



Fairhaven Board of Selectmen

May 7, 2016 Meeting Minutes

Present: Select Board Chairman Charles K. Murphy, Sr., Vice Chairman Robert J. Espindola, and Clerk Daniel Freitas; Town Administrator Mark Rees, and Administrative Assistant Anne O'Brien.

Mr. Murphy called the meeting to order in the Elizabeth Hastings Middle School Auditorium at 8:24 a.m.

PILOT AGREEMENT WITH BLUE WAVE CAPITAL

The Board discussed the draft PILOT agreement with Blue Wave Capital for a solar field at 211 Mill Road. Mr. Rees informed the Board that the Finance Committee had just voted to support the PILOT agreement (see Attachment A). Mr. Rees said that, based on his work with the Finance Committee and negotiations with Blue Wave Capital, he recommends the Board support the article. Mr. Espindola motioned to approve the PILOT agreement and passage of the article (May 7, 2016 Special Town Meeting Article 10). Mr. Freitas seconded. Vote was unanimous. (3-0).

OXFORD SCHOOL – STRATFORD MOU

The Board reviewed a Memorandum of Understanding between the Town and the Stratford Capital Group to have Stratford draft and submit street-level engineering plans to show Town Meeting how the proposed Oxford senior housing development would appear, and to pay for a Special Town Meeting prior to July 22, 2016. Mr. Espindola motioned to approve the MOU and pass over Special Town Meeting Article 6 "Sale of Oxford School". Mr. Freitas seconded. Vote was unanimous. (3-0).

At 11:44 a.m., Mr. Espindola motioned to adjourn with the adjournment of the Annual Town Meeting. Mr. Freitas seconded. Vote was unanimous. (3-0).

Respectfully,
Anne O'Brien
Administrative Assistant
Minutes approved 05/23/2016

AGREEMENT
FOR PAYMENT IN LIEU OF TAXES
FOR PERSONAL PROPERTY

between

BWC Origination Fairhaven One, LLC

and

Town of Fairhaven, MA

dated as of _____, 2016

AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PERSONALPROPERTY (the "Agreement") is made and entered into as of this _____ day of May, 2016 by and between BWC Origination Fairhaven One, LLC, a Delaware limited liability company with a principal place of business at 137 Newbury Street, 4th Floor, Boston, Massachusetts 02116 ("Developer"), the TOWN OF FAIRHAVEN, a municipal corporation duly established by law and located in Bristol County, Commonwealth of Massachusetts and unless otherwise expressly stated, acting in all instances, by and through its Board of Selectmen (the "Town"). Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer plans to build, own and operate a photovoltaic power plant (the "Project") with an expected direct current ("DC") nameplate capacity of approximately 1.096 megawatts ("MW") on approximately a ten (10.79) acres of land located at 211 Mill Road, Fairhaven, Massachusetts, as more particularly shown in Exhibit A (the "Property");

WHEREAS, it is the intention of the Parties that Developer make annual payments to the Town for the term of this Agreement in lieu of personal property taxes on the Project, in accordance with M.G.L. c. 59, § 38H(b) (Acts of 1997 Chapter 164, Section 71(b), as amended) and the Massachusetts Department of Revenue regulations adopted in connection therewith;

WHEREAS, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the personal property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement fixing the payments that will be made with respect to all taxable personal property incorporated within the Project for the term of the Agreement;

WHEREAS, the Parties intend that, during the term of the Agreement, Developer will not be assessed for any statutory personal property taxes to which it might otherwise be subjected under Massachusetts law, and this Agreement will provide for the exclusive payments in lieu of such personal property taxes that Developer (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project during the term hereof, provided, however, that the Parties do not intend for this Agreement to affect any direct payments for services provided by the Town to the Project, including but not limited to, permit fees, consultant services associated with any permit applications, water and sewer services, and similar payment obligations not in the nature of personal property taxes that Developer is otherwise obligated to pay the Town;

WHEREAS, the Town is authorized to enter into this Agreement with Developer, provided the payments in lieu of personal property taxes over the life of the Agreement are expected at inception to approximate the property tax payments that would otherwise be determined under M.G.L. c. 59 based upon the full and fair cash valuation of the Project;

