NET METERING POWER PURCHASE AGREEMENT

This Net Metering Power Purchase Agreement, numbered _____, is made and entered into as of _____ day of [], 2022 (the ***"Effective Date"***), by and between ECA NEMA BRIGHTFIELDS II, LLC, a Massachusetts limited liability company for itself and any and all assignees permitted hereunder (collectively ***"Seller"***) and the City of Somerville, Massachusetts, a municipal corporation and political subdivision of the Commonwealth of Massachusetts (***"Buyer"***). Seller and Buyer may be referred to herein collectively as the ***"Parties"***, and individually as a ***"Party".***

Recitals

A. WHEREAS, Seller plans to construct a solar photovoltaic generation Facility (the "North Facility," or the ***"Facility*** as further defined below) with an aggregate generating capacity of up to approximately 660.53 kWDC (498 kWAC) at 0 Congress Street, Woburn, Massachusetts, 01801 Massachusetts, 01801 also known as Industriplex Woburn (the ***"Project"***) at the Property (as defined in Exhibit A).

B. WHEREAS, the Parties intend that, pursuant to the Net Metering Rules (as defined below), the **North Facility will be a Class II Net Metering Facility** (as defined below) and will generate Net Metering Credits (as defined below).

D. WHEREAS, subject to the terms and conditions of this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller on an annual basis, one hundred percent (100%) of all of the electricity generated by the Project during the Term of this Agreement, so that Buyer is awarded and receives Net Metering Credits generated by the Project and is able to allocate such Net Metering Credits for use in offsetting the utility bills associated with other Buyer utility accounts.

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

ARTICLE 1
DEFINED TERMS

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

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

"Agreement" means this Net Metering Power Purchase Agreement, including all exhibits and attachments hereto.

"Applicable Legal Requirements" means any Laws which may at any time be applicable to this Agreement, the Property or the Project, or any part thereof or to any condition or use thereof, and all leases, permits, and other governmental consents which are or may be required for the use and occupancy of the Property for the installation, operation, maintenance and removal of any of the Facility, as well as the selling and purchasing of electricity, and the accrual of associated Net Metering Credits therefrom.

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

"Billing Cycle" means the monthly billing cycle established by the LDC.

"Business Day" means any day except a Saturday, Sunday, and state and federal legal holiday in the Commonwealth of Massachusetts.

" Buyer'' has the meaning set forth in the introductory paragraph of this Agreement.

"Class II Net Metering Facility" has the meaning set forth in the Net Metering Rules.

"Commercial Operation'' with respect to a Facility, means that (i) the Seller has obtained all necessary licenses, permits and approvals under Applicable Legal Requirements for the installation and operation of the Facility, (ii) the North Facility has been installed in accordance with all Applicable Legal Requirements and qualifies as a Class II Net Metering Facility under the Net Metering Rules, (iii) each Facility is ready and able to generate and supply electricity to the LDC's electricity distribution system at full or substantially full capacity, and (iv) if applicable and to the extent required, the LDC has approved interconnection of the Facility with the electricity distribution system to allow regular, continuous operation of the Facility.

"Commercial Operation Date"' means the first day on which the Facility has achieved Commercial Operation, as defined herein, meaning that the Facility is ready for Commercial Operation, as certified in writing by Seller to Buyer in a notice of Commercial Operation Date pursuant to Section 3.2.

"Construction Commencement Date" means the date of commencement of actual preparation or construction activities on the Property in connection with the installation of the Project.

"Contract Year" means the twelve (12) month period beginning on the Commercial Operation Date and ending on the first anniversary thereof and each twelve (12) month period thereafter.

"Customer Interconnection Acknowledgement Agreement" shall have the meaning set forth in Section 7.6(b) of this Agreement.

"Delivery Point" for each Facility means the location or locations at the Property where Electricity is to be delivered and received under this Agreement, as identified in Exhibit A, and shall be the LDC Metering Device.

"Designated Third Party" has the meaning set forth in Section 16.2(a).

"DPU" means the Massachusetts Department of Public Utilities or its successors.

"Early Termination Date" has the meaning set forth in Section 2.3.

"Effective Date" is the date first set forth in the introductory paragraph of this Agreement.

"Electricity" means the actual and verifiable amount of electricity generated by the Facility and delivered to Buyer at the corresponding Delivery Point(s), as metered in whole kilowatt-hours (kWh) at the LDC Metering Device(s), and that conforms to Applicable Legal Requirements and the applicable LDC and/or authoritative regulatory body standards. Seller shall be responsible for losses between the Facility and the Delivery Point and such losses shall not be included in the definition of "Electricity."

"Electricity Price" shall mean the amount paid by Buyer to Seller for each kWh of Electricity sold by Seller to Buyer and delivered to the Delivery Points pursuant to this Agreement, as set forth in Exhibit B attached hereto.

"Environmental Attributes" means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Project and/or its electricity generation. (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (v) tax credits, incentives or depreciation allowances established under any federal or state law, and (vi) other allowances howsoever named or referred to, with respect to any and all fuel emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Project and/or its electricity generation, and excluding, for the avoidance of doubt, any Net Metering Credits and any credit, allowance, entitlement, certificate, product, valuation or other benefit that inures solely to Buyer only because it is a Municipality or Other Governmental Entity and which cannot be transferred or assigned to, or used for the benefit of Seller.

"Event of Default" has the meaning set forth in Article 10.

"Facility" has the meanings set forth in the recitals.

"Force Majeure" means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, and is not the result of the negligence, of such Party, and (ii) by the exercise of reasonable due diligence, such Party is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include but is not limited to the following acts or events: natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the affected Party; acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; strikes or labor disputes except strikes and labor disputes involving employees of a Party; and acts, failures to act or orders of any kind of any Governmental Authorities acting in their regulatory or judicial capacity.

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

"Host Customer" shall have the meaning given this term in the Net Metering Rules.

"Host Customer Account" means, with respect to a Facility, the LDC account for the LDC Metering Device behind which the Facility is located to which Net Metering Credits shall be assigned.

"Host Customer Account Statement" means the monthly LDC account statement for a Host Customer Account.

"Interconnection Obligations" shall have the meaning set forth in Section 3.3.

"Interest Rate" means a per annum rate of interest equal to the Prime Rate plus two percentage points (2%). For purposes hereof, ***"Prime Rate"*** means the rate that may from time to time be published in The Wall Street Journal under "Money Rates" as the same may change from to time (or if not published on such day on the most recent preceding day on which published), or any other periodical that may be agreed upon by the Parties in writing from time to time.

"Invoice" shall have the meaning set forth in Section 4.4.

"kWh" means kilowatt-hour.

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

"LDC" means the local electric distribution company providing interconnection and net metering services for the system.

"LDC Metering Device" means, with respect to the Facility, the revenue grade LDC meter furnished, installed or monitored and maintained by the LDC for the purpose of measuring the Electricity delivered by the LDC to the Facility and delivered by the Facility to the LDC.

"LDC System" means the electric distribution system operated and maintained by the Utility.

"Net Metering" shall have the meaning set forth in the Net Metering Rules.

"Net Metering Credit" means the applicable monetary value of an excess kilowatt-hour of electricity generated by the Facility, determined in accordance with the Net Metering Rules.

"Net Metering Credit Rate" with respect to a particular Billing Cycle, means the dollar value of a Net Metering Credit accruable to the Host Customer of a Facility for that Billing Cycle.

"Net Metering Facility" and ***"Net Metering Facility of a Municipality or Other Governmental Entity"*** shall have the meaning set forth in the Net Metering Rules.

"Net Metering Rules" means, collectively and as amended from time to time, the Massachusetts net metering statute, MGL c. 164, §§ 138-140, the Massachusetts net metering regulations, 220 CMR 18, orders issued by DPU relating to Net Metering (including, without limitation, DPU 16-64-D (July 29, 2016) and the appendices thereto) and the associated net metering tariff of the LDC.

"North Facility" means the 660.53 kwDC solar photovoltaic energy generating facility, which shall qualify as a Class II Net Metering Facility under the Net Metering Rules.

"Outside Commercial Operation Date" means 18 months after the Effective Date, provided that such period of time shall be extended by any delays caused (i) by Force Majeure or (ii) caused in whole or substantial part by the LDC and Seller has obtained a certificate of completion from the local municipality demonstrating the Project is mechanically complete.

"Person" means an individual, general or limited partnership, corporation, Municipal Corporation, business trust, Joint Stock Company, trust, unincorporated association, joint venture, Governmental Authority, limited liability Company, or any other entity of whatever nature.

"Project" shall have the meaning set forth in the recitals.

"Property" shall have the meaning set forth in the recitals.

"Public Cap Allocation" means an assurance from the Administrator of the Massachusetts Net Metering System of Assurance that a Host Customer will receive Net Metering Services (as defined in the Net Metering Rules) within the Public Cap (as defined in the Net Metering Rules) upon the Host Customer's receipt of notice of authorization to interconnect from the LDC.

"Public Entity Net Metering Limit" shall have the meaning set forth in Section 7.2(b) of this Agreement.

"Recipient Account Statement(s)" means the LDC statement(s) which accompanies the Buyer's Recipient Account(s).

"Recipient Accounts" shall have the meaning set forth in Section 7.2(a).

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

"Schedule Z" shall have the meaning set forth in Section 7.6(a)(i) of this Agreement.

"Seller" shall have the meaning set forth in the introductory paragraph of this Agreement.

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

"Term" shall have the meaning set forth in Section 2.1.

"Termination Date" means the earlier to occur of (i) the last day of the Term, (ii) the Early Termination Date, (iii) the date of termination of this Agreement as the result of an Event of Default, (iv) the date of termination as the result of Force Majeure pursuant to Section 9.2, and (v) the date of termination for any other reason permitted by this Agreement or Applicable Legal Requirements.

ARTICLE 2
TERM; CONDITIONS PRECEDENT; EARLY TERMINATION

2.1 Term. The term of this Agreement (including any extensions, the ***"Term"***) shall commence as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until the twenty-eighth (28th) anniversary of the Commercial Operation Date.

2.2 Conditions Precedent. The commencement of the obligation of Seller to sell Electricity to Buyer under the provisions of this Agreement is subject to the fulfillment of each of the following conditions precedent except, as to the conditions stated in subparagraphs (c) and (d) only, to the extent waived by Seller, though such waiver will not affect any right of Buyer to terminate the Agreement under Section 2.3, or any of Seller's obligations under this Agreement, including, but not limited to, the obligations set forth in Section 3.1, below:

(a) Seller shall have obtained all permits and approvals required for the construction and operation of the Project;

(b) Seller shall have obtained project financing on terms acceptable to Seller;

(c) Seller shall have obtained all approvals under the Net Metering Rules;

(d) the Facility shall have been interconnected with the LDC in accordance with the requirements of the interconnection service agreement, the Net Metering Rules and Applicable Legal Requirements; and

(e) Buyer shall have delivered a copy of the executed Schedule Z and Customer Interconnection Acknowledgment Agreement;

(f) the Project shall have achieved Commercial Operation.

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

(a) by Seller, at any time prior to the Commercial Operation Date, upon twenty (20) days' notice to Buyer, in the event that any condition precedent set forth in Section 2.2 has not been satisfied, provided that the lack of satisfaction of any such condition is not the result of Seller's failure to exercise commercially reasonable efforts and diligence;

(b) by Buyer, upon twenty (20) days' notice to Seller, in the event that the Commercial Operation Date for the Project has not occurred by the Outside Commercial Operation Date, provided that Buyer may not exercise its right to terminate under this Section 2.3(b) after the Commercial Operation Date; or

(c) by either Party in accordance with Section 9.2.

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

ARTICLE 3
DEVELOPMENT OF PROJECT

3.1 Development of Project by Seller. Seller shall undertake all diligent and commercially reasonable good faith efforts to obtain required permits and financing for, and to construct the Project. Using such efforts, Seller shall arrange for the design and construction of the Project in accordance with Applicable Legal Requirements, applicable manufacturers' warranties and instructions, and in a manner such that the North Facility qualifies as a Class II Net Metering Facility.

