Lessor or property of any other Lessee at the Property, Lessee shall promptly repair and restore the damaged areas or property at its sole cost and expense without any notice from Lessor. In the event Lessee fails to perform such repair or restoration, Lessor shall have right (but not the obligation), following thirty (30) days notice to Lessee, to cause such repairs or restorations to be made, without any responsibility or liability to Lessee or any other party for any damages to Lessee's or Lessee Parties' property occurring as a result thereof, and Lessee shall forthwith upon demand pay over to Lessor all of the costs and expenses, including reasonable attorneys' fees, incurred by Lessor in connection therewith, failing which Lessor may withhold the value of the same from amounts otherwise due Lessee under the PSA or Lease. If and as required by Applicable Laws and/or the DEP, Lessee

shall maintain a vegetative cover over the Premises pursuant to Applicable Laws. Lessor shall have no obligation to maintain or repair the Premises or the System, or any security measures implemented by Lessee in connection therewith, notwithstanding anything to the contrary in this Lease.

f) Lessee understands and agrees that, notwithstanding anything to the contrary in this Lease, Lessor shall not be responsible (i) for the subsidence of all or any part of the landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying or beneath the cap or from any other naturally occurring process, including, but not limited to, as may result from the decay of waste buried beneath the cap, or (ii) for the effects of such subsidence on the System.

14. Temporary Removal of System. In the event that, through no fault of Lessee, the landfill cap requires repair or replacement during the term of the Lease, Lessee shall remove portions of the System as necessary for the repair or replacement work to be performed. Lessor shall provide Lessee with at least ninety (90) days advance written notice of any such repair or replacement work, except in the event of an emergency or order of any court or Governmental Authority, in which event Lessor shall provide Lessee with such advance notice as is practicable. During the period of removal, those portions of the System that are removed from may be temporarily stored off-site, or the Lessor may designate a location for the temporary storage on other Lessor property, if available. Lessee shall be responsible to ensure that such storage conforms to industry and manufacturer's requirements for the proper storage of any such equipment. During such temporary storage, Lessee shall be responsible for the security of the System, and, if the System or any part thereof is temporarily stored on Lessor property, Lessee shall store it in a manner that prevents the public from gaining access to the System. To the extent that damage to the landfill cap or other areas of the Premises is the result of the acts or omissions of Lessee during removal or subsequent re-installation of the relevant portions of the System, Lessor shall be entitled to pursue all rights and remedies available to it, including, but not limited to, all administrative penalties or fines imposed on it, and all costs incurred in the restoration of the cap in compliance with the requirements of the DEP and any other Governmental Authority. Unless prohibited by Applicable Laws, the Term of the Lease and PSA shall be extended one day for each day all or part of the System has been removed. Lessee's rent shall be reduced proportionally for the area of the Premises and days from and during which any portion of the System has been removed until such portion of the System is fully restored and operational. Lessor shall pay the reasonable costs paid by Lessee for removal, storage, and re-installation of the relevant portions of the System that had been removed. Other than as expressly set forth in this Section 14, Lessor shall not be responsible for payment of any other claims or damages arising from such removal, storage or re- installation, including, without limitation, any claim of Lessee's lost profits, lost Environmental Financial Attributes, or lost Rebates.

15. Insurance.

a) Generally. Lessee shall maintain the insurance coverage set forth in Exhibit C in full force and effect throughout the Lease Term and during any removal or holdover period. Upon execution of this Lease, Lessee shall provide copies of all insurance policies to Lessor, and shall, on each anniversary of the Effective Date, furnish current certificates evidencing that the coverage required is being maintained.

b) Waiver of Subrogation. Lessee hereby waives any right of recovery against Lessor for injury or loss to personal property due to hazards covered by insurance obtained with respect to the Property or Premises, including the improvements and installations thereon.

c) System Loss. In the event of any harm to the System that was not caused in whole or in part by Lessee and, in the reasonable judgment of Lessee, results in total damage, destruction or loss of the System (“System Loss”), Lessee shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Lessor in writing whether Lessee is willing, notwithstanding such System Loss, to repair or replace the System and to continue the Lease. In the event that Lessee notifies Lessor that Lessee is not willing to repair or replace the System and is terminating the Lease, the Lease will terminate effective upon the date of Lessor’s receipt of such notice, and Lessee shall, subject to subtraction of amounts necessary for the repair of any damage to the Property or Premises, be entitled to the proceeds of its insurance policies with respect to the System Loss, and Lessor shall, subject to Applicable Laws, promptly return to Lessee any prepaid but unearned Rent, provided that Lessee has, removed the System and restored the Property accordance with Section 5. Nothing in this Section shall relieve Lessee of its obligation to indemnify Lessor as expressly provided in this Lease for any damages caused to the Property, including but not limited to the Premises.

16. Liability and Indemnity.

Lessee shall indemnify, defend, and hold harmless Lessor and Lessor Parties against and from any and all losses, liabilities, damages, claims, costs, charges, demands, and expenses (including reasonable attorneys’ fees) for injury or death to Persons, including employees of either Party, and physical damage to property arising out of or in connection with the activities of Lessee and Lessee Parties under this Lease, including without limitation the activities of Lessee and Lessee Parties on or about the Premises. This indemnification obligation is in addition to and not a limitation of any other rights and remedies of Lessor under this Lease, at law or in equity.

17. Casualty. In the event the Premises shall, through no fault of Lessee, be so damaged or destroyed by fire or other casualty so as to make the use of the Premises demonstrably unsuitable for the operation and maintenance of the System, then Lessee may elect to terminate this Lease without penalty upon thirty (30) days written notice to Lessor. In the event of such termination, Lessee shall remove the System and restore the Property in accordance with Section 5. If Lessee does not elect to terminate this Lease in the event of such a casualty, it shall provide written notice to Lessor of that election, provided Lessee commences such restoration promptly upon such election and diligently performs the restoration to completion. Lessee shall have the sole responsibility for restoration of the System.

18. Condemnation. In the event the Premises or Property are transferred to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Lessee’s reasonable determination to render the Premises demonstrably unsuitable for Lessee’s use, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor. Sale to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

19. Assignment.

The Lease may be assigned, if at all, in the same manner and subject to the same limitations as set forth in Article XI the PSA, provided, however, that, other than assignments made for collateral purposes only in connection with the financing of the System, the Lease may not be assigned in part, and may not be assigned to any Person who does not also simultaneously take full assignment of the PSA.

20. Defaults and Remedies.

a) Lessee Default Defined. The following events shall be defaults of this Lease by Lessee (“Lessee Defaults”):

i. If Lessee breaches any material term of this Lease (other than as set forth in subsections (a)(ii)-(a)(vi), below, and (x) if such breach can be cured within thirty (30) days after Lessor’s notice of such breach and Lessee fails to cure within such 30-day period, or if such breach cannot reasonably be cured within such 30-day period despite Lessee’s prompt commencement and diligent pursuit of a cure, if (y) Lessee fails to promptly commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than 30 days is needed, provided that no cure period shall exceed 120 days;

ii. Lessee fails to timely make any payment to Lessor under this Lease, unless such failure is cured within 30 days, provided further that if any failure of Lessee to make timely payments required by this Lease occurs three or more times in any 365-day period, such occurrence shall constitute a Lessee Default even if each such failure to make a timely payment was cured;

iii. Lessee becomes Bankrupt;

iv. Lessee commits a Provider Default under and as defined in Article VIII of the PSA;

v. Lessee fails to provide the bonds required in Section 6 of this Lease, unless such failure is cured within 30 days and no damage to Lessor has resulted from such failure; and

vi. Lessee sells, transfers, or conveys the System to a tax exempt entity.

b) Lessor Default Defined. The following events shall be defaults with respect to Lessor (each, a “Lessor Default”):

i. Lessor fails to pay Lessee any undisputed amount due Lessee under this Lease within ten (10) Business Days from receipt of written notice from Lessee of such past due amount;

ii. Lessor breaches any material term of this Lease if (A) such breach can be cured within thirty (30) days after Lessee’s notice of such breach and Lessor fails to so cure, or (B) Lessor fails to commence and diligently pursue and complete

said cure within a reasonable period of time if a cure period longer than 30 days is needed;

iii. Lessor becomes Bankrupt; or

iv. Lessor commits a Customer Default under and as defined in Article VIII of the PSA.

c) Remedies. If an Event of Default has occurred and, where a cure period is provided above, is not cured within the cure period provided, the non-defaulting Party shall have, and shall be entitled to exercise, any and all remedies available to it at law or in equity, including damages, specific performance and/or the right to terminate the Lease upon notice to the defaulting party without penalty, all of which remedies shall be cumulative, except that if Lessee terminates the Lease for a Lessor Event of Default and Lessee requires Lessor to pay the Early Termination Fee corresponding to the year of termination pursuant to Article VIII of the PSA, such payment shall be Lessee's sole and exclusive remedy notwithstanding anything to the contrary in the Lease or PSA.

21. Notices. All Notices under this Lease shall be made in writing to the Addresses and Persons specified below. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, return receipt requested or email. Email notices shall require confirmation of receipt. Notices shall be deemed to have been received when delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. Rejection or refusal to accept delivery of any notice shall be deemed to be the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 21. Failure to comply strictly with the terms of this provision shall not be held against the Party claiming to have given notice so long as such Party substantially complied with this provision, the receiving Party received the notice in question, and such failure has not materially prejudiced the receiving Party.

To Lessee:

To Lessor:

City Solicitor
City of Newton
City Hall
1000 Commonwealth Avenue
Newton Center, MA 02459

and

TO BE ADDED

22. Waiver. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

23. Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law or in equity or by statute provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, except that payment of a Early Termination Fee by Lessor under the Lease or PSA shall constitute Lessee's sole and exclusive remedy notwithstanding anything to the contrary in the Lease or PSA.

24. Headings. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

25. Survival. The obligations under Sections 3, 4(c), 4(d), 5, 9, 10, 11, 14, 18, 19, 21, 26 and 33, and the indemnification obligations under Sections 7, 11 (b), 12 and 16, shall survive the expiration or termination of this Lease for any reason. For the avoidance of doubt, the expiration or earlier termination of this Lease shall not relieve the Parties of duties or liabilities that by their nature should survive such expiration or termination, prior to the term of the applicable statute of limitations.

26. Governing Law. This Lease is made and entered into and shall be interpreted in accordance with the applicable laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth sitting in Middlesex County or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. Lessee agrees to accept service of process by mail in accordance with Section 22 of the PSA.

27. Severability. Subject to the other terms of this Lease: Any term, covenant or condition in this Lease that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Lease to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Lease, or of such provision in other jurisdictions. The Parties shall use good faith efforts to negotiate to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as practicable corresponds to the spirit and purpose of such ineffective provision.

