

POWER PURCHASE AND LICENSE AGREEMENT

BETWEEN

SHR ENERGY MANAGEMENT, LLC  
As Seller

AND

TOWN OF LITCHFIELD AND TOWN OF LITCHFIELD WATER POLLUTION  
CONTROL AUTHORITY  
As Buyer

DATED AS OF \_\_\_\_\_, 2023

## POWER PURCHASE AND LICENSE AGREEMENT

THIS POWER PURCHASE AND LICENSE AGREEMENT (this "**PPA**" or "**Agreement**") is made and entered into as of \_\_\_\_\_, 2023 (the "**Effective Date**"), by and between SHR ENERGY MANAGEMENT, LLC, a Connecticut Limited Liability company with its principal place of business at 24 Hill Farm Rd, Weston, CT 06883, ("**Seller**"), and the TOWN OF LITCHFIELD, CONNECTICUT and TOWN OF LITCHFIELD WATER POLLUTION CONTROL AUTHORITY, a Connecticut municipal corporation with its Town offices at 74 West Street, Litchfield, Connecticut ("**Buyer**"). Seller and Buyer are sometimes hereinafter referred to individually as a Party and collectively as the Parties.

### RECITALS

- A. Buyer Town of Litchfield is the fee simple owner, and the Town of Litchfield Water Pollution Control Authority is the caretaker and custodian, of all that certain real property together with all improvements, buildings, and other structures thereon known as the Town of Litchfield Water Pollution Control Authority Water Treatment Plant, at 29 Stoddard Road, Bantam, Connecticut 06750, as more particularly described on Exhibit A (the "**Property**").
- B. Seller agrees to finance, own and operate a solar energy facility, defined below (the "**SEF**" or "**Solar Facilities**"), as more particularly described on Exhibit A, (the "**Site**") located on the Property (the "**Premises**").
- C. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Energy generated by the SEF during the Term (as defined below) and otherwise in accordance with the terms of this PPA.
- D. Seller desires to obtain, and Buyer desires to provide an exclusive license for Seller's access to and use of the Premises for the construction, installation, maintenance and operation of and sale of electricity from the SEF.

### AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this PPA and the Schedules and Exhibits hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

#### ARTICLE 1. DEFINED TERMS; RULES OF INTERPRETATION

**11** **Defined Terms.** Capitalized terms used in this PPA shall have the meanings ascribed to them in the Schedule of Definitions and Rules of Interpretation attached hereto as Exhibit C and made a part of this PPA by this reference, or elsewhere in this PPA.

**12** **Rules of Interpretation.** The rules of interpretation in the Schedule of Definitions and Rules of Interpretation shall apply to this PPA unless expressly provided otherwise.

#### ARTICLE 2. TERM

**2.1 Term.** The initial term of this PPA (the “**Term**”) shall commence on the Effective Date and shall be in effect until the twenty-fifth (25<sup>th</sup>) anniversary of the Commercial Operation Date, provided that, upon the subsequent mutual agreement in writing of the Parties, the Term may be extended for two (2) successive, additional terms of five (5) years each.

**2.2 Conditions Precedent.** The respective rights and obligations of the Parties under this PPA (subject to Section 2.4) are conditioned upon the satisfaction in full (or waiver by the Parties) within three hundred and sixty-five (365) days after the Effective Date of (i) the receipt by Seller of final approval from Buyer’s Serving Utility to operate and interconnect the SEF, and (ii) the following:

(a) Within thirty (30) days after the Effective Date, Seller shall have received financing sufficient to enable it to purchase, construct, operate and maintain the SEF as required by this PPA on terms acceptable to the Seller in its sole discretion;

(b) Within thirty (30) days after the Effective Date, completion of a physical inspection of the Premises, including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Premises for the SEF, subject to the provisions of Section 1.3 of the Site Lease.

(c) Within thirty days (30) days after a favorable response from the Buyer’s Service Utility, meaning that Seller expects the capital improvements required to be made as a condition to receiving an interconnection agreement from Buyer’s Serving Utility are less than \$0.10/watt (“Utility Improvements”), Seller shall submit all required documentation for building and electrical permits to the local permitting authority.

(d) Within one-hundred and twenty days (120) after the Effective Date, Seller shall have received an Interconnection Agreement with Buyer’s Serving Utility that qualifies under applicable net energy metering program and Virtual Meter Aggregation program, under which any over- production of energy is carried as a credit on Buyer’s utility bill against later shortfalls in production of the SEF compared to Buyer’s electricity consumption.

Seller may waive the foregoing conditions precedent (ii)(a) and (ii)(b), but none other, except that if Buyer’s Serving Utility determine that the SEF requires an impact study, then the dates defined in (ii)(c) and (ii)(d) shall be extended day for the duration of the impact study.

**2.3 Notice of Commercial Operation.** Unless otherwise agreed by the Parties, and subject to the remaining provisions of this PPA, Seller shall notify Buyer when the SEF has achieved Commercial Operation (the “**Notice of Commercial Operation**”).

(a) **Construction Commencement Notice.** Seller shall provide Buyer with no less than five (5) days advance written notice of the commencement of construction of the SEF, which notice shall be given no later than thirty (30) days after receipt of all Government Approvals, provided, that in the event that the Seller is diligently pursuing completion of the SEF but, due to Force Majeure or delays by the local utility in approving interconnection or other required approvals, the notice deadline shall be extend for up to an additional ninety (90) days.

(b) **Construction Completion Deadline.** If Commercial Operation of the SEF does not occur on or before the date that is six (6) months after the date construction commenced

as referenced in the notice provided pursuant to Section 2.3(a) herein, either Party hereto shall have the right to terminate this PPA by providing written notice to the other at any time prior to the date upon which Commercial Operation is achieved; however, if Seller believes that Commercial Operation is imminent and decides to provide monetary compensation to Buyer in lieu of savings that Seller would have received if the SEF had achieved Commercial Operation, then Buyer cannot terminate this PPA under this provision. Seller shall not use any solar panels known to have been constructed in, or from materials produced by, any provider on the U.S Department of Labor Bureau of International Labor Affairs List of Goods Produced by Child Labor or Forced Labor. Tenant shall use panels from companies who have agreed not to use forced labor by signing the Solar Industry Force Labor Prevention Pledge.

**2.4 Survival.** The terms and conditions of this PPA shall survive the termination or expiration of this PPA only (i) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations and with respect to indemnification; and/or (ii) as otherwise specified herein. The insurance provisions of this PPA shall survive the termination or expiration of this PPA for the duration of all applicable statutes of limitations on any causes of action related hereto.

**2.5 System Removal.** Upon the expiration of the initial Term (or any extension of the Term pursuant to Section 2.1), Seller (or Seller's successor in interest) shall remove the SEF from the Premises at its sole expense unless the Parties have agreed in writing that Buyer shall purchase the SEF from Seller (or Seller's successor in interest) on terms upon which the Parties have agreed. In addition, upon termination of this Agreement by either party pursuant to Sections 7.4, 8.2 or 8.3, Seller (or Seller's successor in interest) shall remove the SEF from the Premises at its sole expense. Prior to the closeout of any such removal, the Buyer shall have the opportunity to inspect the premises and to request any reasonable repairs or other changes to the premises to ensure return of such Premises to correct condition. Closeout of the Seller's obligations for removal shall not occur until the Buyer signs off that the site's condition equals that of the original condition, excepting for normal wear and tear.

### ARTICLE 3.

#### PURCHASE AND SALE; DELIVERY, GOVERNMENTAL CHARGES

**31 Purchase and Sale of Energy Output.** During the Term, Seller shall deliver to Buyer, and Buyer shall take delivery of and consume, at the Delivery Point, all of the Energy in accordance with the terms of this PPA.

**32 Price for Energy Output.** Buyer shall pay Seller for all of the Energy delivered to the Delivery Point, as metered at the Metering Device, and for any Imputed Energy, at the applicable Energy Payment Rate. The payment to be made by Buyer to Seller shall equal the Energy and Imputed Energy for the relevant period multiplied by the Energy Payment Rate for such period.

**33 Energy Payment Rate (PPA Rate).** During the period commencing on the Effective Date and ending on the last day of the Term before the first anniversary of the Commercial Operations Date Buyer shall pay for Energy delivered to the Delivery Point at a rate (the "**Energy Payment Rate**") equal to **\$0.1032 (10.32 cents) per kilowatt hour**. The Energy Payment rate shall **increase 1.00% per annum**. Seller shall not make or add any demand, delivery or other incidental charges to the Energy Payment Rate.

**34     Title and Risk of Loss of Energy Output.** Title to and risk of loss of the Energy will pass from Seller to Buyer at the Delivery Point. As between the Parties, Seller shall be deemed to be in exclusive control of all Energy prior to the Delivery Point, and Buyer shall be deemed to be in exclusive control of all Energy at and from the Delivery Point. Except as otherwise provided herein, Seller warrants that it will deliver the Energy to Buyer at the Delivery Point, free and clear of all liens, security interests, claims, and other encumbrances created by Seller.

**35     Governmental Charges.**

(a) Except as set forth in Section 3.5(b), Seller is responsible for paying all local, state and federal income taxes attributable to Seller for income received under this PPA.

(b) Buyer is a Connecticut municipal corporation and its Water Pollution Control Authority, and is tax exempt under the Connecticut General Statutes.

(c) The Parties shall use reasonable efforts to administer this PPA and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

**36     Insolation.** Buyer understands that unobstructed access to sunlight ("*Insolation*") is essential to Seller's performance of its obligations and a material term of this PPA. Buyer shall not knowingly in any way cause and, where possible, shall not in any way permit any interference with the SEF's Insolation. If Buyer becomes aware of any activity or condition that could diminish the Insolation of the SEF, Buyer shall notify Seller immediately and shall cooperate with Seller in preserving the SEF's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, and damages and lost revenue will be assessed pursuant to the terms of Section 7.5, which is the sole measure of damages. Notwithstanding the foregoing, lawful approvals for the Premises and any surrounding properties by any planning commission, zoning commission, combined planning and zoning commission, or any inland wetlands agency/commission may lead to obstructed access to sunlight. No damage to Seller shall be attributed to any such lawful approval(s).

