

APPENDIX C

AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY

10 Hollis Street Pepperell, Massachusetts 01463

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES FOR PERSONAL PROPERTY (this “PILOT Agreement”) is made and entered into as of _____ by and between Solect Energy Development, LLC, a limited liability company located in Hopkinton, Massachusetts, (“Lessee”), and the Town of Pepperell, a municipal corporation duly established and located in the Commonwealth of Massachusetts (the “Town”). Lessee and the Town are collectively referred to in this PILOT Agreement as the “Parties” and are individually referred to as a “Party”.

WHEREAS, Lessee proposes to build and operate a solar electric generating facility (the “Project”) with a nameplate capacity of (298kW DC, 200 kW AC), as determined by the final design and engineering plans, on Town-owned Property located at the **Varnum Brook School, Pepperell, Massachusetts** as more particularly described in Exhibit A (the “Property”);

WHEREAS, Lessee and the North Middlesex Regional School District (The “District”) have entered into a Solar Power Purchase Agreement (“PPA”), which serves one or more municipal purposes;

WHEREAS, the municipal purposes of the PPA and Project include the establishment of renewable energy facilities and the realization of savings in electricity costs;

WHEREAS, notwithstanding the above, the Parties acknowledge that under Massachusetts General Laws Chapter 59, §2B, the use of Town property in connection with a business conducted for profit or leased or occupied for other than public purposes, shall be valued, classified, assessed and taxed to the lessee in the same manner and to the same extent as if the lessee were the owner thereof in fee, and that therefore the Project may be deemed subject to personal property taxes;

WHEREAS, the Parties wish to avoid uncertainty as to the future personal property tax liability attributable to the Project that may be incurred by the Lessee;

WHEREAS, it is the intention of the Parties that Lessee make payments to the Town for the term of this PILOT Agreement in lieu of personal property taxes on the Project, in accordance with General Laws Chapter 59, §38H (Acts of 1997 Chapter 164, Section 71(b)), as amended) and the Massachusetts Department of Revenue (DOR) Guidelines published in connection therewith;

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

APPENDIX C

WHEREAS, the Parties intend that, during the term of the Agreement, Lessee will not be assessed for any statutory personal property taxes to which it might otherwise be subjected under Massachusetts law, and this Agreement will provide for the exclusive payments in lieu of such personal property taxes that Lessee (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project during the term hereof; and

WHEREAS, the Town is authorized to enter into this Agreement with Lessee, as the culmination of good faith negotiations that anticipate that the payments in lieu of personal property taxes over the life of the Agreement will amount to the equivalent, taking into account other benefits to be received by the District and the Town in the PPA, of the property tax payments that would otherwise be determined under G.L. c.59 based upon the full and fair cash valuation of the Project.

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

1. Payment in Lieu of Personal Property Taxes. Lessee agrees to make payments to the Town in lieu of personal property taxes on and after the Commercial Operation Date, as defined in the PPA between the Parties, in an annual fixed amount as shown in Exhibit B until the expiration or early termination of the PPA, as it may be extended in accordance therewith. This Agreement shall expire upon the date that is last quarterly payment due on the twentieth (20th) anniversary of the Commercial Operation Date as set forth in Exhibit B. Within thirty (30) days following the Commercial Operation Date, a bill will be issued by the Town to the Lessee, with the amount due and the payment due date noted on the bill (the due date of the payment shall be at least thirty (30) days after the date of the bill). Lessee agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation or reduction in the Town's tax rate or assessment percentage and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage. The Parties further agree that the annual PILOT Payment shall not be changed on account of legislative action fixing, exempting or otherwise setting taxes or payments in lieu thereof for photovoltaic solar facilities. To the extent that the as-built capacity of the Project varies from the proposed capacity herein, as demonstrated by as-built drawings and equipment specifications the annual payment amount owed and due the Town shall be adjusted by the percentage of increase or decrease of the capacity of the Project from the capacity proposed herein.
2. Payment Collection. The provisions of General Laws Chapters 59 and 60 and other applicable law will govern the collection of any payments in lieu of taxes provided for in this Agreement as though they were personal property taxes due and payable to the Town. The Town agrees that during the term of this PILOT Agreement, they will not assess Lessee for any personal property taxes with respect to the Project or the Property to which Lessee might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem personal property taxes and payments in lieu of such taxes that Lessee will be obligated to make to the Town with respect to the Project and the Property for the term. The Town agrees that no personal property taxes will be due from or assessed to Lessee with regard to the Property or the associated real property other than the payments in lieu of taxes described in this PILOT Agreement.
3. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Lessee, and the obligations created hereunder will run with the Property and the Project. In the event the Lessee sells, transfers, leases or assigns the Property or all or substantially all, of its interest in the Project, this Agreement will thereafter be binding on the purchaser, transferee or assignee. A Notice of this Agreement will be recorded in the applicable Registry of Deeds forthwith upon execution.

