

HOST COMMUNITY AGREEMENT

This HOST COMMUNITY AGREEMENT (“HCA” or the “Agreement”) is entered into as of the ____ day of _____, 2024 (“Effective Date”), by and between the Town of Medway, Massachusetts (the “Town” or “Medway”), a municipal corporation and body politic of the Commonwealth of Massachusetts, having its offices at 155 Village Street, Medway, Massachusetts. 02053, and Hecate Energy Medway Energy Center, LLC (“Medway Energy Center”), a Delaware Limited Liability Company, having a business address of 621 W. Randolph ST. Chicago, Illinois, 60661. Medway and Medway Energy Center are referred to herein collectively as the “Parties” and individually as “Party.”

RECITALS

WHEREAS, Medway is host community to the proposed 300 megawatt (“MW”) battery energy storage system (“BESS”) at 15 West Street, Medway to be constructed, owned and operated by Medway Energy Center, as described in Exhibit A (the “Project”);

WHEREAS, Medway Energy Center will apply, or has applied, for all necessary federal, state and local permits and approvals for the Project, including, but not necessarily limited to, the following additional agencies: Town of Medway Planning and Economic Development Board; Town of Medway Conservation Commission, United States Environmental Protection Agency (National Pollutant Discharge Elimination System General Permit); Massachusetts Environmental Policy (Expanded Environmental Notification Form and Single Environmental Impact Report); the Massachusetts Department of Public Utilities; and the Massachusetts State Historic Preservation Office (Project Notification Form);

WHEREAS, Medway intends, through this Agreement and all legal powers and remedies available to it, to protect the best interests of its residents, businesses, and its corporate organization at all times to ensure that the Project is safe, efficient, and beneficial for the Medway community;

WHEREAS, Medway’s technical consultants, officials, staff and legal counsel have extensively analyzed BESS systems in general and concluded that, subject to the terms of this Agreement, and Medway Energy Center’s reasonable adherence to Applicable Laws (as defined herein), the net result of the Project’s construction and operation is designed to minimize impacts to the environment, ensure the safety of the public, minimize disruption to the Town and the public, provide reasonable assurance to the Town and its residents that such construction impacts will be mitigated and facilitates the use of efficient construction methods;

WHEREAS, Medway Energy Center is willing to make environmental, public health and public safety payments and other investments, undertake protective or mitigation measures and other certain non-monetary public health and public safety measures, as set forth herein;

WHEREAS, Medway Energy Center has acknowledged and committed that the Project shall provide tax payments to the Town, including, without limitation, community preservation funds, over the twenty-year life of the anticipated Tax Agreement, of not less than fifty-six

million, eight hundred fifty thousand dollars (\$56,850,000) and is committed to negotiating a tax agreement to memorialize this commitment;

WHEREAS, both the Town and Medway Energy Center desire that, should the proposed Project be authorized by the applicable regulatory agencies and government authorities and thereafter be constructed by Medway Energy Center, the construction be carried out, subject to such authorizations, in a manner that: minimizes impacts to the environment, ensures the safety of the public, and minimizes disruption to the Town and the public resulting from the Project; provides reasonable assurance to the Town and its residents that such construction impacts will be mitigated; and facilitates the use of efficient construction methods;

NOW, THEREFORE, in consideration of the mutual promises and covenants of each to the other contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Medway Energy Center hereby covenant and agree as follows:

1. Cooperation Between Medway Energy Center and Medway

The Town and Medway Energy Center have entered into this Agreement to foster a cooperative working relationship with respect to the Project. Both Parties agree to work constructively and in good faith with the other to promote their mutual interests and further agree to cooperate to the maximum extent consistent with their respective activities and responsibilities. The rights, duties and obligations of the Parties hereunder shall be exercised in good faith and in a commercially reasonable manner.

2. Term

This Agreement shall commence on the Effective Date hereof and, except as otherwise provided herein, shall end on the last day of the calendar year in which the Project is last operated by either Medway Energy Center or a successor Project owner (the "Term"). This Agreement shall remain in full force and effect regardless of the standing and status of any other agreement and remains enforceable in full by the Parties hereto. The provisions of this Agreement that shall expressly survive termination of this Agreement are set forth in Section 25.

3. Permitting

Medway Energy Center shall be responsible for applying for, among other things, all applicable and required local permits and shall be responsible for the payment of all permitting and inspection fees in effect at the time of application for each. Medway Energy Center agrees to on-site inspections as reasonably required for approval of applicable local permits during construction or operation of the Project. As of the time of execution of this Agreement, the Parties agree that, to the best of their knowledge and belief at the time of execution of this Agreement, such local permits include, without limitation:

Special Permit and Major Site Plan approval from the Planning and Economic Development Board;

Land Disturbance Permit, Article 26 Stormwater Management and Land Disturbance, of the General By-laws, from Conservation Commission;

Tree Removal Permit, Article 31 Tree Preservation, of the General Bylaws, from the Conservation Commission

Order of Conditions under Wetlands Protection Act (including the Rivers Act) and Town Wetlands By-law from Conservation Commission;

Water Connection Approval, Department of Public Works

Street Opening Permit, Department of Public Works;

Demolition permits, (Above-ground Storage Tank Removal, if applicable), Commercial Building permit, Electrical permit, Plumbing permit, from the Building Department; and

Site Plan Review from the Medway Fire Department, pursuant to 527 CMR 1.05 Table 1.12.8.32. To the extent that fire hydrants are required, approval of the Medway Department of Public Works will be obtained.

Although recognized as advisory only, Medway Energy Center shall also present appropriate elements of the Project to the Medway Design Review Committee.