WHEREAS, the parties recognize that the taxes due under M.G.L. c. 59 based upon the full and fair cash valuation of the Project would result in a tax burden which would be highest at the inception of the Project and would decline over the life of the Project, and that as a result of their agreement to a schedule of fixed annual payments there will be an accruing tax burden as set forth in Exhibit B (the "Accrued Tax Burden") which will be paid over the term of the Agreement, and;

WHEREAS, the Parties have reached this Agreement after good faith negotiations:

NOW THEREFORE, in exchange for the mutual commitments and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Payment in Lieu of Personal Property Taxes. Except as otherwise provided in this Agreement with respect to payment of the Accrued Tax Burden, Developer agrees to make payments to the Town in lieu of personal property taxes for a period of twenty (20) consecutive fiscal tax years, commencing with the fiscal tax year following the first January 1 on or after the Commercial Operations Date (as defined below) (the "Term") at a rate of \$17,164 per MW DC capacity of the Project per annum. Each annual payment will be paid to the Town in two (2) equal installments during the term of this Agreement and the annual payment amount and payment date will be noted on a semi-annual bill issued by the Town to the Developer. Except to the extent that Paragraph 2 of the Agreement provide otherwise, Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation or reduction in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in the agreed per megawatt rate, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage beyond that anticipated by the Parties.

2. Adjustments to Annual Payments. Adjustments to Annual Payments shall be made, if at all, only in accordance with this Paragraph 2.

a. DC Nameplate Capacity Changes. If, as of the date Developer receives from the local electric utility written authorization to interconnect and commence operations of the Project (the "Commercial Operations Date"), the installed DC nameplate capacity of the Project is more or less than the capacity set forth herein by more than 0.001 MW, the remaining Annual Payments shall be increased (if more) or decreased (if less) by a unit price of Seventeen Thousand One Hundred Sixty Four Dollars and Zero Cents (\$17,164.00) per MW DC for each MW (or portion thereof) change in such capacity. In addition, if after the Commercial Operations Date, as a result of the addition, replacement, enhancement, or removal of Project equipment, improvements or other property, the installed DC nameplate capacity of the Project is increased or decreased by more than 0.001 MW, such remaining Annual Payments shall be similarly adjusted for each MW change in such capacity, provided that in the event of a decrease, the Developer will make an additional annual payment in the amount of the Accrued Tax Burden on the effective date of the decrease divided by the number of years remaining in the term of the Agreement, and provided that, in the event of a removal resulting in a decrease in Annual Payments, such decrease shall not be effective unless and until the Project equipment, improvements or other property have been removed from the Project. Within fourteen (14) days following the Commercial Operations Date, Developer shall provide written notice to the Town certifying that date and the DC and AC nameplate capacity of the Project as installed as of that date.

b. Notice of Changes in Capacity. Within fourteen (14) days prior to the addition, replacement, removal or enhancement of Project equipment, improvements or other property resulting in a change in DC nameplate capacity, Developer shall provide written notice to the Town describing, in reasonable detail, the equipment, improvements or other property added, replaced, removed or enhanced; the resulting change in DC nameplate capacity; a proposed adjustment to Annual Payments under Paragraph 2; and the basis for such change in capacity. Developer shall obtain prior approval from the Town, acting by and through its Board of Selectmen, of such change resulting in a decrease in capacity.

3. Inventory and Inspection. Within six (6) months after the Commercial Operations Date, Developer shall prepare and provide to the Town, and the Parties will subsequently agree on a mutually acceptable inventory of personal property incorporated into the Project as of the Commercial Operations Date (the "Inventory"). To the extent that inventory should change, Developer will promptly update the said Inventory and submit the same to the Town, for approval by the Parties. The Town, its officers, employees and consultants and representatives shall have the right upon not less than ten (10) days prior written notice (except in an emergency) to periodically inspect the Project, on reasonable prior notice to Developer, for the purpose of confirming and verifying the Project and compliance with this Agreement. During any such inspection, the Town shall comply with all reasonable Developer safety requirements. Developer's representative may, at the Developer's sole election, accompany the Town on all such inspections.

