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GLOUCESTER CITY COUNCIL

9 Dale Avenue, Gloucester, MA 01930
Office (978) 281-9720 Fax (978) 282-3051

Special Budget & Finance Committee
Monday, December 12, 2011 – 9:00 a.m.
1st Fl. Council Committee Room – City Hall

AGENDA

(Items May be taken out of order at the discretion of the Committee)

1. ***Power Purchase Agreement between City of Gloucester and Equity Industrial Partners (EIP)
That will enable the City to purchase its electricity needs through EIP for the next 25 years***

COMMITTEE

**Councilor Steven Curcuru, Chair
Councilor Paul McGeary, Vice Chair
Councilor Jacqueline Hardy**

Committee members – Please bring relevant documentation

Back-up and Supporting Documentation all on file at the City Clerk's Office, City Hall

CC: Mayor Carolyn Kirk
Jim Duggan
Kenny Costa
Jeffrey Towne
Gregg Cademartori
Suzanne Egan

The listing of matters is those reasonably anticipated by the Chair which may be discussed at the meeting. Not all items listed may in fact be discussed and other items not listed may also be brought up for discussion to the extent permitted by law.

City Hall
Nine Dale Ave
Gloucester, MA 01930



TEL 978-281-9700
FAX 978-281-9738
jduggan@gloucester-ma.gov

CITY OF GLOUCESTER
OFFICE OF THE MAYOR

Memorandum

To: City Council President Hardy and Members of the Gloucester City Council

From: Jim Duggan, Chief Administrative Officer 

Date: December 5, 2011

Re: Power Purchase Agreement

As you know, the Administration's Team consisting of Suzanne Egan, Jeff Towne, Gregg Cademartori and myself have been working very closely with Equity Industrial Partner's (EIP) to negotiate a Power Purchase Agreement (PPA) that will enable the city to purchase our electricity needs through EIP.

Attached for your review is a draft PPA, which encompasses all the issues in the best interest for the City of Gloucester. Understanding it's the desire of the City Council to have the final PPA for review, however EIP informed us they are still reviewing some minor language changes, but feel confident an agreement will be in place by tomorrow.

I respectfully request that this matter be referred to Budget & Finance for their review and recommendation to the full City Council.

Thank you.

11 DEC -5 PM 3:35
CITY CLERK
GLOUCESTER, MA

POWER PURCHASE AGREEMENT

This Power Purchase Agreement is made and entered into as of [REDACTED], 2011 (the "**Effective Date**"), by and between Equity Industrial Turbines, LLC, a Massachusetts limited liability company ("**Seller**") and The City of Gloucester, Massachusetts ("**Buyer**"). Seller and Buyer may be referred to herein collectively as the "**Parties**," and individually as a "**Party**."

Recitals

A. The Parties desire to promote renewable energy generation in the City of Gloucester, Massachusetts.

B. Seller has rights to develop a wind energy project at property located at Blackburn Industrial Park, 11 Dory Road, Gloucester, Massachusetts (the "**Property**").

C. Seller plans to design, permit, finance, construct, own and operate on the Property a wind energy facility with a generating capacity of up to 4.0 megawatts ([alternating current]) consisting of up to two wind turbines (the "**Facility**").

D. Seller intends to seek any local permits and approvals that may be required with respect to the Facility (collectively, the "**Permits**").

E. The Facility is expected to qualify as a Class III Net Metering Facility pursuant to the Massachusetts net metering statute, G.L. c. 164, §§ 138 – 140, the Massachusetts net metering regulations, 220 CMR 18, and associated National Grid net metering tariff (collectively and as amended from time to time, the "**Net Metering Rules**") and will therefore, on a monthly basis, generate to the account of the Host Customer dollar-denominated net metering credits in the amount of the net metering credit applicable to Class III Net Metering Facilities with a public entity Host Customer for each excess kilowatt-hour of electricity generated by the Facility (each such credit, a "**Net Metering Credit**").

F. Buyer desires to be named as the customer of record with respect to the National Grid utility account that will serve the Facility and to therefore serve as the "Host Customer" of the Facility for purposes of the Net Metering Rules.

G. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the electricity generated by the Facility during the Term, so that Buyer, as Host Customer, is awarded all Net Metering Credits generated by the Facility and is able to allocate all such Net Metering Credits for use in offsetting the utility bills associated with other Buyer utility accounts.

H. The Facility is expected to generate as much as approximately 11,000,000 kilowatt-hours of electricity per year (subject to estimated annual degradation of approximately 0.1%).

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are

acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

ARTICLE 1 DEFINED TERMS

The following terms, when used in this Agreement and initially capitalized, shall have the following meanings:

“Affiliate” means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“Agreement” means this Power Purchase Agreement, including all exhibits and attachments hereto.

“Applicable Legal Requirements” means any Laws which may at any time be applicable to the Property or the Facility, or any part thereof or to any condition or use thereof, and all leases, permits and other governmental consents which are or may be required for the use and occupancy of the Property for the installation, operation, maintenance and removal of the Facility.

“Bankrupt” means, with respect to a Party: (i) a Party against which a bankruptcy, receivership or other insolvency proceeding is instituted and not dismissed, stayed or vacated within sixty (60) days thereafter; or (ii) a Party that has made a general assignment for the benefit of creditors, become insolvent, or has voluntarily instituted bankruptcy, reorganization, liquidation or receivership proceedings.

“Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

“Buyer” has the meaning set forth in the introductory paragraph of this Agreement.

“Commercial Operation” means that the Facility is ready for regular, daily operation, has been interconnected to the LDC system, has been accepted by the LDC (to the extent required), and is capable of producing Electricity.

“Commercial Operation Date” means the first day on which the Facility is ready for Commercial Operation, as certified in writing by Seller to Buyer in the Notice of Commercial Operation.

“Construction Commencement Date” means the date of commencement of actual preparation or construction activities on the Property in connection with the installation of the Facility.

“Contract Year” means the twelve month period beginning on the Commercial Operation Date and each anniversary thereof.

“Delivery Point” means the location or locations at the Property where Electricity is to be delivered and received under this Agreement, as identified in Exhibit A attached hereto.

“Designated Third Party” has the meaning set forth in Section 16.2(a).

“DPU” has the meaning set forth in Section 7.5(a) (iv).

“Early Termination Date” has the meaning set forth in Section 2.3.

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

“Electricity” means the actual and verifiable amount of electricity generated by the Facility and delivered to Buyer at the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device, and that conforms to the applicable LDC and/or authoritative regulatory body standards. The Electricity delivered to Buyer at the Delivery Point shall be deemed to be equal to the electric energy measured at the Metering Device; actual energy losses between the Metering Device and the Delivery Point shall not affect the Electricity.

“Electricity Price” shall mean the amount to be paid by Buyer to Seller for each kWh of Electricity sold by Seller to Buyer pursuant to this Agreement, as set forth in Exhibit B attached hereto.

“Environmental Attributes” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Facility and/or its electricity generation, (ii) government financial incentives, (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (iv) renewable energy certificates or any similar certificates or credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (v) tax credits, incentives or depreciation allowances established under any federal or state law, and (vi) other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of wind energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the Facility and/or its electricity generation.

“Event of Default” has the meaning set forth in Article 10.

“Facility” has the meaning set forth in the recitals.

“Fiscal Year” means the twelve month period running from July 1 through June 30 which shall be the period used to calculate the purchase price and annual reconciliation payments.

“Force Majeure” means any event or circumstance that prevents either Party from performing its obligations under this Agreement, which event or circumstance (i) is not within

the reasonable control, and is not the result of the negligence, of either Party, and (ii) by the exercise of reasonable due diligence, either Party is unable to overcome or avoid or cause to be avoided. Subject to the foregoing, Force Majeure may include but is not limited to the following acts or events: natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; explosions or fires arising from lightning or other causes unrelated to the acts or omissions of either Party; acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; strikes or labor disputes; and acts, failures to act or orders of any kind of any Governmental Authorities acting in their regulatory or judicial capacity.

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to Buyer), and any agency, department, commission, board, bureau, or instrumentality of any of them, and the LDC or any independent electric system operator.

“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, leases, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Electricity or this Agreement.

“Host Customer” shall have the meaning given this term in the Net Metering Rules.

“Interconnection Obligations” shall have the meaning set forth in Section 3.3.

“Interest Rate” means the lesser of (a) one percent (1%) per month and (b) the maximum rate permitted by applicable law.

“kWh” means kilowatt-hour.

“Laws” 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.

“LDC” means National Grid, or its successors.

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

“Metering Device” means the LDC meter furnished and installed by the LDC for the purpose of measuring the Electricity delivered by the LDC to the Host Customer and delivered by the Host Customer to the LDC.

“Net Metering” shall have the meaning set forth in the Net Metering Rules.

“Net Metering Credit” shall have the meaning set forth in the Net Metering Rules.

“*Net Metering Facility*” shall have the meaning set forth in the Net Metering Rules.

“*Net Metering Rules*” means, collectively and as amended from time to time, the Massachusetts net metering statute, MGL c. 164, §§ 138 – 140, the Massachusetts net metering regulations, 220 CMR 18, and the associated net metering tariff of the LDC.

“*Notice of Commercial Operation*” shall have the meaning set forth in Section 3.2.

“*Outside Construction Commencement Date*” means (12) months after the Effective Date, provided that such period of time shall be extended by any delays relating to the LDC’s interconnection process (including the design, permitting and construction of any upgrades to the LDC System) or otherwise caused by the LDC and by the period in which any challenge to any permit or approval relating to the Facility is pending.

“*Person*” means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company, or any other entity of whatever nature.

“*Property*” shall have the meaning set forth in the recitals.

“*Seller*” shall have the meaning set forth in the introductory paragraph of this Agreement.

“*Target Buyer Accounts*” shall have the meaning set forth in Section 7.5(a)(ii).

“*Term*” shall have the meaning set forth in Section 2.1.

“*Termination Date*” means the earlier to occur of (i) the last day of the Term, (ii) the Early Termination Date, and (iii) the date of termination of this Agreement as the result of an Event of Default.

ARTICLE 2

TERM; CONDITIONS PRECEDENT; EARLY TERMINATION

2.1 Term. The term of this Agreement (including any extensions, the “*Term*”) shall commence as of the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall remain in effect until the twenty-fifth (25th) anniversary of the Commercial Operation Date, provided that the Term may be extended as the Parties may mutually agree.

