

CONFIDENTIAL AND PRIVILEGED
*Exempt from public records disclosure pursuant to
G. L. c. 4, § 7, cl. 26 (d, h and s)*
*(development of agency policy, pre-negotiation communications and
energy-related trade secrets or confidential information)*

_____, 2011

CONFIDENTIAL

[Insert Member Information]

RE: *Letter of Intent for the Procurement of a Solar Power Generating System
on land owned by the Town of [_____], Massachusetts*

Dear **[Insert Point of Contact]**:

This letter of intent (“LOI”) sets forth the basic terms upon which the Town of [_____] (“Town”) will participate in the Cape & Vineyard Electric Cooperative, Inc. (“CVEC”) Request for Proposals for PV Systems (“Solar RFP”). The Solar RFP will be issued by CVEC on behalf of participating CVEC members and other governmental entities.

CVEC has made or will make considerable efforts to understand the issues associated with procuring a solar photovoltaic generating system or systems (“PV System(s)”) to be installed on Town owned property located at [_____]. The parties understand that the purpose of this LOI is to authorize CVEC to issue a Solar RFP that includes the identified location(s) and to set forth the parties’ roles and responsibilities related thereto. This LOI constitutes an expression of intent only and, except as expressly set forth herein, this LOI does not constitute a binding obligation of any kind by the Town or CVEC to construct the PV System(s) if subsequent investigation determines it is not technically or financially feasible. The parties understand that consummation of the transactions and entry into the agreements contemplated by this LOI are subject to the execution of mutually acceptable written definitive agreements (“Definitive Project Agreements”).

1. **Parties.** CVEC shall issue the Solar RFP and act as awarding authority under the RFP. The Town shall participate in CVEC’s review of responses to the RFP. As awarding authority, CVEC shall have ultimate discretion to select a contractor (“Contractor”) to design, procure, install, test, commission, operate and maintain PV System(s) at the identified location(s). CVEC intends to select and enter into one or more contracts with the most highly qualified respondent(s) to serve as Contractor. The Town shall enter into one or more contracts (discussed in Section 2 below) with CVEC to govern the development of the PV System(s) and the purchase of power from the PV System(s). The Town will provide site and related data as reasonably requested by CVEC and/or the Contractor, and assist in other efforts associated with the design, procurement, installation, testing, commissioning, operation and maintenance of the PV

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System(s), such as access, construction and interconnection. The Town will also assist CVEC and the Contractor, to the extent reasonable and appropriate, to obtain any permits or approvals for design, construction and installation of the PV System(s).

2. ***Definitive Project Agreements.*** The parties agree to use their best efforts to expeditiously negotiate the Definitive Project Agreements as set forth below. The Definitive Project Agreements are inter-governmental agreements under the authority of M.G.L. c. 40, §4A, and will be similar to other CVEC project agreements which the CVEC Board of Directors and CVEC members have reviewed and revised carefully during the course of CVEC's recent solar procurement. Inter-governmental agreements are exempt from public procurement laws pursuant to G.L. c. 30B, §1(b)(3). In addition, a town meeting vote is not required for an inter-governmental agreement. G.L. c. 40, §4A provides the town board of selectmen with the authority to enter into inter-governmental agreements with terms up to twenty-five years.

A. **Inter-Governmental Project Development Agreement(s).** Under each Inter-Governmental Project Development Agreement for a PV System, the Town shall provide CVEC with rights to design, procure, install, test, commission, operate and maintain a PV System. Within the Inter-Governmental Project Development Agreement(s), there will be an agreement to provide CVEC with a parcel of land (at the identified location(s)) for the development of the PV System(s). The Inter-Governmental Project Development Agreement(s) will allow CVEC to subcontract with the Contractor to procure, construct, operate and maintain the PV System(s) and will provide for CVEC, the Contractor (and the Contractor's subcontractors and agents) to be at the identified location(s) for the construction, operation, and maintenance of the PV System(s). CVEC will have various rights of ingress and egress as are standard for project development, as well as the quiet enjoyment of those rights, and CVEC shall be able to provide the Contractor with the same rights and obligations pursuant to an energy management services agreement, or other similar agreement depending upon the nature of the final procurement method and/or project structure.

In the Inter-Governmental Project Development Agreement(s), the Town will agree to assist CVEC: (1) in its permitting efforts before any federal, state, regional or local body having jurisdiction over the project; (2) in designing and implementing an interconnection with NSTAR or as may be required by applicable regulatory conditions; and (3) with the New England ISO, as needed. The parties will also agree to undertake joint marketing and public relations efforts, once they determine to publicly disclose the project. The Inter-Governmental Project Development Agreement(s) will contain other customary and reasonable provisions for similar project development agreements for solar projects.

The Member and CVEC acknowledge that depending upon the nature of the final procurement method and/or project structure, execution of an agreement other than an Inter-Governmental Project Development Agreement (i.e. lease, license or equipment attachment

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agreement containing similar terms as the Inter-Governmental Project Development Agreement) may be necessary and is for purposes of this LOI deemed to be a Definitive Project Agreement.

