

BARNSTABLE COUNTY
In the Year Two Thousand Nineteen
Proposed Ordinance 20- __

To authorize the County of Barnstable to execute a lease agreement between Barnstable County and Rock Harbor Road RF Solar Project 2020, LLC for Roof Solar Photovoltaic Energy Facility at Buildings located at 237 Rock Harbor Road, Orleans, MA 02653

The Cape Cod regional government, known as Barnstable County, hereby ordains;

Section 1. Source of Authority and General Purposes

In accordance with Article II, Section 2-8, (d) (vii) of the Barnstable County Home Rule Charter, Barnstable County hereby enters into a lease agreement between Barnstable County and Rock Harbor Road RF Solar Project 2020, LLC for Roof Solar Photovoltaic Energy Facility at Buildings located at 237 Rock Harbor Road, Orleans, MA 02653

Section 2. Effective Date

The Ground Lease Ordinance shall take effect upon passage of the ordinance by the Barnstable County Assembly of Delegates and execution by the Barnstable County Commissioners, and Rock Harbor Road RF Solar Project 2020, LLC

Section 3. Ground Lease Table of Contents

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Memorandum of Lease Pursuant to M.G.L. c. 183, §4

Approved by the Board of County Commissioners on April 8, 2020 at 10:00 AM.
Date Time


Ronald Bergstrom, Chair

COMMONWEALTH OF MASSACHUSETTS

BANRSTABLE, SS.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Beaty to approve Item 8c through 8l as listed on the agenda for the Board of Regional Commissioners' Meeting on April 8, 2020, as presented, and introduce any required ordinances at the next meeting of the County Assembly of Delegates, pursuant to Section 2 – 8(e) of the Barnstable County Home Rule Charter:

- c. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with the Cape & Vineyard Electric Cooperative, Inc. (CVEC) for Roof Mounted Solar Photovoltaic Energy Facility located at Barnstable County Deeds;
- d. Authorizing the execution of a Lease Agreement for Rooftop Mounted Solar Photovoltaic Energy Facility with Alliance CVEC V LLC located at Barnstable County Deeds;
- e. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Photovoltaic Dual Use Energy Facility located at Barnstable County Farm;
- f. Authorizing the execution of a Lease Agreement for Ground Mounted Dual Use Solar Photovoltaic Energy Facility with Main Street Solar Project 2020, LLC at Barnstable County Farm;
- g. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with CVEC For Solar Canopy Photovoltaic Energy Facility located at Barnstable County Main Parking Lot;
- h. Authorizing the execution of a Lease Agreement for Canopy Solar Photovoltaic Energy Facility with Greenskies Clean Energy LLC at Barnstable County Main Parking Lot;
- i. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Rooftop Solar Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC;
- j. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Canopy Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC;

- k. Authorizing the execution of a Lease Agreement for Roof Mounted Solar Photovoltaic Energy Facility with Rock Harbor Road RF Solar Project 2020, LLC located in the Town of Orleans; and
- l. Authorizing the execution of a Lease Agreement for Solar Canopy Photovoltaic Energy Facility with Rock Harbor Road Cy Solar Project 2020, LLC located in the Town of Orleans;

2nd by Commissioner Flynn, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 8, 2020

A circular seal with a scalloped edge, containing a central emblem and text around the perimeter. The text includes "BARNSTABLE COUNTY" and "1792".
Janice O'Connell
Barnstable County Regional Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Flynn to authorize the Chair to execute agreements regarding the Cape and Vineyard Electric Cooperative (CVEC) Round 5 Photovoltaic/Storage Initiatives in Barnstable County after approval by the County Board of Regional Commissioners, as presented, 2nd by Commissioner Beaty, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 8, 2020


Janice O'Connell
Barnstable County Regional Clerk

INTER-GOVERNMENTAL SERVICES AGREEMENT

BETWEEN

THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

AND

BARNSTABLE COUNTY

FOR MANAGEMENT OF ROOFTOP SOLAR PHOTOVOLTAIC ENERGY FACILITY

LOCATED AT ROCK HARBOR ROAD CY SOLAR PROJECT 2020, LLC

_____, 2020

**INTER-GOVERNMENTAL SERVICES AGREEMENT
BETWEEN
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
AND
BARNSTABLE, MASSACHUSETTS**

This Inter-Governmental Services Agreement (“Agreement”) is entered into this ___ day of _____, 2020 (the “Effective Date”) and is by and between the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation (“CVEC”), and Barnstable County, Massachusetts (“County”). CVEC and the County may be referred to as “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the County is a member of CVEC;

WHEREAS, at the County’s request, CVEC issued a Request for Proposals (“RFP”) pursuant to G. L. c. 164, § 137, seeking a Developer to design, procure, install, test, commission, own, operate and maintain a solar energy generation facility (“PV System”) to be located on property owned by the County and leased to the Developer;

WHEREAS, pursuant to the RFP, County has entered into a lease agreement (“Lease”), attached as Exhibit A, with the Developer to develop the PV System, specifically a Rooftop Solar PV System at Orleans Courthouse, 19 School Road, Orleans, MA 02653 (the “Premises”), to be owned by the Developer and to be operated by the Developer on space leased by the County to the Developer; and

WHEREAS, per the County’s request, CVEC will perform financial and operations management services on the County’s behalf for the PV System, including the tasks listed below.