APPENDIX C

4. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration of the full and fair cash value of the Project, to the extent that such value is determinable as of the date of this Agreement, and the other benefits to be received by the Town in the PPA in accordance with General Laws Chapter 59, §38H. Each Party was represented by counsel in the negotiation and preparation of this PILOT Agreement and has entered into this PILOT Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this PILOT Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over personal property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. Lessee acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes for the Project.

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

6. Personal Property Inventory. Attached to this Agreement as Exhibit C is an itemized inventory prepared by the Lessee of the equipment and personal property ("personal property") that is incorporated into, and thus to constitute, the Project,

7. Invalidity. If, for any reason, including a change in applicable law, it is ever determined that this Agreement is invalid, then this Agreement shall terminate as of the date of such determination, and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist. The Parties will cooperate with each other and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party.

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

To Lessee:

Solect Energy Development, LLC
89 Hayden Rowe Street
Hopkinton, Massachusetts 01748
Attention: Legal Notices

APPENDIX C

To Town:
Town of Pepperell
1 Main Street
Pepperell, Massachusetts 01463
Attention: Town Administrator

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

9. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. Lessee and the Town each consent to the jurisdiction of the Massachusetts courts or other applicable agencies of the Commonwealth of Massachusetts regarding any and all matters, including interpretation or enforcement of this Agreement or any of its provisions.

10. Change of Law. The Parties recognize that at the time of signing of this PILOT Agreement, there is uncertainty in the law regarding the level and applicability of property taxes with respect to renewable energy generating facilities. The Parties agree that if the Massachusetts Legislature subsequently enacts a law establishing a fixed level of payments to be made in lieu of property taxes that would apply to the Lessee and the Project, or exempts the Project of taxation in the absence of this PILOT Agreement, then the new law shall not supersede this PILOT Agreement unless required by law. If, for any reason, including a change in applicable law not referenced herein, a property tax is imposed on the Project or the Property as a result of the Project, in addition to the payments in lieu of taxes due under this PILOT Agreement, the payments in lieu of taxes due under this PILOT Agreement shall be decreased on an annual basis by the amount of the property taxes actually paid to the Town.

11. Good Faith. The Town and Lessee shall act in good faith to carry out and implement this Agreement.

12. Force Majeure/ Casualty. The Lessee and Town both recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party on account of “Force Majeure” or “Facility Loss” (as those terms are defined in the PPA). In the event of an event of Force Majeure or a Facility Loss during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity, and the Lessee requests a reduction in its payment in lieu of taxes under this PILOT Agreement, a pro rata adjustment for the number of days of such Force Majeure or Facility Loss period shall be made in the PILOT bill in the next ensuing tax bill period.

13. Covenants of Lessee. During the term of the Agreement, Lessee will not voluntarily do any of the following:

- a. seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein; or
- b. convey, without the express consent of the Town, by sale, lease or otherwise any interest in the leased area to any entity or organization that qualifies as a charitable organization pursuant to General Laws Chapter 59, §5 (Third).

APPENDIX C

14. Covenants of the Town. So long as Lessee is not in breach of this Agreement during its term, the Town will not do any of the following:

- a. seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement;
- b. seek to collect from Lessee any property tax upon the leased area or the improvements thereon (including the Project) in addition to the amounts herein;
- c. impose any lien or other encumbrance upon the leased area or the improvements thereon (including the Project) except as is expressly provided herein.

The Town or Authorized Legislative Body represents to Lessee that it has secured all approvals of appropriate officers, boards and bodies necessary to duly authorize the execution, delivery and performance of this Agreement and its obligations hereunder,

15. Lessee Represents and Warrants.

- a. It is a corporation or other business entity duly organized, validly existing and in good standing under the laws of the state in which it was formed, and if a foreign corporation or other legal entity, is registered with the Massachusetts Secretary of the Commonwealth, and has full power and authority to carry on its business as it is now being conducted.
- b. This Agreement constitutes the legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting other enforcement of creditors' rights generally or by general equitable principles.
- c. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.
- d. The person executing this Agreement on behalf of Lessee has the full power and authority to bind it to each and every provision of this Agreement.
- e. Lessee is a "generation company" or "wholesale generation company" as those terms are used and defined in G.L. c. 59, § 38H(b) and G.L. c. 164§ 1.
- f. The performance of its obligations under this Agreement will not violate or result in a breach or default of any agreement or instrument to which Lessee is a party or to which Lessee is otherwise bound.

16. Certification of Tax Compliance. Pursuant to G.L. c. 62C, s49A the undersigned Lessee by its duly authorized representative certifies that as of the Effective date it is in tax compliance with the tax laws of the Commonwealth of Massachusetts.

17. Termination by Town Notwithstanding anything to the contrary herein, the Town may terminate this Agreement on thirty (30) days written notice to Lessee if: (a) Lessee fails to make timely payment

APPENDIX C

required under this Agreement, unless such payment is received by Town within the 30-day notice period with interest, provided, however, that the Town may terminate this Agreement if such failure occurs more than three times in any fiscal year even if the failure is cured; (b) Lessee materially breaches this Agreement and fails to cure same within thirty (30) days of receiving written notice from the Town; and/or (c) Lessee's representations in par. 15 were untrue, inaccurate, or incomplete in material respects at time of execution of this Agreement.

