

CITY COUNCIL MEETING

AGENDA ITEM II



From: Elizabeth Dragon, City Manager

Subject: City Council to consider approval of Lease for city owned properties and power purchase agreements for associated solar projects

City Manager Recommendation:

1. Councilor moves:

"I move that the Franklin City Council approve the proposed lease for two River Street properties identified by Tax map/Lot #123-403-00" and to approve the proposed purchase power agreement related to this project.

2. Mayor calls for a second, discussion, and the vote.

Background:

The proposed solar projects will bring additional revenue to the city through lease payments over the next 20 yrs (with two potential 5 year extensions). The project will also bring energy savings through power purchase agreements.

Last month, in the manager's report I provided copies of the planning board notice approving site plan review for 7 solar projects throughout the community (attached). The two projects being reviewed this evening are proposed on city parcels.

The lease agreement and power purchase agreement has been reviewed and worked on with the city attorney. At the August 3rd council meeting we had one remaining legal issue to be resolved for the lease agreement. The solution was to incorporate a bond for the city's protection. I have attached the draft language of the bond (currently being reviewed by the city attorney).

There have also been a lot of negotiations occurring relative to the lease amount and power purchase price. The final agreement was lease payments (\$17,000 & 13,000 per year), Payment in Lieu of taxes (\$3,500 per year for each site), and Power purchase agreements using the 8.45 cent Kwhrate we know we can get from our current supplier for the next 3 yrs and jump to 9.45 cents which is the expected increase and escalate at 5% in years five on. The 5% escalation was a compromise from the original 9% proposed. (spreadsheet created by Director Milner attached to illustrate revenue & savings)

Alternatives: The alternatives are to not approve this and keep the current lease with five for just over \$850 per year (\$25 per acre)

Elizabeth Dragon

From: Andrew Kellar [andrew@nhsolargarden.com]
Sent: Friday, August 07, 2015 7:08 PM
To: Judie Milner; Elizabeth Dragon
Cc: Barrett Bilotta; Ken Merrifield
Subject: Re: Solar garden on City land by Sewage plant

Judie & Elizabeth,

Thank you for working with us on this analysis. We have documentation from ISO-NE that shows the forward capacity auctions for 2017-2019 have already cleared and these numbers are more than posturing from officials. I am happy to send it to you for review?

I would consider the following so we can wrap this up next week and get on the Council's agenda :-):

- 1) *Keep with our initial lease rates but add 2% esc on all sites* - (2) \$17,000 leases & (3) \$13,000 leases, per parcel, per year with a 2% escalation annually
- 2) *Increase the PILOTS as you have here by \$500 per. from original offer* - (7) \$3,500 PILOT payments, per parcel, per year annually
- 3) *Adjust a smaller amount in year 4* - 8.45 cent Kwh rate for the first 3 years, jump to 9.45 cents (keeps it flat in year 4 with est grid rates by then) and then escalate at 5% in years 5 on

If we can have a little give and take on both sides, I am sure I can get my partners sign off too. Below is the savings chart spelling these out. If you accumulate the Lease and PILOTs together with the energy savings, which is a cumulative number to start, it provides the City with \$4,000,000 in cash over 25 years!!!!

Thanks again and we look forward to your responses.

Have a nice weekend....Andrew

Total City Savings - 5.5%

Year	Lease/PIL				Totals-All cumm.
	Land Leases	PILOTs	OT cumm.	Energy Savings	
1	\$73,000	\$24,500	\$97,500	\$0	\$97,500
2	\$74,460	\$24,500	\$196,460	\$0	\$196,460
3	\$75,949	\$24,500	\$296,909	\$0	\$296,909
4	\$77,468	\$24,500	\$398,877	\$0	\$398,877
5	\$79,018	\$24,500	\$502,395	\$2,605	\$505,000
6	\$80,598	\$24,500	\$607,493	\$8,048	\$615,541
7	\$82,210	\$24,500	\$714,203	\$16,579	\$730,781
8	\$83,854	\$24,500	\$822,557	\$28,462	\$851,018
9	\$85,531	\$24,500	\$932,588	\$43,980	\$976,568
10	\$87,242	\$24,500	\$1,044,330	\$63,437	\$1,107,766
11	\$88,987	\$24,500	\$1,157,816	\$87,153	\$1,244,969
12	\$90,766	\$24,500	\$1,273,083	\$115,471	\$1,388,553
13	\$92,582	\$24,500	\$1,390,164	\$148,756	\$1,538,920
14	\$94,433	\$24,500	\$1,509,097	\$187,396	\$1,696,494
15	\$96,322	\$24,500	\$1,629,919	\$231,806	\$1,861,726
16	\$98,248	\$24,500	\$1,752,668	\$282,426	\$2,035,093
17	\$100,213	\$24,500	\$1,877,381	\$339,722	\$2,217,103
18	\$102,218	\$24,500	\$2,004,099	\$404,192	\$2,408,291
19	\$104,262	\$24,500	\$2,132,861	\$476,366	\$2,609,227
20	\$106,347	\$24,500	\$2,263,708	\$556,805	\$2,820,513
21	\$108,474	\$24,500	\$2,396,682	\$646,106	\$3,042,789
22	\$110,644	\$24,500	\$2,531,826	\$744,904	\$3,276,730
23	\$112,857	\$24,500	\$2,669,182	\$853,871	\$3,523,053
24	\$115,114	\$24,500	\$2,808,796	\$973,722	\$3,782,518
25	\$117,416	\$24,500	\$2,950,712	\$1,105,217	\$4,055,929