**37     Maintenance of Premises; Alterations to the Premises.**

(a) Buyer shall, at its sole cost and expense, maintain the Premises in good condition and repair. Buyer will use legally and commercially reasonable efforts to ensure that the Premises remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Premises from the local utility. Buyer is fully responsible for the maintenance and repair of the Premises' electrical system and of all of Buyer's equipment that utilizes the SEF's outputs. Buyer shall properly maintain in full working order all of Buyer's electric supply or generation equipment that Buyer may shut down while utilizing the SEF. Buyer shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the SEF or that could reasonably be expected to adversely affect the SEF. Buyer shall not make any alterations or repairs to the Premises which may adversely affect the operation and maintenance of the SEF without Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. If Buyer wishes to make such alterations or repairs, Buyer shall give prior written notice to Seller, setting forth the work to be undertaken (except for

emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Buyer in making such alterations or repairs in a manner that avoids damage to the SEF, but, notwithstanding any such advice, Buyer shall be responsible for all damage to the SEF caused by Buyer or its contractors. To the extent that temporary disconnection or removal of the SEF is necessary to perform such alterations or repairs, such work and any replacement of the SEF after completion of Buyer's alterations and repairs shall be done by Seller or its contractors at Buyer's cost. All of Buyer's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits. Notwithstanding the foregoing, Seller and Buyer acknowledge that as a regulated water treatment facility, the Connecticut General Statutes, Regulations of Connecticut State Agencies, Department of Energy and Environmental Protection (DEEP), and Environmental Protection Agency (EPA) may require modifications or improvements to the Premises. The parties to this PPA agree that the downtime days accrued to the Buyer under this Agreement may, without prejudice to and at the sole discretion of the Buyer, be used for such improvements or modifications. There shall be no cap on the number of downtime days that may accrue to the Buyer over time. The Buyer Accrual Days shall be initially set at three (3) days as of the Commercial Operation Date and shall be adjusted upwards for three (3) days per calendar year.

(b) The SEF is designed to be attached to the switchgear of the building. Buyer consents to this design and installation with the condition that Buyer shall approve in writing the location of the SEF on the land and that the design and installation shall not violate any lease warranty terms and conditions.

#### **ARTICLE 4. ENVIRONMENTAL ATTRIBUTES AND TAX BENEFITS**

**41     Title to SEF, Environmental Attributes, Capacity Attributes and Tax Benefits.**

All Environmental Attributes relating to the SEF or the Energy will be and shall remain commercial personal property of Seller including, without limitation, Solar Renewable Energy Certificates or any comparable instruments. All Capacity Attributes and Tax Benefits will be and shall remain property of Seller. Buyer shall assign to Seller all rights to and income from rebates, credits, or reimbursements attributable to the SEF. Buyer shall not report to a Person that any Environmental Attributes, Capacity Attributes, Tax Benefits, rebates, credits, or reimbursements as assigned to Seller herein belong to any Person other than Seller. Seller shall be the sole owner and title holder of the SEFs at all times during the Term of this Agreement, which SEFs shall (i) at all times retain the legal status of commercial personal property of Seller as defined under Article 9 of the Uniform Commercial Code and (ii) not attach to or be deemed a part of, or fixture to, the Premises. Buyer shall take no position on any tax return or other filings suggesting that it is anything other than a purchaser of electricity from the SEFs. In this regard, the Parties intend this PPA to be treated as a "service contract" within the meaning of section 7701(e)(3) of the Internal Revenue Code.

**42     Further Assurances.** Promptly upon Seller's request and provided Seller is not in default hereunder, Buyer shall execute all lawful documents and instruments for a Connecticut municipality (including, but not limited to, assignments, consents and acknowledgements) reasonably necessary or desirable to (i) effect, evidence or transfer to Seller all right, title and interest in and to the Environmental Attributes and Tax Benefits, or (ii) effect, participate, or enroll the SEF, Environmental Attributes, Capacity Attributes, or the utility account for the Meter, for the

benefit of Seller, in any program administered by Buyer's Serving Utility, Governmental Entity, independent system operator utility, transmission and distribution provider or other similar entity. If the standards used to qualify the Environmental Attributes or Capacity Attributes to which Seller is entitled under this PPA are changed or modified, Buyer shall promptly upon Seller's request and at Seller's expense use all legally and commercially reasonable efforts to cause the Environmental Attributes or Capacity Attributes to comply with new standards as changed or modified.

**43     Promotion and Branding.** Nothing in this PPA is intended to preclude Buyer or Seller from distributing advertising or other promotional material highlighting the purchase and use of renewable energy from the SEF for commercial or branding purposes, provided that neither Party shall be permitted to release to the public any such material regarding the SEF or the use of renewable energy there from without the prior review and approval of the other Party, which approval shall not be unreasonably withheld, conditioned or delayed. Subject to the foregoing, Buyer and Seller are mutually permitted to use the SEF for promotional purposes, which shall be limited to distribution of written materials, inclusion on Seller's websites, and may not include site visits or signs. Notwithstanding the foregoing, neither Party will use the other Party's (or any Financing Party's) corporate name, logo or other identification in any marketing, promotion, branding or other written, spoken or electronic communications without the express written permission of the other Party.

## **ARTICLE 5.**

### **LICENSE, CONSTRUCTION, MAINTENANCE AND MONITORING**

#### **5.1     License, Construction, Maintenance, and Monitoring of SEF by Seller.**

(a) Seller shall, at its sole cost and expense, construct the SEF and achieve Commercial Operation in a good and workmanlike manner and in accordance with all Laws and Prudent Utility Practices in all material respects, (ii) maintain the SEF in good condition (including any necessary cleaning of solar panels) and repair in accordance with Prudent Utility Practices and the terms of this PPA and all Laws in all material respects, and (iii) monitor the SEF's performance to ensure that any SEF malfunction causing a loss of Energy will be discovered and rectified in accordance with Prudent Utility Practices in all material respects. Buyer hereby consents to the construction, provided Buyer receives prior notice of and provides prior written approval, of the SEF's connection to the Premises, including, without limitation, mounting substrates or supports, wiring and connections, power inverters, service equipment, Metering Devices and equipment and utility interconnections, and, in the case of metering equipment and utility interconnections, on portions of the Premises and surrounding property outside of the Premises so long as Seller does not unreasonably interfere with Buyer's ability to conduct its business or utilize the Premises. Seller shall have the right to take reasonable action to restrict the right of persons to obtain access to the portion of the SEF on the Premises and Buyer will cooperate with Seller in connection with these actions.

(b) Buyer and Seller shall also enter into a Ground Lease to effectuate access by the Seller to the premises. Such Lease should be taken together with this PPA as the primary documents of this transaction. Wherever possible such documents should be read together in a consistent manner, so as not to contradict one another.

(c) Seller shall provide Buyer reasonable notice of all activities conducted by or on behalf of Seller on the Premises. During any such activities, Seller, and its sub-contractors, agents, consultants, and representatives shall comply with Buyer's safety, insurance, and security

procedures (as may reasonably be promulgated from time to time), and Seller and its sub-contractors, agents, consultants, and representatives shall conduct such activities in such a manner and such a time and day as to not unreasonably interfere with Buyer's activities. Except as provided in the Lease, this requirement of access shall not be construed to confer a leasehold on the Seller.

(d) Notwithstanding any provision of Section 5.1(b) or 5.1(c) to the contrary, and as set forth in the Lease, Seller shall have access to the Premises to effect Emergency Repairs of the Interconnection Equipment located on the Premises immediately upon, or as soon as practicable after, notice to Buyer of the need for access. For purposes of this Agreement, "Emergency Repairs" means any maintenance or repair necessary to address or prevent an unplanned interruption or reduction of Energy transmitted through the Interconnection Equipment from the SEF. Such repairs by Seller shall not in any way impede the functioning of the plant or any portion thereof as a water treatment facility.

(e) Seller may curtail deliveries (inclusive of discontinuing or reducing Energy) if Seller reasonably believes that curtailment is necessary to construct, install, repair, replace, remove, maintain or inspect any of its equipment or facilities, or in connection with an emergency or an event of Force Majeure. To the extent practical, all maintenance and repairs shall be performed during off-peak hours and in a manner that would not require a complete interruption in Energy of the SEF. Seller shall notify Buyer of any curtailments of which Seller has advance knowledge, and will endeavor to mitigate the time periods and causes of such curtailments to the extent that such cause is within Seller's reasonable control. Subject to available sunlight, Seller shall resume deliveries of Energy as soon as is reasonably possible and safe in accordance with Prudent Utility Practices.

(f) Seller may modify, alter, expand or otherwise change the SEF, with the prior written consent of Buyer and only as required by Prudent Utility Practices or applicable Law, and such modifications, alterations, expansions or other changes shall not reasonably be expected to result in a material change in the capacity of the SEF or a material adverse impact on the operations of the SEF or the SEF's capability to operate, and shall not in any way impede the Premises as a working water treatment plant facility. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance.

## **5.2 Buyer's Obligations.**

(a) Buyer shall maintain the Premises and shall not take any actions on the Premises that would cause shading of the SEF or otherwise interfere with the operation of the SEF, reduce the production of Energy from the SEF or damage or otherwise increase the cost of maintenance of the SEF. Notwithstanding the foregoing, both parties agree that Buyer may make any required modifications, repairs, or upgrades to the plant required by Connecticut law, Connecticut regulations, DEEP, or the EPA, and such repairs, modifications, or upgrades regardless of their effect on the SEF. The parties further acknowledge that the Accrual Days accumulated by the Buyer may, without prejudice to and at the sole discretion of the Buyer, be used for such required repairs, modifications, or upgrades.

(b) Buyer shall provide or assist Seller and its agents and contractors in obtaining convenient access to and from the Interconnection Equipment located on the Premises



during normal business hours as is reasonably necessary or appropriate for Seller to complete the electrical interconnection to the Premises.

(c) Buyer shall assist Seller and cooperate with Seller, as reasonably necessary and appropriate, to acquire and maintain the Governmental Approvals required for the construction, operation, maintenance and repair of the SEF's connection to the Premises, including, but not limited to, signing the Interconnection Agreement or any applications or consents for permits, local utility interconnection, SREC creation and verification, and rebate applications as are required to be signed by a person in the position of Buyer and reasonably approved by Buyer's counsel.