28. Binding Effect. This Lease and its rights, privileges, duties and obligations shall bind and inure to the benefit of and be binding upon each of the Parties hereto, together with their respective heirs, personal representatives, successors and permitted assigns.

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

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

31. Entire Lease. This Lease and, to the extent applicable, the PSA, represents the full and complete agreement between the Parties hereto with respect to the lease of the Premises and supersedes all prior written or oral negotiations, representations, communications and agreements between said Parties with respect to the lease of the Premises to Lessee. This Lease may be amended only in writing signed by both Lessee and Lessor or their respective successors in interest. Lessor and Lessee each acknowledge that in executing this Lease that party has not relied on any verbal or written understanding, promise, or representation which does not appear in this document.

32. Further Assurances. Upon the receipt of a reasonable request from the other Party, subject to Applicable Laws and the terms of this Lease, the receiving Party shall, at the expense of the requesting Party, execute such commercially reasonable additional documents, instruments and assurances and take such reasonable actions as are reasonably necessary to carry out the terms of the Lease, including entering into any reasonable consents, assignments, affidavits, estoppels and other reasonable documents as may be reasonably required by such Party’s lender to create, perfect or preserve its collateral interest in such Party’s property or such party’s rights and obligations under this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

33. Dispute Resolution.

Any dispute under this lease shall be subject to the Dispute Resolution provisions and limitations set forth in Article IX of the PSA.

34. Force Majeure.

A “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Lease, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party was unable to overcome such act or event with the exercise of due diligence. A Party claiming a Force Majeure Event shall not be considered in breach of this Lease or liable for any delay or failure to comply with the Lease, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall promptly notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter. A Force Majeure event shall not include ordinary or reasonably foreseeable fluctuations in insolation/sunlight or be based on the economic hardship of either Party. If a Force Majeure Event shall have occurred that has materially affected either Party’s ability to perform its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the other Party shall be entitled to terminate the Lease upon ninety (90) days’ prior written notice. If at the end of such ninety (90) day period such Force Majeure Event shall still continue, the Lease shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party

shall have any liability to the other (other than Provider's obligation to remove the System in accordance with Section 6.04 and any such liabilities that have accrued prior to such termination).

35. No Brokers. Lessor and Lessee hereby represent and warrant to the other that no real estate broker or agent is entitled to a commission in connection with this Lease. In the event any broker or other party claims a commission, the party responsible for the contact with that claimant shall indemnify, defend and hold the other party harmless from that claim, including, without limitation, the payment of any attorneys' fees and costs incurred.

36. No Partnership. This Lease is not intended and shall not be construed to create any partnership or joint venture or any other relationship other than one of 'lessor' and 'lessee', and neither Party shall be deemed the agent of the other Party nor have the authority to act as agent for the other Party.

37. No Intended Third Party Beneficiary. There are no intended third-party beneficiaries to this Lease.

38. Subordination to Existing Leases, Easements and Rights of Way. Lessee acknowledges and understands that this Lease and all rights of Lessee hereunder are subject and subordinate to all easements, rights of way, declarations, restrictions and other matters of record. Lessor reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, subject to Lessee's right of quiet enjoyment under Section 10(a), provided, however, that Lessor may continue to undertake Lessor Activities, and do all such things as may be required by Applicable Law, Governmental Approvals and any Governmental Authority, including without limitation the DEP, notwithstanding anything to the contrary in this Lease and the PSA.

39. Additional Terms Regarding Lessor's Obligations. Notwithstanding anything to the contrary in this Lease:

a) Lessor shall not be required to execute documents or instruments subsequent to the execution of this Lease that will materially or unreasonably increase Lessor's risk or obligations under this Lease, or result in the waiver of any of Lessor's rights or remedies under this Lease or at law or in equity, as reasonably determined by Lessor.

b) Any requirement that Lessor cooperate with or assist Lessee or take any action shall not require Lessor to interfere with or influence the independent executive, regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Lessor.

c) This Lease shall be subject to Applicable Laws.

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

e) Nothing in this Lease shall interfere with the Norton Board of Assessors or its designee in the evaluation, calculation, assessment and collection of taxes in accordance with applicable laws and regulations.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -SIGNATURE PAGE FOLLOWS

DRAFT

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year of the last party to sign below (the "*Effective Date*").

LESSOR:

By

Setti Warren, Mayor

Date: Approved as to Form:

Assistant City Solicitor

LESSEE:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A

DESCRIPTION OF PROPERTY AND PREMISES

Legal description of the Property and Premises including a parcel map and/or an abstract of survey, if available.

“Property” means the real property of Lessor located at:

- Address:
- Legal Description of Property: “Premises” means the approximately of the Property, as generally depicted a in the attached Existing Conditions Plan, but subject to Section 2(a) of this Lease.

DRAFT

EXHIBIT B
DEFINITIONS

“*Affiliate*” has the meaning set forth in the PSA.

“*Applicable Law(s)*” has the meaning set forth in the PSA.

“*Bankrupt*” has the meaning set forth in the PSA.

“*Business Day*” has the meaning set forth in the PSA.

“*Commercial Operations Date*” has the meaning set forth in the PSA.

“*Construction Commencement Date*” has the meaning set forth in the PSA.

“*Decommissioning Bond*” means a financial assurance to be established by the Norton Planning for the purpose of decommissioning and removing the System from the Property, and the restoration of the Property to its original condition.

“*Early Termination Fee*” has the meaning set forth in the PSA.

“*Environmental Financial Attributes*” has the meaning set forth in the PSA.

“*Environmental Claims*” means any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that Lessor may suffer or incur due to the introduction, use, release or exacerbation by Lessee of any Hazardous Substances on the Property or the Premises.

“*Environmental Law*” means and includes, without limitation, any present or future federal, state or local law, whether under common law, statute, rule, regulation or otherwise, requirements under Permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directive or other requirements of any Governmental Authority relating to or imposing liability or standards of conduct, disclosure or notification with regard to the protection of human health, the environment, ecological conditions, Hazardous Substances or any activity involving Hazardous Substances. Environmental Law is a part of Applicable Law.

“*Expiration Date*” has the meaning set forth in Section 4(a) of this Lease.

“*Financing Date*” has the meaning set forth in the PSA.

“*Force Majeure Event*” has the meaning set forth in Section 34 of this Lease.

“*Governmental Approval(s)*” has the meaning set forth in the PSA.

“*Governmental Authority*” has the meaning set forth in the PSA.

“Hazardous Substances” means and includes, without limitation, any substance, chemical, material, pollutant, or waste:

(i) the presence of which causes a nuisance or trespass of any kind under any applicable Environmental Law; (ii) which is regulated by any Governmental Authority; (iii) is likely to create liability under any Environmental Law because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including but not limited to, flammables and explosives, gasoline, petroleum and petroleum products, asbestos containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, microbial matter, biological toxins, mycotoxins, mold or mold spores or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such by any Governmental Authority; or (iv) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law.

“Lease Term” means the term of years that commences on the Effective Date and expires at 11:59 p.m. on the Expiration Date, unless earlier terminated.

“Lender” has the meaning set forth in the PSA.

“Lessee Party” or *“Lessee Parties”* means, individually or collectively, Lessee, its Affiliates and any of their authorized representatives, agents, employees, managers, contractors, architects and engineers, and each of their respective officers, directors, partners, members, managers, agents, employees, representatives and invitees.

“Lessor Parties” means, individually or collectively, Lessor, its Affiliates and any of their authorized representatives, agents, employees, managers and each of their respective officers, directors, partners, members, managers, agents, employees, and representatives.

“Local Electric Utility” has the meaning set forth in the PSA.

“Person” has the meaning set forth in the PSA.

“Public Cap Allocation Date” has the meaning set forth in the PSA.

“Purchase Option” has the meaning set forth in the PSA.

“Removal and Restoration Date” means the date not later than sixty (60) days after either the Expiration Date or the date of earlier termination of this Lease, if applicable, when Lessee shall (i) complete removal from the Premises of the System and all of Lessee’s property, including, but not limited to, all equipment and components comprising the System and (ii) restore the Premises to its original condition.

“System” has the meaning set forth in the PSA.

EXHIBIT C

LESSEE INSURANCE

The Lessee shall maintain the following insurance coverages, as a condition of the Lease and PSA, in full force and effect throughout the Term and without interruption either through insurance policies, or acceptable self-insured programs, failing which Lessee shall be deemed in material breach of the Lease:

- (i) Workers' Compensation at statutory limits and Employer's Liability Coverage in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts, which policy shall adequately protect all labor employed by the Lessee during the life of this Lease and, if required, Lessee shall provide written evidence to the Awarding Authority that such insurance is in fact in force. Such insurance shall be of at least \$1,000,000.00 each occurrence.
- (ii) Commercial General Liability Coverage (Occurrence Form) with limits of not less than \$1,000,000.00 each occurrence, on which policy the Town of Norton shall be added as an additional insured, and
- (iii) Automobile Liability Coverage of at least \$1,000,000.00 each occurrence for bodily injury and property damage combined single limit, \$100,000 personal with a \$300,000 aggregate, on which policy the Town of Norton shall be added as an additional insured.
- (iv) Property Coverage for materials and supplies being transported by the contractor.
- (v) Umbrella Liability of at least \$4,000,000/occurrence, on which policy the Town of Norton shall be added as an additional insured.

For any claims resulting from the operation, maintenance, and/or repair of the System, Lessee's insurance coverage shall be primary. Any insurance or self-insurance maintained by Lessor shall be in excess of Lessee's insurance and shall not contribute with it.

Any subcontractor engaged by Lessee to perform services on the Property or the System shall maintain Professional Liability Insurance during the time such contractor is performing such services.

EXHIBIT D
PROPERTY DEED AND ASSESSOR'S MAP

See attached.

DRAFT SOLAR POWER SERVICES AGREEMENT

between

(“Provider”)

and

City of Newton, Massachusetts

(“Customer”)

, 201_
(the “Effective Date”)

SOLAR POWER SERVICES AGREEMENT

THIS SOLAR POWER SERVICES AGREEMENT (this “Agreement”) is made effective as of , 201_ (the “Effective Date”), between (“Provider”), and the City of Newton, Massachusetts, a municipal corporation and political subdivision of the Commonwealth of Massachusetts (“Customer”). Provider and Customer are sometimes referred to individually as a Party and collectively as the Parties.

BACKGROUND

WHEREAS, Provider has offered to sell Solar Services (as hereafter defined) produced by the solar photovoltaic system to Customer as provided in and subject to the provisions of this Agreement, and Customer is willing to purchase the Solar Services as provided in and subject to the provisions of this Agreement; and

WHEREAS, in order to enable this Agreement, Provider and Customer are entering into that certain Lease Agreement of the Premises located in Newton, Massachusetts (see Schedule 1 attached hereto) between Provider and Customer bearing the same date as this Agreement, which will host the above solar photovoltaic system for the production of electricity and corresponding Net Metering Credits, and Provider will, at its sole cost, install, maintain, own and operate that system at the Premises; and

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I. DEFINITIONS

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

“Affiliate” means, with respect to any Person, any other Person directly controlling, controlled by or under common control with such first Person.