4. Notwithstanding anything to the contrary in this Agreement, Medway Energy Center reserves the right to file for, and if granted utilize, a comprehensive zoning exemption with the Massachusetts Department of Public Utilities (“DPU”) from the Town’s zoning bylaws following the initial filing of a Site Plan with the Medway Planning and Economic Development Board that would allow the construction and operation of the BESS located at the above-referenced location in accordance with the requirements established by the DPU pursuant to G.L. c. 40A, Section 3. Similarly, Medway Energy Center reserves the right to file with the Massachusetts Energy Facilities Siting Board for a Certificate of Environmental Impact and Public Interest for the BESS.

5. Independent Agreement

It is acknowledged and agreed that this Agreement, in part and in its entirety, is and shall remain separate and distinct from any other agreements made between Medway Energy Center and Medway relative to this Project, including any tax agreement that may be entered into between Medway Energy Center and the Medway Select Board regarding the tax valuation of the Project (“Tax Agreement”).

6. Amount and Term of Payments

The payments made pursuant to this Agreement shall be independent of, and are in no way dependent upon, payments to be made to Medway pursuant to any Tax Agreement. Unless different payment dates are expressly set forth herein, initial payments due hereunder shall be made on or before the thirtieth day after the Effective Date and June 1st of each succeeding year, and payments referencing Commercial Operations, as defined herein, shall be due no later than sixty days following such initial date of Commercial Operations.

A. Public Safety Training & Technical Rescue Equipment Funds

- i. Medway Energy Center shall provide public safety & emergency management training surrounding first responder response to and community preparedness for BESS and electrical systems incidents in an amount of fifteen thousand dollars (\$15,000) annually to Medway. Medway Energy Center will also submit to Medway an Emergency Response Plan for the Project prior to Medway Energy Center’s commissioning of the Project and shall consider in good faith Medway’s comments on such Emergency Response Plan.
- ii. In an effort to provide Medway and regional responders with technical rescue tools, equipment, and supplies necessary to handle a large-scale incident, Medway Energy Center shall pay the Medway Fire Department the sum of one million one hundred and fifty thousand dollars (\$1,150,000) not later than thirty days following commercial operation to purchase a technical rescue & command center vehicle. It is recognized that this amount is an estimate based upon 2024 dollars, and in the event that commercial operation does not occur by July 1, 2027, this amount shall be increased by two hundred and fifty thousand dollars (\$250,000), provided, however, that the total payments due pursuant to this Agreement at Commercial Operation shall not exceed one million nine hundred thousand dollars (\$1,900,000) and the total payments due, exclusive of any real estate or personal property tax obligations, at the first anniversary of Commercial Operation shall not exceed seven hundred fifty thousand dollars (\$750,000).

B. Technical Review Fund

- i. For Review and Participation in Permitting for the Project Medway Energy Center shall provide Medway with funding for costs incurred by the Town to retain

independent consultants and counsel necessary for the Town to review and participate in any proceeding(s) regarding permits for the Project. This one-time payment shall be one hundred twenty-five thousand dollars (\$125,000) and shall be paid to the Town not later than thirty days following the Effective Date of this Agreement.

C. Town Energy & Sustainability Programming Funding

- i. Medway Energy Center recognizes the efforts of the Town to address renewable energy programming, investigate opportunities to improve energy efficiency and battery storage at Town properties, develop fleet alternatives with electric and hybrid vehicles, and create educational programming to highlight energy sustainability programs, and as such, commits the following funding to the Town in the amounts and at times as follows:
 - a) Municipal Electric and Hybrid Vehicles Conversion Program (vehicles and charging stations) funded in the amount of one hundred sixty-five thousand dollars (\$165,000) due not later than thirty days following the Effective Date of this Agreement; and
 - b) Community Outreach Programming Fund for the purpose of providing real-time messaging and outreach to the community through a digital message center(s) in the amount of ninety thousand dollars (\$90,000) due not later than thirty days following the Effective Date of this Agreement; and
 - c) A fund for the purpose of providing for Municipal Facilities with systems and structural upgrades and/or improvements for renewable energy alternatives in the amount of five hundred thousand dollars (\$500,000) due not later than thirty days following the first anniversary of commercial operation; and
 - d) Funding for the provision of Battery Energy Storage Systems (“BESS”) at Municipal Facilities equipped with solar or wind devices in the amount of two hundred and fifty thousand dollars (\$250,000) due not later than thirty days following the first anniversary of commercial operation; and
 - e) A Public Facility Energy Efficiency Annual Improvement fund in the amount of thirty-five thousand dollars (\$35,000) due annually; and
 - f) A Community Energy & Climate Sustainability Annual Fund in the amount of twenty-five thousand dollars (\$25,000) due annually.

D. Property Value Security Fund

Medway Energy Center agrees to pay residential homeowners who are located within three hundred feet of the Project’s perimeter (on the date that construction begins) for a material

reduction in the value of their home that a homeowner can demonstrate was directly attributable to the construction of the Project in an amount not to exceed twenty-five thousand dollars (\$25,000) per property. This clause applies to the addresses/tax parcel numbers listed in Exhibit C.

Claims for payment must be filed with the Board of Assessors within five years of the date of commencement of construction of the Project. Medway shall provide Medway Energy Center with written notice of such claim, and Medway Energy Center and the Town shall provide the homeowner with a list of three appraisers that are mutually acceptable to the Town and Medway Energy Center. The homeowner shall select one appraiser from that list. The homeowner and Medway Energy Center shall each pay half of the cost of such independent, third-party appraiser. If the appraiser's findings confirm that the homeowner has experienced an economic loss due to a material reduction in the value of their home directly attributable to the Project, then Medway Energy Center shall refund the homeowner's cost of the appraisal and shall compensate the homeowner in the amount of the diminution in property value, up to a maximum of twenty-five thousand dollars (\$25,000).

