

**COMMITTEE ITEMS**

**September 9, 2019**

**Committee Items Budget & Finance**

Committee Items:

Regular

**ORDR132\_07\_15\_19** CPC FY2020 Recommended appropriations (Appropriations 1, 4, 6, 7, & 9)

**ORDR136\_08\_19\_19** Fuller Track Phase II Loan Order

**Removal from Committee Form**

Instructions: Remit to [rjones@cityofnewburyport.com](mailto:rjones@cityofnewburyport.com); [pbarker@cityofnewburyport.com](mailto:pbarker@cityofnewburyport.com); [cgreen@cityofnewburyport.com](mailto:cgreen@cityofnewburyport.com) by Wednesday, 5 PM preceding Council meeting

Committee Name: Budget and Finance

Committee Chair: Tontar

	Measure Identifier	Measure Title	Amended in Committee? (if yes, attach final version)	Consent Agenda or Regular Agenda?
1.	ORDR132_07_15_19	CPC FY2020 Recommended appropriations (Appropriations 1, 4, 6, 7, and 9)	No	Regular
2.	ORDR136_08_19_19	Fuller Track Phase II Loan Order	No	Regular
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13.				

*BTF*  
*COTW*

CITY OF NEWBURYPORT



IN CITY COUNCIL

ORDERED:

That the City Council appropriates from the Community Preservation Act FY 2020 estimated revenues, in accordance with the provisions of M.G.L. Chapter 44B, for the following projects, based upon the Community Preservation Committee's recommendation, the total amount of **\$1,250,803**. The source of funds shall be FY2020 estimated revenues in the amount of \$1,048,493.01 and Community Preservation Fund Balance in the amount of \$304,611. Each project listed below shall be considered a separate appropriation or reservation in the amount indicated for that project. Any conditions or stipulations indicated within the Community Preservation Committee's recommendation, incorporated herein, shall be considered a condition of this appropriation and subsequent grant award.

Project No.	Project Title	Applicant	Request	Recommendation
1	NHS Exterior Woodwork Restoration Phase 3	Newburyport Public Schools	\$110,903	\$110,903
2	Kelleher Gardens Siding Project	Newburyport Housing Authority	\$325,000	\$325,000
3	Gateway Trees 2	Newburyport Tree Commission	\$13,000	\$13,000
4	Cushing House Electrical System	Historic Society of Old Newbury	\$59,430	\$59,430
5	Bartlet Mall Historic Restoration-Walkway Improvements	Newburyport Parks Department and Commission	\$118,925	\$83,000
6	Custom House Maritime Museum: Interior Climate Control Systems Upgrade	Newburyport Maritime Society, Inc.	\$100,000	\$75,000
7	NHS Exterior Woodwork Restoration Phase 4	Newburyport Public Schools	\$84,000	\$84,000
8	Open Space Reserve Fund	Newburyport Open Space	\$170,000	\$100,000
9	Fuller Field Track Renovation Phase 2	Newburyport Parks Department and Commission	\$694,820	Full Bond

*total BTF/COTW*  
*21 20 50*

<b>10</b>	Riverfront Trail Gap Project/Clipper City Rail Trail Phase 2	Newburyport Planning Office	\$250,000	\$250,000
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Total:      \$1,926,078      \$1,100,333

<b>11</b>	NHS Stadium Bond Payment	123,080
<b>12</b>	Cherry Hill Soccer Field Bond Payment	\$12,540
<b>13</b>	Administrative Costs	\$12,000

Total:      **\$150,470**

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Councillor Charles F. Tontar

Approve:  
Date:

Attest:

**NEWBURYPORT COMMUNITY PRESERVATION COMMITTEE  
RECOMMENDATIONS FOR FY20 APPROPRIATIONS**

The Newburyport Community Preservation Committee recommends that the City Council appropriate **\$1,250,803** from Community Preservation Fund Revenues for the projects and bond payments, in the amounts, in the categories, and subject to the conditions hereinafter described.

The following CONDITIONS are common to recommended projects #1 through #11:

- A. Each recipient of funds is required to submit to the CPC a written report on the status of the project by each October 15, January 15, April 15 and July 15 following appropriation and until final completion of the project.
- B. If a project is not completed within twelve (12) months of appropriation, the grantee must submit a written request to the CPC for an extension of the grant. Otherwise, funds may be subject to rescission and returned to Community Preservation Fund Reserves (applicable to appropriations, not to reservations).
- C. Full funding is conditioned upon the receipt of state matching funds, estimated to be 11.5% of local revenue, expected in November 2019.

Attached are:

- 1. A draft Council Order and table summarizing all CPC recommendations.
- 2. Recommendations for appropriation numbers 1-14, with summaries for each.
- 3. Criteria for project evaluation adopted and published by the CPC.

Estimated Community Preservation Fund Revenues available for appropriation or reservation in FY 2020 total **\$1,353,104.01**. This figure includes estimated receipts of the local CPA surcharge through fiscal year end 2019, accumulated interest, the anticipated 11.5% state matching funds expected to be received in November 2019, current uncommitted and unreserved funds, and the returned funds from completed and closed-out projects.

Applications for all projects are available for review in the Office of Planning & Development. Applications received, including those recommended for funding, are also available for viewing on the City website at the following URL:

<https://www.cityofnewburyport.com/community-preservation-committee>

Respectfully submitted by:

Community Preservation Committee Members

Michael Dissette, Chair	Jane Healey, Vice Chair
Mark Rosen	Paul Healy
Daniel Koen	Don Walters
Don Little	Ronald Ziemba
Karen Popken	

**PROJECT NO. 1**  
**NHS EXTERIOR WOODWORK RESTORATION PHASE 3**

The CPC recommends the appropriation of \$110,903 from the FY 2020 Estimated Revenues to the Newburyport Public Schools for the continuation of the NHS Phase 3 exterior woodwork restoration project with the following condition:

- The applicant shall finalize, execute and record a permanent Preservation Restriction (PR) on the entire exterior façade of the structure. The applicant shall consult and obtain approval from the Newburyport Historical Commission (NHC) regarding the scope and details of said PR, prior to execution and recording.

The CPA category is Historic Preservation.

**Project Summary:** This application is a continuation of Phase 3 of this project and will focus on the rehabilitation of the cupola. Age and exposure to weather have caused a variety of issues with the exterior woodwork, necessitating a well-planned historic restoration guided by The Secretary of the Interior's Standard for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. The applicant is nearing completion of the required Preservation Restriction, which will protect the exterior appearance of the structure in perpetuity. The additional funds are necessary because the bids for the work came in higher than the original project estimate.

**PROJECT NO. 2**  
**KELLEHER GARDENS COMMUNITY SIDING PROJECT**

The CPC recommends the appropriation of \$325,000 from the FY 2020 Estimated Revenues to the Newburyport Housing Authority to replace the siding of all buildings.

The CPA category for this appropriation is Affordable Housing.

**Project Summary:** The Housing Authority has recently undertaken a conceptual review which provided an estimate for not only the vinyl siding of the family unit complex located on Storey Avenue known as Kelleher Gardens but for window replacement as well. At this time however, the Newburyport Housing Authority is only requesting monies for the re-siding project. Kelleher Way Housing includes 13 residential buildings, 5 duplexes and 8 quadrplexes, as well as a small maintenance building. The buildings appear to be about 50 years old. All buildings currently have cedar shingles. The shingle siding is in poor condition and are at the end of their useful service. Units are beginning to see interior damage from water infiltration.

**PROJECT NO. 3**  
**GATEWAY TREES 2**

The CPC recommends the appropriation of \$13,000 from the FY 2020 Estimated Revenues to the Newburyport Tree Commission for the purchasing of 12 trees and the planting and two years of care of twenty five trees (12 trees to be purchased and 13 existing Liberty Elms previously purchased by the Tree Commission).

The CPA category for this appropriation is Historic Preservation.

**Project Summary:** The Tree Commission (TC), working the Friends of Newburyport Trees (FoNT), would like to continue a project initiated in 2016 called GATEWAY. The project's mission is to improve and beautify and restore the tree canopy on the principal access roads into Newburyport by planting site-specific street tree species, carefully vetted by Tree Commission arborists, in the public right-of-way. Over 50 available sites have been identified by the Tree Commission on the 2 miles of Merrimac Street. The project includes site preparation, purchasing, planting,

watering (2 years), pruning and mulching of trees. The requested grant will pay for the purchasing 12 trees and the planting and two year care of twenty five new trees.

**PROJECT NO. 4  
CUSHING HOUSE ELECTRICAL SYSTEM**

The CPC recommends the appropriation of \$59,430 from the FY 2020 Estimated Revenues to the Historic Society of Old Newbury to replace the original wiring at the Cushing House and install a comprehensive new electrical system.

- The applicant shall finalize, execute and record a permanent Preservation Restriction (PR) on the entire exterior facade of the structure. The applicant shall consult and obtain approval from the Newburyport Historical Commission (NHC) regarding the scope and details of said PR, prior to execution and recording. If the applicant believes an existing PR for this structure meets these requirements, it shall obtain a written opinion from the Newburyport Historical Commission (NHC) that the scope and details of said PR are adequate in light of this project and that no amendments or additions to said PR are necessary. If the NHC determines that amendments or additions to the existing PR are necessary, the applicant shall finalize, execute and record an update to said PR accordingly. These requirements shall be met before any funds are distributed to the applicant.

The CPA category for this appropriation is Historic Preservation.

**Project Summary:** The electrical system work will be phased over the course of eight months (October 2019- May 2020) to avoid disruption during the summer season. The total project cost is \$118,860. For the last 63 years, the three-story brick building has housed offices, collections storage, period museum rooms, galleries, and a lecture hall that seats 65 people. The electrical system dates from the early 20<sup>th</sup> century and no longer meets code and could present a danger to the building and the collections. The current system is 100 amp.

**PROJECT NO. 5  
BARTLET MALL HISTORIC RENOVATION- WALKWAY IMPROVEMENTS**

The CPC recommends the appropriation of \$83,000 from the FY 2020 Estimated Revenues to the City of Newburyport Parks Department and Commission to renovate and replace walkways within the park to make them more accessible.

The CPA category is Historic Preservation.

**Project Summary:** Bartlet Mall Park is the City of Newburyport's most visually prominent park. Centrally located on High Street at one of the main gateways to downtown, the Park is an easy walk from the central business district, as well as a number of residential neighborhoods and schools. The Bartlet Mall Park Restoration project is a phased project that will restore, preserve and protect the historic integrity of Bartlet Mall according to the original plans of landscape architect Charles Eliot. The Park provides a prime destination for runners, strollers, and dog walkers. The Park plays a major role in hosting annual festivals and other cultural events. The Newburyport Parks Department and Commission propose to remove existing, cracked, uneven, failing asphalt walkways with a porous flexible paving material. The proposed paving material provides a low maintenance, wheelchair accessible surface that also helps to manage stormwater because of its permeability.



**PROJECT NO. 6**  
**CUSTOM HOUSE MARITIME MUSEUM: INTERIOR CLIMATE CONTROL SYSTEMS UPGRADE**

The CPC recommends the appropriation of \$75,000 from the FY 2020 Estimated Revenues to the Newburyport Maritime Society, Inc. for an interior climate control systems upgrade at the Custom House Maritime Museum.

- The applicant shall finalize, execute and record a permanent Preservation Restriction (PR) on the entire exterior facade of the structure. The applicant shall consult and obtain approval from the Newburyport Historical Commission (NHC) regarding the scope and details of said PR, prior to execution and recording. If the applicant believes an existing PR for this structure meets these requirements, it shall obtain a written opinion from the Newburyport Historical Commission (NHC) that the scope and details of said PR are adequate in light of this project and that no amendments or additions to said PR are necessary. If the NHC determines that amendments or additions to the existing PR are necessary, the applicant shall finalize, execute and record an update to said PR accordingly. These requirements shall be met before any funds are distributed to the applicant.

The CPA category for this project is Historic Preservation.

**Project Summary:** The American Alliance of Museums outlines standards requiring that museums monitor environmental conditions and take proactive measures to mitigate the effects of fluctuations in temperature and humidity on collections. CSI Engineering recently completed a feasibility field investigation of the Custom House's building and proposed a scope of work including installation of a cooling HVAC system throughout the basement, first floor, and the non-museum portion of the second floor. CSI will work with Tripi Engineering Services who will investigate remedial options to reduce and control moisture migration through the exterior masonry of the walls and roof. This will ensure that the new HVAC system and building components work together as a system in order to prevent further degradation of historic building materials and protect the collections housed in the structure..

