

OPTION AGREEMENT

This Option Agreement (“Option Agreement”) is made as of _____ by and between the Town of Simsbury, CT (“Owner”) and Simsbury Landfill Solar LLC, a Delaware limited liability company with offices located at 111 Speen Street, Suite 410, Framingham, MA 01701 (together with its nominee, “Optionee”). Owner and Optionee may be referred to individually as a “Party” or collectively as the “Parties”.

RECITALS

A. Owner is the owner in fee simple absolute of certain real property, together with all improvements thereon and all rights and appurtenances thereunto pertaining, located at 68 Wolcott Road, Simsbury CT (the “Property”).

B. Optionee desires to obtain an option to lease a portion of the Property upon which to construct and install a solar photovoltaic facility (“Facility”) for the sale of power to one or more third parties as a community shared solar project, such portion of the Property shown on Exhibit A hereto (the “Leased Site”) (the construction of the Facility, lease of the Leased Site and sale of electricity shall be referred to collectively as the “Project”).

NOW, THEREFORE, in consideration of the purchase price and the mutual promises contained in this Agreement, the parties agree as follows:

1. GRANT OF OPTION. In consideration of the payment by Optionee to Owner of One Hundred Dollars (\$100) paid by Optionee (the receipt of which the Owner acknowledged) and as an inducement to Optionee to pursue the development of the Project, Owner grants to Optionee and its successors and assigns, and Optionee hereby accepts, the sole and exclusive option (the “Option”) to lease the Leased Site free and clear of any tenants, occupants or materials or equipment and liens but subject to encumbrances of record and otherwise upon terms and conditions to be negotiated and contained in a definitive lease agreement. 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 B hereto, but that Exhibit B does not contain a full list of the terms of a definitive lease agreement. Additional terms may be negotiated by the Owner or by the Optionee based on due diligence performed by Optionee, requirements of lender(s) for the Project, town approvals as may be required, probate court approvals as may be required, conditions imposed by the Connecticut Attorney General, or requirements of the local electric utility. Owner acknowledges that Optionee has not performed any studies of the suitability of the Property or the Leased Site for the Project.

2. TERM; EXERCISE OF OPTION.

(a) The term of this Option Agreement (“Option Term”) shall commence on the Effective Date and shall expire on the one year anniversary of the Effective Date. Optionee has the right, in its sole and absolute discretion to terminate the Option and/or this Option Agreement at any time for any reason. If the Option is not terminated by Optionee as provided in this Agreement, Optionee will have the right, upon 10 days written notice to Owner and the payment of an additional non-refundable sum of \$100.00, to extend the Option Term for an additional period of one year.

(b) Optionee may, in its sole discretion, exercise the Option at any time during the Option Term by giving written notice (“Notice”) of such exercise to Owner which Notice shall include a diagram of the Site for the Owner’s approval which shall not be unreasonably withheld or delayed (nothing herein is intended to prevent Optionee, at its election, from providing Owner with and

requesting Owner's approval of a legal description and diagram prior to giving the Notice to Owner). Optionee shall deliver with its Notice a proposed lease agreement. The Parties shall negotiate in good faith the terms of the lease agreement for a period of ninety (90) days after Owner's receipt of the Notice with the intended goal of executing a lease within such ninety-day period. The execution of a lease shall be referred to as the "Closing". Optionee may deliver the Notice on a conditional basis and Optionee may revoke the Notice prior to Closing. If the Notice is revoked, this Option Agreement and the Option shall nevertheless remain in full force and effect for the remaining Option Term.

3. CLOSING. At the Closing, the Parties shall execute a lease agreement and such other documents, instruments, certifications and confirmations as may be reasonably required to fully effect and consummate the transactions contemplated by this Option Agreement or the lease agreement, including any documents required by the local electric utility, Optionee's lenders or Optionee's title company, and any documents Optionee deems necessary to remove any liens, encumbrances or exceptions to title affecting the Leased Site.