NOW THEREFORE, in consideration of the foregoing and the mutual promises set forth below, CVEC and County agree as follows:

ARTICLE I: SCOPE OF WORK

1.1 Conditions Precedent. The obligations of the County and CVEC under this Agreement shall be conditioned upon execution by Developer and County of the Lease as of or of even date with the Effective Date of this Agreement.

1.2 Scope of Work. CVEC shall serve as the County’s representative and complete the following tasks in the Lease on behalf of the County:

- (a) Represent the County’s interests with the Developer and the utility and facilitate PV System commissioning;

- (b) Represent the County's interests concerning PV System design and construction;
- (c) Perform inspections, or arrange for inspections, of the PV System as necessary or requested by the County;
- (d) Notify the system owner of its maintenance obligations with respect to the PV System under the Lease and update the County on compliance with same;
- (e) Monitor Developer's compliance with maintenance obligations under the Lease;
- (f) Monitor Developer's compliance with the federal, state, and local permit and regulatory requirements identified in the Lease, exclusive of tax issues;
- (g) Ensure that Developer provides for Decommissioning Assurance per the terms of the Lease;
- (h) Facilitate the County's decision making steps concerning the County's Purchase Option, as set forth in the Lease;
- (i) Maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, or as may be reasonably required by County;
- (j) Keep full and accurate records of all costs, fees, charges and other amounts incurred by CVEC under this Agreement, and maintain such records for inspection by the County for a period of three years after termination of this Agreement;
- (k) Provide County with access to information regarding the operations of the PV System or other data concerning the PV System; and
- (l) Notify County as soon as practicable when CVEC becomes aware that the PV System may be mechanically inoperable for more than a seven (7) day period.

The County's obligations in the Lease not specifically tasked to CVEC herein shall remain the sole responsibility of the County.

1.3 County's Informational Obligations. The County shall provide to CVEC all information necessary for CVEC to fulfill the Scope of Work set forth in Section 1.2, including making County administrative staff available as necessary or appropriate.

ARTICLE II: COMPENSATION FOR CVEC'S SERVICES

2.1 Payment to CVEC and Billing. Based on the CVEC Scope of Work set forth in Article I and in accordance with a Sliding Scale established by a CVEC Board of Directors vote, the County shall pay to CVEC \$500 for CVEC annual services. CVEC shall invoice the County annually on the project's commercial operations anniversary, and County shall pay CVEC within thirty (30) days of the receipt of CVEC's invoice.

ARTICLE III: TERM

3.1 Term. The term of this Agreement (the “Term”) commences on the Effective Date and continues for a period of twelve (12) months unless terminated earlier by either Party pursuant to Section 4.1. The County may, in its sole discretion, elect to renew this Agreement for up to nine (9) additional 12-month terms, with amendments to Exhibit A (Lease), including pricing terms and scope of services, as the Parties may agree to in writing. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements for one five (5) year period, with such modifications to the provisions hereto which may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

ARTICLE IV: NONPERFORMANCE; TERMINATION; REMEDIES

4.1 Nonperformance.

(a) In the event that CVEC fails to perform any part of the Scope of Work set forth in Section 1.2 of this Agreement, the County may provide written notice to CVEC of such nonperformance, which CVEC may then within ten (10) business days cure the nonperformance or produce a plan acceptable to the County (in its reasonable discretion) to cure the nonperformance. In the event that CVEC fails to cure the nonperformance or to agree with the County on a plan to cure the nonperformance within that timeframe, the County may (i) remove such task(s) from CVEC’s Scope of Work and take over such responsibility or responsibilities, with compensation to CVEC reduced accordingly, or (ii) terminate this Agreement upon ten (10) days’ written notice to CVEC. In taking over, the County shall have the right, for completing the services, to have access to any database and materials of CVEC. CVEC shall not be held liable for nonperformance of any part of the Scope of Work if the reason for such nonperformance is lack of adequate or accurate information or resources from the County.

(b) In the event that the County fails to provide information to CVEC in accordance with Section 1.3 or to compensate CVEC in accordance with Section 2.1, CVEC may provide written notice to the County of such noncompliance, which the County may then within ten (10) business days cure the noncompliance or produce a plan acceptable to the other Party (in its reasonable discretion) to cure the noncompliance. In the event that the County fails to cure the noncompliance, CVEC may terminate this Agreement upon ten (10) days’ written notice to the County, with interest on any amounts due and owing related to the nonperformance or breach.

