

INTER-GOVERNMENTAL NET METERED POWER SALES AGREEMENT

BETWEEN

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

AND

THE TOWN OF WEST TISBURY

Standard Form / (v. 6.29.12) (Ground Mount)

West Tisbury Landfill

TABLE OF CONTENTS

ARTICLE I: DEFINITIONS1

ARTICLE II: CONSTRUCTION; OBLIGATION TO MODIFY AGREEMENT6

 2.1 Construction6

 2.2 Obligation to Modify6

ARTICLE III: PURCHASE AND SALE7

 3.1 Sale and Purchase7

 3.2 Take-or-Pay for Net Energy Delivered to Point of Delivery7

 3.3 Environmental Credits and Value7

 3.4 Net Metering Credits.....7

 3.5 Maximum Financial Liability of the Parties Pursuant to M.G.L. c. 40,
 Section 4A.....9

ARTICLE IV: TERM9

 4.1 Term.....9

ARTICLE V: METERING AND BILLING9

 5.1 Billing9

 5.2 Payment.....9

 5.3 Metering Equipment and Testing.....9

 5.4 Dispute11

ARTICLE VI: PARTIES' OBLIGATIONS11

 6.1 Seller's Obligations.....11

 6.2 Buyer's Obligations12

 6.3 Net Metering13

ARTICLE VII: REPRESENTATIONS AND WARRANTIES13

 7.1 Seller's Representations and Warranties13

 7.2 Buyer's Representations and Warranties14

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES14

 8.1 Termination.....14

 8.2 Events of Default by Buyer.....15

 8.3 Events of Default by Seller15

 8.4 Force Majeure15

 8.5 Remedies.....16

 8.6 Step-in Rights of Financier18

 8.7 Acknowledgement of Cooperative's Purchase Option.....19

ARTICLE IX: ASSIGNMENT.....19

 9.1 No Assignment Without Permission.....19

ARTICLE X: DISPUTE RESOLUTION; GOVERNING LAW19
10.1 Dispute Resolution.....19
10.2 Governing Law20
10.3 Stay of Termination20

ARTICLE XI: MISCELLANEOUS21
11.1 Notices21
11.2 Entire Agreement; Amendments; Binding Effect.....22
11.3 Expenses22
11.4 No Joint Venture22
11.5 Joint Workproduct22
11.6 Waiver.....22
11.7 Severability22
11.8 Further Assurances.....23
11.9 Headings and Captions23
11.10 Survival.....23
11.11 Counterparts; Scanned Copy.....23
11.12 Reports; Compliance with M.G.L. c. 40, Section 4A.....23
11.13 Special Terms and Conditions23

**INTER-GOVERNMENTAL NET METERED POWER SALES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
THE TOWN OF WEST TISBURY**

This Inter-Governmental Net Metered Power Sales Agreement (“Agreement”) is entered into this __ day of _____, 2012 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“Seller”), and the Town of West Tisbury (“Buyer”).

RECITALS

A. Seller is the lessee of Buyer-owned land on which the PV System (defined herein and further identified in Exhibit B) is located at 47 Old Stage Road, West Tisbury, Massachusetts, 02575 (the “Premises”), pursuant to an Inter-Governmental Project Development Agreement between Seller and Buyer dated as of even date herewith (“Inter-Governmental PDA”);

B. Buyer is leasing the Premises to Seller to allow it to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises for beneficial public purposes;

C. Seller has assigned certain rights and obligations under the Inter-Governmental PDA to Contractor (as defined herein) to design, procure, install, test, commission, own, operate and maintain the PV System, pursuant to an Energy Management Services Agreement (“EMS Agreement”) between Seller and Contractor;

D. Seller will purchase Net Energy (as defined herein) generated by the PV System from Contractor and in turn sell an allocated share of that Net Energy to Buyer, pursuant to this Agreement;

E. Buyer desires to purchase the Net Energy generated by the PV System from Seller; and

F. Seller, to the extent permitted by law, will net meter the Net Energy generated by the PV System for the benefit of Buyer.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE I: DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary

meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Commercial Operation” means that the PV System is ready for regular, daily operation, has undergone testing as provided in the EMS Agreement, has been accepted by Seller and Buyer (and to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects, and is capable of producing Energy and delivering it to the Point of Delivery.

“Commercially Reasonable” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics, and regulations.

“Contractor” means the third party entity that will design, procure, install, test, commission, own, operate, and maintain the PV System pursuant to the EMS Agreement.

“Cooperative Member” means any municipality, county or political subdivision thereof, or other body politic, that has duly joined Seller as a cooperative member. Although Buyer is a Cooperative member, Buyer shall be excluded from this definition under this Agreement.

“Distribution Company” means NStar Electric Company or any successor thereto.

“Distribution Company System” means the electric distribution system operated and maintained by the Distribution Company.

“DOER” means the Massachusetts Department of Energy Resources.

“Effective Date” means the date set forth in the introductory paragraph of this Agreement.

“EMS Agreement” has the meaning set forth in the Recitals hereto, a form of which is attached hereto as Exhibit D.

“Energy” means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

“Event of Default” means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

“Event of Termination” means any event of termination as defined in Section 8.1 of this Agreement.

“Financier” means any individual or entity providing money or extending credit for the PV System to Seller for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Seller.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, *Force Majeure* shall not mean:

- (a) Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System.
- (b) Unavailability of sun.
- (c) Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of *Force Majeure*.
- (d) Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Cooperative shall be able to assert Buyer’s governmental actions on Permits for the PV System as an event of *Force Majeure*.

- (e) Any nonpayment under this Agreement or any third party agreement.
- (f) Economic hardship of either Party.

“Good Engineering Practice” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, excluding Seller and any Cooperative Members, including, without limitation, Buyer.