On or prior to the commencement of construction of the Project: (a) Medway Energy Center shall establish an escrow account (the "Security Account") with a national banking institution, and shall maintain such account until the later to occur of: (i) the date that is five years after the commencement of construction of the Project; and (ii) that date on which the last properly-filed claim under this Section has been resolved; and (b) shall initially deposit fifty thousand dollars (\$50,000) into the Security Account.

Funds in the Security Account shall be used by Medway Energy Center to compensate homeowners in accordance with this Section. In the event that, at the end of any month during the term of the Security Account as set forth above, the balance of funds in the Security Account is less than fifty thousand dollars (\$50,000), Medway Energy Center shall, on or before the 15th day of the subsequent month, deposit sufficient additional funds into the Security Account so as to restore the balance to not less than fifty thousand dollars (\$50,000).

For the purposes of this subsection, in the event that more than one entity owns an interest in such a property, all such owners with respect to a property shall collectively, and not individually, be deemed one homeowner.

E. Community Support Funding

Medway Energy Center, in an effort to demonstrate its commitment to and support of the Medway Community commits to providing the following funding:

- i. Funding to support the agricultural and farming programs at Medway Community Farm in the annual amount of fifty thousand dollars (\$50,000) due annually on June 1st.
- ii. Funding to support the efforts of the Food Banks in Medway, the Medway Food Pantry at Mahan Circle and the Medway Village Food Pantry, in the annual

amount of ten thousand dollars (\$10,000) to each Pantry not later than June 1st of each year.

- iii. Funding to support youth and adult recreation programs in the Town under the Parks and Recreation Commission shall be in the annual amount of thirty thousand dollars (\$30,000) paid not later than June 1st of each year.

F. Water Quality Improvement Funding

Medway Energy Center shall provide the Town with the following sums of money designed to enhance the Town's drinking water and stormwater systems on the dates shown:

- i. PFAS Reduction Fund in the amount of five hundred thousand dollars(\$500,000) due not later than thirty days following commercial operation; and
- ii. Stormwater Enhancement Program designed to promote programs that will assist in the compliance of targeted removal thresholds of stormwater contaminants in the annual amount of fifty thousand dollars (\$50,000) due annually on or before June 1st.

G. Abutting Neighbors Landscaping Fund

Medway Energy Center shall, not later than sixty days after the commencement of Commercial Operation and only upon written request of the landowner, provide any abutting landowner within three hundred feet of the perimeter of the Project with a one-time landscaping allowance of five thousand dollars (\$5,000).

7. Facilitation of the Project

A. Medway agrees to take reasonable measures with respect to which it has legal capacity to facilitate the timely review of all local permits and approvals necessary to accomplish the Project and to act at all times during such review within its legal capacity. This Section is not intended to and shall not be construed to imply that the Select Board has the authority to direct the outcome of any application submitted to any independent, local permit-issuing authority nor that the Select Board has the independent or concurrent authority to issue any permits or other such approvals for the Project. Further, this Section is not intended to limit the exercise of the Town's police powers or duty to protect public health and safety.

B. Upon request of the Town, Medway Energy Center shall cooperate with and provide assistance to the Town in its efforts to review and evaluate the Project, including, but not limited to, all geotechnical, topographic, conservation, and civil engineering reviews, as well as any environmental, noise testing or other reports submitted by Medway Energy Center to any Governmental Authority (as defined in Section 8), including changes to or modifications of the Project and/or PILOT/tax appraisals that may be deemed necessary by the Massachusetts Department of Revenue and/or the Town. Medway Energy Center shall provide Medway boards, commissions and committees with funding for costs incurred by the Town related to such

reviews and reports, including peer reviews with a maximum amount of \$100,000. This section and reimbursables are independent of and excluded from any monetary amounts identified above.

C. Consistent with Section 16(C) below, Medway Energy Center shall no later than ninety days after the Effective Date of this agreement, create and maintain a web page that provides up-to-date information about the Project and an opportunity for the Medway community to communicate online with, and ask questions of, representatives of Medway Energy Center and receive timely responses to any such questions about the Project.

D. Medway Energy Center agrees to work in good faith with the Town's Community & Economic Development officials to (i) consider any design changes to the Project and site plan and (ii) address material engineering and technical review concerns proposed by the Town to protect the health and safety of residents, onsite employees and the impacts on surrounding properties and environmental resources.

8. Compliance with Laws

- A. Medway Energy Center shall ensure that the design, construction and operation of the Project conform to and comply with Applicable Laws (as defined below) including, but not limited to, as follows: (A) any traffic, noise or visual requirements or limitations; (B) any applicable building, plumbing, electrical, gas, and fire safety codes; and (C) configuration of all lighting, landscaping, building and site design(s), and signage and National Fire Prevention Agency ("NFPA") 855 Standard for the Installation of Stationary Energy Storage Systems.
- B. Medway Energy Center and any successor Project owner shall operate the Project in accordance with Good Industry Practice, as defined herein.
- C. Medway Energy Center shall ensure that any subcontractors hired to perform construction or operation of the Project shall be required to comply with Applicable Laws and do so in accordance with Good Industry Practice and shall be adequately insured.
- D. For purposes of this Agreement, the term "Applicable Laws" shall mean any present and future law, act, rule, code, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party's rights and obligations hereunder, including, without limitation, the construction, operation, ownership, maintenance, repair, decommissioning and removal of the Project. For purposes of this Agreement, "Good Industry Practice" shall mean the practices, methods and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the energy storage industry in the construction, operation and maintenance of energy storage systems similar in size and technology to the Project) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected

to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. Good Industry Practice is not intended to be limited to consideration of the best or any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum or possible practices, methods or acts. For purposes of this Agreement, “Governmental Authority” shall mean the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof including Medway, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal.