“Agreement” means this Solar Power Services Agreement, including the Schedules and Exhibits attached hereto.

“Applicable Law” means any and all applicable constitutional provisions, laws, statutes, rules, regulations, ordinances, bylaws, treaties, orders, decrees, judgments, decisions, certificates, holdings, injunctions, registrations, licenses, franchises, permits, authorizations, guidelines, Governmental Approvals, the Net Metering Rules, and any and all approvals, consents or requirements of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority. [

“Assignment” has the meaning set forth in Article XI.

“Bankrupt” means that a Party (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Boston, Massachusetts are required or authorized by Applicable Law to be closed for business.

“Commercial Operations,” with respect to a System, means that the System is ready for regular, daily operation, has been interconnected to the Local Electric Utility, has been accepted by the Local Electric Utility (to the extent required), and is capable of producing Electricity at full or substantially full capacity, has been installed in accordance with Applicable Law, and qualifies as a Net Metering Facility of a Municipality or Other Governmental Entity under the Net Metering Rules.

“Commercial Operations Date” means the date on which any System is ready for commercial operations after required testing.

“Commercial Operations Deadline” has the meaning set forth in Section 4.01(c).

“Construction Commencement Date” is the date on which all Governmental Approvals for construction shall have been obtained by Provider, and substantial and continuous construction activities for the installation of the System shall have commenced at the Premises.

“Contract Year” means each consecutive 365-day period commencing on the Commercial Operations Date.

“Customer” has the meaning set forth in the preamble hereof.

“Customer Default” has the meaning set forth in Section 8.02(a).

“Dispute” has the meaning set forth in Section 9.01.

“Early Termination Fee” means the fee payable by Customer to Provider under the circumstances described in Section 8.02.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means all products of the System other than electricity and Net Metering Credits corresponding thereto, including but not limited to carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, tax credits, emissions allowances, green tags, tradable renewable credits and Green-e® products, but not including grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

“Financing Date” has the meaning set forth in Section 6.03(b).

“Force Majeure Event” has the meaning set forth in Section 8.03.

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

“Governmental Authority” means any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government, and any governmental or quasi-governmental entity or independent system operation or regional transmission operator, including, without limitation, the Massachusetts Department of Environmental Protection and the Local Electric Utility.

“Governmental Charges” means all applicable federal, state and local taxes (including, without limitation, real and personal property taxes, sales, use, gross receipts or similar taxes), governmental charges, costs, expenses, charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed, assessed, and/or authorized by a Governmental Authority, the Local Electric Utility or other similar entity, on or with respect to the System, Property, Solar Services, Net Metering Credits, this Agreement and/or the Lease.

“Guaranteed Annual Solar Services Output” means the minimum amount of electricity that is guaranteed by the Provider to be generated by the System in a Contract Year as shown in Schedule 4.

“Independent Appraiser” means an individual, mutually acceptable to the Parties (or, in the event they cannot agree, selected by the two appraisers identified by the Parties in accordance with Article XIII) who is a member of an accounting firm qualified by education, certification, experience and training to determine the Fair Market Value of solar photovoltaic facilities reasonably similar in size and operational characteristics of the

System. Except as may be otherwise agreed in writing by the Parties, the Independent Appraiser shall not be (or within seven years before his or her appointment have been) a director, officer or employee of, or directly or indirectly retained as consultant or adviser to any Party or their respective Affiliates.

“Initial Term” has the meaning set forth in Section 6.01.

“kWh Rate” has the meaning set forth in Section 3.01 and Schedule 3.

“Lease” means that certain Lease Agreement, to be entered into concurrently with this Agreement, between the Customer and Provider.

“Lender” means any third-party entity providing financing to Provider with respect to the System. It shall not mean Provider’s trade creditors.

“Local Electric Utility” means the local electric distribution company providing interconnection and net metering services for the System.

“Meter” means the utility grade meter with net metering capabilities installed by the Local Electric Utility for the System pursuant to that utility’s tariff(s) that is used by the Local Electric Utility to measure the Solar Services delivered to the Local Electric Utility from the System.

“Net Metering” shall have the meaning set forth in M.G.L. c.164, s.138 and 220 CMR 18.02.

“Net Metering Credit” has the meaning set forth in M.G.L. c.164, s.138-140 and 220 CMR 18.00.

“Net Metering Rules” means the rules promulgated by the Massachusetts Department of Public Utilities (“DPU”) pursuant to, among others, M.G.L. c. 164, ss. 138-140, 220 CMR 11.04, 220 CMR 18.00, 220 CMR 8.00 and DPU docket 11-10 (Order Adopting Net Metering Rules), and DPU Docket 11- 11-E (Order on Exceptions to Definition of Unit and Facility), each as amended and extended periodically.

“Party” means Provider or Customer.

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

“PILOT” means the Payment-in-Lieu-of-Taxes Agreement establishing annual payments in lieu of taxes for the Premises and the System signed by the Provider and the Customer, as local taxing authority.

“Premises” has the meaning set forth in the Lease.

“Production Shortfall” means the amount, expressed in kWh, by which the actual amount of Solar Services generated by the System in any Contract Year is less than the Guaranteed Annual Solar Services Output for such Contract Year, as set forth in Section 2.02.

“Property” has the meaning set forth in the Lease, and includes the Premises.

“Provider” has the meaning set forth in the preamble hereof.

“Provider Default” has the meaning set forth in Section 9.01(a).

“Public Cap Allocation Date” has the meaning set forth in Section 6.03(f).

“Purchase Option” has the meaning set forth in Article XIII of this Agreement.

“Rebates” shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems but does not include grants or benefits for which only a governmental entity is eligible as determined by and under Applicable Law.

“Renewal Term” has the meaning set forth in Section 6.01.

“Site Plan” means, for each System, a plan depicting the locations, within and upon the Premises, of System components, including interconnection arrangements and access points, as revised by final as-built drawing(s) and subsequent revisions depicting any System alterations, and incorporated in Schedule 2 hereto.

“Solar Services” means the supply of on-site net electrical output in kWh (AC) generated by the System and delivered from the System to Customer, as measured by the Meter, and for which Customer receives a Net Metering Credit for each kWh of output.

“Solar Services Payment” has the meaning set forth in Section 3.01.

“Stated Rate” means a rate per annum equal to the lesser of (a) six percent (6%) or (b) the maximum rate allowed by Applicable Law.

“System” means the single photovoltaic solar renewable energy facility having a capacity of up to ___ megawatts (“MW”) AC installed by Provider on a single parcel of land at the Premises and, unless otherwise permitted by the Local Electric Utility and the Net Metering Rules, interconnected to the Local Electric Utility at a single interconnection point via a single Meter, which facility shall include but not necessarily be limited to an integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring and interconnections with the Local Electric Utility, as more specifically described in Schedule 2.

“Term” has the meaning set forth in Section 6.01.

ARTICLE II.
DELIVERY OF SOLAR SERVICES; GUARANTEES

2.01 Purchase Requirement. Customer agrees to purchase one hundred percent (100%) of the Solar Services during the Term. The payment for Solar Services is calculated in accordance with Section 3.01 of this Agreement. The purchase of Solar Services hereunder does not include Environmental Attributes or any other attributes of ownership of the System, title to which shall rest solely with Provider, but shall include all Net Metering Credits. Provider agrees that it shall deliver the Solar Services to the Meter free of all claims, security interests or encumbrances of any kind.

2.02 Guaranteed Annual Solar Services Output.

(a) Provider guarantees that the System will produce the Guaranteed Annual Solar Services Output in each Contract Year, as shown in Schedule 4.

(b) In the event that a Production Shortfall exists during any Contract Year, Provider shall pay to Customer, within thirty (30) days of the end of such year, the difference between the average Net Metering Credit value during the applicable Contract Year and the kWh Rate multiplied by the Production Shortfall.

ARTICLE III.
PRICE AND PAYMENT

3.01 Consideration. Customer shall pay to Provider a monthly payment (the “Solar Services Payment”) for the Solar Services delivered to Customer. For any billing period, the Solar Services Payment shall equal the product of the Solar Services output for that period *multiplied by* the relevant kWh Rate as specified in Schedule 3. Provider shall invoice Customer on a monthly basis. The first invoice shall include any production that occurred prior to the initial invoice date, including any test energy as provided in Section 4.02 below, provided Customer receives Net Metering Credits from the Local Electric Utility for such production. The last invoice shall include production only through the date on which the Agreement expires or is earlier terminated. Customer shall pay any Solar Services Payment invoiced within thirty (30) days of receipt thereof, subject to the other provisions of this Agreement.

3.02 Method of Payment. Customer shall make all payments under this Agreement either by electronic funds transfer to the account designated by Provider, or by check. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at the Stated Rate, subject to the other provisions of this Agreement.

3.03 Payment Disputes. If a Dispute arises with respect to any invoice, such Dispute shall be resolved pursuant to Article IX hereto; *provided that*, during the time a Dispute is pending, the disputing Party shall not be deemed in default under this Agreement for any failure to pay any disputed amounts, and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of

undisputed amounts owed hereunder. A Party may withhold amounts disputed in good faith.

3.04 Change in Law.

If there is any change in Applicable Law subsequent to the Effective Date that results in a material and adverse change in Provider's ability to provide, or Customer's ability to receive or use, Net Metering Credits, or results in the disqualification of the System as a Net Metering Facility of a Municipality or Other Governmental Entity under the Net Metering Rules, Customer or Provider, as the case may be, shall submit to the other Party a written notice indicating (i) the change in Applicable Law, and (ii) the manner in which such change has resulted in the effect aforesaid. The Parties shall thereupon promptly (within ten calendar days) commence informal, good faith negotiations to try to amend this Agreement to address such effect to the reasonable satisfaction of the Parties. If the Parties are unable, in their reasonable discretion, to agree to an amendment within 45 calendar days of the date of a Party's receipt of written notice hereunder, then either Party may terminate this Agreement without penalty for such termination, provided, however, that the Parties shall remain subject to any liabilities and obligations under this Agreement that had arisen prior to the date of termination, or from a provision of this Agreement that expressly survives termination, provided further that during the aforesaid 45-day negotiation period, Customer shall not be required to make Solar Services Payments if Customer is not receiving Solar Services and Net Metering Credits. No early termination charges shall apply to a Change in Law event.

ARTICLE IV. CONSTRUCTION AND OPERATION

4.01 Development and Commercial Operations Date/Deadline.

(a) Design and Construction. Provider will, at its sole cost and expense, cause the System to be designed, engineered, permitted, installed and constructed pursuant to good and prudent industry practice, Applicable Law, Governmental Approvals and the applicable requirements of any Governmental Authority, and shall be responsible, as the Interconnection Customer for the System, for all costs and expenses associated with and arising from interconnection of the System to the Local Electric Utility's electric distribution system ("Development"). Provider shall be solely responsible for the Development of the System.

