

TOWN OF OLD SAYBROOK  
**SELECTMEN'S OFFICE**

CARL P. FORTUNA JR., FIRST SELECTMAN

SCOTT M. GIEGERICH, SELECTMAN

MATTHEW PUGLIESE, SELECTMAN

---

302 Main Street • Old Saybrook, Connecticut 06475-2384  
Telephone (860) 395-3123 • Fax (860) 395-3125

REGULAR MEETING AGENDA  
**Tuesday, January 24, 2023**  
**4:00 p.m.**

Old Saybrook Town Hall – First Floor Conference Room

Public Zoom Link:

<https://zoom.us/j/97813035481?pwd=QkE1OVFXZlhIRTVTaGhMdjZKMkNOQT09>

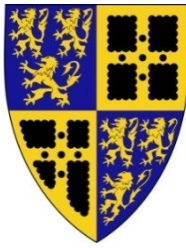
Dial In: 929-436-2866

Meeting ID: 978 1303 5481

Passcode: 302302

One Tap Mobile: <tel://9294362866,,97813035481#>

- I. CALL TO ORDER**
  - II. PLEDGE OF ALLEGIANCE**
  - III. COMMENTS FROM THE PUBLIC**
  - IV. COMMENTS FROM THE SELECTMEN:** Ethics advisory opinion
  - V. APPROVAL OF MINUTES:** Board of Selectmen Meeting January 10, 2023.
  - VI. BUSINESS BEFORE THE BOARD**
    - A.** Discussion and possible action to approve Chamber of Commerce lease extension.
    - B.** Discussion and possible action on a Virtual Net Metering Services Purchase Agreement.
    - C.** Appointments
      - 1.** Conservation Commission. Resignation vacancy. This appointment is for the unexpired portion of a two-year term due to end 11/2024.
      - 2.** Inland Wetland Commission. Resignation vacancy alternate member. This appointment is for the unexpired portion of a two-year term due to end 11/2023.
- VII. ADJOURNMENT**



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REGULAR MEETING MINUTES  
**Tuesday, January 10, 2023 8:30  
a.m.**

Old Saybrook Town Hall – First Floor Conference Room

Direct link to the recording: <https://youtu.be/cNkt48BqkvU>

It is also included in the following playlists:

Board of Selectmen Meetings:

<https://www.youtube.com/playlist?list=PLKX0JMf1KPP9SQAHOQUQR3yLtNYxKOWK>

- I. CALL TO ORDER** – All members present
- II. PLEDGE OF ALLEGIANCE** - Recited
- III. COMMENTS FROM THE PUBLIC** - None
- IV. COMMENTS FROM THE SELECTMEN:** Mr. Pugliese asked the status of the Department of Public Works (DPW) investigation which Mr. Fortuna responded to by saying that the Board would get a full update when the internal investigation is completed. He also stated that Bill Claffey is doing an excellent job as interim and DPW and the Transfer Station are running smoothly. Mr. Fortuna reported that the town did not get the Saybrook Point grant but the Commissioner of DECD has agreed to meet with the town on February 2<sup>nd</sup> to review the project and the site. The sidewalk project on the west side of Route 1 from Ocean State Job Lot to Elm Street is out to bid. The legislative session started today and Mr. Fortuna expects a heavy focus on affordable housing and taxes. Marijuana sales begin in the state today; Fine Fettle has resubmitted their application in Old Saybrook. The North Yard has changed owners and the back taxes have been paid to the tune of over \$600k. With this and the increase in interest income, the town should reap a significant revenue surplus this year. Mr. Pugliese inquired if the Board of Selectmen could have a meeting at some point to discuss the budget before the First Selectman submits it to the board which Mr. Fortuna agreed to.
- V. APPROVAL OF MINUTES:** Special Board of Selectmen Meeting November 8, 2022. *A MOTION was made to approve the Special November 8, 2022 minutes. PUGLIESE/GIEGERICH*  
*MOTION CARRIED UNANIMOUSLY*
- VI. BUSINESS BEFORE THE BOARD**
  - A.** Discussion and possible action to approve American Rescue Plan Funding (ARPA) request, as recommended by the ad hoc ARPA committee created by the Board of Selectman, for Sandra Clark  
Mr. Fortuna and Mr. Pugliese both stated that the ARPA committee has been quite thorough and are satisfied with all recommendations to date. *A MOTION was made to approve the Board of Selectmen recommendation and move to town meeting ARPA request funding for Sandra Clark. GIEGERICH / PUGLIESE*

**MOTION CARRIED UNANIMOUSLY**

Board of Selectmen  
Minutes  
January 10, 2023

- B.** As approved by the Board of Finance and recommended by the Board of Selectmen an appropriation for a town match in the amount of \$347,200 toward the \$500,000 Small Town Economic Assistant Program funded by \$317,000 from the Town's sidewalk fund 3019 and \$30,200 from the capital nonrecurring fund. Further, to move the capital non-recurring portion of the match for further approval at town meeting.

Mr. Fortuna mentioned that this should have been on the last town meeting but it was an oversight. *A MOTION was made to approve the Board of Finance and Board of Selectmen recommendation and move to town meeting.* **GIEGERICH / PUGLIESE**

**MOTION CARRIED UNANIMOUSLY**

- C.** Discussion and action on Call of Special Town Meeting. *A MOTION was made approve the Call of Special Town Meeting, Town Hall – First Floor Conference Room on Tuesday, January 24<sup>th</sup>, 2023 at 6:00 p.m*

**GIEGERICH / PUGLIESE**

**MOTION CARRIED UNANIMOUSLY**

- D.** Discussion and action to remove property at 2 Sea Lane-1 from seasonal classification recorded in Volume 200 and approve as a year-round dwelling. *A MOTION was made approve 2 Sea Lane-1 as a year-round dwelling*

**GIEGERICH / PUGLIESE**

**MOTION CARRIED UNANIMOUSLY**

- E.** Discussion and action on refund of building permit fee: 16 Hill Street. *A MOTION was made approve building permit fee refund.* **GIEGERICH / PUGLIESE**

**MOTION CARRIED UNANIMOUSLY**

- F.** Discussion and action on refund of building permit fee: 77 Neptune Drive. *A MOTION was made approve building permit fee refund.* **GIEGERICH / PUGLIESE**

**MOTION CARRIED UNANIMOUSLY**

- G.** Appointments

- 1. Economic Development Commission.** Resignation vacancy regular member. Elevation appointment Susan Quish. This appointment is for the unexpired portion of a five-year term due to end 06/2025.

Mr. Fortuna explained that with appointive boards, there has been no past practice or policy of replacing like political parties with vacancies. However, he has honored that commitment with elective boards. In the town charter, the only reference is that when an appointment is NOT made by the Board of Selectmen within a certain amount of time, the board can make its own appointment. *A MOTION was made approve the appointment of Susan Quish.*

**GIEGERICH / FORTUNA**

**MOTION CARRIED UNANIMOUSLY**

Board of Selectmen  
Minutes  
January 10, 2023

2. Economic Development Commission. Elevation vacancy alternate member. This appointment is for the unexpired portion of a two-year term due to end 08/2024. Michael Bender appointed as an alternate. *A MOTION was made to approve the appointment of Michael Bender.*

***GIEGERICH / PUGLIESE***

***MOTION CARRIED UNANIMOUSLY***

3. Pension and Employee Benefits Board. Term expiration Rowena Moffett. This is a five-year term due to expire 01/2028. *A MOTION was made approve the re-appointment of Rowena Moffett.*

***GIEGERICH / FORTUNA***

***MOTION CARRIED UNANIMOUSLY PUGLIESE/GIEGERICH***

**VII. ADJOURNMENT - *A MOTION was made adjourn at 9:25 a.m.***

***MOTION CARRIED UNANIMOUSLY***

Respectfully submitted,

Carl P. Fortuna Jr.  
First Selectman

## LEASE EXTENSION AGREEMENT

**THIS LEASE EXTENSION AGREEMENT** made this 20<sup>th</sup> day of January, 2023 by and between the **TOWN OF OLD SAYBROOK**, a municipality in the County of Middlesex and State of Connecticut, acting herein by the Board of Selectmen of the Town of Old Saybrook (hereinafter referred to as the “**LESSOR**”), and **OLD SAYBROOK CHAMBER OF COMMERCE**, having an office and principal place of business in the Town of Old Saybrook, County of Middlesex and State of Connecticut (hereinafter referred to as the “**LESSEE**”).