(d) Buyer shall maintain the Site Electrical System in good condition and repair to be able to receive the Energy. Buyer will maintain its connection and service contract(s) with Buyer's Serving Utility or any successors thereto, so that the SEF may continuously generate and deliver Energy and so that Buyer may procure its full requirements for electricity that are not served by the SEF. Notwithstanding the foregoing, the Site Electrical System may be temporarily taken offline or modified to comply with any applicable laws, regulations, or orders of state or federal agencies. In such case, such action will be deemed not to enact any damages to either party to this PPA.

(e) Buyer shall not cause or allow any Person under Buyer's control to cause the SEF's equipment on the Premises to be disconnected or shut down, temporarily or otherwise, unless in the case of emergency or as a result of an event of Force Majeure. In the event of a disconnect or shut down on the Premises of a portion of the SEF caused by Buyer or a Person under Buyer's control, damages and lost revenue will be assessed pursuant to the terms of Section 7.5, which is the sole measure of damages. At the request of Buyer, Seller may consent, such consent not to be unreasonably withheld, conditioned or delayed, to temporarily shut down all or a portion of the SEF for a predetermined period of time; provided that nothing herein shall require Seller's consent to a shutdown of the SEF if necessary as a result of an emergency. Seller will be compensated in connection with any such shutdown in accordance with Section 7.5. No damages will be due if the shutdown is due to a Force Majeure event.

**5.3 Telemetry.** Seller shall provide a means for Buyer to access real-time data or telemetry with respect to the SEF's performance. In order to allow Seller to provide Buyer and third parties with access to real-time online data related to the SEF performance, Buyer shall permit Seller reasonable access to Buyer's broadband internet connection. If Buyer does not maintain such internet connection on the Premises, Buyer shall reasonably cooperate with Seller to allow Seller to install and maintain a broadband internet connection at the Site. Subject to Section 4.3 above, Seller retains the right to use telemetry and other monitoring data concerning the performance of the SEF for evaluative, maintenance, and promotional purposes. Seller agrees that it will comply with all applicable state and federal standards, regulations, and laws governing data privacy and internet and network security. Seller agrees that failure to adhere to such standards may result in damages to the Buyer and shall be a breach of this PPA.

## **ARTICLE 6.**

### **METERING DEVICE AND METERING**

**6.1 Metering Equipment.** Seller shall provide, install, own, operate and maintain the Metering Device to measure the amount of Energy output of the SEF, with the ability and right for

Buyer to access real-time via internet connection to monitor the Metering Device. Buyer shall provide Seller with high-speed internet access at the Premises during the entire Term. Seller's use of such connection shall not result in a substantial slowdown to Buyer's network or devices using such network. Seller agrees that it will comply with all applicable state and federal standards, regulations, and laws governing data privacy and internet and network security. Seller agrees that failure to adhere to such standards may result in damages to the Buyer and shall be a breach of this PPA. Buyer grants Seller a right of access to the Metering Device on the Premises as needed to inspect, repair, and maintain such Metering Device. Buyer shall allow for the installation of necessary communication lines in connection with the Metering Device and shall reasonably cooperate in providing access for such installation. The Metering Device shall be kept under seal, such seal to be broken only by Seller when the Metering Device is to be tested, adjusted, modified, or relocated. In the event Seller or Buyer breaks a seal, the applicable Party shall notify the other as soon as practicable.

**6.2 Measurements.** Readings of the Metering Device shall be conclusive as to the amount of the SEF Energy output; *provided, however*, that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 6.3, or registers inaccurately, measurement of Energy to the Delivery Point shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Metering Device was registering accurately; or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 6.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments; *provided, however*, that, in the case of clause (ii), the period covered by the correction under Section 6.3 shall not exceed twelve (12) months.

**6.3 Testing and Correction.**

(a) Upon Buyer's reasonable request, but in no event more than once every twelve (12) months, Seller shall inspect and test the Metering Device for accuracy. Each Party and its consultants and Representatives shall have the right to witness each test of the Metering Device to verify the accuracy of its measurements and recordings. Seller shall provide at least ten (10) days prior written notice to Buyer of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test, and shall provide Buyer with copies of such written report not later than thirty (30) days after completion of such test. Subject to Section 6.3(b) below, Seller shall bear the cost of the testing of the Metering Device and the preparation of the Metering Device test reports. Seller shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct such inaccuracy, if practicable, or shall replace the same.

(b) The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

- (i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing.
- (ii) Seller shall, within thirty (30) days after receiving such notice from Buyer or Buyer shall, within such time after having received such notice from Seller, advise the other Party in writing as to its position concerning the

accuracy of such Metering Device and state reasons for taking such position.

- (iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause the Third Party Monitor to test the Meter.
- (iv) If the Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of the Metering Device shall be adjusted in accordance with Section 6.2(b)(i) and the party claiming such inaccuracy shall bear the cost of inspection and testing of the Metering Device.
- (v) If the Metering Device is found to be inaccurate by more than two percent (2%) or if such Metering Device is for any reason out of service or fails to register, then (A) Seller shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, (B) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 6.2, and (C) Seller shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Energy output for any period is decreased, Seller shall reimburse Buyer within thirty(30) days for the amount paid by Buyer in consideration for the decrease. If as a result of such adjustment the quantity of Energy output for any period is increased, Buyer shall pay Seller within thirty (30) days for the additional quantity of Energy at the Energy Payment Rate applicable during the applicable period.

**6.4 Live Meter Maintenance.** Buyer acknowledges and understands that the SEF is installed behind the current electric utility meter located on the Premises (the "**Meter**") and that the Meter remaining live is critical to the proper operation of the SEF. Buyer, as a municipality, agrees to maintain the operation of the meter.

## **ARTICLE 7.**

### **LOSS, DAMAGE OR DESTRUCTION OF SEF; INSURANCE; FORCE MAJEURE; PAYMENTS FOR TEMPORARY SHUT DOWN**

#### **7.1 SEF Loss.**

(a) Seller shall bear the risk of any SEF Loss excluding, however, any SEF Loss arising out of or resulting from (i) any acts of Buyer or Buyer's agents, Representatives, customers, vendors, visitors, or invitees or (ii) any breach of the PPA by Buyer (collectively, the circumstances set forth in clause (i) or (ii), "**Buyer Act**").

(b) In the event of any SEF Loss that, in the reasonable judgment of Seller, results in less than total damage, destruction or loss of the SEF and more than five (5) years remains in the Term, this PPA will remain in full force and effect and Seller will, at Seller's sole cost and expense, subject to Section 7.1(c) below, repair or replace the SEF as quickly as practicable.

(c) To the extent that any SEF Loss, which in the reasonable judgment of Seller, results in less than total damage or destruction or loss of the SEF, is caused by Buyer Act, Buyer shall promptly upon demand therefor from Seller pay any and all costs and expenses of such repair or replacement.

(d) In the event of any SEF Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the SEF, or to the extent the SEF is damaged during the last ten (10) years of the Term, Seller shall, within thirty (30) Business Days following written notice from the Buyer of the occurrence of such SEF Loss, notify Buyer whether Seller is willing, notwithstanding such SEF Loss, to repair or replace the SEF, it being understood that in such instance Seller shall have no obligation to restore the SEF.

(e) In the event Seller notifies Buyer that Seller is not willing to repair or replace the SEF, this PPA will terminate automatically effective upon the effectiveness of such notice unless Buyer agrees to pay the restoration cost. If such SEF Loss has been caused solely by Buyer Act, Buyer shall, within twenty (20) Business Days following such termination, pay to Seller, as liquidated damages, the Termination Payment applicable as of such termination date.

(f) In the event Seller notifies Buyer that Seller is willing to repair or replace the SEF, the following shall occur: (A) this PPA will remain in full force and effect, and (B) Seller will repair or replace the SEF as quickly as practicable but in any event within six (6) months of the casualty and, in addition, if such SEF Loss has been caused, in total or partially, by Buyer Act, Buyer shall promptly upon demand therefor from Seller pay any and all costs and expenses of such repair or replacement caused by such Buyer Act.

## **7.2 Insurance.**

(a) Seller will, at its own cost and expense, maintain commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence, with aggregate limits of \$5,000,000. Limits may be satisfied with a combination of primary and excess or umbrella policies. Seller will, at its own cost and expense, maintain environmental/pollution insurance coverage for not less than \$1,000,000. All such insurance shall be from a provider having at least a rating of A/VIII with AM Best.

(b) Buyer shall, at Buyer's sole cost and expense, carry commercial general liability insurance with respect to the Premises during the Term (which liability insurance shall cover claims of bodily injury, personal injury and property damage (including loss of use thereof) arising out of Buyer's operations, and contractual liabilities), and Buyer shall carry property insurance covering the full replacement cost of the Premises. Such coverage shall be in such amounts, from such companies, and on such other terms and conditions, as Buyer may from time to time reasonably determine.

(c) Each Party will name the other Party as an additional insured in each such policy provided in this Section 7.2 using the form CG 2010 or an equivalent satisfactory to Seller with thirty (30) days prior notice of cancellation or nonrenewal.

(d) Buyer and Seller shall furnish to one another a certificate of insurance from the insurer, which certificate shall evidence the insurance coverage required by this Section 7.2. At either Party's request, the other party shall furnish copies of applicable endorsements evidencing the required coverages.

(e) The provisions of this PPA shall not be construed to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

**7.3 Performance excused by Force Majeure.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the "**Claiming Party**") gives notice and details of the Force Majeure event to the other Party as soon as practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, then the Claiming Party will be excused from the performance of its obligations under this PPA affected by the Force Majeure event (other than the obligation to make payments under this PPA) for a period equal to the effect of the disabling Force Majeure circumstances. The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; *provided, however*, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion.

**7.4 Termination due to Force Majeure.** If a Claiming Party claims a Force Majeure for a consecutive period of twelve (12) calendar months or longer, the non-Claiming Party may terminate this PPA, in whole or in part, without any liability to the Claiming Party as a result of such termination (except with respect to payment of amounts incurred or accrued or owed prior to termination and actions that occur prior to termination) by providing written notice of such termination at any time prior to the date upon which the obligation prevented by such Force Majeure has been satisfied. Without limiting the generality of the foregoing, if Seller does not deliver Energy from the SEF to Buyer for a continuous period of six (6) months for any reason other than Buyer's default hereunder, Buyer shall have the right to terminate this PPA by delivering written notice of such termination at any time prior to the date upon which the SEF resumes the production of Energy.