4. RIGHT OF ENTRY. Optionee and Optionee's authorized representatives may at any reasonable time, after giving reasonable notice to Owner, enter upon the Property for the purpose of making inspections, appraisals, surveys, shading analysis, including the cutting of survey lines and putting up markers and driving stubs and stakes, site and soil, groundwater and structural analysis, engineering studies, core sampling for engineering reports, locating existing rights of way, easements, and utilities and evaluating the Property for transmission line connections to the local utility, and measuring potential access and transmission easement areas. Optionee will exercise this right of entry in such a way so as to not cause unreasonable damage to the Property and Optionee shall repair any and all damage to the Property caused by such inspections and investigations in a timely manner. Optionee agrees to indemnify Owner from all third party claims for any personal injury or property damage or otherwise to any person or property caused by any negligent or intentional action or omission of Optionee or its agents in exercising its right of entry onto the Property. Such undertaking of indemnity shall survive the termination of this Agreement for any reason for a period of one year. Notwithstanding any other provision in this Section 4, the indemnity described herein shall not extend to and in no event shall Optionee be liable to Owner for any negligence or misconduct of Owner or any agent, contractor or employee of Owner. Owner agrees to indemnify and save harmless Optionee from all claims of liability for any personal injury or property damage or otherwise to any person or property caused by action or omission of Owner or its agents before Closing.

5. PRE-CLOSING RESTRICTIONS. Owner shall not do, or cause, permit or suffer to occur, any of the following without Optionee's prior written consent:

(a) create, grant, permit or suffer to exist any easement, lien, encumbrance condition or other right or interest that may burden, benefit or otherwise impede Optionee's intended use of the Leased Site for the Project; or

(b) construct any improvements on the Leased Site.

6. OWNER'S AND OPTIONEE'S DOCUMENTATION. To the extent that any of the following items exist and are in the possession of Owner and can be located through a reasonable search, Owner agrees to furnish to Optionee within 30 days from the date of this Agreement any and all building inspection reports, surveys, title reports, topographical maps, engineering and architectural drawings or plans, environmental reports, lot layouts, any plans or profiles of any roadways, easements, or utility lines. Owner further agrees to furnish to Optionee all information available to Owner concerning the environmental condition of the Property and the existence of any contract rights that Owner might hold for the service of the Property by utilities, either public or private.

7. ENVIRONMENTAL INSPECTION AND RELATED MATTERS.

a. Definitions. As used in this Agreement, the following terms will have the following meanings:

(i) **Contamination** means any release of a Hazardous Substance; Petroleum Substance or Product; polychlorinated biphenyl (PCB); asbestos or asbestos containing material; radon gas; or other substance considered to be a contaminant by professionals in the field of environmental assessments under standard commercial practice;

(ii) **Hazardous Substance** means those substances as defined by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601(14), and includes any material that is toxic, flammable, explosive, or corrosive as these terms are defined by CERCLA. Petroleum Substances or Products as defined below are excluded.

(iii) **Petroleum Substance or Product** means any material containing refined or crude oil or any fraction thereof and includes natural gas, natural gas liquids, liquified natural gas, or synthetic gas usable for fuel or mixtures of natural gas and such synthetic gas. Hazardous Substances as defined above are excluded.

(iv) **Phase I Environmental Assessment** have the meanings understood by professionals in the field of environmental assessments, which will include screening the Property for existing or threatened Contamination, be designed to avail Optionee of certain defenses under applicable federal or state law, and include such other inquiries and examinations as are considered necessary or desirable under standard commercial practice at the time the assessment is conducted.

(v) **Release** means such occurrences as defined by CERCLA, 42 U.S.C. 9601(10), and includes any intentional or accidental discharging, spilling, leaking, pumping, pouring, injecting, escaping, leaching, dumping, disposing, or emitting into the environment.

b. Environmental Investigations.

As a condition precedent to Optionee's obligation to lease, Optionee, at Optionee's expense, may perform environmental investigations (including but not limited to Phase I Environmental Assessment) of the Leased Site by a qualified environmental consultant (the Consultant) selected by Optionee and conducted in accordance with standard commercial practice at the time of the assessment.