WHEREAS, the LESSOR and the LESSEE entered into a Lease for premises situated at and known as One Main Street, Old Saybrook, Connecticut, which Lease was executed on or about November 29, 2007, and

WHEREAS, said Lease provided for a term of five (5) years, with an option for an additional five (5) year extensions, and

WHEREAS, the term of said Lease, as extended for an additional five (5) year period, shall terminate on March 4, 2023, and

WHEREAS, the parties wish to extend said Lease for an additional five (5) year period on the following terms and conditions:

1. That the extended term of the Lease shall begin on March 5, 2023, and terminate on March 4, 2028.
2. That the monthly rental for said premises shall be \$850 per month, which shall be paid, in advance, on the fifth (5<sup>th</sup>) day of each month during the term.
3. That all of the terms of the original Lease between the parties are hereby affirmed and incorporated, and shall be in full force and effect during the extended five (5) year period.

This Lease Extension Agreement shall be binding upon and inure to the benefit of the parties hereto.





To: Old Saybrook Board of Selectmen

From: Old Saybrook Chamber of Commerce

Re: Lease, 1 Main Street, Old Saybrook, CT

Date: January 20, 2023


EXERCISE OF OPTION TO RENEW LEASE

Please be advised that the undersigned, as Lessee under a certain lease for premises at 1 Main Street, Old Saybrook, Connecticut and dated November 29, 2007, does hereby exercise his/her option to extend the term of said Lease for a period commencing on March 5, 2023, and terminating on March 4, 2028.

During extended term, Lessee shall pay rent of \$850 per month, in lieu of the rent contained in the original Lease.

It is further provided, however, that all other terms of the Lease shall continue during this extended term as if set forth herein.

Old Saybrook Chamber of Commerce

By:   
Judy Sullivan  
Executive Director  
Duly Authorized

**VIRTUAL NET METERING SERVICES PURCHASE AGREEMENT**

**BETWEEN**

**GREENSKIES CLEAN ENERGY LLC**

**AND**

**[MUNICIPALITY], CONNECTICUT**

**DATED AS OF [REDACTED] [REDACTED], 2023**



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**EXHIBITS**

Exhibit A	Solar Energy Facility
Exhibit B	Property
Exhibit C	Services
Exhibit D	Schedule of Definitions and Rules of Interpretation
Exhibit E	Early Termination Payment

## VIRTUAL NET METERING SERVICES PURCHASE AGREEMENT

THIS VIRTUAL NET METERING SERVICES PURCHASE AGREEMENT (the “*Agreement*”) is made and entered into by and between Greenskies Clean Energy LLC, with offices at 127 Washington Ave, West Building Lower Level, North Haven, CT (“*Buyer*”), and [MUNICIPALITY], CT with an office at [Address], CT [Zip] (“*Seller*”) as of [REDACTED], 2023 (the “*Effective Date*”). Seller and Buyer are sometimes hereinafter referred to individually as a Party and collectively as the Parties.

### RECITALS

- A. Buyer agrees to finance, own and operate a solar energy facility, as more particularly described in Exhibit A (the “*SEF*”) on the Property (as defined by Exhibit B);
- B. Buyer shall enter into a Power Purchase Agreement (the “*PPA*”) with EDC (as defined below) pursuant to which Buyer shall sell to EDC and EDC shall purchase from Buyer all of the Energy and Environmental Credits (as defined below) generated by the SEF during the Term (as defined below) and otherwise in accordance with the terms of this Agreement and the PPA.
- C. Buyer desires to obtain from Seller access and services related to utility meters and related infrastructure owned by or under control of Seller, as set forth on Exhibit C (the “*Services*”), and Seller agrees to provide the Services, subject to the terms and conditions set forth in this Agreement.

### AGREEMENT

In consideration of the foregoing recitals, the mutual agreements, representations, warranties and covenants set forth in this Agreement and the Schedules and Exhibits hereto, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

#### ARTICLE 1. DEFINED TERMS; RULES OF INTERPRETATION

**1.1 Defined Terms.** Capitalized terms used in this Agreement shall have the meanings ascribed to them in the Schedule of Definitions and Rules of Interpretation attached hereto as Exhibit D and made a part of this Agreement by this reference, or elsewhere in this Agreement.

**1.2 Rules of Interpretation.** The rules of interpretation in the Schedule of Definitions and Rules of Interpretation attached hereto as Exhibit D shall apply to this Agreement unless expressly provided otherwise.

#### ARTICLE 2. TERM

**2.1 Term.** The initial term of this Agreement (the “*Term*”) shall commence on the Effective Date and shall be in effect until the [twentieth (20)<sup>th</sup>] anniversary of the Commercial Operation Date.

**2.2 Conditions Precedent.** The respective rights and obligations of the Parties under this Agreement (subject to Section 2.4) are conditioned upon the satisfaction in full (or waiver by Buyer) within [ ] ( ) days after the Effective Date of (i) the receipt by Buyer of final approval from Seller's Serving Utility to operate and interconnect the SEF, and (ii) the following:

(a) Buyer shall have received financing sufficient to enable it to purchase, construct, operate and maintain the SEF as required by this Agreement on terms acceptable to the Buyer in its sole discretion;

(b) Buyer shall have obtained all Governmental Approvals and approvals from Seller's Serving Utility, which approvals shall include conditions and terms satisfactory to Buyer in its sole discretion, which discretion shall include the right to terminate this Agreement if capital improvements are required to be made as a condition to receiving an interconnection agreement from Seller's Serving Utility and such improvements not economically acceptable to Buyer in its sole discretion;

(c) Buyer shall have obtained confirmation from the applicable Governmental Authorities or shall be otherwise satisfied the SEF is eligible to participate in the Virtual Net Metering opportunity for State, Agriculture, or Municipal ("**SAM**") Customers in NRES Program.

(d) Seller shall have executed documents required by any Governmental Entity to participate in the Virtual Net Metering opportunity for SAM customers in the NRES Program;

(e) Buyer shall have entered into the PPA that qualifies under Connecticut's Virtual Net Metering Program for purchase of 100% of the Energy Credits generated by the SEF.

(f) Buyer shall have entered into an Interconnection Agreement with Seller's Serving Utility that qualifies under the Virtual Net Metering opportunity for SAM customers in the NRES Program, under which the Buyer will be designated a Tariff Payment Beneficiary and allocated 100% of Tariff payments; and

(g) Completion of a physical inspection of the Premises by Buyer, including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Property for the SEF.

**2.3 Notice of Commercial Operation.** Unless otherwise agreed by the Parties, and subject to the remaining provisions of this Agreement, Buyer shall notify Seller when the SEF has achieved Commercial Operation (the "**Notice of Commercial Operation**").

(a) **Construction Commencement Notice.** Buyer shall coordinate with Seller a schedule mapping out permitting, Seller approvals, project milestones and time frames.

(b) **Construction Completion Deadline.** If Commercial Operation of the SEF does not occur on or before the date that is [ ] ( ) days after the Effective Date as referenced in the notice provided pursuant to Section 2.3(a) herein, either Party hereto shall have the right to terminate this Agreement by providing written notice to the other at any time prior to the date upon which Commercial Operation is achieved.

**2.4 Survival.** The terms and conditions of this Agreement shall survive the termination or expiration of this Agreement only (i) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations; and/or (ii) as otherwise specified herein.