B. Inter-Governmental Power Sales Agreement(s). The Town and CVEC shall enter into an Inter-Governmental Power Sales Agreement for each PV System. The Town shall purchase, and CVEC shall sell a percentage of the energy generated by the PV System(s) during the term of the Inter-Governmental Project Development Agreement(s) (in accordance with CVEC policy, 10 % of the energy generated by each PV System will be reserved for the Cape Light Compact). If permitted under the net metering laws of Massachusetts, the Town shall net meter all of its electric load. The remaining energy generated by the PV System may be sold by CVEC to its members under separate agreement. The Inter-Governmental Power Sales Agreement(s) will contain other customary and reasonable provisions for similar power sales agreements for solar projects.

The Inter-Governmental Power Sales Agreement(s) shall not include the sale or purchase of any environmental attributes, value or credits of any kind or nature, including, without limitation, those resulting from or associated with renewable energy credits. The Town shall allow CVEC to assign its rights for financing purposes without the Town's consent.

C. Related Agreements. The Town shall also execute other agreements as reasonably requested by CVEC in order to allow for the development, financing, installation, operation, and maintenance of the PV System(s) at the identified location(s).

3. ***Solar RFP Process***. The Town hereby acknowledges and agrees that CVEC has the right to include the identified location(s) in the Solar RFP and that CVEC has the discretion to withhold an identified location from inclusion in, or remove it from, the Solar RFP if subsequent investigation determines it is not technically or financially feasible to develop a PV System at the identified location(s). The Town further acknowledges that CVEC has the sole discretion to choose a procurement method and to conduct the solar procurement in however manner it deems necessary and appropriate.

4. ***Exclusivity***. The Town shall not, directly or indirectly, through any representative or otherwise, solicit or entertain offers for, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other person relating to construction of a PV System at the identified location(s), from the date this LOI is signed by the Town until the Termination Date (the "Exclusivity Period"). The Town agrees to promptly notify CVEC regarding any contact between the Town or its representatives regarding any such offer or proposal or related inquiry. For purposes of this LOI, "Termination Date" shall mean the earlier to occur of: (i) six months from the date this LOI is signed by the Town; (ii) the inability of the Town and CVEC, after good faith negotiations, to reach agreement on the Definitive Project Agreements by December 31, 2011; or (iii) the failure of the RFP process to result in a successful award to a Contractor for a PV System at the identified location(s). Notwithstanding the foregoing, nothing in

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this LOI shall preclude the Town from conducting any engineering or feasibility studies regarding the solar power potential of the identified location(s).

5. ***Access to Information/Due Diligence.*** During the Exclusivity Period, the Town shall provide CVEC with: (i) full and free access to the identified locations, and other engineering reports, permits, plans and other documents which are reasonably requested by CVEC; and (ii) a legal description identifying the location for development of the PV System and other site related information as necessary to include in the Definitive Project Agreements. The Town designates **[insert name and contact information]** as its authorized representative and day-to-day point of contact for all issues arising under this LOI, the RFP, and the negotiation of Definitive Project Agreements. The Town acknowledges that CVEC counsel will not act as counsel to the Town. The Town is represented by **[insert name and contact information for counsel]** and such counsel shall be available to assist the Town throughout the RFP process and during the negotiation of the Definitive Project Agreements with CVEC.

6. ***Confidentiality.*** Except as and to the extent required by law, without the prior written consent of the other party, neither party to this LOI will disclose or use, and will direct its/their representatives not to disclosure or use any information shared by either party that is specifically marked or otherwise designated as confidential.

7. ***Termination.*** The provisions set forth in Sections 3-6 (the “Binding Provisions”) will automatically terminate upon expiration of the Exclusivity Period, and may be terminated earlier if the Town and CVEC mutually consent to such early termination. The termination of the Binding Provisions will not affect the liability of either party for breach of any of the Binding Provisions. Upon termination of the Binding Provisions, the parties will have no further obligations hereunder, except as stated in Section 6 (Confidentiality), which will survive any such termination.

8. ***Entire Agreement.*** This LOI constitutes the entire agreement between the parties and supersedes all prior oral or written agreements, and understandings between the parties as to the subject matter thereof. This LOI may be amended or modified only by a writing executed by both parties.

9. ***No Liability.*** The provisions of Sections 1-2 of this LOI are intended only as an expression of intent on behalf of the parties, are not intended to be legally binding and are expressly subject to execution of the Definitive Project Agreements. Except as provided in the Binding Provisions (or as expressly provided in any binding written agreement that the parties may enter into in the future), no past or future action, course of conduct or failure to act relating to the PV System(s), or relating to the negotiation of the terms of the Definitive Project Agreements, shall give rise to or serve as a basis or any obligation or other liability on the part of CVEC, the Town, or any of their affiliates.

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CVEC is enthusiastic about moving forward on this Solar RFP project with you and looks forward to working with you to achieve a mutually beneficial result. If the Town is in agreement with the foregoing, please sign this LOI in duplicate originals and return one original to CVEC.

Very truly yours,

Cape & Vineyard Electric Cooperative, Inc.
Margaret Downey, Clerk
Charles S. McLaughlin, Jr., President

AGREED AND ACCEPTED THIS ____ DAY OF _____, 2011 BY ITS DULY
AUTHORIZED OFFICER:

TOWN OF [_____]

By: _____

Name: _____

Title: _____

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