(b) Commercial Operations Date. Within seven (7) calendar days of the System achieving Commercial Operations, Provider shall certify to the Customer in writing the date on which the System achieved Commercial Operations. Provided such certification is correct, the date so certified shall be deemed the "Commercial Operations Date."

(c) Commercial Operations Deadline. Subject to Section 2(d)(ii) of the Lease, Provider shall cause the System to achieve Commercial Operations no later than December 31, 2016 (the "Commercial Operations Deadline").

(d) Testing. Provider shall conduct such testing of the System as may be required by the Local Electric Utility and Applicable Law. Provider shall notify Customer of the results of any such testing. Customer will purchase all test energy under the provisions of this Agreement whether such test energy is produced before or after the Commercial Operations Date, provided Customer receives Net Metering Credits corresponding to such energy.

4.02 Operations. The System shall be owned, operated, maintained, repaired and, at the expiration or earlier termination of the Agreement or Lease unless Customer has exercised the Purchase Option, removed by or for Provider at its sole cost and expense with reasonable diligence and in a commercially reasonable manner, and in accordance with its Interconnection Services Agreement with the Local Electric Utility, Applicable Law, Governmental Approvals, the applicable requirements of any Governmental Authority, and good and prudent industry practices.

4.03 Metering. Pursuant to the Local Electric Utility's interconnection tariff, Provider, as Interconnection Customer, shall request the Local Electric Utility to furnish and maintain the Meter on the Premises for the measurement of Solar Services generated by the System on a continuous basis. To the extent permitted by the Local Electric Utility under said tariff, Provider shall test the Meter, or request that the Local Electric Utility test the Meter, in compliance with the manufacturer's recommendations, which shall not be less than once per calendar year. In addition, once per calendar year, Customer shall have the right to audit all such Meter data upon reasonable notice, and any such audit shall be at Customer's sole cost; and Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations. If testing of the Meter pursuant to the foregoing indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace, or request the Local Electric Utility to repair or replace, the Meter, all at no cost or expense to Customer. Provider shall make a corresponding adjustment to the records of the amount of Solar Services based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if the actual period cannot be so determined and the Local Electric Utility has not made an independent determination, then an estimated period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering or (ii) the date the Meter was placed into service; *provided, however*, that such estimated period shall in no case exceed one (1) year.

4.04 Monitoring System. Provider shall install a performance monitoring system. Such system shall at minimum meet the requirements for reporting actual production of electricity to the Local Electric Utility and any appropriate state or regional agency. Such system shall include at minimum a state-of-the-art remote data acquisition system (DAS) designed to gather and record system parameters as well as weather related parameters including power, sunlight, wind speed and air temperature from a local area weather station. The monitoring system shall also include data logging and historical data collection capabilities to ensure Customer can observe system performance over time. Provider shall also provide and install a data monitoring LED display at a location of

Customer's choosing. Such display shall be web-enabled to demonstrate near real-time performance, and a link may be included on Customer's website.

4.05 Outages. Provider shall be entitled to suspend delivery of electricity to the Meter for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; *provided that* Provider shall use commercially reasonable efforts to minimize any interruption in service to Customer, shall comply with all requirements of the Local Electric Utility in connection with any suspension, and shall be responsible for any Production Shortfall.

4.06 Host Customer. If Customer is the "Host Customer" on the Meter, as the term "host customer" is defined in the Net Metering Rules, then (1) unless otherwise reasonably required by Customer during the Term, Provider shall, at no cost to Customer, prepare all Schedule Zs and file them with the Local Electric Utility and shall fulfill, on behalf of Customer, all obligations of Host Customer for the System, in connection with which efforts Customer shall reasonably cooperate; and (2) in addition to any other rights and remedies available to Customer, Provider hereby agrees, notwithstanding anything to the contrary herein, to pay and indemnify Customer for and from any and all costs, damages, and expenses incurred by Customer, or imposed upon Customer by the Local Electric Utility, under any agreement between Customer, as Host Customer, and the Local Electric Utility, including, but not limited to, charges and costs for any electricity consumed by the System or the Premises. Customer shall have the right, in its capacity as Host Customer, but not the obligation, to access the System and Meter during business hours upon reasonable advance notice to Provider for the purpose of verifying Provider's compliance with this Agreement and the Interconnection Services Agreement executed by Provider and the Local Electric Utility, provided that any exercise or failure to exercise such right shall not relieve Provider of its obligations hereunder, nor operate as a waiver of any right, remedy, claim or defense of Customer under this Agreement or at law or in equity.

4.07 Provider acknowledges that the System is to be qualified as a Net Metering Facility of a Municipality or Other Government Entity under the Net Metering Rules, and therefore agrees not to take any action, or fail to take an action, if doing so will disqualify or contribute to causing the disqualification of the System as such a facility.

4.08 Provider represents, warrants and agrees that it has, as of the Effective Date, applied to the Local Electric Utility for interconnection of the System, and that it will, as soon as reasonably possible under the rules established by the Massachusetts Department of Utilities for the Net Metering System of Assurance, apply, on behalf of Customer as Host Customer of the System, for a Public Cap Allocation. Provider shall use its best and diligent efforts to obtain approval of interconnection and a Cap Allocation, and Customer shall reasonably cooperate with Provider in those efforts.

ARTICLE V.
TITLE TO SYSTEM

5.01 Title to System. Provider shall retain title to and be the legal and beneficial owner of the System at all times. Absent further written election by Provider, the System shall (i) remain the personal property of Provider and shall not attach to or be deemed a part of, or fixture to, the Premises, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code. Customer warrants and represents that it shall not lien the System. Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its title to and rights in the System. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Code, as amended, and the provisions of this Agreement shall be construed consistently with the intention of the Parties. As between the Parties, Provider shall retain the exclusive right to take or sell all System products, including capacity and all Environmental Attributes, except for the Solar Services purchased by Customer hereunder, including all Net Metering Credits corresponding to such Solar Services.

5.02 Ownership of Rebates; Customer Rebate Assistance. All Rebates available in connection with the System are owned by Provider. Customer shall reasonably cooperate with Provider, at Provider's sole cost and expense, in obtaining all Rebates currently available or subsequently made available in connection with the System.

5.03 Risk of Loss; Exclusive Control. As between the Parties, Provider will at all times be deemed to be in exclusive control of the Solar Services and shall bear the risk of loss of the Solar Services until delivery of that production to the Meter, as measured by the Meter. Risk of loss of and title to the Solar Services measured by the Meter will transfer from Provider to Customer at the Meter, provided Customer received Net Metering Credits corresponding to the Solar Services.

5.04 Governmental Charges. Notwithstanding anything to the contrary in this Agreement, Provider is solely responsible for any and all Governmental Charges. Both Parties shall, subject to Applicable Law and the other provisions of this Agreement, use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges.

ARTICLE VI.
TERM OF AGREEMENT

6.01 Term. Subject to City of Newton approval and the execution of any PILOT, without which approval and execution this Agreement shall not be valid notwithstanding anything to the contrary herein, the initial term of this Agreement shall commence on the Effective Date and shall continue for a period ending on the first December 31 following the twentieth (20th) anniversary of the Commercial Operations Date of the System (the "Initial Term," together with any "Renewal Term," referred to as

the “Term”), unless terminated earlier pursuant to this Agreement. The Agreement may be extended upon mutual agreement for up to an additional five years (the “Renewal Term”).

6.02 Early Termination by Provider. In the event that any of the following events or circumstances occur after the Effective Date but prior to the Construction Commencement Date, which events or circumstances Provider shall demonstrate to Customer’s reasonable satisfaction, Provider may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other Party for such termination, except for any liability of Provider arising prior to the date of such termination.

(a) There exist environmental conditions at the Premises that were not known and not reasonably knowable by Provider as of the Effective Date, which will materially increase the cost of constructing the System or will materially and adversely affect the electricity production from the System.

(b) There is a material, adverse change in the Environmental Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that will materially and adversely affect the economics of the installation for Provider and its investors, including any Lender. Provider agrees that the regulations issued/to be issued by the Commonwealth of Massachusetts pertaining to the SREC II RPS Solar Carve Out Program shall not constitute a change in Environmental Attributes contemplated hereunder.

(c) Provider is unable, after having expended good faith diligent efforts to do so, to obtain financing for the System on reasonable terms and conditions.

(d) Provider, despite its best and diligent efforts, and through no fault of its own, has not received all required Governmental Approvals.

6.03 Early Termination by Customer. Subject to Section 2(d)(ii) of the Lease, Customer may terminate this Agreement without penalty or any liability to the Provider as specified below:

(a) upon thirty (30) days notice to Provider in the event that an application for interconnection for the System has not been filed with the Local Electric Utility within ten (10) days of the Effective Date, and the Interconnection Services Agreement has not been executed by Provider and Local Electric Utility by October 1, 201_;

(b) upon thirty (30) days notice to Provider, in the event that Provider has not reasonably demonstrated to Customer, within three hundred sixty five (365) days of the Effective Date (the “Financing Date”), that Provider has obtained financing sufficient to purchase, construct, commission, own and operate the System. The Parties agree that Customer’s receipt, within the aforesaid time period, of evidence of a term sheet and commitment letter signed by a Lender shall constitute evidence that Provider has

obtained such financing for all purposes under this Agreement, and that, after said receipt, Provider shall not be eligible to terminate the Agreement under Section 6.02(c);

(c) upon thirty (30) days notice in the event the System does not qualify or is not qualified as a “Net Metering Facility of a Municipality or Other Governmental Entity,” as defined in the Net Metering Rules, as of the Commercial Operations Date, unless such qualification is obtained within such thirty (30)day notice period;

(d) upon thirty (30) days notice in the event a Provider Default, defined in paragraph 8.01(a), has occurred;

(e) upon thirty (30) days notice in the event Provider has failed to achieve the Construction Commencement Date within three hundred sixty five (365) days of the Effective Date and/or the Commercial Operations Date by December 31, 201_;

(f) upon thirty (30) days notice in the event the System has not been granted a Public Cap Allocation under the Net Metering System of Assurance by October 1, 2015 (the “Public Cap Allocation Date”), or Provider fails to maintain such allocation unless Provider cures the latter failure within said 30-day notice period; and

(g) upon thirty (30) days notice in the event Provider has not furnished to Customer written confirmation from the Local Electric Utility within ninety (90) days of the Effective Date that Net Metering Credits will be calculated based on the Local Electric Utility’s “small commercial” rate.