- E. Subject to Section 4 of this Agreement, Medway Energy Center shall at all times, including during permitting, construction and operation, comply with all Town of Medway General and Zoning by-laws

9. Construction Management Plan

- A. Medway Energy Center shall prepare a construction management plan (“Construction Management Plan”) as part of its application process to the Medway Planning and Economic Development Board that shall include all Medway Energy Center obligations provided in Sections 10 (Noise and Visual Mitigation), 11 (Traffic Impacts), and 12 (Fire, Health and Safety). The Construction Management Plan as approved by the Medway Planning and Economic Development Board shall be coordinated with and provided to the Town prior to Medway Energy Center conducting any construction or pre-construction activities. The Construction Management Plan shall include, among other things, a written timetable setting forth the pre-construction, construction and completion schedule (“Critical Path Method”). Medway Energy Center shall provide prior notice to Medway of any material changes to the Construction Management Plan, which shall include in the case of any delay of three months or more in the pre-construction, construction, or completion schedule(s). It is understood that the Medway Conservation Commission may provide additional requirements related to any required filings for the project.

To the extent that Medway Energy Center seeks to expand or modify the Project during the Term of this Agreement, Medway Energy Center will notify the Town of and will prepare a new construction management plan for such expansion or modification, with any such expansion or modification subject to approval of the Medway Planning and Economic Development Board. In particular, Medway Energy Center will work with the Town in relation to (i) any new visual or noise impacts to landowners by such expansion or modification, (ii) any traffic impacts from additional construction; (iii) any new fire, health and safety impacts related to any Project upgrade or modifications; and (iv) any additional impacts that may be raised by changing BESS technology to the extent that Medway Energy Center seeks to upgrade the Project.

10. Noise and Visual Mitigation

The Parties agree that there are abutting landowners to the Project that may have visual and noise impacts as a result of the Project. Medway Energy Center agrees to mitigate these impacts as follows during construction and operation of the Project and as further provided in Medway Energy Center's Construction Management Plan:

- A. Medway Energy Center's active construction of the Project will be conducted in accordance with Medway Zoning Bylaw Section 7.3.D and other applicable Laws but in no case shall be outside of the following hours: Monday – Friday, 7:00 a.m. to 7:00 p.m. No construction shall be conducted on legal holidays. Under no circumstances shall these hours be altered without the written approval of the Chief of Police in his/her sole discretion.
- B. Medway Energy Center shall use best efforts to respond to complaints received by the Town about noise from construction and/or operation of the Project and Medway Energy Center shall undertake any and all commercially reasonable actions to address such complaints.
- C. Medway Energy Center shall use commercially reasonable efforts through final design and construction of the Project to shield abutting properties from increases in noise and visual impacts. Medway Energy Center shall accomplish this in part through plantings, landscaping, buffering walls, berm development, and/or fencing that shall be properly maintained throughout the course of the Term of the Agreement. Medway Energy Center shall, in this regard, comply with all requirements and conditions as may be determined by the Medway Planning and Economic Development Board and Medway Conservation Commission through their respective permitting processes.
- D. Medway Energy Center shall establish a post construction sound monitoring protocol for the Town with the Massachusetts Department of Environmental Protection ("MassDEP") and the Town's designated representative. Medway Energy Center shall perform post construction sound monitoring as required by its operating permits and shall promptly forward the results of any required testing directly to the Town's designated representative. The Town's designated representative may witness the post construction operational sound level measurements. Sound levels from the facility will comply with all applicable state and local requirements.

11. Traffic Impacts

Medway Energy Center agrees to work with Medway officials, including the Medway Chief of Police, to address both construction- and operations-phase traffic, and to include traffic mitigation as part of its Construction Management Plan.

- A. Medway Energy Center agrees to utilize Medway police details as may be required or directed by the Town during construction and operation of the Project to ensure the

safety of the surrounding area. Any costs incurred by the Town to employ police officers to oversee the traffic during construction shall be paid for Medway Energy Center. Use of such details in connection with construction or operation of the Project or upon local public ways shall be subject to the rules and requirements of the Medway Chief of Police.

- B. During construction, any deviations from the Construction Management Plan must be submitted to the Medway Chief of Police for his approval, not to be unreasonably withheld.
- C. Medway Energy Center shall, following construction of the Project (but in no event later than six months following completion of the construction), repair any damage to Stone Street or West Street in Medway caused by construction of the Project as may be determined by the Medway Highway Superintendent. Such repair shall be completed in accordance with commonly accepted standards of road construction and condition.
- D. Medway Energy Center hereby agrees to coordinate with the Medway Chief of Police and the Medway Director of Public Works in advance of any transportation of oversized and/or overweight loads in connection with construction or operation of the Project.
- E. During construction, Medway Energy Center shall ensure that large truck, heavy equipment and machinery, semi-trailer truck and oversized load traffic to and from the Project shall only utilize State numbered routes available for use within the Town for access.

12. Fire, Health and Safety

The Medway Fire Chief shall be consulted in the design, construction and operation of the Project, including, without limitation, the Construction Management Plan, related to fire safety and emergency medical requirements. The Medway Fire Chief's suggestions shall be incorporated into the design and operations plans for the Project, as reasonably appropriate. The Town shall include reference to the Project and its operations as necessary in its emergency management procedures. The design and operations of the Project shall include, among other things, the following:

- A. Medway Energy Center and any successor or other owner of the Project shall provide and maintain a Company employee or employees as a point of contact for the Town ("Medway Energy Center Representative(s)"). The Medway Energy Center Representative(s) shall be knowledgeable of the Project and be in a position of authority to assist the Town with construction, operation, emergency and decommissioning questions. Upon the Effective Date, Medway Energy Center shall provide Medway the contact information (name, address, telephone and email address) of the Medway Energy Center Representative(s) and promptly update the Town in the event of a change in the Medway Energy Center Representative(s). In the event of any assignment or sale of the Project pursuant to Section 20, Medway Energy Center shall promptly notify the

successor owner of this requirement to provide and maintain an owner company contact with the Town.

