**Grafton**

**Community Solar**



Solar

3992 Saxtons River Road

**Community Solar License and Operation, Maintenance, and Net Metering Agreement and Contract for the purchase of solar photovoltaic panels between Grafton Community Solar LLC (“Developer”),**

**and \_\_\_\_\_\_\_\_\_\_\_\_(“Owner”)**

**Section 1: License to Place Solar Panels on Project Site and Receive Net Metering Credits**

*This first page of the License Agreement is required by the Vermont Financial Regulatory Department pursuant to the Vermont Solar Utility No-Action Exemption (the "SUN Exemption") July 21, 2014, the VT Attorney General and the Federal Trade Commission (FTC).*

**THIS AGREEMENT, AND OWNER’S PAYMENTS MADE HEREUNDER, ENTITLE OWNER TO OWNERSHIP OF OWNER’S SOLAR PANELS AND TO NET METERING CREDITS, WHICH MAY HAVE VALUE TO OFFSET THE CONSUMPTION OF ELECTRICITY. THE VALUE OF NET METERING CREDITS WILL DEPEND ON THE AMOUNT OF ELECTRICITY GENERATED BY THE SYSTEM AND FLUCTUATIONS IN THE MARKET PRICE FOR ELECTRICITY. HOWEVER, OTHER THAN THE RECEIPT OF NET METERING CREDITS PRODUCED BY OWNER’S SOLAR PANELS, OWNER WILL NOT OTHERWISE BE ENTITLED TO ANY PORTION OF THE PROFIT FROM THE COMMUNITY SOLAR PROJECT.**

WITNESSETH:

WHEREAS, Developer owns or controls certain real property located within the service territory of Green Mountain Power (the “**Utility**”) in the State of Vermont, that is or will be developed with infrastructure, including mounts, inverters, and wiring, to support and connect photovoltaic panels to the electric utility grid (the **“Project”*)***; and

WHEREAS, Owner is the owner of certain photovoltaic panels (**“Owner’s Solar Panels”**) that it wishes to install at the Project for the purpose of generating solar electricity to produce net metering credits on the terms and conditions contained herein; and

WHEREAS, Developer and Owner desire that Developer will be solely responsible for the design, permitting, construction, operation, maintenance, repair and decommissioning of the Project and the design, siting, installation, operation, maintenance and removal of Owner’s Solar Panels; and

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. License.** Subject to the terms and conditions contained herein, Developer hereby grants Owner a nonexclusive license (**“License”**), in common with others, to have Owner’s Solar Panels installed, maintained, and operated by the Developer at the Project; provided, however, that other than the grant of licenses to third parties on terms and conditions substantially similar to the terms and conditions of this License and Agreement, including the rights granted to other owners under a provision substantially similar to Section 5 (Management Change) contained herein, Developer will not grant any license or other rights to third-parties in connection with the Project that will impair or diminish the full exercise by Owner of its rights under this License and Agreement.

**2. Term.** The initial term of this Agreement and the License granted herein, shall commence on the date that the Project is first placed into service, as determined by Developer, and shall terminate on the 25th anniversary thereof. Developer shall notify Owner in writing of the date it determines the Project “is first placed into service.” At the end of the initial term, if Developer determines that the Project has a remaining useful life and Developer is able to secure an extension of other agreements necessary to operate the Project, including, without limitation, the land lease for the Project site, Developer may, in its sole discretion, elect to offer Owner an extension of the term of this License and this Agreement for any additional period as Developer sees fit. Any renewal terms will depend upon utility rates and solar costs at the time. Owner is not obligated to accept the renewal terms. If Owner declines the renewal terms, Developer shall remove Owner’s Solar Panels and Owner can pick them up at the Project.

**3. Construction, Operation, and Maintenance of the Project**. Following the CPG determination, Developer shall design, permit, site, construct, operate, maintain, repair and decommission the Project and the installation of the Owner’s Solar Panels consistent with applicable codes. After commissioning, Developer shall operate the Project in such a manner as to maximize the kWh output of the Project and Owner’s Solar Panels. Developer shall perform or shall have contracted qualified professionals to maintain the Project and Owner’s Solar Panels, and such contracted professionals shall comply with the same quality standards as are applicable to Developer. Developer shall bear the total cost of the design, permitting, siting, construction, operation, maintenance, repair and decommissioning of the Project and Owner’s Solar Panels. Owner shall have no liability for the design, permitting, siting, construction, operation, maintenance, repair, replacement or decommissioning of the Project.