6.04 Removal of System at Expiration. Unless Customer has exercised the Purchase Option, Provider shall, at Provider’s expense, remove all of its tangible property comprising the System from the Premises and restore the condition of the Property to its original condition upon the expiration or earlier termination of the Agreement in accordance with and as set forth in the Lease.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES

7.01 Each Party represents and warrants to the other as of the Effective Date:

(a) Organization; Existence; Good Standing. Such Party is duly organized, validly existing and in good standing in the jurisdiction of its organization. Such Party has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, and such Party has taken all requisite corporate, body politic or other action to approve the execution, delivery and performance of this Agreement, subject, as to the Town, to Town Meeting authorization.

(b) Binding Obligation. This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to creditors’ rights generally.

(c) No Litigation. There is no litigation, action, proceeding or investigation pending or, to such Party's knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would materially affect its ability to carry out the transactions contemplated herein.

ARTICLE VIII.
DEFAULT AND FORCE MAJEURE

8.01 Provider Defaults.

(a) Provider Default Defined. The following events shall be defaults of this Agreement by Provider ("Provider Defaults"):

(i) If Provider breaches any material term of this Agreement (excluding the failures set forth in sub-sections (a)(ii)-(a)(v) of this Section 8.01), and (i) if such breach can be cured within thirty (30) days after Customer's notice of such breach and Provider fails to cure within such 30-day period, or if such breach cannot reasonably be cured within such 30-day period despite Provider's prompt commencement and diligent pursuit of a cure, if (ii) Provider fails to promptly commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than thirty (30) days is needed, provided that no cure period shall exceed one hundred twenty (120) days;

(ii) Provider becomes Bankrupt;

(iii) Provider fails to make payment for any Production Shortfall under Section 2.02(b), unless such failure is cured within thirty (30) days from Provider's receipt of notice of termination; provided, however, that if any such failure occurs three or more times in any three hundred sixty five (365) day period, even if such failure is cured as aforesaid, such occurrence shall constitute a Provider Default;

(iv) Provider sells or conveys the System to a tax exempt entity;
or

(v) Provider commits a Lessee Default under and as defined in the Lease.

(b) Customer's Remedies. If a Provider Default described in Section 8.01(a) has occurred and is continuing, Customer may terminate this Agreement immediately upon such default, unless the default is one for which a cure period is provided in Section 8.01(a), in which event Customer may terminate immediately upon the expiration of the respective cure periods set forth in such provisions, and in either event Customer may, notwithstanding anything to the contrary in this Agreement or the Lease, (i) exercise any and all rights and remedies it may have at law or equity or under this Agreement, including without limitation its right to exercise the Purchase Option, or at Customer's sole election and in its sole discretion, (ii) unless Customer has exercised the

Purchase Option, require that Provider remove the System from the Premises and restore the Property to its original condition in accordance with the Lease, and regardless of whether Customer has exercised the Purchase Option, require that Provider pay to Customer, not as a penalty but as liquidated damages, the Parties acknowledging that Customer's damages in the event of a Provider Default being difficult to determine, an amount calculated as follows: Take the sum of the Estimated Annual Output in kWhs for all the remaining Contract Years (shown in Schedule 4), and multiply that sum by the difference between the kWh Rate applicable at the time of termination and average value of a Net Metering Credit over the twenty four (24) months preceding termination.

8.02 Customer Defaults.

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

(i) Customer fails to pay Provider any undisputed amount due Provider under this Agreement within ten (10) Business Days from receipt of written notice from Provider stating the existence (and the amount) of such past due amount;

(ii) Customer breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Customer fails to so cure, or (B) Customer fails to commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than thirty (30) days is needed;

(iii) Customer becomes Bankrupt; or

(iv) Customer commits a Lessor Default under and as defined in the Lease.

(b) Provider's Remedies. If a Customer Default described in Section 8.02(a) has occurred and is continuing, Provider may, subject to Section 9.01, terminate this Agreement immediately upon the expiration of the respective cure periods set forth in such provisions and Provider shall be entitled to receive from Customer, as liquidated damages, and as Provider's sole and exclusive remedy for such default notwithstanding anything to the contrary in this Agreement or the Lease, the Early Termination Fee as set forth in Schedule 5. Notwithstanding the foregoing and anything to the contrary in this Agreement or the Lease, no Early Termination Fee shall be due or payable for any Customer Default occurring before the Commercial Operations Date, for which default, if any, Provider shall be entitled to pursue such remedies as are available at law or in equity.

8.03 Force Majeure. A "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party, and such Party was unable to overcome such act or event with the exercise of due diligence. Notwithstanding any other term hereof, no payment obligation of Customer under this Agreement may be excused or delayed as the

result of a Force Majeure Event, unless as a result of such event or Provider's efforts (or lack thereof) to overcome such an event, Customer does not receive Solar Services and Net Metering Credits, in which event Customer shall not be required to pay for Solar Services not received, or for Solar Services for which corresponding Net Metering Credits have not been received, by Customer. A Party claiming a Force Majeure Event shall not be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall promptly notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter. A Force Majeure event shall not include ordinary or reasonably foreseeable fluctuations in insolation/sunlight or be based on the economic hardship of either Party. If a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the other Party shall be entitled to terminate the Agreement upon ten (10) days' prior written notice. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than Provider's obligation to remove the System and restore the Premises in accordance with the Lease, and any such liabilities that have accrued or arise from events occurring prior to such termination).

8.04 LIMITATION ON LIABILITY. NOTWITHSTANDING ANY OTHER TERM HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT EXCLUDING CLAIMS OF INDEMNIFICATION FOR CLAIMS OF THIRD PARTIES, INCLUDING THE LOCAL ELECTRIC UTILITY. THE LOSS OF ANY SAVINGS IN CUSTOMER'S ELECTRICITY COSTS FROM NET METERING CREDITS CORRESPONDING TO THE SOLAR SERVICES SHALL NOT BE DEEMED A DAMAGE OF THE KIND LIMITED UNDER THIS SECTION.

ARTICLE IX.
DISPUTE RESOLUTION

9.01 Resolution by Parties. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party. If the Parties are unable to reach agreement within such thirty (30) day period (or such longer period as the Parties may agree) then either Party may refer the matter to non-binding mediation in accordance with Section 9.02. Notwithstanding anything to the contrary in this Agreement, but except as provided in Section 3.03 with respect to payments disputed in good faith, this Article IX shall not prevent a Party from exercising a right to terminate this Agreement expressly provided herein, except that Customer shall not be required to make any payment of any Early Termination Fee due to a Customer Default unless Provider has in good faith complied with this Article IX (including without limitation

non-binding mediation under Section 9.02) before terminating this Agreement and requiring payment of the Early Termination Fee due to a Customer Default.

9.02 Non-Binding Mediation. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Section 9.01 may be referred by any Party to non-binding mediation. In such event, the Party requesting mediation shall send written notice to the other Party, suggesting three proposed mediators. If the Party receiving such notice does not agree with any of the proposed mediators, it shall proposed three additional mediators. The Parties shall confer in good faith and agree upon a mediator.

9.03 Exceptions to Mediation Obligation. The obligation to engage in dispute resolution under this Article IX shall not prevent any Party from seeking equitable relief in accordance with Section 14.12.

9.04 Failure to Resolve Dispute. In the event the Parties are unable to resolve any Dispute in the manner set forth above, either Party may resort to such legal remedies as are available to it at law and equity.

ARTICLE X. INSURANCE, CASUALTY AND CONDEMNATION

10.01 Provider shall maintain, throughout the Term of this Agreement, all insurance required by the Local Electric Utility for or in connection with the System, and, if not included in such insurance, the insurance required in the Lease.

ARTICLE XI. ASSIGNMENT

11.01 Generally. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Customer and their respective successors and permitted assigns. Any purported assignment in violation of this Article XI shall be null and void *ab initio*.

11.02 Assignment by Customer. Customer shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that without Provider's prior written consent, Customer may sell Net Metering Credits corresponding to the Solar Services to another "municipality or other governmental entity," as that phrase is defined in the Net Metering Rules, provided that Customer shall be responsible to pay for such Solar Services in accordance with this Agreement notwithstanding any such sale.

11.03 Assignment by Provider.

(a) Provider may, with advance written notice to Customer, collaterally assign or pledge its interests hereunder and/or in the System or any monies due under this Agreement, with any such assignee/pledgee having all rights typical of a secured lender subject to the terms of this Agreement.

(b) Notwithstanding subparagraph (c) below, the parties agree and acknowledge that, immediately following execution of this Agreement, Provider shall assign all of its rights and obligations hereunder and under the Lease to _____, and such assignee shall assume all of Provider's obligations hereunder and under the Lease in writing. Upon the execution of such assignment and assumption by Provider and _____, subject to the last sentence of this subparagraph, Provider shall be released from all of its obligations hereunder and under the Lease and _____ shall have no liability hereunder or thereunder. Provider hereby represents and warrants that has the experience and financial capability as set forth in clauses (x) and (y) in subparagraph (c), below, subject to Provider obtaining sufficient financing to purchase, construct, commission, own and operate the System perform all of Provider's obligations under this Agreement .

(c) Except as otherwise provided in subparagraph (b), above, Provider may make an Assignment of Provider's rights and obligations hereunder only upon Customer's prior written consent, provided, however, that, other than assignments made for collateral purposes, the Agreement may not be assigned in part, and may not be assigned to any Person who does not also simultaneously take full assignment of the Lease; provided further that, subject to the limitations on assignment set forth herein, Customer shall not unreasonably withhold its consent to an Assignment of Provider's rights and obligations hereunder if Customer has been provided with reasonable proof that the proposed assignee is not a tax-exempt entity and that such assignee: (x) has demonstrable experience in operating and maintaining photovoltaic solar systems comparable to the System; and (y) has the demonstrable financial capability to maintain the System and perform hereunder, provided that such level of experience and financial capability shall not be less than the level of experience and financial capability of Provider-assignor. Other than as set forth in subparagraph (b) above, a direct assignee of Provider's obligations hereunder shall assume in writing, in form and content reasonably satisfactory to Customer, the due performance of all Provider's obligations under this Agreement. In addition, notwithstanding any demonstration made to Customer as set forth in this Section 11.03, by virtue of making an approved assignment hereunder, Provider agrees that it shall be deemed as having represented and warranted to Customer that the assignee has the experience and capability set forth in clauses (x) and (y) above.

11.04 Financing Accommodations. Customer acknowledges that Provider will be financing the acquisition and installation of the System with funding from one or more Lenders or third-party capital providers. Such financings may include the sale or sale/leaseback of one or more of the Systems to tax advantaged entities. In order to facilitate System financings, but subject to the other provisions of this Agreement, Customer will provide such Lenders and capital providers with reasonable consents and confirmations as may be reasonably requested, including the consent for such entities, subject to the terms of the Agreement, to enforce Provider's rights hereunder, cure any Provider Default, Provider shall, within thirty (30) days following receipt of an invoice, reimburse Customer for all reasonable costs and expenses, including Customer's reasonable attorneys' fees, incurred in providing such consents and confirmations to Provider or such Lenders or third-party capital providers.