**PROJECT NO. 7**  
**NHS EXTERIOR WOODWORK RESTORATION PHASE 4**

The CPC recommends the appropriation of \$84,000 from the FY 2020 Estimated Revenues to the Newburyport Public Schools for the continuation of the NHS exterior woodwork restoration project with the following condition:

- The applicant shall finalize, execute and record a permanent Preservation Restriction (PR) on the entire exterior façade of the structure. The applicant shall consult and obtain approval from the Newburyport Historical Commission (NHC) regarding the scope and details of said PR, prior to execution and recording.

The CPA category is Historic Preservation.

**Project Summary:** This project looks to restore the topmost sections of exterior woodwork on the historic Newburyport High School. Age and exposure to weather have caused a variety of issues with the exterior woodwork necessitating a well-planned historic restoration guided by the Secretary of Interior's Standard for Rehabilitation and Guidelines for Rehabilitating Historic Buildings. This application for Phase 4 will address the remaining miscellaneous areas which need attention which include the back sides of the Library and Auditorium as well as other areas. Phase 4 is expected to occur in the summer of 2020.

**PROJECT NO. 8**  
**OPEN SPACE RESERVE FUND**

The CPC recommends the reservation of \$100,000 from the FY 2020 Estimated Revenues to the Open Space Reserve Fund.

The CPA category for this reservation is Open Space.

**Project Summary:** Since 2014, through appropriations from the Open Space Reserve Fund, the City successfully protected 10+ acres of land on Curzon Mill Road and a significant portion of the Colby Farm land on Low Street (pending). The existence of the Reserve allowed the City to take the opportunities when they were presented. Recent CPC funding rounds have restored the Reserve to its current balance of \$729,966. The OSC continues to work on conserving open space based on goals and priorities described in the City's Master Plan and Open Space and Recreation Plan. This application is a "placeholder," with the intention of submitting supplementary application(s) about specific projects, as agreements are reached, outside funding and project partners identified, and we are otherwise able to provide the project-specific details for your consideration. No funds will be appropriated from the Open Space Reserve Fund without the CPC's review and recommendation, and City Council's approval of the specific projects.

**PROJECT NO. 9**  
**FULLER FIELD TRACK RENOVATION- PHASE 2**

The CPC recommends to fully bond the continued renovation of the track and field facility at the Bradley Fuller Athletic Field on Low Street in the amount of \$694,820 on the condition that the annual debt service not exceed \$55,000.

The CPA category for this appropriation is Recreation.

**Project Summary:** Phase 1 of this project saw construction of a new, collegiate level track and multipurpose sports field at the existing track facility on Low Street. Phase 2 got underway with the installation of a new fence that allows gating off the facility in order to charge admissions for events. Continuation of the project includes installation of a 500 to 1,000-person grandstand, completion of electrical connections throughout the facility for the sound and timing systems, installation of a new sound system, and renovation of the interior of the existing field house to include expanded restroom facilities. Future phases include improving the parking and drop off area, and installing new concrete walkways and lighting and upgrade of the turf infield.

**PROJECT NO. 10**  
**RIVERFRONT TRAIL GAP PROJECT/ CLIPPER CITY RAIL TRAIL- PHASE 2**

The CPC recommends the appropriation of \$250,000 from the FY 2020 Estimated Revenues to the City of Newburyport Office of Planning & Development for the construction phase of the Riverfront Trail Gap Project.

The CPA category for this appropriation is Recreation.

**Project Summary:** The construction phase of the Clipper City Rail Trail's Riverfront Trail Gap Project will establish a crucial trail link along a 1,200' section of the former B&M railroad corridor along the Merrimack River shoreline, and fill a critical gap in this well-used trail network. The project will clean up soil contamination and significantly improve the resilience of this unprotected stretch of shoreline to sea level rise and storm surge events. The riverfront trail section between Joppa Park and the American Yacht Club will connect over three miles of the City's existing Rail Trail/Harborwalk network. The trail will be raised several feet above existing grade in order to be at or above the

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## CITY OF NEWBURYPORT



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IN CITY COUNCIL

ORDERED:

August 19, 2019

THAT, upon the recommendation of the Community Preservation Committee, \$694,820 is appropriated to pay costs of the continuation of Phase 2 of the Bradley Fuller Athletic Facility renovation project, including the installation of a 500 to 1,000-person grandstand, completion of electrical connections throughout the facility for the sound and timing systems, installation of a new sound system, and renovation of the interior of the existing field house to include expanded restroom facilities, and including the payment of all costs incidental and related thereto; and that to meet this appropriation, the Treasurer with the approval of the Mayor, is authorized to borrow \$694,820 under and pursuant to M.G.L. c.44B, of the General Laws (the Community Preservation Act), M.G.L. c.44 or pursuant to any other enabling authority, and to issue bonds or notes of the City therefor. Any premium received upon the sale of any bonds or notes approved by this order, less any such premium applied to the payment of the costs of issuance of such bonds or notes, may be applied to the payment of costs approved by this vote in accordance with M.G.L. c. 44, §20, thereby reducing the amount authorized to be borrowed to pay such costs by a like amount.

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Councillor Charles F. Tontar

**September 9, 2019**  
**Committee Items-**  
**Planning & Development**

Committee Items:

Consent

APPT115\_07\_15\_19

Mark Moore

ZBA

08/01/2024



CITY OF NEWBURYPORT  
OFFICE OF THE MAYOR  
DONNA D. HOLADAY, MAYOR

*psd*  
CITY CLERK'S OFFICE  
NEWBURYPORT, MA

2019 JUL -1 PM 3:55

60 PLEASANT STREET - P.O. BOX 550  
NEWBURYPORT, MA 01950  
978-465-4413 PHONE  
978-465-4402 FAX

To: President and Members of the City Council  
From: Donna D. Holaday, Mayor  
Date: July 1, 2019  
Subject: Re-Appointment

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I hereby re-appoint, subject to your approval, the following named individual as a member of the Zoning Board of Appeals. This term will expire on August 1, 2024.

Mark Moore  
67 Curzon Mill Road  
Newburyport, MA 01950

# MARK W. MOORE

67 Curzon Mill Road ■ Newburyport, MA 01950 ■ 508-523-1483

mwmooore63@me.com

## CAREER PROFILE

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*Senior Executive Equity Trading and Client Relationship Professional* with over 20 years of experience covering institutional equity asset managers across the AUM spectrum in Boston and the New England area. Desire an opportunity to leverage experience and skills in a pivot to a Client Relationship/Sales role in the Financial Services industry. Areas of expertise include:

- Management/Leadership
- Relationship Management
- Institutional Sales & Trading
- Market Trend Analysis
- Equity Research
- Negotiation
- Business Development
- Growth Strategy
- Investment Accounting

## PROFESSIONAL BACKGROUND

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*Managing Director, Equity Sales Trading (2016-2017)*

*Seaport Global Securities, Boston, MA*

- Re-established a Sales Trading presence in Boston, with additional coverage responsibilities of Toronto and Montreal.
- Utilized strong relationships to open 12 new accounts in 10 months, including one of the Top 3 revenue producers in the firm.
- Executed client orders utilizing a variety of algorithm vendors and strategies while on a run rate to increase revenues 100% YoY

*Director, Equity Sales Trading (2000-2014)*

*SunTrust Robinson Humphrey, Boston, MA*

- Spearheaded the opening of a new Trading presence in Boston increasing electronic trading links with institutional clients by 100%.
- Initiated trading merchandise recaps during the day keeping the sales force focused on best situations and resulting in revenue growth of 20%.
- Built and retained a book of business developing one client into the number one revenue producing firm in the system and growing many by 50% or more.

*Senior Vice President (1998-2000)*

*Paine Webber Securities, Boston, MA*

- NASDAQ Sales-trader.
- Stabilized business levels and resolved concerns related to Paine Webber's NASDAQ trading capabilities after the company had experienced trader turnover.
- Leveraged client relationships to grow business by 50% in the first year

*Vice President/Interim Director (1997)*

*NatWest Securities, Boston, MA*

- Managed the office for a six month period while the company explored strategic options for their U.S Equity Division.
- Maintained and retained clients during the strategic realignment.

*Assistant Vice President (1996-1997)*

*Bankers Trust Securities, Boston, MA*

- Delivered a book of business to the newly opened Boston office growing revenues by 30%.

# MARK W. MOORE

Page Two

## ADDITIONAL EXPERIENCE

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### *Sales Trader (1994-96)*

Prudential Securities, Boston, MA

- Strategized and negotiated capital trades with market makers and clients resulting in revenue growth of 120%.
- Prospected and opened several new accounts in the New England area.

### *Sales Trader (1992-94)*

Tucker Anthony, Boston, MA

- Maintained and grew revenues for a West Coast client base.
- Planned and managed semi-annual, marketing trips to address issues and explore new revenue opportunities.
- Co-managed trading of a \$120m lead managed I.P.O.

### *Trading Assistant- NASDAQ Market Making Desk (1986-89)*

Adams, Harkness & Hill, Boston, MA

- Managed positions of a book of approximately 40 publicly traded companies.
- Resolved disputed, over the wire trades with competitors.
- Negotiated capital commitment with sales traders and their clients to best manage risk.

### *Floor Service Coordinator (1986)*

Boston Stock Exchange, Boston, MA

- Executed orders by negotiating prices with floor specialists to ensure best execution for clients in an open outcry environment.
- Trained and developed new Floor Service Coordinators and summer interns.

## EDUCATION

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### *Master of Business Administration, 1991*

Boston University, Boston, MA

- Finance and Marketing focus

### *B.S., Business Marketing, 1985*

Providence College, Providence, RI

### *Additional Professional Development:*

- Series 7, 63 & 55 registered
- Bloomberg, Fidessa and Bloomberg OMS
- Member of the Boston Securities Traders Association.

## INTERESTS AND ACTIVITIES

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University of South Carolina Football

Kansas University Basketball

U-6 Soccer Coach, Lynnfield, MA

Eighth Grade Town League Basketball Coach, Lynnfield, MA

# Committee Items-Public Safety

## September 9, 2019

### *In Committee:*

#### Consent

COMM174\_08\_19\_19      Block Party - Otis Place - 9/21/2019

COMM175\_08\_19\_19      Walk for the Poor - 9/28/2019

#### Regular

ORDR137\_08\_19\_19      Parking Fees

ORDR134\_08\_19\_19      Employee Parking - Garage





300 ... MA  
 JUL 25 11:45

CITY OF NEWBURYPORT  
 60 PLEASANT STREET  
 NEWBURYPORT, MA 01950

**BLOCK PARTY APPLICATION**

Please fill out the application below and obtain the approving signatures for the street closure. Mail or drop off the completed signed application at: City Clerk's Office, City Hall, 60 Pleasant Street, Newburyport, MA 01950 **at least eight (8) business days prior** to a City Council meeting. The requested Block Party needs approval by the City Council. For any questions, please contact The City Clerk's Office at (978) 465-4407.

DATE OF REQUEST: July 16 2019

CONTACT INFORMATION

FIRST AND LAST NAMES: Paula Renda

MAILING ADDRESS: 16 OTIS PL Newburyport

PHONE NUMBER: 603-702-0283

E-MAIL ADDRESS: paularenda24@comcast.net

BLOCK PARTY INFORMATION

BLOCK PARTY DATE: Sept. 21, 2019

DESIRED STREET CLOSING LOCATION: From 15 Otis to end of Otis  
 Please indicate cross streets when requesting the closing of street sections against High

STREET TO BE BARRICADED: same as above

DESIRED STREET CLOSING TIME: 8am to 10 PM  
 Block Parties should run no later than 10:00 p.m.

7/15

**REGULATIONS**

By signing, I agree that I am a legal adult 18 years of age or older and understand this permit does not release me of any liability for damages that may result from the conducting of this Block Party. Further, I agree to comply with all requirements listed below:

I understand that applications for block party permits may take up to four (4) weeks to process.

Block parties will be conducted only on low-volume residential streets, dead-end streets, or cul-de-sacs. No thoroughfares or collector streets may be used.

It is hereby agreed that, by signing and presenting this application, signer(s) represents to the City of Newburyport that the following statements are true and correct, and agrees to and will abide by the following:

1. All residents living on the street or block for which the party is planned request the block party, or have been contacted and do not object to the Block Party.
2. To be responsible for placement, maintenance and removal of barricades.
3. A block party permit does not allow the sale of alcohol or the consumption of alcohol on public property (in city streets, sidewalks, parks, etc.) alcohol is allowed only on private property. All state and city alcohol laws still apply during Block Parties.
4. Amplified music shall be permitted with permission of the City Council.
5. To leave **AT LEAST A TWELVE (12) FOOT AISLE** in the street to permit passage of emergency vehicles or vehicles of residents. Failure to maintain a ten (10) foot aisle during the entire period of the party will necessitate denial of requests for subsequent block parties. **Public safety personnel will monitor the party for strict adherence to this rule.**
6. To maintain adult supervision at all times during the party.
7. Applicant(s) shall be responsible for the pick-up of trash and garbage within two (2) hours of the end of the party.
8. Streets may not be barricaded later than 10:00 P.M.
9. No residents of the area designated shall be prohibited from attending the party.
10. No such activity may e conducted within five hundred (500) feet of any school, church, hospital, nursing home or similar operation unless endorsed by the management of such institution.
11. Only approved readily removable Barricades will be permitted such as orange cones and sawhorses with a sign. No vehicles will be permitted to be used as a Barricade.
12. Block parties are permitted 10 A.M. – 10 P.M.