“Inter-Governmental PDA” has the meaning set forth in the Recitals hereto.

“ISO” means the New England Independent System Operator established in accordance with the NEPOOL Agreement (the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005) and the Interim Independent System Operator Agreement as amended, superseded or restated from time to time.

“kW” means Kilowatt.

“kWh” means Kilowatt hour.

“Metering Device(s)” means any and all revenue quality meters installed by Contractor, Seller or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Delivery Point for sale to Seller and/or Buyer.

“Municipal Load” means total annual energy usage as determined on the Effective Date of this Agreement, or [xx] kWh.

“MW” means Megawatt.

“MWh” means Megawatt hour.

“NEPOOL” means the New England Power Pool and any successor organization.

“Net Energy” means the actual and verifiable amount of Energy generated by the PV System and delivered to Buyer at the Point of Delivery or allocated to Buyer in excess of any Energy consumed by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements and the Tariffs.

“Net Metering” means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a net metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§138 – 140 and 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s Tariffs.

“Net Metering Credits” shall have the meaning set forth in 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

“Parties” means Buyer and Seller collectively, and their respective successors and permitted assignees.

“Party” means Buyer or Seller individually, and their respective successors and permitted assignees.

“Permits” means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

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

“Point of Delivery” means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A to the Inter-Governmental PDA.

“Prime Rate” means the rate published from time to time in the “Money Rates” section of *The Wall Street Journal*, as the prime-lending rate. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index.

“PV System” means the solar electric generating facility, including but not limited to the PV System Assets, which produces the Net Energy sold and purchased under this Agreement, as further identified in Exhibit B attached hereto.

“PV System Assets” means each and all of the assets of which the PV System is comprised, including the 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, Metering Devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

“Renewable Energy Certificate” (“REC”) means, with respect to each certificate, all of the environmental and other non-energy attributes, value and credits of any kind and nature associated with one (1) MWh of generation eligible for compliance against the Renewable Energy Portfolio Standard, 225 C.M.R. §14.00, including, but not limited to, any and all pollution offsets or allowances and regulatory compliance rights.

“Solar Net Metering Facility” has the meaning set forth in 220 C.M.R. §18.00, as may be amended from time to time by a Governmental Authority.

“Tariffs” means the Distribution Company’s Interconnection Agreement, M.D.T.E. No. 162-B (Standards for Interconnecting Distributed Generation), and Net Metering Tariff, M.D.P.U. No. 163, as approved in D.P.U. Docket 09-73 and subsequent amendments thereto.

“Term” has the meaning set forth in Article IV (Term).

“Termination Date” means the earlier to occur of: (a) the last day of the Term; or (b) the date of termination.

ARTICLE II: CONSTRUCTION; OBLIGATION TO MODIFY AGREEMENT

2.1 Construction. The Parties acknowledge and agree that the EMS Agreement is substantially similar in form and substance to the model energy management services agreement recommended for use by the DOER in accordance with M.G.L. c. 25A, §11C and 225 C.M.R. § 10.00 et seq. The Parties acknowledge that inconsistencies may exist between this Agreement and the EMS Agreement and that the Parties will use their best efforts to construe the two agreements harmoniously. If a conflict arises between the Seller’s performance of its obligations under the EMS Agreement and the terms of this Agreement, the Parties will use their best efforts to reach a Commercially Reasonable resolution of the conflict. To the extent the Parties are unable to resolve such conflict, the Parties acknowledge and agree that their sole remedy shall be to utilize the Dispute Resolution procedures set forth in Section 10.1 of this Agreement.

2.2 Obligation to Modify. Upon implementation by the Massachusetts Department of Public Utilities, DOER, or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular (i) any rule or regulation regarding Net Metering, or (ii) any order, rule or regulation issued by the DOER pursuant to M.G.L. c. 25A, §11C or 225 C.M.R. § 10.08(8) requesting a modification to the EMS Agreement, the Parties shall be obligated to amend this Agreement to conform to such rule(s), order(s) and/or regulation(s) to the extent that such amendments are

Commercially Reasonable. The Parties shall use their best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

ARTICLE III: PURCHASE AND SALE

3.1 Sale and Purchase. Buyer shall purchase and Seller shall sell the Net Energy pursuant to the terms and conditions set forth in Exhibit A.

3.2 Take-or-Pay for Net Energy Delivered to Point of Delivery. Subject to Section 8.3 (Events of Default by Seller) and Section 8.4 (Force Majeure), if Buyer fails to take Net Energy allocated to Buyer or made available to Buyer at the Delivery Point that Buyer is required to purchase under the terms of this Agreement, then Buyer shall pay to Seller on a monthly basis the price of the Net Energy as specified in Exhibit A upon thirty (30) days prior written notice by Seller. Seller shall have no duty to mitigate any charges under this Section 3.2. Disputes regarding compensation under this provision shall be subject to Article X (Dispute Resolution; Governing Law). Buyer shall not enter into any other energy agreements, other than with the Seller, that would result in any reduction in the total number of kWh that are allocated to Buyer under this Agreement. Pursuant to M.G.L. c. 40, §4A, the obligation of the Buyer to purchase the Net Energy as required under the terms of this Agreement in any contract year shall not be subject to appropriation and the Buyer shall not be exempt from liability pursuant to M.G.L. c. 44, §31.

3.3 Environmental Credits and Value. The Net Energy to which Buyer is entitled shall not include any RECs. Buyer may not, under this Agreement, make any claims whatsoever with respect to any RECs or the corresponding Energy in regards to a renewable portfolio standard, emission offset or other environmental, disclosure or similar regulatory requirement.