8. REPRESENTATIONS AND WARRANTIES BY OWNER. Owner represents and warrants as of the date of this Agreement and as of the date of Closing that:

a. Owner is the fee owner of the Property and has the right, title, and authority to enter into and to perform its obligations under this Option Agreement;

b. The entry and performance of this Agreement by Owner will not breach any other agreement with any other party or create a violation of any applicable law, rule, or regulation. Notwithstanding the foregoing, Optionee recognizes and acknowledges that the Connecticut Attorney General claims jurisdiction pursuant to General Statutes §3-125 over the property based on the Amos Eno Deed and Owner makes no representation regarding the likelihood of an adverse ruling by the Attorney General or the Simsbury Regional Probate Court affecting the proposed Lease;

c. There are no pending, and to the best of Owner's knowledge no threatened, actions, suits, arbitrations, claims or proceedings, at law, in equity or otherwise, that would adversely affect the Property or Owner's ability to perform its obligations under this Agreement or the Ground Lease, including, but not limited to, judicial, municipal or administrative proceedings in eminent domain, collection actions, claims relating to alleged building code violations or health and safety violations, federal, state or local agency actions regarding environmental matters, lease disputes, claims relating to federal environmental protection agency or zoning violations, or actions relating to personal injuries or property damages alleged to have occurred at the Property or by reason of the condition or use of or construction on the Property;

d. Owner has received no written notice of any violation of any applicable laws, ordinances, rules, requirements, regulations and building codes of any governmental agency, body or subdivision thereof bearing on the Property

e. To Owner's knowledge, (1) the Property or any portion thereof is not in violation of any environmental laws, and (2) Owner has not used, generated, manufactured, stored or disposed of on, under or about the Property or transported to or from the Property any hazardous substances in violation of any environmental laws.

f. Owner has received no written notice of any special assessments or charges which have been levied against the Property or which will result from work, activities or improvements done to or for the benefit of the Property except as may be shown on a title commitment given to Optionee as part of the Property Information. Owner has received no written notice of any intended public improvements which will result in any charge being levied against, or in the creation of any lien upon, the Property or any portion thereof. There are no actions or proceedings threatened against the Owner to condemn all or any part of the Property.

9. Exclusivity. In recognition of the fact that investigations, inspections and due diligence review and pursuit of the Project will require significant effort and expenditure by Optionee, Owner agrees that during the Option Period, Owner 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 any party to lease, sublease, occupy or use the Property whether for a solar project or for any other use. Owner agrees that any such negotiations in progress as of the date hereof will be terminated or suspended during such period. Owner shall promptly disclose to Optionee any unsolicited inquiry or proposal from another party regarding use of the Property or installation of a solar project at the Property.

10. NOTICES. All notices to the parties hereto will be delivered by hand or via certified mail return receipt requested or overnight delivery and will be deemed effective upon delivery and upon confirmation of receipt by other means, to the following address until the address is changed by notice in writing to the other party:

Optionee: Ameresco, Inc., 111 Speen Street, Suite 410, Framingham, MA 01701, Attention: Director PV-Grid Tie with a copy to Attention: General Counsel (same address)

Owner: Town of Simsbury, First Selectmen, 933 Hopmeadow Street, Simsbury, CT 06070

11. SURVIVAL. The provisions contained in this agreement, including Owner's obligations and warranties and representations, will be true as of the date of this Agreement and as of the date of Closing and will survive the Closing.

12. DEFAULT AND REMEDIES. If either Party defaults in performance under this Agreement which default continues for thirty days after written notice from the non-defaulting Party, then the non-defaulting Party may pursue all remedies available at law or in equity including an action for specific performance or monetary damages.

