



Town of Simsbury

66 Town Forest Road, P.O. Box 495, Simsbury, Connecticut 06070
~ Thomas J. Roy, P.E. – Director of Public Works ~

BOARD OF SELECTMEN MEETING **AGENDA SUBMISSION FORM**

1. **Title of submission:** Community Shared Solar – Landfill Site
2. **Date of submission:** August 2, 2016
3. **Date of Board Meeting:** August 8, 2016
4. **Individual or Entity making the submission:**
Thomas J. Roy, P.E. – Director of Public Works
5. **Action requested of the Board of Selectmen:**

Authorize the First Selectman to execute a Letter of Intent* with Ameresco Inc. to submit a proposal for a Community Shared Solar Array to be located at the closed landfill site as part of the CT DEEP's pilot program.

**Town Council will review all documents prior to execution.*
6. **Summary of Submission:**

A 1 MW+/- community solar array would be constructed at the Town's closed landfill site for the benefit of residents who cannot have solar on their homes. Please see attached memo for more information on this program.
7. **Financial Impact:**

Annual electricity savings of up to \$13,000 per year if the Town is the anchor tenant for the project, using up to 40% of the power generated. Annual donation to the Community Farm of \$500 to support the Farm's mission.
8. **Description of documents included with submission:**
 - Memo dated August 2, 2016 describing program



Town of Simsbury

66 TOWN FOREST ROAD, P.O. BOX 495, SIMSBURY, CONNECTICUT 06070

~ Department of Public Works ~

Memorandum: Community Shared Solar – Landfill Site

To: Board of Selectman
CC: Tom Cooke, Jeff Shea
From: Thomas J. Roy, Director of Public Works
Date: August 2, 2016

In January of 2016 a presentation was made to the Board of Selectmen outlining a DEEP pilot program being offered by the CT DEEP for “Community Shared Solar”. Community Shared Solar is where a commercial solar array is constructed for the benefit of residents, who can purchase shares in the solar array. These shares will allow the energy produced by the commercial solar array to offset the electricity bill for their home. This type of program is beneficial for residents that have cannot have solar on their homes, for any reason (trees, roof pitch, condo, association guidelines, etc.)

The Public Works Department, working with the Clean Energy Task Force has issued an RFQ to engage interested firms, in participating in the DEEP pilot program. Through this process, we have selected Ameresco Inc. of Framingham, Massachusetts to put forward a proposal for a 1 MW+/- community solar facility to be located at the Town’s closed landfill site. Ameresco is a national company with extensive experience with projects of this size throughout New England.

As part of the proposal process, Ameresco has agreed to provide the following:

- Priority for Simsbury Residents through a targeted marketing campaign
- Allow the Town to serve as an anchor tenant using up to 40% of the power generated by the facility
- Low to Moderate Income Allocation utilizing public housing authorities for 20% of the energy produced
- Lease payment to the Town of \$8,000 to \$10,000 per MW per year
- Annual electricity savings of up to \$13,000 per year if the Town is the anchor tenant for the project
- Annual donation to the Community Farm of \$500 per year to support the farms mission
- Improvements to the landfill access roads
- Educational programing offered to Simsbury schools k-12 curriculum and monitor/kiosk at Town Hall to allow residents to see how much clean energy is produced by this project

The next step in this process is to enter into a Letter of Intent with Ameresco who will then respond to the DEEP’s RFP process. As this is a pilot process, DEEP will be limiting the participation in the program to 4MW for all of the territory served by Eversource. As such, Ameresco will be working “At Risk” for this portion of the project in the hope that Simsbury

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will be selected for the program. This Letter of Intent allows Ameresco to pursue this project with the understanding this if selected by DEEP, Ameresco and the Town will be able to negotiate a final agreement at a later date.

As Ameresco is preparing the proposal for the DEEPs consideration and as we refine the project, staff will be working with a number of stakeholders including Town boards, the Simsbury Airport, Paine's, and the Community Farm to ensure the final product is will designed, safe, and consistent with the goals of the Town.