3.4 Net Metering Credits. Seller and Buyer acknowledge and agree that for purposes of complying with the regulations at 220 C.M.R. § 18.07(2), Buyer shall, if requested by Seller: (i) sign the Interconnection Agreement as Host Customer (as such term is defined in 220 C.M.R. § 18.02); and (ii) designate Seller as its agent for purposes of communications and interactions with the Distribution Company as necessary to carry out the terms of this Agreement, the Inter-Governmental PDA and the EMS Agreement. If Seller does not request that Buyer sign the Interconnection Agreement as Host Customer, Seller shall sign as Host Customer and shall hold all interest in and title to any and all Net Metering Credits generated or created during the Term in connection with operation of the PV System.

(a) Allocation of Net Metering Credits.

(i) In the event that Buyer is the Host Customer, and there is Net Energy for which Buyer must allocate Net Metering Credits, Buyer shall: (i) designate on Schedule Z to the Interconnection Agreement Buyer's accounts for which Buyer desires to allocate its share of the Net Metering Credits generated or

created during the Term in connection with the operation of the PV System; and (ii) at Seller's direction, designate on Schedule Z the accounts of other Cooperative Members to receive Net Metering Credits generated or created during the Term in connection with the operation of the PV System in excess of Buyer's Municipal Load (as such term is defined in the Inter-Governmental PDA). Buyer acknowledges that for purposes of allocating Net Metering Credits, in Buyer's role as Host Customer, it shall have no interest in and title to any Net Metering Credits generated in connection with the operation of the PV System in excess of Buyer's Municipal Load.

(ii) In the event that Seller is the Host Customer, except as otherwise provided in this Agreement and excluding any period when Buyer is in default of this Agreement, in the event that there is Net Energy for which Seller must allocate Net Metering Credits, Seller shall designate Buyer to receive the allocation of Buyer's share of the Net Metering Credits generated or created during the Term in connection with the operation of the PV System and the allocation or delivery of Net Energy to Buyer.

(iii) Seller and Buyer acknowledge and agree that in accordance with the Distribution Company Tariffs, the Host Customer may amend Schedule Z of the Tariffs two (2) times per calendar year, or as otherwise agreed to by the Distribution Company. Buyer and Seller will use Commercially Reasonable efforts to request that the Distribution Company amend the Schedule Z to address any changes in the identified electric accounts. Buyer shall report to Seller as soon as reasonably possible in advance of any anticipated material change in Buyer's electric accounts that would require an amendment to the Schedule Z.

(b) Purchase of Net Metering Credits by Distribution Company.

(i) In the event that Buyer is the Host Customer, and there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits, Buyer shall be entitled to the Net Metering Credit value for Buyer's share of Net Energy as set forth in section (d) of Exhibit A to this Agreement.

(ii) In the event that Seller is the Host Customer, and there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Seller's designees, Seller shall pay Buyer the Net Metering Credit value for Buyer's share of Net Energy as set forth in section (d) of Exhibit A to this Agreement.

Seller and Buyer acknowledge and agree to request on Schedule Z of the Distribution Company Tariffs that the Distribution Company purchase Net Metering Credits from the Host Customer in connection with the operation of the PV System. In the event that the Distribution Company does not agree to such request and instead elects to allocate Net Metering Credits to the Host Customer or its designees, Seller and Buyer agree to use

their best efforts to amend Exhibit A to conform to Section 3.4(a) and the original intent and economic effect of this Agreement in a timely fashion. Regardless of whether Buyer receives an allocation of Net Metering Credits or whether Buyer receives a payment for its share of the value of the Net Metering Credits purchased by the Distribution Company, Buyer must pay the price for each kWh of electric power set forth in Exhibit A.

3.5 Maximum Financial Liability of the Parties Pursuant to M.G.L. c. 40, Section 4A. This Agreement is not intended to impose any financial liabilities on the Parties other than as expressly set forth herein.

ARTICLE IV: TERM

4.1 Term. The term of this Agreement (the “Term”) commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Effective Date (the “Termination Date”) or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. If Seller is the owner of the PV System upon the Termination Date, the Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

ARTICLE V: METERING AND BILLING

5.1 Billing. On or before the fifteenth (15th) day of each month during the Term (or if such day is not a Business Day, the next succeeding Business Day), Seller shall calculate the amount due and payable to Seller pursuant to Exhibit A, with respect to the immediately preceding month, and shall forward to Buyer an invoice, including such calculation, with sufficient detail for Buyer to verify the calculation and the total amount due and payable for the previous month.

5.2 Payment. Within twenty-one (21) days of the receipt of Seller’s invoice pursuant to Section 5.1(Billing), Buyer shall pay Seller any amounts due and payable hereunder for Net Energy delivered or allocated to Buyer during the prior month. All such invoices shall be paid by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by Seller.

5.3 Metering Equipment and Testing. Seller or Contractor shall provide, install, own, operate and maintain the Metering Device(s). Except as otherwise provided herein, readings of the Metering Device(s) shall be conclusive as to the amount of Net Energy delivered to Buyer.

(a) Seller shall maintain and test the Metering Device(s) generally in accordance with the same terms and conditions applicable to the Metering Device(s) installed for the purpose of delivering Energy to the Distribution Company and the calculation of Net Metering Credits, but in any event on no less than every two (2) years. Seller shall bear the cost of the annual testing of the Metering Device(s) and the preparation of the Metering Device(s) test reports, as provided for in Section 5.3(e).

(b) Twice per calendar year, Buyer may request a test of the Metering Device(s). Following any meter test, if the Metering Device(s) is found to be accurate or inaccurate within $\pm 2\%$, then Buyer shall bear the costs of the meter test and reconciliation. If the Metering Device(s) is found to be inaccurate by more than $\pm 2\%$, or if the Metering Device(s) is for any reason out of service or fails to register, then Seller shall bear the costs of the meter test and reconciliation.