Applicant signature: Paula A. Remick Date: July 11, 2019

**APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE**

CITY MARSHALL [Signature]  
 4 Green Street  
 FIRE CHIEF [Signature]  
 Greenleaf Street  
 DEPUTY DIRECTOR [Signature]  
 1 Perry Way  
 CITY CLERK [Signature]  
 60 Pleasant Street

City use only:  
 Approved \_\_\_\_\_ Denied \_\_\_\_\_ Date \_\_\_\_\_

**NEWBURYPORT SPECIAL EVENT APPLICATION**

Tel. (978) 835-1109 Fax.

(For Parades, Road Races and Walkathons Only - Please complete page 3 of this application)

NAME OF EVENT: Saint Vincent de Paul Walk for the Poor

Date: 9/28/2019 Time: from 9:00A to 12:00 pm

Rain Date: 9/29/2019 Time: from 12:20 to 3:30 pm

2. Location: Immaculate Conception Church

3. Description of Property: Parking lot to Market Square to Airport Public  Private   
& Back to Parking lot

4. Name of Organizer: Saint Vincent de Paul City Sponsored Event: Yes  No

Contact Person: MaryAnn Lawler

Address: 42 Green St Telephone: (978) 835-1109

E-Mail: MARYANNAWALKER@VERIZON.NET Cell Phone:

Day of Event Contact & Phone: MaryAnn Lawler (978) 835-1109

5. Number of Attendees Expected: Approx. 100

6. MA Tax Number: 27-4114921

7. Is the Event Being Advertised? Yes Where? Church and Local Newspaper

8. What Age Group is the Event Targeted to? All

9. Have You Notified Neighborhood Groups or Abutters? Yes  No  Who? \_\_\_\_\_

ACTIVITIES: (Please check where applicable.) Subject to Licenses & Permits from Relevant City Departments

A. Vending: Food \_\_\_\_\_ Beverages \_\_\_\_\_ Alcohol \_\_\_\_\_ Goods \_\_\_\_\_ Total # of Vendors \_\_\_\_\_

B. Entertainment: (Subject to City's Noise Ordinance.) Live Music \_\_\_\_\_ DJ \_\_\_\_\_ Radio/CD \_\_\_\_\_  
 Performers \_\_\_\_\_ Dancing \_\_\_\_\_ Amplified Sound \_\_\_\_\_ Stage \_\_\_\_\_

C. Games /Rides: Adult Rides \_\_\_\_\_ Kiddie Rides \_\_\_\_\_ Games \_\_\_\_\_ Raffle \_\_\_\_\_  
 Other \_\_\_\_\_ Total # \_\_\_\_\_

Name of Carnival Operator: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

D. Organizer is responsible for clean-up during and after event. All trash must be collected and removed from event location immediately at the end of the event unless prior written agreement had been made with the Department of Public Services (DPS).

Will you be conducting the clean-up for this event? Yes  No

*N/A*

**If yes:**

- a) How many trash receptacles will you be providing? 3
- b) How many recycling receptacles will you be providing? 3
- c) Will you be contracting for disposal of : **Trash** Yes \_\_\_\_\_ No  **Recycling** Yes \_\_\_\_\_ No
- i. If yes, size of dumpster(s): **Trash** \_\_\_\_\_ **Recycling** \_\_\_\_\_
- ii. Name of disposal company: **Trash** \_\_\_\_\_ **Recycling** \_\_\_\_\_
- iii. If no, will you remove trash & recycling with organizers' cars or trucks? Yes  No \_\_\_\_\_
- iv. If no, where will the trash & recycling be disposed ? \_\_\_\_\_

**If no:**

- a) # of trash container(s) to be provided by DPS \_\_\_\_\_
- b) # of recycling container(s) to be provided by Recycling Office \_\_\_\_\_
- c) \$45.00/hr/DPS employee charge must be paid by the organizer to DPS in advance of the event (Fee for Special Events). The hours required for the event will be determined by DPS.

All fees must be paid prior to the event. Check or money order is payable to the City of Newburyport.

E. Portable Toilets: (Each cluster of portable toilets must include at least one ADA accessible toilet)

# \_\_\_\_\_ Standard      # \_\_\_\_\_ ADA accessible

*NOT NEEDED*

Name of company providing the portable toilets: \_\_\_\_\_

**FOR PARADE, ROAD RACE AND WALKATHON EVENTS ONLY**

PARADE \_\_\_\_\_

ROAD RACE \_\_\_\_\_

WALKATHON  \_\_\_\_\_

1. Name of the Group or Person Sponsoring the Road Race, Parade, Walkathon:

Saint Vincent de Paul Society Immaculate Conception  
PARISH CHAPTER

2. Name, Address & Daytime Phone Number of Organizer:

MARY ANN LAUDER  
42 GREEN ST. NEWBURGH, NY 01950  
(914) 835-1109

3. Name, Address & 24/7 Telephone Number of Person Responsible for Clean Up

Mary Ann Lauder  
42 GREEN ST.  
(914) 835-1109

4. Date of Event: 9/28/2019 Expected Number of Participants: Approx 100

5. Start Time: 9:30 AM Expected End Time: 12:00 PM

6. Road Race, Parade or Walkathon Route: (List street names & **attach map of route**):

GREEN ST. to MARKET SQUARE to MEDICINE ST. to OAKLAND  
ST. to HIGH ST. to GREEN ST.

7. Locations of Water Stops (if any): MARKET SQUARE AND BROADWAY & HIGH ST.

8. Will Detours for Motor Vehicles Be Required? NO If so, where? \_\_\_\_\_

9. Formation Location & Time for Participants: 9:00 AM  
IMMACULATE CONCEPTION CHURCH (PARKING LOT)

10. Dismissal Location & Time for Participants: 12:00 NOON  
IMMACULATE CONCEPTION CHURCH (PARKING LOT)

11. Additional Parade Information: N/A

- Number of Floats: N/A
- Locations of Viewing Stations: N/A
- Are Weapons Being Carried: Yes \_\_\_\_\_ No
- Are Marshalls Being Assigned to Keep Parade Moving: Yes \_\_\_\_\_ No

**APPROVAL SIGNATURES REQUIRED FOR STREET CLOSURE OR ANY USE OF A PUBLIC WAY.**

CITY MARSHAL [Signature] 4 Green St. FIRE CHIEF [Signature] 0 Greenleaf St.  
DEPUTY DIRECTOR [Signature] 16A Perry Way CITY CLERK [Signature] 60 Pleasant St.

## DEPARTMENT APPROVAL (for Committee Member use only):

It will be necessary for you to obtain permits or certificates from the following Departments: Please note that costs for some City support services during an event are an estimate only. Some Departments may forward an invoice for services rendered at the completion of the event, and others may require advance payment.

<i>Approval Required</i>	Date: _____	Signature _____
___	1. Special Events:	_____
___	2. Police:	_____
	Is Police Detail Required:	_____ # of Details Assigned: _____
___	3. Traffic, Parking & Transportation:	_____
___	4. ISD/Health:	_____
___	5. Recycling:	_____
___	6. ISD/Building:	_____
___	7. Electrical:	_____
___	8. Fire:	_____
	Is Fire Detail Required:	_____ # of Details Assigned: _____
___	9. Public Works: <i>Fee for Special Events: \$45/hr/DPS employee for trash handling/staging etc. may apply</i>	
	Yes: \$ _____ due on _____	No Fee for Special Events applies
	Other requirements/instructions per DPS _____	
___	10. Recreation Department:	_____
___	11. License Commission	_____

**The departments listed above have their own application process.**  
**Applicants are responsible for applying for and obtaining all required**  
**permits & certificates from the various individual departments**

Archdiocese

a list of all streets notified shall be provided to the city clerk to be date stamped and appended to the application record. Press releases and other media type notifications are encouraged.

(6) *Insurance.* All events shall have an insurance policy or rider in effect for the event naming the "City of Newburyport" as an additional insured. The policy shall be no less than two million dollars (\$2,000,000.00).

(7) *Event termination.* If in the judgment of the city marshal, fire chief or department of public services (DPS) director or designees thereof determine that an event is unsafe due to existing conditions, that event may be stopped, terminated or suspended. In the case of a multidiscipline event such as a triathlon, the harbormaster or his/her designee may likewise stop, terminate or suspend the swimming portion for cause.

(8) *Event and traffic security.* The city marshal, fire chief, DPS director or in the case of a triathlon, the harbormaster can require special duty personnel to assist in the organizing and coordinating the safety and security of the event. All special duty assignments will be paid by the event organizers.

(9) *Clean-up.* The event organizers shall be responsible for post event trash collection, removal of signage, directional arrows, advertisements or other promotional material associated with the event.

(10) *Parking.* The event organizers shall be responsible for including parking instructions in materials disseminated to event participants. If the event is happening within one-half mile of municipal parking, then participants shall be asked to park at such parking facilities.

(11) *Notification of previous event organizers.* To the extent reasonably possible, the city clerk shall notify all event organizers from events held from 2014—2016, inclusive, by a one-time phone, email, or letter of the new application timeline and other requirements.

(12) *Simplification.* Departments are encouraged to unify their respective applications into a singular application, managed and distributed by the city clerk's office.

(13) *Americans with Disabilities Act.* Event organizers are reminded of the importance of and expectation of adherence to the Americans with Disabilities Act of 1990 (42 U.S.C § 12101) and subsequent applicable amendments.

(e) *Enforcement.*

(1) *Regulations.* Consistent with this section, the city shall promulgate regulations to enforce and otherwise implement the provisions of this section upon passage by the city council. Any event previously approved by city council shall be deemed permitted.

(2) *Warning.* In the circumstance that this section is violated, the enforcement may consist of a warning. Any warnings issued for violation(s) will be reported to the city clerk and city council and may be used as a factor in future application approvals and denials.

(3) *Noncriminal disposition.* If the city determines that a violation has occurred in which a noncriminal violation is issued, the named event organizer shall be penalized by a non-criminal disposition as provided in Massachusetts General Law as adopted by the City of Newburyport as a general ordinance in section 1-17 of chapter 1 of the Code or Ordinances of the City of Newburyport in the amounts set herein in subsection (e)(4) below.

(4) *Violation.* The non-criminal violation shall be one hundred dollars (\$100.00) for the first offense and two hundred fifty dollars (\$250.00) for second and subsequent offenses. Any non-criminal citations issued for violation(s) will be reported to the city clerk and city council and shall be used as a factor in future application approvals and denials.

(5) *Failure to notify.* If the event fails to notify residents and provide documentation to the city clerk, pursuant to subsection (d)(5) above, shall render that organization ineligible to receive an event permit for a period of twelve (12) months unless special leave is granted by two-thirds supervote of the city council.