- B. Upon reasonable request, the Medway Energy Center Representative(s) shall provide Medway safety officials with reasonable access to the Project to ensure the operations at the Project adhere to Applicable Laws and this Agreement. In association with Section 6(a)(i) above, the Medway Energy Center Representative(s) shall provide access to the Project to Medway officials for annual emergency response training and shall coordinate participation by Medway Energy Center representatives in such emergency response training at a mutually acceptable time.
- C. As part of this Agreement, Medway Energy Center shall provide the Medway Fire Department with appropriate tools and supplies to provide for adequate fire suppression materials in the event of a fire or incident at the Project. The Fire Chief shall specify the exact specifications of each material or equipment annually to ensure that the most appropriate version or type of material or equipment is procured. The amount of funding in this regard is capped at five thousand dollars (\$5,000) annually. Medway Energy Center shall also replace and/or restock said materials that may be used for fire suppression efforts at the Project. Emergency notification systems used for safety and/or fire monitoring shall provide for immediate notification to the Medway Fire Department in addition to any offsite third-party monitoring company or agent. Medway Energy Center shall also be required, in the event of an emergency on the site, to have an official representative be present onsite not later than two hours after notification by the Fire Chief or his designee. Medway Energy Center must immediately notify Medway public safety officials of any hazardous condition or potentially hazardous condition at the facility.
- D. Fire Suppression: Medway Energy Center shall install (at Medway Energy Center's sole cost and expense), to the reasonable satisfaction of the Fire Chief and Water & Sewer Superintendent, sufficient fire protection materials and equipment that provide for maximum fire protection on the property and at the facility. Further, Medway Energy Center shall be responsible for reimbursing the Town for all water used on the property for fire suppression efforts, whether from on-site hydrants, mains or lines, or from off-property sources, with said amounts to be determined by the Town through meters or any estimating process that the Town deems reasonable.
- E. Water Collection – Fire Suppression: Runoff resulting from water used in fire suppression activities will be directed into the stormwater management system for the Project site. The stormwater management design will meet the Massachusetts Stormwater Policy recommendations, and the Project will fully comply with MassDEP Stormwater Standards and Town requirements. Water collected in the stormwater management detention basin, catch basins, vortex units (or similar) and/or other collection facilities will be monitored during firefighting activities. Medway Energy Center shall have a licensed environmental services company on contract to remove and properly dispose of affected runoff water within the stormwater management system. No more than 30 days following Commercial Operation, Medway Energy Center shall

provide the Town with documentation demonstrating a valid contract in full force and effect with a licensed environmental services company and shall include such company in its emergency response plan for immediate dispatch to the Project in the event of an active fire and further, shall maintain such a contract for the life of the operation of the Project.

- F. Medway Energy Center shall not deploy, install, or use any secondhand, reconditioned, or previously used battery systems on the property. All batteries or battery systems used on the property shall be tested and certified by Underwriters Laboratories with a 9540A certificate as safe. Further, Medway Energy Center shall provide to the Town prior to installation a full 9540A test report for each type of battery device located on the property. Medway Energy Center shall further notify the Medway Fire Chief in advance if the type of battery or batteries used onsite is to be changed and shall provide 9540A testing results that are reasonably acceptable to the Medway Fire Chief. The Town agrees that this provision will be reviewed after twenty years of Commercial Operation.
- G. Spacing between battery packs which may include multiple battery units on the property shall be installed in accordance with NFPA 855 except as may be otherwise determined during the Town review process to prevent propagation or so called “thermal runaway” conditions where a fire in one pack could spread to an adjoining pack or packs.
- H. When a battery, battery pack, or other item including equipment, supply or material is deactivated or no longer used for power storage and/or related technical use, it shall be removed from the property as soon as possible, but in no case more than thirty calendar days following said deactivation.
- I. A snow storage and snow removal plan shall be provided to the Town for approval. Snow must be cleared from the property and provisions developed to prevent snow from limiting or restricting access by emergency personnel to any batter pack or energy system on the property.

13. Use of Local Labor

Medway Energy Center agrees to use commercially reasonable efforts to hire local labor in connection with the construction of the Project.

14. Decommissioning

Medway Energy Center shall decommission and remove the Project following the end of all use and/or operations of the Project, at Medway Energy Center’s sole cost and expense, in accordance with Section 8.12 of the Zoning Bylaws, the decommissioning plan as approved by the Town Planning and Economic Development Board and in accord with all Applicable Laws and Good Industry Practice and in a safe and environmentally controlled process. Medway Energy Center shall provide the Town with a copy of any decommissioning plan it files with any Governmental Authority in connection with permitting or approval of the Project. Medway Energy Center shall provide Medway with at least one hundred and eighty days’ prior written

notice of the decommissioning of the Project. This Section shall survive the termination of this Agreement until all obligations hereunder have been fully discharged.