I look forward to discussing this exciting project with you and would be happy to answer any questions you may have.

July __, 2016

[Address]

RE: Letter of Intent for Property Lease in Simsbury, CT for Solar PV Ground-Mount Installation

Dear _____;

This letter of Intent (“**LOI**”) is intended to confirm recent discussions between Ameresco, Inc., a Delaware corporation, with principal offices at 111 Speen Street, Framingham, Massachusetts 01701 and the Town of Simsbury, CT (“**Landlord**”) regarding the terms which will form the basis of the Parties’ efforts to cooperate with respect to the development of a solar PV system located at the sites set forth on Exhibit 1 (the “**Sites**”), to generate electrical energy and associated environmental attributes, if any, as a community shared solar project for the benefit of the Town of Simsbury and its residents (the “**Project**”).

Whereas, Ameresco, Inc. is an established solar PV developer and Landlord is the owner of record of the Sites. Landlord has selected Ameresco through a Request for Qualifications procurement and wishes to lease the Sites to Ameresco, Inc. or its affiliate (“**Ameresco**”) so that Ameresco may develop the Project.

Whereas, Ameresco desires to perform due diligence with respect to the Site, to perform other evaluations to determine the viability of the Project and to bid into the CT DEEP RFP for the Shared Clean Energy Facility (“**SCEF**”) Pilot.

Now, Therefore, Landlord and Ameresco (for purposes of this LOI, Landlord and Ameresco are each a “**Party**” and jointly the “**Parties**”) agree that the following terms will be the basis for attempting to negotiate a definitive lease agreement or other agreement(s) (the “**Definitive Agreements**”) for Project as described below:

1. Project Due Diligence

Ameresco will perform certain development, engineering and economic tasks for due diligence to determine the Project’s viability at the Sites. As part of this due diligence effort, Landlord shall disclose any conditions at the Site that may adversely impact the Project, including, but not limited to:

- Any unpaid property taxes;
- The property tax rate for the site;
- Any lease, license, or easement agreements;
- Any hazardous waste disclosures, obligations for remediation, and indemnifications;
- Any undisclosed legal matters, and
- Any undisclosed employee or contractor matters at the Site.

Within twenty (20) business days after the Parties’ execution of this LOI, Landlord will deliver to Ameresco photocopies of any information in Landlord’s possession with respect to the Sites which is reasonably necessary for Ameresco’s performance of the due diligence, including, without limitation, any title commitments or policies, site plans, surveys, zoning information, environmental reports, information regarding state and local laws and regulations affecting the Site, and information regarding soil conditions at the Site. Ameresco intends to submit a bid to the CT DEEP RFP for the Shared Clean Energy Facility (“**SCEF**”) Pilot Program based on Ameresco’s right to lease the Sites for the Project.

2. Leased Premises

Subject to Ameresco’s due diligence findings and final Project design, the Leased Premises will consist of approximately __ acres of land at the Sites, as generally shown on Exhibit 1 hereto (the “**Leased Premises**”) and incorporated herein. The exact square footage will not be known until after Ameresco undertakes further due diligence. Ameresco will require enough space at the Site for the Project capable of producing up to [2,000] kilowatts-DC of energy. The Leased Premises shall be leased to Ameresco together with right of access to and from the Leased Premises and all necessary easements for access, transmission facilities, distribution lines, cables, wiring, conduits, etc. Landlord shall provide sufficient construction laydown space at the Sites during construction. Landlord shall grant easements for access to the Leased Premises and for transmission and interconnection infrastructure. The exact

locations of such easements will be determined following further project development. The easements shall be memorialized in written agreements in recordable form.