**I fully understand and agree to all the terms set forth in this application. The information that I have provided is truthful and accurate. I accept all responsibility related to this event.**

Signed: Maureen Louder

Date: 7/22/2019



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

07/10/2019

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

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

PRODUCER Roman Catholic Archdiocese of Boston 66 Brooks Drive Braintree, MA 02184	CONTACT NAME:		
	PHONE (A/C, No., Ext):	617-746-5742	FAX (A/C, No.): 617-779-4572
	E-MAIL ADDRESS:	ormadmin@rcab.org	
INSURED Location 479-400 Society of Saint Vincent dePaul 18 Canton Street Stoughton MA 02072	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Fides Insurance Group		
	INSURER B: National Catholic Risk Retention Group		
	INSURER C:		
	INSURER D:		
	INSURER E:		
INSURER F:			

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A B	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR			Fides 19-002 \$250,000.00 RRG 10358-22 \$750,000.00	07/01/19	07/01/20	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			FM 10358-22	07/01/19	07/01/20	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input type="checkbox"/> Y <input checked="" type="checkbox"/> N / A				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

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

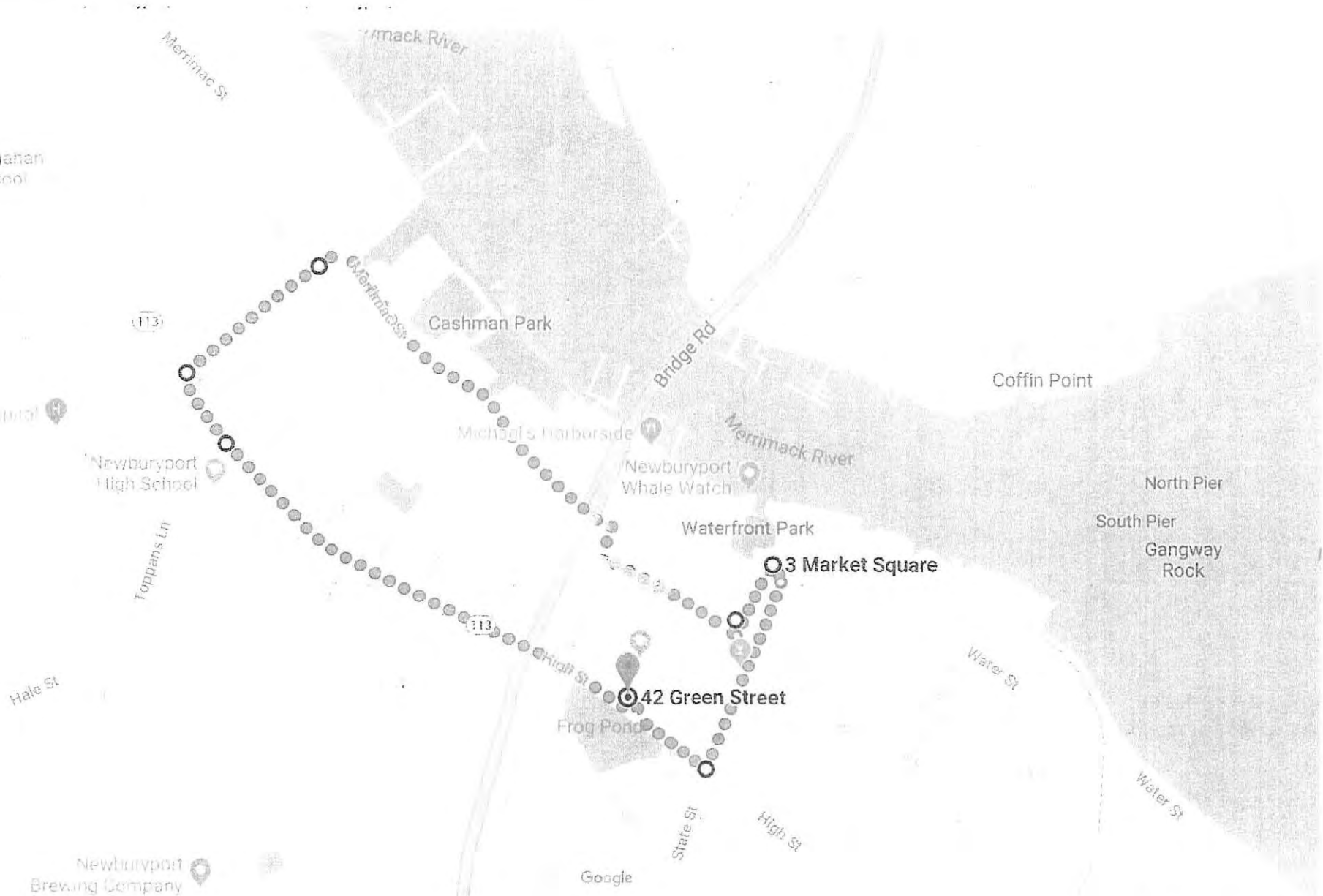
Re: 09/28/2019 SVdP Walk for Poor - Evidence of General Liability Insurance.  
Certificate Holder is an additional Insured where required by written contract.

CERTIFICATE HOLDER City of Newburyport, MA City Hall Newburyport, MA 01950	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE 
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Francis T. Bresnahan Elementary School



Walk 2.75 miles



**Applicant Information**

Name of organization Spirit Vincent de Paul Society  
 Contact name Mary Ann Lawler  
 Address 712 BERTW ST  
 City Newburyport  
 State MA Zip 01950  
 Phone (CONTACT) (978) 835 1109 Fax \_\_\_\_\_  
 Email MALAWLER@VINCENDEPAUL.ORG

**Scheduling Information**

Date of Application 7/22/19

**We request use of:**

- |   |   |
|---|---|
| <input type="checkbox"/> Atkinson Common  | <input type="checkbox"/> Inn Street   |
| <input type="checkbox"/> Atwood Park  | <input type="checkbox"/> Jason Sawyer Playground  |
| <input type="checkbox"/> Garrison Gardens   | <input type="checkbox"/> Joppa Park   |
| <input type="checkbox"/> Bartlet Mall   | <input type="checkbox"/> March's Hill   |
| <input type="checkbox"/> Brown Square   | <input checked="" type="checkbox"/> Market Square/Bullnose  |
| <input type="checkbox"/> Cashman Park   | <input type="checkbox"/> Moseley Woods Pavilion   |
| <input type="checkbox"/> Basketball <input type="checkbox"/> Tennis <input type="checkbox"/> Ball field <input type="checkbox"/> Soccer | <input type="checkbox"/> Moulton Square   |
| <input type="checkbox"/> Cherry Hill Athletic Fields  | <input type="checkbox"/> Newburyport Skate Park   |
| <input type="checkbox"/> Clipper City Rail Trail  | <input type="checkbox"/> Patrick Tracy Square   |
| <input type="checkbox"/> Cornelius Doyle Triangle   | <input type="checkbox"/> Perkins Park   |
| <input type="checkbox"/> Cushing Park   | <input type="checkbox"/> Basketball <input type="checkbox"/> Tennis <input type="checkbox"/> Ball field |
|   | <input type="checkbox"/> Woodman Park   |
|   | <input type="checkbox"/> Other _____  |

Dates/days requested 7/22/19 Ann. date 9/29/19

Time slot requested 9:00 AM - 12:00 noon INFO TENT AND WATER

Activity WORK FOR THE FAIR Number of attendees Approx 100

Authorized Applicant Signature Mary Ann Lawler

**FOR INTERNAL USE ONLY**

- Approval is contingent upon approval from the following authorities:
- Health Department
  - Fire Department
  - Police Department
  - Licensing Commission
  - City Council
  - Harbormaster

ADDITIONAL COMMENTS:  
TRASH MUST BE REMOVED BY ORGANIZER

**ALL APPLICATIONS MUST INCLUDE A CURRENT CERTIFICATE OF INSURANCE NAMING THE CITY AS INSURED IN THE AMOUNT OF TWO MILLION DOLLARS.**

Submit completed form to  
 Newburyport Parks Dept  
 60 Pleasant Street  
 Newburyport, MA 01950  
 parks@cityofnewburyport.com  
 978-465-4462

See page 2 for Rules and Regulations and contacts for use of other parks and recreational facilities

For Parks Commission Use
Date reviewed <u>7/23/19</u>
Approved <input checked="" type="checkbox"/>
Rejected <input type="checkbox"/>
Comments _____
_____
Donation received <input checked="" type="checkbox"/>

## CITY OF NEWBURYPORT




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 IN CITY COUNCIL

## ORDERED:

Date: August 19, 2019

THAT, pursuant to the CITY OF NEWBURYPORT Code of Ordinances Section 13-180.1.(f)(1) and Section 13-166, the CITY COUNCIL of the CITY OF NEWBURYPORT hereby amends and approves the following schedule of parking fees and fines in the paid parking facilities subject to introductory and time-limited discount incentive rates for paid parking permits pursuant to regulations promulgated by the Parking Clerk as described in Section 13-180.1.(f)(2):

Resident Annual Permit -- Paid Parking Facilities, with exceptions per subd. (e)(4)	\$18.00
Senior Resident Annual Permit -- Paid Parking Facilities, with exceptions per subd. (e)(4)	\$5.00
Employee Quarterly Permit -- All-Day Parking Facilities	--- \$50.00
Hourly fee -- Waterfront Trust Lot, NRA West Lot, NRA East Lot, State Street Lot, and Titcomb Street Garage	\$1.00
Hourly fee -- Green Street Lot, Prince Place Lot, and Hales Court Lot	\$1.50
Resident Monthly Pass -- Titcomb Street Garage	\$60.00
Non-Resident Monthly Pass -- Titcomb Street Garage	\$80.00
Fine for Non-Display, Non-Payment, or Overtime Violation	\$25.00

AND FURTHER THAT, the above schedule of parking fees and fines shall take effect on **Monday, September 30, 2019**. Any and all necessary fee adjustments for existing paid permits shall be equitably prorated by the parking clerk.

---

 Councillor Jared J. Eigerman

## CITY OF NEWBURYPORT




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 IN CITY COUNCIL

Date: August 19, 2019

**ORDERED:**

THAT, pursuant to the CITY OF NEWBURYPORT Code of Ordinances Section 13-166, the CITY COUNCIL of the CITY OF NEWBURYPORT hereby amends existing subsections (a)(1), (a)(2), (e)(1), (e)(3), and (e)(4) of Section 13-180.1 to read as follows, with deletions ~~double-stricken through~~, and additions double-underlined:

*(a) Definitions. As used in this section:*

- (1) *Paid parking ~~lots-facilities~~: ~~Central Business District Green Street Lot, State Street Lot, Tracey Prince Place Lot, Newburyport Redevelopment Authority East Lot, Newburyport Redevelopment Authority West Lot, Waterfront Trust Lot, Hales Court Lot, and Titcomb Street Garage.~~*
- (2) *All-day parking ~~lots-facilities~~: ~~Tracey Prince Place Lot, Newburyport Redevelopment Authority East Lot, Newburyport Redevelopment Authority and West Lots, Hales Court Lot, and Titcomb Street Garage.~~*

...

*(e) Use of parking permits.*

- (1) A parking permit shall not guarantee or reserve a parking space nor shall it excuse the observance of any traffic or parking regulation, including but not limited to time restrictions, other than the requirement to pay the hourly parking fee for use of paid parking lots-facilities, with the exception of the Waterfront Trust Lot.
- (3) A downtown employee paid parking permit is only valid in the designated spaces in the all-day parking facilities ~~lots of the Tracey Place lot, Newburyport Redevelopment Authority East Lot and Newburyport Redevelopment Authority West Lot.~~
- (4) Resident parking permits are valid in all the paid parking lots-facilities with the sole exceptions of the Waterfront Trust Lot and the Titcomb Street Garage.

---

 Councillor Jared J. Eigerman

**September 9, 2019**  
**Committee Items Public Utilities**

**Consent**

COMM177\_08\_19\_19  
Memo and Nexamp Contracts re: Solar Alternative On-Bill Credits



CITY OF NEWBURYPORT  
 OFFICE OF THE MAYOR  
 DONNA D. HOLADAY  
 60 PLEASANT STREET • P.O. BOX 550  
 NEWBURYPORT, MA 01950  
 (978) 465-4400 • (978) 465-4452 (FAX)  
 WWW.CITYOFNEWBURYPORT.COM

## Memorandum

To: Sharif Zeid, Chairman Public Utilities  
 City Council  
 From: Mayor Donna D. Holaday  
 Molly Ettenborough  
 Energy Advisory Committee  
 Date: August 12, 2019  
 Re: Solar Alternative On-Bill Credits

The City of Newburyport has received another Solar Alternative On-Bill Credits (AOBC) opportunity from Nexamp as provided for under the new Solar Massachusetts Renewable Target (SMART) program in Massachusetts.

The SMART takes a page from the previous solar incentive programs in the state and provides a fixed discount on electric utility bills, regardless of the energy market, much like the City's agreement with the solar farm in Salisbury and the three agreements we just signed in June.

As you will recall, the city just signed three contracts with Nexamp, for this same arrangement after an RFP process. The credits for those three will be credited and applied to the schools accounts. Total savings to the City of Newburyport for those contracts is estimated to be \$41,000 the first year and total savings close to a \$1 million over a 20 year contractual commitment. The AOBC discounts will be a fixed 15% off the National Grid supply portion of the accounts bill.

Nexamp has just approached Newburyport again for two more contracts with the same terms and contract, a 15 % discount and annual approximate cumulative credit of \$15,000. They have approached us for the following reasons:

- Recent completion of process and short window to act on the availability of these solar blocks, as the state only allots so much solar at a time.
- Municipalities, especially those with a Triple-A bond rating, provide developers and investors' confidence in credit worthiness.
- Contract readiness.

Attached is a copy of the proposed Nexamp contracts. These contracts will provide an annual savings of approximately \$15,000 and we propose that these credits be made available to the Newburyport Schools as the previous Nexamp credits were.

The Nexamp proposal for AOBC through SMART would again increase the city's municipal electric load commitment to renewable energy to approximately 55-60%. We urge the City Council to support the City's renewable energy initiatives and authorize the Mayor to sign the Nexamp contract.

## CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of \_\_\_\_\_, 2019 (the “*Effective Date*”) by and between **Sutton Solar 2, LLC**, a Delaware limited liability company (“*Seller*”), and the City of Newburyport, a Massachusetts municipal corporation (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

**WHEREAS**, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

### ARTICLES I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, or if such terms are defined elsewhere in this Agreement, the meanings given where such terms are defined. Words not defined herein shall be given their common and ordinary meanings.