Within sixty days of the date of initial Commercial Operation of the Project, Medway Energy Center shall establish and annually maintain a bond to provide for funding to decommission and remove said Project. The initial amount of said bond shall be five million dollars (\$5,000,000). At a date no earlier than the tenth anniversary of the Commercial Operation of the Project, the Town may request that a qualified independent engineer mutually acceptable to the Parties perform an appraisal of the estimated cost required to remove all equipment and structures from the site, address any hazardous materials or contamination that may be identified, and to restore the site to a condition equal to that in existence at the time of acquisition by Medway Energy Center at the end of the expected useful life of the Project. If the Parties are unable to mutually agree on an independent engineer after thirty days of negotiations regarding the selection of the same, one shall be appointed by the American Arbitration Association, Boston office, pursuant to its "Arbitrator Select, List and Appointment" program and Section 28 hereof. Notwithstanding the foregoing, any appraisal shall be final and not subject to further review and the Parties shall each pay one half of the cost of such independent engineer's appraisal. Within sixty days of receipt of the results of the independent engineer's appraisal, Medway Energy Center shall post a bond in the amount of the estimated cost to decommission the Project as set forth in such appraisal; provided, however, that in no case shall the amount of said Bond exceed fifteen million dollars (\$15,000,000). The Town of Medway shall be listed as a beneficiary of said bond.

15. Local Purchasing

Medway Energy Center agrees to use commercially reasonable efforts to purchase goods and services necessary for the construction of the Project from local vendors.

16. Community Updates

- A. Medway Energy Center agrees to provide promptly to the Town copies of material filings and other information submitted or received in connection with such proceedings in any filing before an agency or department of the Commonwealth as may occur. Medway Energy Center shall provide promptly to the Town notice of and where possible, a hyperlink to, all other material filings and other information submitted or received before the Federal Energy Regulatory Commission or any other federal agency and ISO-NE that involve Medway Energy Center.
- B. Once construction commences, Medway Energy Center shall establish a community outreach plan with Medway officials that will provide for timely public dissemination of information regarding construction schedule, work hours, etc. ("Community Outreach Plan"). Medway Energy Center will keep Medway reasonably apprised of progress in constructing the Project and shall identify and describe, as promptly as practicable, any significant construction issue which might be reasonably expected to affect the interests of Medway, and provide not less than one day advance notice of any need to conduct

construction activities after the standard construction day shift set forth in accordance with Section 10 of this Agreement.

- C. Medway Energy Center shall periodically (but at least once every six months or upon reasonable request of the Medway Select Board) during pre-construction and construction activities provide public reports to Medway at meetings of the Select Board, describing its progress in obtaining necessary permits and the status of construction of the Project, and, matters that may reasonably be expected to affect the Town's interests, describing major issues which may have arisen and responding to questions from Town officials and/or the public.

Medway Energy Center shall create and maintain a web page that it will regularly update to provide the community with status and progress reports on the permitting, construction, and operation of the Project and any changes thereto, but in no case shall the web page be updated less than every two weeks.

17. Insurance and Indemnification

- A. Subject to the minimum coverages set forth in Exhibit B, Medway Energy Center shall at all times maintain insurance coverage as required and appropriate for the Project in accordance with Medway Zoning Bylaw Section 8.12.F, including insurance for claims arising out of injury to persons or property, relative to either sudden and accidental occurrences or non-sudden and accidental occurrences, resulting from construction or operation of the Project. Medway Energy Center shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by projects of similar size and scope and shall provide insurance coverage information to the Select Board annually and more often if there are any changes to such coverage.
- B. Medway Energy Center shall indemnify, defend and hold harmless the Town and its officers, employees, agents and representatives ("Medway Indemnified Parties") from and against any and all costs, claims, liabilities, damages, expenses (including reasonable attorneys' fees), causes of action or suits or judgments by third parties, incurred by, on behalf of or involving any one of the foregoing parties to the extent arising, directly or indirectly, from or in connection with: (i) any material breach by Medway Energy Center of its obligations, covenants, representations or warranties contained in this Agreement; or (ii) Medway Energy Center's material act or omission that constitutes a violation of Applicable Laws; provided that: (a) the Town has not materially breached any obligation, covenant, representation or warranty contained in this Agreement or taken any act or omission that constitutes a violation of Applicable Laws; and (b) the defenses available to Medway Energy Center against such claims are similar to those available to Medway.
- C. If a Medway Indemnified Party seeks indemnification pursuant to this Section, the Town shall notify Medway Energy Center of the existence of a claim, or potential claim as soon as practicable after learning of such claim, or potential claim, describing with

reasonable particularity the circumstances giving rise to such claim. Medway Energy Center shall be required to reimburse the Town for any documented reasonable costs associated with a claim for indemnification by a Medway Indemnified Party within sixty days of the Town's submission of its documented costs to Medway Energy Center. Upon written acknowledgment by Medway Energy Center that it will assume the defense and indemnification of a claim from a Medway Indemnified Party, Medway Energy Center may assert any defenses which are or would otherwise be available to the Medway Indemnified Party. Medway Energy Center shall have full control of such defense and proceedings, including the selection of counsel and any settlement of the proceedings.

- D. No later than thirty days prior to the commencement of construction, Medway Energy Center shall deliver to the Town a parent guaranty from (to be added), Medway Energy Center's parent, in a form reasonably acceptable to the Town (the "Guaranty"). The Guaranty shall: (i) guarantee Medway Energy Center's obligation to make the payments due hereunder upon the commencement of Commercial Operations, ii) Medway Energy Center's other obligations hereunder, and (iii) be capped at an amount equal to (A) from and after the date that is thirty days after the Effective Date and through the date that is the fifth anniversary of Commercial Operation of the Project, two million dollars (\$2,000,000), (B) from the date that is the fifth anniversary of Commercial Operation of the Project until the date that is the tenth anniversary of Commercial Operation of the Project, one million and five hundred thousand dollars (\$1,500,000), and (C) from the date that is the tenth anniversary of Commercial Operation of the Project until the termination of this Agreement, one million dollars (\$1,000,000).
- E. Notwithstanding any provision contained herein, the provisions of this Section shall survive the termination or expiration of this Agreement for a period of three years with respect to any claims which occurred or arose prior to such termination or expiration.