2.2 Conditions Precedent. Seller’s obligation to sell Electricity hereunder and Buyer’s obligation to buy Electricity hereunder shall be conditioned on the following:

- i. execution of an agreement for the payment in lieu of taxes (“PILOT”) pursuant to G.L. c. 59, § 38H(b). Without limiting the foregoing, the Parties agree to exercise good faith efforts to promptly negotiate such

agreement and further agree that such agreement shall provide for an aggregate annual payment in lieu of taxes in the initial amount of \$40,000 (\$10,000 per installed megawatt), such amount to be increased each subsequent year by two and one-half percent (2.5%).

2.3 Early Termination. This Agreement may be terminated prior to the expiration of the Term (the "**Early Termination Date**"):

- (a) by Seller, at any time prior to the erection of the Facility's first wind energy turbine, upon thirty (30) days' notice to Buyer, in the event that Seller, in its discretion, determines that the development of the Facility should be abandoned; or
- (b) by Buyer, at any time prior to the Construction Commencement Date, upon thirty (30) days' notice to Seller, in the event that the Construction Commencement Date has not occurred by the Outside Construction Commencement Date.

Upon early termination of this Agreement in accordance with this Section 2.3, each Party shall discharge by performance all obligations due to the other Party that arose up to the Early Termination Date and 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 3 DEVELOPMENT OF FACILITY

3.1 Development of Facility by Seller. Seller shall undertake good faith efforts to obtain required permits and financing for, and to construct the Facility. Buyer shall have no obligations with respect to the design, permitting, financing, construction, ownership or operation of the Facility.

3.2 Notice of Commercial Operation. Subject to the provisions of this Agreement, Seller shall notify and represent to Buyer when the Facility has achieved Commercial Operation ("**Notice of Commercial Operation**"), and shall in such notice certify to Buyer the Commercial Operation Date.

3.3 Interconnection Requirements. Seller shall undertake good faith efforts to negotiate and execute an Interconnection Service Agreement with LDC and Buyer shall fulfill its interconnection obligations set forth in Section 7.5(b), below. Seller shall be responsible for all costs, fees, charges and obligations of every kind and nature required to connect the Facility to the LDC System, including but not limited to fees associated with system upgrades and operation and maintenance carrying charges ("**Interconnection Obligations**"). In no event will Buyer be responsible for any Interconnection Obligations, except as set forth above and in Section 7.5.

3.4 Title. Except as otherwise set forth in this Agreement, as between the Parties during the Term of this Agreement, all ownership of and title to the Facility and all Environmental Attributes shall be and remain with the Seller.

ARTICLE 4
PURCHASE AND SALE; DELIVERY;
GOVERNMENTAL CHARGES; PILOT

4.1 Purchase and Sale of Electricity. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Seller shall make available to and sell to Buyer, and Buyer shall take delivery of at the Delivery Point and purchase from Seller, all Electricity generated by the Facility.

4.2 Quantity. The number of kilowatt-hours of Electricity purchased from Seller shall be the number of kilowatt-hours determined by the LDC to have been delivered to the LDC by Buyer as the Facility's Host Customer pursuant to the Net Metering Rules.

4.3 Price for Electricity. The purchase price of each kilowatt-hour of Electricity shall be calculated in accordance with Exhibit B.

4.4 Invoicing and Payment. During each monthly LDC billing cycle, Seller shall provide Buyer with an invoice for the Electricity delivered to Buyer during the prior monthly LDC billing cycle (the "**Invoice**"). Seller's invoice shall reference the kilowatt-hours upon which the invoice is based, as determined by delivery to the LDC. Buyer will remit payment of the amount of each Invoice to Seller or its designee within thirty (30) days following Buyer's receipt of each such Invoice. Any amounts not paid by the due date will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

4.5 Invoice Disputes. In the event of a good faith dispute regarding any Invoice, Buyer shall pay the undisputed amount of such Invoice and shall seek to resolve the dispute in accordance with the dispute resolution procedures set forth in Article 14. Upon resolution of the dispute, any required refund or additional payment shall be made within forty five days and with no prior appropriation ninety (90) days of such resolution along with interest accrued at the Interest Rate from and including the date of the original payment (with respect to a refund) or original due date (with respect to an additional payment). Any dispute by Buyer with respect to an Invoice or an adjustment thereof is waived unless, within three (3) years after the date the invoice is rendered or such adjustment is made, Buyer notifies Seller of such dispute and states the basis for such dispute. Upon Buyer's request with respect to an Invoice, Seller, within ten (10) days, shall provide Buyer with information necessary to permit Buyer to replicate Seller's computation of the invoiced amount.

4.6 Governmental Charges. Seller shall be responsible for any governmental charges attributable to sale of electricity to Buyer. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Electricity hereunder are to be exempted from or not subject to one or more Governmental Charges, either Party shall, promptly upon the

other Party's request th erefore, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion.

4.7 Title and Risk of Loss of Electricity. Title to and risk of loss of the Electricity will pass from Seller to Buyer at the Delivery Point.

4.8 Records and Audits. Each Party will keep, for a period of not less than two (2) years after the expiration or termination of this Agreement records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for all transactions hereunder. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to transactions hereunder during such other Party's normal business hours.