Total Hayfield Savings - 5.5%

Year	Lease/PIL				Totals-All cumm.
	Land Leases	PILOTs	OT cumm.	Energy Savings	
1	\$34,000	\$7,000	\$41,000	\$0	\$41,000
2	\$34,680	\$7,000	\$82,680	\$0	\$82,680
3	\$35,374	\$7,000	\$125,054	\$0	\$125,054
4	\$36,081	\$7,000	\$168,135	\$0	\$168,135
5	\$36,803	\$7,000	\$211,937	\$2,605	\$214,542
6	\$37,539	\$7,000	\$256,476	\$8,048	\$264,524
7	\$38,290	\$7,000	\$301,766	\$16,579	\$318,345
8	\$39,055	\$7,000	\$347,821	\$28,462	\$376,283
9	\$39,836	\$7,000	\$394,657	\$43,980	\$438,637
10	\$40,633	\$7,000	\$442,291	\$63,437	\$505,728
11	\$41,446	\$7,000	\$490,736	\$87,153	\$577,889
12	\$42,275	\$7,000	\$540,011	\$115,471	\$655,482
13	\$43,120	\$7,000	\$590,131	\$148,756	\$738,887
14	\$43,983	\$7,000	\$641,114	\$187,396	\$828,510
15	\$44,862	\$7,000	\$692,976	\$231,806	\$924,782
16	\$45,760	\$7,000	\$745,736	\$282,426	\$1,028,162
17	\$46,675	\$7,000	\$799,410	\$339,722	\$1,139,132
18	\$47,608	\$7,000	\$854,019	\$404,192	\$1,258,211
19	\$48,560	\$7,000	\$909,579	\$476,366	\$1,385,945
20	\$49,532	\$7,000	\$966,111	\$556,805	\$1,522,916
21	\$50,522	\$7,000	\$1,023,633	\$646,106	\$1,669,739
22	\$51,533	\$7,000	\$1,082,165	\$744,904	\$1,827,069
23	\$52,563	\$7,000	\$1,141,729	\$853,871	\$1,991,600
24	\$53,615	\$7,000	\$1,202,343	\$973,722	\$2,165,322
25	\$54,687	\$7,000	\$1,264,030	\$1,105,217	\$2,349,247

On thu, Aug 6, 2015 at 4:39 PM, Judie Milner <jmilner@franklinnh.org> wrote:

Correct. Like we discussed – we think there is a more political drive in that announcement.

Judie Milner

Finance Director

City of Franklin, New Hampshire

316 Central Street

Franklin, NH 03235

Ph: [603-934-3900](tel:603-934-3900)

Fx: [603-934-7413](tel:603-934-7413)

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From: Andrew Kellar [andrew@nhsolargarden.com]
Sent: Tuesday, August 11, 2015 4:50 PM
To: Elizabeth Dragon
Cc: Barrett Bilotta
Subject: Re:

Here you go....Is this helpful?

Any feedback on our response to the PPA from last week?

Andrew

Franklin Town Solar 1, LLC

- City Hayfield location next to WWTP
- 1.3 MWs
- Power dedicated to City
- \$17,000 land lease (open land with min. site work)
- \$3500 PILOT payment per year

Franklin Town Solar 2, LLC

- City Hayfield location next to WWTP
- 1.3 MWs
- Power dedicated directly to WWTP or City
- \$17,000 land lease
- \$3500 PILOT payment per year

Ashfill Solar, LLC

- Land about to be donated to City by COOP
- 1.3 MWs
- Power dedicated to NHSG's offtakers in PSNH territory
- \$13,000 land lease (wooded lot with some site work)
- \$3500 PILOT payment per year

Industrial Park Drive Solar, LLC

- Land that City has ability to get an option on with current landowner
- 1.3 MWs
- Power dedicated to NHSG's offtakers in PSNH territory
- \$13,000 land lease (wooded lot with some site work)
- \$3500 PILOT payment per year