3. Lease Payment

If Ameresco is awarded a contract under the CT DEEP RFP for the Shared Clean Energy Facility (“SCEF”) Pilot Program and Ameresco elects to lease the Leased Premises for the construction and operation of the Project, the lease shall provide for a lease payment at an annualized rate of approximately _____, escalated at _____% per year, less the annual tax payment to the local municipality, payable to Landlord; provided that, the actual amount of the lease payment shall be subject to final design to confirm system size, as well as, the estimated commercial operation date. [The Parties agree that any lease agreement shall at a minimum contain the terms and conditions generally stated, or specifically stated, as the case may be, set forth on Exhibit 2 hereto, but that Exhibit 2 does not contain a full list of the terms of a definitive lease agreement. Additional terms may be negotiated based on due diligence performed by Ameresco, requirements of lender(s) for the Project, or requirements of the local electric utility and Landlord.] The lease payments to Landlord will begin on the commencement of commercial operations of the Project and will continue through the end of the term of the Definitive Agreements, which is anticipated to be twenty (20) years from the date of commercial operations. Other business terms of the Definitive Agreements will be negotiated by the Parties in good faith if Ameresco elects to lease the Site.

4. Special Termination Right of Ameresco

If, following completion of due diligence, Ameresco elects to enter into a lease with Landlord for the Leased Premises, the lease shall contain a termination right in favor of Ameresco exercisable in the event Ameresco cannot meet all conditions precedent for installation, operation, interconnection and sale of power from the Project. Specifically, this will include the condition precedent that Ameresco obtains an award and qualification for the Project under the provisions and requirements of the *CT DEEP RFP for the Shared Clean Energy Facility (“SCEF”) Pilot Program*. A complete list of such conditions precedent shall be established after Ameresco conducts further due diligence. Landlord shall provide reasonable assistance in helping Ameresco and its contractors achieve and meet such conditions.

5. Warranty

Landlord warrants that it has sole and exclusive ownership/title to the Site. Landlord further warrants that it has the authority to lease the Site to Ameresco, free and clear of liens, easements and encumbrances for the term of the Definitive Agreements

6. Exclusive Negotiating Rights

In recognition and consideration that the development of the Project will require significant effort and expenditures by Ameresco, for a period of two hundred and seventy (270) days from the execution of this LOI by the Parties (the “Exclusivity Period”) Landlord (itself or through its affiliates) shall not directly or indirectly, solicit, initiate, seek, encourage or support any inquiry, proposal, offer or bid from, negotiate with, provide any information to, or enter into any agreement with (verbal or written), any party (other than Ameresco) in connection with the lease or purchase of the Site or development of the Project. Landlord agrees that any such negotiations in progress with other third parties as of the date hereof will be terminated during such Exclusivity Period. Landlord will promptly disclose to Ameresco any unsolicited inquiry or proposal regarding an offer to lease or purchase the Site including the identity of the interested party and the terms of its inquiry or proposal.

At the expiration of the Exclusivity Period, exclusivity shall automatically extend if Ameresco and Landlord are continuing to negotiate in good faith to execute the Definitive Agreements.

7. Public Announcements and Confidentiality Agreement

Other than as necessary for Ameresco to perform its due diligence and develop the Project, the Parties agree not to release any information to the public with regards to this LOI or any potential agreement without the mutual written

consent of the Parties. The Parties agree that the terms of this letter and any negotiations shall remain confidential between the Parties and their legal representation [as permitted by law](#).

8. Expenses

Except as provided in the Definitive Agreements, the Parties shall each bear their own costs and expenses (including legal and accounting fees and expenses) incurred in connection with this LOI and the Project, whether or not Definitive Agreements are executed, and any actions taken by either Party in reliance on this LOI shall be at such Party's sole risk and expense.

9. Governing Law

This letter shall be governed by the laws of the ~~Commonwealth of Massachusetts~~[State of Connecticut](#). For any dispute not resolved by good faith negotiations involving senior management of the Parties, the the Parties agree to the exclusive jurisdiction of the state courts in ~~Suffolk County, Massachusetts~~[Hartford County, Connecticut](#).

10. Miscellaneous

- A. This letter contains the entire agreement of the Parties and supersedes any previous understandings, commitments or agreements, oral or written. Changes to the LOI may be made only in writing signed by the Parties.
- B. The failure of either Party to enforce at any time any of the provisions of this LOI, or to require at any time performance by the other Party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this LOI or any part thereof, or the right of either Party thereafter to enforce each and every such provision.