(c) If a Metering Device(s) is found to be inaccurate by $\pm 2\%$ or less, any previous recordings of the Metering Device(s) shall be deemed accurate. If a Metering Device(s) is found to be inaccurate by more than $\pm 2\%$ or if such Metering Device(s) is for any reason out of service or fails to register, then: (i) Seller shall promptly cause the Metering Device(s) found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy; (ii) Seller shall send an invoice to Buyer the following month estimating the correct amounts of Net Energy delivered or allocated during the periods affected by such inaccuracy, service outage or failure to register; and (iii) Seller shall estimate the correct amount of Net Energy in accordance with Good Engineering Practice and as practicable based on the kWh generated during the affected period. If as a result of such adjustment the quantity of Net Energy for any period is decreased, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for that Net Energy. If as a result of such adjustment the quantity of Net Energy for any period is increased, Buyer shall pay for the additional Net Energy. Adjustments to bills shall be made in accordance with ISO rules, policies and procedures. Amounts due as a result of any billing adjustment made in accordance with ISO rules, policies and procedures shall not be subject to any interest charge in favor of Buyer or Seller.

(d) In the event that the Metering Device(s) is for any reason out of service or fails to register, and as a result, the Distribution Company refuses to allocate to Seller's designees or otherwise to purchase the Net Metering Credits associated with the Net Energy generated during that affected period, Seller shall have no obligation to Buyer with respect to those Net Metering Credits, nor shall Buyer have any obligation to pay for such Net Energy on account of such metering failure.

(e) Each Party and its consultants and representatives shall have the right to witness each test conducted by or under the supervision of Seller to verify the

accuracy of the measurements and recordings of the Metering Device(s). Seller shall provide at least twenty (20) 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.

(f) For such time as Contractor is the owner and operator of the PV System, the terms of Section 7.3(e) of the EMS Agreement shall govern in the event of any inaccuracy between the Metering Devices of Contractor and Distribution Company. Seller agrees to pass through to Buyer any credited amounts it receives from Contractor as part of Seller's accounting performed under Section 5.1 of this Agreement.

5.4 Dispute. If a Party, in good faith, disputes a payment or calculation of Buyer's share of Net Metering Credits, as described in this Article V, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay any undisputed portion of such invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within twenty-one (21) Business Days of such resolution along with the interest accrued at the Prime Rate per annum from and including the due date but excluding the date paid. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Prime Rate. The Parties shall only be entitled to dispute an invoice within twelve (12) calendar months from the date of issuance of such invoice. If the Parties are unable to resolve a payment dispute under this Article V, the Parties shall follow the procedure set forth in Article X (Dispute Resolution; Governing Law). Buyer and Seller hereby acknowledge and agree that during the Term of the EMS Agreement (as defined therein), Seller will rely on the information in the invoices provided to Seller by Contractor pursuant to Section 7.4 (Billing) of the EMS Agreement in the preparation of its invoices sent to Buyer under this Article V, and that the dispute provision in Section 7.6 of the EMS Agreement will govern the dispute of invoices under this Article V. Buyer and Seller further acknowledge and agree that upon such time as Seller is the owner of the PV System, the dispute provisions of this Section 5.4 shall control the dispute of Seller's invoices to Buyer under this Article V.

ARTICLE VI: PARTIES' OBLIGATIONS

6.1 Seller's Obligations.

(a) Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required (and in the form required) by any Governmental Authority, NEPOOL, ISO, or as may be reasonably required by Buyer.

(b) For the duration of the Term, Seller shall provide Buyer with access to information regarding the operations of the PV System or other data concerning the PV System.

(c) For the duration of the Term, Seller shall notify Buyer as soon as practicable when Seller becomes aware that the Facility may be mechanically inoperable for more than a seven (7) day period.

(d) Seller shall act as the Host Customer, as defined in 220 C.M.R. § 18.02 and Section 1.01 (definitions) of the Distribution Company's Net Metering Tariff, M.D.P.U. No. 163, for the PV System, unless Seller requests that Buyer act as Host Customer pursuant to Section 3.4 (Net Metering Credits) herein. To the extent that the Distribution Company elects not to purchase Net Metering Credits from Seller, Seller shall be responsible for allocating Net Metering Credits to Buyer as Seller's designee.

6.2 Buyer's Obligations.

(a) Buyer shall be responsible for any present and future taxes, fees and levies, if any, imposed on or associated with the Energy at and from the Delivery Point. Seller shall receive the benefit of any allowances or other credits related to the PV System, except as expressly provided to Buyer under this Agreement. During such time as Contractor is owner and operator of the PV System, Buyer shall reimburse Seller for any Governmental Charges paid by Seller to Contractor pursuant to the EMS Agreement.

(b) Buyer shall not be required to enter into collateral assignments of this Agreement except as provided by this Section 6.2(b). Subject to the terms and conditions of this Agreement, Buyer shall, upon prior written request by Seller or Contractor, execute a consent and agreement with respect to a collateral assignment hereof in favor of any Financier in a form acceptable to Buyer, provided (i) Seller shall reimburse Buyer for all reasonable expenses and attorneys' fees incurred by Buyer in connection therewith, and (ii) that Buyer's duty to make factual statements or representations in such consent and agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent and agreement is delivered.

(c) Buyer further acknowledges that the Financier(s) may have other or further requests with respect to the assignment of this Agreement (such as requests for legal opinions or certificates from Buyer) and may request that certain terms be incorporated into a consent and agreement or assignment agreement to be executed by Buyer. Buyer will consider any such requests and will cooperate and negotiate any such consent and agreement or assignment in good faith. Upon Buyer's written request after execution of any such consent and agreement or assignment, Seller shall reimburse Buyer for any reasonable attorney's fees and expenses associated therewith.