Lakeshore Drive Solar, LLC

- City owned land on Hill road (old gravel pit)
- 1.3 MWs
- Power dedicated to NHSG's offtakers in NH COOP territory
- \$13,000 land lease (some site work)
- \$3500 PILOT payment per year

Water Street Solar, LLC

- City owned contaminated site
- 1.3 MWs
- Power dedicated to NHSG's offtakers in PSNH territory or City
- \$13,000 land lease (additional permitting at the State level & more expensive construction costs)
- \$3500 PILOT payment per year

Commerce Drive Solar, LLC

- Privately owned landfill
- 1.3 MWs
- Power dedicated to NHSG's offtakers in PSNH territory
- \$3500 PILOT payment per year

Industrial Park Drive Solar, LLC

- Privately owned landfill
- 1.3 MWs
- Power dedicated to NHSG's offtakers in PSNH territory
- \$3500 PILOT payment per year

On Tue, Aug 11, 2015 at 4:13 PM, Elizabeth Dragon <citymgr@franklinnh.org> wrote:

Can you update the summary of all 7 solar sites-listings as the city/private, MW's , lease value, pilot value, where power is dedicated etc..it was originally with the LOI's I think back in March.

I believe judie gave you the specific email date.

Its easier for me to answer questions from the media with that summary.

I have attached some of the email from the old version that I am referring too

Elizabeth A. Dragon

City Manager

City of Franklin

(P) 934-3900

(F) 934-7413

DRAFT

LEASE BOND

Bond No. ____

KNOW ALL BY THESE PRESENTS

That we, **NAMED INSURED**, as Principal, and **NAME OF SURETY**, a corporation duly organized and existing under and by virtue of the laws of the State of -----, as Surety, are held and firmly bound unto, ----- in the sum of **ONE HUNDRED THOUSAND AND NO/100THS** – (\$100,000.00) lawful money of the United States of America, to be paid to -----for which payment well and truly to be made, we bind ourselves, our heirs, executors, jointly and severally, firmly by these presents.

WHEREAS said Principal has entered into a Lease Agreement, dated ----- with the ----- for the use of the premises described in the articles of the said Lease Agreement.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall faithfully **MAINTAIN PROPERTY** required under said Lease Agreement, (which by reference is made a part hereof), then this obligation shall be null and void, otherwise to remain in full force and effect.

PROVIDED, HOWEVER, THAT THIS BOND IS EXECUTED BY THE PRINCIPAL AND SURETY AND ACCEPTED BY THE OBLIGEE SUBJECT TO THE FOLLOWING EXPRESS CONDITIONS:

1. The term of this bond shall be from ----- **2015** to ----- **2016**, subject to continuation by an annual extension certificate.
2. The liability of the Surety shall in no event exceed – **ONE HUNDRED THOUSAND AND NO/100THS (\$100,000.)** in the aggregate, the penal sum of this bond.
3. No assignment shall be effective without the written consent of the Surety.
4. All suits, actions against this bond must be brought within thirty (30) days of the termination of the Lease or bond whichever shall occur first.
5. It is understood and agreed that the obligation of the Surety may be terminated by the Surety by giving ninety (90) days advance notice in writing to the Obligee.

SIGNED, SEALED AND DATED THIS ----- day of -----, 2015..

(Principal)

BY: _____

(Surety)

By: _____

**City of Franklin, New Hampshire
Electric Rate Analysis**

Solar Garden City Electrical Revenue Analysis:

Solar Garden 8.45 for 3 years; 5.0% escalation thereafter

ConEdison 5.5% escalation

Savings per year Electricity

Lease Payment Revenue 2% escalation

PILOT

Net Savings/Revenue per year

	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19		
	8.45	8.45	8.45	9.45	9.92	10.42	10.94	11.49	12.06	12.66	13.30	13.96	14.66	15.39	16.16	16.97	17.82	18.71	19.65	20.63		
	8.45	8.45	8.45	9.45	9.97	10.52	11.10	11.71	12.35	13.03	13.75	14.50	15.30	16.14	17.03	17.97	18.95	20.00	21.10	22.26		
	0.00	0.00	0.00	0.00	534.37	1,124.85	1,775.86	2,492.13	3,278.73	4,141.07	5,084.94	6,116.52	7,242.44	8,469.76	9,806.03	11,259.31	12,838.23	14,551.96	16,410.34	18,423.83	123,550.36	
	34,000.00	34,680.00	35,373.60	36,081.07	36,802.69	37,538.75	38,289.52	39,055.31	39,836.42	40,633.15	41,445.81	42,274.73	43,120.22	43,982.63	44,862.28	45,759.52	46,674.71	47,608.21	48,560.37	49,531.58	826,110.57	
	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	140,000.00
	41,000.00	41,680.00	42,373.60	43,081.07	44,337.06	45,663.60	47,065.38	48,547.45	50,115.15	51,774.22	53,530.75	55,391.25	57,362.66	59,452.38	61,668.30	64,018.84	66,512.94	69,160.17	71,970.71	74,955.41	1,089,660.93	