13. ENTIRE AGREEMENT. This Agreement contains the entire agreement of the parties and will supersede the terms and conditions of all prior written and oral agreements, if any, concerning the matters it covers. The Recitals are incorporated into this Agreement. The parties acknowledge there are no oral agreements, understandings, representations, or warranties that supplement or explain the terms and conditions contained in this Agreement. This Agreement may not be modified except by an agreement in writing signed by the parties. Owner agrees to sign a short form memorandum of this Option Agreement to be recorded in the public records where the Property is located. Optionee shall pay the recording charges.

14. WAIVER. Failure to insist upon strict compliance with any of the terms, covenants, or conditions hereof will not be deemed a waiver of the terms, covenants, or conditions, nor will any waiver or relinquishment of any right or power at any one time or more times be deemed a waiver or relinquishment of the right or power at any other time or times.

15. SEVERABILITY. This Agreement will be construed in its entirety and will not be divisible, except that the invalidity or unenforceability of any provision hereof will in no way affect the validity or enforceability of any other provision.

16. CAPTIONS. Captions are used in this Agreement for convenience only and will not be used to interpret this Agreement or any part of it.

17. GOVERNING LAW. This Agreement is to be construed in accordance with the law of the State of Connecticut.

18. CHOICE OF FORUM/JURISDICTION. The Parties hereby consent to venue and to the exclusive jurisdiction of the federal courts of Connecticut.

19. WAIVER OF TRIAL BY JURY. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR ANY RELATED AGREEMENTS OR INSTRUMENTS AND THE ENFORCEMENT THEREOF, INCLUDING ANY CLAIM OF INJURY OR DAMAGE TO ANY PARTY OR THE PROPERTY OF ANY PARTY.

20. SUCCESSOR/ASSIGNMENT. This Agreement will be binding upon and the obligations and benefits hereof will accrue to the parties hereto, their heirs, personal representatives, successors, and assigns. This Agreement is fully assignable by Optionee without Owner's consent to an entity wholly owned or controlled by Optionee or to a third party only upon written consent of Owner, which consent will not be unreasonably withheld. This Agreement is not assignable by Owner without Optionee's consent. If the Agreement is assigned by Optionee with Owner's consent, Optionee will nevertheless remain fully liable for performance of the Agreement.

21. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each will be considered an original, and together they will constitute one Agreement.

22. FACSIMILE SIGNATURES. Facsimile signatures will be considered original signatures for the purpose of execution and enforcement of the rights delineated in this Agreement.

234. CONSTRUCTION; ADVICE OF COUNSEL. The parties agree that each has consulted with an attorney who has actively participated in the drafting and negotiation of this Agreement and that the provisions of this Agreement will not be construed in favor of either party.

[signatures follow]

WITNESS the following duly authorized signatures as of the date set forth above:

OWNER:

Town of Simsbury, CT

By: _____

Name:

Title:

OPTIONEE:

Simsbury Landfill Solar LLC

By: Ameresco, Inc., its sole member

By: _____

Name:

Title:

EXHIBIT A

Leased Site

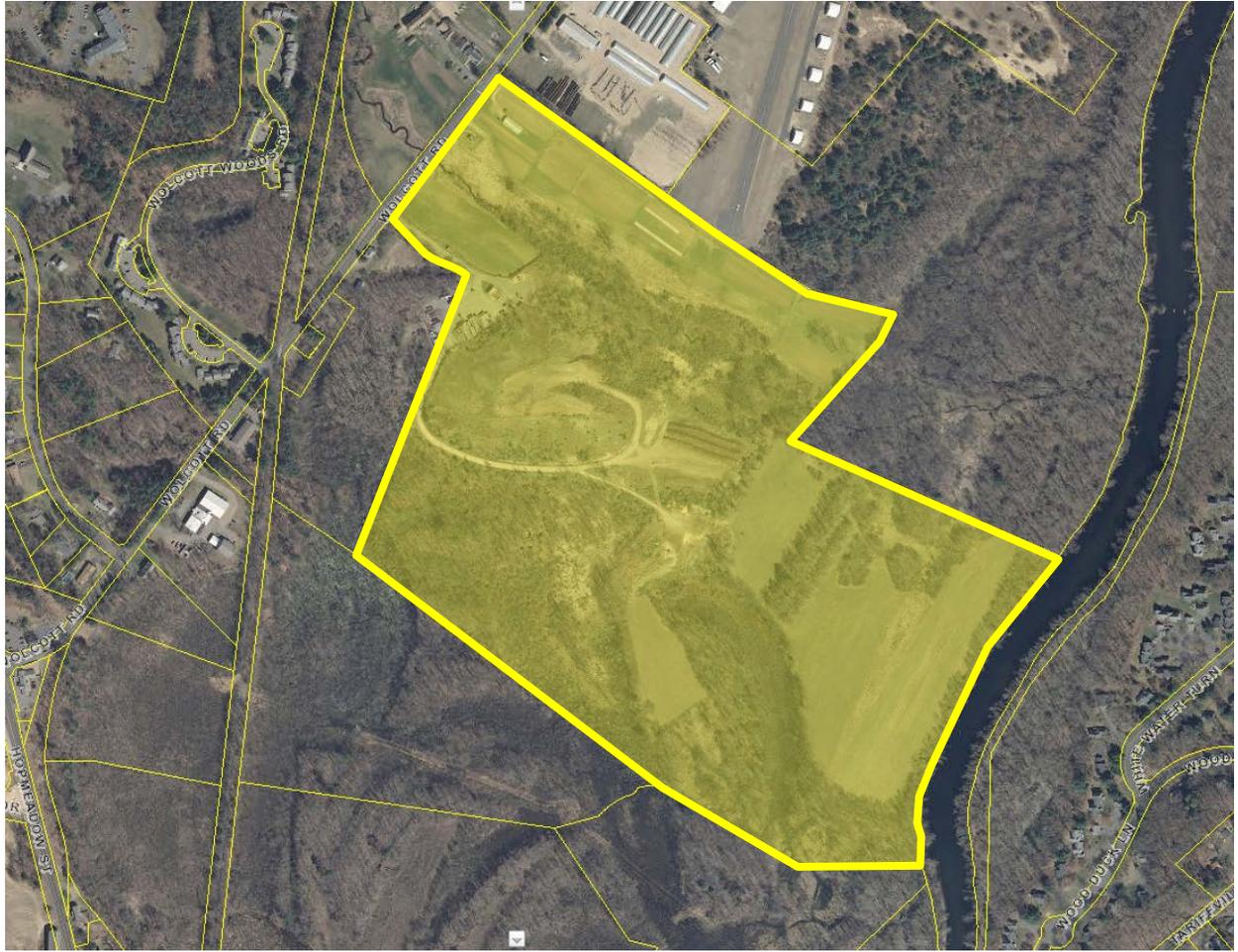
Closed Municipal Landfill, 68 Wolcott Road

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.