(d) Buyer shall act expeditiously, cooperatively and in good faith in

facilitating any amendments to this Agreement requested by Financier in connection with the financing of the PV System.

(e) Buyer shall act expeditiously, cooperatively and in good faith in facilitating any Permit, license or similar authorization necessary for the PV System, including, without limitation, assisting Seller with the Interconnection Agreement required by the Distribution Company for Net Metering, in particular Schedule Z.

(f) In accordance with Section 3.4, if requested by Seller, Buyer shall act as the Host Customer, as defined in 220 C.M.R. § 18.02 and Section 1.01 (definitions) of the Distribution Company's Net Metering Tariff, M.D.P.U. No. 163, for the PV System and designate Seller as its agent for purposes of communications and interactions with the Distribution Company as necessary to carry out the terms of this Agreement, the Inter-Governmental PDA and the EMS Agreement.

6.3 Net Metering.

(a) Each Party's obligations under this Agreement are subject to the PV System qualifying for Net Metering as a Solar Net Metering Facility.

(b) Subject to the provisions of this Agreement, each of Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the PV System to be eligible for and participate in Net Metering.

(c) So long as any such amendment will materially benefit a Party without material detriment to the other Party, the Parties commit to each other in good faith to make Commercially Reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering and ensure that the PV System is eligible for Net Metering.

ARTICLE VII: REPRESENTATIONS AND WARRANTIES

7.1 Seller's Representations and Warranties. As of the Effective Date of this Agreement, Seller represents and warrants to Buyer as follows:

(a) Seller has full legal capacity to enter into this Agreement;

(b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Seller has full authority to do so and to fully bind Seller; and

(c) Seller knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law

enforcement agency against or affecting Seller or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Seller's ability to carry out its obligations under this Agreement.

7.2 Buyer's Representations and Warranties. As of the Effective Date of this Agreement, Buyer represents and warrants to Seller as follows:

- (a) Buyer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Buyer has full authority to do so and to fully bind Buyer; and
- (c) Buyer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Buyer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Buyer's ability to carry out its obligations under this Agreement.
- (d) Buyer agrees that it has read and fully understands the form of EMS Agreement (attached as Exhibit D to this Agreement), including, without limitation, the price paid for Net Energy by Cooperative to Contractor thereunder.

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES

8.1 Termination. Subject to Section 8.4 (*Force Majeure*), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Either Party may terminate this Agreement in the event that an incurable material Event of Default pursuant to Section 8.2 (Events of Default by Buyer) or 8.3 (Events of Default by Seller) prevents operation of the PV System for twelve (12) months, except with respect to *Force Majeure* events.
- (b) Seller shall terminate this Agreement in the event that Seller abandons the PV System prior to Commercial Operation.
- (c) Seller may terminate this Agreement if there is an Event of Default by Buyer pursuant to Section 8.2.
- (d) In the event that Buyer defaults under Section 8.2 of the Inter-Governmental PDA (Events of Default by Host Town), Seller may terminate this Agreement, as also provided for in Section 8.5(b) of the Inter-Governmental PDA (Remedies) and may exercise any other remedy provided for in this Agreement or otherwise allowed by law.

(e) Seller may terminate this Agreement in the event that the EMS Agreement is terminated by either Seller or Contractor, except to the extent the EMS Agreement is terminated due to Seller's exercise of its Purchase Option (as defined therein).

8.2 Events of Default by Buyer. The following shall each constitute an Event of Default by Buyer:

(a) Buyer breaches any non-monetary material obligation under this Agreement, and fails to cure such breach within thirty (30) Business Days after notification by Seller of the breach.

(b) Buyer fails to make any payment due under this Agreement within forty-five (45) Business Days after such payment is due unless such payment is contested.

(c) If any material representation or warranty made by Buyer in Article VII (Representations and Warranties) of this Agreement proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Seller and Buyer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from the Seller.

(d) Any breach by Buyer pursuant to any of the provisions in Section 3.2 (Take-or-Pay for Energy Delivered to Point of Delivery).

(e) Any other material breach of this Agreement not specifically enumerated above.

Events of Default in this Section 8.2 are subject to, among other things, specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.3 Events of Default by Seller. It shall constitute an Event of Default by Seller if Seller breaches any material obligation under this Agreement that proves to have a material adverse effect on Buyer and fails to cure the breach within thirty (30) Business Days after notification by Buyer of the breach. Events of Default in this Section 8.3 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.4 Force Majeure. Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Buyer) and 8.3 (Events of Default by Seller), if by reason of *Force Majeure* either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a) the non-performing Party, as soon as practicable (and in any event within five (5) Business Days after the *Force Majeure* event first prevents

performance, gives the other Party hereto written notice describing the particulars of the occurrence; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (d) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of *Force Majeure* continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date, provided, however, that the other Party may not terminate this Agreement if the non-performing Party is using Commercially Reasonable efforts to cure the Event of Termination and the non-performing Party provides reasonable written assurances that it will be able to cure such Event of Termination within an additional one hundred eighty (180) days. In the event of termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

8.5 Remedies.

(a) Subject to the limitations set forth in Section 8.5(c) below, in the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Buyer) or 8.3 (Events of Default by Seller), as applicable, the non-defaulting Party may seek, among other things, specific performance and/or monetary damages pursuant to this Section 8.5.

(b) In the case of a payment default by Buyer hereunder, Seller shall have the obligation, during any cure or waiver period provided to Buyer, to sell Net Energy to any other party on Commercially Reasonable terms to mitigate its losses.