Solar Garden Revenue (other City owned sites):

Lease Payment Revenue 2% escalation

PILOT

Revenue per year

	39,000.00	39,780.00	40,575.60	41,387.11	42,214.85	43,059.15	43,920.33	44,798.74	45,694.72	46,608.61	47,540.78	48,491.60	49,461.43	50,450.66	51,459.67	52,488.87	53,538.64	54,609.42	55,701.60	56,815.64	947,597.42	
	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	7,000.00	140,000.00
	46,000.00	46,780.00	47,575.60	48,387.11	49,214.85	50,059.15	50,920.33	51,798.74	52,694.72	53,608.61	54,540.78	55,491.60	56,461.43	57,450.66	58,459.67	59,488.87	60,538.64	61,609.42	62,701.60	63,815.64	1,087,597.42	

Total potential savings/revenue **2,177,258.35**

To: City Council and City Manager
From: Angela Carey
Date: June 25, 2015
Re: Site Plan Applications; Solar Projects

On May 27th, 2015 and June 24th, 2015, the Planning Board held public hearings regarding the following applications:

- Seven (7) Site Plan Review Approval applications are being presented by NH Solar Gardens, Applicant, and Nobis Engineering, Engineer, to build community Solar Garden arrays on seven (7) properties in the City of Franklin. These properties are identified as:
 - P15-004: River Street, Tax Map/Lot # 123-403-00, C Zone (Conservation District) and RR Zone (Rural Residential District), owned by the City of Franklin.
 - P15-005: A second area located on River Street, Tax Map/Lot # 123-403-00, C Zone (Conservation District) and RR Zone (Rural Residential District), owned by the City of Franklin.
 - P15-006: 73 Punch Brook Road, Tax Map/Lot # 082-409-00 [I-1 Zone (Industrial District)] and Salisbury Road, Tax Map/Lot # 082-401-00 [C Zone (Conservation District)], both owned by Concord Regional Solid Waste Resource Recovery Cooperation (CRSWRRC).
 - P15-007: Hill Road, Tax Map/Lot # 091-007-00, C Zone (Conservation District), owned by the City of Franklin.
 - P15-008: 79 Hill Road, Tax Map/Lot # 114-039-00, R-1 Zone (Low-Density Residential District) and B-1 Zone (Low-Density Business and Commercial District), owned by the City of Franklin.
 - P15-009: Commerce Drive, Tax Map/Lot # 102-402-00, I-1 Zone (Industrial District), owned by Franklin Commons Realty Group, LLC.
 - P15-010: Industrial Park Drive, Tax Map/Lot # 032-403-00, R-1 (Low-Density Residential District) and I-1 Zone (Industrial District), owned by Stanley S. Wiegartz.

On May 27th, 2015, applications P15-006 to P15-010 were approved by the Planning Board. Subsequently, P15-004 and P15-005 were continued to June 24th, 2015 and were approved at the June 24th public hearing meeting held by the board.

On June 24th, 2015, the Planning Board made a motion to send a positive recommendation to the City Council regarding their approval of all seven applications for the NH Solar Properties and this motion passed.

Please find attached to this document a copy of the Site Plan approvals.

Please let me know if you need any further information.

City of Franklin, N.H.

and

NH SolarGarden.com _____, LLC

LAND LEASE AGREEMENT

Agreement made by and between the City of Franklin, New Hampshire, a New Hampshire municipal corporation with a place of business at 316 Central Street, Franklin, New Hampshire, 03235, hereinafter referred to as the "Landlord" and NH SolarGarden.com _____, LLC, a New Hampshire limited liability company with a place of business at ~~74 Union Road, Stratham, New Hampshire 03885~~ _____, hereinafter referred to as the "Tenant".

Lease Terms & Conditions:

1. **Background:** Landlord desires to receive land lease payments and other benefits generally available in the state of New Hampshire under the Group Net Metering Program ("GNM") offered by the New Hampshire Public Utility Commission ("PUC") for those properties that install a solar photovoltaic system, as further described below. In consideration for Landlord's obligations hereunder for the Term of this Lease, Tenant will fund, construct, own, operate and maintain a solar power generation facility for the generation of electric energy, including any necessary electrical transmission lines, transformers, converters, conduits, inverters, transformers, wiring, switchgear, metering equipment, monitoring and control equipment, safety equipment and other equipment (the "Facility") to be located on a portion of Landlord's property located at and known as _____ ("Landlord's Property"). The Facility

shall be specifically located on that portion of Landlord's Property (approximately _____ acres in size, excluding access) identified on the site plan to be attached to this Lease as Exhibit A. The Facility, together with access to it are referred to herein as the "**Premises.**"