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

3.3 Interconnection Requirements. Seller shall be responsible for all costs, fees, charges and obligations of every kind and nature required to connect the Project to the LDC System, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges, the cost to install

the LDC Metering Device, and the cost to insure the Project ***("Interconnection Obligations").*** In no event will Buyer be responsible for any Interconnection Obligations, except as set forth in Section 7.6.

3.4 Cooperation Regarding Authorizations. Seller will be responsible for applying for and securing all permits for the Project. Further, Seller will manage all applications for all approvals, registrations and other related matters with the LDC and any Governmental Authority, including the submission of applications described in this Agreement and, to the extent relevant, Seller will do so on behalf of Buyer (subject to Buyer's approval). Buyer agrees to cooperate with Seller in preparing such applications and securing such permits, approvals and registrations, including, without limitation, timely executing and delivering all documentation required from Buyer relating thereto. Where allowed by law, Buyer shall designate Seller as its agent in obtaining all approvals, registrations and additional authorizations required of Buyer in connection with this Agreement and the transactions contemplated hereby.

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

a) Changes in Environmental Incentives. In the event a change in Law occurs that results in additional Environmental Attributes, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Legal Requirements. For the avoidance of doubt, the parties acknowledge that the Seller owns the Class I RECs and other similar incentives because it is paying for the Solar Facility.

3.6 Operation and Maintenance of Project. Seller, at its sole cost and expense, shall be responsible for operation, repair, insuring, monitoring and maintenance of each Facility and the Project in material compliance with equipment manufacturer requirements and in accordance with generally accepted good industry practice and Applicable Legal Requirements.

3.7 Facility Loss. In the event of loss, theft, damage or destruction of the Project or any portion thereof, or any other occurrence or event that prevents or limits the Project from operating in whole or in part, resulting from or arising out of casualty, condemnation or Force Majeure (***"Facility Loss"),*** Seller shall assess the condition of the Project and notify Buyer, within five (5) days of the Facility Loss of Seller's intention to undertake repair or replacement of the Facility and within thirty (30) days to assess and commence the repair or replacement. If Seller determines and notifies Buyer that Seller does not intend to undertake such repair or replacement, this Agreement shall terminate upon receipt of such notice unless, in the event of a partial Facility Loss, Seller's notice states Seller's election to maintain this Agreement in full force and effect, including without limitation the provisions of Section 4.8 (Minimum Output).

If this Agreement terminates pursuant to this Section 3.7 in circumstances in which repair or replacement of the Project would have been commercially reasonable, as considered against repair or replacement by a similarly situated solar facility owner, then Buyer shall be entitled to a payment in the amount of the net present value of the Shortfall Values (as defined in Section 4.8) for each remaining Contract Year or portion thereof of the Term (each such Shortfall Value to be calculated assuming delivery of zero kWhs of Electricity at the applicable Delivery Point and assuming an average Net Metering Credit Rate equal to the Net Metering Credit Rate as of the date of termination); provided, that Buyer shall have an obligation to undertake reasonable efforts to enter into a replacement contract and the amount of such payment shall be reduced by the amount of energy savings reasonably expected to be realized by Buyer pursuant to any such replacement contract as determined by the Buyer.

ARTICLE 4
PURCHASE AND SALE; DELIVERY;

4.1 Purchase and Sale. Commencing on the date the Facility achieves Commercial Operation and continuing throughout the remainder of the Term, Seller shall make available to and sell to Buyer, and Buyer shall take delivery of, purchase from Seller, one hundred percent (100%) of all Electricity generated by the Project (which shall include Net Metering Credits with respect to such Electricity).

4.2 Price. The purchase price of each kilowatt-hour of Electricity shall be calculated in accordance with Exhibit B. The Parties agree to seek approval from the LDC for the Facility to receive Time-Of-Use rate classification (currently designated the A-9 rate class) which returns the greatest Net Metering Credit value to the Buyer. Seller shall prepare any such documents, including the LDC's net metering service application (the "***Schedule Z***") and Buyer shall reasonably cooperate with Seller's preparation of such documents, including, without limitation, by providing information on Buyer's existing other accounts with the LDC. In the event the rate classification changes, the Seller will seek to have the Facility classified at the LDC rate which returns the greatest Net Metering Credit value to the Buyer.

4.3. Invoicing and Payment. Commencing on the Commercial Operation Date and continuing throughout the Term, during each monthly Billing Cycle, Seller shall provide Buyer with an invoice (the ***"Invoice"***) for the Electricity delivered to Buyer during the prior Billing Cycle (the ***"Delivered Quantity"***) and charging the Buyer for payment of an amount equal to the Delivered Quantity multiplied by the Electricity Price. The Delivered Quantity will be determined by Seller by reference to the Host Customer Account information to be obtained pursuant to Section 4.5. Buyer will remit payment of the amount of each invoice to Seller or its designee by check (or other means agreeable to both Parties) within sixty (60) days following Buyer's receipt and approval of each such Invoice. For avoidance of doubt and subject to the provisions of Section 7.6 Buyer shall not be liable to Seller (or any other person or entity) for any Electricity or Net Metering Credits, or for payment of the same, that are generated by the Facility during any time which the Facility does not qualify as a Net Metering Facility.(The Parties acknowledge that both Buyer's electricity consumption and the Project's generation output will vary throughout the year. Accordingly, the dollar value of the Net Metering Credits credited to Buyer's Recipient Account(s) each month may be greater than or less than the amount due on Buyer's Recipient Account Statement(s) for that same monthly Billing Cycle.)

4.4 Invoice Disputes. In the event of a good faith dispute regarding any Invoice, Buyer shall pay the undisputed amount of such Invoice and shall seek to resolve the dispute in accordance with the dispute resolution procedures set forth in Article 14. Upon resolution of the dispute, any required refund or additional payment shall be made within sixty (60) days of such resolution.

4.5 Host Customer Obligations and Charges. Buyer shall exercise reasonable efforts to provide Seller with direct electronic access to all Host Customer Account Statements and account information with respect to the Host Customer Account, including, at Seller's request, such cooperation with Seller as may be necessary to arrange with the LDC to enable Seller, through installation of a Seller-owned meter reader or other means, to have direct electronic access to the LDC Metering Device data. In the event that it is not possible to provide such access then Buyer shall provide Seller by email or other means agreeable to both parties with a copy of each Host Customer Account Statement within seven (7) Business Days of receipt. Upon receipt of such Host Customer Account Statement(s), Seller shall cause the next Invoice issued by Seller to Buyer to reflect a credit to Buyer for any fixed monthly customer charge on the Host Customer

Account Statement(s) as well as any charges on the Host Customer Account Statement(s) arising from the Facility's use of electricity delivered to the LDC Metering Device by the LDC.

Seller shall be responsible for (1) performing, on behalf of Buyer (to the extent allowed by the LDC), all obligations of a Host Customer and customer of record under the LDC's net metering tariff, (2) all costs and expenses associated with the fulfillment of such obligations, other than those ministerial administrative costs incurred by Buyer as incident to its reasonable cooperation with Seller pursuant to the following sentence; (3) all costs incurred by Buyer under any "retail customer" or similar agreements required by the LDC for the Project, and (4) all costs and expenses associated with the interconnection of The Project with the LDC's electric distribution system. Buyer shall reasonably cooperate with Seller in connection with Seller's efforts to fulfill its obligations set forth in this Section. In addition, Seller shall defend, indemnify and save Buyer harmless from any claims asserted against the Buyer, as Host Customer, by any third party for damages, costs, and expenses, including reasonable attorneys' fees, arising from or related to activities undertaken at the Property by the owner(s) and any lessee(s) of the Property, the Seller, and any of their employees, officers, agents, representatives and licensees, except to the extent such damages, costs and expenses arise from the negligence, willful misconduct or breach of this Agreement of or by Buyer, its employees, officers, agents, representatives or licensees.

4.6 Intentionally reserved.

4.7 Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Seller to LDC or Buyer at the applicable Delivery Point.

4.8 Minimum Output. As of the third anniversary of the Commercial Operation Date, in the event that the Average Annual Output is less than eighty percent (80%) of the Estimated Annual Output for such period (as set forth in Exhibit D) (the ***"Minimum Output"***), Buyer is entitled to compensation in an amount equal to the Shortfall Value for purposes hereof:

(i) ***"Average Annual Output"*** shall mean the average annual amount of Electricity delivered to the Delivery Point, calculated on a rolling three-year basis based on the amount of Electricity delivered to the Delivery Point for the Contract Year then ended and for the previous two Contract Years (or, prior to the third anniversary of the Commercial Operation Date, the previous Contract Year(s), if any); and

(ii) ***"Shortfall Value"*** shall mean a dollar amount equal to the product of (A) the positive difference, if any, in dollars per kWh between the average Net Metering Credit value during the Contract Year then ended and the Electricity Price and (B) the positive difference in kWh between the Minimum Output for such Contract Year and the Average Annual Output. For purposes of calculating Shortfall Value, the Minimum Output for such Contract Year shall be reduced by the number of kWhs of reduced output reasonably identified by Seller (but subject to Section 14.2, Dispute Resolution) as caused by: a LDC System outage or failure; acts or omissions of third parties causing suspension or reduction of generation by the Facility, delays in repairs to the Project beyond the reasonable control of Seller; or Force Majeure.

4.9 Intentionally reserved.

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

examine the other Party's records pertaining to transactions hereunder during such other Party's normal business hours. Before discarding any such records, Seller shall notify Buyer in writing of its intent to do so no later than ninety (90) days before discarding if the records are less than 10 years old, and Buyer may, if it chooses, elect to make copies of any such records at Buyer's cost.

ARTICLE 5
TITLE TO ENVIRONMENTAL ATTRIBUTES AND CAPACITY

Other than the Net Metering Credits that accrue to Buyer's account as Host Customer under the Net Metering Rules, or any credit, allowance, entitlement, certificate, product, valuation or other benefit that inures solely to Buyer only because it is a Municipality or Other Governmental Entity and which cannot be transferred or assigned to, or used for the benefit of, Seller, Environmental Attributes and any rights or credits relating to the generating capacity of the Project shall remain the property of Seller and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Seller in its sole discretion and for its sole benefit. Subject to Applicable Legal Requirements and Laws, Buyer shall, upon Seller's request, take whatever actions are reasonably necessary from time to time in order for the Seller to claim the benefits of all Environmental Attributes and capacity rights or credits other than the Net Metering Credits. In the event such actions will result in Buyer's incurring any costs, Buyer may so notify Seller and, if Seller does not withdraw its request, Seller shall promptly reimburse Buyer for such costs. Without limiting the generality of the foregoing, all public statements made by or on behalf of either Party must accurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and any related reporting rights.

ARTICLE 6
METERING DEVICES; LDC BILLING ADJUSTMENTS

6.1 Metering Equipment. The Parties acknowledge that Seller shall arrange for the LDC to furnish, install or monitor the LDC Metering Devices. On behalf of Buyer as the LDC's customer of record, Seller shall be responsible for arranging compliance with any LDC customer requirements relating to LDC access to the LDC Metering Devices. In addition, Seller may install, own, operate, and maintain one or more Seller Metering Devices.

6.2 Meter Accuracy. Buyer may at any time, with reasonable advance notice to Seller, exercise its rights as the LDC's customer of record to seek testing of the accuracy of the LDC Metering Devices. In addition, on behalf of Buyer as the LDC's customer of record, Seller may on its own initiative, and shall upon the request of Buyer, exercise Buyer's LDC customer rights to arrange for testing of the accuracy of the LDC Metering Devices.

6.3 Billing Adjustments. In the event of a discrepancy between the data generated by the LDC Metering Device and the quantity of Net Metering Credits reflected on the Host Customer Account Statements, Seller shall, upon its own initiative or upon request of Buyer and at Seller's cost and expense, exercise diligent and commercially reasonable efforts to investigate and remedy the discrepancy in consultation with the LDC. If as a result of any LDC billing adjustment, the quantity of Electricity for any period is decreased, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for that Electricity. If as a result of any LDC billing adjustment, the quantity of Electricity for any period is increased, Buyer shall pay for

the additional Electricity within (60) days of receipt of the Invoice for the actual amount of Electricity received as reflected on the Invoice.