ARTICLE 5 TITLE TO ENVIRONMENTAL ATTRIBUTES

Other than the Net Metering Credits that accrue to Buyer's account as Host Customer under the Net Metering Rules, Environmental Attributes shall remain the property of Seller and may be used, sold, transferred, pledged, collaterally assigned, retired or otherwise disposed of by Seller in its sole discretion and for its sole benefit.

ARTICLE 6 METERING DEVICE; LDC BILLING ADJUSTMENTS

6.1 Metering Equipment. The Parties acknowledge that Seller shall arrange for the LDC to furnish and install the Metering Device and shall maintain compliance with LDC metering requirements. On behalf of Buyer as the LDC's customer of record, Seller shall be responsible for arranging compliance with any LDC customer requirements relating to LDC access to the Metering Device.

6.2 Meter Accuracy. Thirty six hours prior to taking any action, Seller shall give Buyer notice of its intent to act, thereafter, Seller may exercise LDC customer right's to arrange for testing of the accuracy of the Metering Device.

6.3 Billing Adjustments Following LDC Billing Adjustments. If as a result of an LDC billing adjustment the quantity of Electricity for any period is decreased (the "*Electricity Deficiency Quantity*") and the LDC reduces the amount of Net Metering Credits awarded for such period, Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Electricity Deficiency Quantity. If as a result of such adjustment the quantity of Electricity for any period is increased (the "*Electricity Surplus Quantity*") and the LDC increases the amount of Net Metering Credits awarded for such period, Buyer shall pay for the Electricity Surplus Quantity at the Electricity Price applicable during such period.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

7.1 Representations and Warranties. Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any applicable Laws;

(b) this Agreement, and each document executed and delivered in accordance with this Agreement, constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) all such persons as are required to be signatories to or otherwise execute this Agreement on its behalf under all applicable Laws have executed and are authorized to execute this Agreement in accordance with such Laws;

(d) it is acting for its own account, and has made its own independent decision to enter into this Agreement, and is not relying upon the advice or recommendations of the other Party in so doing;

(e) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(f) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates.

7.2 Buyer's Representation and Warranty Regarding Net Metering. Buyer represents and warrants to Seller that it does not own or operate, nor is it the assignee (solely or together with other governmental entities) of one hundred percent (100%) of the output of, Net Metering Facilities with an aggregate capacity of more than six (6) megawatts (alternating current).

7.3 Forward Contract; Commodity Exchange Act; Bankruptcy Code. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward contract 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 a "utility" as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

7.4 No Advice. The Parties acknowledge and agree that Seller is not acting as a consultant or advisor to Buyer for any purpose and that Buyer is making its own decision to enter into this Agreement based solely on its own analysis and the advice of its own advisors.

7.5 Covenants of Buyer.

(a) Net Metering.

(i) Host Customer. Buyer shall take action and execute documents, as reasonably required, to designate Buyer as the LDC customer of record for the LDC utility meter in connection with the Facility and otherwise establish Buyer as the Host Customer for purposes of the Net Metering Rules. Said designation shall in no manner whatsoever relieve Seller of its obligations under Section 3.3 (regarding interconnection requirements) hereunder with respect to Interconnection Obligations.

(ii) Allocation of Net Metering Credits to Target Buyer Accounts. Buyer shall designate its utility accounts with the LDC to receive Net Metering Credits generated by the Facility, such accounts identified as of the Effective Date in Exhibit C attached hereto (the "**Target Buyer Accounts**"). Buyer shall promptly take action and execute documents, as reasonably required, to allocate all Net Metering Credits generated by the Facility to the Target Buyer Accounts, including without limitation, a "Schedule Z" net metering service application.

(iii) Net Metering Facility of a Governmental Entity. Buyer acknowledges that the Facility will be a Net Metering Facility of a municipality or other governmental entity within the meaning of G.L. c. 164, § 138, as amended by St. 2010, c. 359, § 27, and agrees not to take any action inconsistent with the Facility's status as such a facility (including, without limitation, terminating the Schedule Z or amending the Schedule Z in a manner inconsistent with such status).

(iv) Net Metering Limit. Buyer acknowledges that, pursuant to G.L. c. 164, § 139(f), as amended by St. 2010, c. 359, § 29, the maximum amount of generating capacity eligible for net metering by a municipality or other governmental entity is 10 megawatts (alternating current). Accordingly, Buyer covenants that it shall not own or operate, nor shall it be the assignee (solely or together with other governmental entities) of one hundred percent (100%) of the output of, Net Metering Facilities (other than the Facility) with an aggregate capacity of more than six (6) megawatts (alternating current) and Buyer shall notify Seller upon obtaining ownership or operation of, or upon becoming the assignee (solely or together with other governmental entities) of one hundred percent (100%) of the output of, any Net Metering Facility.

(v) Cooperation on Assurance of Net Metering Eligibility. Buyer agrees to provide such information and reasonable assistance to Seller as may be reasonably necessary to allow Seller to avail itself of any reasonable system

established by the DPU and/or the LDC to provide certain assurances that a facility will be an eligible Net Metering Facility once the facility commences operation.