**ARTICLE 3.  
PURCHASE AND SALE OF SERVICES; ENERGY CREDITS; ASSIGNMENT, GOVERNMENTAL  
CHARGES**

**3.1 Metering Services.** Buyer shall purchase the Services from Seller necessary for the proper and efficient operation of the SEF during the Term, all in accordance with the terms and conditions set forth herein, under the PPA and the requirements of applicable Law. The fees payable for the Services are set forth on Exhibit C and shall be payable on or prior to the first day of each calendar quarter during the Term.

**3.2 Energy Credits.** It is the intent of the parties that this Agreement, together with the PPA, shall comply in all respects with the NRES Rules, under the Buy-All compensation structure. Energy delivered to the Delivery Point shall be metered and shall be recognized in the form of Energy Credits where each kilowatt-hour of Energy delivered to the Delivery Point constitutes one (1) Energy Credit.

**3.3 Buy-All Tariff Rate.** The Buy-All Tariff Rate shall be determined in accordance with the PPA.

(a) According to the NRES Rules, under the Buy-All compensation structure, the EDC will compensate the Buyer for all Energy Credits produced by the SEF at the Buy-All Tariff Rate, . Seller hereby assigns to Buyer the right to all compensation as a Tariff Payment Beneficiary.

(b) As part of the Buyer's application to the NRES Program, Seller shall identify to Buyer and to Seller's Serving Utility up to five (5) Beneficial Accounts and up to five (5) Critical Facility Beneficial Accounts owned and controlled by Seller (the "***Seller's Beneficial Accounts***"), which shall benefit from the Virtual Net Metering opportunity for SAM customers in the NRES Program. Seller may amend the designation of Seller's Beneficial Accounts not more than once per subsequent calendar year by providing at least 60 days prior written notice to the Buyer and Seller's Serving Utility; however, the total of Seller's Accounts, Beneficial and Critical combined shall not exceed ten (10) at any time. Seller will cooperate with the Buyer in providing any additional information which Seller's Serving Utility deems necessary to qualify Seller's Beneficial Accounts.

**3.4 Allocation of Compensation to Tariff Payment Beneficiary.** Buyer shall be designated a Tariff Payment Beneficiary under the NRES Rules, and will be allocated 100% of the total Buy-All Tariff Rate in accordance with the PPA and the NRES Rules.

(a) According to the NRES Rules, payments from the EDC to the Buyer as the Tariff Payment Beneficiary shall occur on a quarterly basis and will be based on the set percentage of the total Buy-All Tariff Rate in Exhibit E, multiplied by the amount of Energy Credits produced by the SEF.

**3.5 Title and Risk of Loss of Energy Credits.** Title to and risk of loss of the Energy Credits shall pass to the EDC pursuant to the terms and conditions of the NRES Rules.

**3.6 Governmental Charges.**

(a) Except as set forth in Section 3.6(b), Buyer is responsible for paying all local, state and federal income taxes attributable to Buyer for income received under this Agreement and the PPA.

(b) The 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 Energy Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the applicable Party with all necessary documentation to evidence such exemption or exclusion.

**3.7 Change in Law/NRES Program.**

(a) Change in Law. The Parties acknowledge and agree that the Buy-All Tariff Rate is based on assumptions related to the availability of Capacity Attributes, Environmental Attributes, Virtual Net Metering opportunity for SAM customers in the NRES Program, and Tax Benefits, including tax-advantaged financing structures. In the event of the elimination or alteration of one or more Capacity Attributes, Environmental Attributes, Virtual Net Metering opportunity for SAM customers in the NRES Program, Tax Benefits or any other change in law that results in a material adverse economic impact on Seller in respect to this Agreement, the Parties shall work in good faith to amend this Agreement within thirty (30) Business Days after such elimination or alteration as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties. In the event the Parties cannot amend this Agreement during the established timeline, the Parties shall resolve the Dispute per the Dispute Resolution process pursuant to Section 15.13.

(b) Material Change to NRES Program. In the event that any material changes to the Virtual Net Metering opportunity for SAM customers in the NRES Program results in a material adverse economic impact on the Parties, the Parties shall negotiate in good faith to amend this Agreement within thirty (30) Business Days after such programmatic change to attempt to restore the economic benefits to the Buyer, its Affiliates and Financing Parties, on the one hand, and the Seller. In the event the Parties cannot amend this Agreement during the established timeline, the Parties shall resolve the Dispute per the Dispute Resolution process pursuant to Section 15.13.

**ARTICLE 4.**

**ENVIRONMENTAL ATTRIBUTES AND TAX BENEFITS**

**4.1 Title to Environmental Attributes, Capacity Attributes, and Tax Benefits.** Title to All Environmental Attributes to the Energy delivered to the Delivery Point by Buyer shall pass to the EDC at the time of production, pursuant to the terms and conditions of the NRES Rules. All Tax Benefits shall remain property of Buyer. Seller shall assign to Buyer all rights to and income from rebates, credits, or reimbursements attributable to the SEF or Energy. Seller shall not report to a Person that Seller owns any Environmental

Attributes Tax Benefits, rebates, credits, or reimbursements. Buyer shall be the sole owner and title holder of the SEF at all times during the Term of this Agreement, which SEF shall (i) at all times retain the legal status of personal property of Buyer as defined under Article 9 of the Uniform Commercial Code and (ii) not attach to or be deemed a part of, or fixture to, the Property. Without limiting the generality of the foregoing, Buyer may file one or more precautionary financing statements, including fixture filings in such jurisdictions as it deems appropriate with respect to the SEFs to protect Buyer's rights therein.

**4.2 Further Assurances.** Promptly upon Buyer's request and provided Buyer is not in default hereunder, Seller shall execute such documents and instruments reasonably necessary or desirable to (i) effect, evidence or transfer to Buyer all right, title and interest in and to the Environmental Attributes and Tax Benefits, or (ii) effect, participate, or enroll the SEF, Environmental Attributes or the utility account for the Meter(s), for the benefit of the Buyer, in any program administered by Seller's Serving Utility, Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity. If the standards used to qualify the Capacity Attributes or Environmental Attributes to which Buyer is entitled under this Agreement are changed or modified, Seller shall promptly upon Buyer's request and without cost to Seller use all commercially reasonable efforts to cause the Capacity Attributes or Environmental Attributes to comply with new standards as changed or modified.

**4.3 Promotion and Branding.** Buyer and Seller are mutually permitted to use the SEF for promotional purposes, which shall be limited to distribution of written materials, and may not include site visits or signs. Notwithstanding the foregoing, neither Party will use the other Party's (or any Financing Party's) corporate name, logo or other identification in any marketing, promotion or branding without the express written permission of the other Party.

**4.4 No Impairment of Environmental Attributes and Tax Benefits.** Seller shall not take any action or suffer any omission that would have the effect of impairing the value to Buyer of Environmental Attributes or Tax Benefits. Seller shall be solely responsible for notifying Buyer of any action or omission that could impair such value and for consulting with Buyer as necessary to prevent impairment of Environmental Attributes or Tax Benefits.

## ARTICLE 5. CONSTRUCTION, MAINTENANCE AND MONITORING

**5.1 Construction, Maintenance, Monitoring and Removal of SEF by Seller.** Buyer shall, at its sole cost and expense, (i) on or before seven [REDACTED] ( [REDACTED] ) days after the Effective Date, as may be extended in accordance Section 2.2, construct the SEF and achieve Commercial Operation in a good and workmanlike manner and in accordance with all Laws and Prudent Utility Practices in all material respects, (ii) maintain the SEF in good condition (including any necessary cleaning of solar panels) and repair in accordance with Prudent Utility Practices and the terms of this Agreement and all Laws in all material respects, and (iii) monitor the SEF's performance to ensure that any SEF malfunction causing a loss of Energy will be discovered and rectified in accordance with Prudent Utility Practices in all material respects. Buyer may modify, alter, expand or otherwise change the SEF without the prior written consent of Seller, so long as such modifications, alterations, expansions or other changes do not result in a material decrease in the capacity of the SEF or a material adverse impact on the operations of the SEF or the SEF's capability to operate.