### ARTICLE II TERM

- 2.1 Term. The Agreement term (the “*Term*”) shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date (the “*Termination Date*”) or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.
- 2.2 Early Termination. In addition to any other rights of termination set forth in this Agreement, this Agreement may be terminated before the Termination Date (the “*Early Termination Date*”):
- (a) by Seller, upon thirty (30) days’ notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it will not construct the Facility or (ii) after the Construction Commencement Date it will abandon the Facility as a result of an event of Force Majeure;
  - (b) by Seller, in accordance with section 4.1 (regarding conditions precedent);

(c) by either Party, in accordance with Section 4.2 (regarding regulatory change);

(d) pursuant to Section 10.3 (regarding financing); or

(e) by Buyer if Seller fails to achieve Commercial Operations by [12/31/2020] (the “Commercial Operations Deadline”); provided that the Commercial Operations Deadline shall be extended day-for-day to account for any delays caused, through no fault of Seller’s, by the Utility in the construction of upgrades to its distribution grid to accommodate the Facility; provided further that if construction on the Facility has commenced (as defined in the next sentence) but the Facility has not achieved Commercial Operations by the Commercial Operations Deadline, and Seller is diligently installing the Facility, the Commercial Operations Deadline shall be extended by an additional ninety (90) days. For the purpose of this provision, the word “construction on the Facility” shall mean that all or substantially all racking systems and solar panels have been delivered to the property on which the Facility is to be installed, and Seller has commenced actual installation of the Facility’s racking system and solar panels on such property. Seller shall promptly and reasonably demonstrate to Buyer in writing that the conditions set forth in this provision have been satisfied.

Upon early termination of this Agreement in accordance with this Section 2.2, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE III TITLE; COMMERCIAL OPERATION DATE**

#### **3.1 Title.**

- (a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, subject to and to the extent permitted by Applicable Law, Buyer shall assign them to Seller and, if Buyer receives any payments for them, it shall pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.
- (b) As between Seller and Buyer, title to, and risk of loss of, the Credits purchased by Buyer hereunder will pass from Seller to Buyer upon allocation of the Credits to Buyer’s Utility Account(s). If Buyer is purchasing less than 100 percent of the Credits, title to and risk of loss of the Credits not purchased by Buyer shall at all times remain with Seller.

3.2 Notice of Commercial Operations Date. Within 14 days of receipt of notification from the Utility that the Facility may commence operations, Seller shall provide Buyer with a copy of such notification, and the date of such notification, unless a different date for commencement of operations is set forth in that notification by the Utility, shall constitute the Commercial

CITY OF NEWBURYPORT - DRAFT



Operations Date.

**ARTICLE IV  
CONDITIONS PRECEDENT; REGULATORY CHANGE**

- 4.1 Conditions Precedent. Seller's obligations under this agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority, including a "SMART Participant Customer Disclosure Form". If the Facility does not so qualify, or if the Facility loses its qualification through no fault of the Seller, then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the date of Buyer's receipt of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment, liabilities or other obligations arising under this Agreement prior to the delivery of the notice, and Section 11.1 (Disputes) shall continue to apply to disputes that arose before such termination.
- 4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the Utility binding on a Party that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent reasonably possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefits to each Party. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement.

**ARTICLE V  
PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES**

- 5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for, the Quantity. The Price is stated on Exhibit A, attached hereto and incorporated herein. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be required to pay for any Credits before those Credits have been allocated to Buyer by the Utility and are reflected on invoices received by Buyer from the Utility.
- 5.2 Delivery. Seller shall direct the Utility to deliver the Credits to Buyer under the SMART Program.
- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (in

CITY OF NEWBURYPORT - DRAFT

accordance with the process established by the Tariff). Buyer may change the Utility Accounts to which Credits are allocated subject to any requirements of the Utility regarding the timing and manner of making such changes, and Seller shall cooperate with Buyer regarding any such changes, including, but not limited to, by filing any documentation with the Utility to implement such change so long as (i) Buyer provides written notice to Seller and (ii) the new address is serviced by the same Utility that provided service to the old address. The change in address will be effective upon the Utility allowing Seller to make such change, which under the tariff existing as of the date of this Agreement is generally within six (6) months. Seller will not be liable for any Credits lost through no fault of Seller's as a result of such change of address.

- (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such Credits will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits, provided that Buyer shall not be invoiced by Seller for any Credits unless and until those Credits are received by Buyer from the Utility and reflected on Buyer's invoices received from the Utility.
- (c) Each Party acknowledges that each of them is relying on the Facility receiving and maintaining qualification as a Community Shared Solar Tariff Generation Unit under the Massachusetts SMART Program. Buyer and Seller each agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Shared Solar Tariff Generation Unit, and shall reasonably cooperate with each other to assure the Facility's continued qualification.
- (d) Seller will promptly take reasonable efforts to correct any Utility Credit-allocation error and Buyer agrees to reasonably cooperate in a timely manner as needed.
- (e) Seller shall elect the Utility's fixed supply option for 6 month period to determine value of Credits.

### 5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary, available documentation to evidence the exemption or

exclusion.

## ARTICLE VI PAYMENT

### 6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller shall provide an invoice to Buyer (the “*Invoice*”) for the amount due for Credits received by Buyer from the Utility based on the Price multiplied by the Quantity.
- (b) Buyer shall remit payment of the full undisputed amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each Invoice. If Buyer does not pay the undisputed amount of an Invoice within thirty (30) days of receiving the Invoice, the amount due on the Invoice shall bear interest from the date on which the payment was due, through and including the date Seller receives the payment. The annual Interest accrual rate is the Interest Rate.
- (c) Before the Commercial Operations Date, Buyer shall, with Seller’s cooperation, take all reasonable actions necessary to cause the Utility to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller’s obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

### 6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party’s records regarding the transactions during the other Party’s normal business hours.

### 6.3 Invoice Disputes: Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the

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dispute. Any overpayments shall either be returned by the receiving Party promptly following the request or be deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date, unless the basis of the dispute was not reasonably ascertainable from the face of the Invoice, in which event the period for disputes shall be extended to a total of twenty-four (24) months from the date of such Invoice(s). If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).

- (b) If the Parties determines that the value of Credits reflected on an Invoice is different than the value of Credits allocated to Buyer's Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an accounting or administrative error by the Utility, Seller, with the cooperation of Buyer as the Utility Account holder, shall resolve the discrepancy with the Utility.

## ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS, INDEMNIFICATION

7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the Commonwealth of Massachusetts.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall endeavor in good faith to perform its obligations under this Agreement in compliance with Applicable Law.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are intended to be a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is understood to be a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not deemed a "utility" as such term is used in Section 366 of the United States Bankruptcy Code.

7.3 Upon written request from Seller on or prior to the Effective Date and thereafter (not to exceed once every year), Buyer shall provide to Seller a copy of the most recent years

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financial statements for Buyer, provided that Buyer shall be in compliance with any such request if Buyer provides to Seller such financial statements as are prepared by Buyer in the ordinary course of its business.

7.4 Seller Production Guarantee. Beginning on the first day of the fourth Contract Year and determined on each annual anniversary of the Commercial Operations Date for the remainder of the Term, if the aggregate number of Credits delivered to Buyer hereunder for the prior three Contract Years (such three-year aggregate, the “Three-Year Credit Total”) does not equal or exceed the aggregate of the Minimum Credit Requirement over such three-year period (the “Three-Year Credit Requirement”), on its next invoice issued to Buyer, Seller shall credit Buyer an amount equal to: (a) the positive difference, if any, between (i) the average price paid by Buyer to the Utility for electric power over such three-year period, as reasonably determined by Seller and (ii) the Price, multiplied by (b) the difference between the Three-Year Credit Requirement and the Three-Year Credit Total.

7.5 Indemnification. Seller shall indemnify and save harmless the Buyer from and against any and all claims, damages, liabilities, losses, charges, costs and expenses (including reasonable attorneys’ fees) arising out of any breach of this Agreement by Seller.

## ARTICLE VIII TERMINATION; DEFAULT

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after receiving written notice (including the invoice to which such payment relates) that such payment is past due unless the specific amount of the payment not made is being disputed.
- (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party promptly commences efforts, and proceeds with due diligence during such thirty (30) day period, to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party’s time to do so shall be extended by the time reasonably necessary to cure the same not to exceed a total additional period of sixty (60) days.
- (c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.
- (d) The Party:

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- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) 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 (iv) 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. The other Party shall not be required to perform any obligations that are in consideration of the obligations of the non-performing Party that are not being carried out by reason of *Force Majeure*, provided that Buyer shall not be excused from making payments for Credits delivered and reflected on Buyer's Utility Accounts.

8.3 Termination for Default.

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.
- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date, provided that Buyer shall remain responsible to pay for any Credits received from the Utility prior to the termination date, except to the extent any amount due from Buyer for Credits may be offset by

Buyer with any damages suffered by Buyer in connection with any such termination.

**ARTICLE IX  
REMEDIES; LIMITATION OF LIABILITY; WAIVER**

9.1 Remedies.

- (a) Subject to the limitations set forth in this Agreement, upon a termination by Seller due to an Event of Default by Buyer occurring after the Commercial Operations Date, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer (in addition to amounts due Seller for any Credits received from the Utility prior to the termination) any anticipated loss in revenues resulting from sales for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) Price as of the date of the termination and (ii) the market price for Credits as of the date of termination (as reasonably determined by Seller), multiplied by the average of the annual Quantity delivered by Seller in all Contract Years preceding the year of termination of the Agreement, provided that such amount to be paid by Buyer shall not exceed \$15,000.
- (b) Subject to the limitations set forth in this Agreement, upon a termination by Buyer due to an Event of Default by Seller occurring after the Commercial Operations Date, Buyer may recover from Seller any loss in savings for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) the average price of electricity delivered by the Utility to Buyer's Utility Accounts as of the date of termination of the Agreement and (ii) the Price, multiplied by the average of the annual Quantity purchased by Buyer in all Contract Years preceding the year of termination of the Agreement.
- (c) Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party shall take reasonable efforts to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement in accordance with the laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, Buyer shall under no circumstances be liable on account of any Event of Default for any alleged loss of Tax Attributes or Environmental Attributes.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR

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## EQUITY.

### 9.3 Waivers.

- (a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. A Party's failure to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any Party's right or remedy specified herein or any other right or remedy a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other except as otherwise required by law or limited in this Agreement.
- (b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

## ARTICLE X ASSIGNMENT

- 10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. For purposes of this Section 10.1, a transfer includes any sale of all or substantially all of the assets of Seller (other than to an Affiliate of Seller) or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any change in control of Seller or Buyer whereby there is a change of the person(s) or entity(ies) with the authority to direct the day-to-day management of Seller or Buyer. Upon any assignment, sale, transfer, or conveyance by Seller other than a collateral assignment under Section 10.2, or upon any such change in control of Seller, Seller shall be deemed to have represented and warranted to Buyer that the assignee, purchaser, or transferee has the ability (including financial) to fulfill or cause the fulfillment of all obligations of Seller under this Agreement.

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## 10.2 Collateral Assignment; Financing Provisions:

(a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:

(i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.

(ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility, subject to the terms of this Agreement;

(B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder, or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests or has otherwise assumed Seller's obligations under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement but shall not excuse any Seller Event of Default before, as a result of, or after such exercise of remedies;

(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender a copy of Buyer's notice to Seller of an Event of Default, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender promptly commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to execute any reasonable consents to assignment or acknowledgements as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility. Seller shall pay Buyer's reasonable, documented attorneys' fees incurred in reviewing and negotiating any such consent or acknowledgment.

10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) diminish the Credit value to Buyer, or (iv) disallow the Facility's qualification under the SMART Program, the Parties shall negotiate in good faith in an effort to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination.

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**ARTICLE XI  
DISPUTE RESOLUTION**

11.1 Dispute Resolution. The Parties agree to use their respective reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.

- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the chief executive of Seller, and the chief executive of Buyer, who shall use their respective reasonable efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a written notice that identifies with reasonable particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute hereby agree to submit the dispute to non-binding mediation if the monetary value of the dispute exceeds \$25,000, and may, if they mutually agree, submit any other disputes of lesser amount to non-binding mediation. For disputes whose monetary value exceed \$25,000, the following process shall apply: Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the “AAA”) to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed one 6-hour business day and shall occur within sixty (60) days of the appointment of the mediator, unless such time periods are modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all Parties involved in the dispute.
- (c) Injunctive Relief. Notwithstanding the foregoing, or anything to the contrary in this Agreement, either Party may at any time, and without having to engage in any dispute resolution or mediation, seek injunctive relief to prevent perceived irreparable harm.