4. Payment Collection, Security. The provisions of M.G.L. c. 60 and other applicable law will govern the collection of any payments in lieu of taxes provided for in this Agreement as though they were personal property taxes due and payable to the Town. In addition to any provisions of law applicable to the collection of payments under this Agreement, the Developer will provide the Town with security for all payments for the term of the Agreement in the form of collateral, a letter of credit, surety, or such other form of security as shall be satisfactory to the Town in its reasonable discretion. The amount of security shall not be in excess of the largest annual Accrued Tax Burden set forth on Exhibit B.

5. Tax Status. Separate Tax Lot. The Town agrees that during the term of this Agreement, the Town will not assess Developer for any personal property taxes with respect to the Project or the Property to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem personal property taxes and payments in lieu of such taxes that Developer will be obligated to make to the Town with respect to the Project and the Property, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of general applicability by the Town for excise taxes on vehicles due pursuant to M.G.L. c. 60A and for services provided by the Town to the Project, including but not limited to, permit fees and consultant services.

The Town agrees that no personal property taxes will be due from or assessed to Developer with regard to the Project other than the payments in lieu of taxes described in this Agreement.

6. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Developer, and the obligations created hereunder will run with the Property and the Project. In the event that Developer sells, transfers, leases or assigns the Property or all or substantially all of its interest in the Project, this Agreement will thereafter be binding on the purchaser, transferee, lessee or assignee. A Notice of this Agreement may be recorded in the applicable Registry of Deeds forthwith upon execution. In the event of bankruptcy of the Developer, the Accrued Tax Burden shall be due and payable immediately, and the Town may revoke this Agreement. In the event that the successor or assign of Developer is a tax-exempt entity, the Accrued Tax Burden, and the remaining payments due to the Town as part of this agreement will be paid in a lump sum using a discount rate of ten (10%) percent to calculate the Net Present Value of the remaining future payments due.

7. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project, to the extent that such value is determinable as of the date of this Agreement in accordance with M.G.L. c.59, § 3811. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over personal property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective

interests. The Town acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project.

8. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver or cause to be executed and delivered, such additional instruments, certificates and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement and, upon the exercise by a Party of any power, right, privilege or remedy pursuant to this Agreement that requires any consent, approval, registration, qualification or authorization of any third party, each Party will execute and deliver all applications, certifications, instruments and other documents and papers that the exercising Party may be so required to obtain.

9. Partial Invalidity. If, for any reason, including a change in applicable law, a property tax is imposed on the Project or the Property in addition to the payments in lieu of taxes due under this Agreement, the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of the property taxes actually paid to the Town for each year. If for any reason, including a change in applicable law, a payment in lieu of taxes is provided for that is less than that provided for in Paragraph 1 of this Agreement, any amount provided for in this Agreement over and above such lesser amount shall be considered a payment by Developer to the Town as the host community of the Project. In no event, except as provided for in Paragraph 2 hereof, shall the payment amounts provided for herein be reduced below the level called for in Paragraph 1.

10. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or otherwise. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To: Developer

BWC Origination Fairhaven One, LLC
c/o BlueWave Capital, LLC
137 Newbury Street, 4th Floor
Boston, MA 02116
Attn: Trevor Hardy

To: Town of Fairhaven

Board of Selectmen
Town Hall
Center Street
Fairhaven, MA 02719
Attn: Town Administrator

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

11. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The Parties each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions. Venue for any action brought hereunder shall be the courts of Bristol County, Massachusetts.

12. Good Faith. The Parties shall act in good faith to carry out and implement this Agreement.

13. Force Majeure. The Parties recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure". As used herein, Force Majeure includes, without limitation, the following events:

- a. Acts of god including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or
- c. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

In the event an event of Force Majeure occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty (60) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken.

If Developer elects not to rebuild, then the Accrued Tax Burden shall be immediately due and payable in full and the Developer may notify the Town of its termination of all other provisions of this Agreement and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist.

14. Insurable Loss. The Developer shall insure the Project against loss due to fire and other casualty, naming the Town as a loss payee. If the Developer elects not to rebuild in the event of an insured loss The Town may satisfy the payment of the Accrued Tax Burden from the proceeds of any insurance payment from the Developer's insurer. To the extent that that insurance payment is in excess of the Accrued Tax Burden, that excess will be paid to the Developer and shall not inure to the benefit of the Town.