**5.2 Telemetry.** Buyer shall provide a means for EDC to access real-time data or telemetry with respect to the SEF's performance through means that may reasonably be incorporated into advertising and promotional materials. Subject to Section 5.1 above, Buyer retains the right to use telemetry and other monitoring data concerning the performance of the SEF for evaluative, maintenance, and promotional purposes.

## **ARTICLE 6. METERING DEVICE AND METERING**

**6.1 Metering Equipment.** Buyer shall provide, install, own, operate and maintain a Metering Device with the ability and right for Buyer to access real-time via internet connection to monitor Metering Device. The Metering Device shall be kept under seal, such seal to be broken only by Buyer when the Metering Device is to be tested, adjusted, modified or relocated. In the event that Buyer breaks a seal, Buyer shall notify Seller as soon as practicable. Buyer shall, at its sole cost and expense, maintain Metering Device in accordance with Prudent Industry Practice including testing the Metering Device in accordance with the PPA and applicable interconnection agreement.

## **ARTICLE 7. LOSS, DAMAGE OR DESTRUCTION OF SEF; FORCE MAJEURE**

**7.1 SEF Loss.** In the event of any SEF Loss, as may be determined in the reasonable discretion of Seller, Buyer shall have the option, in its sole discretion, to repair or replace the System or terminate this Agreement. Buyer shall notify Seller in writing of its election within ninety (90) days after the date of the damage to the SEF. Buyer shall, under all circumstances, be entitled to all insurance proceeds with respect to the SEF. If Buyer elects to repair or replace the System, Buyer shall undertake such repair or replacement as quickly as practicable. If Buyer elects to terminate this Agreement, the termination shall be effective immediately upon delivery of the notice under this Section 7.1.

(a) In the event of any SEF Loss that, in the reasonable judgment of Buyer, results in less than total damage, destruction or loss of the SEF and more than five (5) years remains in the Term, this Agreement will remain in full force and effect and Buyer will, at Buyer's sole cost and expense, subject to Section 7.1(c) below, repair or replace the SEF as quickly as practicable.

(b) In the event of any SEF Loss that, in the reasonable judgment of Buyer, results in total damage, destruction or loss of the SEF, or to the extent the SEF is damaged during the last five (5) years of the Term, Buyer shall, within thirty (30) Business Days following written notice from the Seller of the occurrence of such SEF Loss, notify Seller whether Buyer is willing, notwithstanding such SEF Loss, to repair or replace the SEF, it being understood that in such instance, Buyer shall have no obligation to restore the SEF.

(c) In the event that Buyer notifies Seller that Buyer is not willing to repair or replace the SEF, this Agreement will terminate automatically effective upon the delivery of such notice unless Seller agrees to pay the restoration cost. In the event that Buyer notifies Seller that Buyer is willing to repair or replace the SEF, the following shall occur: (A) this Agreement will remain in full force and effect, and (B) Buyer will repair or replace the SEF as quickly as practicable but in any event within nine (9) months of the casualty as may be extended by mutual agreement of the Parties.

**7.2 Performance excused by Force Majeure.** To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the “*Claiming Party*”) gives notice and details of the Force Majeure event to the other Party as soon as practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, then the Claiming Party will be excused from the performance of its obligations under this Agreement affected by the Force Majeure event (other than the obligation to make payments of amounts accrued prior to the Force Majeure event) for a period equal to the effect of the disabling Force Majeure circumstances. The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; *provided, however,* that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion.

**7.3 Termination due to Force Majeure.** If a Claiming Party claims a Force Majeure for a consecutive period of twelve (12) calendar months or longer, either Party may terminate this Agreement, in whole or in part, without any liability to the other Party as a result of such termination (except with respect to payment of amounts accrued prior to termination and actions or omissions that occur prior to termination) by providing written notice of such termination at any time prior to the date upon which the obligation prevented by such Force Majeure has been satisfied. Without limiting the generality of the foregoing, if Buyer does not deliver Energy Credits from the SEF to the Delivery Point for a continuous period of twelve (12) months for any reason other than Seller’s default hereunder, Seller shall have the right to terminate this Agreement by delivering written notice of such termination at any time prior to the date upon which the SEF resumes the production of Energy.

**7.4 Insurance Coverage.** Buyer agrees that while performing services specified in this contract that it shall carry sufficient insurance (liability and/or other) as applicable according to the nature of the service(s) to be performed and name the Seller as an additional insured in such policies. If requested, certificates of such insurance shall be provided to the Seller prior to the performance of services.

## **ARTICLE 8. EVENTS OF DEFAULT; REMEDIES**

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

(a) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within ten (10) Business Days after receipt of written notice from the Party claiming the failure (a “*Non-Defaulting Party*”);

(b) any representation or warranty made by such Party in this Agreement is intentionally false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement if such failure is not remedied within thirty (30) days after receipt of written notice from the Non-Defaulting Party; provided, however, that, if despite due diligence such default is not capable of cure within said thirty (30) days, the Defaulting Party shall have ninety (90) days to cure such default, provided the Defaulting Party diligently

pursues such cure and substantially completes same within said ninety (90) days after the receipt of such notice. The Parties may mutually agree in writing that the Defaulting Party shall have additional time as is reasonably necessary to cure such default; or

(d) such Party becomes Bankrupt; or

(e) Seller prevents assignment of or allocation of Energy Credits from the SEF and assignment to Seller's Beneficial Accounts by the EDC.

**8.2 Seller Remedies.** Upon the occurrence and during the continuance of an Event of Default where Buyer is the Defaulting Party (a "***Buyer Event of Default***"), Seller shall have all rights available to it at law and in equity; however, notwithstanding the foregoing, it is agreed that Seller shall have the right to terminate this Agreement as a result of a Buyer Event of Default only in the event such Buyer Event of Default is a monetary Event of Default or a material non-monetary Event of Default that has resulted in substantial harm, economically or otherwise, to Seller (each such default being a "***Buyer Termination Default***"). In the event any Buyer Termination Default remains uncured following any applicable notice and cure period, Seller shall have the right to provide Buyer with written notice of its intent to terminate this Agreement. In the event such specified Buyer Termination Default and any other subsequent termination event is not cured within forty-five (45) days of Buyer's receipt of such notice of intent to terminate (which notice shall specify the exact Buyer Termination Default and any other being claimed) then thereafter, and only thereafter, Seller shall have the right to (i) terminate this Agreement as of such date by providing written notice of such termination to Buyer.

### **8.3 Buyer Remedies.**

(a) Upon the occurrence and during the continuance of an Event of Default where Seller is the Defaulting Party (a "***Seller Event of Default***"), Buyer shall have the right to (i) obtain from Seller, and Seller shall pay, an Early Termination Payment to Buyer according to Section 8.4 and Exhibit E, and (ii) pursue any and all additional claims against Seller in accordance with Section 15.13. In the event any Seller Event of Default remains uncured following any applicable notice and cure period, buyer shall have the right to provide Seller with written notice of its intent to terminate this Agreement and terminate this Agreement forty-five (45) days after Seller's receipt of such notice.

**8.4 Early Termination Payment Notice.** In the event that Buyer elects to require payment of the Early Termination Payment by Seller as provided in Section 8.3, then, as soon as practicable after calculation of the Early Termination Payment according to Exhibit E by Buyer, Buyer will notify Seller of the amount of the Early Termination Payment and any amount otherwise due and outstanding under this Agreement. Such notice will include a written statement explaining in reasonable detail the calculation of such amount. Seller shall pay the Early Termination Payment and any amount otherwise due and outstanding under this Agreement to Buyer forty-five (45) Business Days after the effectiveness of such notice. For the avoidance of any doubt, Seller's failure to make the Early Termination Payment pursuant to this Section 8.4 shall not effect or preclude Buyer's right or claim to such Early Termination Payment in a claim against Seller pursuant to Section 15.13.