**4. Installation, Operation and Maintenance of Owner’s Solar Panels.** Developer shall be solely responsible for installing, operating, and maintaining Owner’s Solar Panels on the Premises for the term of this Agreement. Owner shall have no liability for the day to day operation and maintenance of Owner’s Solar Panels.

**5. Right of Owners to Request Change in Management.**

**a.** Notwithstanding any provisions contained herein to the contrary, upon the occurrence of any of the following events: 1) land owner reports failure to pay lease payments for more than one year; 2) any taxing entity (for example, the town of Grafton or State of Vermont) reports Developer failed to pay taxes 3) property and/or liability insurance is not maintained; or 4) the Project fails to meet 90% of expected productivity on a cumulative annual average basis as noted in Exhibit A, page 2, Owner may submit a written request to Developer for a change of management (a “Change in Management Request”). Developer will report to Owner on a monthly basis a comparison between expected productivity and actual productivity and will report annually proof of insurance, taxes, lease payments and status of the LLC. ***Owner must white list the E-Mail address*** [***rex@solarstrategies.net***](mailto:rex@solarstrategies.net) ***to receive these reports. It is Owner’s responsibility to ensure that his/her E-Mail server accepts E-Mails from this address.***

**b.** Developer shall provide other information reasonably requested by Owner that Owner deems necessary or appropriate for solicitation of written proposal(s) from one or more potential alternative “Qualified Providers” to provide ongoing maintenance and operation of the Project. As used herein, “Qualified Provider” shall mean a reputable third party with at least three (3) years of experience in maintaining and operating one or more group net metered solar projects permitted by the Vermont Public Service Board and with an aggregate nameplate generating capacity of at least 200 kW(AC). Owner shall provide to Developer a written proposal from a Qualified Provider as soon as practical after Owner submits its Change in Management Request. Within thirty (30) days following receipt of such proposal, Developer shall notify all parties who own solar panels installed at the Project of such request for a change of management, and shall instruct each such owner to respond within an additional thirty (30) days to indicate whether or not they are for or against the change of management. If owners representing ownership of more than two thirds of Owners of the solar panels installed at the Project are in favor of the change of management, Developer shall sign a contract with the Qualified Provider for the maintenance of the Project upon the terms set forth in the Qualified Provider’s written proposal. The calculation of two thirds of the ownership of solar panels shall not include any panels owned by the Developer. Developer agrees to cooperate in good faith with any successor in management.

**6. Tax Credits.** For purposes of any federal or state tax credits that may be available in connection with the ownership of the Project and/or Owner’s Solar Panels, Owner shall retain ownership of Owner’s Solar Panels. Developer shall own the balance of the Project other than Owner’s Solar Panels and solar panels owned by third parties. As the project has already begun construction the 30% Federal tax credit is “Safe Harbored” , meaning if project is not complete and operational in 2019 the 30% tax credit will still be in affect when project is complete even if in 2020.

**7. Renewable Energy Credits**

As of 2017, all Renewable Energy Credits are assigned to the utility and are compensated for with an increased net metering credit. These now represent contributions to the Vermont Renewable Energy goals, and represent a decrease in the amount of carbon based electricity generated or purchased by Vermont.

**8. Decommissioning.** At the end of the Term of the License and this Agreement, Developer may, in its discretion, remove Owner’s Solar Panels from the Project and so notify Owner. In any such notice to Owner, Developer shall notify Owner of how and where to collect their Solar Panels. If Developer is not able, after using reasonable means, to contact Owner within 60 days after the end of the Term, or if Owner notifies Developer that it no longer wants Owner’s Solar Panels, Developer may dispose of Owner’s Solar Panels by any legal means as Developer sees fit, free of charge to Owner.

Developer shall be responsible for all other costs of decommissioning.

**9. Appointment of Developer as Owner’s Representative.** Owner hereby designates Developer to be Owner’s representative for purposes of communications with the Utility and/or the Vermont Public Service Board, or any other regulatory agency, in connection with any matters concerning the Project and/or Owner’s Solar Panels and the net metering thereof. Developer will not make any false or misleading statements to any third-parties in its capacity as Owner’s representative.