Landlord hereby grants to Tenant, together with its Agents (defined below), non-exclusive access under and across Landlord's Property for ingress, egress and access (including access for the purposes described herein) to the Premises, adequate to, without limitation, install, repair, replace, expand, inspect, test, replace, enhance, alter, upgrade, maintain and operate the Facility and all interconnection facilities required to connect the Facility to either the Tenant's or the Landlord's switchgear, as applicable, including electrical transmission lines, upgrades, transformers, inverters and associated equipment, substations, relay and switching equipment and safety equipment the Facility at all times during the term of this Lease. In addition, if required Landlord agrees to transfer the meter to Tenant to receive payments for power from PUC (if necessary for the Project). The term "**Agents**" means the officers, directors, shareholders, members, partners, employees, contractors, consultants and other third persons acting under a party's direction and control.

2. **Rent Reserved.** Rent shall be paid as follows: Payments shall commence thirty (30) days after array commissioning and then annually on the same date.

3. **Term.** This Lease shall be for an initial term of twenty (20) years. At the Tenant's option, there shall be up to two (2) five (5) year extensions of this agreement. In order to exercise either of these extensions, the Tenant shall notify the Landlord of its desire for an extension between one hundred twenty (120) and one hundred thirty (130) days prior to the expiration of any term. Either party may require the reopening of negotiations in reference to the rental payment amount prior to the execution of an extension document. In the event that the parties are unable to voluntarily resolve that issue, either party may require that it shall be submitted to binding arbitration.

4. Host Power Purchase Agreement: If the Premises require the consumption of the power for onsite usage, Landlord agrees to pay the HPPA kWh power rate indicated in the summary above, if applicable. All power will be tallied through a revenue grade meter and will be invoiced monthly. Payments are due within 30 days of invoice date, otherwise Landlord will be charged a finance charge of 1.5% monthly will be added to invoice amount.

5. Uses and Conditions: Landlord may permit use of the Premises by any other party except, as set forth herein and such use by any other party shall not in any way interfere with Tenant's use of the Premises. Landlord shall not use, nor shall Landlord permit its lessees, licensees, employees, invitees or Agents to use, any portion of the Property in any way that unreasonably interferes with the operations of Tenant. Landlord acknowledges and agrees that access to sunlight ("**Insolation**") is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not knowingly authorize any interference with Insolation on and at the Premises. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Property that could adversely affect Insolation levels. In the event of foliage growth on the premises that could adversely affect Insolation levels, Tenant shall have the right to remove the growth. If Landlord becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Landlord shall advise Tenant of such information and reasonably cooperate with Tenant, at no cost to Landlord, unless such interference is caused by Landlord or its affiliates, officers, Agents or employees, in measures to preserve existing levels of insolation at the Premises. Landlord represents and warrants to Tenant that there are no liens, security interests or other encumbrances burdening the Premises that will interfere with Tenant's use and operation of the Facility. Landlord covenants to Tenant that it will not cause, create, incur, assume, permit or suffer to exist any liens (including mechanics', labor or material man's lien), security interests or other encumbrances on the

Premises that will interfere with Tenant's use and operation of the Facility. If Landlord breaches its obligations under this Section, it shall immediately notify Tenant in writing, shall promptly cause such liens to be discharged and released of record without cost to Tenant.

Landlord shall execute such documents and take all actions as may be necessary for application to membership and continued participation in the GNM for or on behalf of Facility. Landlord shall cooperate with Tenant, at Tenant's sole cost and expense, to obtain all permits, franchises, approvals and authorizations required to install and operate the Facility, and Landlord shall execute all necessary consents and applications and perform other reasonable ministerial requirements as and to the extent required.

Tenant acknowledges that the Planning Board and the Zoning Board are independent agencies and Landlord's agreement to cooperate with Tenant does not insure that these agencies will make decisions in Tenant's favor.