**ARTICLE XII  
MISCELLANEOUS**

12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where

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expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller:                    Sutton Solar 2, LLC  
  ATTN: Charles Nutter  
  101 Summer Street, 2<sup>nd</sup> Floor  
  Boston, MA 02110  
  Email: [AM@nexamp.com](mailto:AM@nexamp.com)

With a copy to: Nexamp, Inc.  
  ATTN: General Counsel  
  101 Summer Street  
  Boston, MA 02110  
  Email: [legal@nexamp.com](mailto:legal@nexamp.com)

If to Buyer:                    ATTN: Mayor  
  City of Newburyport  
  60 Pleasant Street  
  Newburyport, MA 01950

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.2 INTENTIONALLY OMITTED.

12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect except as otherwise provided by law. If a material provision is determined to be unenforceable and the Party which would have been materially benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith in an effort to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, either Party may terminate the Agreement upon sixty (60) days written notice.

12.4 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, and any litigation arising hereunder shall be brought solely in the Massachusetts state courts located in Suffolk County, MA, with each Party hereby waiving any objections on account of venue or forum.

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- 12.5 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 12.6 Press Releases. The Parties shall reasonably cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits. Any good faith failure of a Party to comply with this provision shall not constitute an Event of Default.
- 12.7 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.
- 12.8 Amendments: Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.9 Counterparts. 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 agreement.
- 12.10 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 reasonable documents and assurances requested by the other Party. Each Party shall reasonably cooperate with the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10. Seller shall pay Buyer's reasonable attorneys' fees incurred in reviewing and negotiating any such documents and assurances.
- 12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.
- 12.12 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.
- 12.13 Additional Terms Regarding Buyer. Notwithstanding anything to the contrary in this Agreement:
- (a) Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement that will materially increase Buyer's risks or obligations under the Agreement, or result in the waiver of any of Buyer's rights, defenses, or

remedies under the Agreement or at law or in equity, or require Buyer to give or cause its legal counsel to give a legal opinion or require Buyer to make a statement of fact of which Buyer has no actual knowledge.

- (b) To the extent Buyer is obligated by any provision of this Agreement to negotiate any document or instrument with, or at the request of, Seller or any Lender, or to take any actions in connection with Seller's efforts to secure financing for the Facility, Seller shall promptly reimburse Buyer for reasonable, documented attorney fees incurred by Buyer in reviewing and negotiating any such document or instrument.
- (c) Any requirement that Buyer cooperate or assist Seller shall not require Buyer to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.
- (d) The Agreement shall be subject to Applicable Law.
- (e) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

**BUYER**

**SELLER**

**CITY OF NEWBURYPORT**

**Sutton Solar 2, LLC**

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

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

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

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

Title: \_\_\_\_\_

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## Glossary of Terms

“*Affiliate*” means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

“*Applicable Law*” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

“*Billing Period*” shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

“*Business Day*” means a day on which Federal Reserve member banks in Boston, MA 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 Operations*” shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply and has begun to generate and supply electricity to the Utility’s electricity distribution system at full or substantially full capacity, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

“*Commercial Operations Date*” means the date on which the Facility achieves Commercial Operations and has obtained the final statement of qualification from the Massachusetts Department of Energy Resources (or equivalent).

“*Construction Commencement Date*” means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

“*Contract Year*” means each year during the Term, with the first Contract Year starting on the Commercial Operations Date and ending on the first anniversary of the Commercial Operations Date.

“*Credits*” means the monetary value of the excess Energy generated by an Alternative On-Bill Credit Generation Unit, stated as of the Effective Date by the Utility according to 225 CMR 20.00, et seq. and the applicable Tariff; and excluding, for the avoidance of doubt, any Tax

Attributes or Environmental Attributes.

“*Credit Value*” shall be determined under the SMART Program at 225 CMR 20.08(1)(a)(2) and the applicable Tariff for the relevant Billing Period.

“*Energy*” means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“*Environmental Attribute*” means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

“*Facility*” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility’s electric distribution system.

“*Force Majeure*” means any cause not within the reasonable control and occurring without the fault 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; high winds, hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes (other than of Seller’s employees); lock-outs or other industrial disturbances (other than those involving Seller’s employees); 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. A Party may not assert an event of *Force Majeure* to excuse it 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, provided that nothing herein is intended by the Parties to interfere with the performance by Buyer or its officials of Buyer’s regulatory functions as a Massachusetts municipality. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“*Governmental Authority*” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“*Governmental Charges*” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits.

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**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

**“Lender”** means the entity or person(s) (or any affiliate of any thereof) from time to time providing any financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor under a sale/leaseback financing structure.

**“Meter”** means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

**“Minimum Credit Requirement”** means the minimum number of Credits Seller must transfer to Buyer hereunder pursuant to Section 7.4 hereof. The Minimum Credit Requirement is set forth in Exhibit B and shall be equal to ninety percent (90%) of the expected production of the Facility (updated as of Commercial Operations to reflect the as-built Facility size, as adjusted for weather) for a Contract Year.

**“Price”** is defined on Exhibit A.

**“Purchase Percentage”** is defined on Exhibit A.

**“Quantity”** means the total quantity of Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage, as measured and evidenced by the Credits reflected on actual invoices received by Buyer from the Utility.

**“Renewable Energy Certificate”** or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

**“SMART Program”** is the Applicable Law known as the “Solar Massachusetts Renewable Target” program. Specifically, that Applicable Law found as of the Effective Date at 225 C.M.R. §20.00, *et seq.*, as it may be amended from time to time, and including all regulatory agency orders pertaining thereto.

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“*Tariff*” means either the Utility tariff for interconnection for distributed generation and net metering services, or the Alternative On-bill Crediting mechanism tariff, as appropriate for the context, and each as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

“*Tax Attributes*” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

“*Utility*” means the electric distribution company providing service to the Facility.

“*Utility Account(s)*” means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation under the SMART Program.

“*Utility Statement(s)*” means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).

## EXHIBIT A

### PRICE; and PURCHASE PERCENTAGE

“*Price*” equals 85 percent (85%) of the Credit Value for that Billing Period.

“*Purchase Percentage*” equals 50 percent (50%) of the Energy generated during the relevant Billing Period.

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## EXHIBIT B

### FACILITY; MINIMUM CREDIT REQUIREMENT

The Facility is the approximately 1.0 MW (AC) solar (PV) power electrical generation facility located at 25 Oakhurst Rd, Sutton, MA 01590.

Contract Year	Minimum Credit Requirement (kWh)*
1	665,228
2	660,970
3	656,740
4	652,537
5	648,361
6	644,211
7	640,088
8	635,992
9	631,921
10	627,877
11	623,859
12	619,866
13	615,899
14	611,957
15	608,041
16	604,149
17	600,283
18	596,441
19	592,624
20	588,831

\*Note that the Minimum Credit Requirement shall be updated as of Commercial Operations to reflect the as-built Facility size

## CREDIT PURCHASE AND SALE AGREEMENT

This Credit Purchase and Sale Agreement (“*Agreement*”) is entered into as of \_\_\_\_\_, 2019 (the “*Effective Date*”) by and between Apex Solar 1, LLC, a Delaware limited liability company (“*Seller*”), and the City of Newburyport, a Massachusetts municipal corporation (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

### RECITALS

**WHEREAS**, Seller finances, develops, owns, operates and maintains solar (PV) electric generation facilities; and

**WHEREAS**, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, Credits associated with Energy generated by the Facility, but not the Environmental Attributes or Tax Attributes, during the Term, subject to the terms set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, warranties, covenants and conditions herein, and the Exhibits attached hereto, Seller and Buyer agree as follows.

### ARTICLES I DEFINITIONS

When used in this Agreement, capitalized terms shall have the meanings given in the Glossary of Terms, attached hereto and incorporated herein, or if such terms are defined elsewhere in this Agreement, the meanings given where such terms are defined. Words not defined herein shall be given their common and ordinary meanings.

### ARTICLE II TERM

- 2.1 Term. The Agreement term (the “*Term*”) shall begin on the Effective Date and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operations Date (the “*Termination Date*”) or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof.
- 2.2 Early Termination. In addition to any other rights of termination set forth in this Agreement, this Agreement may be terminated before the Termination Date (the “*Early Termination Date*”):
- (a) by Seller, upon thirty (30) days’ notice to Buyer, if Seller, in its sole discretion, determines that (i) prior to the Construction Commencement Date, it will not construct the Facility or (ii) after the Construction Commencement Date it will abandon the Facility as a result of an event of Force Majeure;
  - (b) by Seller, in accordance with section 4.1 (regarding conditions precedent);

- (c) by either Party, in accordance with Section 4.2 (regarding regulatory change);
- (d) pursuant to Section 10.3 (regarding financing); or

(e) by Buyer if Seller fails to achieve Commercial Operations by 6/31/2020 (the “Commercial Operations Deadline”); provided that the Commercial Operations Deadline shall be extended day-for-day to account for any delays caused, through no fault of Seller’s, by the Utility in the construction of upgrades to its distribution grid to accommodate the Facility; provided further that if construction on the Facility has commenced (as defined in the next sentence) but the Facility has not achieved Commercial Operations by the Commercial Operations Deadline, and Seller is diligently installing the Facility, the Commercial Operations Deadline shall be extended by an additional ninety (90) days. For the purpose of this provision, the word “construction on the Facility” shall mean that all or substantially all racking systems and solar panels have been delivered to the property on which the Facility is to be installed, and Seller has commenced actual installation of the Facility’s racking system and solar panels on such property. Seller shall promptly and reasonably demonstrate to Buyer in writing that the conditions set forth in this provision have been satisfied.

Upon early termination of this Agreement in accordance with this Section 2.2, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement in accordance with the terms hereof.

### **ARTICLE III TITLE; COMMERCIAL OPERATION DATE**

#### **3.1 Title.**

- (a) Under no circumstances shall the Buyer have or retain title to the Facility, Energy, Environmental Attributes, Tax Attributes, generation capacity and ancillary services produced or associated with the Energy or the Facility. If Buyer is deemed to be the owner or provider of any of the above, subject to and to the extent permitted by Applicable Law, Buyer shall assign them to Seller and, if Buyer receives any payments for them, it shall pay them to Seller. This Section 3.1(a) shall survive the termination of this Agreement.
- (b) As between Seller and Buyer, title to, and risk of loss of, the Credits purchased by Buyer hereunder will pass from Seller to Buyer upon allocation of the Credits to Buyer’s Utility Account(s). If Buyer is purchasing less than 100 percent of the Credits, title to and risk of loss of the Credits not purchased by Buyer shall at all times remain with Seller.

**3.2 Notice of Commercial Operations Date.** Within 14 days of receipt of notification from the Utility that the Facility may commence operations, Seller shall provide Buyer with a copy of such notification, and the date of such notification, unless a different date for commencement of operations is set forth in that notification by the Utility, shall constitute the Commercial

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Operations Date.

#### ARTICLE IV CONDITIONS PRECEDENT; REGULATORY CHANGE

- 4.1 Conditions Precedent. Seller's obligations under this agreement are subject to the Facility's connection to the Utility pursuant to any laws, regulations or tariffs qualifying the Facility to generate Credits. Buyer agrees that it will, in good faith, execute any reasonably requested documentation required by any Governmental Authority, including a "SMART Participant Customer Disclosure Form". If the Facility does not so qualify, or if the Facility loses its qualification through no fault of the Seller, then Seller may, but shall not be obligated to, terminate this Agreement by delivering notice to the Buyer. If this Agreement is terminated pursuant to this Section 4.1, the termination shall be effective as of the date of Buyer's receipt of such notice without further liability of the Parties to each other, provided that the Parties shall not be released from any payment, liabilities or other obligations arising under this Agreement prior to the delivery of the notice, and Section 11.1 (Disputes) shall continue to apply to disputes that arose before such termination.
- 4.2 Obligation to Modify Agreement Pursuant to Actions by Governmental Authority. Upon a Governmental Authority order, decision, or regulation implementation, or upon the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the Utility binding on a Party that (i) materially restricts Seller's ability to deliver Credits to Buyer or to fulfill its other obligations under this Agreement, (ii) materially restricts Buyer's ability to receive Credits, or (iii) disallows the Facility's qualification under laws, regulations or tariffs qualifying the Facility to generate Credits, as appropriate, the Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent reasonably possible, and shall use commercially reasonable efforts to conform such amendment to restore the economic benefits to each Party. If the Parties, negotiating in good faith, cannot agree concerning conforming to such actions, then either Party may terminate this Agreement.