**7.5 Payment for Temporary Shutdown of SEF or Reduced Energy Output.** In the event (a) Buyer needs to conduct any type of work on the Premises not arising from state or federal laws, regulations, or agency or court orders, or from a requirement to maintain functioning of the water treatment plant or Site Electrical System that will require the shutdown of the SEF, (b) Buyer or any Person within Buyer's control causes any disruption on the Premises which will require, or otherwise causes, Seller to cease making deliveries of Energy, or otherwise causes the SEF to shut down, or (c) Buyer or any Person in Buyer's control causes a reduction in Energy output from the SEF, whether from disruption on the Premises or otherwise ("Buyer Interference"), and such Buyer Interference exceeds the then applicable number of accrued Buyer Accrual Days (as hereinafter defined in Exhibit C), Buyer's payments due hereunder shall be adjusted to compensate Seller for the Imputed Energy during the period in which Energy cannot be or is not generated and delivered to Buyer during such shutdown that exceeds the Buyer Accrual Days, together with the value of Environmental Attributes and Tax Benefits relating to such Imputed Energy. The payment adjustment shall be equal to the sum of the lost Zrec revenue on a pro-rata basis, where one Zrec equals one megawatt of power produced. The Zrec value shall be pro rated against the lost kilowatt-hours.

Such payments shall not apply in the event the Buyer is required by any law, regulation, or order of any state or federal agency, court, or authority to partially or totally shutdown the SEF in order to maintain, repair, or improve the Premises and the Buyer uses its Accrual Day(s) for such work.

**ARTICLE 8.**  
**EVENTS OF DEFAULT; REMEDIES**

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

(a) the failure to make, when due, any payment required under this PPA if such failure is not remedied within ten (10) Business Days after receipt of written notice from the Party claiming the failure (a "***Non-Defaulting Party***");

(b) any representation or warranty made by such Party in this PPA is intentionally false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this PPA if such failure is not remedied within thirty (30) days after receipt of written notice from the Non-Defaulting Party; provided, however, that, if despite due diligence such default is not capable of cure within thirty (30) days, the Defaulting Party shall have such additional time as is reasonably necessary to cure such default, provided the Defaulting Party diligently pursues such cure and completes same within ninety (90) days after the receipt of such notice;

(d) such Party becomes Bankrupt; or

(e) solely as to Buyer, (i) the closure or shutdown of Buyer's operations or other shutdown of the SEF caused by the action of Buyer or of any Person under Buyer's control; (ii) Buyer loses its rights to occupy and enjoy the Premises; or (iii) Buyer prevents Seller from installing the SEF or otherwise fails to perform in a way that prevents the delivery of electronic energy from the SEF.

**8.2 Buyer Remedies.** Upon the occurrence and during the continuance of an Event of Default where Seller is the Defaulting Party (a "***Seller Event of Default***"), Buyer shall have all rights available to it at law and in equity and may take any and all action reasonably necessary to cure such Seller Event of Default. In the event Buyer exercises such rights, Seller shall promptly reimburse Buyer for any and all reasonable costs and expenses incurred by Buyer (including reasonable attorney's fees) in connection with the exercise of Buyer's rights hereunder. However, notwithstanding the foregoing, it is agreed that Buyer shall have the right to terminate this PPA as a result of a Seller Event of Default only in the event such Seller Event of Default is a monetary Event of Default or a material non-monetary Event of Default that has resulted in substantial harm, economically or otherwise, to Buyer (each such default being a "***Seller Termination Default***"). In the event any Seller Termination Default remains uncured following any applicable notice and cure period, Buyer shall have the right to provide Seller with written notice of its intent to terminate this PPA. In the event such specified Seller Termination Default and any other subsequent termination event is not cured within forty five (45) days of Seller's receipt of such notice of intent to terminate (which notice shall specify the exact Seller Termination Default and any other being claimed) then thereafter, and only thereafter, Buyer shall have the right to terminate this PPA as of such date by providing written notice of such termination to Seller. Furthermore, the Buyer does not waive any limit on liability or immunity it may enjoy under the Connecticut General Statutes as a municipality.

### **8.3 Seller Remedies.**

(a) If an Event of Default where Buyer is the Defaulting Party (a "***Buyer Event of Default***"), has occurred and is continuing, Seller has the right in its sole discretion, without obligation, to take any and all action reasonably necessary to cure such Buyer Event of Default.

(b) Upon the occurrence and during the continuance of a Buyer Event of Default, where such Buyer Event of Default remains uncured following any applicable notice of default and cure period ("***Buyer Termination Default***"), (i) Seller shall provide Buyer with written notice of its intent to terminate this PPA. In the event such specified Buyer Termination Default is not cured within forty-five (45) days of Buyer's receipt of such notice of intent to terminate (which notice shall specify the exact Buyer Termination Default and any other being claimed, then thereafter, and only thereafter, Seller shall have the right to terminate this PPA as of such date by providing written notice of such termination to Buyer.

**8.4 Termination Payment Notice.** In the event that Seller elects to require payment of the Termination Payment by Buyer as provided in Section 8.3, then, as soon as practicable after calculation of the Termination Payment by Seller, Seller will notify Buyer of the amount of the Termination Payment and any amount otherwise due and outstanding under this PPA. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. If undisputed by Buyer, Buyer shall be required to pay the Termination Payment and any amount otherwise due and outstanding under this PPA to Seller within twenty (20) Business Days after the effectiveness of such notice. By way of example, the following termination payment calculation may be used:

**8.5 Remedies Cumulative.** Except as specifically provided to the contrary, the rights and remedies contained in this Article 8 are cumulative with the other rights and remedies available under this PPA or at law or in equity.

**8.6 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 PPA. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

## **ARTICLE 9. INVOICING AND PAYMENT; TRUE-UP**

**9.1 Invoicing and Payment.** Seller will issue monthly invoices within ten (10) days after the conclusion of the preceding calendar month for deliveries made during that month. Except as specifically provided to the contrary herein, all invoices under this PPA will be due and payable not later than twenty (20) days after receipt of the applicable invoice. Each Party will make payment by check, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

**9.2 Disputed Amounts.** A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this PPA at any time within twelve (12) months following the date the invoice (or invoice adjustment) was rendered. In the event that either Party

disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are manifestly inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this PPA, and to give notice of the objection to the other Party. Any required payment will be made within ten (10) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the paid date.

**93     No Setoff.** Except as otherwise set forth herein, each Party hereby waives all rights to set-offs of amounts due hereunder. The Parties agree that all amounts due hereunder are independent obligations and shall be made without set-off for other amounts due or owed hereunder.

**94     Records and Audits.** Each Party will keep, for a period not less than two (2) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations, and payments for such Transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to Transactions during such other Party's normal business hours. Notwithstanding the foregoing, in the event Buyer conducts an audit and discovers an inaccuracy in Seller's invoices, charges, computations and payments required for a Transaction in an amount in excess of five percent (5%), Buyer shall be entitled to recover the cost and expense of the audit in addition to the other corrective actions required as a result of said audit.

**95     Currency.** All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

#### **ARTICLE 10. REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENTS; ADDITIONAL COVENANTS**

**101     Representations and Warranties.** Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (b) the execution, delivery and performance of this PPA are within its powers, have been duly authorized by all necessary action, do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it and do not require the consent of any third party; (c) this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, subject to any bankruptcy, insolvency, reorganization and other Laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court; (d) it is acting for its own account, and has made its own independent decision to enter into this PPA, 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 PPA; and (f) it understands that the other Party is not acting as a fiduciary for or an advisor to it or its Affiliates. Buyer represents and warrants to Seller that: (i) to its knowledge, there are no site conditions or construction requirements (including any Environmental Condition) that would increase the cost of installing the Interconnection Equipment at the planned locations or increase any liabilities in



connection with the Interconnection Equipment; (ii) the information provided to Seller pursuant to this PPA as of the Effective Date is true and accurate in all material respects; (iii) Buyer has fee simple and clear title to the Premises, subject only to the Permitted Encumbrances; and none of the Permitted Encumbrances would reasonably be expected to adversely impact Seller's rights hereunder or under this PPA; (iv) no electricity generated by the SEF will be used to heat a swimming pool; (v) Buyer is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company and (vi) each Party has no knowledge of any facts or circumstances that could materially and adversely affect their respective ability to perform their obligations hereunder.

**102 Buyer Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366.** Buyer acknowledges and agrees that, for purposes of this PPA, Seller is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

## ARTICLE 11. INDEMNITY; LIMITATIONS

**11.1 Indemnity.** To the fullest extent permitted by law, each Party (the "**Indemnitor**") hereby indemnifies and agrees to defend, protect, and hold harmless the other Party and its Representatives (the "**Indemnified Parties**") from and against any and all claims, losses, liabilities, damages, costs and expenses (including attorneys' fees) ("**Indemnity Claims**") caused by, resulting from, relating to or arising out of any breach of this PPA by the Indemnitor or any of its Representatives or any negligence or intentional misconduct on the part of the Indemnitor or any of its Representatives; *provided, however*, that the Indemnitor will not have any obligation to indemnify the Indemnified Parties from or against any Indemnity Claims to the extent caused by, resulting from, relating to or arising out of the gross negligence or intentional misconduct of the Indemnified Parties, or material breach of this PPA by the Indemnitor. In addition to the foregoing, to the fullest extent permitted by law, Buyer, as the Indemnitor, hereby indemnifies and agrees to defend, protect, and hold harmless Seller and its Representatives, as the Indemnified Parties, from and against any and all Indemnity Claims related to any and all Environmental Conditions, except to the extent that the same are caused by the negligence or willful misconduct of Seller and/or its Representatives, where, as used in this PPA, the term (a) "**Environmental Conditions**" means (i) the violation or alleged violation of any Environmental Law at or on the Premises; (ii) the release or potential release of any Hazardous Material at, on or from the Premises, unless such Hazardous Material was brought onto the Premises by Seller or its Representatives; and/or (iii) any other environmental matter adversely affecting the Premises that was not directly caused by Seller or its Representatives; (b) "**Hazardous Material**" means any substance or material regulated by or listed in any Environmental Law; and (c) "**Environmental Law**" means any federal, state or local law, regulation, ordinance or other requirement governing human health and/or the environment.

**11.2 Limitation of Remedies, Liability and Damages.** The Parties confirm that with respect to the matters specified herein and to the extent specified the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. Without prejudice to the calculation of the amount of any Termination Payment, payment for Imputed Energy, and/or indemnity claims arising out of claims by third parties, neither Party will be liable for

consequential, incidental, punitive, special exemplary or indirect damages, by statute, in tort or under contract under any indemnity provisions or otherwise.