(b) Customer Interconnection Acknowledgement. In order to fulfill the LDC's requirements for interconnecting to the LDC distribution grid an energy generating facility that is owned by one party but is located behind the LDC utility meter of another party, Seller shall be party to the interconnection service agreement and Buyer agrees, within a reasonable period of time following Seller's request, to enter into the customer interconnection acknowledgement agreement with LDC in a form substantially similar to the form of customer interconnection acknowledgement agreement attached to the LDC's interconnection tariff.¹

(c) Data Access; Customer Advocacy. Buyer shall take action and execute documents, as reasonably required, to designate (and, as necessary, re-designate) Seller to LDC as an authorized recipient of the energy billing and usage data with respect to the LDC utility meter in connection with the Facility. In addition, upon Seller's request and Buyer's specific written authorization and provided Seller is acting in the interest of Buyer, Seller may advocate with the LDC and/or the DPU with respect to Buyer's rights as the LDC customer of record and Host Customer, including, without limitation, for the purpose of ensuring timely and accurate recording of Net Metering Credits generated in connection with the Facility. Seller shall not on behalf of Buyer pursue any formal dispute resolution process or DPU administrative proceeding relating to a dispute as contemplated under this Section 7.5(c) unless Seller has received Buyer's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned.

(d) Uniform Procurement Act Exemption Filings. **Buyer shall comply with the provisions of G.L. c. 30B, § 1(b)(33), which requires that, within fifteen (15) days of the signing of a contract for energy or energy related services by a municipality, the municipality shall submit to the DPU, the Department of Energy Resources, and the Office of the Inspector General a copy of the contract and a report of the process used to execute the contract.** Buyer shall promptly deliver to Seller a complete copy of such filings together with satisfactory evidence that the filings have been timely made.

(e) No Resale of Electricity. The Electricity purchased by Buyer from Seller under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the LDC pursuant to the Net Metering Rules), without prior approval of Seller, which approval

¹ The current version of National Grid's interconnection agreement is Exhibit G – Agreement between the Company and the Company's Retail customer available at http://www.nationalgridus.com/masselectric/business/energyeff/4_standard-interconnection.asp.

shall not be unreasonably withheld, and Buyer shall not take any action which would cause Buyer or Seller to become a utility or public service company.

(f) No Assertion that Seller is a Utility. Provided that Seller has complied with all terms of this agreement, Buyer shall not assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any Governmental Authority as a result of Seller's obligations or performance under this Agreement.

7.6 Covenants of Seller.

(a) Loan Commitment Letter. Promptly following receipt of a commitment letter from a lender to provide initial permanent debt financing for the Facility, Seller shall deliver a copy of such letter to Buyer. Seller has the continuing obligation to provide information regarding any changes to the debt financing of the facility. Seller shall immediately notify Buyer in the event that the permanent debt is refinanced.

(b) Operation of Facility. Following the Commercial Operation Date and during the Term, Seller shall operate the Facility to the full capacity allowed pursuant to the special permit granted with respect to the Facility by the Gloucester City Council on October 11, 2011 (the "*Special Permit*"). Notwithstanding the foregoing, Seller may suspend or curtail operation of the Facility in order to comply with any Applicable Legal Requirements (including the Special Permit) or any order or request of a Governmental Authority, and, to perform reasonable maintenance and repairs or replacements, but only after written authorization from Buyer, in the event of an emergency, or to the extent permitted by Section 9.1 (Force Majeure).

(c) Marketing of Surplus Net Metering Credits. Following the first Contract Year in which the Unconsumed Surplus Quantity (as defined in Exhibit B) is more than zero, Buyer may request Seller's assistance in marketing surplus net metering credits to one or more other parties. Upon receipt of such request, Seller shall exercise reasonable efforts to assist Buyer in arranging for allocation of surplus net metering credits to such party or parties, including the filing of an amended Schedule Z to request that the LDC implement such reallocation.

ARTICLE 8 FORCE MAJEURE

8.1 Performance Excused by Force Majeure. To the extent Seller is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and Seller gives notice and details of the Force Majeure to Buyer as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by Seller), then Seller will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). Seller will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that Seller is not required to settle any strikes, lockouts or similar disputes except on

terms acceptable to Seller in its sole discretion. During the period in which, and to the extent that, obligations of Seller are excused by Force Majeure, Buyer will not be required to perform or resume performance of its obligations to Seller corresponding to the obligations of Seller excused by Force Majeure.

To the extent Buyer is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and Buyer gives notice and details of the Force Majeure to Seller as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by Buyer), then Buyer will be excused from, the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). Buyer will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that Buyer is not required to settle any strikes, lockouts or similar disputes except on terms acceptable to Buyer in its sole discretion. During the period in which, and to the extent that, obligations of Buyer are excused by Force Majeure, Seller will not be required to perform or resume performance of its obligations to Buyer corresponding to the obligations of Buyer excused by Force Majeure.

ARTICLE 9 EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default. An “*Event of Default*” means, with respect to a Party (a “*Defaulting Party*”), the occurrence of any of the following:

(a) such Party’s failure to make, when due, any payment required under this Agreement if such failure is not remedied within ninety (90) days after receipt of notice of such failure;

(b) such Party’s failure to comply with any material provision of this Agreement if such failure is not remedied ninety (90) days after notice and demand by the non-defaulting Party to cure the same or such longer period (not to exceed one hundred eighty (180) days) as may be reasonably required to cure, provided that the defaulting Party diligently continues until such failure is fully cured; or

(c) such Party becomes Bankrupt.