#### ARTICLE V PURCHASE AND SALE OF CREDITS; GOVERNMENTAL CHARGES

- 5.1 Sale and Purchase of Credits. Beginning on the Commercial Operations Date and continuing throughout the Term, Seller agrees to sell to Buyer, and Buyer agrees to accept from Seller and to pay the Price to Seller for, the Quantity. The Price is stated on Exhibit A, attached hereto and incorporated herein. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be required to pay for any Credits before those Credits have been allocated to Buyer by the Utility and are reflected on invoices received by Buyer from the Utility.
- 5.2 Delivery. Seller shall direct the Utility to deliver the Credits to Buyer under the SMART Program.
- (a) To deliver the Credits to Buyer, Seller shall direct the Utility to allocate the Credits purchased by Buyer under this Agreement to Buyer's Utility Account(s) (in

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accordance with the process established by the Tariff). Buyer may change the Utility Accounts to which Credits are allocated subject to any requirements of the Utility regarding the timing and manner of making such changes, and Seller shall cooperate with Buyer regarding any such changes, including, but not limited to, by filing any documentation with the Utility to implement such change so long as (i) Buyer provides written notice to Seller and (ii) the new address is serviced by the same Utility that provided service to the old address. The change in address will be effective upon the Utility allowing Seller to make such change, which under the tariff existing as of the date of this Agreement is generally within six (6) months. Seller will not be liable for any Credits lost through no fault of Seller's as a result of such change of address.

- (b) Buyer understands that the Credits delivered to Buyer in any particular month will be reflected on Buyer's Utility Statement as a monetary credit amount and not as an electricity quantity; and that such Credits will be reflected on the Utility Statement according to the Utility's billing cycle, which may be up to approximately two (2) months after the Facility generates the Energy associated with the Credits, provided that Buyer shall not be invoiced by Seller for any Credits unless and until those Credits are received by Buyer from the Utility and reflected on Buyer's invoices received from the Utility.
- (c) Each Party acknowledges that each of them is relying on the Facility receiving and maintaining qualification as a Community Shared Solar Tariff Generation Unit under the Massachusetts SMART Program. Buyer and Seller each agrees that it shall not take any action that would cause the Facility not to be qualified as a Community Shared Solar Tariff Generation Unit, and shall reasonably cooperate with each other to assure the Facility's continued qualification.
- (d) Seller will promptly take reasonable efforts to correct any Utility Credit-allocation error and Buyer agrees to reasonably cooperate in a timely manner as needed.
- (e) Seller shall elect the Utility's fixed supply option for 6 month period to determine value of Credits.

### 5.3 Governmental Charges.

- (a) Seller is responsible for any Governmental Charges attributable to the sale of Credits hereunder, whether imposed before, upon or after the allocation and delivery of Credits to Buyer.
- (b) The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions to minimize Governmental Charges. If any Credits sales are exempted from or not subject to one or more Governmental Charges, the relevant Party shall, promptly upon the other Party's written request, provide the other Party with all necessary, available documentation to evidence the exemption or

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exclusion.

## ARTICLE VI PAYMENT

### 6.1 Payment.

- (a) Beginning with the first Billing Period that Seller delivers Energy to the Utility, Seller shall provide an invoice to Buyer (the “*Invoice*”) for the amount due for Credits received by Buyer from the Utility based on the Price multiplied by the Quantity.
- (b) Buyer shall remit payment of the full undisputed amount of each Invoice to Seller or its designee by electronic funds transfer (or other means agreeable to Seller) to the account designated by Seller within thirty (30) days following Buyer’s receipt of each Invoice. If Buyer does not pay the undisputed amount of an Invoice within thirty (30) days of receiving the Invoice, the amount due on the Invoice shall bear interest from the date on which the payment was due, through and including the date Seller receives the payment. The annual Interest accrual rate is the Interest Rate.
- (c) Before the Commercial Operations Date, Buyer shall, with Seller’s cooperation, take all reasonable actions necessary to cause the Utility to allow Seller to electronically access, for the Term, the Utility Statement(s) and account information solely for purposes of fulfilling Seller’s obligations under this Agreement.
- (d) The Parties shall resolve Invoice disputes according to Section 6.3 (Invoice Disputes).

### 6.2 Records and Audits.

- (a) Seller shall maintain accurate operating records in order to properly administer this Agreement.
- (b) Each Party shall keep, for a period of not less than two (2) years after the expiration or termination of any transaction, records sufficient to permit the other Party to verify the accuracy of billing statements, invoices, charges, computations and payments for the transaction. During these periods each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party’s records regarding the transactions during the other Party’s normal business hours.

### 6.3 Invoice Disputes; Invoice Discrepancies.

- (a) If a Party, in good faith, disputes an Invoice, including disputes under Section 6.3(b), the disputing Party shall promptly notify the other Party of the basis for the dispute and shall pay the undisputed portion of the Invoice no later than the due date. Any required payment shall be made within seven (7) Business Days of resolving the

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dispute. Any overpayments shall either be returned by the receiving Party promptly following the request or be deducted from subsequent payments with interest accrued at the Interest Rate, at the option of the overpaying Party. The Parties may only dispute amounts owed or paid within twelve (12) calendar months from the Invoice date, unless the basis of the dispute was not reasonably ascertainable from the face of the Invoice, in which event the period for disputes shall be extended to a total of twenty-four (24) months from the date of such Invoice(s). If the Parties are unable to resolve an Invoice dispute under this Section, the Parties shall follow the procedure set forth in Article 11 (regarding dispute resolution).

- (b) If the Parties determines that the value of Credits reflected on an Invoice is different than the value of Credits allocated to Buyer's Utility Account(s), and that the discrepancy is due to an issue related to the Meter, Seller shall use commercially reasonable efforts to resolve the issue with the Utility. If the discrepancy is due to an accounting or administrative error by the Utility, Seller, with the cooperation of Buyer as the Utility Account holder, shall resolve the discrepancy with the Utility.

## **ARTICLE VII REPRESENTATIONS, WARRANTIES, COVENANTS, INDEMNIFICATION**

7.1 Each Party represents and warrants to the other Party as follows.

- (a) The Party is duly organized, validly existing, and in good standing under the laws of the state in which the Party is organized and is authorized to conduct business in the Commonwealth of Massachusetts.
- (b) The Party has full legal capacity to enter into and perform this Agreement.
- (c) The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- (d) It shall endeavor in good faith to perform its obligations under this Agreement in compliance with Applicable Law.

7.2 The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are intended to be a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is understood to be a "forward merchant" within the meaning of the United States Bankruptcy Code. The Parties further acknowledge and agree that, for purposes of this Agreement, Seller is not deemed a "utility" as such term is used in Section 366 of the United States Bankruptcy Code.

7.3 Upon written request from Seller on or prior to the Effective Date and thereafter (not to exceed once every year), Buyer shall provide to Seller a copy of the most recent years

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financial statements for Buyer, provided that Buyer shall be in compliance with any such request if Buyer provides to Seller such financial statements as are prepared by Buyer in the ordinary course of its business.

7.4 Seller Production Guarantee. Beginning on the first day of the fourth Contract Year and determined on each annual anniversary of the Commercial Operations Date for the remainder of the Term, if the aggregate number of Credits delivered to Buyer hereunder for the prior three Contract Years (such three-year aggregate, the “Three-Year Credit Total”) does not equal or exceed the aggregate of the Minimum Credit Requirement over such three-year period (the “Three-Year Credit Requirement”), on its next invoice issued to Buyer, Seller shall credit Buyer an amount equal to: (a) the positive difference, if any, between (i) the average price paid by Buyer to the Utility for electric power over such three-year period, as reasonably determined by Seller and (ii) the Price, multiplied by (b) the difference between the Three-Year Credit Requirement and the Three-Year Credit Total.

7.5 Indemnification. Seller shall indemnify and save harmless the Buyer from and against any and all claims, damages, liabilities, losses, charges, costs and expenses (including reasonable attorneys’ fees) arising out of any breach of this Agreement by Seller.

## **ARTICLE VIII TERMINATION; DEFAULT**

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

- (a) The Party fails to make any material payment due under this Agreement within thirty (30) days after receiving written notice (including the invoice to which such payment relates) that such payment is past due unless the specific amount of the payment not made is being disputed.
- (b) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party promptly commences efforts, and proceeds with due diligence during such thirty (30) day period, to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party’s time to do so shall be extended by the time reasonably necessary to cure the same not to exceed a total additional period of sixty (60) days.
- (c) Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.
- (d) The Party:

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- i. is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- ii. makes a general assignment, arrangement or composition with or for the benefit of its creditors; or
- iii. (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) commences a voluntary case under any bankruptcy law; (D) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (E) acquiesces in, or fails to contest in a timely manner, any petition filed against it in an involuntary case under bankruptcy law or seeking to dissolve it under other applicable law; or (F) takes any action authorizing its dissolution.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure*, either Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within a reasonable time after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) 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 (iv) 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. The other Party shall not be required to perform any obligations that are in consideration of the obligations of the non-performing Party that are not being carried out by reason of *Force Majeure*, provided that Buyer shall not be excused from making payments for Credits delivered and reflected on Buyer's Utility Accounts.

### 8.3 Termination for Default.

- (a) Upon the occurrence of an Event of Default, the non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, subject to the rights to cure of Section 8.1 and Section 10.2(a)(iii)(A), and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.
- (b) If this Agreement is terminated due to an Event of Default, Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, Credits generated after that termination date, provided that Buyer shall remain responsible to pay for any Credits received from the Utility prior to the termination date, except to the extent any amount due from Buyer for Credits may be offset by

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Buyer with any damages suffered by Buyer in connection with any such termination.

## ARTICLE IX REMEDIES; LIMITATION OF LIABILITY; WAIVER

### 9.1 Remedies.

- (a) Subject to the limitations set forth in this Agreement, upon a termination by Seller due to an Event of Default by Buyer occurring after the Commercial Operations Date, Seller may sell Credits produced by the Facility to persons other than Buyer, and recover from Buyer (in addition to amounts due Seller for any Credits received from the Utility prior to the termination) any anticipated loss in revenues resulting from sales for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) Price as of the date of the termination and (ii) the market price for Credits as of the date of termination (as reasonably determined by Seller), multiplied by the average of the annual Quantity delivered by Seller in all Contract Years preceding the year of termination of the Agreement, provided that such amount to be paid by Buyer shall not exceed \$15,000.
- (b) Subject to the limitations set forth in this Agreement, upon a termination by Buyer due to an Event of Default by Seller occurring after the Commercial Operations Date, Buyer may recover from Seller any loss in savings for a twelve month period only, measured as the 12 months immediately following termination of this Agreement, with such loss being defined as the positive difference, if any, between (i) the average price of electricity delivered by the Utility to Buyer's Utility Accounts as of the date of termination of the Agreement and (ii) the Price, multiplied by the average of the annual Quantity purchased by Buyer in all Contract Years preceding the year of termination of the Agreement.
- (c) Buyer and Seller each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party shall take reasonable efforts to mitigate damages it may incur as a result of the other Party's non-performance under this Agreement in accordance with the laws of the Commonwealth of Massachusetts. Notwithstanding the foregoing, Buyer shall under no circumstances be liable on account of any Event of Default for any alleged loss of Tax Attributes or Environmental Attributes.

9.2 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR

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## EQUITY.

### 9.3 Waivers.

- (a) No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by Seller or Buyer unless the waiver is in writing and signed by the Party against whom it is to be enforced or such Party's agent. A Party's consent or approval to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. A Party's failure to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any Party's right or remedy specified herein or any other right or remedy a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other except as otherwise required by law or limited in this Agreement.
- (b) Acceptance of Payment. Neither receipt nor acceptance by Seller or Buyer of any payment due herein, nor payment of same by Buyer or Seller, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that Seller or Buyer may be entitled to exercise hereunder.

## ARTICLE X ASSIGNMENT

- 10.1 Prior Written Consent. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, except that without consent of Buyer, Seller (i) may assign its rights and obligations hereunder to an Affiliate of Seller and (ii) may sell or collaterally assign this Agreement in accordance with Section 10.2. For purposes of this Section 10.1, a transfer includes any sale of all or substantially all of the assets of Seller (other than to an Affiliate of Seller) or Buyer or any merger of Seller or Buyer with another person, whether or not Seller or Buyer is the surviving entity from such merger, or any change in control of Seller or Buyer whereby there is a change of the person(s) or entity(ies) with the authority to direct the day-to-day management of Seller or Buyer. Upon any assignment, sale, transfer, or conveyance by Seller other than a collateral assignment under Section 10.2, or upon any such change in control of Seller, Seller shall be deemed to have represented and warranted to Buyer that the assignee, purchaser, or transferee has the ability (including financial) to fulfill or cause the fulfillment of all obligations of Seller under this Agreement.

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## 10.2 Collateral Assignment; Financing Provisions:

(a) Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to a Lender. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender, Buyer agrees as follows:

(i) Consent to Collateral Assignment. Buyer hereby consents to both of the sale of the Facility to a Lender and the collateral assignment of the Seller's right, title and interest in and to this Agreement as security for financing associated with the Facility.