(c) In the case of a payment default by Buyer hereunder, Seller's monetary damages shall be the difference between the price under this Agreement and the price at which Seller sells the Buyer's share of the Net Energy on Commercially Reasonable terms to mitigate its losses plus any costs of arranging for such resale. Provided, however, that if the price at which Seller sells the Buyer's share of the Net Energy to mitigate its losses is greater than the price under this Agreement, Seller's monetary damages shall be reasonable costs, including any costs of arranging for such resale, incurred by Seller.

(d) To the extent that Seller receives Net Energy from the PV System but Seller does not sell Buyer's share of such Net Energy to Buyer in accordance with this Agreement, including, without limitation, Article III (Purchase and Sale) and Exhibit A, and Seller does not make a cash payment to Buyer for its share pursuant to Section 3.4(b) (Purchase of Net Metering Credits by Distribution Company), Buyer may, during any cure or waiver period provided to Seller, purchase substitute Energy from any other party on Commercially Reasonable terms to mitigate its losses. This Agreement does not guarantee the delivery of a

certain amount of kWh or MWh of Net Energy to Buyer. This Agreement only entitles Buyer to its share of Net Energy as set forth in Article III and Exhibit A.

(e) To the extent that Seller receives Net Energy from the PV System but Seller does not sell Buyer's share of such Net Energy to Buyer in accordance with this Agreement, including, without limitation, Article III (Purchase and Sale) and Exhibit A, and Seller does not otherwise make a cash payment to Buyer for its share pursuant to Section 3.4(b) (Purchase of Net Metering Credits by Distribution Company), Buyer's monetary damages shall be limited to the difference between the price under this Agreement and the price at which Buyer purchases substitute Energy on Commercially Reasonable terms to mitigate its losses plus any costs of arranging for such purchase of substitute Energy. Provided, however, that if the price at which Buyer purchases substitute Energy to mitigate its losses is less than the price under this Agreement, Buyer's monetary damages shall be limited to its reasonable costs, including any costs of arranging for such purchase, to acquire substitute Energy.

(f) Both Parties agree that they have a duty to use Commercially Reasonable efforts to mitigate damages that may be incurred as a result of the other Party's performance or non-performance under the Agreement.

(g) After the Termination Date of this Agreement, Buyer shall have no further obligation to purchase Net Energy or to make any payment whatsoever under this Agreement, except for payments for obligations arising or accruing prior to the Termination Date. After the Termination Date, this Agreement shall not be construed to provide any residual value to either Party or any successor or any other Person, for rights to, use of, or benefits from the PV System, subject to Section 11.10 (Survival).

(h) Buyer may not enforce any remedies against Contractor under the EMS Agreement, except as otherwise provided therein. Cooperative agrees to enforce any and all remedies against the Contractor under the EMS Agreement. Buyer's sole remedy against Contractor under the EMS Agreement shall be to seek specific performance of this Agreement by the Seller.

For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

NO PARTY HERETO SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST

PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT.

8.6 Step-in Rights of Financier.

(a) Buyer is cognizant of the need of Seller to finance its interest in the PV System. Pursuant to Sections 6.2(b) (Buyer's Obligations), 6.2(c) (Buyer's Obligations) and 9.1(a) (Seller Assignment), Buyer agrees without any further request for prior consent to permit Seller to mortgage, assign or transfer this Agreement for the purpose of obtaining financing, provided: (i) the term of such mortgage, assignment or transfer shall not exceed the Term hereof; (ii) Seller shall give Buyer notice of the name and address of Financier, and a copy of the mortgage, assignment or transfer document within thirty (30) days of the execution of such mortgage, assignment or transfer; and (iii) that the existence of such mortgage, assignment or transfer, or any foreclosure by any Financier, shall not relieve Seller from any liability or responsibility for the performance of its obligations under this Agreement.

(b) Buyer agrees to give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Default hereunder, and Financier shall have a period of sixty (60) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed one hundred eighty (180) days, to cure the Event of Default if Financier uses Commercially Reasonable efforts to cure such Event of Default during the initial sixty (60) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such reasonable period of time thereafter.

(c) Buyer agrees that, prior to termination pursuant to Section 8.1 (Termination), Buyer shall give written notice to any Financier of which Buyer has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such default, provided however, that Financier shall have an additional one hundred eighty (180) days to cure the Event of Termination if Financier uses Commercially Reasonable efforts to cure such Event of Termination during the initial one hundred eighty (180) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Termination within the additional one hundred eighty (180) days.

(d) Buyer also agrees that, in the event that Buyer terminates this Agreement pursuant to Section 8.1 (Termination), then a new agreement shall be executed by Buyer with Financier to assume Seller's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which

would expand the rights of Financier or extend or expand Buyer's obligations hereunder.

8.7 Acknowledgement of Cooperative's Purchase Option. Buyer agrees and understands that Seller shall have the right to purchase the PV System from Contractor pursuant to Article 13 of the EMS Agreement, and that pursuant to Section 8.11 of the Inter-Governmental PDA, Buyer may obligate Seller to exercise its right to purchase the PV System from the Contractor upon expiration of the term of the EMS Agreement. In the event that Seller exercises its right to purchase the PV System from Contractor under the EMS Agreement this Agreement shall continue in full force and effect.

ARTICLE IX: ASSIGNMENT

9.1 No Assignment Without Permission. Subject to the following, the rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto:

(a) Seller Assignment. Seller may assign, subcontract or delegate all or a portion of its rights, privileges or obligations under this Agreement to any Person, subject to the prior written approval of Buyer, such consent not to be unreasonably withheld; provided that prior notice to or consent of Buyer shall not be required: (i) for an assignment by Seller to any of Seller's individual other Cooperative Members or individual members of the Cape Light Compact; and (ii) for a collateral assignment by Seller to any Financier, subject to the terms and conditions of Sections 6.2(b), 6.2(c) and 8.6.