14. Covenants of Developer. During the term of the Agreement, Developer will not voluntarily do any of the following:

- a. seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein;
- b. convey by sale, lease, assignment or otherwise any interest in the Project to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59 Section 5 (Third); or
- c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement.

15. Representation and Warranty of Developer. Developer represents and warrants:

- a. It is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation or entity, is, to the full extent required by law or regulation, registered with the Massachusetts Secretary of the Commonwealth, and has full power and authority to carry on its business as it is now being conducted.
- b. This Agreement constitutes the legal, valid and binding obligation of Developer enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting enforcement of creditors' rights generally or by general equitable principles.
- c. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.
- d. None of the documents or information furnished by or on behalf of Developer to the Town in connection with the negotiation and execution of this Agreement contains any untrue, false or inaccurate statement of a material fact or omits to state any material fact required to be stated therein, or necessary to ensure that the statements contained herein or therein, in the light of the circumstances in which they were made, are not misleading.
- e. The person executing this Agreement on behalf of Developer has the full power and authority to bind it to each and every provision of this Agreement.
- f. Developer is a "generation company" as such term is used and defined in M.G.L. c. 59, § 38H(b) and M.G.L. c. 164, § 1 (or their successor provisions).

16. Covenants of the Town. So long as Developer is not in breach of this Agreement during its term, and except as authorized in this Agreement, the Town will not do any of the following:

- a. seek to invalidate this Agreement or otherwise take a position adverse to the

purpose or validity of this Agreement;

b. seek to collect from Developer any property tax upon the Project or any other improvement thereon for which Developer is not the responsible party in addition to the amounts herein;

c. impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) except as is expressly provided herein;

17. Certification of Tax Compliance. Pursuant to M.G.L. c. 62C, § 49A the undersigned Developer by its duly authorized representative certifies that it is in tax compliance with the tax laws of the Commonwealth of Massachusetts.

18. Enforceability. Developer and the Town understand and agree that this Agreement shall be null and void and that except for the obligation for the payment of the Accrued Tax Burden no portion of this Agreement shall be enforceable, if: (a) this Agreement, or any material portion of this Agreement, is determined or declared to be illegal, void, or unenforceable; or (b) Developer or any successor or assignee of Developer, if any, is not a "generation company" as such term is used or defined in M.G.L. c. 59, § 38H (b), and M.G.L. c. 164, § 1 (or their successor provisions).

19. Default. It shall be a default of this Agreement if the Developer or any successor or assignee violates any of the terms and conditions of this Agreement, provided, in the event of such violation, the Developer or its successor or assignee has not cured such violation within thirty (30) calendar days of receipt of written notice of such violation or Developer or its successor or assignee notifies the Town prior to the expiration of said thirty (30) calendar period that it does not intend to cure such violation. In the event of such default the Accrued Tax Burden shall be immediately due and payable, and the obligations of the Town shall be terminated.

20. Successor Agreement. Unless otherwise undertaken beforehand, not less than six (6) months prior to the last payment called for in Paragraph 1 above, the Parties may meet and negotiate a successor agreement to the within Agreement governing the tax treatment of the Project and/or the continuation of payments to the Town of Fairhaven as the host community for the Project.

(Signature Page Follows)

Executed under seal by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

TOWN OF FAIRHAVEN, acting by and through its Board of Selectmen

By: _____
Title: _____
Date: _____

**BWC ORIGINATION FAIRHAVEN
ONE, LLC**

By: BlueWave Capital, LLC

Its: Sole Member

By: _____
Title: _____
Date: _____

EXHIBIT A
Legal Description

The Property:

EXHIBIT B
Schedule of
Accrued Tax Burden

FY2016	\$31,736
FY 2017	\$42,873
FY 2018	\$51,118
FY 2019	\$56,738
FY 2020	\$59,973
FY 2021	\$61,043
FY 2022	\$60,146
FY 2023	\$57,464
FY 2024	\$53,160
FY 2025	\$47,383
FY 2026	\$41,788
FY 2027	\$36,378
FY 2028	\$31,154
FY 2029	\$26,119
FY 2030	\$21,275
FY 2031	\$16,625
FY 2032	\$12,171
FY 2033	\$7,915
FY 2034	\$3,860
FY 2035	\$9