6.4 Confirmation of Net Metering Credits. During the first Contract Year, Seller shall assist Buyer in confirming that 100% of the anticipated Net Metering Credits allocable to Buyer hereunder have been properly credited against Buyer's monthly utility bills at the appropriate Net Metering Credit kWh dollar values. Buyer shall forward to Seller the LDC monthly utility bills for the accounts listed on the Schedule Z. Seller shall review such bills and compare them to Seller's records with regard to production by the System during the period covered by such bills to confirm that the correct amount of Net Metering Credits are applied on the LDC bills at the appropriate Net Metering Credit kWh dollar value. If Buyer or Seller believes that there is an error in the allocation of Net Metering Credits to the applicable LDC bills, or an error in the Net Metering Credit kWh dollar values applied, Seller shall contact the LDC on Buyer's behalf and attempt to obtain the information necessary to confirm whether the Net Metering Credits have been correctly credited and applied, and shall assist Buyer in obtaining any missing Net Metering Credit total dollar values from the LDC, provided that neither party hereto shall be required to incur any out of pocket costs, including without limitation any legal fees or consultant costs, in order to do so. In addition, within ninety (90) days following the end of each Contract Year, Seller shall prepare a reconciliation of the Net Metering Credits allocable to such Contract Year, based on the Facility production during such Contract Year, and the amount of Net Metering Credits credited to Buyer's accounts by the LDC, and the Net Metering Credit kWh dollar values during such period. If there is any discrepancy between the amount of Net Metering Credits allocable to the accounts and the actual amount credited to the accounts or the Net Metering Credit kWh dollar values, Seller shall contact the LDC on Buyer's behalf and attempt to obtain the information necessary to determine how such discrepancy occurred, and shall assist Buyer in obtaining any missing Net Metering Credit total dollar value from the LDC, provided that, as aforesaid, neither party hereto shall be required to incur any out of pocket costs, including without limitation any legal fees or consultant costs, in order to do so.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

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

(a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Laws;

(b) this Agreement constitutes its legally valid and binding obligation enforceable in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) all such persons as are required to be signatories to or otherwise execute this Agreement on its behalf under all applicable Laws have executed and are authorized to execute this Agreement in accordance with such Laws;

(d) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;

(e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(f) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

7.2 Additional Representations and Warranties of Buyer.

(a) Recipient Accounts. With respect to certain of Buyer's existing accounts with the LDC identified in Exhibit C attached hereto (the "***Recipient Accounts***"), Buyer, to the best of its knowledge after reasonable inquiry, has provided to Seller complete and correct records of its electricity usage with respect to such accounts.

(b) Net Metering Capacity Associated with Buyer. Buyer represents and warrants to Seller that it is not the Host Customer of Net Metering Facilities with an aggregate capacity (inclusive of the Project) of more than 10 megawatts (alternating current) (as amended from time to time by the Net Metering Rules, the ***"Public Entity Net Metering Limit"***). Notwithstanding the foregoing, Buyer is free to contract for the purchase and sale of other entities selling Net Metering Credits, so long as the aggregate capacity of the Buyer's purchases do not exceed 10 megawatts (as amended).

7.3 Forward Contract: Bankruptcy Code. The Parties acknowledge and agree that Seller intends that this Agreement and the transactions contemplated hereunder be deemed a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller be deemed a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

7.4 Service Contract. The Parties intend that this Agreement be treated as a "service contract" within the meaning of Section 7701 (e) of the Internal Revenue Code.

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

7.6 Covenants.

(a) Net Metering.

(i) Host Customer. At Seller's reasonable request, and subject to Applicable Legal Requirements, Buyer shall promptly take any action and execute any documents, as required, to designate Buyer as the LDC customer of record for the LDC Metering Devices serving one or more of the Facilities and otherwise establish Buyer as the Host Customer for such Facility or Facilities for purposes of the Net Metering Rules. Such designation shall in no manner whatsoever relieve the Seller of its obligations under this Agreement, including Section 3.3, with respect to Interconnection Obligations. Seller shall prepare any such documents, including the LDC's net metering service application(s) (the "***Schedule Z(s)***"), and Buyer shall reasonably cooperate fully with Seller's preparation of such documents. Further, Seller shall prepare an application with appropriate supporting documents for a Cap Allocation for the Project, and Buyer shall reasonably cooperate fully with Seller's preparation of such documents.

(ii) Allocation of Net Metering Credits. At Seller's reasonable request, Buyer shall promptly take any reasonable action and execute any documents, as required, so that the Net Metering Credits accruing to Buyer as Host Customer of the Facility are allocated to

the Recipient Accounts. Buyer acknowledges and agrees that it shall not allocate or permit to be allocated any Net Metering Credits generated by any other source to the Recipient Accounts if such allocation would affect Buyer's ability to comply with its obligations under this Agreement, provided that, whether or not such effect is anticipated, Buyer shall provide at least thirty (30) days' notice to Seller prior to undertaking or permitting any such allocation.

(iii) Net Metering Facility of a Governmental Entity. Subject to clause (a)(i) above, the Parties Acknowledge their mutual intent that each Facility be classified as a Net Metering Facility of a Municipality or Other Governmental Entity, and, in the event that a facility is so classified, each Party agrees not to take any action inconsistent with such regulatory status of the Project (including, without limitation, terminating the ***Schedule Z*** or amending the ***Schedule Z*** in a manner inconsistent with such status) except insofar as such action is expressly authorized hereunder. For avoidance of doubt, the Parties acknowledge that, pursuant to the current Net Metering Rules, in order to obtain and preserve such status, no Schedule Z for a Net Metering Facility of a Municipality or Other Governmental Entity may allocate Net Metering Credits to the account of any individual or of any entity that is not a city, City, federal agency or department, state agency or department, or any entity that is not approved by DPU as an "Other Governmental Entity."

(iv) Net Metering Limit. Buyer acknowledges that, pursuant to the Net Metering Rules, the maximum amount of generating capacity eligible for net metering by a municipality or other governmental entity is the Public Entity Net Metering Limit. Accordingly, Buyer covenants that it shall not serve as the Host Customer of Net Metering Facilities (inclusive of the Project) with an aggregate capacity more than the Public Entity Metering Limit. Without limiting the foregoing, Buyer further covenants that, during the Term, except with the consent of Seller, which shall not be unreasonably withheld, delayed or conditioned, Buyer shall not serve as Host Customer of other Net Metering Facilities if the output from such Net Metering Facilities interferes with or precludes the Buyer from receiving Net Metering Credits generated by the Facility in accordance with this Agreement.

(v) Cooperation on Assurance of Net Metering Eligibility. Each Party agrees to promptly provide such information and assistance to the other Party as may be necessary to allow the Parties to avail themselves of any system established by DPU and/or the LDC to provide certain assurances that a Facility will be an eligible Net Metering Facility once the Facility commences operation.

(vi) Consolidated Billing of Electricity Charges. In order to ensure Buyer's ability to maximize savings resulting from allocation of Net Metering Credits to the Recipient Accounts, Buyer shall arrange, to the extent possible, for the charges for its electricity purchases from competitive electricity suppliers (if any) to be billed through the ***Recipient Account Statement(s)***.

(b) Customer Interconnection Acknowledgement. In order to fulfill the LDC's requirements for interconnecting to the LDC distribution grid an energy generating facility that is owned by one party but is located behind the LDC utility meter of another party, Seller shall be party to the interconnection service agreement for each Facility and Buyer agrees, promptly following Seller's request, to enter into the customer interconnection acknowledgement agreement for each Facility with the LDC in a form substantially similar to the form of customer interconnection

acknowledgement agreement attached to the LDC's interconnection tariff (the ***"Customer Interconnection Acknowledgement Agreement"***).

(c) Data Access; Customer Advocacy. Buyer shall take action and execute any documents, as required, to designate (and, as necessary, re-designate) Seller to LDC as an authorized recipient of the Host Account Statements with respect to the LDC Metering Devices serving the Facility. In addition, Buyer shall take such reasonable action and execute any documents, as required, and otherwise cooperate with Seller, so as to permit Seller to advocate with the LDC and/or DPU with respect to Buyer's rights as the LDC customer of record and Host Customer, including, without limitation, for the purpose of ensuring timely and accurate recording of Net Metering Credits generated in connection with the Facility.

(d) Uniform Procurement Act Exemption Filings. Buyer shall comply with the provisions of G.L. c. 30B, § 1(b)(33), which require that, within fifteen (15) days of the signing of a contract for energy or energy related services by a covered public entity, the procuring public entity shall submit to DPU, the Department of Energy Resources, and the Office of the Inspector General a copy of the contract and a report of the process used to execute the contract, and Seller shall assist Buyer therein as reasonably requested. Buyer shall promptly deliver to Seller a complete copy of such filings.

(e) No Resale of Electricity. The Electricity purchased by Buyer from Seller under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the LDC pursuant to the Net Metering Rules), without prior approval of Seller, which approval shall not be unreasonably withheld. For avoidance of doubt, this Section 7.6(e) shall not prohibit Buyer from exercising its rights as Host Customer under the Net Metering Rules to allocate Net Metering Credits to other parties nor from moving Recipient Accounts from one Schedule Z to another Schedule Z, subject to Buyer's other obligations under this Agreement.

(f) No Right to Enter or Use Property. Buyer shall not have, nor shall it assert, any right under this Agreement to enter upon or use the Property or the Facility in any manner, provided, however, that Buyer shall, upon reasonable prior notice, be provided access to the Project and (to the extent Seller is permitted to grant such access) the LDC Metering Device for which Buyer is Host Customer, from time to time during normal business hours and subject to reasonable site health and safety requirements, for any reasonable purpose related to Buyer's status as Host Customer.

(g) No Assertion that Seller is a Utility. The Parties acknowledge that it is their intent that Seller not be deemed an electric utility or public service company or similar entity that has a duty to provide service, or is otherwise subject to rate regulation.

ARTICLE 8
(INTENTIONALLY RESERVED)

ARTICLE 9

FORCE MAJEURE

9.1 Performance Excused by Force Majeure. To the extent a Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and Seller gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by Seller), then the affected Party will be excused from, the performance of such obligations under this Agreement (other than the obligation to make payment then due or becoming due with respect to the other Party's performance prior to the Force Majeure). The affected Party will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations. During the period in which, and to the extent that, obligations of a Party are excused by Force Majeure, the unaffected Party will not be required to perform or resume performance of its obligations to the affected Party corresponding to the obligations of the affected Party excused by Force Majeure. In addition, any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order, a delay or inability to perform substantially attributable to a Party's failure to timely take the actions necessary to obtain and maintain all necessary permits, a failure to satisfy contractual conditions or commitments (unless otherwise caused by an event of Force Majeure), or lack of or deficiency in funding or other resources, shall each not constitute a Force Majeure.

9.2 Termination Due to Force Majeure. In the event of a Force Majeure that prevents, in whole or in material part, the performance of Seller for a period of one hundred eighty (180) calendar days or longer (provided that such period shall be extended for an additional period of up to one hundred (100) calendar days if Seller has promptly commenced efforts to resume performance of its obligations and is diligently continuing such efforts), then either Party may, upon thirty (30) days' notice to the other Party, terminate this Agreement, whereupon the Parties shall each discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which by their terms survive expiration or termination of this Agreement.