**113 Limitations on Warranties.** Except as expressly provided in this PPA, Seller hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

**114 Duty to Mitigate.** Buyer and Seller shall each have a reasonable duty to mitigate damages pursuant to this PPA, and each shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this PPA, including with respect to termination of this PPA.

## **ARTICLE 12. CONFIDENTIALITY**

Each Party (the "**Receiving Party**") shall not use for any purpose other than performing the Work under this Agreement or divulge, disclose, produce, publish, or permit access to, without the prior written consent of the other Party (the "**Disclosing Party**"), any Confidential Information of the Disclosing Party. "Confidential Information" does not include (a) information known to the Receiving Party prior to obtaining the same from the Disclosing Party; (b) information in the public domain at the time of disclosure by the Receiving Party; (c) information obtained by the Receiving Party from a third party who did not receive the same, directly or indirectly, from the Disclosing Party or (d) information subject to the Connecticut Freedom of Information Act. The Receiving Party shall use the standard of care that the Receiving Party uses to preserve its own Confidential Information to prevent unauthorized use or disclosure of such Confidential Information. Notwithstanding anything herein to the contrary, the Receiving Party has the right to disclose Confidential Information without the prior written consent of the Disclosing Party: (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed, (ii) as otherwise required by law, (iii) to the extent necessary in endorsing the Agreement, (iv) as advisable or required in connection with any government or regulatory filings, including without limitation, filings with any regulating authorities covering the relevant financial markets, (v) to its attorneys, accountants, financial advisors or other agents, in each case bound by confidentiality obligations, (vi) to banks, investors and other financing sources and their advisors, in each case bound by confidentiality obligations; or (vii) in connection with an actual or prospective merger or acquisition or similar transaction where the party receiving the Confidential Information is bound by confidentiality obligations.

## **ARTICLE 13. NOTICES**

**13.1 Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements, or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, electronic mail (email), overnight delivery, certified, or registered mail, return receipt requested. All notices shall be deemed to have been properly given or made upon the earliest to occur of (a) actual delivery, (b) two (2) days after being sent by overnight courier service, (c) seven (7) days after being deposited in the mail addressed as aforesaid and (d) one (1) day after being sent by e-mail; provided that in the case of notice by e-mail such notice is followed promptly by the sending of the original of such

notice by overnight courier service. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

If to Buyer:

Town of Litchfield  
Attn: First Selectman  
P.O. Box 488  
74 West Street  
Litchfield, CT 06759

Town of Litchfield WPCA  
Attn: Chairman  
P.O. Box 343  
Litchfield, CT 06759

Town of Litchfield  
Attn: Director of Public Works  
101 Russell Street  
Litchfield, CT 06759

Town of Litchfield WPCA  
Attn: Director of WPCA  
29 Stoddard Road  
Bantam, CT 06750  
[WPCA@townoflitchfield.org](mailto:WPCA@townoflitchfield.org)

If to Seller:

SHR Energy Management LLC  
Attn: Noel H. Lafayette  
24 Hill Farm Road,  
Weston, CT 06883  
[nlafayette@shrenergy.com](mailto:nlafayette@shrenergy.com)

**ARTICLE 14.**  
**ASSIGNMENT AND FINANCING**

**14.1 Assignment; Binding Effect.**

(a) Except for assignments to Affiliates, neither Buyer nor Seller shall, without the prior written consent of the other, which consent will not be unreasonably withheld, conditioned, or delayed, assign, pledge or transfer all or any part of, or any right or obligation under, this PPA, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void.

(b) Notwithstanding the foregoing, Seller may, without the prior written consent of Buyer, finance, or any right or obligation under this PPA (i) to any party that acquires Seller or all or substantially all of Seller's assets, as long as that party has the experience and knowledge to operate the assets; (ii) for security purposes in connection with any financing or other financial arrangements regarding SEF; (iii) to any Financing Party; (iv) to any Qualified Assignee or (v) to an entity that enters into an agreement with a Qualified Assignee pursuant to which (1) such Qualified Assignee shall be responsible for SEF operation and maintenance under this PPA and (2) Seller shall have granted to the Qualified Assignee all other rights granted to Seller herein necessary for operation and maintenance of SEF (each, a "***Permitted Transfer***"). Seller shall deliver notice of any Permitted Transfer to Buyer in writing as soon as reasonably practicable. Buyer agrees to execute such reasonable consents to financing and to provide such information, as is requested by Seller in connection with any financing. Except for financing, any transfer of any right(s) under this PPA by either party shall require prior written consent of the other Party, which consent shall not be unreasonably withheld.

(c) Subject to the foregoing restrictions on assignment, this PPA will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

**14.2 Cooperation with Financing.** Buyer acknowledges that Seller will be financing the construction of the SEF and Buyer agrees that it shall reasonably cooperate with Seller and its Financing Parties in connection with such financing for the SEF, including: (a) the furnishing of such public information; (b) the giving of such certificates; (c) providing of an officer's certificate of Buyer or its affiliate that this PPA was duly authorized, executed and delivered by Buyer, (d) the obtaining of any lien waivers, the execution of commercial law forms and such other documents, all as reasonably requested by Seller or any Financing Party to secure such Financing Party's collateral position in the SEF or in Seller's rights under this PPA; *provided, however*, that the foregoing undertaking shall not obligate Buyer to change any rights of benefits, or increase any burdens, liabilities or obligations of Buyer, under this PPA to the Financing Parties except as specifically provided herein. Buyer, as a municipality, may only take those actions in such cooperation as it is permitted to take under the Connecticut General Statutes and Town of Litchfield Code of Ordinances.

## ARTICLE 15. FINANCING PARTY ACCOMMODATIONS

**15.1 Buyer Acknowledgment.** Buyer acknowledges that Seller shall have the right, to finance the SEF with financing accommodations from a Financing Party and that Seller's obligations will be secured by, among other collateral, a pledge or collateral assignment of this PPA and a first security interest in the SEF. In order to facilitate such necessary financing, Buyer agrees as set forth below.

**15.2 Consent to Assignment.** Notwithstanding any contrary term or provision of this PPA, Seller shall have the right to assign this PPA in connection with the financing or refinancing of the SEF, provided that such financing or refinancing does not transfer any operation obligations of the Seller under this PPA to any financing entity or person. If any operational responsibility of the Seller is to be transferred to a financing entity or person, prior written consent of the Buyer shall be required, which consent shall not be unreasonably withheld. In addition, Buyer shall in good faith work with Seller and Seller's Financing Party if Buyer is satisfied that the Financing Party can fulfill the requirements of this PPA and provided that any such consent does not require Buyer to alter its rights and obligations pursuant to this PPA in any way, nor accept the operation and maintenance of the SEF by any entity that it not qualified to do so.

**15.3 Financing Party's Rights Following an Event of Default.** Notwithstanding any contrary term or provision of this PPA:

(a) The Financing Party, as assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this PPA in accordance with the terms of this PPA, provided that such Financing Party also satisfies the obligations of Seller hereunder. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this PPA and the SEF.

(b) The Financing Party shall have the right, but not the obligation, to pay all sums due under this PPA and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default or Seller Event of Default in the time and manner provided by the terms of this PPA. Nothing herein requires the Financing Party to cure any Seller Event of Default (unless the Financing Party has succeeded to Seller's interests) to perform any act, duty or obligation of Seller, but Buyer hereby gives the Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the SEF, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Seller to the Financing Party, Buyer's consent shall be required, however, the Financing Party will give notice to Buyer of the transferee or assignee of this PPA; *provided, further*, that any sale, transfer or other disposition of the SEF by the Financing Party, whether by judicial proceeding or otherwise, shall be made solely to a Qualified Assignee. Any such exercise of remedies shall not constitute an Event of Default.

(d) Upon any rejection or other termination of this PPA pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Financing Party made within sixty (60) days of such termination or rejection, Buyer may, in its discretion, enter into a new PPA with Financing Party or its Qualified Assignee, on the same terms

and conditions as hereunder.

(e) In the event that a Financing Party becomes the owner of the SEF as a result of the exercise of remedies under subsections (c) or (d) above, whether as a result of the exercise of its remedies as a secured party or in connection with the bankruptcy of Seller, the Financing Party shall agree not to disturb the Buyer's rights to purchase Energy under this PPA, pursuant to the terms and conditions hereof, and further agrees to sell its right in the SEF or the PPA to a Qualified Assignee purchaser only if such purchaser agrees to continue to provide Buyer with Energy under this PPA in accordance with the terms and conditions thereof. If such assignment shall transfer any rights or responsibilities as to the operation of the SEF, it shall require prior written consent from the Buyer, which consent shall not be unreasonably withheld. If any Qualified Assignee or other purchaser of the SEF elects to terminate this PPA or the accompanying Lease, such party shall be required to offer for sale at fair market value the SEF to the Buyer, or else remove the SEF and restore the site to its pre-SEF condition, normal wear and tear excepted.

#### **15.4 Financing Party's Right to Cure.**

(a) Upon receipt from Financing Party of its invocation of the rights provided for in this Section 15.4 and the name and address of the Financing Party entitled to notice, Buyer will not exercise any right to terminate this PPA unless Buyer has given the Financing Party prior written notice at the address provided to Buyer in writing of any event giving rise to Buyer's right to terminate this PPA. Buyer's notice of an intent to terminate this PPA must specify the condition giving rise to such right. Notwithstanding any contrary term or provision in this PPA, Financing Party shall have thirty (30) days beyond the cure period provided to Seller pursuant to this PPA to cure the condition. Buyer's and Seller's obligations under this PPA will otherwise remain in effect and required to be fully performed during any cure period.

(b) If the Financing Party or its Qualified Assignee (including any purchaser which meets the definition of a Qualified Assignee) has commenced and is diligently pursuing judicial proceedings to acquire title to or control of the SEF, or has acquired title to or taken control of the SEF, and in either event cures all existing Seller Events of Default that are capable of being cured by Financing Party or its Qualified Assignee subject to and within the time allowed by Section 15.4(a) and assumes in writing the obligations of Seller hereunder, then this PPA will continue in full force and effect.