**8.5 Remedies Cumulative.** Except as specifically provided to the contrary, the rights and remedies contained in this Article 8 are cumulative with the other rights and remedies available under this Agreement or at law or in equity.

**8.6 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 9. INVOICING AND PAYMENT**

**9.1 Consideration for Services Provided and Energy Delivered.** As consideration for the provision of Service hereunder, Buyer shall pay to Seller the quarterly Service Fee set forth in Exhibit C. As consideration for the delivery of Energy Credits to the Delivery Point by Buyer, as measured by the Metering Device(s), Buyer shall be designated a Tariff Payment Beneficiary under the NRES Rules, with an allocation of a set percentage of the Buy-All Tariff Rate, in accordance with the PPA.

**9.2 No Setoff.** Except as otherwise set forth herein, each Party hereby waives all rights to set-offs of amounts due hereunder. The Parties agree that all amounts due hereunder are independent obligations and shall be made without set-off for other amounts due or owed hereunder.

**9.3 Records and Audits.** Each Party will keep, for a period not less than two (2) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such Transaction. 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 during such other Party's normal business hours. Notwithstanding the foregoing, in the event that Seller conducts an audit and discovers an inaccuracy in [EDC]'s invoices, charges, computations and payments required for a Transaction in an amount in excess of two percent (2%), Seller shall be entitled to recover the cost and expense of the audit in addition to the other corrective actions required as a result of said audit.

**9.4 Currency.** All pricing offered, payments made and amounts referenced hereunder are and will be in U.S. dollars.

## **ARTICLE 10. REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT**

**10.1 Representations and Warranties.** Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation; (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action, do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law applicable to it and do not require the consent of any third party; (c) this Agreement and each other 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; (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 advisor to it or its Affiliates. Seller represents and warrants to Buyer that: (i) the information provided to Seller pursuant to this Agreement as of the Effective Date is true and accurate in all material respects; (ii) Seller is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company; and (iii) each Party has no knowledge of any facts or circumstances that could materially and adversely affect their respective ability to perform their obligations hereunder.

**10.2 Buyer's Current Electric Requirements.** Seller's annual electric requirements from Seller's Beneficial Accounts, as may be amended from time to time pursuant to Section 3.3(b), are such that the Seller can utilize one hundred and ten percent (110%) of the estimated annual Energy Credits produced during each year of the Term, based on the Expected Output.

**10.3 Seller Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366.** Buyer acknowledges and agrees that, for purposes of this Agreement, Buyer is not a "utility" as such term is used in Section 366 of the United States Bankruptcy Code and Seller agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Seller is a debtor.

## **ARTICLE 11. LIABILITIES, DAMAGES, AND LIMITATIONS**

**11.1 Municipal Immunity or Limitations or Exceptions to Municipal Liability.** The Parties acknowledge and agree that nothing in this Agreement shall be construed as a modification, compromise or waiver by the Seller of any rights or defenses of any immunities or limitations or exceptions to municipal liability provided by Federal Law or the Laws of the State of Connecticut to the Seller or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of this Agreement. To the extent that this section conflicts with any other section, this section shall govern.

**11.2 Limitation of Remedies, Liability and Damages.** The Parties confirm that with respect to the matters specified herein and to the extent specified the express remedies and measures of damages provided in this Agreement satisfy the essential purposes hereof. Without prejudice to the calculation of the amount of any Early Termination Payment and/or indemnity claims arising out of claims by third parties, neither Party will be liable for consequential, incidental, punitive, special exemplary or indirect damages, by statute, in tort or under contract under any indemnity provisions or otherwise; provided however, that notwithstanding the foregoing, in no event will the foregoing limitations of liability be applied to limit the extent of the liability of either Party to the other for intentional misconduct. The limitations imposed herein or remedies and the measure of damages are without regard to the applicable cause or causes, including the negligence of any Party, whether such negligence be sole, joint or concurrent, or active or passive. Notwithstanding any provision of this Agreement to the contrary, Buyer's maximum liability to the seller, except for indemnity obligations in respect of personal injury, property damage and intellectual property infringement claims, under this Agreement will be limited, in the aggregate to the difference between the amount EDC actually pays to the Seller's Serving Utility for replacement Energy and the amount EDC would have had to pay to Buyer for such Energy Credits supplied by Buyer over the remaining term of the Agreement.

**11.3 Limitations on Warranties.** Except as expressly provided in this Agreement, Buyer hereby disclaims any and all representations, warranties and guarantees, express or implied, including warranties of merchantability and fitness for a particular purpose.

**11.4 Duty to Mitigate.** Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

**ARTICLE 12.  
NOTICES**

**12.1 Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below. All notices, requests, statements or payments will be made in writing. Notices required to be in writing will be delivered by hand delivery, overnight delivery or regular, certified, or registered mail, return receipt requested. All notices shall be deemed to have been properly given or made upon the earliest to occur of: (a) actual delivery; (b) two (2) days after being sent by overnight courier service; (c) five (5) days after being deposited in the mail addressed as aforesaid; and (d) one (1) day after being sent by e-mail; provided that in the case of notice by e-mail such notice is followed promptly by the sending of the original of such notice by overnight courier service. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

If to Buyer:                   Greenskies Clean Energy LLC  
  127 Washington Ave  
  West Building, Lower Level  
  North Haven, CT 06473  
  Attention: Stanley Chin, CEO

If to Seller:                   [SELLER]  
  [Seller Address]  
  Attention: \_\_\_\_\_

With a copy to:  
  
\_\_\_\_\_

**ARTICLE 13.  
ASSIGNMENT AND FINANCING**

**13.1 Assignment; Binding Effect.**

(a) Except for assignments to Affiliates, neither Buyer nor Seller shall, without the prior written consent of the other, which consent will not be unreasonably withheld, conditioned or delayed, assign,

pledge or transfer all or any part of, or any right or obligation under, this Agreement, whether voluntarily or by operation of Law, and any such assignment or transfer without such consent will be null and void.

(b) Notwithstanding the foregoing, Buyer may, without the prior written consent of Seller, assign, or otherwise directly or indirectly transfer all or any part of, or any right or obligation under this Agreement (i) to an Affiliate or any party that acquires Buyer or all or substantially all of Buyer's assets; (ii) for security purposes in connection with any financing or other financial arrangements regarding SEF; (iii) to any Financing Party; (iv) to any Qualified Assignee or (v) to an entity that enters into an agreement with a Qualified Assignee pursuant to which (1) such Qualified Assignee shall be responsible for SEF operation and maintenance under this Agreement and (2) Buyer shall have granted to the Qualified Assignee all other rights granted to Buyer herein necessary for operation and maintenance of SEF (each, a "***Permitted Transfer***"). Buyer shall deliver notice of any Permitted Transfer to Seller in writing within thirty (30) days. Seller agrees to execute such reasonable consents to assignment and other documents, and to provide such information, as is requested by Buyer in connection with any Permitted Transfer.

(c) Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns and Buyer shall have no further obligations under this Agreement.

**13.2 Cooperation with Financing.** Seller acknowledges that Buyer will be financing the construction of the SEF and Seller agrees that it shall reasonably cooperate with Buyer and its Financing Parties in connection with such financing for the SEF, including (a) the furnishing of such public information; (b) the giving of such certificates; (c) providing of an officer's certificate of Seller or its affiliate that this Agreement was duly authorized, executed and delivered by Seller, (d) the obtaining of any lien waivers, the execution of commercial law forms, estoppels, consents and such other documents, all as reasonably requested by Buyer or any Financing Party to secure such Financing Party's collateral position in the SEF or in Buyer's rights under this Agreement; *provided, however*, that the foregoing undertaking shall not obligate Seller to change any rights or benefits, or increase any burdens, liabilities or obligations of Seller, under this Agreement to the Financing Parties except as specifically provided herein.