The Parties agree that, other than Sections 5, 6, 7, 8, 9, and 10, which the Parties agree are binding, this LOI does not constitute a firm proposal, offer or enforceable agreement to enter into any transactions with respect to the subject matter hereof, is not binding on any of the Parties and imposes no duty or obligation on any of them to proceed with or to negotiate with respect to any or all of the proposed transactions. Except as specifically provided in Sections 5, 6, 7, 8, 9 and 10, neither Party shall have any obligation to the other Party with respect to the transactions described in this LOI unless and until both Parties have executed all of the agreements required to effectuate such transactions. Both Parties agree to act in good faith to negotiate and execute the Definitive Agreements within the Exclusivity Period described in Section 6.

If the forgoing terms of this letter are correct and acceptable, so indicate by signing and returning this document to my office.

Sincerely,

_____ Date: _____

Ameresco, Inc.

ACCEPTED AND AGREED TO BY:

_____ Date: _____

Landlord

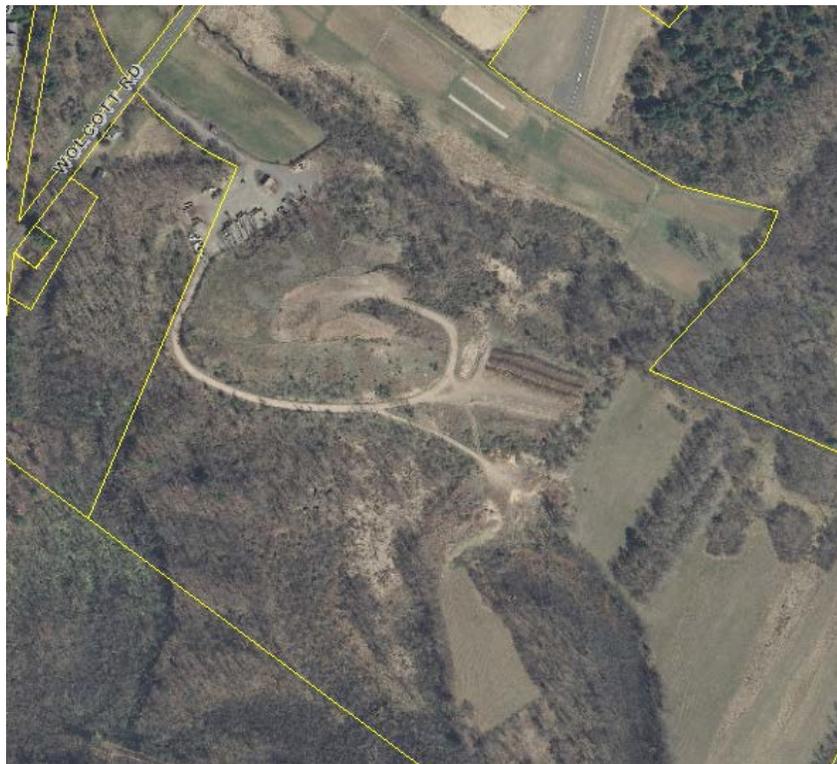
EXHIBIT 1 SITES

Site 1 – Closed Municipal Landfill, 68 Wolcott Road

A brief description of the sites follows, as well as aerial photographs.

Site 1 – Closed Municipal Landfill

This parcel of approximately 60 acres includes the Town's closed municipal landfill. The parcel is located in a sparsely developed area with few residential abutters, and is abutted by a three-phase utility distribution circuit. The topography and wetlands are issues for this site.