9.2 Remedies for Event of Default. If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or applicable law, shall have the right to (i) terminate this Agreement, upon thirty (30) days’ notice to the Defaulting Party, (ii) withhold any payments due to the Defaulting Party under this Agreement; and (iii) suspend performance due to the Defaulting Party under this Agreement. Without limiting the foregoing, if Seller is the non-defaulting Party, Seller shall be entitled to all remedies available at law or in equity, Similarly without limiting the foregoing, if Buyer is the non-defaulting Party, Buyer shall be entitled to all remedies available at law or in equity, Each Party agrees that it has a

duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party's default under this Agreement.

9.3 Remedies Cumulative. The rights and remedies contained in this Article are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

9.4 Unpaid Obligations. The non-defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available under this Agreement. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the non-defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE 10 RIGHTS AND OBLIGATIONS FOLLOWING TERMINATION

10.1 General. Following termination or expiration of this Agreement, each Party shall discharge by performance all obligations due to the other Party that arose up to the termination date and the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement.

10.2 LDC and Regulatory Matters. Upon the termination or expiration of this Agreement for any reason, Buyer shall take commercially reasonable actions and execute commercially reasonable documents, as may be reasonably requested by Seller, to designate Seller or its designee as the LDC customer of record for the LDC utility meter at the Delivery Point and otherwise establish Seller or its designee as the Host Customer for purposes of the Net Metering Rules.

ARTICLE 11 LIMITATIONS

11.1 Limitation of Liability.

(a) No Liability to Third Parties. Buyer and Seller agree that this Agreement is not intended for the benefit of any third party and that neither Buyer nor Seller shall be liable to any third party by virtue of this Agreement, other than as provided in Section 16.2(e) (regarding Designated Third Party Beneficiaries).

(b) No Indirect or Consequential Damages. Except as expressly provided in this Agreement, it is specifically agreed and understood that neither Party will be responsible to the other for any indirect, special, incidental or consequential loss or damage whatsoever (including lost profits and opportunity costs) arising out of this Agreement or anything done in connection herewith. This Section 13.1(b) shall apply

whether any such indirect, special, incidental or consequential loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty or otherwise.

11.2 Limitation on Warranties. Seller does not warrant or guarantee the amount of Electricity to be generated by the Facility.

ARTICLE 12 GOVERNING LAW; DISPUTE RESOLUTION

12.1 Governing Law. This Agreement shall be construed under and governed by the laws of the Commonwealth of Massachusetts, without regard to its rules regarding choice of laws.

12.2 Dispute Resolution. The Parties agree to use their respective best 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 or manager of Buyer, who shall use their respective best efforts to resolve such dispute. The dispute shall be considered to have arisen when one Party sends the other a notice that identifies with particularity the nature, and the acts(s) or omission(s) forming the basis of, the dispute. The period for informal negotiations shall not exceed thirty (30) 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 agree to submit the dispute to mediation. 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 sixty (60) days, unless such time period is 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) Arbitration.

(i) Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 14.2(a) or (b) shall (except as provided in Section 14.2(d)) be settled by binding arbitration between the Parties conducted in Gloucester, Massachusetts, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration

Rules of the AAA in effect on the date that a Party gives notice of its demand for arbitration.

(ii) Dispute Submission. The Party initiating the Arbitration (the "**Submitting Party**") shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the "**Responding Party**"), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.

(iii) Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and experience with public entities issues and shall not have any current or past substantial business or financial relationships with the Parties or their Affiliates. Arbitrators must agree to be bound by confidentiality obligations reasonably acceptable to the Parties. If the amount in controversy is less than \$250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairperson of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA. As used herein, "**Panel**" means either a single arbitrator or a group of three arbitrators selected as provided herein.

(iv) Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Parties shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the Panel will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted.

(v) Decision. Upon ten (10) days following completion of the hearing conducted by the Panel, each Party shall submit to the Panel its proposal for resolution of the dispute. The Panel in its award shall be limited to selecting only one of the two proposals submitted by the Parties. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at

commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(vi) Expenses. Unless otherwise ordered by the Panel, each Party shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel's costs shall be made on a monthly basis prior to the Award.

(d) Exceptions to Arbitration. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bona fide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

(e) Survival of Arbitration Provisions. The provisions of this Section 14.2 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

ARTICLE 13 ASSIGNMENT; BINDING EFFECT

13.1 General Prohibition on Pledge or Assignment. Except as provided in this Agreement, neither Party may pledge or assign its rights hereunder without the prior written consent of the other Party which shall not be unreasonably withheld or delayed.

13.2 Assignments by Seller. Notwithstanding anything to the contrary herein, with prior written consent of Buyer, Seller may assign all (but not part) of its rights and obligations hereunder to an Affiliate of Seller or to the acquiring or surviving entity in the case of a sale, merger, sale of substantially all of the assets of, or other change of control of, Seller. At least thirty days prior to requested date of such assignment, Seller shall provide the name and address of the assignee, and documentation establishing that the assignee has assumed all of Seller's rights and obligations under this Agreement. Otherwise, neither Party may assign, sell, transfer or in any other way convey its rights 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, conditioned, or delayed.

13.3 Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to and inure to the benefit of, the Parties and their permitted heirs, successors and assigns.