## **ARTICLE 14. FINANCING PARTY ACCOMMODATIONS**

**14.1 Seller Acknowledgment.** Seller acknowledges that Buyer shall have the right to finance the SEF with financing accommodations from a Financing Party and that Buyer's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the SEF. In order to facilitate such necessary financing, Seller agrees as set forth below.

**14.2 Consent to Assignment.** Notwithstanding any contrary term or provision of this Agreement, Buyer shall have the right to assign this Agreement in connection with the financing or refinancing of the SEF, and Seller consents to the assignment by Seller to the Financing Party of Buyer's right, title and interest in and to this Agreement. Notwithstanding any contrary term or provision contained in this Agreement, any assignment of this Agreement to a Financing Party for financing or refinancing of the SEF shall not require Seller's consent. In addition, Seller shall in good faith work with Buyer and Buyer's Financing Party upon request to agree upon

consent by Seller to the assignment of this Agreement, provided that any such consent does not require Seller to alter its rights and obligations pursuant to this Agreement in any way.

**14.3 Financing Party's Rights Following an Event of Default.** Notwithstanding any contrary term or provision of this Agreement:

(a) The Financing Party, as assignee, shall be entitled to exercise, in the place and stead of Buyer, any and all rights and remedies of Buyer under this Agreement in accordance with the terms of this Agreement, provided that such Financing Party also satisfies the obligations of Buyer hereunder. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the SEF.

(b) The Financing 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 Buyer hereunder or cause to be cured any default or Buyer Event of Default in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any Buyer Event of Default (unless the Financing Party has succeeded to Buyer's interests) to perform any act, duty or obligation of Buyer, but seller hereby gives the Financing Party the option to do so.

(c) Upon the exercise of remedies under its security interest in the SEF, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale, or any conveyance from Buyer to the Financing Party, Seller's consent shall not be required, however, the Financing Party will give notice to Seller of the transferee or assignee of this Agreement; *provided, further*, that any sale, transfer or other disposition of the SEF by the Financing Party, whether by judicial proceeding or otherwise, shall be made solely to a Qualified Assignee. Any such exercise of remedies shall not constitute an Event of Default.

(d) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Buyer under the United States Bankruptcy Code, at the request of Financing Party made within sixty (60) days of such termination or rejection, Seller will enter into a new Agreement with Financing Party or its Qualified Assignee, on the same terms and conditions as hereunder, provided that said new Agreement shall only be for a term equal to the remaining years left under this Agreement when said bankruptcy action is taken.

(e) In the event that a Financing Party becomes the owner of the SEF as a result of the exercise of remedies under subsections (c) or (d) above, whether as a result of the exercise of its remedies as a secured party or in connection with the bankruptcy of Buyer, the Financing Party shall agree not to disturb the Seller's rights to sell Services under this Agreement and Energy and Energy Credits under the PPA, pursuant to the terms and conditions hereof, and further agrees to sell its right in the SEF or the Agreement to a Qualified Assignee purchaser only if such purchaser agrees to continue to provide Seller with Services under this Agreement and Energy and Energy Credits under the PPA, in accordance with the terms and conditions hereof and thereof.

**14.4 Financing Party's Right to Cure.**

(a) Upon receipt from Financing Party of its invocation of the rights provided for in this Section 14.4 and the name and address of the Financing Party entitled to notice, Seller will not exercise any right



to terminate this Agreement unless Seller has given the Financing Party prior written notice at the address provided to Seller in writing of any event giving rise to Seller's right to terminate this Agreement. Seller's notice of an intent to terminate this Agreement must specify the condition giving rise to such right. Notwithstanding any contrary term or provision in this Agreement, Financing Party shall have forty-five (45) days beyond the cure period provided to Buyer pursuant to this Agreement to cure the condition. Seller's and Buyer's obligations under this Agreement will otherwise remain in effect and required to be fully performed during any cure period.

(b) If the Financing Party or its Qualified Assignee (including any purchaser which meets the definition of a Qualified Assignee) has commenced and is diligently pursuing judicial proceedings to acquire title to or control of the SEF, or has acquired title to or taken control of the SEF, and in either event cures all existing Buyer Events of Default that are capable of being cured by Financing Party or its Qualified Assignee subject to and within the time allowed by Section 14.4(a) and assumes in writing the obligations of Buyer hereunder, then this Agreement will continue in full force and effect.

**14.5 Notice of Defaults and Events of Default.** Upon and at any relevant time after receipt of the notice provided for in Section 14.4(a), Seller agrees to deliver to the Financing Party a copy of any notice of a Buyer's default simultaneously with the delivery of such notice by Seller to Buyer.

## **ARTICLE 15. MISCELLANEOUS**

**15.1 Governing Law.** This Agreement will be governed by the Laws of Connecticut, without giving effect to principles of conflicts of Laws.

**15.2 Entire Agreement; Amendments.** This Agreement (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior oral or written agreements between the Parties, relating to the subject matter hereof. Except as otherwise expressly provided in this Agreement, any amendment, modification or change to this Agreement will be void unless in writing and executed by both Parties.

**15.3 Non-Waiver.** No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. No waiver by either Party of a breach of any term or provision contained herein shall be effective unless signed and in writing and signed by the waiving Party. No consent by either Party to, or waiver of a breach by either Party, whether express or implied, shall be construed operate as or constitute a consent to waiver of, or excuse of any other or subsequent or succeeding breach by either Party.

**15.4 Severability.** If any part, term, or provision of this Agreement, is determined by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality or enforceability of any other part, term, or provision of this Agreement, and shall not render this Agreement unenforceable or invalid as a whole. Rather the part of this Agreement that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal enforceable, and valid provision that is as similarly in tenor to the stricken provision, within the limits of applicable Law, and the remainder of this Agreement will remain in full force.

**15.5 No Third Party Beneficiaries.** Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

**15.6 No Recourse to Affiliates.** This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder unless such obligations were assumed in writing by the Person against whom recourse is sought.

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

**15.8 Counterparts.** This Agreement may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this Agreement received by either Party by facsimile or other electronic transmissions (such as an email .pdf file) is binding upon the other Party as an original.

**15.9 Further Assurances.** The Parties shall at their own cost and expense do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this Agreement.

**15.10 General Interpretation.** The terms of this Agreement have been negotiated by the Parties hereto and the language used in this Agreement shall be deemed to be the language chosen by the Parties hereto to express their mutual intent. This Agreement shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument of any portion thereof to be drafted, or in favor of the party receiving a particular benefit under the Agreement. No rule of strict construction will be applied against any person.

**15.11 Removal of Liens.** Buyer shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the SEF in order to protect its rights in the SEF, provided, however, that Buyer shall not be entitled to place any filings, liens, notices or encumbrances against any real property owned by the Seller.

**15.12 Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

**15.13 Dispute Resolution.**

(a) **Good Faith Negotiations.** In the event that any question, dispute, or difference arises out or in connection with this Agreement, including any question regarding its existence, validity, performance or termination (a “*Dispute*”), then senior management personnel from both Seller and Buyer shall meet and

diligently attempt in good faith to resolve the Dispute for a period of thirty (30) days following one Party's written request to the other Party for such a meeting.

(b) Jurisdiction and Venue. In the event the Parties are unable to resolve a Dispute pursuant to the provisions of Section 15.13(a), the Parties deem this Agreement to have been made in the [MUNICIPALITY], State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Agreement to be, and it shall be, governed by the Laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of Laws. To the extent that any immunities provided by Federal Law or the Laws of the State of Connecticut do not bar an action against the Seller, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of [MUNICIPALITY] only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court. The Buyer waives any objection which it may now have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

**15.14 Freedom of Information Act.** Seller shall comply with all Connecticut Freedom of Information Act (“FOIA”) requirements, any Federal, State, or local statute, regulation, ordinance, or State policy that mandates disclosure and may require disclosure for an audit that may become public. Notwithstanding anything herein to the contrary, Seller shall use best efforts to not disclose any information associated with this Agreement which falls under the FOIA exemptions enumerated in Section 1-210(b) of the Connecticut General Statutes.