(b) Buyer Assignment. Buyer shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Seller, such consent not to be unreasonably withheld.

Notice of any assignment that does not require prior written approval shall be provided to the other Party as soon as practicable. If a Party fails to obtain prior written approval of the non-assigning Party to the extent required for an assignment under this Section 9.1, such assignment is voidable by such non-assigning Party.

ARTICLE X: DISPUTE RESOLUTION; GOVERNING LAW

10.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article X shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement

of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be Barnstable County Superior Court, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

10.2 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

10.3 Stay of Termination.

(a) During informal negotiations and mediation pursuant to Section 10.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 10.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 10.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) During the Term of the EMS Agreement (as defined therein), if there is any lawsuit pending between Seller and Contractor, Buyer shall not exercise any termination rights pursuant to this Agreement and shall continue to fully perform its obligations under this Agreement. As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Buyer may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by the Seller at any time by any reason.

ARTICLE XI: MISCELLANEOUS

11.1 Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Buyer:

Town of West Tisbury
PO Box 278
West Tisbury, MA 02575
Attn: Town Administrator
Email: townadmin@westtisbury-ma.gov
Tel: (508) 696-0102
Fax: (508) 696-0103

with a copy to:

Ronald H. Rappaport, Esq.
Reynolds, Rappaport, Kaplan & Hackney, LLC
PO Box 2540
106 Cooke Street
Edgartown, MA 02539
Fax: (508) 627-3088
Email: rrappaport@rrklaw.net

If to Seller:

Cape & Vineyard Electric Cooperative, Inc.
P.O. Box 427/SCH
Barnstable, MA 02630
Attn: Margaret T. Downey
Tel: (508) 375-6636
Fax: (508) 362-4136
Email: mdowney@barnstablecounty.org

with a copy to:

Jeffrey M. Bernstein, Esq.
BCK Law, P.C.
One Gateway Center, Suite 809
Newton, MA 02458
Tel: (617) 244-9500
Fax: (617) 244-9550
Email: jbernstein@bck.com

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the Agreement; (b) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the Agreement; or (c) if by Federal Express or other reputable express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the Agreement. Either Party may change its address and contact person for the purposes of this Section 11.1 by giving notice thereof in the manner required herein.

11.2 Entire Agreement; Amendments; Binding Effect. This Agreement and the Inter-Governmental PDA constitute the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

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

11.4 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

11.5 Joint Workproduct. This Agreement shall be considered the workproduct of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

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

11.7 Severability. If any section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or

otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

11.8 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

11.9 Headings and Captions. The headings and captions appearing in this Agreement are intended for reference only, and are not to be considered in construing this Agreement.

11.10 Survival. Termination of this Agreement for any reason shall not relieve Seller or Buyer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article X (Dispute Resolution; Governing Law), which shall survive the expiration or termination of this Agreement.

11.11 Counterparts; Scanned Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

11.12 Reports; Compliance with M.G.L. c. 40, Section 4A. Seller shall prepare an annual report which shall be provided, without charge, to Buyer and each of Seller's Cooperative Members no later than sixty (60) days after the close of its fiscal year. Seller shall keep accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received. Seller agrees that it will perform regular audits of such records. Periodic financial statements shall be issued to Buyer and all Cooperative Members. Seller's officers responsible for this Agreement shall give appropriate performance bonds. Seller shall comply with all other applicable provisions of M.G.L. c. 40, §4A.

11.13 Special Terms and Conditions. Buyer understands and agrees that this Agreement is Seller's standard form inter-governmental agreement for power purchases and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the purchase of Net Energy from the PV System on the Premises, such terms and conditions will be set forth in Exhibit C attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict

between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

SELLER

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name: Margaret T. Downey
Title: Clerk

By: _____
Name: John Checklick
Title: President

Deleted: Charles S. McLaughlin, Jr.

P.O. Box 427
Superior Court House
Barnstable, MA 02630
(508) 375-6636 (voice)
(508) 362-4166 (fax)

BUYER

Town of West Tisbury

By: _____
Name:
Title:

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

PO Box 278
West Tisbury, MA 02575
(508) 696-0102 (voice)
(508) 696-0103 (fax)

List of Exhibits to Agreement

- Exhibit A – Prices and Terms
- Exhibit B – Description of the PV System
- Exhibit C – Special Terms and Conditions
- Exhibit D – Form of Energy Management Services Agreement

T:\Clients\CVEC\PV GEN\2011 Solar RFP\Draft Project Agreements\West Tisbury\West Tisbury Landfill Inter-Governmental PSA (12-12-12) (cvec).doc