ARTICLE 14 FINANCING AND RELATED MATTERS

14.1 Special Seller Assignment Rights. Notwithstanding any contrary provisions contained in this Agreement, Seller may assign, transfer or pledge its rights under this

Agreement as collateral for the purpose of obtaining financing for the Facility, provided the terms of the transfer, pledge or assignment are disclosed to Buyer. Upon request, Buyer may sign agreements reasonably requested of Seller or its lenders to acknowledge and evidence such agreement, provided that such assignment shall not relieve Seller of its obligations under this Agreement.

14.2 Designated Third Party Rights.

(a) Notice to Designated Third Party. Buyer agrees to give copies of any notice provided to Seller by Buyer to any assignee or transferee of which it has (each, a "***Designated Third Party***") of any event or occurrence which, if uncured, would result in a Seller Event of Default.

(b) Exercise of Seller Rights. A Designated Third Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement.

(c) Performance of Seller Obligations. A Designated Third Party 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 hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Designated Third Party to cure any default of Seller under this Agreement or (unless such party has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives such party the option to do so.

(d) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Facility by a Designated Third Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Designated Third Party (or any assignee of the Designated Third Party) in lieu thereof, the Designated Third Party shall give notice to Buyer of the transferee or assignee of this Agreement.

(e) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of a Designated Third Party made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with such party or its assignee having substantially the same terms and conditions as this Agreement.

(f) Third Party Beneficiary. Buyer agrees and acknowledges that each Designated Third Party is a third party beneficiary of the provisions of this Article.

14.3 Consent to Assignment. Upon disclosure of the terms, Buyer agrees to (i) execute commercially reasonable consents to assignment or acknowledgements and (ii) at Seller's expense, provide such opinions of counsel as may be reasonably requested by Seller and/or a Designated Third Party in connection with such financing or sale of the Facility.

14.4 Right to Cure.

(a) Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given each Designated Third Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Designated Third Party 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 Designated Third Party within such period and such party 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 thirty (30) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) If, pursuant , to an exercise of remedies by a Designated Third Party, such party or its assignee (including any purchaser or transferee) shall acquire control of the Facility and this Agreement and shall, within the time periods described in the preceding subsection, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

ARTICLE 15 CERTAIN REGULATORY CHANGES

15.1 Notice of Regulatory Change; Good Faith Negotiations. In the event of a change in the Net Metering Rules, other Laws, or the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the LDC, that materially restricts the ability of Seller to deliver Electricity generated by the Facility to Buyer, the ability of Buyer to deliver Electricity generated by the Facility to the LDC, or the ability of Buyer to receive Net Metering Credits, then, upon a Party's receipt of notice of such change from the other Party, the Parties shall promptly and in good faith negotiate such amendments to or restatements of this Agreement as may be commercially reasonable to achieve the allocation of economic benefits originally intended by the Parties. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement in the form of a net metering credit purchase agreement.

15.2 Post-refinancing Notice of Special Regulatory Change; Good Faith Negotiations. Without limiting the provisions of Section 17.1, if the permanent debt of the Facility is refinanced then the provisions of this Section shall also be in effect. Within thirty (30) days following the tenth (10th), fifteenth (15th) and twentieth (20th) anniversaries of the Commercial Operation Date (each, an "Adjustment Date"), in the event of a change in the Net Metering Rules, other Laws, or the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the LDC that has occurred prior to the current Adjustment Date and following any prior Adjustment Date, and that reduces the economic

value to Buyer resulting from this Agreement, Buyer may provide notice to Seller of such change. Upon Seller's receipt of such notice from Buyer, the Parties shall promptly and in good faith negotiate such amendments to or restatements of this Agreement as may be necessary to achieve the allocation of economic benefits originally intended by the Parties.

ARTICLE 16 NOTICES

All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and

if to Seller to: Equity Industrial Turbines, LLC
 W. Hunter Emerson
 145 Rosemary Street, Suite E
 Needham, MA 02494

with a copy to: Klavens Law Group, P.C.
 420 Boylston Street, 5th Floor
 Boston, MA 02116
 Facsimile: (888) 248-7594
 Attention: Jonathan S. Klavens, Esq.

if to Buyer to: Office of the Mayor
 9 Dale Avenue
 Gloucester, MA 01930
 Facsimile: (978) 281-9738

with a copy to: Director of Public Works
 City of Gloucester
 Poplar Street
 Gloucester, MA 01930
 Facsimile: (978) 281-3896

if to a Designated Third Party, to the address and contact person of which Buyer has been given notice pursuant to this Article 18.

Notices hereunder shall be deemed properly served (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) if sent by mail, on the third Business Day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; or (iii) if by overnight Federal Express or other reputable overnight express mail service, on the next Business Day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement. Any Party may change its address and contact person for the purposes of this Article 18 by giving notice thereof in the manner required herein.

ARTICLE 17
MISCELLANEOUS

17.1 Survival. Notwithstanding any provision contained herein or the application of any statute of limitations, the provisions of Articles 5 (Environmental Attributes), 11 (rights and obligations following termination), 13 (limitations of liability), 14 (governing law, dispute resolution), 16 (financing and related matters), 18 (notices), and this Section 19 shall survive the termination or expiration of this Agreement.

17.2 Entire Agreement; Amendments. This Agreement, together with that certain Escrow Agreement, dated as of the date hereof, among Seller, Buyer and the Escrow Agent identified therein, constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written instrument signed by both Parties hereto.

