

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") dated this ____ of May, 2021, memorializes the agreement made by and between _____ ("_____"), a _____ having a principal place of business at _____ and the City of Derby, a municipal corporation organized and existing under the laws of the State of Connecticut having a principal place of business at 1 Elizabeth Street, Derby, Connecticut 06418 (the "City"). From time to time throughout this MOU, each of _____ and the City is referred to as a "Party," and collectively as the "Parties."

WITNESSETH

WHEREAS, _____ desires to construct, own, operate and maintain a carbonate fuel cell power facility within the City in order to expand clean energy deployment, increase access to clean energy for low to moderate income customers, optimize the positive re-use of sites with limited alternative uses, and minimize the cost to electric ratepayers;

WHEREAS, the City owns certain real property identified as Map 9-6 & 8 6 & 17 in the City of Derby and commonly known as 49 Coon Hollow Road (the "Property");

WHEREAS, the City is willing to lease a portion of the Property in the southern section of the Property referred to as the "old dog pound area" consisting of approximately 13,000 square feet +/-, as depicted on the map attached hereto and located outside the existing high voltage transmission line easement (the "Lease Premises");

WHEREAS, in order to have sufficient access to the Leased Premises, the Lease (as hereinafter defined) for such property will include non-exclusive rights and easements to pass and re-pass, under, over, through and across the Property for the duration of the Lease;

NOW THEREFORE, in consideration of these promises, the parties enter into this MOU to evidence the following general agreement:

SECTION 1. LEASE: If _____ determines, in its sole discretion, that the Leased Premises is suitable for, and is or can be zoned for, the _____'s intended use, then the City and _____ shall enter into good faith negotiations for _____ to lease the Leased Premises from the City upon such terms as mutually agreed upon by the Parties.

SECTION 2. PROPERTY ACCESS EASEMENT: Simultaneously with the execution of the Lease, the City shall provide to _____, at no additional cost to _____, a non-exclusive right and easement to pass and re-pass over, under, through and across that certain portion of the Property (the "Property Access Easement") for _____ to access the Leased Premises for the duration of the Lease. The City shall record such easement on the City of Derby Land Records. Notwithstanding the foregoing, upon completion of construction of the carbonate fuel cell power facility, _____ acknowledges and agrees that in no event may the _____'s activities under the Property Access Easement unreasonably interfere in any way with the City's municipal use of the Property.

SECTION 3. SUPPORTING APPROVALS: The Parties acknowledge that there are approvals required in connection with the construction and installation of a carbonate fuel cell power facility, including those under the Shared Clean Energy Pilot Program and the City, including but not limited to the planning and zoning commission. In conjunction with obtaining approvals from any potentially required regulatory or administrative body, the Parties will provide such services and support as may be necessary to obtain necessary approvals. In the event that the Parties do not obtain such required approvals within one hundred eighty (180) days from the date hereof (unless extended by mutual agreement of the parties) (the "Approval Deadline"), this MOU shall be null and void with no recourse to the Parties except for those provisions which expressly survive termination of this MOU, if any. In the event that a planning or zoning board approval or other required approval is denied and _____ elects to appeal such denial, then the Approval Deadline shall, upon written notice from _____ to the City, be automatically extended for an additional one hundred eighty (180) days.

SECTION 4. RIGHT OF ENTRY: The City hereby grants _____ the right, personally or through its environmental, structural, geotechnical and other engineers, consultants, surveyors, architects, and other parties as _____ may designate to enter the Property to inspect, examine and conduct such property survey, examinations, assessments, appraisal, and geotechnical study tests (collectively, the "Investigations"). The City shall allow _____ and such inspectors' reasonable access to the Property upon at least 24 hours advance notice to conduct such Investigations of the Leased Premises. All costs associated with such Investigations shall be borne solely by _____.

SECTION 5. MISCELLANEOUS TERMS AND CONDITIONS: The following are comprehensive provisions in conjunction with the aforementioned Sections and Exhibits presented in this MOU:

- (a) Upon full construction of the carbonate fuel cell power facility on the Leased Premises this MOU shall become null and void.
- (b) This MOU shall be construed in accordance with and governed by the laws of the State of Connecticut.
- (c) This MOU may not be recorded.
- (d) No Party to this MOU is empowered to alter or amend any term herein unless such alteration or amendment is in writing and has been signed by both Parties. This provision cannot be orally waived.
- (e) The individuals who have executed this MOU on behalf of the respective Parties expressly represent and warrant that they are authorized to sign on behalf of such Parties for the purpose of duly binding such Parties to this MOU.
- (f) This MOU may be executed in several counterparts, each of which, when so executed and delivered shall be an original, but all of which together shall constitute but one and the same instrument.

- (g) The terms and provisions of this MOU embody the Parties' mutual intent and shall not be construed more liberally in favor of, nor more strictly against, either Party and, particularly, shall not be construed more strictly against the Party which has drafted this MOU.
- (h) Nothing contained in this MOU shall be construed to create any association, trust, partnership, or joint venture or impose a trust or partnership, duty, obligation, or liability or any agency relationship on, or with regard to, either Party. Neither Party hereto shall have the right to bind or obligate the other in any way or manner.

Signature Pages to Follow

IN WITNESS WHEREOF, _____ has executed this Memorandum of Understanding as of the date set forth below:

1st Witness: [RESPONDENT'S NAME]

NAME By: _____

2nd WITNESS: _____
NAME

NAME TITLE

DATE

STATE OF CONNECTICUT)
) ss:
COUNTY OF NEW HAVEN)

I HEREBY CERTIFY that on this ____ day of _____, 2021 before me, _____, the undersigned officer, personally appeared _____, who acknowledged himself to be the _____ of _____ [RESPONDENT'S NAME], and as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such _____.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Notarial Seal]

Notary Public/Commissioner of the Superior Court

My commission expires: _____

IN WITNESS WHEREOF, City of Derby has executed this Memorandum of Understanding as of the date set forth below:

1st Witness: City of Derby

NAME By:_____

2nd WITNESS: _____
NAME

NAME TITLE

DATE

STATE OF CONNECTICUT)

COUNTY OF _____)

I HEREBY CERTIFY that on this ____ day of _____, 2021 before me, _____, the undersigned officer, personally appeared _____, who acknowledged himself/herself to be the _____ of The City of Derby, and as such _____, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself as such _____.

IN WITNESS WHEREOF I hereunto set my hand and official seal.

[Notarial Seal]

Notary Public/Commissioner of the Superior Court

My commission expires: _____

EXHIBIT A

Description