**10. Insurance/Indemnification.**

a. Developer shall, as an operational cost of the Project, maintain property and liability insurance on the Project and Owner’s Solar Panels in amounts and on policies sufficient to pay for repair and/or replacement of any damaged parts of the Project, including Owner’s panels, and to provide for any of Developer’s liability or its errors and omissions related to is role in the Project and for any Owner’s liability for having Owner’s property on Project land. Developer shall name Owner as an additional insured under such insurance policy or policies. In the event the premises or the Project are destroyed by fire, storm, earthquake, or other casualty covered by the insurance maintained hereunder, provided the insurance proceeds are sufficient to fully restore the Project, Developer shall apply any insurance proceeds to repair the Premises and the Project and this License and Agreement shall continue according to its terms.

**b.** Each party shall at all times indemnify, defend, and save harmless the other party, its officers, employees, agents, and contractors, from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of any event, circumstance, act or incident which result from, are connected with, or grow out of the acts or omissions of the indemnifying party in connection with this License and Agreement, except in cases of negligence or willful misconduct by the indemnified party, its agents, servants, contractors or employees.

**11. Developer Maintenance Obligations - Operating & Maintenance Cost Sources of Funds**

**a.** All other ongoing costs of operation, maintenance, and insurance will be funded by Developer from the sale of excess capacity power generation. Developer will develop the Project with sufficient infrastructure to hold Owner’s and all other Owner’s solar panels. Developer expects to retain ownership of not less than 15% of the Project’s generation capacity (the **“Excess Capacity”**). Developer shall enter into one or more contracts, on terms and conditions acceptable to Developer in its sole discretion, to sell net metering credits associated with this Excess Capacity to one or more third parties. Developer will use the net income generated from the sale of the Excess Capacity to fund ongoing operation, lease, maintenance and insurance costs of the Project, including, without limitation, for costs of the Project insurance, for the costs of customary day to day operation and maintenance of Owner’s Solar Panels, and for the cost of any taxes assessed against the Project, including real property taxes and other federal, state or local tax levies, if any.

**b.** Regardless of whether sale of Excess Capacity creates sufficient net income to pay for its operation, maintenance and insurance obligations, Developer shall continue to be responsible for paying both costs of those obligations.

**12. Allocation of Net Metering Credits.**

For each month during the term of this Agreement, Developer shall cause Utility to allocate net metering credits to a Utility electrical account designated by Owner, or if Owner is not a customer of Utility then to a Utility electrical account designated by Developer, in an amount equal to “Owner’s Prorata Share” of the total net generation of the Project. (see b below) **“Owner’s Prorata Share”** shall be a percentage equal to the total rated production capacity of Owner’s Solar Panels (in kW) divided by the total rated production capacity of all solar panels installed at the Project (in kW).

**a**. Developer hereby understands that the Utility will follow all laws, rules and orders directing a utility on how to calculate the value of the net metering credits attributable to Owner’s Prorata Share and to apply such credits to Owner’s electricity bill(s) should the Owner’s utility account be in Green Mountain Power’s service territory. The specific GMP account number(s) and split between those accounts (if applicable) is noted on the signature page. GMP account holders will become members of a new net meter group with a new billing cycle and all usage history prior to joining the new group will not be shown. Your GMP account number will not change.

**b**. Should the Owner not be a customer of Green Mountain Power, then Developer shall pay Owner each month an amount equal to Owner’s Prorata Share of the KWHs produced by the Project, multiplied by the prevailing GMP Rate #1 plus the applicable solar adder incentive multiplied by 80%. Payment shall be in the form of a check mailed to the address noted on the signature page, or, if Owner desires, directly to a financial institution or utility of their choice, the name, address and account number to be supplied to the Developer.

c. **NOTWITHSTANDING THE FOREGOING OR ANYTHING HEREIN TO THE CONTRARY, DEVELOPER MAKES NO REPRESENTATIONS OR WARRANTIES OR GUARANTIES AS TO THE VALUE OF THE NET METERING CREDITS THAT WILL BE PRODUCED BY OWNER’S SOLAR PANELS AND/OR TO BE APPLIED TO OWNER’S UTILITY BILL(S), AND DIRECTS OWNER TO THE VERMONT NET METERING STATUTE AT 30 V.S.A. 219a, THE RULES AND REGULATIONS OF THE VERMONT PUBLIC SERVICE BOARD, AND THE UTILITY’S RATE SCHEDULES AS APPROVED BY THE PUBLIC SERVICE BOARD, AND ALL AMENDMENTS TO THE FOREGOING.**

**13. Buyout/Transfer or Additional Purchase Options.**

**a**. **Buyout:** At any time during the Term of this Agreement, Owner may notify Developer in writing that Owner wants Developer to buy Owner’s Solar Panels. The Buyout Price will be the Fair Market Value of the panels at the time of buyout. Fair Market Value is the price that a given property or asset would fetch in the marketplace, subject to the following conditions:

i. Prospective buyers and sellers are reasonably knowledgeable about the asset; they are behaving in their own best interests and are free of undue pressure to trade.

ii. A reasonable time period is given for the transaction to be completed.