IN WITNESS HEREOF the parties hereto have executed this PILOT Agreement the day and year first above written

TOWN OF PEPPERELL

By: _____

Title: Town Administrator

Printed Name:

LESSEE

Solect Energy Development, LLC

Federal Tax ID#: 27-277-1883

By: _____

Title: __Chief Operating Officer____

Printed Name ____James Dumas____

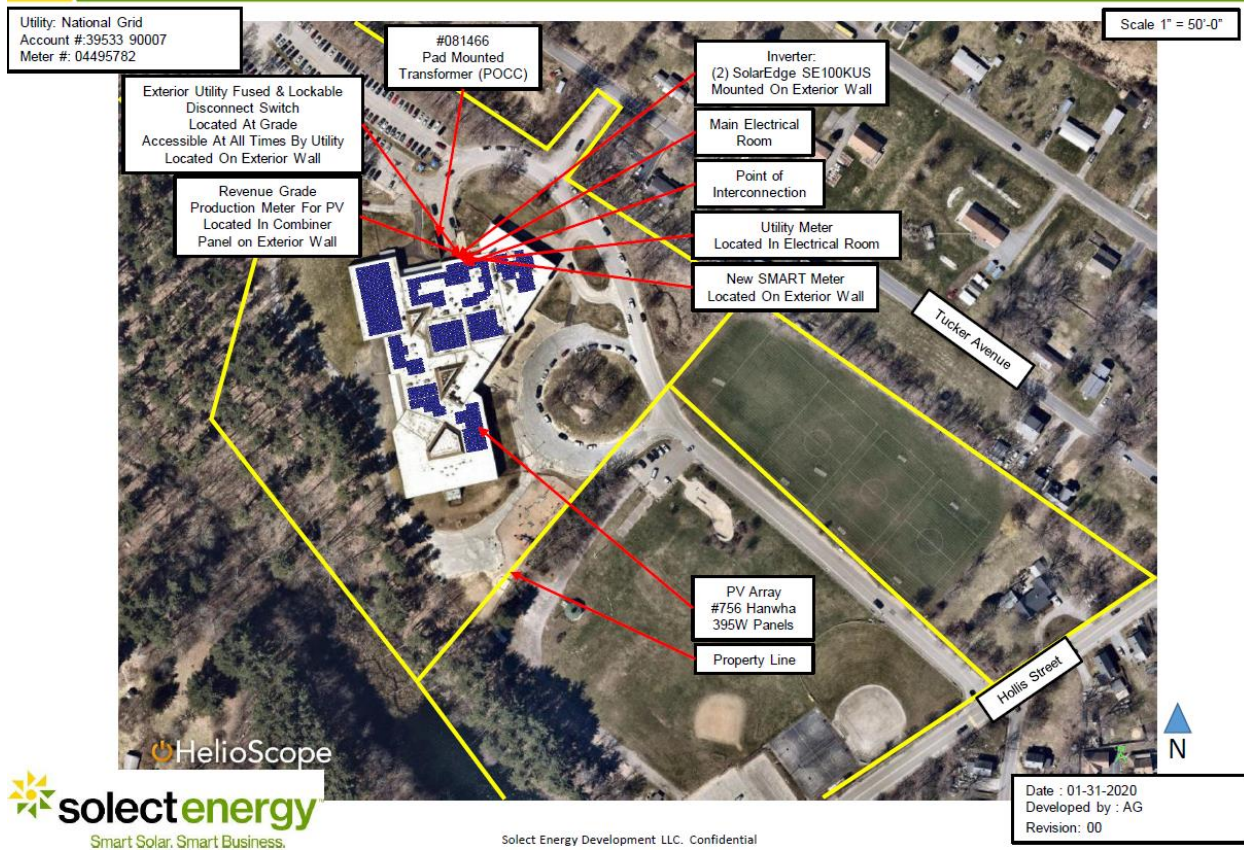
APPENDIX C

EXHIBIT A

DESCRIPTION OF THE SITE and PREMISES

INSERT LEGAL DESCRIPTION

Site Plan – SED – Varnum Brook Elementary School – 3740 – 298.62 kW DC – 200 kW AC 10 Hollis St, Pepperell, MA 01463



APPENDIX C

EXHIBIT B

Payment Schedule and Amounts

YEAR	AMOUNT
1	\$3,583
2	\$3,476
3	\$3,372
4	\$3,271
5	\$3,172
6	\$3,077
7	\$2,985
8	\$2,895
9	\$2,808
10	\$2,724
11	\$2,643
12	\$2,563
13	\$2,486
14	\$2,412
15	\$2,339
16	\$2,269
17	\$2,201
18	\$2,135
19	\$2,071
20	\$2,009

APPENDIX C

EXHIBIT C

Inventory of Personal Property at the Project

#756 Tier 1 395W solar PV modules or equivalent

#2 SolarEdge inverters or equivalent

EcoFoot Equilibrium ballast solar racking system or equivalent

Combiner, disconnect, breaker, production meter, conduit, wire and remaining balance of system materials