ARTICLE 10
EVENTS OF DEFAULT; REMEDIES

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

(a) such Party's failure to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) days after receipt of notice of such failure;

(b) such Party's failure to comply with any material provision of this Agreement if such failure is not remedied within sixty (60) days after notice and demand by the non-defaulting Party to cure the same or such longer period (not to exceed one hundred twenty (120) days) as may be reasonably required to cure, provided that the defaulting Party diligently continues to perform under this Agreement and to work to cure the failure until such failure is fully cured; or

(c) such Party becomes Bankrupt; or

(d) any representation or warranty made by such Party in this Agreement is not true and complete in any material respect when made and such breach of representation or warranty has a material adverse effect on the non-defaulting Party unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within sixty (60) calendar days after written notice to such Party specifying the nature of such misrepresentation, and (ii) such cure removes any material adverse effect on the non-defaulting Party of such fact, circumstance or condition being otherwise than as first represented, provided that such cure may be made within such longer period (not to exceed one hundred (100) days) as may be reasonably required to cure, provided that the defaulting Party diligently continues to perform under this agreement and to work to cure the failure until such failure is fully cured; or

(e) Seller fails to maintain or cause to be maintained insurance for the Project in accordance with Seller's interconnection service agreement with the LDC or Applicable Legal Requirements, including insurance requirements established under regulatory authority of the municipality where the Project is located, and such failure is not cured within ten (10) days after Buyer notifies Seller of such failure. In this case, Buyer shall be the non-Defaulting Party.

10.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or applicable law, but subject to the provisions of Article 16 with respect to a Seller Event of Default, shall have the right to (i) terminate this Agreement, upon thirty (30) days' notice to the Defaulting Party, (ii) withhold any payments due to the Defaulting Party under this Agreement, (iii) suspend performance due to the Defaulting Party under this Agreement, and (iv) exercise all other rights and remedies available at law or in equity to the non-defaulting Party, including recovery of all reasonably foreseeable damages under applicable law, subject to such limitations on such recovery as required by law, including, but not limited to, the requirement that the non-defaulting Party prove its damages with reasonable certainty, and mitigate its damages in accordance with law, and as set forth herein. For Seller, such damages may include, without limitation, (i) lost revenues in connection with any failure by Buyer to purchase Electricity/Net Metering Credits from Seller hereunder in accordance with the terms hereof, (ii) lost revenues in connection with any inability of Seller to sell Environmental Attributes associated with such Electricity and (iii) accelerated payments, fees, damages and penalties under Seller's financing agreements. In addition, and without limiting the foregoing, If Seller is the non-defaulting Party, Seller

shall have the right and obligation to exercise all diligent, commercially reasonable efforts to sell electricity, Net Metering Credits and Environmental Attributes produced or generated by the Facility to persons other than Buyer in order to mitigate any damages suffered as a result of Buyer's default. Each Party agrees that it has a duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party's default under this Agreement. For avoidance of doubt, in the event of a Buyer Event of Default that gives rise to a Seller right to terminate. Seller may, to the extent permitted by Applicable Legal Requirements and Laws, mitigate its damages by arranging for Buyer to continue to serve as Host Customer of the Facility but amend the Schedule Z(s) to facilitate Seller's sale of the Net Metering Credits to third party recipients as directed by Seller from time to time.

10.3 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity, subject, however, to such limitations on relief or the recovery of damages as are required by law.

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

10.5 Buyer's Rights and Remedies. Upon an Event of Default by Buyer, but prior to the expiration of the applicable cure period, Buyer shall have the option upon written notice to Seller to assign this Agreement to an eligible municipality under the Net Metering Rules, subject to the approval of such assignment by Seller in its reasonable discretion. Following an assignment permitted under this Section 10.5, Seller shall have no further obligation or liability under this Agreement, except for the satisfaction of any liabilities accrued or incurred by Buyer prior to the effective date of the assignment, after the effective date of such assignment and except for any provisions to this Agreement that survive the Termination of this Agreement.

10.6 Documentation Conflicts. The City of Somerville Standard Contract General Conditions and the Supplemental Contract Terms and Conditions are attached hereto and incorporated herein as Exhibit F. In the event of a conflict between the provisions of Exhibit F and any provision of this Agreement, the Parties agree that the Terms of Exhibit F shall prevail.

ARTICLE 11

CERTAIN RIGHTS AND OBLIGATIONS FOLLOWING TERMINATION OR EXPIRATION

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

11.2 LDC and Regulatory Matters. Upon the termination or expiration of this Agreement for any reason, Seller shall undertake diligent efforts, and Buyer shall promptly take all actions and execute all documents, as may be necessary or reasonably requested by Seller, to designate Seller or its designee as the LDC customer of record for the LDC Metering Devices at the Delivery Points and otherwise establish Seller or its designee as the Host Customer of the Facility for purposes of the Net Metering Rules, and to facilitate

the amendment of the Schedule Z(s) so as to terminate as soon as practicable Buyer's status as Host Customer and the allocation of Net Metering Credits to the Recipient Accounts. To the extent that the LDC does not permit termination of Buyer's Host Customer status or allocation of Net Metering Credits to the Recipient Accounts (as modified from time to time) as of the effective date of termination or expiration of this Agreement and instead requires termination of such allocation as of a later date, and the Recipient Account actually receives Net Metering Credits, Buyer's purchase and payment obligations hereunder shall survive with respect to any Electricity delivered by Seller to the Delivery Point(s) and corresponding with Net Metering Credits so received by the Recipient Accounts.

ARTICLE 12
INDEMNIFICATION

12.1 Indemnity. Seller shall indemnify, defend (with counsel acceptable to Buyer, which acceptance shall not be unreasonably withheld) and hold harmless the Buyer and its members, managers, officers, officials, employees, agents, representatives and independent contractors, from and against all demands, claims, suits, liabilities, losses, damages, costs or expenses (including judgments, costs, interest, attorney's fees and expert's fees)arising from or in connection with any act or omission relating in any way to the performance of this Agreement by Seller, its officers, agents or employees or others under Seller's control, or its subcontractors or independent contractors, or (ii) an Event of Default of Seller. Seller further agrees, if requested by Buyer, to investigate, handle, respond to, and defend any such claim, demand, or suit at its own expense arising under this Article. Should Seller defend any such claim against the Buyer, it shall have full control of such defense, in its reasonable discretion. Notwithstanding the foregoing, the indemnity provided under this Section shall not extend to claims, demands, lawsuits or actions for liability attributable solely to the negligence, willful misconduct or Event of Default of Buyer, its officers, agents or employees.

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

12.3 Survival of Indemnity Claims. In addition, notwithstanding any provision contained herein, the provisions of this Article shall survive the termination or expiration of this Agreement for a period of six (6) years thereafter, with respect to any claims which occurred or arose (in whole or in part) prior to such termination or expiration.

12.4. In addition, the extent of this indemnification shall not be limited by any obligation or any term or condition of any insurance policy.

ARTICLE 13
LIMITATIONS

13.1 Limitation of Liability.

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

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

(c) No Waiver of Massachusetts Tort Claims Act. Nothing contained in this Agreement shall constitute a waiver of any immunities or the limitations on liability of Buyer under the Massachusetts Tort Claims Act. General Laws Chapter 258, as amended from time to time, or any other applicable law.

13.2 Limitation on Warranties. Except as expressly provided in this Agreement, each Party hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose. Without limiting the foregoing, but subject to the provisions of Section 4.8 (Minimum Output), Seller does not warrant or guarantee the amount of Electricity to be generated by the Project.

ARTICLE 14
GOVERNING LAW; DISPUTE RESOLUTION

14.1 Governing Law. This Agreement shall be construed under and governed by the laws and in the courts of the Commonwealth of Massachusetts, and any dispute arising under or relating to this Agreement shall be adjudicated by a Court sitting within the Commonwealth of Massachusetts.

14.2 Dispute Resolution.

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

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

ARTICLE 15
ASSIGNMENT; BINDING EFFECT

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

15.2 Permitted Assignments by Seller. Notwithstanding anything to the contrary herein, Buyer acknowledges that for financing or other reasons, it may be necessary or desirable for Seller to arrange for construction and/or ownership of the ***Facility*** by separate project entities and that allocation of Seller's rights and obligations with respect to such project entities may be accomplished through exercise of Seller's assignment of rights hereunder and, in the event of such assignment, upon Seller's or the assignee's request, Buyer agrees to execute such documents as are reasonably required to accomplish such purposes.. Seller may assign all or a portion of its rights and obligations hereunder to (i) an Affiliate of Seller or (ii) to the purchaser of substantially all of the assets of Seller, or to an entity that purchases the ***Facility*** or, prior to the construction of the ***Facility***, the development rights thereto. Seller shall provide no less than 10 business days prior written notice to Buyer of Seller' intent to execute an assignment.

In the event of an assignment pursuant to this Section, prior to the effective date of any such assignment, Seller and/or such assignee shall reasonably demonstrate to Buyer the assignee's ability (itself or through use of the services of qualified third parties as determined by the Buyer in its reasonable discretion) to perform its obligations under this Agreement, which documentation shall contain a representation from the assignee that it has adequate financial ability (taking into account, among other things, Project revenues) and technical ability (itself or through use of the services of qualified third parties as determined by the Buyer in its reasonable discretion) to perform its obligations under this Agreement, provided that the assignee shall not be required to possess ability that exceeds that of Seller as of the Effective Date. Buyer agrees to promptly execute any document reasonably requested by Seller in acknowledgement of such assignment in accordance with the provisions hereof, provided that Seller and/or such assignee has complied with the applicable provisions of this Section 15.2. Following an assignment permitted under this Section 15.2, except to the extent provided by the terms of such assignment and except to the extent that the assignee has assumed only a portion of Seller's rights and obligations hereunder, Seller shall have no further obligation for the performance of duties assigned pursuant to the Assignment after the effective date of such assignment

15.3 Permitted Assignments by Buyer. In the event of a material change in Buyer's circumstances, including Buyer's inability to timely use all Net Metering Credits received by Buyer hereunder, Buyer may assign its rights and obligations under this Agreement to a third party provided that (i) Seller and any Lender determine, in their sole, reasonable discretion, that the proposed assignee is creditworthy and capable of performing all of Buyer's obligations under this Agreement for the remainder of the Term, (ii) the assignee agrees in writing to assume all of Buyer's obligations under this Agreement and (iii) the assignee is capable of performing said obligations of Buyer. Without limiting the foregoing, Buyer may assign to one or more third parties a portion of its obligations hereunder such that Buyer, together with the partial assignee(s), shall collectively be obligated to purchase all of the Electricity/Net Metering Credits generated by the Project. Prior to notifying Seller of any such proposed assignment, Buyer shall undertake reasonable efforts to identify and implement alternative solutions to remedy any inability of Buyer to timely use all Net Metering Credits accruing to Buyer under this Agreement. Seller agrees to reasonably cooperate with, and undertake commercially reasonable efforts to assist Buyer in identifying and implementing such solutions and any assignment permitted hereunder.

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

ARTICLE 16
FINANCING AND RELATED MATTERS

16.1 Special Seller Assignment Rights. Notwithstanding any contrary provisions contained in this Agreement, including, without limitation, Article 15, Buyer specifically agrees, without any further request for prior consent, but with advance written notice to Buyer, to permit Seller to assign, transfer or pledge its rights under this Agreement as collateral for the purpose of obtaining financing or refinancing in connection with the Project, and to sign any agreements reasonably requested of Seller or its lenders to acknowledge and evidence such agreement, provided that any such assignment, transfer, or pledge shall not relieve Seller of its liabilities and obligations under this Agreement.

16.2 Designated Third Party Rights.

(a) Notice to Designated Third Party. Buyer agrees to give copies of any notice provided to Seller by Buyer to any assignee or transferee permitted pursuant to Section 16.1 of which it has written notice (each, a ***"Designated Third Party"***) of any event or occurrence which, if uncured, would result in a Seller Event of Default, provided that, at any given point during the Term, Buyer shall not be required to provide notice to more than one Designated Third Party.

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

(c) Performance of Seller Obligations. A Designated Third Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Designated Third Party to cure any default of Seller under this Agreement (unless such party has succeeded to Seller's interests under this Agreement) or (unless such party has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives such party the option to do so, provided any such cure, act, duty or obligation is performed in accordance with this the terms of this Agreement.