Formatted: Font: 8 pt

EXHIBIT A

PRICES AND TERMS

- (a) The Term for provision of Energy under this Agreement shall begin on the Effective Date and shall continue until the end of the twentieth (20th) year after the Effective Date unless otherwise terminated or extended in accordance with its terms.
- (b) (i) While the Contractor owns the PV System, Buyer shall pay Seller the price paid by Cooperative to Contractor under the EMS Agreement plus an operational cost adder as identified on Exhibit C and any direct costs incurred by Seller in connection with the PV System, including costs attributable to any net metering revenue sharing paid by Seller on behalf of Buyer to a Host Town in accordance with Exhibit D of the Inter-Governmental PDA.
- (ii) Alternatively, in the event that Cooperative exercises its purchase option and takes ownership of the PV System, the price shall be as follows: For the first year or any portion thereof following the date on which Seller takes ownership of the PV System, Buyer shall pay Seller a price to be determined for each kWh of electric power as delivered or allocated to Buyer from the PV System pursuant to Buyer's percentage share as determined in (d) below. On the first anniversary of the date on which Seller takes ownership of the PV System and each anniversary of that date thereafter, this energy price shall be annually adjusted based on: (A) the projected output, using the average annual capacity factor of the PV System in prior year(s); and (B) anticipated amounts for operation and maintenance costs, other direct project costs, debt service and required reserves, along with recovery of any material unanticipated operating, maintenance or other such costs reasonably incurred by Seller in the prior year and not recovered from Buyer in the price set forth herein.
- (c) This price does not include any applicable taxes.
- (d) Buyer's percentage share of the Net Energy generated by the PV System shall be 100%. In the event the Distribution Company allocates rather than purchases Net Metering Credits, and the Net Energy projected to be produced in the PV System's first year of operation is greater than the Buyer's Municipal Load as determined on the Effective Date of this Agreement, Seller shall use Commercially Reasonable efforts to reallocate any excess Net Energy to other Cooperative Members on a pro rata basis.
- (e) The Net Energy generated by the PV System shall be purchased by Buyer subject to Net Metering (as defined in the Agreement), the applicable rules and regulations promulgated by the Department of Public Utilities, and the Distribution Company's Tariffs (as defined in the Agreement).

(f) In the event that there is Net Energy for which the Distribution Company elects to purchase rather than allocate Net Metering Credits to Seller's designees, Seller shall pay Buyer for Buyer's share of the Net Metering Credit value as paid to Seller by the Distribution Company.

(g) In the event that Contractor pays Seller damages for a Production Shortfall pursuant to Section 5.6 of the EMS Agreement (as such term is defined in the EMS Agreement), Delay Liquidated Damages pursuant to Section 4.8(a) of the EMS Agreement (as such term is defined in the EMS Agreement), upon Seller termination for a Contractor event of default pursuant to Section 9.3 of the EMS Agreement, or a Foregone User Benefit pursuant to Section 8.1 of the EMS Agreement (as such term is defined in the EMS Agreement), Seller shall, within a reasonable period of time after receiving such payment from Contractor, allocate such payment to Buyer under the same formula for allocating Net Energy produced by the PV System.

EXHIBIT B

DESCRIPTION OF PV SYSTEM

The West Tisbury Landfill PV Project is a .883 MW (DC) and .716 MW (AC) solar electric generation facility to be located at 47 Old Stage Road – West Tisbury, MA 02575. The facility will consist of approximately 3,047 photovoltaic modules mounted on a non-penetrating ballasted ground mount system. The .883 MW (DC) solar array will utilize approximately two (2) inverters to convert the energy output from direct current (DC) to alternating current (AC). A transformer will then step up the voltage of the AC output to the level of the interconnecting utility's distribution line. The system will be designed to meet all local, state and federal codes and regulations. At such time that Contractor can fully describe the PV System, this Exhibit B shall be replaced in its entirety with the completed chart below.

PV SYSTEM:	System Manufacturer: Suntech Modules or Equal
	Nameplate Capacity: 883.63 kW
	Approximate Annual Energy Production:
	1,153,596 kWh
	Location: 47 Old Stage Road – West Tisbury, MA 02575
	Preliminary Specifications:
	<hr/>
PV SYSTEM ASSETS:	Mounting Systems: P2 Mounting System or Equal
	Tracking Devices: Not Applicable
	Inverters: Satcon Inverters or Equal
	Integrators: Broadway Electrical Co., Inc.
	Related Equipment: Not Applicable
	Electric Lines: 480V, 120V, 13.8kV
	Permits: Electrical & Building Permits
	Contracts: EMS Agreement

**** Final system size will be determined once final field layout and structural analysis has been completed.**

EXHIBIT C

SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS INTER-GOVERNMENTAL NET METERED POWER PURCHASE AGREEMENT

1. Operational Costs Adder.

Seller shall be entitled to recover its operational costs for its services in managing this Agreement and any other Net Metered Power Sales Agreement entered into pursuant to Seller's September 2011 Request for Proposals ("RFP") for Energy Management Services.

The operational adder for Buyer pursuant to Section (b)(i) of Exhibit A shall be \$0.01. Commencing on the first anniversary of the Commercial Operation date of the PV System, and on each anniversary date thereafter, the operational adder shall be increased by the percentage that the United States Department of Labor Bureau of Labor Statistics Consumer Price Index For All Urban Consumers (All Items Index for Boston-Brockton-Nashua) ("CPI-U") for the month in which such anniversary occurs exceeds the corresponding CPI-U for the month in which the Commercial Operation date of the PV System occurs. If the manner in which the CPI-U is determined is substantially revised or the CPI-U shall become unavailable, Seller and Buyer agree to cooperate to determine an acceptable, comparable alternative index upon which to base the increase in the operational adder.

2. Municipal Load. Article I is hereby amended to define "Municipal Load" as follows:

"Municipal Load" means the total annual energy usage of Buyer and the West Tisbury School as determined on the Effective Date of this Agreement, or [xx] kWh.

Formatted: Highlight

3. Purchase Option. Section 8.7 of the Agreement is replaced in its entirety with the following:

8.7 Purchase Option. Pursuant to Section 8.10 of the Inter-Governmental PDA, Buyer may exercise a right to purchase the PV System if Seller does not exercise Seller's Purchase Option upon the seventh (7th), tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Effective Date of the EMS Agreement. In the event that Seller exercises its right to purchase the PV System from Contractor under the EMS Agreement this Agreement shall continue in full force and effect.

Formatted: No underline

Formatted: Indent: First line: 36 pt

Formatted: Superscript

Formatted: Superscript

Formatted: Superscript

Formatted: Superscript

EXHIBIT D

FORM OF ENERGY MANAGEMENT SERVICES AGREEMENT

Please see attached.