6. Improvements; Utilities; Access: Landlord hereby consents to the construction and installation of the Facility, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections as required for the Facility to generate electricity. Tenant shall have the right, at its expense, to erect and maintain the Facility on the Premises, as required. Tenant shall have the right to alter, replace, expand, enhance or upgrade the Facility at any time during the Term of this Lease. Tenant shall cause all construction to occur in compliance with all applicable laws and ordinances, including, without limitation, all requirements of the New Hampshire Department of Environmental Services, and shall discharge or bond any mechanic's lien filed or recorded. Landlord acknowledges that it shall not interfere with any aspects of installation, including, without limitation, attempting to direct construction personnel as to the location of or method of installation of the Facility. The Facility shall remain the exclusive property of Tenant. Tenant may, but shall not be required to, use

appropriate means of restricting access to the Facility. Tenant shall, at Tenant's expense, keep and maintain the Facility now or hereafter located on the Premises in commercially reasonable condition and repair during the Term of this Lease, normal wear and tear as excepted. Subject to the terms of this Lease, Tenant shall have 24-hours-a-day, 7-days-a-week access to the Premises to install, repair, replace, expand, inspect, test, replace, enhance, alter, upgrade and maintain the Facility at all times during the Term of this Lease. Such continuous access shall be used solely for emergency repairs to the facility. Routine equipment replacement, upgrades and similar activities shall occur during the hours of 7:00 a.m. until 7:00 p.m., Monday through Saturday, inclusive (Sundays are excluded) without further written agreement of the Landlord. If required, Tenant shall arrange for and pay any expense for snow plowing or removal that is required for such access. Tenant represents and warrants that the construction of the Facility will be done in a manner such that no coverage provided there under will be waived. Tenant covenants to Landlord that it will not cause, create, incur, assume, permit or suffer to exist any liens (including mechanics', labor or material man's lien), security interests or other encumbrances on the Property.

If Tenant breaches its obligations under this Section, it shall immediately notify Landlord in writing, shall promptly cause such liens to be bonded, discharged and released of record without cost to Landlord, and shall indemnify Landlord against all costs and expenses (including reasonable attorney's fees and court costs at trial and on appeal) incurred in bonding, discharging and releasing such liens.

7. Taxes: Tenant shall pay when due all real property taxes, including those assessed pursuant to RSA 72:23, I(b) attributable to the installation of the Facility. The Tenant shall pay when due any personal property tax or any other tax or fee which are directly attributable to the presence or installation of the Facility. Landlord hereby grants to Tenant the right to challenge, whether in a court, Administrative Proceeding, or other venue, any personal property or real property tax assessments that may affect Tenant. If Landlord receives notice of any personal property or real property tax assessment against the Landlord, which may affect Tenant and is directly attributable to Tenant's installation, Landlord

shall provide timely notice of the assessment to Tenant sufficient to allow Tenant to consent to or challenge such assessment. Further, Landlord shall provide to Tenant any and all documentation associated with the assessment and shall execute any and all documents reasonably necessary to effectuate the intent of this Section. Notwithstanding any future increase in taxes for the Premises and any real property attributable to the installation of the Facility, Tenant shall remain entitled to any and all tax credits available through municipal, state, federal or international programs. The failure by Tenant to pay the duly assessed personal and real estate taxes when due shall be cause to terminate this Lease by Landlord.

8. Insurance; Waiver of Subrogation: Tenant shall maintain throughout the Term, Commercial general liability insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence protecting Landlord and Tenant against any liability occasioned by any occurrence on or about the Premises and all-risk property insurance in an amount insuring the full replacement value of the Facility. Landlord shall maintain throughout the Term Commercial General Liability Insurance (or equivalent protection provided by the Landlord's participation in a shared risk pool or its equivalent) with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence protecting Landlord and Tenant against any liability occasioned by any occurrence on or about the Premises. Each such policy shall be issued by one or more insurers with general policy holders ratings of not less than A-, as rated in the most current available insurance reports published by A.M. Best & Company, Inc., or the then-equivalent thereof, and licensed to do business in the State of New Hampshire and authorized to issue such policies. Each policy of insurance procured by Tenant shall: (i) name Landlord as loss payee (to the extent covering risk of loss or damage to tangible property) and as an additional named insured as its interests may appear (to the extent covering any other risk); and (ii) contain endorsements providing that such policy shall not be cancelled or amended with respect to Landlord and Landlord's said designees without thirty (30) days' prior notice to Landlord and such designees. Each party shall have the right to insure and

maintain the insurance coverage required hereunder under blanket insurance policies. Each party shall, within ten (10) days of written request, furnish current certificates of insurance evidencing the required insurance. Landlord and Tenant shall each secure an appropriate clause in, or an endorsement upon, each insurance policy obtained by it pursuant to which the respective insurance companies waive subrogation or permit the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party. The waiver of subrogation or permission for waiver of any claim hereinbefore referred to shall extend to the Agents of each party. Each party hereby releases the other and its Agents with respect to any claim (including a claim for negligence) that it might otherwise have against the other party for loss, damages or destruction with respect to its property by fire or other casualty (including rental value or business interruption, as the case may be) or otherwise occurring during the Term to the extent of the limits of coverage under such insurance policies. The parties agree to reopen negotiations in reference to the limits of insurance or shared risk pool coverage no more frequently than every three (3) years. In the event that the parties are unable to voluntarily resolve issues arising from such negotiations, the issues shall be submitted to binding arbitration.