**15.5 Notice of Defaults and Events of Default.** Upon and at any relevant time after receipt of the notice provided for in Section 15.4(a), Buyer agrees to deliver to the Financing Party a copy of any notice of a Seller's default simultaneously with the delivery of such notice by Buyer to Seller.

### **ARTICLE 16. MISCELLANEOUS**

**16.1 Governing Law.** This PPA will be governed by the Laws of the State of Connecticut, without giving effect to principles of conflicts of laws.

**16.2 Entire Agreement; Amendments.** This PPA, together with its accompanying Lease of municipal property, (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Without

limiting the generality of the foregoing, the Parties acknowledge and agree that, as of the Effective Date of the PPA, (a) any and all prior agreements between the Parties relating to the subject matter of the PPA (collectively, the "**Prior Agreements**") are superseded in their entirety by the PPA, (b) the Prior Agreements are of no further force or effect and no longer the legal obligation of either Party, (c) no Party had, nor now has, any claim against, or liability or obligation to, the other Party under the Prior Agreements, and (d) no asset or property of either Party was, or now is, bound by, or subject to, any encumbrance, lien or other restriction by reason of the Prior Agreements. Except as otherwise expressly provided in this PPA, any amendment, modification or change to this PPA will be void unless in writing and executed by both Parties.

**16.3 Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. No waiver by either Party of a breach of any term or provision contained herein shall be effective unless signed and in writing and signed by the waiving Party. No consent by either Party to waive a breach by either Party, whether express or implied, shall be construed operate as or constitute a consent to waiver of, or excuse of any other or subsequent or succeeding breach by either Party. The Buyer reserves all rights, remedies, defenses, and immunities granted to municipalities under Connecticut law.

**16.4 Severability.** If any part, term, or provision of this PPA, is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term, or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legally enforceable, and valid provision that is as similarly in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this PPA will remain in full force.

**16.5 No Third-Party Beneficiaries.** Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

**16.6 No Recourse to Affiliates.** This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder unless such obligations were assumed in writing by the Person against whom recourse is sought.

**16.7 Relationship of Parties.** The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose unless expressly stated otherwise herein.

**16.8 [Reserved]**

**16.9 Counterparts.** This PPA may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile or other electronic transmissions (such as an email .pdf file) is binding upon the other Party as an original.

**16.10 Further Assurances.** The Parties shall at their own cost and expense do such

further acts, perform such further actions, execute, and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

**16.11 General Interpretation.** The terms of this PPA have been negotiated by the Parties hereto and the language used in this PPA shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This PPA shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the PPA. No rule of strict construction will be applied against any person.

**16.12 Removal of Liens.** As municipal property, the Premises is not subject to lien by any party. Buyer agrees it will not permit any lien to be brought against the Premises, and Seller agrees that it shall not lien the Premises or permit the Premises to be liened by any person or business entity provided materials, good, or services in the construction, maintenance, or repair of the SEF. Seller agrees that it will indemnify and defend the Buyer, and seek discharge of any such lien. Buyer may recover reasonable attorney's fees and costs from Seller if Seller liens or permits the Premises to be liened and Buyer is required to undertake negotiations or litigation to discharge such lien(s).

**16.13 Forward Contract.** The Parties acknowledge and agree that this PPA and the transactions consummated under this PPA constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

**16.14 Dispute Resolution.**

(a) In the event that any question, dispute, difference or claim arises out or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a "Dispute"), then senior management personnel from both Seller and Buyer shall meet and diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party's written request to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Sections 16.14(b) shall apply.

(b) In the event the Parties are unable to resolve a Dispute pursuant to the provisions of Sections 16.14(a), the Parties agree that the Superior Court for the State of Connecticut, Judicial District of Litchfield at Torrington shall have exclusive jurisdiction over any suit brought hereunder.

**16.15 Rescission Period.** Either Party may rescind this PPA, without penalty, by written notice delivered to and received by the other Party not later than three (3) Business Days after the Effective Date (the "*Rescission Period*").

**16.16 Municipal Approvals.** The following shall be approvals on which this PPA and the accompanying Lease are contingent, where applicable:

- Approval of the Town of Litchfield Planning and Zoning Commission.



- Approval of the Litchfield Inland Wetlands and Watercourses Commission.
- Approval of the Town of Litchfield Board of Finance.
- Approval of the Town of Litchfield WPCA.
- Approval of the Town of Litchfield Board of Selectmen.
- Approval of a Town Meeting of the Town of Litchfield.

Failure of any such approval shall void this PPA and the accompanying Lease, with no breach imputed to the Buyer.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, intending to be legally bound, Seller and Buyer have signed this PPA through their duly authorized representatives effective as of the date first set forth above.

SHR Energy Management LLC

By: \_\_\_\_\_  
Name: Noel H. Lafayette  
Title: President

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

STATE OF CONNECTICUT )

COUNTY OF \_\_\_\_\_ ) ss: \_\_\_\_\_, 2023

Personally appeared Noel H. Lafayette duly authorized, President of SHR Energy Management, LLC, as aforesaid, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed, and the free act and deed of said Limited Liability Company, before me.

[Seal]

\_\_\_\_\_  
Notary Public  
My Commission Expires:

Town of Litchfield

By: \_\_\_\_\_  
Name: Denise Raap  
Title: First Selectman

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

STATE OF CONNECTICUT                    )  
  ) ss: Litchfield                    \_\_\_\_\_, 2023  
COUNTY OF LITCHFIELD                )

On this the \_\_\_\_ day of \_\_\_\_\_, 2023, before me the undersigned officer, personally appeared Denise Raap, First Selectman, of the Town of Litchfield, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged she executed the same in the capacity therein stated and for the purposes therein contained.

\_\_\_\_\_  
Notary Public  
Commissioner of Superior Court  
My Commission Expires

Town of Litchfield WPCA

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

Name: David R. Wilson

Title: Chairman

Witnessed by:

Witnessed by:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

STATE OF CONNECTICUT

)

) ss: Litchfield

\_\_\_\_\_, 2023

COUNTY OF LITCHFIELD

)

On this the \_\_\_\_ day of \_\_\_\_\_, 2023, before me the undersigned officer, personally appeared David R. Wilson, Chairman of the Town of Litchfield Water Pollution Control Authority, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged he executed the same in the capacity therein stated and for the purposes therein contained.

\_\_\_\_\_  
Notary Public

Commissioner of Superior Court

My Commission Expires

## EXHIBIT A

### PROPERTY

#### Legal Description of Property

29 Stoddard Road, Litchfield, CT 06759

The entire WPC parcel consists of 36 acres. The solar array proper will utilize a fenced in area of 1.07 acres, as depicted on the site plan below at Exhibit F. The existing, partially paved access road on the right-hand side of the side driveway will be utilized as a gateway to the solar array, for ongoing maintenance. Most construction equipment will be stored here as well.



It is situated upon the right-hand side of the driveway, approx. 100 yds prior to main gate of the plant. It commences just at 90-degree right angle to the access driveway on the right-hand side. This access driveway shall remain in place, as the gated entrance to the solar array proper.

The site is currently wooded, with less mature, lower value trees. There is a small wetlands area, as marked on the site plan, inside this access driveway, approximately 30 feet to the right.





The site is flat for the first 2/3 of the acreage, walking North to South, then it begins a gentle slope upwards estimated to be at 20-degree pitch, yet it is uneven in some spots. At the crest of the slope is a rock ledge, where the array fence will end.

Walking north to south, on the left side is a stone wall that runs the length of the site. To the right side is brush, which ends at the exiting utility poles that run the length of site as well.

Upon review, the attached photographs show the orange markers which make the southernmost point of the array fence line, along with the planned shrubbery screenings locations.



The conduit run will begin near the corner of the main driveway and the access driveway, going down the main driveway towards the main buildings, heading north. It will connect to the main building's switchgear, which is subterranean.





See also attached site plan.

**EXHIBIT B**  
**SOLAR ENERGY FACILITY**

**Technical Specifications**

- 345 kW DC Solar PV System
- 432.232 kWh for the Expected System Output, which represents the expected production from the SEF in the first year of production.

**Project Specifications**

<b><u>Major Components</u></b>	<b><u>Description</u></b>	<b><u>Model</u></b>	<b><u>Units</u></b>
<b>Modules:</b> Hanwha Qcells, QPeak		DUO XLG11/BFG 585w	590
<b>Inverters:</b> Sunny Tripower		CORE1-50US	5
<b>Racking:</b> APA Ground screws		NA	400

The PV modules being installed are reliable, durable and highly efficient PV modules with a 10-year product guarantee. The panels also carry a 25-year manufacturer output warranty that will provide at least 80% of their PTC rating. This project contains modules, inverters, racking and other solar equipment on 1.2 Acres of the Premises.

DC power from the solar modules will be routed in electrical conduit to the inverters. AC power from the inverters will be routed underground along the driveway path, to the main electrical service located inside the main building of the WPCA, on the parcel owned by the Buyer.



## EXHIBIT C

### SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

1. **Definitions.** The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

(a) [reserved]

(b) “**Affiliate**” means with respect to any entity, such entity’s general partner or manager, employee, or any other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. For purposes of this definition, “control” (including, with its correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any such person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

(c) “**Bankrupt**” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) is unable to pay its debts generally as they come due or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within sixty (60) days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

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

(e) “**Buyer**” shall have the meaning ascribed to it in the Preamble.

(f) “**Buyer Accrual Days**” means the number of accrued days in favor of Buyer for a Buyer Interference. The Buyer Accrual Days shall be initially set at three (3) days as of the Commercial Operation Date and shall be adjusted upwards for three (3) days per calendar year and decreased by any Buyer Accrual Days used by Seller for an abatement attributable to a curtailment. For the avoidance of doubt, the Buyer Accrual Days are calculated based on a complete shutdown of the entire SEF and as such, if a curtailment only affects a portion of the SEF, then such Buyer Accrual Days shall be adjusted for the portion that is curtailed. For example, if Buyer curtails 10% of the SEF

for 10 days during the first two years, then Buyer shall have 5 Buyer Accrual Days at the end of the second year.

(g) “**Buyer Act**” shall have the meaning ascribed to it in Section 7.1.

(h) “**Buyer Event of Default**” has the meaning ascribed thereto in Section 8.2.

(i) “**Buyer’s Serving Utility**” means Eversource Connecticut

(j) “**Buyer Termination Default**” has the meaning ascribed thereto in Section 8.3(b).