17.3 Press Releases. Seller shall not issue a press release or make any public statement with respect to this Agreement without the prior written agreement of Buyer with respect to the form, substance and timing thereof, except that Seller may make any such press release or public statement when the releasing Party is advised by its legal counsel that such a press release or public statement is required by law, regulation or stock exchange rules, provided however, in such event, the Parties shall use reasonable good faith efforts to agree as to the form, substance and timing of such release or statement.

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

17.5 No Joint Venture. Seller will perform all services under this Agreement as an independent contractor. 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.

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

17.7 Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party that would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith 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 Party's benefits, the matter shall be resolved pursuant to Section 14.2 (relating to dispute resolution) and the Panel or court (as the case may be) may grant any remedy or relief, including reformation of the Agreement, that it deems just and equitable to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

17.8 Joint Work Product. This Contract shall be considered the joint work product of the Parties hereto, and shall not be construed against either Party by reason thereof.

17.9 Headings. The headings of Articles and Sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such Articles or Sections.

17.10 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

17.11 Relationships of Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose, unless expressly stated otherwise herein.

17.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single Agreement.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

SELLER:

EQUITY INDUSTRIAL TURBINES, LLC

By: _____
Name:
Title:

BUYER:

THE CITY OF GLOUCESTER

By: _____
Name: Carolyn A. Kirk
Title: Mayor

Approved as to form:

Suzanne Egan, General Counsel

Exhibit A

DELIVERY POINT

The location at the Property where Electricity is to be delivered and received under this Agreement is the LDC meter behind which the Facility will be located.

Exhibit B

ELECTRICITY PRICE; ANNUAL PRICE RECONCILIATION

Base Electricity Price

For each LDC monthly billing cycle (a "*Month*") in which Electricity is delivered to the Delivery Point, the Electricity Price shall be an amount equal to the greater of a Net Metering Credit accruing to Buyer as Host Customer for that Month or (ii) \$0.13. The base electricity price shall be used to determine the purchase price which shall be a varying discount of the Base Electricity Price depending on the amount of Electricity generated and the Consumed Quantity.

Annual Price Reconciliation

The following terms, when used in this Exhibit B and initially capitalized, shall have the following meanings:

"Average Net Metering Credit Value" means, with respect to each Contract Year, the average Net Metering Credit value for such Contract Year weighted according to the number of Net Metering Credits generated by the Facility at each Net Metering Credit value.

"Base Quantity" means, with respect to each Fiscal Year, the first 9,000,000 kWh of Electricity delivered to the Delivery Point (as pro-rated for any Fiscal Year consisting of fewer than 365 days).

"Consumed Quantity" means, with respect to each Fiscal Year, the number of kilowatt-hours of Electricity corresponding to the aggregate dollar amount of Net Metering Credits used by Buyer during such Fiscal Year.

"Consumed Surplus Quantity" means, with respect to each Fiscal Year, the amount in kilowatt-hours by which the Consumed Quantity exceeds the Base Quantity.

"Delivered Quantity" means, with respect to each Fiscal Year, all kilowatt-hours of Electricity generated by the Facility and delivered to the Delivery Point.

"Unconsumed Surplus Quantity" means, with respect to each Fiscal Year, the amount in kilowatt-hours by which the Delivered Quantity exceeds the sum of the Base Quantity and the Consumed Surplus Quantity.

"Purchase Price" means product of the discount rate and the base electricity rate.

With respect to each Fiscal Year, the purchase price of Electricity delivered in such Fiscal Year shall be adjusted as set forth below in light of the Consumed Surplus Quantity and the Unconsumed Surplus Quantity for such Fiscal Year.

For every Fiscal Year, Buyer shall pay a purchase price calculated pursuant to the following schedule:

1. For the Base Quantity, first Nine Million kWh produced, the purchase price shall be the product of a 20 % discount of the base price.
2. For the Consumed Surplus Quantity, any kWhs generated above Nine Million, the purchase price shall be the product of a 75% discount of the base price.
3. For the Unconsumed Surplus Quantity, any kWhs generated in excess of Buyer's consumed quantity, the purchase price shall be the product of a 100 % discount of the base price.

Within twenty (20) days following the conclusion of each Fiscal Year, Buyer, in order to permit Seller's calculation of the amounts described above, shall provide Seller copies (or, if feasible, arrange for Seller to obtain copies directly from the LDC) of all LDC invoices relating to such Fiscal Year with respect to all of Buyer's LDC accounts that received Net Metering Credits during such Fiscal Year from Buyer as Host Customer of the Facility.

Within thirty (30) days following its receipt of such documents, Seller shall calculate the Consumed Surplus Quantity and Unconsumed Surplus Quantity for such Fiscal Year as well as any retroactive price reductions due pursuant to this Exhibit B and shall deliver to Buyer such calculations together with payment of the aggregate amount of any retroactive price reductions due Buyer under this Exhibit B.

Within fifty (50) days of the end of Buyer's fiscal year, Buyer will receive a retroactive price reduction equal to the product of the unconsumed surplus quantity and 25% of the net metering credit, resulting in a 100% discount of the net metering credits for the unconsumed quantity during the fiscal year.

Exhibit C

TARGET BUYER ACCOUNT INFORMATION