ARTICLE XII.
INDEMNIFICATION

12.01 Indemnification by Provider. Provider shall fully indemnify, save harmless and defend Customer from and against any and all damages, losses, liabilities, costs, claims, and expenses (including attorneys' fees) incurred by or imposed upon Customer in connection with or arising from any claim by a third party, including the Local Electric Utility, for economic damages, physical damage to or physical destruction of property, or death of or bodily injury to any Person, including, but not limited to, claims arising out of Provider's construction, operation, maintenance, repair, removal and/or ownership of the System.

12.02 Survival of Provisions. The provisions of this Article XII are in addition to and not in limitation of any other rights and remedies available to Customer, and shall survive the expiration or termination of this Agreement.

ARTICLE XIII.
PURCHASE OPTION

13.01 Grant of Purchase Option. For and in consideration of the payments made by Customer under this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Provider hereby grants Customer the right and option to purchase all of Provider's right, title and interest in and to the System (to include, for the purpose of this Article XIII, all such right, title and interest in and to all Environmental Attributes and Rebates accruing on and after the date of purchase by Customer) for its Fair Market Value on the terms set forth in this Agreement (the "Purchase Option").

13.02 Customer Request for Appraisal of Solar Energy Facility Value. Notwithstanding anything to the contrary in this Agreement and the Lease, Customer shall have the right, upon the earlier of (a) one hundred eighty (180) days prior to the end of the Initial Term or any Renewal Term, (b) after the eighth (8th) anniversary of the Commercial Operations Date, or (c) upon the occurrence of an Provider Default, to provide a written notice to Provider requiring a determination of the Purchase Price as set forth below.

13.03 Selection of Independent Appraiser. Within fifteen (15) days of Provider's receipt of a notice provided under Section 13.02, Provider and Customer shall each propose an Independent Appraiser. If Provider and Customer do not agree upon the appointment of an Independent Appraiser within such fifteen (15) day period, then at the end of such fifteen (15) day period, the two proposed Independent Appraisers shall, within ten (10) 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 a valuation of the System. Such selection shall be final and binding on Provider and Customer absent fraud.

13.04 Determination of Purchase Price.

(a) The selected Independent Appraiser shall, within thirty (30) days of appointment, make a preliminary determination of the Fair Market Value in accordance with Section 13.05.

(b) Upon making its preliminary determination, the selected Independent Appraiser shall provide such preliminary determination to Provider and Customer, together with all supporting documentation that details the calculation of the preliminary determination. Provider and Customer shall each have the right to object to the preliminary determination within twenty (20) days of receiving such preliminary determination, provided that the objecting Party shall provide a written explanation reasonably documenting the reasons for its objection. Within fifteen (15) days after the expiration of such 20- day period, the selected Independent Appraiser shall issue its final determination to Provider and Customer, which shall be set forth in a written opinion delivered to the Parties and shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making its final determination. The Independent Appraiser shall in all events act in good faith to determine Fair Market Value. 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.

13.05 Calculation of Purchase Price. The purchase price (the “Purchase Price”) payable by Customer for the System shall be equal to the Fair Market Value as determined by the Independent Appraiser in its final determination.

13.06 Costs and Expenses of Independent Appraiser. Provider and Customer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

13.07 Exercise of Purchase Option

(a) Customer shall have ninety (90) days from the date of the Independent Appraiser’s final determination to exercise the Purchase Option. Customer must exercise its Purchase Option during such 90-day period by providing written notice to Provider. Once Customer delivers such notice, the exercise of the Purchase Option shall be irrevocable, except due to fraud of Provider or fraud or manifest error of the Independent Appraiser; and unless Customer’s legislative body fails to appropriate funds equal to the Purchase Price, or Customer’s review of the System and records pertaining thereto furnished by Provider in accordance with 13.07(b) reveals that Provider failed to install, operate, maintain, and repair the System in accordance with this Agreement and the Lease; and unless the Parties are able to reach agreement on the terms of purchase of the System under Section 13.08.

(b) Promptly following receipt of Customer’s notice pursuant to Section 13.2, Provider shall make the System, including records relating to the operations, maintenance, and warranty repairs, available to Customer for its inspection during normal business hours.

13.08 Terms of System Purchase. On the Transfer Date, as such term is defined in Section 13.09, (a) Provider shall surrender and transfer to Customer all of Provider's right, title and interest in and to the System (to include, for the purpose of Article XIII, Provider's right, title and interest to Environmental Attributes and Rebates accruing on and after the Transfer Date); (b) Customer shall pay the Purchase Price, by certified check, bank draft, and/or wire transfer; and (c) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing such terms and conditions as are usual and customary for a sale of similar assets, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the System in Customer, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the System to Customer. Provider shall, at its expense, remove any and all liens, security interests, and other encumbrances placed on the System, including without limitation those placed by Provider, an Affiliate, or Lender, and shall assign to Customer all manufacturer or other similar warranties for the System.

13.09 Transfer Date. The closing of any sale of the System (the "Transfer Date") pursuant to this Section 13.09 will occur no later than thirty (30) days following appropriation by Customer's legislative body of funds equal to the Purchase Price, unless extended or shortened by agreement of the Parties.

ARTICLE XIV.
MISCELLANEOUS

14.01 Additional Documents. Upon the receipt of a written request from a Party, the other Party shall, at the cost and expense of the requesting Party, execute such additional reasonable documents, instruments, estoppels, consents, confirmations and assurances, and take such additional reasonable actions as are reasonably necessary to carry out the terms of this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

14.02 Integration; Attachments. This Agreement, together with the Schedules and any Exhibits attached hereto, including the Lease, constitutes the entire agreement and understanding between Provider and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

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

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

14.05 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The failure of Provider or Customer to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision in any other instance, or of any other provision in any instance. No single or partial exercise of any right under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right; and no waiver of any breach of or default under any provision of this Agreement shall constitute or be construed as a waiver of any subsequent breach of or default under that or any other provision of this Agreement.

14.06 Cumulative Remedies. Except as set forth herein, any right or remedy of Provider or Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not. Notwithstanding the foregoing, in the event Customer is required to pay the Early Termination Fee in accordance with Article VIII hereof, such fee shall be Provider's sole and exclusive remedy for any default of Customer under this Agreement and the Lease.

14.07 Survival. The obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement to the extent necessary to give them full effect, including, but not limited to, Provider's obligation to indemnify Customer under Sections 4.07 and 12.01, and Provider's obligation to pay all Governmental Charges under Section 5.04.

14.08 Governing Law; Jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to any choice of law principles. Any legal action or proceeding with respect to or arising out of this Agreement shall be brought in or removed to any court of the Commonwealth sitting in Middlesex County or the federal district court sitting in the Commonwealth. By execution and delivery of this Agreement, Provider and Customer accept, generally and unconditionally, the jurisdiction of the aforesaid court. Provider and Customer hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of *forum nonconveniens*. Provider agrees that service of process may be effected upon it by certified mail or federal express, with proof of receipt, at the address provided in Section 14.17 (Notices).

14.09 Severability. Subject to the other terms of this Agreement: Any term, covenant or condition in this Agreement that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Agreement to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Agreement, or of such provision in other jurisdictions. The Parties shall use good faith efforts to negotiate to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as possible corresponds to the spirit and purpose of such ineffective provision.

14.10 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

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

14.12 Injunctive Relief. The Parties acknowledge that a violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such a violation or breach, and regardless of any other provision contained in this Agreement, such Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

14.13 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

14.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

14.15 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a public utility, an electric utility, an investor owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator.

14.16 No Recourse to Affiliates. This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed by the Person against whom recourse is sought, or such recourse is otherwise permitted under the terms of this Agreement or law.

14.17 Notices. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider:

If to Customer:

City Solicitor
City of Newton
City Hall
1000 Commonwealth Avenue
Newton Center, MA 02459

or at such other address as may be designated in writing to the other Party. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand-delivered, or sent by (a) registered or certified U.S. Mail, postage prepaid, (b) commercial overnight delivery service, or (c) facsimile or email attachment, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand-delivered, or upon confirmation of sending when sent by facsimile or email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail. Customer shall deliver to any Lender, concurrently with delivery thereof to Provider, a copy of each notice of Provider Default given by Customer under Section 8.01 of this Agreement, and no such notice shall be effective absent delivery to the Lender, provided that Customer shall not be required to deliver such a notice to more than one Lender or to more than one address at any given time, and provided further that such Lender is identified in this Agreement or in a writing signed by Provider and delivered to Customer in accordance with this Section 14.17. In the event more than one Lender or more than one address is identified by Provider, Customer shall be in compliance with the preceding sentence of this Section if it delivers a copy of the notice of Provider Default to any one such Lender and at any one such address, unless the notice to Customer identifying a Lender and address expressly states that such Lender and such address supersedes any prior Lender and address identified by Provider, in which event Customer shall deliver said notice to such Lender at such address.

14.18 Additional Qualifications. Notwithstanding anything to the contrary in this Agreement:

(a) Customer shall not be required to execute documents or instruments, or take any actions or omit from taking any actions, subsequent to the execution of the Agreement which will materially or unreasonably increase Customer's risk or obligations under the Agreement, or result in the waiver of any of Customer's rights

or remedies under the Agreement or at law or in equity, as reasonably determined by Customer.

(b) Any requirement that Customer cooperate or assist Provider shall not require Customer to interfere with, or influence, the independent executive, regulatory, judicial, licensing, permitting, taxing or legislative functions of any department, board, committee, official, body or commission of Customer in its capacity as a municipality.

(c) The Agreement shall be subject to Applicable Laws.

(d) Customer does not waive any of the rights, remedies, defenses and immunities afforded Customer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Customer hereby reserves. Furthermore, City officials are not personally liable.

(e) Nothing herein shall interfere with the duties of the City Assessor in the calculation, assessment and collection of any taxes.

14.19 M.G.L. c. 62C, § 49A Certification. The Provider hereby certifies under penalties of perjury that it has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

14.20 Disclosure of Beneficial Interests. Provider shall complete, sign and file the certification and disclosure required by G.L. c. 7C, s. 38, with respect to the Lease.

[Signature pages follow.]

IN WITNESS WHEREOF intending to be legally bound hereby, the Parties have executed this Solar Power Services Agreement as of the Effective Date.