Given these conditions, your Panel’s Fair Market Value will represent an accurate valuation of their worth. If Owner accepts Developer’s offer in writing within fifteen (15) days, Owner and Developer shall thereafter as promptly as reasonably possible take all steps necessary to transfer ownership of Owner’s Solar Panels to Developer with effect in either **June or December**, and upon such transfer Developer shall pay to Owner the Buyout Price. Upon the transfer of Owner’s Solar Panels to Developer this Agreement shall terminate and be of no further force and effect.

**b**. **Transfer:** In either **June or December** of any year during the Term of this Agreement, Owner may sell or transfer Owner’s Solar Panels to another person or entity, and in connection with any such sale or transfer, Owner shall have the right and obligation to transfer this Agreement as a part of the sale or transfer. In the event of such an assignment, the prior Owner shall be released from any liability or obligation under this License and Agreement, and this License and Agreement shall be binding upon Owner’s transferees, successors and assigns.

*Owner acknowledges that sale or transfer of their panels before five years may trigger recapture of any federal tax credit claimed.*

**c**. **Purchase More Panels:** Owner may ask Developer if any additional panels are available for any time during the Term of this Agreement. Should panels be available. Should panels be available, purchase may occur only during June or December and such panels may or may not be eligible for any tax credits.

**14. Assignment.**

Developer may only assign its rights and obligations under this Agreement with Owner’s consent, which shall not be unreasonably delayed, conditioned or withheld, provided that no such consent shall be required in connection with a sale of Grafton Community Solar, LLC or the sale of all or substantially all of Grafton Community Solar, LLC’s assets. In the event of such an assignment, this Agreement shall be binding upon Developers successors and assigns.

**15. Additional Licensees.** Developer reserves the right to add additional licensees to the Project on such terms and conditions as Developer shall elect. Addition of new licensees shall in no way dilute the productivity or expected productivity of the Owner’s panels.

**16. Termination.**

**a**. Developer agrees that Owner may terminate this Agreement at any time upon not less than thirty (30) days written notice. In the event Owner terminates this Agreement, Owner and Developer shall cooperate to arrange for the disconnection and removal of Owner’s Solar Panels from the Project. Developer will arrange for actual physical removal of Owner’s Solar Panels or may elect to substitute equal or greater value panels.

**b**. Owner agrees that Developer may terminate Owner’s License and this Agreement if Owner breaches this Agreement in any material respect, or in the event that electrical network failure beyond Developer’s control shall prevent the Project from loading the total or partial electricity production from Owner’s Solar Panels to the utility grid. If Developer determines that there is sufficient cause to terminate Owner’s License and this Agreement, Developer shall provide Owner with not less than thirty (30) days’ written notice of said termination and an opportunity to cure the alleged breach.

**c**. If Developer breaches the terms of this License and Agreement and such default results in Owner not receiving at least 90% (on a cumulative annual average basis) of the Owner’s expected electric generation (as set forth in Exhibit A) from Owner’s Solar Panels, and such loss of expected electric generation cannot be remedied within two months, Owner may terminate this Agreement upon thirty (30) days’ written notice to Developer. Upon termination for Developer default, Developer shall pay Owner the current replacement value of the Owner’s Solar Panels less 5%/yr depreciation and Developer shall then own the panels.

**17. Representations.** As a material inducement to entering into this License and Agreement, each party, with respect to itself, represents and warrants to the other party throughout the term of License and Agreement that:

**a**. It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to perform this License and Agreement.

**b**. It has all regulatory authorizations necessary for it to legally perform its obligations under this License and Agreement.

**c**. The execution, delivery and performance of this License and Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents.

**d**. This License and Agreement constitutes a legal, valid and binding obligation of such party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditor's rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

**e**. There are no bankruptcy, insolvency, reorganization, receivership or other proceedings pending or being contemplated by it, or to its knowledge threatened against it.

f. There are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that could materially adversely affect its ability to perform this License and Agreement.