4.2 Termination. In addition to the termination provisions for nonperformance set forth in Section 4.1, this Agreement shall be subject to termination by either Party for (a) Force Majeure (as defined in the Lease), or (b) in the event that the Lease is terminated, except to the extent the Lease is terminated due to CVEC’s or County’s exercise of their Purchase Options (as defined therein).

4.3 Remedies. Each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to any nonperformance or breach by the other Party under this Agreement, subject to any limitations set forth in this Agreement.

4.4 Limitation of Liability. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR 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, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

ARTICLE V: DISPUTE RESOLUTION

5.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 5.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that cannot be resolved by informal negotiations shall be submitted to nonbinding mediation. If the parties cannot agree upon a mediator, the parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. Each party shall bear its own mediation costs. Injunctive relief may be sought by either Party without resorting to mediation to prevent irreparable harm.

ARTICLE VI: MISCELLANEOUS

6.1 Modification. This Agreement may be modified only by a written amendment signed by both Parties hereto. In the event of a regulatory or legal change related to net metering that materially impacts this Agreement, the Parties shall use good faith efforts to modify this Agreement to comply with such regulatory or legal change, subject to termination rights in this Agreement.

6.2 Interpretation. When used in this Agreement, terms shall have the meanings defined in Exhibit A (Lease), unless otherwise provided. Words not defined herein shall be given their common and ordinary meanings.

6.3 Construction. The Parties acknowledge that inconsistencies may exist between this Agreement and the Lease between the County and the Developer, and that CVEC and the County will use their best efforts to construe this Agreement harmoniously with that Lease.

6.4 No Assignment Without Permission. The Parties agree that each shall not assign, subcontract or delegate its rights, privileges or obligations under this Agreement without the prior written approval of the other Party, such consent not to be unreasonably withheld.

6.5 Entire Agreement; Binding Effect. This Agreement 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 inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

6.6 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

6.7 No Joint Venture. Nothing herein contained shall be deemed to constitute either 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 the Parties are individual and not collective in nature.

6.8 Joint Work Product. This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

6.9 Waiver. No waiver by either Party hereto of any one or more defaults by the 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 either Party hereto to complain of any action or non-action on the part of the 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.

6.10 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. The Parties agree that Barnstable County Superior Court, Massachusetts shall have jurisdiction over any litigation entered into hereunder.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the CVEC as public cooperative or to the County as municipal entity.

6.11 Nondiscrimination. The Parties agree that they shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to each Party, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. The Parties shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

6.12 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

6.13 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 documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

6.14 Survival. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Article 5 (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

6.15 Counterparts; Scanned Copy. 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 instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

6.16 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by any Party to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of any Party to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

6.17 Notice.

All correspondence and notices between County and CVEC shall be directed to the following:

If to County:

County Administrator
Barnstable County
3195 Main Street
Barnstable, MA 02630
Attn: _____
Phone () ____ - ____
Email: _____

If to CVEC:

Liz Argo
Executive Director
Cape & Vineyard Electric Cooperative, Inc.
23H2 White's Path, Suite 2

South Yarmouth, MA 02664
Tel: 774-722-1812
largo@cvecinc.org

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) 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) 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. Notices may also be sent by electronic mail message and shall be deemed properly served when the sending Party receives a confirmation that the message has been completely transmitted without error (out-of-office auto-responses shall not comply), provided that messages transmitted on any day that is not a Business Day, or after 5:00 p.m. local time (at the location of the receiving Party) on a Business Day, shall be deemed given on the next Business Day following the day on which the sending Party receives a confirmation that the message has been completely transmitted without error. The Parties are responsible for maintaining current and complete contact information; any Party may change its contact person and the contact information provided above by giving written notice thereof.

6.18 G.L. c. 40 §4A. The Parties acknowledge and agree that this Agreement is an inter-governmental agreement entered into in accordance with G.L. c. 40 §4A. The Parties shall maintain accurate and comprehensive records of services performed, costs incurred, and reimbursements and contributions received under this Agreement and undertake regular audits of such records.

6.19 Ownership of Documents and Work Product. In the event of termination of this Agreement, all documents, data, spreadsheets, databases, and information of any kind developed by CVEC, as well as all results or products of the services provided by CVEC pursuant to this Agreement or the Statement of Work in the Peregrine Agreement related to this Agreement shall be the sole property of the County, and upon request of the County shall be returned to the County.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

CVEC

Cape & Vineyard Electric Cooperative, Inc.

By: _____
Name:
Title: Clerk

By: _____
Name:
Title: President

23H2 White's Path
Suite 2
South Yarmouth, MA 02664
(774) 722 -1812 (voice)

COUNTY

Barnstable County

By: _____

Name:

Title:

List of Exhibits to Agreement

Exhibit A – Lease between County and Developer (including related exhibits)

EXHIBIT A
LEASE BETWEEN COUNTY AND DEVELOPER