18. Representations and Warranties

- A. Town Representations and Warranties. As of the Effective Date, the Town represents and warrants to Medway Energy Center:
- i. The Town is a municipality in the Commonwealth of Massachusetts with full legal right, power and authority to enter into and to fully and timely perform its obligations under this Agreement;
 - ii. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Town has full authority to do so and to fully bind the Town; and
 - iii. The Town knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting the Town or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or

enforceability of the Agreement or the Town's ability to carry out its obligations under the Agreement.

- B. Medway Energy Center Representations and Warranties. As of the Effective Date, Medway Energy Center represents and warrants to the Town:
- i. Medway Energy Center has full legal capacity to enter into this Agreement;
 - ii. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of Medway Energy Center has full authority to do so and to fully bind Medway Energy Center; and
 - iii. Medway Energy Center knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Medway Energy Center or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of the Agreement or Medway Energy Center's ability to carry out its obligations under the Agreement.

19. Events of Default; Remedies; Limitation of Liability

A. Events of Default by Medway Energy Center. The following shall each constitute an event of default by Medway Energy Center ("Medway Energy Center Event of Default"):

- i. Medway Energy Center breaches any non-monetary material obligation under the Agreement, and fails to cure such breach within thirty days after notification by the Town of the breach and such failure is not proximately caused by a Town Event of Default as set forth in this Agreement;
- ii. Medway Energy Center fails to make any payment due under this Agreement within thirty days of such due date after written notification from the Town;
- iii. If any material representation or warranty made by Medway Energy Center in this Agreement proves to have been misleading or false in any material respect when made and Medway Energy Center does not cure the underlying facts so as to make such representation or warranty correct and not misleading within thirty days of written notice from the Town;
- iv. Medway Energy Center: (a) files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; (b) makes an assignment for the benefit of creditors; (c) consents to the appointment of a receiver of the whole or any substantial part of its assets; (d) has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety days after the filing thereof; (e) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Medway Energy Center's

- assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety days from the date of entry thereof; or (f) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Medway Energy Center's assets and such custody or control is not terminated or stayed within ninety days from the date of assumption of such custody or control; or
- v. Medway Energy Center consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, and the resulting, surviving or transferee entity fails to assume, effective immediately upon the effectiveness of such consolidation, amalgamation, merger or transfer, each and all of the obligations of Medway Energy Center under this Agreement.
- B. Events of Default by Town. It shall constitute an event of default by the Town ("Town Event of Default") if the Town breaches any non-monetary material obligation under the Agreement and fails to cure such breach within thirty days after notification by Medway Energy Center of the breach.
- C. Remedies; Limitations. In the event of a Medway Energy Center Event of Default under Section 19.A.ii of this Agreement, and the failure to cure within 30 days of after notification by the Town of the Event of Default, the Town, subject to any limitations under Applicable Laws, shall add to any amount due and owing a 12% interest charge per year, prorated for the length of such Medway Energy Center Event of Default.
- D. Measure of Damages. The Parties confirm that the express remedies and measure of damages provided in this Agreement satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the Parties reserve and shall have all rights and remedies available to them at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement.
- E. NO CONSEQUENTIAL OR PUNITIVE DAMAGES. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.

20. Assignment

Medway Energy Center agrees that this Agreement shall be binding upon and inure to the benefit of successor owners and operators of the Project. Medway Energy Center further agrees that it will not sell, lease or otherwise dispose of the Project (each a “Transfer”) to any person or entity (“a Transferee”) without prior written consent by the Town, such consent not to be unreasonably withheld, unless (i) Medway Energy Center reasonably believes such person or entity has the resources and ability to operate the Project in accordance with Applicable Laws and in accordance with this Agreement and (ii) at the time of such Transfer, Medway Energy Center obtains a written agreement of the Transferee to be bound by this Agreement, in which case notice will be provided to the Town. Any assignment by Medway Energy Center in connection with any financing, or to any entity controlling, controlled by, or under common control with Medway Energy Center shall not be considered a Transfer. As soon as practicable after such Transfer, Medway Energy Center shall give notice thereof to the Town and identify the Transferee, along with a statement that after due diligence, Medway Energy Center reasonably believes that the conditions of this Section 20 are fulfilled with respect to such Transferee.

21. Termination

This Agreement shall not be subject to termination, except for the following events of termination:

- i. By mutual agreement of the Town and Medway Energy Center;
- ii. By Medway Energy Center in the event that it abandons the Project prior to the commencement of construction or Commercial Operation or there is any regulatory or legal proceeding or government investigation that results in an unfavorable final judgment, order, decree, stipulation or injunction that prevents Medway Energy Center from constructing or operating the Project; or
- iii. By the Town in the event of: (i) an incurable Medway Energy Center Event of Default pursuant to Section 19; or (ii) a Medway Energy Center Event of Default pursuant to any other provision of this Agreement which is not cured within eighteen months of the date of the Event of Default and which failure to earlier cure is due to an event of Force Majeure as set forth below.

22. Force Majeure

For the purposes of this Agreement, “*Force Majeure*” means any cause not within the reasonable control of Medway Energy Center which precludes it from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; winds; hurricanes; tornadoes; extreme weather; fires; pandemics; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts of terrorism; acts, failures to act or orders of any kind of any Governmental

Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions. Nothing in this provision is intended to excuse Medway Energy Center from performing due to any governmental act, failure to act, or order, where it was reasonably within Medway Energy Center's power to prevent such act, failure to act, or order. Notwithstanding anything in the Agreement to the contrary, *Force Majeure* shall not mean:

- i. Customary inclement weather (in contrast to extreme weather) affecting construction, operation, or decommissioning of the Project.
- ii. Unavailability of equipment, repairs or parts for the Project, except to the extent due to a qualifying event of Force Majeure (whether such event affects Medway Energy Center directly or any supplier, manufacturer, shipper or warehouseman, including the delay in obtaining construction materials as a result of a qualifying Force Majeure event).
- iii. Any nonpayment under this Agreement.
- iv. Economic hardship of Medway Energy Center.