9. **Notices.** All notices, requests, demands and other communications shall be in writing and are effective three (3) days after deposit in the U.S. mail, certified and postage paid, upon receipt if by facsimile with confirmation or personally delivered or sent by next-business-day delivery via a nationally recognized overnight courier to the addresses set forth below. Landlord or Tenant may from time to time designate any other address for this purpose by providing written notice to the other party.

10. **Legal Authority.** Landlord covenants and warrants to Tenant that: (i) Landlord has full right, power and authority to execute this Lease; (ii) it has good and unencumbered title to the Premises free and clear of any liens or mortgages, except those disclosed to Tenant, appear as exceptions on the commitment of title insurance the Tenant may obtain and which will not interfere with Tenant's

rights to or use of the Premises; and (iii) execution and performance of this Lease will not violate any laws, ordinances, covenants, or the provisions of any mortgage, lease, or other agreement binding on Landlord or to which Landlord is a party.

11. Quiet Enjoyment. Landlord covenants that at all times during the Term of this Lease, Tenant's quiet enjoyment of the Premises or any part thereof shall not be disturbed as long as Tenant is not in default beyond any applicable grace or cure period.

12. Hazardous Substances. Landlord and Tenant shall not introduce or use any substance, chemical or waste (collectively, "Hazardous Substance") on the Property in violation of any applicable law. Landlord shall be responsible for, and shall promptly conduct any investigation and remediation as required by any applicable environmental laws, for spills or other releases of any Hazardous Substance not caused solely by Tenant, that have occurred or which may occur on Landlord's Property. Each party agrees to defend, indemnify and hold harmless the other from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that the other party may suffer or incur due to the introduction of any Hazardous Substances not previously existing on Landlord's Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from any activities on Landlord's Property by any party other than Tenant. The indemnifications in this Section specifically include, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority. This Section shall survive the termination or expiration of this Lease.

13. Grants and/or Credits: Tenant shall receive any environmental credits, grants, rebates or tax credits or benefits otherwise available and stemming from

the funding, construction and operation of the Facility, from utilities or state and federal authorities. If requested by Tenant, Landlord shall provide reasonable assistance to Tenant in executing all applications and other documents prepared by Tenant necessary for Tenant to receive such payments, including designating Tenant as the customer for purposes of the any applicable solar program or assigning payments therefrom to Tenant.

14. Assignment and Subleasing: Except as set forth below, neither Party shall assign this lease to a third party without the written consent of the opposing party, said consent not to be unreasonably withheld. Notwithstanding the preceding sentence, Tenant shall have the right to mortgage or grant a security interest in this Lease and the Facility, and may assign this Lease and the Facility to any lenders, Lenders or holders of security interests, including their successors or assigns (collectively "**Lenders**"), or any third party who acquires all or substantially all of the assets of Tenant or acquires the equity interests of Tenant, provided such Lenders agree to be bound by the terms and provisions of this Lease, and provided further that Tenant shall give Landlord prior written notice of such mortgage security interest or assignment, including contact information of such mortgagor or assignee. In such event, Landlord shall execute such consent to leasehold financing as may reasonably be required by Lenders. Tenant may assign, sell or transfer this Lease without the prior written consent of Landlord. For purposes of this Section, transfer includes any sale of all or substantially all of the assets of Tenant or any merger of Tenant with another person, whether or not Tenant is the surviving entity from such merger, or any other change in control of Tenant.

15. Termination: ~~Either party~~ The Tenant shall have the right to terminate this Lease upon one hundred eighty (180) ~~_____~~ days written notice to the ~~either~~ Landlord. In the event Tenant terminates this Lease, and in any event, at the end of the Term or any extended Term, Tenant shall remove the Facility from the Premises. Tenant shall restore the Premises to the same condition it was in prior to the installation of the Facility. If either party hereto fails to comply in any

material respect with any term, provision or covenant of this Lease within thirty (30) days after written notice from the non-defaulting party, such uncured breach shall be an event of default ("**Event of Default**") under this Lease; provided that if such default cannot be cured within thirty (30) days, then the period within which to cure such default shall be extended up to an additional sixty (60) days so long as the defaulting party diligently pursues such remedial action and such condition is reasonably capable of being remedied within such additional 60-day period. Upon the occurrence of an Event of Default, in addition to any other rights and remedies available to the non-defaulting party at law or in equity, such non-defaulting party shall have the option to terminate this Lease upon written notice to the defaulting party. In the event the Facility shall be so damaged or destroyed so as to make the use of the Facility impractical as determined by a qualified engineering consultant retained by Landlord and reasonably acceptable to Tenant, then Tenant may elect to terminate this Lease on not less than twenty (20) days' prior notice to Landlord effective as of a date specified in such notice, and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration of this Lease and neither party shall have any further obligations to the other party hereunder other than such rights or obligations that expressly survive the termination of this Lease. If Tenant does not elect to terminate this Lease pursuant to the previous sentence, Landlord shall have the right, but not the obligation, to repair the damage to the Premises and return the Facility to its condition prior to such damage or destruction, except that Landlord shall in no event be required to repair, replace or restore any property of Tenant comprising part of the Facility, which replacement or restoration shall be Tenant's responsibility. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby, provided that any Tenant award does not reduce Landlord's award for the Property to an amount less than what Landlord would have received if the Facility had not been installed.