**15.15 Disclosure of Records.** This Agreement may be subject to the provisions of section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency, as defined in section 1-200 of the Connecticut General Statutes, and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to the FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of sections 1-205 and 1-206 of the Connecticut General Statutes.

[signature page to follow]

IN WITNESS WHEREOF, intending to be legally bound, Seller and Buyer have signed this Agreement through their duly authorized representatives effective as of the date first set forth above.

GREENSKIES CLEAN ENERGY LLC

By: \_\_\_\_\_  
Name: Stanley Chin  
Title: CEO  
Date: \_\_\_\_\_

[MUNICIPALITY]

By: \_\_\_\_\_  
Name:  
Title:  
Date: \_\_\_\_\_

**EXHIBIT A**

**SOLAR ENERGY FACILITY**

**Estimated Solar System Size and Location “System Site”**

**Estimated Solar System Size:**

**Inverter:**

**Delivery Point:**

**Monitoring Equipment:**

**System #1 Description:**

**EXHIBIT B – PROPERTY**

**Address:**    **Satellite Picture of Property:**

**EXHIBIT C**

**SERVICES**

**DESCRIPTION OF SERVICES:**

**SERVICE FEE: [ ] % of Buyer's Quarterly Compensation under PPA:**

**PAYMENT PROVISIONS AND INVOICING:**

## EXHIBIT D

### Schedule of Definitions and Rules of Interpretation

1. **Definitions.** The definitions provided below and elsewhere in this Agreement will apply to the defined terms used in this Agreement:

(a) “**Affiliate**” means with respect to any entity, such entity’s general partner or manager, employee, or any other entity that, directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, such entity. For purposes of this definition, “control” (including, with its correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any such person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

(b) “**Agreement**” means this Virtual Net Metering Services Purchase Agreement.

(c) “**Bankrupt**” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) is unable to pay its debts generally as they come due or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within sixty (60) days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency Law or other similar Law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(d) “**Buyer**” shall have the meaning ascribed to it in the Preamble.

(e) “**Seller’s Beneficial Accounts**” has the meaning ascribed thereto in Section 3.3 (b).

(f) “**Buyer Event of Default**” has the meaning ascribed thereto in Section 8.2.

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



(h) “**CAMD**” means the Clear Air Markets Division of the United States Environmental Protection Agency or any successor or other agency that is given jurisdiction over a program involving transferability of specific Environmental Attributes.

(i) “**Claiming Party**” shall have the meaning ascribed to it in Section 7.2.

(j) “**Commercial Operation**” will begin on the day in which the entire SEF is operating on a sustained basis and producing Energy and Buyer is in receipt of all required approvals, signoffs and permits from any and all Governmental Entities and the Seller’s Serving Utility for the production, delivery and sale of Energy (including the Energy Credits and resale of Energy to Seller’s Serving Utility).

(k) “**Commercial Operation Date**” means the date upon which the SEF begins Commercial Operation, as set forth in the Notice of Commercial Operation.

(l) “**Defaulting Party**” shall have the meaning ascribed to it in Section 8.1.

(m) “**Delivery Point**” means the EDC’s meter or a point designated by EDC located on Seller’s premises. In accordance with the State of Connecticut’s Year 2 NRES program Rules, the Delivery Point may referred to as the point of common coupling or the point of interconnection.

(n) “**Discounted Revenue Forecast**” means the sum of the present values calculated at the per annum rate of interest equal to [four percent (4%)] of the following amounts for each year (or part thereof) remaining between the early termination date and the end of the Term: (i) the applicable Buy-All Tariff Rate and percentage allocation to Buyer as a Tariff Beneficiary for such year, if known, or a mutually agreed estimate of the Buy-All Tariff Rate and percentage allocation to Buyer as a Tariff Beneficiary for such year, multiplied by (ii) the average annual output during the previous three (3) years.

(o) “**Early Termination Payment**” means an amount equal to the sum of (i) Discounted Revenue Forecast applicable through the end of the Initial Term, (ii) the value of Environmental Attributes relating thereto, such value determined based on the greater of the value at which Buyer had contracted to sell those Environmental Attributes or the spot market value, and (iii) the value of any lost Tax Benefits. A table of annual Early Termination Payments is found in Exhibit E.

(p) “**Effective Date**” shall have the meaning ascribed to it in the Preamble to this Agreement.

(q) “**Energy**” means electric energy (alternating current, expressed in kilowatt-hours) generated by the SEF. Energy does not include any attendant Environmental Attributes.

(r) “**Energy Credit**” shall have the meaning ascribed to it in Section 3.1.

(s) “**Buy-All Tarriff Rate**” shall have the meaning ascribed to it in Section 3.2.

(t) “**EDC**” means the Electric Distribution Company as referenced in the NRES Rules

(u) “*Environmental Attributes*” means each of the following that is in effect as of the Effective Date or in the future: (i) credits, benefits, reductions, offsets and other beneficial allowances, including, to the extent applicable and without limitation, performance based incentives or renewable portfolio standard in the state in which the Property are located or in other jurisdictions (collectively, “*Allowances*”) attributable to the ownership or operation of the SEF or the production or sale of Energy, (ii) 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 solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy or Energy Credits during the Term and in which Buyer has good and valid title, including any credits to be evidence by Solar Renewable Energy Certificates or similar laws or regulations applicable in any jurisdiction, (iii) any such Allowances related to (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) the United Nations Framework Convention on Climate Change (the “*UNFCCC*”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or involving or administered by the CAMD, and (iv) all reporting rights with respect to such allowances under Section 1605(b) of the Energy Policy Act of 1992, as amended from time to time or any successor statute, or any other current or future international, federal, state or local law, regulation or bill, or otherwise. Environmental Attributes shall also include Tax Benefits.

(v) “*Event of Default*” shall have the meaning ascribed to it in Section 8.1.

(w) “*Expected System Output*” shall have the meaning ascribed to it in Exhibit A.

(x) “*Financing Party*” or “*Financing Parties*” shall mean any and all Persons or successors or assignees thereof lending money or extending credit to Buyer or an Affiliate of Buyer, or investing equity (including tax equity) in Buyer or an Affiliate of Buyer: (i) for the construction, term or permanent financing of the SEF; (ii) for working capital or other ordinary business requirement of the SEF (including but not limited to the maintenance, repair, replacement or improvement of the SEF); (iii) for any development financing, bridge financing, credit enhancement, credit support or interest rate protection in connection with the SEF; (iv) for the Buyer’s operation of the SEF; or (v) for the purchase of the SEF and related rights and obligations of Buyer.

(y) “*FOIA*” shall have the meaning ascribed to it in Section 15.14.

(z) “*Force Majeure*” means any event or circumstance that prevents a Party from performing its obligations under this Agreement, which event or circumstance (i) is not within the reasonable control, or is not the result of the negligence or willful misconduct, of the Claiming Party, and (ii) by the exercise of reasonable due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided and shall be deemed to include, but not be limited to, acts of God, acts of civil or military authorities, acts of war or public enemy, terrorism, threat of terrorism, insurrections, riots, fires, explosions, floods, interruption of transportation, embargoes, or other causes of a similar nature. Force Majeure will not be based on (i) Seller’s inability to economically to use Energy Credits purchased hereunder for the Seller’s Beneficial Accounts, or (ii) Buyer’s ability to sell Environmental Attributes at any price or Energy Credits at a price greater than the price of Energy Credits under this Agreement.