(d) Exercise of Remedies. Upon the exercise of secured party remedies, including any sale of the Facility by a Designated Third Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Designated Third Party (or any assignee of the Designated Third Party) in lieu thereof, the Designated Third Party shall give written notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement, unless the act of exercising such remedy itself constitutes an Event of Default under Article 10 of this Agreement, provided, however, that the exercise of such remedies shall not itself serve as a cure of any default of Seller.

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

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

16.4 Right to Cure.

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

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

16.5 Reimbursement of Certain Costs. ln the event that Buyer is required to incur legal or administrative costs in order to comply with its obligations to provide, review and/or execute certain documents pursuant to this Article 16, Buyer may provide advance notice to that effect to Seller together with a good faith estimate of such excess legal costs. In such case, Buyer shall not be required to provide, review or execute the document at issue unless Seller agrees to reimburse Buyer for such excess costs, up to the amount of such good faith estimate. Upon receipt of such notice, Seller may elect to agree to such reimbursement or to withdraw the relevant request.

ARTICLE 17
CHANGE IN LAW

In the event that a change in Law occurs, including without limitation, a change in the Net Metering Rules, or the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the LDC (a ***"Change in Law"***), which materially restricts the ability of Seller to deliver Electricity generated by the Facility covered under this Agreement to Buyer, or the ability of Buyer as Host Customer or LDC customer of record to deliver Electricity generated by the Facility to the LDC or the ability of Buyer to receive Net Metering Credits, or the qualifications of a Facility as a Net Metering Facility of a Municipality or Other Government Entity, as the status of the Facility then may be, then, upon a Party's receipt of notice of such a Change in Law from the other Party, the Parties shall promptly and in good faith endeavor to negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement in the form of a net metering credit purchase agreement. If the Parties are unable, despite good faith efforts, to reach agreement on an amendment or restatement within one hundred twenty (120) days, and the non-affected Party has not elected to absorb all additional costs directly attributable to the Change in Law, either Party may terminate this Agreement without liability for such termination, provided, however, that Buyer shall not be required to pay for any Electricity with respect to which it has not received Net Metering Credits from the LDC. In the event that a Change in Law occurs that would provide economic or other benefits to either or both parties that are not available under current law, the Parties shall promptly and in good faith endeavor to negotiate such amendments and restatements to or restatements of this Agreement as may be necessary to allow the affected party or parties to receive such benefits, while maintaining the allocation of economic benefits and burdens originally intended by the parties.

ARTICLE 18
NOTICES

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

If to Sellers to:
Todd Fryatt
c/o ECA SOLAR
282 Moody St., #202
Waltham, MA 02453
Email: pd@ecasolar.com

With a copy to:
Jonathan Klavens, Esq.
Klavens Law Group
20 Park Plaza, #402
Boston, MA 02116
Email: jklavens@klavenslawgroup.com

If to Buyer to:
City of Somerville
Attn: Office of the Mayor
City Hall
93 Highland Ave
Somerville, MA 02143

AND

Director
Office of Sustainability and Environment
City of Somerville
City Hall
50 Evergreen Avenue
Somerville, MA 02145

with a copy to:
City Solicitor for the City of Somerville, City Hall, 93 Highland Ave
Somerville, MA 02143

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

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

ARTICLE 19
MISCELLANEOUS

19.1 Survival. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of Article 5, Section 6.3, and Articles 10, 11, 12, 13, 14, 16, 18, and 19 shall survive the termination or expiration of this Agreement.

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

19.3 Expenses. Each Party hereto shall pay its own expenses incurred in connection with entering into this Agreement, including without limitation, all attorneys' fees and expenses, unless otherwise provided herein.

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

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

19.6 Cooperation. Each Party acknowledges that this Agreement may require approval or review by third parties and agrees that it shall use commercially reasonable efforts to cooperate in seeking to secure such approval or review. The Parties further acknowledge that the performance of each Party's obligations under this Agreement may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term reasonably cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its ob1igations hereunder.

19.7 Insurance. From and after the Commercial Operation Date, Seller shall obtain and maintain insurance in accordance with Seller's interconnection service agreement with the LDC and Applicable Legal Requirements. On all insurance policies maintained by Seller hereunder, except for workers' compensation, Buyer shall be listed as an additional insured. Seller shall also maintain insurance in amounts sufficient to cover Seller's obligations under this Agreement and to cover any reasonably foreseeable losses that could be incurred by Buyer. The Seller shall deliver to the Buyer new certificates of insurance at least ten (10) calendar days prior to expiration of the prior insurance and shall furnish the Buyer with the name, business address and telephone number of the insurance agent. Seller certifies compliance with applicable state and federal employment laws or regulations including but not limited to G.L. c. 152 (Workers' Compensation), as applicable, and Seller shall provide City with acceptable evidence

of compliance with the insurance requirements by these laws. At the time of execution of this Agreement, Seller shall provide certificates of insurance evidencing compliance with this paragraph.

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

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

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

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

19.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Agreement. 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 and deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement.

19.13 Additional Matters. Notwithstanding anything to the contrary in this Agreement:

(a) Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement which will materially or unreasonably increase Buyer's risk or obligations under the Agreement, or result in the waiver of any of Buyer's rights or remedies under the Agreement or at law or in equity, or require Buyer to give an opinion, or require Buyer to make a statement of fact of which Buyer does not have actual knowledge (except that Seller may reasonably request that Buyer make a statement of fact to the best of its actual knowledge).

(b) Any requirement that Buyer reasonably cooperate or assist Seller shall not require Buyer to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.

(c) The Agreement shall be subject to Applicable Legal Requirements and shall be valid only to the extent permitted by and consistent with all requirements of law.

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

(e) The Parties acknowledge that nothing in this Agreement shall limit or otherwise affect the ability of the Buyer to carry out any regulatory mandate or exercise its regulatory powers in accordance with Applicable Legal Requirements and Laws.

Remainder of Page Intentionally Left Blank

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

BUYER - CITY OF SOMERVILLE

I hereby certify that the total contract amount is $_____, and that an unencumbered balance of $_____ is available for the first fiscal year of this contract. I further certify that a sum of $_____ is hereby encumbered against the appropriate account for the purposes of this contract. Further, I certify that as funds become available, I will encumber additional sums as are required under this contract.

_____
Edward Bean
City Auditor

_____
Katjana Ballantyne
Mayor

_____
Angela M. Allen
Director of Procurement

_____
Christine Blais
Director of the Office of Sustainability and Environment

_____
Jill Lathan
Department of Public Works Commissioner

APPROVED AS TO FORM:

_____
Francis X. Wright, Jr.
City Solicitor

SELLER

ECA NEMA BRIGHTFIELDS II, LLC

X_____
Signature of Authorized Agent of Vendor

Todd Fryatt
Printed Name of Authorized Agent of Vendor

Manager
Title of Authorized Agent of Vendor

282 Moody St., #202
Street Address of Vendor

Waltham, MA 02453
City, State and Zip

_____
Tax ID #

FOR CORPORATIONS ONLY:
I certify that the individual signing on behalf of the corporation has the authority to bind the corporation.

_____
Clerk's Signature

_____
Print or Type Clerk's Name

Exhibit A

PROPERTY: DELIVERY POINT

Property

The **"*Property*"** shall be the real property located at Industriplex Woburn as further described on Exhibit A-1. The Facility, together with all appurtenant facilities to interconnect the Facility to the LDC electric distribution system, shall be a solar photovoltaic array capable of producing approximately 875,850 kilowatt hours of electricity per year. The Facility's aggregate nameplate capacity shall be approximately 660.53 DC (498 kWAC).

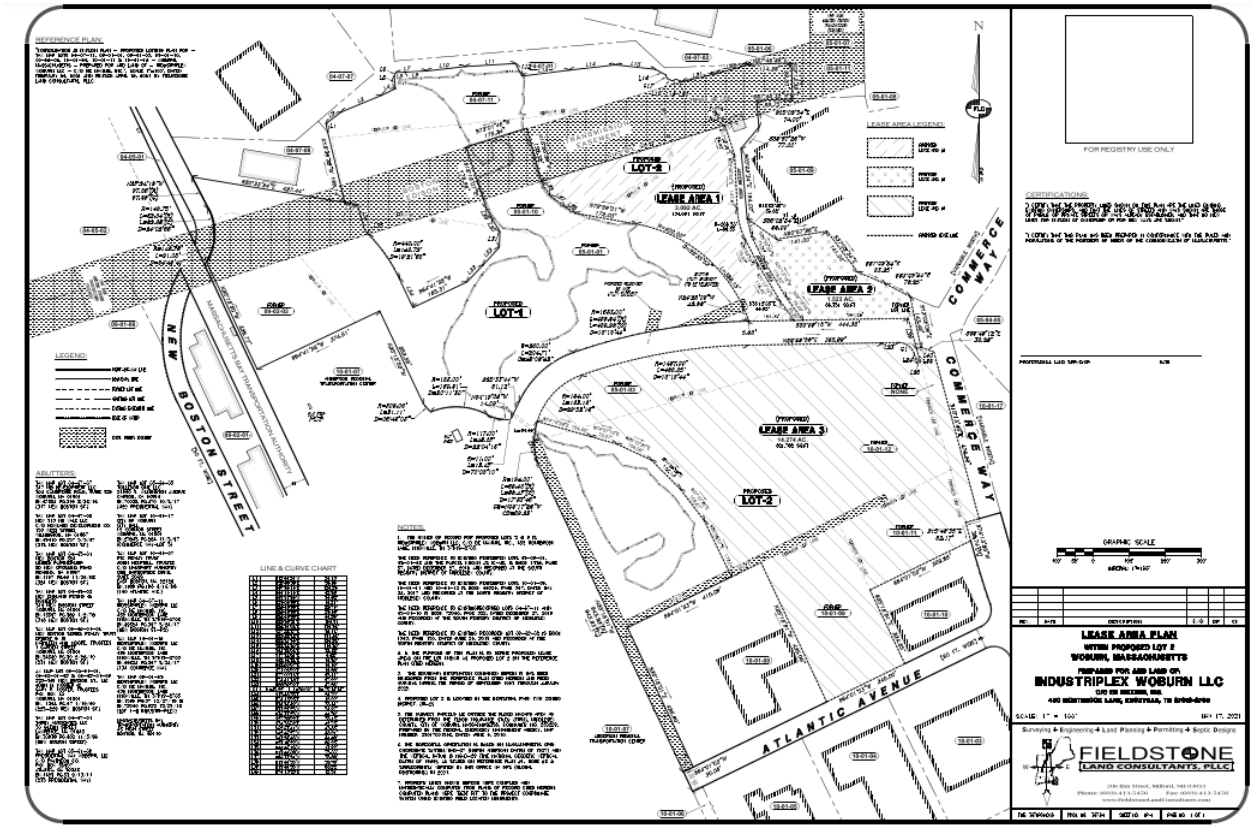
One hundred percent (100%) of the Facility's output will be allocated to the City of Somerville.

Delivery Points

The location at the Property where Electricity is to be delivered from the Facility and received under this Agreement shall be the LDC Metering Device on the Property upon which the respective Facility is located.

Exhibit A-1

Property Description



Legal Description of Lease Area 1

On Proposed Lot 2

Land of

Industriplex Woburn LLC Woburn, Massachusetts

Beginning at the southwesterly comer of the within described Lease area at the southwesterly comer of land of lndustriplex Woburn LLC (Proposed Lot-2) and at the southeasterly comer of other land of lndustriplex Woburn LLC (Proposed Lot-1) and on the northerly lot line of the Anderson Regional Transportation Center, thence along the westerly lot line of said Proposed Lot-2 and the easterly lot line of said Proposed Lot-1.