(k) “**CAMD**” means the Clear Air Markets Division of the United States Environmental Protection Agency or any successor or other agency that is given jurisdiction over a program involving transferability of specific Environmental Attributes.

(l) “**Capacity Attributes**” means any current or future defined characteristic, certificate, tag, credit, or ancillary service attribute, whether general in nature or specific as to the location or any other attribute of the SEF, intended to value any aspect of the capacity of the SEF to produce Energy or ancillary services, which may be counted toward any measure, regulation, requirement, or program of Buyer’s Serving Utility, Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity.

(m) “**Claiming Party**” shall have the meaning ascribed to it in Section 7.3.

(n) “**Commercial Operation**” will begin on the day in which the entire SEF is operating on a sustained basis and producing not less than the Expected System Output and Seller is in receipt of all required approvals, signoffs and permits from any and all Governmental Entities and the Buyer’s Serving Utility for the production and sale of Energy (including the resale of Energy to Buyer’s Serving Utility).

(o) “**Commercial Operation Date**” means the date upon which the SEF begins Commercial Operation, as set forth in the Notice of Commercial Operation.

(p) “**Confidential Information**” shall have the meaning ascribed to it in Article 12.

(q) “**Defaulting Party**” shall have the meaning ascribed to it in Section 8.1.

(r) “**Delivery Point**” means the interconnection points on the Premises behind the meters installed by Buyer’s Serving Utility and before the electrical systems serving the Premises. No other delivery points are permitted under this PPA without the permission of the Buyer.

(s) “**Discounted Revenue Forecast**” means the sum of the present values calculated at the per annum rate of interest equal to four percent (4%) of the following amounts for each year

(or part thereof) remaining between the: (i) the applicable Energy Payment Rate for such year, if known, or a mutually agreed estimate of the Energy Payment Rate for such year, multiplied by (ii) the average annual output during the previous three (3) years, discounted by one-half a percent (0.5%) per annum.

(t) “**Effective Date**” shall have the meaning ascribed to it in the Preamble to this PPA.

(u) “**Energy**” means electric energy (alternating current, expressed in kilowatt-hours) generated by the SEF. Energy does not include any attendant Environmental Attributes.

(v) “**Energy Payment Rate**” shall have the meaning ascribed to it in Section 3.3.

(w) “**Environmental Attributes**” means each of the following that is in effect as of the Effective Date: (i) credits, benefits, reductions, offsets and other beneficial allowances, including, to the extent applicable and without limitation, performance based incentives or renewable portfolio standard in the state in which the Premises are located or in other jurisdictions (collectively, “**Allowances**”) attributable to the ownership or operation of the SEF or the production or sale of Energy, (ii) other Allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy during the Term and in which Seller has good and valid title, including any credits to be evidenced by Solar Renewable Energy Certificates or similar laws or regulations applicable in any jurisdiction, (iii) any such Allowances related to (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (, and (iv) all reporting rights with respect to such allowances under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise. Environmental Attributes shall also include Tax Benefits.

(x) “**Environmental Conditions**” shall have the meaning ascribed to it in Section 11.1.

(y) “**Environmental Law**” shall have the meaning ascribed to it in Section 11.1.

(z) “**Event of Default**” shall have the meaning ascribed to it in Section 8.1.

(aa) “**Expected System Output**” shall have the meaning ascribed to it in Exhibit A.

(bb) “**Financing Party**” or “**Financing Parties**” shall mean any and all Persons or successors, or assignees thereof lending money or extending credit to Seller or an Affiliate of Seller, or investing equity (including tax equity) in Seller or an Affiliate of Seller: (i) for the construction, term or permanent financing of the SEF; (ii) for working capital or other ordinary business requirement of the SEF (including but not limited to the maintenance, repair, replacement or improvement of the SEF); (iii) for any development financing, bridge financing, credit

enhancement, credit support or interest rate protection in connection with the SEF; (iv) for the Seller's operation of the SEF; or (v) for the purchase of the SEF and related rights and obligations of Seller.

(cc) "**Force Majeure**" means any event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the reasonable control, or is not the result of the negligence or willful misconduct, of the Claiming Party, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided and shall be deemed to include, but not be limited to, acts of God, acts of civil or military authorities, acts of war or public enemy, insurrections, riots, strikes or other labor disturbances, fires, explosions, floods, interruption of transportation, embargoes, or other causes of a similar nature. Force Majeure will not be based on (i) Buyer's inability economically to use Energy purchased hereunder or by for such Energy, or (ii) Seller's ability to sell Environmental Attributes at any price or Energy at a price greater than the price of Energy under this PPA.

(dd) "**Governmental Approvals**" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the SEF, the production and delivery of Energy, and Environmental Attributes, or any other transactions or matter contemplated by this PPA (including those pertaining to electrical, Premises, zoning, environmental and occupational safety and health requirements).

(ee) "**Governmental Charges**" means all applicable federal, state and local taxes (other than taxes based on income or net worth but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, license fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this PPA.

(ff) "**Governmental Entity**" means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(gg) "**Hazardous Material**" shall have the meaning ascribed to it in Section 11.1.

(hh) "**Imputed Energy**" means Energy that the SEF is prevented from generating or delivering to, or that is not accepted at, the Delivery Point to the extent not caused by Seller or Force Majeure. In determining Imputed Energy for which Buyer is obligated to pay Seller, the Parties shall consider insolation, historical performance, projected output degradation or such other factors as Seller and Buyer shall in good faith agree.

(ii) ***Indemnified Parties***” shall have the meaning ascribed to it in Section 11.1.

(jj) ***Indemnitor***” shall have the meaning ascribed to it in Section 11.1.

(kk) ***Insolation***” shall have the meaning ascribed to it in Section 3.6.

(ll) ***Interconnection Agreement***” means the agreement for interconnection of the SEF with the distribution system of Buyer’s Serving Utility.

(mm) ***Interconnection Equipment***” means that portion of the SEF, including mounting substrates or supports, wiring and connections, power inverters, service equipment, Metering Devices and equipment and utility interconnections, as required or appropriate to effect the interconnection of the SEF to the Premises or to Buyer’s Serving Utility.

(nn) ***ITC Credit***” means (i) the energy credit under Section 48 of the Internal Revenue Code of 1986, and (ii) the grant under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, as each may be amended, supplemented, extended or replaced from time to time, and including all successor enactments or legislation relating thereto.

(oo) ***Late Payment Interest Rate***” means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or, if not published on such day, on the most recent preceding day on which published), plus 2%, and (ii) the statutory “prompt payment rate” for contracts with the State of Connecticut.

(pp) ***Law***” means any national, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this PPA or the transaction contemplated hereby.

(qq) ***License***” shall have the meaning ascribed to it in Section 5.1(b).

(rr) ***License Term***” shall have the meaning ascribed to it in Section 5.1(b).

(ss) ***Meter***” shall have the meaning ascribed to it in Section 6.4.

(tt) ***Metering Device***” means any and all meters at or immediately before the Delivery Point needed for the registration, recording, and transmission of information regarding the Energy delivered to the Delivery Point.

(uu) ***Net Metering Credits***” means credits that are generated under the applicable net energy metering program and Virtual Meter Aggregation program, under which any over- production of energy is carried as a credit on Buyer’s utility bill against later shortfalls in production of the SEF

compared to Buyer's electricity consumption.

(vv) "**Non-Defaulting Party**" shall have the meaning ascribed to it in Section 8.1(a).

(ww) "**Notice of Commercial Operation**" shall have the meaning ascribed to it in Section 2.3.

(xx) "**PPA**" means this Power Purchase Agreement.

(yy) "**Parent Account**" means the first account that Net Metering Credits will be allocated to per the Buyer's Serving Utility's Virtual Meter Aggregation program. The Parent Account will receive its full allocation prior to Net Metering Credits being allocated to all additional meters per the Waterfall Schedule in Exhibit E.

(zz) "**Parties**" shall mean Buyer and Seller, collectively or individually, as the context may require.

(aaa) "**Permitted Encumbrances**" – none

(bbb) "**Permitted Transfer**" shall have the meaning ascribed to it in Section 14.1(b).

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

(ddd) "**Premises**" shall have the meaning ascribed to it in the Recitals.

(eee) "**Prudent Utility Practices**" means those practices, methods, and acts, that are commonly used by a significant portion of the solar powered electric generation industry in the United States using prudent engineering and operations to design and operate solar powered generating facilities and related electric equipment lawfully and with safety, dependability, efficiency, and economy, including all applicable requirements of Law. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible prudent standards, practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers' warranties and the requirements of governmental authorities of competent jurisdiction and the requirements of this PPA.

(fff) "**Prior Agreements**" shall have the meaning ascribed to it in Section 16.2.

(ggg) "**Qualified Assignee**" means as it pertains to any assignment of this PPA by Seller, any entity that has competence and experience in the operation and maintenance of solar photovoltaic systems similar in size and type as the SEF and is financially capable of performing Seller's obligations under this PPA, all as reasonably demonstrated to Buyer, and agrees in writing to assume Seller's duties and obligations under the PPA.

(hhh) “**Rescission Period**” shall have the meaning ascribed to it in Section 16.2.

(iii) “**Representatives**” means, in respect of a Person, the officers, directors, employees, agents, advisors, contractors, or other representatives of such Person.

(jjj) “**SEF**” means the solar electric generating facility that produces the Energy sold and purchased under this PPA as more particularly defined in Exhibit A hereto, including the Interconnection Equipment.

(kkk) “**SEF Assets**” means each and all of the assets of which the SEF is comprised, including Seller’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the SEF.

(lll) “**SEF Loss**” means loss, theft, damage or destruction of the SEF or SEF Assets, or any other occurrence or event that prevents or limits the SEF from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or other Force Majeure).

(mmm) “**Seller**” shall have the meaning ascribed to it in the Preamble.

(nnn) “**Seller Event of Default**” has the meaning ascribed thereto in Section 8.2.

(ooo) “**Seller Termination Default**” has the meaning ascribed thereto in Section 8.2.

(ppp) “**Site Electrical System**” means Buyer’s existing electrical system for the supply and distribution of electricity to the Premises, which system is interconnected with Buyer’s Serving Utility.

(qqq) “**Solar Renewable Energy Certificates**” or “**SRECs**” means the certificate representing the environmental attributes associated with Energy, as developed under the oversight and regulations of the applicable state’s Public Service Commission, including any modifications or revisions thereof or any successor agency.