(ii) Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility, subject to the terms of this Agreement;

(B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder, or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests or has otherwise assumed Seller's obligations under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement but shall not excuse any Seller Event of Default before, as a result of, or after such exercise of remedies;

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(iii) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender a copy of Buyer's notice to Seller of an Event of Default, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Lender within such period and the Lender promptly commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then such person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Lender a Third-Party Beneficiary. Buyer agrees and acknowledges that Lender is a third-party beneficiary of the provisions of this Section 10.2.

(c) Entry to Consent to Assignment. Buyer agrees to execute any reasonable consents to assignment or acknowledgements as may be reasonably requested by Seller and/or Lender in connection with such financing or sale of the Facility. Seller shall pay Buyer's reasonable, documented attorneys' fees incurred in reviewing and negotiating any such consent or acknowledgment.

10.3 Obligation to Modify Agreement. If a Lender or the Seller requires this Agreement to be modified to finance, develop or operate the Facility, and the modification does not (i) materially restrict Seller's ability to deliver Credits to Buyer, (ii) materially restrict Buyer's ability to receive Credits, (iii) diminish the Credit value to Buyer, or (iv) disallow the Facility's qualification under the SMART Program, the Parties shall negotiate in good faith in an effort to amend this Agreement in a timely fashion. If the Parties, negotiating in good faith, cannot agree on the amendments, Seller may terminate this Agreement, or, if Seller determines in good faith that the Agreement cannot be amended to allow the Facility to be financed, developed or operated in a commercially reasonable manner, then Seller may terminate the Agreement. The terminating Party shall give the other Party thirty (30) days prior written notice and this Agreement shall terminate without further liability of the Parties to each other, provided that the Parties shall not be released from any obligation arising under this Agreement prior to such termination.

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## ARTICLE XI DISPUTE RESOLUTION

- 11.1 Dispute Resolution. The Parties agree to use their respective reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement.
- (a) Negotiation. Any dispute that arises under or with respect to this Agreement shall in the first instance be the subject of informal negotiations between the chief executive of Seller, and the chief executive of Buyer, who shall use their respective reasonable efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a written notice that identifies with reasonable particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed fourteen (14) calendar days from the time the dispute arises, unless it is modified by written agreement of the Parties.
- (b) Mediation. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute hereby agree to submit the dispute to non-binding mediation if the monetary value of the dispute exceeds \$25,000, and may, if they mutually agree, submit any other disputes of lesser amount to non-binding mediation. For disputes whose monetary value exceed \$25,000, the following process shall apply: Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator either Party may request the American Arbitration Association (the “AAA”) to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed one 6-hour business day and shall occur within sixty (60) days of the appointment of the mediator, unless such time periods are modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator’s fees shall be shared equally by all Parties involved in the dispute.
- (c) Injunctive Relief. Notwithstanding the foregoing, or anything to the contrary in this Agreement, either Party may at any time, and without having to engage in any dispute resolution or mediation, seek injunctive relief to prevent perceived irreparable harm.

## ARTICLE XII MISCELLANEOUS

- 12.1 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where

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expressly provided for otherwise), shall be deemed delivered upon receipt (except that notice provided by email shall be deemed delivered upon confirmation of receipt, of which auto-reply is insufficient), and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or email transmission. The communications shall be sent to the following addresses:

If to Seller: Apex Solar 1, LLC  
ATTN: Charles Nutter  
101 Summer Street, 2<sup>nd</sup> Floor  
Boston, MA 02110  
Email: [AM@nexamp.com](mailto:AM@nexamp.com)

With a copy to: Nexamp, Inc.  
ATTN: General Counsel  
101 Summer Street  
Boston, MA 02110  
Email: [legal@nexamp.com](mailto:legal@nexamp.com)

If to Buyer: ATTN: Mayor  
City of Newburyport  
60 Pleasant Street  
Newburyport, MA 01950

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

## 12.2 INTENTIONALLY OMITTED.

12.3 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect except as otherwise provided by law. If a material provision is determined to be unenforceable and the Party which would have been materially benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith in an effort to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Parties benefits, either Party may terminate the Agreement upon sixty (60) days written notice.

12.4 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, and any litigation arising hereunder shall be brought solely in the Massachusetts state courts located in Suffolk County, MA, with each Party hereby waiving any objections on account of venue or forum.

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- 12.5 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between Seller and Buyer with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.
- 12.6 Press Releases. The Parties shall reasonably cooperate with each other when making public announcements of any kind or in any form related to the execution and existence of this Agreement, or the sale or purchase of Credits. Any good faith failure of a Party to comply with this provision shall not constitute an Event of Default.
- 12.7 No Joint Venture. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of Seller and Buyer hereunder are individual and neither collective nor joint in nature.
- 12.8 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both Parties or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- 12.9 Counterparts. 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 agreement.
- 12.10 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 reasonable documents and assurances requested by the other Party. Each Party shall reasonably cooperate with the other to effect or confirm transactions contemplated by this Agreement. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.10. Seller shall pay Buyer's reasonable attorneys' fees incurred in reviewing and negotiating any such documents and assurances.
- 12.11 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a reasonable manner.
- 12.12 No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement. This Section 12.12 shall not limit the right of a Lender pursuant to Section 10.2.
- 12.13 Additional Terms Regarding Buyer. Notwithstanding anything to the contrary in this Agreement:
- (a) Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement that will materially increase Buyer's risks or obligations under the Agreement, or result in the waiver of any of Buyer's rights, defenses, or

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remedies under the Agreement or at law or in equity, or require Buyer to give or cause its legal counsel to give a legal opinion or require Buyer to make a statement of fact of which Buyer has no actual knowledge.

- (b) To the extent Buyer is obligated by any provision of this Agreement to negotiate any document or instrument with, or at the request of, Seller or any Lender, or to take any actions in connection with Seller's efforts to secure financing for the Facility, Seller shall promptly reimburse Buyer for reasonable, documented attorney fees incurred by Buyer in reviewing and negotiating any such document or instrument.
- (c) Any requirement that Buyer cooperate or assist Seller shall not require Buyer to interfere with or influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.
- (d) The Agreement shall be subject to Applicable Law.
- (e) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.

IN WITNESS WHEREOF, the Parties executed this Credit Purchase and Sale Agreement under seal as of the Effective Date.

**BUYER**

**SELLER**

**CITY OF NEWBURYPORT**

**Apex Solar 1, LLC**

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

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

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

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

Title: \_\_\_\_\_

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## Glossary of Terms

**“Affiliate”** means, as to any person or entity, any other person or entity which, directly or indirectly, is in control of, is controlled by, or is under common control with, such person or entity. For purposes of this definition, “control” of a person or entity means the power, directly or indirectly, to direct or cause the direction of the management and policies of such person or entity whether by contract or otherwise.

**“Applicable Law”** means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, constructing, operating, and owning the Facility, and selling and purchasing Credits.

**“Billing Period”** shall mean as defined in the applicable Tariff pursuant to which the Facility becomes qualified to receive Credits.

**“Business Day”** means a day on which Federal Reserve member banks in Boston, MA 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 Operations”** shall occur for the Facility when (i) Seller has obtained all necessary licenses, permits and approvals under Applicable Law to install and operate the Facility, (ii) the Facility is able to generate and supply and has begun to generate and supply electricity to the Utility’s electricity distribution system at full or substantially full capacity, (iii) Seller has completed or obtained all Facility-related equipment and rights, if any, to allow regular Facility operation, and (iv) if applicable and to the extent required, the Utility has approved the Facility’s interconnection with the electricity distribution system to allow regular Facility operation.

**“Commercial Operations Date”** means the date on which the Facility achieves Commercial Operations and has obtained the final statement of qualification from the Massachusetts Department of Energy Resources (or equivalent).

**“Construction Commencement Date”** means the date of commencement of site preparation or construction activities on the property upon which the Facility is located.

**“Contract Year”** means each year during the Term, with the first Contract Year starting on the Commercial Operations Date and ending on the first anniversary of the Commercial Operations Date.

**“Credits”** means the monetary value of the excess Energy generated by an Alternative On-Bill Credit Generation Unit, stated as of the Effective Date by the Utility according to 225 CMR 20.00, et seq. and the applicable Tariff; and excluding, for the avoidance of doubt, any Tax

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Attributes or Environmental Attributes.

“*Credit Value*” shall be determined under the SMART Program at 225 CMR 20.08(1)(a)(2) and the applicable Tariff for the relevant Billing Period.

“*Energy*” means the amount of electricity the Facility generates over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“*Environmental Attribute*” means GIS Certificates, Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, benefits, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Credits.

“*Facility*” means the solar (PV) power electrical generation facility identified on Exhibit B, attached hereto and incorporated herein, together with all appurtenant equipment required to interconnect the Facility to the Utility’s electric distribution system.

“*Force Majeure*” means any cause not within the reasonable control and occurring without the fault 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; high winds, hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes (other than of Seller’s employees); lock-outs or other industrial disturbances (other than those involving Seller’s employees); 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. A Party may not assert an event of *Force Majeure* to excuse it 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, provided that nothing herein is intended by the Parties to interfere with the performance by Buyer or its officials of Buyer’s regulatory functions as a Massachusetts municipality. Economic hardship of either Party shall not constitute an event of *Force Majeure*.

“*Governmental Authority*” means any national, state or local government, or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“*Governmental Charges*” means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, Utility, or other similar entity, on or with respect to the Credits.

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**“Interest Rate”** means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate mutually acceptable to both the Seller and Buyer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

**“Lender”** means the entity or person(s) (or any affiliate of any thereof) from time to time providing any financing or refinancing to the Seller or any affiliate thereof or otherwise for the construction of, expansion of, and/or operation and maintenance of, the Facility, and any successors, assigns, agents, or trustees thereof, including any lessor under a sale/leaseback financing structure.

**“Meter”** means the meter furnished and installed by the Utility to measure the electricity delivered by the Utility to the Facility and delivered by the Facility to the Utility.

**“Minimum Credit Requirement”** means the minimum number of Credits Seller must transfer to Buyer hereunder pursuant to Section 7.4 hereof. The Minimum Credit Requirement is set forth in Exhibit B and shall be equal to ninety percent (90%) of the expected production of the Facility (updated as of Commercial Operations to reflect the as-built Facility size, as adjusted for weather) for a Contract Year.

**“Price”** is defined on Exhibit A.

**“Purchase Percentage”** is defined on Exhibit A.

**“Quantity”** means the total quantity of Credits associated with the Energy generated by the Facility during the relevant Term or Billing Period (as determined pursuant to applicable law, regulation and Tariff), multiplied by the Purchase Percentage, as measured and evidenced by the Credits reflected on actual invoices received by Buyer from the Utility.

**“Renewable Energy Certificate”** or **“REC”** means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, the Tax Attributes and the Credits.

**“SMART Program”** is the Applicable Law known as the “Solar Massachusetts Renewable Target” program. Specifically, that Applicable Law found as of the Effective Date at 225 C.M.R. §20.00, *et seq*, as it may be amended from time to time, and including all regulatory agency orders pertaining thereto.

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*“Tariff”* means either the Utility tariff for interconnection for distributed generation and net metering services, or the Alternative On-bill Crediting mechanism tariff, as appropriate for the context, and each as approved by the Massachusetts Department of Public Utilities, together with any subsequent amendments and approvals thereto.

*“Tax Attributes”* means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Facility or the output generated by the Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation), and excluding, for the avoidance of doubt, any Environmental Attributes and Credits.

*“Utility”* means the electric distribution company providing service to the Facility.

*“Utility Account(s)”* means the Utility accounts designated by Buyer and identified to the Utility by the Seller pursuant to applicable regulation under the SMART Program.

*“Utility Statement(s)”* means the statements from the Utility, which accompanies the Buyer’s Utility Account(s).



## EXHIBIT A

### PRICE; and PURCHASE PERCENTAGE

“*Price*” equals eighty-five percent (85%) of the Credit Value for that Billing Period.

“*Purchase Percentage*” equals fifty percent (50%) of the Energy generated during the relevant Billing Period.

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## EXHIBIT B

### FACILITY; MINIMUM CREDIT REQUIREMENT

The Facility is the approximately 332 kW (AC) solar (PV) power electrical generation facility located at 21 Apex Drive, Marlborough, MA 01752.

Contract Year	Minimum Credit Requirement (kWh)*
1	213,885
2	212,516
3	211,156
4	209,805
5	208,462
6	207,128
7	205,802
8	204,485
9	203,176
10	201,876
11	200,584
12	199,300
13	198,025
14	196,757
15	195,498
16	194,247
17	193,004
18	191,768
19	190,541
20	189,322

\*Note that the Minimum Credit Requirement shall be updated as of Commercial Operations to reflect the as-built Facility size

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