(aa) “**Governmental Approvals**” means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required to be obtained or maintained by any Person with respect to the development, siting, design, acquisition, construction, equipping, financing, ownership, possession, shakedown, start-up, testing, operation or maintenance of the SEF, the production and delivery of Energy, and Environmental Attributes, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements).

(bb) “**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, license fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Entity, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this Agreement.

(cc) “**Governmental Entity**” means any government or any agency, bureau, board, commission, court, department, official, political subdivision, tribunal, program administrator or other instrumentality of any government, whether federal, state or local, domestic or foreign, or any Person, owned, operated, managed or otherwise controlled thereby.

(dd) “**ITC Credit**” means (i) the energy credit under Section 48 of the Internal Revenue Code of 1986, and (ii) the grant under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, as each may be amended, supplemented, extended or replaced from time to time, and including all successor enactments or legislation relating thereto.

(ee) “**Interconnection Agreement**” means the agreement for interconnection of the SEF with the distribution system of Seller’s Serving Utility.

(ff) “**Interconnection Equipment**” means that portion of the SEF, including mounting substrates or supports, wiring and connections, power inverters, service equipment, Metering Devices and equipment and utility interconnections, as required or appropriate to effect the interconnection of the SEF to the Seller’s Serving Utility, including such as may be located on Seller’s Leased Property.

(gg) “**Law**” means any federal, regional, state or local law, statute, rule, regulation, code, ordinance, administrative ruling, judgment, decree, order or directive of any jurisdiction applicable to this Agreement or the transaction contemplated hereby.

(hh) “**Metering Device**” means any and all Seller owned and operated meters at or immediately before the Delivery Point needed for the registration, recording, and transmission of information regarding the Energy delivered to the Delivery Point.

(ii) “**Non-Defaulting Party**” shall have the meaning ascribed to it in Section 8.1(a).

2.3. (jj) “*Notice of Commercial Operation*” shall have the meaning ascribed to it in Section

(kk) “*NRES*” means the applicable Year 1 Non-Residential Renewable Energy Solutions Program.

(ll) “*NRES Rules*” means the Year 1 Non-Residential Renewable Energy Solutions Program Rules prepared by the Connecticut Light and Power Company d/b/a Eversource Energy and the United Illuminating Company dated as of December 10, 2021.

(mm) “*Parties*” shall have the meaning ascribed in the Preamble.

(nn) “*Permitted Transfer*” shall have the meaning ascribed to it in Section 13.1(b).

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

(pp) “*Prudent Utility Practices*” means those practices, methods, and acts, that are commonly used by a significant portion of the solar powered electric generation industry in the United States using prudent engineering and operations to design and operate solar powered generating facilities and related electric equipment lawfully and with safety, dependability, efficiency, and economy, including all applicable requirements of Law. Prudent Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be a spectrum of possible standards, practices, methods or acts expected to accomplish the desired results, having due regard for, among other things, manufacturers’ warranties and the requirements of governmental authorities of competent jurisdiction and the requirements of this Agreement.

(qq) “*Qualified Assignee*” means as it pertains to any assignment of this Agreement by Buyer, any entity that has competence and experience in the operation and maintenance of solar photovoltaic systems similar in size and type as the SEF and is financially capable of performing Buyer’s obligations under this Agreement, all as reasonably demonstrated to Seller, and agrees in writing to assume Seller’s duties and obligations under the Agreement.

(rr) “*Representatives*” means, in respect of a Person, the officers, directors, employees, agents, advisors, contractors, or other representatives of such Person (for the avoidance of doubt, this does not include students of such Person who do not fall into any of the foregoing categories of such Person).

(ss) “*SEF*” means the solar electric generating facility that produces the Energy and Energy Credits purchased under this Agreement as more particularly defined in Exhibit A hereto, including the Interconnection Equipment.

(tt) “*SEF Assets*” means each and all of the assets of which the SEF is comprised, including Buyer’s solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Property, electric lines and conduits required to connect such equipment to the Delivery Point, protective and associated

equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the SEF.

(uu) “**SEF Loss**” means loss, theft, damage or destruction of the SEF or SEF Assets, or any other occurrence or event that prevents or limits the SEF from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or other Force Majeure).

(vv) “**Seller**” shall have the meaning ascribed to it in the Preamble.

(ww) “**Seller Event of Default**” has the meaning ascribed thereto in Section 8.3.

(xx) “**Seller’s Serving Utility**” means [The Connecticut Light and Power Company d/b/a Eversource Energy].

(yy) “**Seller Termination Default**” has the meaning ascribed thereto in Section 8.2.

(zz) “**Solar Renewable Energy Certificates**” or “**SRECs**” means the certificate representing the environmental attributes associated with Energy, as developed under the oversight and regulations of the State of Connecticut Public Utilities Regulatory Authority, including any modifications or revisions thereof adopted by such regulator or any successor agency.

(aaa) “**Tax Benefits**” means ITCs attributable to the SEF or Energy (including the ITC Credit), accelerated depreciation attributable to the SEF or any SEF Asset, and any other tax credit or tax write-offs allowed under applicable law attributable to the SEF or Energy, irrespective of whether such Tax Benefits accrue for the benefit of Buyer, any Affiliate, or any investor of buyer or any Affiliate of such investor.

(bbb) “**Term**” shall have the meaning ascribed thereto in Section 2.1.

(ccc) “**Third Party Monitor**” means an unaffiliated third party, selected in each case by Seller and reasonably approved by seller that provides, installs, operates or maintains the installation, operation, or maintenance of the Metering Devices.

(ddd) “**Transaction**” means any transaction between the Parties under the terms of this Agreement and any transaction between the Seller’s Serving Utility and either of the Parties relating to payments based on energy produced by the SEF at the Buy-All Tariff Rate

(eee) “**Utility Requirements**” means any protocols, procedures, or guidelines which apply to the SEF and are implemented, required or otherwise adopted by Seller’s Serving Utility.

2. **Rules of Interpretation.** In this Agreement, unless expressly provided otherwise:

(a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Agreement and a reference to a recital, Article, Section, subsection or paragraph of this Agreement

or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this Agreement or other agreement in which it is used unless otherwise stated;

(b) references to this Agreement, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto;

(c) reference to any Article, Section, or Exhibits means such Article of this Agreement, Section of this Agreement, or such Exhibit to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(d) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Agreement or such other agreement, instrument or provision, as the case may be;

(e) a reference to a statute or other Law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, Law or provision;

(f) the singular includes the plural and vice versa;

(g) a reference to a Person includes a reference to the Person's executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;

(h) words of any gender shall include the corresponding words of the other gender;

(i) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;

(j) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

(k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a day is a reference to a calendar day, (ii) a month is a reference to a calendar month, and (iii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) references to any date in this Agreement shall be deemed to mean such date as adjusted from time to time as permitted hereunder due to Force Majeure unless expressly stated otherwise; and

(q) if any index used in this Agreement at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then Seller and Buyer shall agree upon a substitute index that most closely approximates the unavailable index as in effect prior to such unavailability. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this Agreement.

**EXHIBIT D**

<b>System Name:</b>	[_____]
<b>NRES Program Tariff Type:</b>	Buy-All Tariff
<b>Buy-All Tariff Rate &amp; Bid Price (\$/MWh):</b>	\$
<b>Bid Preference (Y/N + type + %)</b>	Yes, Distressed Community (20%)
<b>Evaluated Bid Price:</b>	\$[_____]
<b>NRES Program Tariff Payment Beneficiary:</b>	Buyer
<b>Allocation to Tariff Payment Beneficiary:</b>	100.0% (e.g., \$[_____] / \$[_____] )
<b>Buyer's Beneficial Accounts:</b>	[_____][_____]



**EXHIBIT E**

**EARLY TERMINATION PAYMENT**

The Early Termination Payment with respect to the System under the Agreement shall be calculated in accordance with the table shown below.

<b>Early Termination Occurs in Year:</b>	<b>Termination Value</b>
Year	Termination Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	