**g**. All information provide to a party by the other party is true and accurate to the best of that party’s knowledge.

**18. Solar Panel Warranties.** In addition to the protections granted to the Owner in paragraph 9, Insurance/Indemnification, to the extent possible, Developer shall assign to Owner any warranties associated with Owner’s Solar Panels.

**19. General Provisions**

**a**. **Entire Agreement; Modification.** This Agreement sets forth the entire agreement and understanding between Owner and Developer as to the subject matter hereof and supersedes all prior or contemporaneous agreements or understanding between the parties relating to this subject matter. There shall be no amendments or modifications to this Agreement, except by a written document, which is signed by both parties.

**b**. **Governing Law; jurisdiction.** This Agreement shall be governed by and construed under the laws of the State of Vermont without regard to conflicts of laws principles. Any and all actions or proceedings seeking to enforce any provision of, or based on any right arising out of this Agreement shall be settled by arbitration between the parties pursuant to the rules and procedures of the American Arbitration Association.

**c**. **Headings.** The heading for each article and section in this Agreement have been inserted for convenience or reference only and are not intended to limit or expand on the meaning of the language contained in the particular article or section.

**d**. **Severability.** Should any one or more of the provisions of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, it shall be considered severed from this Agreement and shall not serve to invalidate the remaining provisions herein. If the provision is material, the Owners shall make good faith effort to replace the invalid or unenforceable provision with a valid and enforceable one such that the objective contemplated by them when entering this Agreement may be realized.

**e**. **No Waiver.** Any delay in enforcing a party’s rights under this Agreement or any waiver as to a particular default or other matter shall not constitute a waiver of such party’s rights to the future enforcement of its rights under this Agreement.

**f**. **Notices.** All notices, requests, statements or payments will be made to the addresses and persons specified below and shall be made in writing. Notices will be delivered by hand delivery, overnight delivery, U.S. Mail, or E-Mail. Notices will be deemed to have been received when delivered, or in the case of E-Mail when confirmation of successful transmission is received. If not confirmation of receipt of an E-Mail is received when it is requested, either party must use U.S. Mail. A party may change its address by providing notice of the same in accordance with this provision.

**g**. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original & together shall be deemed to be one & the same agreement.

**Section 2: Solar Panel Purchase Contract**

**1.** Owner hereby purchases from Developer \_\_\_\_\_\_\_ , watts DC solar photovoltaic panels (“Owner’s Solar Panels”) at a cost of $4.00 per watt. Increments of 375 watts. The increments will be the size of the panel installed which may differ from the size available at the time of owner purchase commitment. In which case the owners purchase price will be adjusted to reflect panel size and owner share will be as close to original as possible. Owner will only be charged for full panels. An invoice, a panel specification sheet, warrantee and serial numbers become appended to this document upon installation completion. Upon receipt of full payment a receipt will be generated and e-mailed to you.

**2.** Owner agrees to pay the Purchase Price ($\_\_\_\_\_\_\_\_\_) 1) 50% ($\_\_\_\_\_) on the same date as this contract is executed; 2) 30% ($\_\_\_\_\_\_\_\_) when solar panels and racking are complete; and 3)the remaining 20% ($\_\_\_\_\_\_\_\_\_) on first connection of the project to the grid (“energization”). Failure by Developer to complete project will allow 100% of payments to be returned to Owner. Payments by check shall be made payable to Grafton Community Solar LLC and mailed to the address below. No other payments are required from Owner in connection with this Contract.

Grafton Community Solar, LLC P.O. Box 143, Grafton, VT 05146

**IN WITNESS WHEREOF**, the parties hereto have each caused the:

**Community Solar License and Operation, Maintenance, and Net Metering Agreement (Section 1)**

and the

**Contract for the Purchase of Solar Photovoltaic panels (Section 2)**

executed on \_\_\_\_\_\_\_\_\_\_\_ \_\_, 2019 .

**Owner(s),**

**Developer,**

Grafton Community Solar, LLC

PO Box 143, Grafton, VT 05146

Rex@solarstrategies.net

802 289-4492

**By:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Rex James**, member-manager of Grafton Community Solar LLC , sole member of Grafton Community Solar, LLC PO Box 143, Grafton VT 05146 802 289-4492

Address: ,

Phone

E-Mail Address:

GMP Account Number(s)

**By:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Owner’s Name**



EXHIBIT A TOTAL SOLAR ARRAY PERFORMANCE

Panel number, owner name and serial numbers would be listed here:

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