23. Notices

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

If to Medway:

Town Manager
Town of Medway
155 Village Street
Medway, Massachusetts 02053
(508) 533-3200
mboynton@townofmedway.org

with a copy to:

Jeffrey M. Bernstein, Esq.
BCK Law, P.C.
P.O. Box 205
Woodstock, Vermont 05091
802.457.9050
jbernstein@bck.com

If to Medway Energy Center:

and

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in the Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in the Agreement; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in the Agreement. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving Party shall be followed up by personal delivery or overnight delivery within forty-eight hours. Either Party may change its address and contact person for the purposes of this Section by promptly giving notice thereof in the manner required herein.

24. Entire and Complete Agreement; Binding Effect

This Agreement, along with the Exhibit(s) attached (or to be attached) hereto, constitutes the entire and complete agreement of the Parties with respect to the subject matter hereof, exclusive of all prior understandings, arrangements and commitments, all of which, whether oral or written, having been merged herein, except for contemporaneous or subsequent written understandings, arrangements, or commitments signed by the parties intended to be bound thereby. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest hereunder.

25. Survival

Termination of this Agreement for any reason shall not relieve of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Sections 14, 17, 23, 27, 28 and 29.

26. Other Documents

Each Party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other party in order to give full effect to this Agreement.

27. Governing Law

This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

28. Dispute Resolution and Venue

Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Town and Medway Energy Center. The Town and Medway Energy Center agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

Any dispute that arises under or with respect to this Agreement that cannot be resolved in the daily management and implementation of this Agreement shall in the first instance be the subject of informal negotiations between management personnel from Medway Energy Center and the Town Manager of Medway, as the case may be, who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed thirty days from the time the dispute arises, unless it is modified by written agreement of the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Section of this provision, the Parties agree to submit the dispute to mediation. Within fourteen days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association, Boston office, to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation.

In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be Norfolk County Superior Court, Dedham, Massachusetts. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any such judicial action, the “Prevailing Party” shall be entitled to payment from the opposing party of its reasonable costs and fees, including, but not limited to attorneys’ fees, arising from the civil action. As used herein, the phrase “Prevailing Party” shall mean the party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

29. Confidentiality

The Parties understand that the Town is subject to, among other laws, the Massachusetts Public Records Act, G.L. c. 66, § 10 and G.L. c. 4, § 7, cl. 26, pursuant to which all documents and records made or received by the Town shall, absent an exemption or law to the contrary, constitute a public record subject to disclosure. To the extent not inconsistent with the Town’s duty set forth in the preceding sentence, if either Party or its representatives provides to the other Party or its representatives confidential information, including business plans, strategies,

financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Project or of a Party's business ("Confidential Information"), the receiving Party shall protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any event not less than a commercially reasonable degree of care, and refrain from using such Confidential Information except in the negotiation and performance of this Agreement. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a Governmental Authority, under Applicable Laws or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

30. Amendments

This Agreement may only be amended or modified by a written amendment to the Agreement signed by both Parties hereto.

31. Severability

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

32. Headings and Captions

The headings and captions appearing in this Agreement are intended for reference only and are not to be considered in construing the Agreement.

33. Counterparts; Scanned Copies

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

34. Waiver

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

35. Joint Work Product

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

36. Successors and Assigns

This Agreement shall be binding upon Medway Energy Center, Medway and each of Medway Energy Center's affiliates, parents, successors and permitted assigns and inure to the benefit of and be enforceable by Medway Energy Center, Medway and each of Medway Energy Center's affiliates, parents, successors and permitted assigns.

37. No Joint Venture

Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

38. Further Assurances

From time to time and at any time at and after the execution of the Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the Agreement.

39. No Limitation of Regulatory Authority

The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Medway to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of Medway or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Laws.

[Signature Page to Follow]

IN WITNESS WHEREOF, Medway has caused this Agreement and has caused its seal to be attached to this Agreement on the____day of _____, 2024.

ATTEST:

TOWN OF MEDWAY

By:_____

By:_____

Frank Rossi, Chair

By:_____

Todd Alessandri, Vice Chair

By:_____

Dennis Crowley, Clerk

By:_____

Glenn Trindade, Member

By:_____

Maryjane White, Member

IN WITNESS WHEREOF, Medway Energy Center has caused this Agreement to be executed in its name by its duly authorized officer and has caused its corporate seal to be attached to this Agreement, on the____day of _____, 2024.

ATTEST:

MEDWAY ENERGY CENTER, LLC

By:_____

By:_____

[Name, Title]

EXHIBIT A: PROJECT DESCRIPTION

EXHIBIT B: INSURANCE MINIMUM COVERAGES

Subject to commercial availability on reasonable terms and conditions, Medway Energy Center shall obtain and maintain insurance policies in compliance with the following requirements:

1. **Commercial General Liability Insurance** written on an ISO CG 00 01 occurrence form or the equivalent with limits of \$1,000,000 per occurrence, \$2,000,000 aggregate and \$2,000,000 products-completed operations, which can be met through a combination of primary and excess liability coverage.
2. **Umbrella or Excess Liability Insurance** following the form and at least as broad as the underlying Commercial General Liability policy, in an amount not less than \$20,000,000 per occurrence, \$20,000,000 aggregate, and \$20,000,000 completed operations aggregate.

EXHIBIT C: LIST OF ABUTTING HOMEOWNERS

Map-Parcel	Name	Address	City	Zip

(Residential Properties 300 Foot Radius)