(rrr) “**SUT**” shall have the meaning ascribed to it in Section 3.5(b).

(sss) “**Tax Benefits**” means ITCs attributable to the SEF or Energy (including the ITC Credit), accelerated depreciation attributable to the SEF or any SEF Asset, and any other tax credit or tax write-offs allowed under applicable law attributable to the SEF or Energy, irrespective of whether such Tax Benefits accrue for the benefit of Seller, any Affiliate, or any investor of Seller or any Affiliate of such investor.

(ttt) “**Term**” shall have the meaning ascribed thereto in Section 2.1.

(uuu) “**Termination Payment**” means an amount equal to the sum of (i) Discounted Revenue Forecast applicable through the end of the Initial Term or the applicable extension term, as the case may be, (ii) the value of Environmental Attributes relating thereto, such value determined based on the greater of the value at which Seller had contracted to sell those Environmental Attributes or the spot market value, and (iii) the value of any lost Tax Benefits less any amounts due from Seller through the end of the Initial Term or the applicable extension term, as the case may be, as discounted by the same discount rate used in calculating Discounted Revenue Forecast.

(vvv) “**Third Party Monitor**” means an unaffiliated third party, selected in each case by Seller and reasonably approved by Buyer that provides, installs, operates or maintains the installation, operation, or maintenance of the Metering Device.

(www) “**Transaction**” means any transaction between the Parties under the terms of this PPA.

(xxx) “**Virtual Meter Aggregation**” means the Buyer’s Serving Utility rider that allows SEF’s to aggregate meters to receive Net Metering Credits from SEF’s located on the same parcel as the associated meters. The Net Metering Credits are allocated based on a waterfall schedule set by the SEF owner and per the Buyer’s Serving Utility’s “Net Energy Meter Rider” agreement attached as Exhibit F. Additional rules and eligibility requirements of the Virtual Meter Aggregation rider can be found on the Buyer’s Serving Utility’s website.

(yyy) “**Waterfall Schedule**” means the meter list that the Buyer wishes to receive Net Metering Credits from the SEF, as defined in Exhibit E. The Net Metering Credits will be allocated to the first meter on the list and will roll over to the next meter on the list once the previous meter has been fully allocated. This process will continue until all Net Metering Credits are allocated.

2. **Rules of Interpretation.** In this PPA, unless expressly provided otherwise:

- a) The words “herein,” “hereunder” and “hereof” refer to the provisions of this PPA and a reference to a recital, Article, Section, subsection or paragraph of this PPA or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this PPA or other agreement in which it is used unless otherwise stated;
- b) references to this PPA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;
- c) reference to any Article, Section, or Exhibits means such Article of this PPA, Section of this PPA, or such Exhibit to this PPA, as the case may be, and references in any Article or



Section or definition to any clause means such clause of such Article or Section or definition;

- d) a reference to this PPA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this PPA or such other agreement, instrument or provision, as the case may be;
- e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;
- f) the singular includes the plural and vice versa;
- g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- h) words of any gender shall include the corresponding words of the other gender;
- i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;
- j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");
- k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;
- l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;
- m) if the time for performing an obligation under this PPA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;
- n) a reference to (i) a day is a reference to a calendar day, (ii) a month is a reference to a calendar month, and (iii) a year is a reference to a calendar year;

- o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;
- p) references to any date in this PPA shall be deemed to mean such date as adjusted from time to time as permitted hereunder due to Force Majeure unless expressly stated otherwise; and
- q) if any index used in this PPA at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then Seller and Buyer shall agree upon a substitute index that most closely approximates the unavailable index as in effect prior to such unavailability. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this PPA.

**EXHIBIT D**  
**PERMITTED ENCUMBRANCES**

None Permitted

**EXHIBIT E**  
WPCA Savings Chart

PPA and Savings Charts: PPA rate vs estimated year utility rate increases

Utility Rate	Year	Solar PPA Rate	Net Savings Spread
\$0.1843	1	\$0.1032	\$0.081
\$0.1898	2	\$0.1042	\$0.086
\$0.1955	3	\$0.1053	\$0.090
\$0.2013	4	\$0.1063	\$0.095
\$0.2074	5	\$0.1074	\$0.100
\$0.2136	6	\$0.1085	\$0.105
\$0.2199	7	\$0.1096	\$0.110
\$0.2265	8	\$0.1107	\$0.116
\$0.2333	9	\$0.1118	\$0.122
\$0.2403	10	\$0.1129	\$0.127
\$0.2474	11	\$0.1140	\$0.133
\$0.2548	12	\$0.1151	\$0.140
\$0.2625	13	\$0.1163	\$0.146
\$0.2703	14	\$0.1175	\$0.153
\$0.2784	15	\$0.1186	\$0.160
\$0.2867	16	\$0.1198	\$0.167
\$0.2953	17	\$0.1210	\$0.174
\$0.3041	18	\$0.1222	\$0.182
\$0.3132	19	\$0.1235	\$0.190
\$0.3226	20	\$0.1247	\$0.198
\$0.3322	21	\$0.1259	\$0.206
\$0.3422	22	\$0.1272	\$0.215
\$0.3524	23	\$0.1285	\$0.224
\$0.3629	24	\$0.1297	\$0.233
\$0.3738	25	\$0.1310	\$0.243

## Savings Chart 345kw WPCA Solar Array

Date:	4/28/2023
System kW (DC):	345
Solar Production (year 1):	431,940
Annual Degradation:	0.50%
PPA Rate (\$/kWh)	\$0.1032
Utility Purchase Rate:	\$0.1843
Utility Rate Escalation:	3.0%
PPA Annual Rate Escalation:	1.00%
Analysis Term (yrs.):	25

		Solar kWh	Offsettable Utility Costs	Solar PPA Cost	Cash Savings	Savings in \$/kWh	% Discount	Utility Rate	Solar PPA Rate	Net Savings
1	2023	431,940	\$79,607	\$44,580	\$35,027	\$0.081	-44%	\$0.1843	\$0.1032	\$0.081
2	2024	429,780	\$81,577	\$44,800	\$36,777	\$0.086	-45%	\$0.1898	\$0.1042	\$0.086
3	2025	427,631	\$83,596	\$45,022	\$38,574	\$0.090	-46%	\$0.1955	\$0.1053	\$0.090
4	2026	425,493	\$85,665	\$45,245	\$40,420	\$0.095	-47%	\$0.2013	\$0.1063	\$0.095
5	2027	423,366	\$87,785	\$45,469	\$42,316	\$0.100	-48%	\$0.2074	\$0.1074	\$0.100
6	2028	421,249	\$89,958	\$45,694	\$44,264	\$0.105	-49%	\$0.2136	\$0.1085	\$0.105
7	2029	419,143	\$92,184	\$45,920	\$46,264	\$0.110	-50%	\$0.2199	\$0.1096	\$0.110
8	2030	417,047	\$94,466	\$46,147	\$48,319	\$0.116	-51%	\$0.2265	\$0.1107	\$0.116
9	2031	414,962	\$96,804	\$46,376	\$50,428	\$0.122	-52%	\$0.2333	\$0.1118	\$0.122
10	2032	412,887	\$99,200	\$46,605	\$52,595	\$0.127	-53%	\$0.2403	\$0.1129	\$0.127
11	2033	410,823	\$101,655	\$46,836	\$54,819	\$0.133	-54%	\$0.2474	\$0.1140	\$0.133
12	2034	408,768	\$104,171	\$47,068	\$57,103	\$0.140	-55%	\$0.2548	\$0.1151	\$0.140
13	2035	406,725	\$106,750	\$47,301	\$59,449	\$0.146	-56%	\$0.2625	\$0.1163	\$0.146
14	2036	404,691	\$109,392	\$47,535	\$61,857	\$0.153	-57%	\$0.2703	\$0.1175	\$0.153
15	2037	402,667	\$112,099	\$47,770	\$64,329	\$0.160	-57%	\$0.2784	\$0.1186	\$0.160
16	2038	400,654	\$114,874	\$48,007	\$66,867	\$0.167	-58%	\$0.2867	\$0.1198	\$0.167
17	2039	398,651	\$117,717	\$48,245	\$69,472	\$0.174	-59%	\$0.2953	\$0.1210	\$0.174
18	2040	396,658	\$120,630	\$48,483	\$72,147	\$0.182	-60%	\$0.3041	\$0.1222	\$0.182
19	2041	394,674	\$123,616	\$48,723	\$74,893	\$0.190	-61%	\$0.3132	\$0.1235	\$0.190
20	2042	392,701	\$126,676	\$48,965	\$77,711	\$0.198	-61%	\$0.3226	\$0.1247	\$0.198
21	2043	390,737	\$129,811	\$49,207	\$80,604	\$0.206	-62%	\$0.3322	\$0.1259	\$0.206
22	2044	388,784	\$133,024	\$49,450	\$83,573	\$0.215	-63%	\$0.3422	\$0.1272	\$0.215
23	2045	386,840	\$136,316	\$49,695	\$86,621	\$0.224	-64%	\$0.3524	\$0.1285	\$0.224
24	2046	384,906	\$139,690	\$49,941	\$89,749	\$0.233	-64%	\$0.3629	\$0.1297	\$0.233
25	2047	382,981	\$143,148	\$50,188	\$92,959	\$0.243	-65%	\$0.3738	\$0.1310	\$0.243
Totals		10,174,758	\$2,710,412	\$1,183,275	\$1,527,137					

3%

# Solar Escalation of 1% per annum.

Date:	4/28/2023
System kW (DC):	345
Solar Production (year 1):	431,940
Annual Degradation:	0.50%
PPA Rate (\$/kWh)	\$0.1032
Utility Purchase Rate:	\$0.1843
Utility Rate Escalation:	3.0%
PPA Annual Rate Escalation:	1.00%
Analysis Term (yrs.):	25

Solar PPA Rate
\$0.1032
\$0.1042
\$0.1053
\$0.1063
\$0.1074
\$0.1085
\$0.1096
\$0.1107
\$0.1118
\$0.1129
\$0.1140
\$0.1151
\$0.1163
\$0.1175
\$0.1186
\$0.1198
\$0.1210
\$0.1222
\$0.1235
\$0.1247
\$0.1259
\$0.1272
\$0.1285
\$0.1297
\$0.1310

**EXHIBIT F**  
Site Plan

See attached Site Plan, dated February 7, 2023.