By: _____

By: _____

City of Newton, a municipal corporation and a political subdivision of the Commonwealth of Massachusetts

By: its Mayor

Setti Warren

Approved as to form:

Assistant City Solicitor

DRAFT

SCHEDULE 1-DESCRIPTION OF PREMISES

Solar System Premises: (see Lease for accurate description of Premises)

Premises is Owned or
Controlled by: City of Newton, Massachusetts

DRAFT

SCHEDULE 2 - SYSTEM

Solar System Size: Module: TBD

Inverter:

DRAFT

SCHEDULE 3- kWh RATE [REVISE SCHEDULE]

For each Billing Cycle in which the System delivers electricity to the Local Electric Utility, the price per kWh of Net Metered Production shall be \$0. __/kWh ("kWh Rate"), subject to an escalation of __% per annum.

DRAFT

SCHEDULE 4- EXPECTED OUTPUT AND MINIMUM GUARANTEED OUTPUT

[REVISE SCHEDULE]

The estimated annual output and Guaranteed Annual Solar Services Output with respect to the System shall be in accordance with the following schedule. The Guaranteed Annual Solar Services Output for each Contract Year shall be eighty five percent (85%) of each Estimated Annual Output for the applicable year based on actual weather and insolation data.

Year	Estimated Annual Output (kWh) (AC)	Guaranteed Annual Solar Services Output (kWh) (AC) (85%)
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

SCHEDULE 5. EARLY TERMINATION FEE

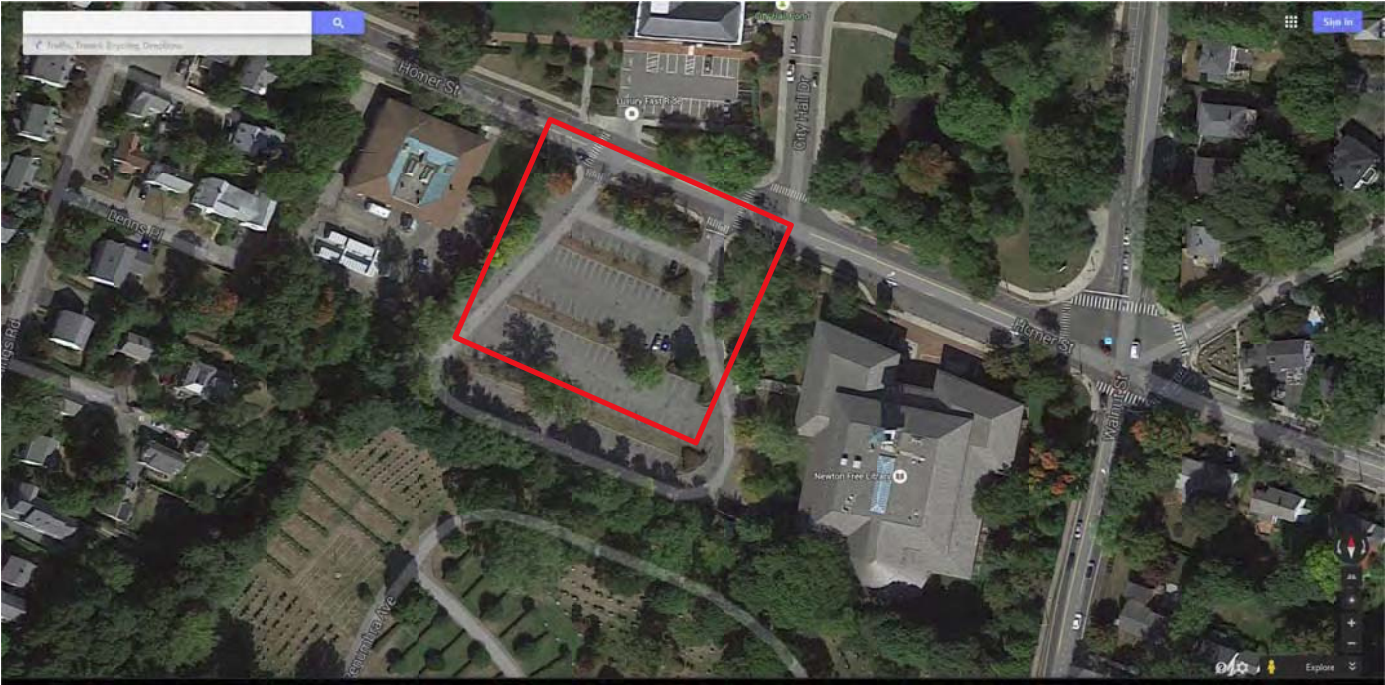
The Early Termination Fee with respect to the System under the Agreement shall be as follows:

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

*Early Termination Fee is not payable prior to the Commercial Operations Date.

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

330 Homer Street- Library car ports



52, 60, 74 Elliot Street. Three roof tops and a truck port area for DPW trucks.







PATRIOT







GMC

7R 261

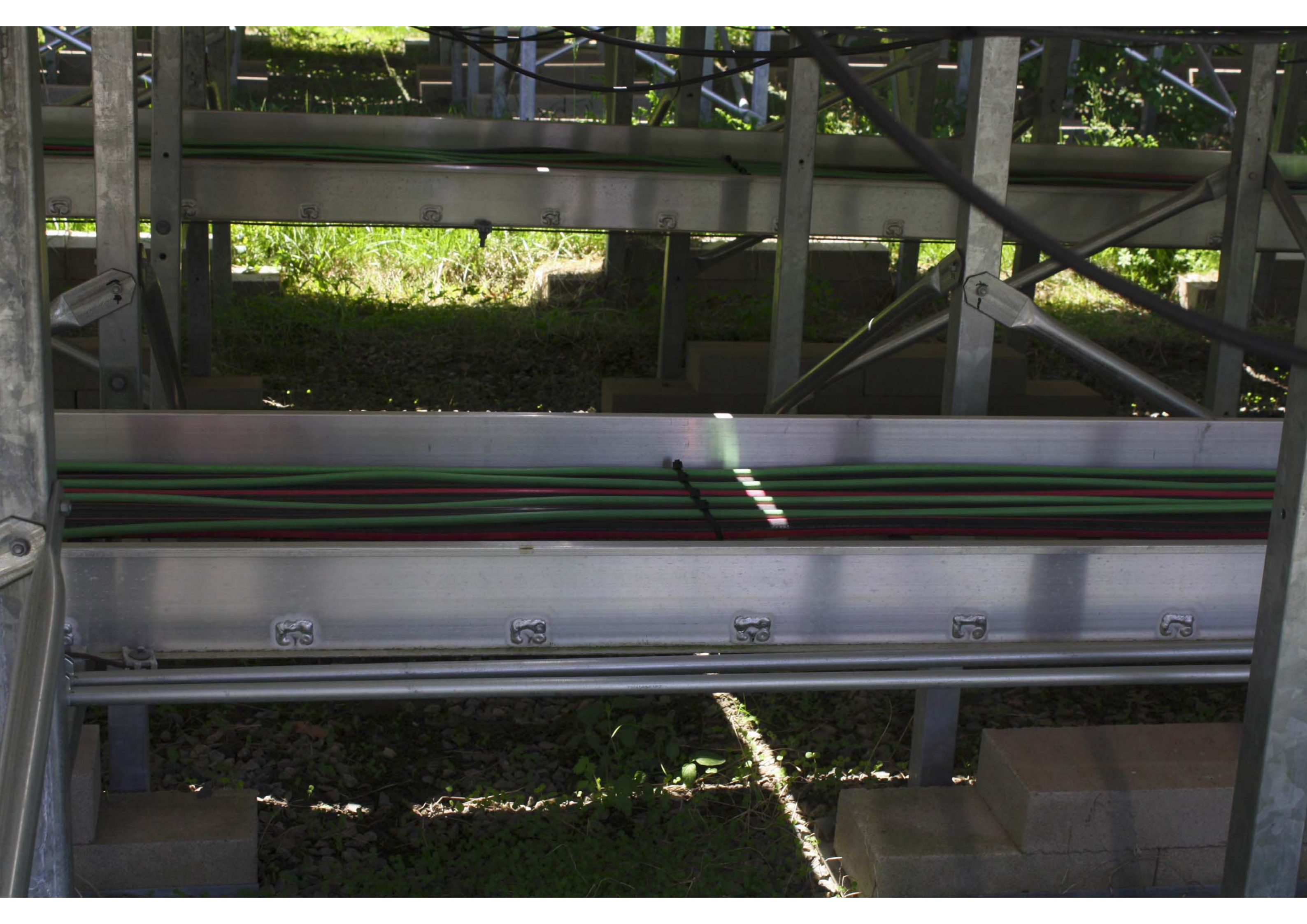
049698



























PUBLIC BUILDINGS DEPARTMENT

Joshua R. Morse, Commissioner
Telephone (617) 796-1600
FAX (617) 796-1601
TTY: (617) 796-1089
52 ELLIOT STREET
NEWTON HIGHLANDS, MA 02461-1605

Setti D. Warren
Mayor

October 16, 2015

Community Preservation Committee
c/o Alice E. Ingerson, Ph.D.
Community Preservation Program Manager
City Of Newton
1000 Commonwealth Ave.
Newton, MA 02459

Re: Museum Archives, Fire Suppression & Accessibility Project

Dear Community Preservation Committee,

During the demolition process at Jackson Homestead and Museum, which started at the ELL building, the contractor uncovered serious structural issues and damage to the existing wood framing, including: missing carrying beams, rotted roof rafters and floor joists, crawl space full of boulders and a 15' deep abandoned well in addition to many missing footings under the wood posts. In addition, the fire department requested some modifications to the designed fire suppression system related to the cold spaces in the building.

The cost to remediate these unexpected and unforeseen issues is \$87,876.00 to be added to the original contract. Since this number exceeds the contingency amount already appropriated to the control of Public Building, we are asking that additional funds be allocated to the project in the total amount of \$132,943.00, including release of the \$39,452 Board of Aldermen contingency already appropriated, and a CPC recommendation to appropriate the \$93,491 previously recommended but not appropriated by the Board of Aldermen. This amount is larger than the cost of the known but unanticipated issues found to date, because the project is at a very early stage of construction and more unforeseen issues maybe uncovered when the work moves into the main house.

If you have any question please let me know.

Sincerely,



Joshua R. Morse
Public Building Commissioner

Cc: Alejandro M. Valcarce, Deputy Commissioner
Rafik E. Ayoub, Project Manager

Historic Newton/Jackson Homestead Accessibility, Archives Storage and Fire Suppression Project

Date: October 16, 2015



The Jackson Homestead and Museum

History of The Project Change Orders

On August 6, 2015 a demolition permit was issued by ISD and the GC started the demolition inside the ELL building while the main house was isolated and the staff are working normally. Once the demo was underway the contractor drew our attention to serious structural damage to the existing wood framing structure that included missing carrying beams, rotted rafters and floor joists, also found a 15 feet deep abandoned well and boulders around the foundation walls in some areas of the building, on the outside a manhole was buried under the dirt and is located where the HC ramp is going to the building. The structural engineer examined the situation and came with detailed design for the repairs and that resulted in a change order adding **\$85,660.00** to the project.