1. N 24° 23' 09" W 42.96 feet, and

2. Northwesterly by a curve to the left having a radius of 400.00 feet a distance of 388.15 feet to a point of tangent, and

3. N 79° 59' 01" W 172.03 feet, and

4. N 56° 54' 49" W 33.41 feet, and

5. N 53° 29' 25" W 51.97 feet, and

6. N 30° 33' 25" W 44.59 feet, to a point on the southerly side of a 150 feet wide Boston Edison Company transmission easement. Said point being the northwesterly comer of the within described Lease Area, thence

7. N 73° 01' 40" E 529.99 feet along the southerly line of said Boston Edison transmission easement to a point on the westerly edge of the paved access road leading northerly to the T.O.U. Building (Thermal Oxidation Unit Building). Said point being the northeasterly comer of the within described Lease Area, thence

8. S 17° 58' 39" E 86.90 feet along the westerly edge of said paved access road, and

9. S 02° 46' 53" E 147.81 feet, and

10. Southeasterly by a curve to the left having a radius of 209.50 feet a distance of 88.55 feet to a point of tangent, and

11. S 26° 59' 59" E 75.93 feet, and

12. S 31 ° 13' 19" E 118.45 feet, and

13. S 36° 12' 05" E 66.52 feet to point on the said northerly lot line of the Anderson Regional Transportation Center. Said point being the southeasterly comer of the within described Lease Area, thence

14. S 88° 59' 10" W 124.35 feet to the point of beginning.

Containing 3.092 acres (134,681 sq. ft.)

Also shown on a plan entitled "Lease Area Plan, Within Proposed Lot 2, Woburn, Massachusetts, Prepared For And Land of, Industriplex Woburn LLC", Scale: 1 inch= 100 feet, dated May 17, 2021, and prepared by Fieldstone Land Consultants, PLLC

Legal Description of Lease Area 2

Part of Proposed Lot 2

Land of

lndustriplex Woburn LLC Woborn, Massachusetts

Beginning at the southwesterly comer of the within described Lease area on the southerly lot line of land of Industriplex Woburn LLC (Proposed Lot 2) and on the northerly lot line of the Anderson Transportation Center, being N 88° 59' 10" E 23.25 feet from the southeast comer of Proposed Lease Area 1 and on the easterly edge of the paved access road leading northerly to the T.O.U. Building (Thermal Oxidation Unit Building), thence northwesterly along the easterly edge of said paved access road

1. N 36° 12' 05" W 79.09 feet, and

2. N 31° 13' 19" W 116.93 feet, and

3. N 26° 5 9' 5 9" W 7 5 .23 feet, thence leaving the edge of said paved access road

4. N 13° 52' 48" W 50.62 feet to a point on the northeasterly lot line of said Proposed Lot 2 and on the southwesterly lot line of land now or former of Presidential Way Woburn, LLC (Tax Map Lot 05-01-09). Said point being the northwest comer of the within described Lease Area, thence

5. S 55° 02' 34" E 99.00 feet, along said northeasterly lot line of Proposed Lot 2 and said southwesterly boundary of Presidential Way Woburn, LLC land, and

6. N 80° 57' 26" E 141.00 feet, and

7. S 37° 02' 34" E 141.00 feet, and

8. S 67° 02' 34" E 83.25 feet, and

9. S 63° 02' 34" E 76.25 feet, to a point on the westerly side line of Commerce Way. Said point being the southeast comer of the within described Lease Area, thence

10. S 12 ° 02' 09" E 14 3. 48 feet along the westerly side line of said Commerce way to a point on the northerly lot line of land Industriplex Woburn LLC (Proposed Lot 3). Said point is the southeast comer of the within described Lease Area, thence

11. S 74° 13' 25" W 12.31 feet along the northerly lot line of said Proposed Lot 3 to a point on the easterly lot of the Anderson Regional Transportation Center (Tax Map Lot 10-01-07), thence

12. N 15° 46' 35" W 86.22 feet along said easterly lot line of the Anderson Regional Transportation Center to the northeast corner of said Anderson Regional Transportation center, thence

13. S 88° 59' 10" W 291.00 feet along the northerly lot line of the Anderson Regional Transportation Center to the point of beginning.

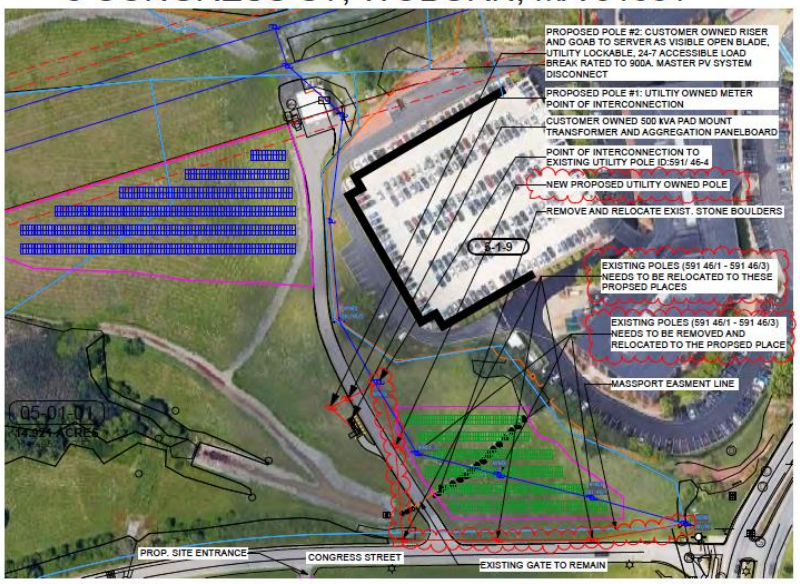
Containing 1.523 acres (66,351 sq. ft.)

Also shown on a plan entitled "Lease Area Plan, Within Proposed Lot 2, Woburn, Massachusetts, Prepared For And Land of, Industriplex Woburn LLC", Scale: 1 inch= 100 feet, dated May 17, 2021, and prepared by Fieldstone Land Consultants, PLLC.

NORTH FACILITY

PHOTOVOLTAIC SYSTEM AT 25° TILT
USING 754 (+14 DEAD MODULES) @ 545W MODULES
& 624 @ 400W MODUELS:
TOTAL 660.53 kWDC (498 kWAC)

INDUSTRIPLEX WOBURN LLC PHASE II
0 CONGRESS ST, WOBURN, MA 01801



1 SITE PLAN - 0 CONGRESS ST, WOBURN, MA: 660.53 kWDC PV SYSTEM

SYSTEM DESCRIPTION	
MODULE TYPE	545 MONO HYG 156 TRANSPARENT SMW (BIFACIAL HALF CELL) (MAG: 400W - 72HL-V (MONOFACIAL HALF CELL))
QUANTITY	754 - BIFACIAL OR STRINGS OF 26 624 - MONOFACIAL OR STRINGS OF 26
SYSTEM SIZE (DC)	660.53 kW
MOUNTING SYSTEM	GROUND MOUNT
RACKING	TBD
TILT ANGLE	25°
ARRAY AZIMUTH	180°
DC COMBINER	SOLECTRIA CPY500 COMBINER (QTY 3)
MONITORING SYSTEM	ALSOMSIGHT
INVERTERS	SOLECTRIA XGI - 180kW (QTY 3)
SYSTEM SIZE (AC)	498 kW

SITE LEGEND	
	400W MONOFACIAL
	545W BIFACIAL
	FENCE LINE
	ACCESS ROAD

2 LOCUS MAP

3 SIMILAR PV ARRAY

eca solar
282 MOODY STREET, #202
WALTHAM, MA 02451
617-790-7159

PROJECT INFORMATION:
GROUND MOUNT AT
0 CONGRESS STREET
WOBURN, MA 01801

ISSUE DATE:
2/11/2022

REV.	DATE	DESCRIPTION	BY

CLIENT:

SCHEMATIC ONLY - NOT FOR CONSTRUCTION

DRAWN BY: SR | CHK. | APV. BM

STAMP:

SHEET TITLE:
SITE PLAN
SCALE: AS NOTED

SHEET NUMBER:
PV-01

Exhibit B

ELECTRICITY PRICE

For each Billing Cycle in which Electricity is delivered to the Delivery Point, the purchase price of each kilowatt-hour of Electricity shall be an amount equal to 90 percent (90%) of the dollar value of the Net Metering Credit accruing to the Target Buyer Accounts during that Billing Cycle.

Exhibit C

RECIPIENT ACCOUNT INFORMATION

Recipient Accounts:

[To be provided by BUYER]

Upon Seller's request, Buyer shall promptly provide Seller with the following information regarding each such account:

- LDC customer name
- Account billing address
- Account service address
- LDC account number
- Annual LDC electricity charges, inclusive of supply, delivery and customer/meter charges
- Annual kWh usage
- Percentage of Net Metering Credits to be allocated to such account

Exhibit D

ESTIMATED OUTPUT

The table below reflects 100% of the anticipated output of the Facility, in aggregate, over the Term of this Agreement, 100% of which shall be allocated to the City of Somerville. The values set forth in the table below are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the Facility.

Year 1 - 875,850
Year 2 - 871,471
Year 3 - 867,092
Year 4 - 862,712
Year 5 - 858,333
Year 6 - 853,954
Year 7 - 849,575
Year 8 - 845,195
Year 9 -840,816
Year 10 - 836,437
Year 11 - 832,058
Year 12 - 827,678
Year 13 - 823,299
Year 14 - 818,920
Year 15 - 814,541
Year 16 - 810,161
Year 17 - 805,782
Year 18 - 801,403
Year 19 - 797,024
Year 20 - 792,644
Year 21 - 788,265
Year 22 - 783,886
Year 23 - 779,507
Year 24 - 775,127
Year 25 - 770,748
Year 26 - 766,369
Year 27 - 761,990
Year 28 - 757,610

Exhibit E

CITY FORMS

Certificates of Signature Authority

Form:___ CITY OF SOMERVILLE Rev. 08/01/12
Contract Number:_____

Certificate of Authority
(Limited Liability Companies Only)

Instructions: Complete this form and sign and date where indicated below.

1. I, the undersigned, being a member or manager of
ECA NEMA BRIGHTFIELDS II LLC
(Complete Name of Limited Liability Company)

a limited liability company (LLC) hereby certify as to the contents of this form for the purpose of contracting with the City of Somerville.

2. The LLC is organized under the laws of the state of: Massachusetts.

3. The LLC is managed by **(check one)** a ☑ Manager or by its ☐ Members.

4. I hereby certify that each of the following individual(s) is:
   - a member/manager of the LLC;
   - duly authorized to execute and deliver this contract, agreement, and/or other legally binding documents relating to any contract and/or agreement on behalf of the LLC;
   - duly authorized to do and perform all acts and things necessary or appropriate to carry out the terms of this contract or agreement on behalf of the LLC; and
   - that no resolution, vote, or other document or action is necessary to establish such authority.

Name	Title
Todd Fryatt	Manager

5. **Signature:**_____
Printed Name: Todd Fryatt
Printed Title: Manager
Date: _____

Online at: www.somervillema.gov/purchasing

Certificates of Good Standing

The Commonwealth of Massachusetts
Secretary of the Commonwealth
State House, Boston, Massachusetts 02133

William Francis Galvin
Secretary of the
Commonwealth

March 14, 2022

TO WHOM IT MAY CONCERN:

I hereby certify that a certificate of organization of a Limited Liability Company was filed in this office by

ECA NEMA BRIGHTFIELDS II, LLC

in accordance with the provisions of Massachusetts General Laws Chapter 156C on **June 16, 2020.**

I further certify that said Limited Liability Company has filed all annual reports due and paid all fees with respect to such reports; that said Limited Liability Company has not filed a certificate of cancellation; that there are no proceedings presently pending under the Massachusetts General Laws Chapter 156C, § 70 for said Limited Liability Company's dissolution; and that said Limited Liability Company is in good standing with this office.

I also certify that the names of all managers listed in the most recent filing are: **TODD FRYATT**

I further certify, the names of all persons authorized to execute documents filed with this office and listed in the most recent filing are: **TODD FRYATT**

The names of all persons authorized to act with respect to real property listed in the most recent filing are: **NONE**

In testimony of which,
I have hereunto affixed the
Great Seal of the Commonwealth
on the date first above written.