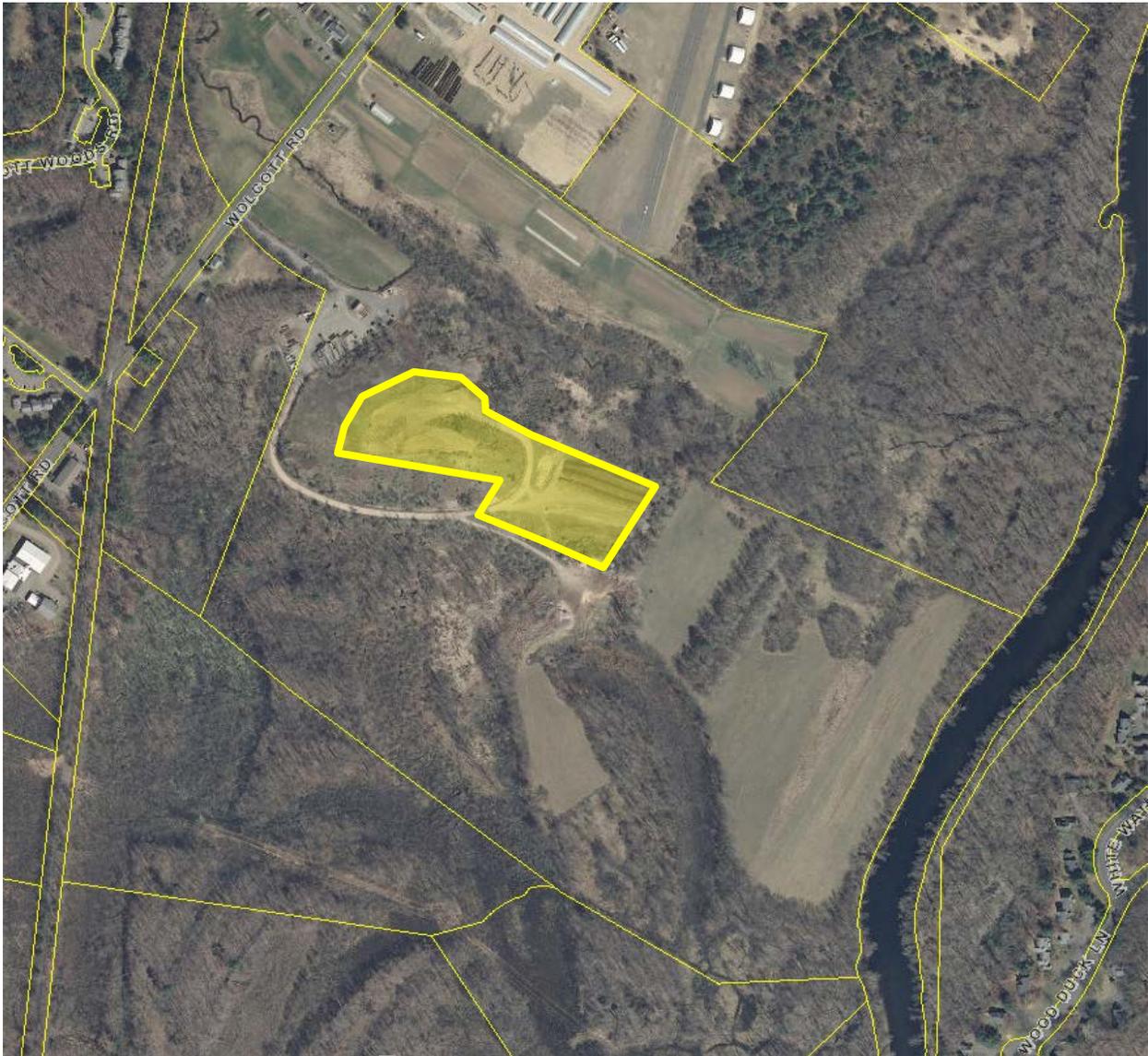




Address: 68 Wolcott Road, Simsbury, CT

Tax ID #: 13-439-008

Lease Site Description



Address: 68 Wolcott Road, Simsbury, CT

Tax ID #: 13-439-008

Lease Area: Approximately 6 acres (+/-)

Exhibit B

Terms and conditions of lease agreement

1. **Leased Site:** The Leased Site shall be approximately 6 acres, being portion of the parcel of approximately 60 acres which includes the Town's closed municipal landfill (as shown on Exhibit A).
2. **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 Optionee.
3. **Financing:** Financing for the project on terms and conditions satisfactory to Optionee at its sole discretion.
3. **Mutual general indemnity and limitation on liability.** Indemnity from Owner in favor of Optionee for pre-existing conditions on the Leased Site.
4. **Rent:** An annual fixed rate of \$8,000 per MW_{AC}, less the annual tax payment to the local municipality, payable to Owner; provided that in no event shall the aggregate annual payment to the Owner be less than \$4,000 per year. The proposed capacity of the project is 0.972 MW_{AC}, however, the final capacity and resulting lease payment is pending the approved project capacity by CT DEEP and PURA. The lease payments to Owner 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. Optionee's rights to install, maintain and operate the solar facility shall be subject to receipt and compliance with all required governmental approvals for installation, construction and operation of the solar facility at the Leased Site, including zoning approval, planning board approval and conservation commission/inland wetlands agency approval.
6. **Interconnection:** Optionee 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 Optionee, its assigns, employees, agents, contractors, invitees, and the local electric utility.
7. **Termination Right:**
 - a. Optionee shall have a right to terminate the Lease without any liability and without being considered in default if Optionee 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.