Also during the Newton Fire Department review of the fire suppression drawing and design, they asked to eliminate the heat traces that were wrapping the sprinkler pipes located in the cold areas and outside the building. In order to satisfy the NFD, all the heat traces were eliminated and a small dry pipe system was added to protect the pipes in the cold areas. This request resulted in a change order adding **\$14,094.00** to the project.

With this extra work, the project completion date would be extended to March 31, 2016.

At the request of PBD, NFD agreed to grant a building permit excluding the fire suppression work which needs their final approval. On September 14, 2015, ISD issued the permit which allowed the contractor to continue working on the project especially the site and exterior work. At this time the project is progressing with the exterior and site work.

Summary of Project Change Orders

August 6, 2015	Demolition permit issued, demolition starts inside the ell, with main house isolated & Homestead staff working normally.
structural issues	Contractor found: missing carrying beams, rotted rafters & floor joists, 15-foot deep abandoned well, boulders around foundation walls, manhole buried at site of planned excavation for handicap ramp.
	structural engineer's designed solutions = \$85,660 in additional costs
fire suppression system	Newton Fire Dept. requested elimination of heat traces designed to prevent freezing of sprinkler pipes outside heated parts of the building.
	heat traces replaced by small dry pipe system = \$14,094 in additional costs
September 14, 2015	Building permit issued for all work other than fire suppression, pending Fire Dept. approvals; work progressing on site and exterior.
	Project completion date extended to March 31, 2016.

Historic Newton/Jackson Homestead Accessibility, Archives Storage and Fire Suppression Project

PROJECT BUDGET CHANGES, 2015	Proposed April 2015	Appropriated Through June 2015	Proposed October 2015
CONSULTANTS (architect)	\$ 183,213	\$ 183,213	\$ 183,213
BUILDING IMPROVEMENTS (construction)	\$ 789,037	\$ 789,037	\$ 789,037
STORAGE/MOVING	\$ 14,000	\$ 14,000	\$ 14,000
FURNITURE, FIXTURES & EQUIP	\$ 47,700	\$ 47,700	\$ 47,700
WORK BY OTHER DEPTS. (Jackson Homestead staff)	\$ 15,000	\$ -	\$ -
PUBLIC BUILDINGS R-M	\$ 52,500	\$ -	\$ -
CONTINGENCY	\$ 104,895	\$ 39,452	\$ 172,394
TOTAL PROJECT COST	\$1,206,345	\$1,073,402	\$1,206,345

November 2015 request

\$39,452 from Board of Aldermen contingency appropriated June 2015
+ \$93,491 recommended by CPC May 2015 but not yet appropriated

\$132,943 total request, as addition to construction contingency

UNCOVERED EXISTING STRUCTURAL CONDITION



UNCOVERED EXISTING STRUCTURAL CONDITION



Existing Conditions



Historic Newton/Jackson Homestead Accessibility, Archives Storage and Fire Suppression Project



City of Newton



PUBLIC BUILDINGS DEPARTMENT

Josh Morse, Building Commissioner
Telephone (617) 796-1600
FAX (617) 796-1601
TTY: (617) 796-1608
52 ELLIOT STREET
NEWTON HIGHLANDS, MA 02461-1605

Setti D. Warren
Mayor

October 29, 2015

Public Facilities and Finance Committees
Newton City Hall
1000 Commonwealth Avenue
Newton Centre, MA 02459

Re: Summary of \$250,000 Mechanical & Interior Improvements at the Main Library, Docket Item # 284-15

The Public Buildings Department has prepared the following Summary of the Mechanical and Interior Improvements at the Main Library:

The existing Chiller, Cooling Tower and Associated Equipment is over 25 years of age and has reached the end of its useful life. Replacement parts for the existing Chiller, Cooling Tower and Associated Equipment are obsolete and no longer manufacture, making procuring replacement materials repairs to the equipment extremely difficult. The chiller was inoperative numerous times the past cooling season due to problems with the chiller's operating controls and major leaks in the chiller itself and related components. The department has spent over \$35,000 in the past few years repairing the chiller and related components. It is our intention to replace the existing chiller, the cooling tower and operating controls with a new state of the art chiller system. Air handlers in the building are also at the end of their useful life and a systematic replacement program started.

The restrooms in the Main Library are highly used due to the large volume of patrons visiting the library on a daily basis. As a result, the interior finishes in the restrooms of the building are beginning to show excessive wear and tear requiring upgrading. The current metal toilet partitions and doors are in poor condition and will be replaced with new partitions made of a phenolic material. This type of partition has been used for many years in the City's school buildings and has been highly durable as well as maintenance free. The current restroom floors will be replaced with a durable epoxy flooring system. Epoxy flooring is very easy to maintain. The overall quality and look of the restrooms will vastly improve with these upgrades.

Please see the below for the breakdown of costs:

Design	\$10,000
Chiller Replacement	\$96,500
Chiller Controls	\$20,500
Cooling Tower Repairs	\$13,500
Air Handler Replacement	\$44,500
Toilet Partition Replacement	\$17,500
Demo/wall repair to accommodate new partitions	\$13,000
Restroom Epoxy Flooring	\$22,500
Contingency	\$12,000

Should you have any questions regarding the above, please feel free to contact my office.

Sincerely,

Josh Morse
Public Buildings Commissioner

cc: Maureen Lemieux, Chief Financial Officer
Alex Valcarce, Deputy Commissioner
Dori Zaleznik, Chief Admin Officer

CITY OF NEWTON
IN BOARD OF ALDERMEN

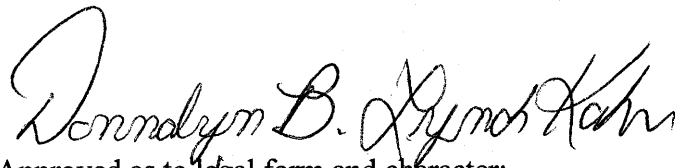
ORDINANCE NO. A-49

December 1, 2014

BE IT ORDAINED BY THE BOARD OF ALDERMEN
OF THE CITY OF NEWTON AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2012, as amended, be further amended with respect to Chapter 26, **STREETS AND SIDEWALKS**, as follows:

In **Sec. 26-8D. Trial program for removal of snow and ice from sidewalks.**, as established by Ordinance Z-83, dated March 21, 2011, and most recently amended by Ordinance A-8, dated January 22, 2013, strike in the sixth sentence the words "November 1, 2014" and insert in place thereof the words "November 1, 2015.

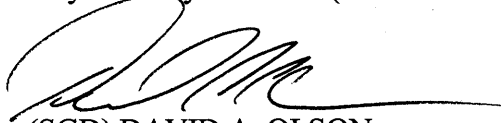


Approved as to legal form and character:

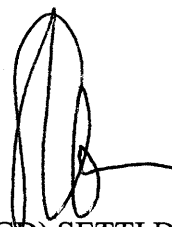


DONNALYN B. LYNCH KAHN
City Solicitor

Under Suspension of Rules
Readings Waived and Adopted
22 yeas 0 nays 2 absent (Aldermen Ciccone and Harney)



(SGD) DAVID A. OLSON
City Clerk



(SGD) SETTI D. WARREN
Mayor

Date: 12/5/14



SETTI D. WARREN
MAYOR

City of Newton, Massachusetts
Office of the Mayor

#297-15

#298-15

Telephone
(617) 796-1100

Facsimile
(617) 796-1113

TDD/TTY
(617) 796-1089

E-mail
swarren@newtonma.gov

October 23, 2015

Honorable Board of Aldermen
Newton City Hall
1000 Commonwealth Avenue
Newton, MA 02459

Ladies and Gentlemen:

I write to request that your Honorable Board vote no action necessary on docket items #297-15 and 298-15. Per the attachment from the Comptroller, the requested transfers are no longer necessary as Water and Sewer Revenue are forecasted to generate more funds than anticipated in the FY16 Budget.

Thank you for your consideration of this matter.

Very truly yours,

Setti D. Warren
Mayor

RECEIVED
NEWTON CITY HALL
2015 OCT 26 PM 1:20
David A. Orsini, Clerk
Newton, MA 02459



CITY OF NEWTON, MASSACHUSETTS
WATER AND SEWER FUNDS
COMPARATIVE REVENUE BUDGET TO ACTUAL and REVENUE FORECAST
July 1, 2015 - September 30, 2015
(with comparative activity for the first three months of the three prior fiscal years)

	FY 2016			FY 2015			FY 2014			FY 2013		
	Budget	Actual	% Budget	Actual	% Annual	Actual	% Annual	Actual	% Annual	Actual	% Annual	
Stormwater Management Fund Revenue												
Stormwater Revenue (receipts less refunds)	\$ 1,950,000	\$ 384,875	19.74%	\$ 179,115	23.07%	\$ 197,420	25.20%	\$ 180,280	23.60%			
Less: prior year accrual (1)												
Net Stormwater Fund Revenue	\$ 1,950,000	\$ 384,875	19.74%	\$ 179,115	23.07%	\$ 197,420	25.20%	\$ 180,280	23.60%			
Projected - FY 2016 @ YTD & annualization of September collections for remaining 9 months of fiscal year (1):		\$ 1,827,583										
Sanitary Sewer Fund Revenue												
Sewer Fund Revenue (receipts less refunds)	\$ 30,490,166	\$ 8,662,132	28.41%	\$ 8,191,869	26.16%	\$ 7,761,308	26.07%	\$ 7,591,934	25.88%			
Less: prior year accrual (1)												
Net Sewer Fund Revenue	\$ 30,490,166	\$ 8,662,132	28.41%	\$ 8,191,869	26.16%	\$ 7,761,308	26.07%	\$ 7,591,934	25.88%			
Transfers from other Funds	648,921	531,892	81.97%	648,921	100.00%	-	0.00%	689,753	100.00%			
Net Sewer Fund	\$ 31,139,087	\$ 9,194,024	29.53%	\$ 8,840,790	27.64%	\$ 7,761,308	25.58%	\$ 8,281,687	27.58%			
Projected - FY 2016 @ YTD & 9/30 Median collection rate for three prior years		\$ 31,939,714	27.58%									
Water Fund Revenue												
Water Fund Revenue (receipts less refunds)	\$ 23,875,000	\$ 6,392,551	26.78%	\$ 5,710,594	26.18%	\$ 5,444,609	26.01%	\$ 5,360,185	26.19%			
Less: prior year accrual (1)												
Net Water Fund	\$ 23,875,000	\$ 6,392,551	26.78%	\$ 5,710,594	26.18%	\$ 5,444,609	26.01%	\$ 5,360,185	26.19%			
Projected - FY 2016 @ YTD & 9/30 Median collection rate for three prior years.		\$ 24,410,988	26.19%									

(1) Stormwater revenue for remaining 9 months of the fiscal year are forecasted based upon September actual collections, which is the first full month's collections at the FY 2016 new stormwater rates.