William Francis Galvin

Secretary of the Commonwealth

Processed By:TAA

Certificate of Insurance

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 9/21/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
Marsh & McLennan Agency LLC 4900 Libbie Mill East Boulevard Suite 100 Richmond VA 23230	PHONE (A/C, No, Ext): 800-285-1778	FAX (A/C, No):
	E-MAIL ADDRESS: certificates@MarshMMA.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Utica Mutual Insurance Company	25976
INSURED ECA Solar, LLC 282 Moody Street #202 Waltham MA 02453	INSURER B : Evanston Insurance Company	35378
	INSURER C : Travelers Prop & Casualty Co of America	25674
	INSURER D : Travelers Indemnity Co of America	25666
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 1824062313 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
C	X COMMERCIAL GENERAL LIABILITY			DTCO6T993527PHX22	7/13/2022	7/13/2023	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 300,000
	X Deductible $5K						MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$ 2,000,000
	POLICY X PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER:							$
A	AUTOMOBILE LIABILITY			5484404	11/5/2021	11/5/2022	COMBINED SINGLE LIMIT (Ea accident)	$ 1,000,000
	ANY AUTO						BODILY INJURY (Per person)	$
	ALL OWNED AUTOS X SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	X HIRED AUTOS X NON-OWNED AUTOS						PROPERTY DAMAGE (Per accident)	$
								$
D	UMBRELLA LIAB OCCUR			CUP6T996437	7/13/2022	7/13/2023	EACH OCCURRENCE	$ 5,000,000
	X EXCESS LIAB CLAIMS-MADE						AGGREGATE	$ 5,000,000
	DED RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N						PER STATUTE OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) N/A						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
B	Contractor's Pollution E&O/Professional Liability			MMAENV003249	7/13/2022	7/13/2024	Limit/Aggregate Limit/Aggregate	$1,000,000 $1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

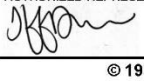
Additional Named Insureds applicable to all policies:
ECA SOLAR LLC
ECA MASTER LLC
ECA CONSTRUCTION LLC
ECA LAKE LLC
ECA SOLAR SYSTEMS W.B. LLC
Norfolk Solar LLC
See Attached...

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



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ACORD 25 (2014/01) **The ACORD name and logo are registered marks of ACORD**

AGENCY CUSTOMER ID: _____

LOC #: _____

ADDITIONAL REMARKS SCHEDULE

AGENCY	NAMED INSURED
Marsh & McLennan Agency LLC	ECA Solar, LLC 282 Moody Street #202 Waltham MA 02453
POLICY NUMBER	
CARRIER / NAIC CODE	EFFECTIVE DATE:

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,

FORM NUMBER: 25 **FORM TITLE:** CERTIFICATE OF LIABILITY INSURANCE

ECA SEMA NOR LLC
SEMA 42 PARTNERS LLC
ECA NEMA 100 CLI LLC
NEMA 100 PARTNERS LLC
ECA NEMA Brightfields I, LLC
ECA NEMA Brightfields II, LLC
Electric City Solar Initiative LLC
Estromina Fryeburg ME Land LLC
Estromina Greeley CO Land LLC
Androscoggin Ridge LLC

City of Somerville is listed as Additional Insured with respects to the General Liability policy where required by contract

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Exhibit F

CITY OF SOMERVILLE STANDARD CONTRACT GENERAL CONDITIONS

1. Definitions
"City" shall mean the City of Somerville, Massachusetts.

"Contract" and "Contract Documents" shall include the following documents, as applicable: City's Standard Contract Form; these Standard Contract General Conditions; Supplemental Conditions (if applicable); City's Invitation for Bids, Request for Proposals, Request for Quotation, or other solicitation; the Vendor's response to the City's solicitation document including certifications but excluding any language stricken by City as unacceptable. Appendices are made an integral part of this Contract. The Contract documents are to be read collectively and complementary to one another; any requirement under one shall be as binding as if required by all. In the event of any conflict or inconsistency between the City's Standard Contract General Conditions and the Supplemental Conditions, the Supplemental Conditions shall prevail. In the event of any conflict or inconsistency between the provisions of the City's Standard Contract Form or these Standard Contract General Conditions and any other Contract Documents or appendices, the provisions of the City's Standard Contract Form and/or these Standard Contract General Conditions shall prevail. In the event of any conflict or inconsistency between the Contract Documents and any applicable state law, the applicable state law shall prevail.

"Certify" or "Certifies" shall mean that the Vendor certifies under pains and penalties of perjury to the statement referenced.

"Vendor" shall mean the individual, corporation, partnership, or other entity which is a party to this Contract.

2. Performance; Time
The Vendor shall perform in accordance with all provisions of this Contract in a manner satisfactory to the City. The Vendor's performance shall be timely and meet or exceed industry standards for the performance required. It is understood and agreed that all specified times or periods of performance are of the essence of this Contract.

3. Acceptance of Goods or Services
Performance under this Contract shall include services rendered, obligations due, costs incurred, goods and deliverables provided and accepted by the City. The City shall have a reasonable opportunity to inspect all goods and deliverables, services performed by, and work product of the Vendor, and accept or reject same.

4. Compensation
The City shall pay in full and complete compensation for goods received and accepted and services performed and accepted under this Contract in an amount not to exceed the amount stated on the face of this Contract paid in accordance with the rate indicated or in accordance with a prescribed payment schedule.

The Vendor shall periodically submit invoices to the City, for which compensation is due under this Contract and requesting payment for goods received or services rendered by the Vendor during the period covered by the invoice. The invoice must agree to the rates/payment schedule as indicated in this contract. The invoice shall include the following information: vendor name, vendor remit address, invoice date, invoice number, itemized listing of goods, services, labor, and expenses and indicating the total amount due. The City shall review the invoice and determine the value of goods or services accepted by the City in accordance with the Contract Documents. Payments due to the Vendor will be made within sixty (60) days from receipt and approval of an invoice. Final invoices from the Vendor are due no later than ninety (90) days from the Completion Date. Any invoice received past the ninety (90) day date will not be paid. If this Contract is extended, invoices related to the extension period are due no later than ninety (90) days from the Extended Completion Date.

The Vendor shall furnish such information relating to the goods or services or to documentation of labor or expenses as may be requested by the City. Acceptance by the Vendor of any payment or partial payment, without any written objection by the Vendor, shall in each instance operate as a release and discharge of the City from all claims, liabilities, or other obligations relating to the performance of this Contract.

In case of an error in extension prices quoted herein, the unit price will govern (Applicable To Goods Only).

5. Release of City on Final Payment
Acceptance by the Vendor of payment from the City for final delivery of goods or rendering of services under this Contract shall be deemed to release forever the City from all claims and liabilities, except those which the Vendor notifies the City in writing within three (3) months after such payment.

6. Risk of Loss
The Vendor shall bear the risk of loss, for any cause, for any Vendor materials used for this Contract and for all goods, deliverables, and work in process, until possession, ownership, and full legal title to the goods and deliverables are transferred to and accepted by the City.

The Vendor shall pay and be exclusively responsible for all debts for labor and material contracted for by the Vendor for the rental of any appliance or equipment hired by Vendor and/or for any expense incurred on account of services to be performed or goods delivered under this Contract.

The City shall not be liable for any personal injury or death of the Vendor, its officers, employees, or agents.

7. Indemnification
The Vendor shall indemnify, defend (with counsel acceptable to City, which acceptance shall not be unreasonably withheld), and hold harmless the City of Somerville, its officers, employees, agents and representatives from and against any and all claims, suits, liabilities, losses, damages, costs or expenses (including judgments, costs, interest, attorney's fees and expert's fees) arising from or in connection with any act or omission relating in any way to the performance of this Contract by the Vendor, its agents, officers, employees, or subcontractors.

The extent of this indemnification shall not be limited by any obligation or any term or condition of any insurance policy. The obligations set forth in this paragraph shall survive the expiration or termination of this Agreement.

8. Default; Termination; Remedies

A. Events of Default

The following shall constitute events of default under this Contract: (1) The Vendor has made any material misrepresentation to the City; or (2) a judgment or decree is entered against the Vendor approving a petition for an arrangement, liquidation, dissolution or similar relief relating to bankruptcy or insolvency; or (3) the Vendor files a voluntary petition in bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief for debtors; or (4) the Vendor seeks or consents or acquiesces in the appointment of any trustee or receiver, or is the subject of any other proceeding under which a court assumes custody or control over the Vendor or of any of the Vendor's property; or (5) the Vendor becomes the defendant in a levy of an attachment or execution, or a debtor in an assignment for the benefit of creditors; or (6) the Vendor is involved in a winding up or dissolution of its corporate structure; or (7) any failure by the Vendor to perform any of its obligations under this Contract, including, but not limited to, the following: (i) failure to commence performance of this Contract at the time specified in this Contract due to a reason or circumstance within the Vendor's reasonable control, (ii) failure to perform this Contract with sufficient personnel and equipment or with sufficient material to ensure the completion of this Contract within the specified time due to a reason or circumstance within the Vendor's reasonable control, (iii) failure to perform this Contract in a manner reasonably satisfactory to the City, (iv) failure to promptly re-perform within reasonable time the Services or Supplies that were properly rejected by the City as erroneous or unsatisfactory, (v) discontinuance of the Services or Supplies for reasons not beyond the Vendor's reasonable control, (vi) failure to comply with a material term of this Contract, including, but not limited to, the provision of insurance and nondiscrimination; or (8) any other acts specifically and expressly stated in this Contract as constituting a basis for termination of this Contract.

B. Termination Upon Default.

In the event of a default by the Vendor, the City, acting through its Chief Procurement Officer, may, at its option, terminate this Contract immediately by written notice of termination specifying the termination date.

Notwithstanding the above, in the event of a default by the Vendor, the City, acting through its Chief Procurement Officer, may give notice in writing of a default, which notice shall set forth the nature of the default and shall set a date, by which the Vendor shall cure the default, subject to approval of the City.

If the Vendor fails to cure the default, the City, in the alternative, may make any reasonable purchase or contract to acquire goods or services in substitution for those due from Vendor. The City may deduct the cost of any substitute contract or nonperformance together with incidental and consequential damages from the Contract price and shall withhold such damages from sums due or to become due to the Vendor. If the damages sustained by the City exceeds sums due or to become due, the Vendor shall pay the difference to the City upon demand.

Upon immediate notification to the other party, neither the City nor the Vendor shall be deemed to be in default for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control. The City retains all rights and remedies at law or in equity.

If the Vendor fails to cure the default within the time as may be required by the notice, the City, acting through its Chief Procurement Officer, may, at its option terminate the Contract.

The parties agree that if City erroneously or unjustifiably terminates this Contract for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

C. Termination For Convenience.

Notwithstanding any language to the contrary within this Contract, the City, acting through its Chief Procurement Officer, may terminate this Contract, without cause at any time, effective upon the termination date stated in the notice of termination. In the event of termination for convenience, the Vendor shall be entitled to be paid for goods delivered and accepted and services rendered and accepted prior to notice of termination at the prices stated in the Contract, subject to offset of sums due the Vendor against sums owed by the Vendor to the City. Any goods or services delivered after notification of termination but prior to the effective termination date must be approved in writing in advance by the City in order to be eligible for payment. In no event shall the Vendor be entitled to be paid for any goods or services delivered after the effective date of termination. The Vendor shall be entitled to no other compensation of any type. In no case shall a Vendor be entitled to lost profits.

D. Obligations Upon Termination.

Upon termination of this Contract with or without cause, the Vendor shall immediately, unless otherwise directed by the City: 1. cease performance upon the stated termination date; 2. surrender to the City the Vendor's work product, which is deliverable under the Contract, whatever its state of completion; and 3. return all tools, equipment, finished or unfinished documents, data, studies, reports, correspondence, drawings, plans, models, or any other items whatsoever prepared by the Vendor pursuant to this Contract, which shall become property of the City, or belonging to or supplied by the City.

E. Rights and Remedies.

The City shall have the right to: a) disallow all or any part of the Vendor's invoices not in material compliance with this Contract; b) temporarily withhold payment pending correction by the Vendor of any deficiency; c) sue for specific performance or money damages or both, including reasonable attorneys' fees and costs incurred in enforcing any Vendor obligations hereunder; d) pursue remedies under any bond provided; and e) pursue such other local, state and federal actions and remedies as may be available to the City.