111 Speen Street, Suite 410
Framingham, MA 01701

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EXHIBIT 2 LEASE TERMS

Terms and conditions of lease agreement

1. **Term:** 20 years from commercial operation date of the solar facility with two five-year extension options.
2. **Due Diligence:** Satisfactory due diligence and site investigation provisions by Ameresco.
3. **Financing:** Financing for the project on terms and conditions satisfactory to Ameresco at its sole discretion.
3. **Mutual general indemnity and limitation on liability.** Indemnity from Landlord in favor of Ameresco for pre-existing conditions on the Leased Site.
4. **Rent:** An annual fixed rate of \$_____, escalated at _____% per year, less the annual tax payment to the local municipality, payable to Landlord. The lease payments to Landlord will begin on the commencement of commercial operations of the Project and will continue through the end of the term of the PPA related to the Project, which is anticipated to be twenty (20) years from the date of commercial operations.
5. **Permitted Use:** Construction, design, installation, maintenance, operation, removal of a solar photovoltaic system, together with all appurtenant facilities including but not limited to cables, conduits, transformers, concrete pads, poles, wiring, meters and electric lines and equipment.
6. **Interconnection:** Ameresco shall have an easement on, in, under, or over and across the portions of the Property necessary for the purpose of constructing, reconstructing, installing, operating and maintaining wires, cables, conduits for transmission of electrical energy and/or for communication purposes, and all necessary and property foundations, footings and such other interconnection facilities as are needed to interconnect the solar system to the utility's distribution system. The users of the easement may include Ameresco, its assigns, employees, agents, contractors, invitees, and the local electric utility.



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7. Termination Right: Ameresco shall have a right to terminate the Lease without any liability and without being considered in default if Ameresco cannot meet all conditions precedent for installation, operation, interconnection and sale of power from the solar facility to be installed, including obtaining all necessary permitting and interconnection approvals and obtaining an award and qualification for the Project under the provisions and requirements of the *CT DEEP RFP for the Shared Clean Energy Facility ("SCEF") Pilot Program*.
8. Covenants: Landlord shall give possession of the Leased Site to Ameresco free and clear of all structures, tenants and occupants at commencement of the Lease. Landlord shall not interfere with Ameresco's use of the Leased Site. Landlord shall not interfere or allow any interference with insolation to the Leased Site. Landlord shall allow Ameresco to perform vegetation management to prevent any shading of the Leased Site.
9. Easements. One (1) easements shall be granted for access from a public way serving the property, and easements for Ameresco's and the local electric utility's transmission facilities and infrastructure.
10. Taxes. Landlord to pay all real estate taxes; Ameresco to pay all personal property taxes or negotiate with the municipality other payment in lieu of taxes arrangement satisfactory to Ameresco in its sole discretion.
11. Financing Provisions. Financing provisions benefitting any lender of Ameresco with respect to the solar facility, including without limitation the ability of Ameresco to collaterally assign the lease for financing without undue restrictions which shall not release Ameresco from liability or obligations under the terms of the Lease Agreement.
12. Compliance with Laws. Ameresco shall comply with all federal, state and municipal laws, ordinances, rules and/or regulations, including labor laws and laws against employment discrimination.
13. Decommissioning Assurance. Ameresco must provide adequate financial assurance, in a form reasonably satisfactory to the Landlord, to fully cover the cost of decommissioning the PV System and restoration of the underlying property.
14. Governing Law; Venue. The Lease shall be governed by the Laws of the State of Connecticut. Any disputes shall be resolved within the venue of the State of Connecticut.
15. Indemnification. Ameresco shall indemnify and hold harmless Landlord from and against any and all liabilities, costs, claims, and expenses incurred by Landlord in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or



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bodily injury to any person, but only to the extent caused by the negligence or willful misconduct of Ameresco or its agents or employees or others under Ameresco's control during the Lease Term; provided, however, that Ameresco's obligations shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord.

16. Insurance. Ameresco must obtain, at a minimum, (i) worker's compensation insurance; (ii) commercial general liability insurance of at least three million dollars; (iii) professional liability insurance covering negligent errors, omissions, and acts of the Ameresco or of any person or business entity for whose performance Ameresco is legally liable arising out of the performance of Lease of at least 3 million dollars, (iv) comprehensive automobile liability coverage of at least 3 million dollars, (v) umbrella liability insurance with single limits in the amount of at least 3 million dollars, and (vi) all risk builder's risk property coverage.