16. Liability and Indemnity: Each party shall indemnify, defend and hold harmless the other party, its affiliates, officers, agents and employees from and against any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Landlord or Tenant, and damage or destruction of property, including, but not limited to, property of Tenant, any utility company or Landlord, or other loss or damage incurred by Landlord or Tenant, arising out of: (i) negligent acts or omissions or willful misconduct of the other party, its agents, officers, directors, employees or contractors; or (ii) the material breach by the other party of any of its obligations, representations or warranties under this Lease. The obligation to indemnify shall extend to and encompass all costs incurred by the party and any indemnitees of the party in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Each party's obligations pursuant to this Section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of the other party, its indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties. Each party shall pay any cost that may be incurred by the other party or its indemnitees in enforcing this indemnity, including reasonable attorneys' fees. None of the members, managers, officers, directors, or stockholders of Tenant, shall have any personal liability in connection with the performance or failure of performance of any of the covenants, conditions, or provisions of this Lease to be performed by Tenant, and Landlord shall look solely to assets of Tenant for the recovery of any damages sustained by reason of such performance or failure to perform. None of the officers, managers, employees, agents or representatives of Landlord, shall have any personal liability in connection with the performance or failure of performance of any of the covenants, conditions, or provisions of this Lease to be performed by Landlord, and Tenant shall look solely to Landlord's interest in the Property for the recovery of any damages sustained by reason of such performance or failure to perform.

17. Subordination/Estoppel Certificate. From time to time, upon written request by Tenant (or its Lenders), Landlord shall provide within ten (10) days thereafter (i) a lien subordination certificate from any party purporting to have a lien, security interest or other encumbrance on the Premises, confirming its interest in Tenant's Facility and Rights to Premises are subject to the Lease and subordinate to any properly perfected Lender Liens granted by Tenant to same, or (ii) an estoppel certificate attesting, to the knowledge of Landlord, of Tenant's compliance with the terms of this Lease or detailing any known issues of noncompliance, and making such other representations, warranties, and accommodations reasonably requested by such Lender. Either party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party: That this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; the dates to which amounts due have been paid; and such other information as may be reasonably requested by a party hereto.

18. Entire Agreement. This Lease constitutes the entire agreement and understanding of the parties, and supersedes all offers, negotiations and other agreements. There are no representations or understandings of any kind not set forth herein. Any amendments to this Lease must be in writing and executed by both parties. Each party agrees to cooperate with the other in executing any documents necessary to protect its rights or use of the Premises. Either party may

record a Notice of Lease in compliance with NH RSA 477:7-a. This Lease shall be construed in accordance with the laws of the State of New Hampshire. If any term of this Lease is found to be void or invalid, such finding shall not affect the remaining terms of this Lease, which shall continue in full force and effect. The parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

19. Waiver. No provision of this Lease will be deemed waived by either party unless expressly waived in writing signed by the waiving party. No waiver shall be implied by delay or any other act or omission of either party.

20. Authority. The persons who have executed this Lease represent and warrant that they are duly authorized to execute this Lease in their representative capacity as indicated. This Lease may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

21. Broker. The parties agree that this contract is as a result of direct negotiation and agreement between the parties and no realtor, broker, agent or other third party is entitled to any commission or fees in association with this transaction.

22. Ancillary Documents. Upon the receipt of a written request from the other party, each party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section. This Lease shall run with the land, and shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

The following Exhibits will be attached to this Lease and shall be complete and binding:

- A. Legal Description of Real Property and Site Plan for Premises
- B. Proof of Landlord insurance coverage

23. Amendment. No term or provision of this Agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.

Field (

24. Governing Law. This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.

Field (

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes but all of which shall constitute one in the same agreement.

Field (

This document is executed by the City of Franklin, New Hampshire in accordance with authority granted by the Franklin City Council on July __, 2015.

IN WITNESS WHEREOF, the undersigned have signed this Lease as of _____, 2015.

LANDLORD:

By: _____

Name: _____

Title: Landowner

TENANT:

By: _____

Name: _____

Title: Manager

EXHIBIT A

Legal Description and Site Plan of the Premises