b. Owner shall have a right to terminate the Lease, at any time prior to the start of construction, without any liability and without being considered in default if (a) Owner receives an unfavorable opinion of the State Attorney General exercising his purported jurisdiction under General Statute §3-125 finding that the SCEF is incompatible with the terms of the Amos Eno Deed to the property; (b) Owner receives an adverse ruling by the Simsbury Probate Court with respect to the Project or Lease or (c) Optionee has not obtained all required governmental approvals for installation, construction and operation of the solar facility at the Leased Site, including zoning approval, planning board approval and conservation commission/inland wetlands agency approval within one year following the later of the execution of the Lease and PURA final approval of the purchase price approved by CT DEEP.

8. Covenants: Owner shall give possession of the Leased Site to Optionee free and clear of all structures, tenants and occupants at commencement of the Lease. Owner shall not interfere with Optionee’s use of the Leased Site. Owner shall not interfere or allow any interference with insolation to the Leased Site. Owner shall allow Optionee to perform vegetation management to prevent any shading of the Leased Site.

9. Easements. Options shall be granted Easements for access from public ways serving the property, and easements for Optionee’s and the local electric utility’s transmission facilities and infrastructure.

10. Taxes. Owner to pay all real estate taxes; Optionee to pay all personal property taxes or negotiate with the municipality other payment in lieu of taxes arrangement satisfactory to Optionee in its sole discretion.

11. Financing Provisions. Financing provisions benefitting any lender of Optionee with respect to the solar facility, including without limitation the ability of Optionee to collaterally assign the lease for financing without undue restrictions which shall not release Optionee from liability or obligations under the terms of the Lease Agreement.

12. Compliance with Laws. Optionee 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. Optionee must provide adequate financial assurance, in a form reasonably satisfactory to the Owner, 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. Optionee shall indemnify and hold harmless Owner from and against any and all liabilities, costs, claims, and expenses incurred by Owner 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 bodily injury to any person, but only to the extent caused by the negligence or willful misconduct of Optionee or its agents or employees or others under Optionee’s control during the Lease Term; provided, however, that Optionee’s obligations shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Owner.

16. Insurance. Optionee 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 Optionee or of any person or business entity for whose performance Optionee 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.

17. Landfill Operations. The DEEP post closure use permit will be applied for, and issued in the name of, the Town of Simsbury as owner of the landfill. Optionee will comply with permits and approvals related to the construction, operation or maintenance of the solar system on the Leased Premises. Obligations related to the operation or maintenance of the landfill remain the Owner's responsibility.

18. Solar Project:

a. Optionee shall offer priority to Simsbury residents to subscribe for credits under the DEEP Shared Clean Energy Facilities PILOT program through a targeted marketing campaign.

b. The Town of Simsbury shall have the right to serve as an anchor customer under the DEEP Shared Clean Energy Facilities PILOT program and be allocated up to 40% of the power generated by the solar facility pursuant to a solar credit purchasing agreement for estimated annual electricity saving of up to \$13,000 per year.

c. At least 20% of the power generated by the solar facility shall be allocated to Low to Moderate Income residents utilizing public housing authorities.

19. Community Farm Donation. Optionee shall make an annual donation to the Community Farm of \$500 per year to support the farms mission;

20. Access Road Improvements. Optionee shall be responsible for improvements to the landfill access roads; and

21. Educational Programming. Optionee shall offer educational programming to Simsbury schools k-12 curriculum and shall install a monitor/kiosk at Simsbury Town Hall to allow residents to see how much clean energy is produced by the Project.