Any termination shall not effect or terminate any of the rights or remedies of the City as against the Vendor then existing, or which may accrue because of any default. No remedy referred to in this subsection is intended to be exclusive, but shall be cumulative, and in addition to any other remedy referred to above or otherwise available to the City or Vendor at law or in equity. The Vendor shall not gain nor assert any right, title or interest in any product produced by the Vendor under this Contract.

9. Insurance
The Vendor shall comply with all insurance requirements set out in the Contract Documents. The Vendor shall deliver to the City new certificates of insurance at least ten (10) days prior to expiration of the prior insurance and shall furnish the City with the name, business address and telephone number of the insurance agent. Vendor certifies compliance with applicable state and federal employment laws or regulations including but not limited to G.L. c. 152 (Workers' Compensation), as applicable, and Vendor shall provide City with acceptable evidence of compliance with the insurance requirements of this chapter.

10. Governing Law; Forum
This Contract shall be governed by the laws of the Commonwealth of Massachusetts. Any action arising out of this Contract shall be brought and maintained in a state or federal court in Massachusetts which shall have exclusive jurisdiction thereof.

11. Complete Agreement
This Contract supersedes all prior agreements and understandings between the parties and may not be changed unless mutually agreed upon in writing by both parties.

12. Amendment
No amendment to this Contract shall be effective unless it is signed by the authorized representatives of all parties and complies with all requirements of the law. All alterations or additions, material or otherwise, to the terms and conditions of this Contract must be in writing and signed by the City, as set forth in the below section, and the Vendor.

13. Conditions of Enforceability Against the City
This Contract is only binding upon, and enforceable against, the City if: (1) the Contract is signed by the Mayor; (2) endorsed with approval by the City Auditor as to appropriation or availability of funds; (3) endorsed with approval by the City Solicitor as to form; and (4) funding is appropriated for this Contract or otherwise made available to the City.

This Contract and payments hereunder are subject to the availability of an appropriation therefor. Any oral or written representations, commitments, or assurances made by any City representatives are not binding. Vendors should verify funding and contract execution prior to beginning performance.

When the amount of the City Auditor's certification of available funds is less than the face amount of the Contract, the City shall not be liable for any claims or requests for payment by Vendor which would cause total claims or payments under this Contract to exceed the amount so certified.

The City's Standard Contract Form and Standard Contract General Conditions shall supersede any conflicting verbal or written agreements or forms relating to the performance of this Contract, including contract forms, purchase orders, or invoices of the Vendor.

The City shall have no legal obligation to compensate a Vendor for performance that is outside the scope of this Contract. The City shall make no payment prior to the execution of a Contract.

14. **Taxes**
Purchases incurred by the City are exempt from Federal Excise Taxes and Massachusetts Sales Tax, and prices must exclude any such taxes. Tax Exemption Certificates will be furnished upon request. The City of Somerville's Massachusetts Tax Exempt Number is: **MO46 001 414**.

15. Independent Contractor
The Vendor is an independent contractor and is not an employee, agent or representative of the City. The City shall not be obligated under any contract, subcontract, or commitment made by the Vendor.

16. Assignment; Sub-Contract
The Vendor shall not assign, delegate, subcontract, or transfer this Contract or any interest herein, without the prior written consent of the City.

17. Discrimination
The Vendor agrees to comply with all applicable laws prohibiting discrimination in employment. The Vendor agrees that it shall be a material breach of this Contract for the Vendor to engage in any practice which shall violate any provision of G.L. c. 151B, relative to discrimination in hiring, discharge, compensation or terms, conditions or privileges of employment because of race, color, religious creed, national origin, sex, sexual orientation, age, or ancestry.

18. Waiver
All duties and obligations contained in this Contract can only be waived by written agreement. Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to said party.

19. Severability
In the event that any provision of this Contract shall be held to be illegal, unenforceable or void, such provision shall be severed from this Contract and the entire Contract shall not fail on account thereof, but otherwise remain in full force and effect and shall be enforced to the fullest extent permitted by law.

20. Notice
The parties shall give notice in writing by one of the following methods: (i) hand-delivery; (ii) facsimile; (iii) certified mail, return receipt requested; or (iv) or overnight delivery service, to the Vendor at the contact information specified on the face of this Contract; to the City addressed to: Purchasing Director, Somerville City Hall, 93 Highland Avenue, Somerville, MA 02143, Fax # 617-625-1344 with a copy to: City Solicitor, City Hall, 93 Highland Avenue, Somerville, MA 02143. Notice shall be effective on the earlier of (i) the day of actual receipt, or (ii) one day after tender of delivery.

21. Captions
The captions of the sections in this Contract are for convenience and reference only and in no way define, limit or affect the scope or substance of any section of this Contract.

22. Non-Collusion
This Contract was made without collusion or fraud with any other person and was in all respects bona fide and fair. As used in this paragraph, the word, "person," shall mean any natural person, joint venture, partnership, corporation, or other business or legal entity. The Vendor certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word “person” shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

23. Tax and Contributions Compliance
The Vendor certifies, under pains and penalties of perjury, in accordance with MGL c. 62C, s. 49A, that the Vendor is in full compliance with all laws of the Commonwealth of Massachusetts relating to taxes, is in good standing with respect to all returns due and taxes payable to the Commonwealth, reporting of employees and contractors, and withholding and remitting of child support and to contributions and payments in lieu of taxes. In the event that the City is notified by the IRS that the TIN provided by the vendor and the vendor name as recognized by the IRS do not match their records, the vendor is responsible for all penalties.

24. Municipal Taxes, Charges and Liens
The Vendor certifies that it has paid all accounts receivable owed to the City of Somerville, including but not limited to real estate, personal property or excise tax, parking fines, water/sewer charges, license/permit fees, fines and/or any other municipal lien charges due to the City of Somerville. Pursuant to MGL c. 60, s. 93, the Vendor agrees that the Collector/Treasurer of the City may withhold from amounts owing and payable to the Vendor under this Contract any sums owed to any department or agency of the City which remain wholly or partially unpaid. This shall include but not be limited to unpaid taxes and assessments, police details, and any other fees and charges until such sums owed have been fully paid, and the Collector/Treasurer may apply any amount owing and payable to the Vendor to satisfy any monies owed to the City.

25. Compliance with Applicable Laws
The Vendor shall comply with all applicable federal and state laws, and city ordinances and regulations, which in any manner affect performance of this Contract. The Vendor shall defend, indemnify, and hold harmless the City, its officers, agents and employees against any claim or liability arising from or based on the violations of such ordinances, regulations or laws, caused by the negligent actions of the Vendor, its agents, employees or subcontractors.

26. Conflict of Interest
The Vendor certifies that no official or employee of the City has a financial interest in this Contract or in the expected profits to arise therefrom, unless there has been compliance with the provisions of G. L. c. 43, § 27 (Interest in Public Contracts by Public Employees), and G. L. c. 268A (Conflict of Interest). The Vendor certifies that it has reviewed the Massachusetts Conflict of Interest Law, MGL c. 268A and at any time during the term of this Contract, the Vendor is required to affirmatively disclose in writing to the City the details of any potential conflicts of interest of which the Vendor has knowledge or learns of during the Contract term.

27. Licenses and Permits
The Vendor certifies that it is qualified to perform the Contract and shall obtain and possess at its sole expense, all necessary licenses, permits, or other authorizations required by the City, the Commonwealth of Massachusetts or any other governmental agency, for any activity under this Contract. The Vendor shall submit copies of such licenses and/or permits to the City upon request If a business, the Vendor certifies that it is a duly organized and validly existing entity, licensed to do business in Massachusetts, in good standing in the Commonwealth of Massachusetts, with full power and authority to consummate the Contract, and listed under the Commonwealth of Massachusetts Secretary of State’s website as required by law.

28. Recordkeeping, Audit, and Inspection of Records All records, work papers, reports, questionnaires, work product, regardless of its medium, prepared or collected by the Vendor in the course of completing the work to be performed under this Contract shall at all times be the exclusive property of the City. In the event of termination or upon expiration of the Contract, the Contractor shall promptly deliver to the City all documents, work papers, calculations, data, drawings, plans, and other tangible work product or materials pertaining to the services performed under this Contract, in both a physical format and electronic format. The electronic format shall be either Comma Separated Values (CSV) files along with the mapping information for each field, or Microsoft SQL (2005/2008) database with all associated Database Schemas, or such other electronic format(s) acceptable to the city. At no additional cost to the City, the Contractor shall store and preserve such records while in their possession in accordance with the requirements of the Massachusetts Public Records Law, the Commonwealth of Massachusetts record retention schedule and City of Somerville record retention schedule. The City shall have the right to at reasonable times and upon reasonable notice to examine and copy, at its reasonable expense, the books, records, and other compilations of data of the Vendor which relates to the provision of services under this Contract. Such access shall include on-site audits, review, and copying of said records.

29. Debarment or Suspension
The Vendor certifies that it has not been and currently is not debarred or suspended by any federal, state, or municipal governmental agency under G. L. c. 29, § 29F or other applicable law, nor will it contract with a debarred or suspended subcontractor on any public contract.

30. Warranties (Applicable to Goods Only)
The Vendor warrants that (1) the goods sold are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects and (4) that they are in conformity with any sample which may have been presented to the City. The Vendor guarantees that upon inspection, any defective or inferior goods shall be replaced without additional cost to the City. The Vendor will assume any additional cost accrued by the City due to the defective or inferior goods. The Vendor guarantees all goods for a period of no less than one (1) year, unless a greater period of time is specified in the Contract Documents.

SUPPLEMENTAL CONDITIONS
(FOR CONTRACT NO. _____)

The parties agree that the Standard Contract General Conditions are hereby revised as follows:

1. **SECTION 1 "DEFINITIONS"**

   In the Definition of "Contract" and "Contract Documents":

   (a) delete the term "City's Standard Contract Form" and replace with "that certain Net Metering Power Purchase Agreement, by and between the City and ECA NEMA BRIGHTFIELDS II, LLC, dated September __, 2022, as may be amended from time to time (the "NMPA")" and the defined term is used accordingly; and
   (b) At the end of the definition, add the following sentence: "Any reference to these Standard Contract General Conditions shall mean the Standard Terms and Conditions approved August 27, 2015."

2. **SECTION 4 "COMPENSATION"**

   In the third full paragraph, last sentence, insert the word "known" prior to "claims, liabilities, or other obligations relating to the performance of this Contract."

3. **SUB-SECTION 8(B) "TERMINATION UPON DEFAULT"**

   At the end of the second full paragraph, add the following sentence:

   "Notwithstanding the foregoing, such notice shall allow Vendor sixty (60) days after notice and demand by the City to cure the same or such longer period (not to exceed one hundred twenty (120) days) as may be reasonably required to cure, provided that the Vendor diligently continues to perform under this Contract and to work to cure the failure until such failure is fully cured."

   Delete the last full paragraph of Sub-Section 8(b) in its entirety.

4. **SUB-SECTION 8(C) "TERMINATION FOR CONVENIENCE"**

   Sub-Section 8(c) shall be deleted in its entirety.

5. SECTION 13 "CONDITIONS OF ENFORCEABILITY AGAINST THE CITY"

At the end of the second full paragraph, add the following sentence:

"The City Auditor shall exercise his/her best efforts to certify the amount required under the NMPA to pay the City's expenses for the requisite period and the City shall exercise its best efforts to make an appropriation therefore."

6. SECTION 16 "ASSIGNMENT; SUB-CONTRACT"

At the end of the first sentence, add the following language: "except as allowed under the NMPA."

7. SECTION 9 "INSURANCE"

Add the following sentence as the last sentence of this Section: "On all insurance policies maintained by Seller hereunder, except for workers' compensation, Buyer shall be listed as an additional insured."

*** END OF SUPPLEMENTAL CONDITIONS ***