
TAX AGREEMENT
FOR PERSONAL AND REAL PROPERTY

between

Kearsarge Granby 2 LLC.

and

THE TOWN OF GRANBY

dated as of _____, 2016

TAX AGREEMENT FOR PAYMENT OF PERSONAL AND REAL PROPERTY

THIS AGREEMENT FOR PAYMENT OF PERSONAL AND REAL PROPERTY TAXES (this "Agreement") is made and entered into as of _____, 2016 by and between KEARSARGE GRANBY 2 LLC. ("Developer") and the TOWN OF GRANBY, MASSACHUSETTS, by and through its Board of Selectmen, a municipal corporation duly established by law and located in Hampshire County, Commonwealth of Massachusetts (the "Town"). Developer and the Town are collectively referred to in this Agreement as the "Parties" and are individually referred to as a "Party".

WHEREAS, Developer plans to build, own and operate a photovoltaic power plant (the "Project") with an expected DC nameplate capacity of approximately 650 kilowatts on approximately 2.5 acres, more or less, parcels of land located at 190 East Street, Granby, MA, Hampshire County, Massachusetts, as more particularly shown in Exhibit A (the "Property");

WHEREAS, it is the intention of the Parties that Developer make annual payments to the Town for the term of this Agreement in lieu of Personal and Real Property taxes on the Project, in accordance with G.L. c.59, §38H (Acts of 1997 Chapter 164, Section 71(b), as amended) and the Massachusetts Department of Revenue regulations adopted in connection therewith;

WHEREAS, because both Developer and the Town need an accurate projection of their respective expenses and revenues with respect to the Personal and Real Property that is taxable under law, the Parties believe that it is in their mutual best interests to enter into this Agreement fixing the payments that will be made with respect to all taxable Personal and Real Property incorporated within the Project for the term of the Agreement;

WHEREAS, the Parties intend that, during the term of the Agreement, Developer will not be assessed for any statutory Personal and Real Property taxes to which it might otherwise be subjected under Massachusetts law, and this Agreement will provide for the exclusive payments in lieu of such Personal and Real Property taxes that Developer (or any successor owner of the Project) will be obligated to make to the Town with respect to the Project during the term hereof, provided, however, that the Parties do not intend for this Agreement to affect any direct payments for services provided by the Town to the Project, including but not limited to, permit fees, consultant services associated with any permit applications, water and sewer services, and similar payment obligations not in the nature of property taxes that Developer is otherwise obligated to pay the Town;

WHEREAS, the Town is authorized to enter into this Agreement with Developer, provided the payments in lieu of Personal and Real Property taxes over the life of the Agreement are expected at inception to approximate the property tax payments that would otherwise be determined under G.L. c.59 based upon the full and fair cash valuation of the Project; and

WHEREAS, the Parties have reached this Agreement after good faith negotiations.

NOW THEREFORE, in exchange for the mutual commitments and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Payment in Lieu of Personal and Real Property Taxes. Developer agrees to make payments to the Town in lieu of Personal and Real Property taxes on and after the Completion Date (defined below) for a period of twenty (20) consecutive years, commencing with the payment of fiscal tax year 2017, said payment to reflect a pro-rated amount for fiscal tax year 2017 (from the Completion Date of the Project to the end of the fiscal year), and ending with fiscal tax year 2036 in the amounts as set forth in Exhibit B. Each annual payment will be paid to the Town in four (4) equal installments on or before _____, _____, _____ and _____ of each fiscal tax year during the term of this Agreement and the annual payment amount and payment date will be noted on a semi-annual bill issued by the Town to the Developer. Except to the extent that Paragraphs 2, 3 and 4 of the Agreement provide otherwise, Developer agrees that the payments in lieu of taxes under this Agreement will not be reduced on account of a depreciation factor, revaluation, or reduction in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in the agreed per megawatt rate, and the Town agrees that the payments in lieu of taxes will not be increased on account of an inflation factor, revaluation or increase in the Town's tax rate or assessment percentage beyond that anticipated by the Parties and already reflected in this Agreement.

Notwithstanding anything to the contrary in this Agreement, in the event Developer's leasehold interest in the Property is, other than due to an assignment or sale of Developer's leasehold interest in the Property, discontinued before expiration of the term of this Agreement, whether by way of the expiration or termination of the lease between the Developer and the Property Owner or otherwise, and either: (i) Developer does not then own the Property; or (ii) the Property Owner does not then purchase the Project from the Developer and take assignment of this Agreement pursuant to Section 7 hereof, then this Agreement shall also terminate automatically as of the date of such discontinuance, and the Town shall proceed to assess taxes for the Project and on the Property under applicable laws and regulations as if this Agreement never existed. Developer shall immediately notify the Town in writing in the event of any such discontinuance of its leasehold interest, failing which Developer and the Property Owner shall, notwithstanding anything to the contrary in this Agreement, remain responsible for all payments due under this Agreement.

2. Improvements or Additions, Retirements. To the extent that Developer, at its sole option, makes any capital improvements to the Project or adds additional Personal and Real Property on or after the date the Project achieves its commercial operation date, defined as the date the Project receives approval to run power into the grid (the "Completion Date"), the remaining payments in lieu of taxes will be increased as described in Paragraph 3. To the extent that Developer, at its sole option, retires or removes any capital improvements from the Project or retires or removes any Personal and Real Property from the Project on or after the Completion Date, the remaining payments in lieu of taxes will be decreased as described in Paragraph 3.

Notwithstanding the foregoing, consistent with applicable Massachusetts Department of Revenue regulations, only the addition of equipment on or after the Completion Date that adds value to the Project (not including replacement of existing equipment, machinery, and pollution control and other equipment that is exempted from local property taxes) will lead to an increase in the payments in lieu of taxes due under this Agreement. No additional payments in lieu of property taxes will be due or required for: (i) replacement of Personal and Real Property or equipment or machinery that is nonfunctional, obsolete, or is replaced solely due to wear and tear or casualty or as part of scheduled or unscheduled maintenance; or (ii) pollution control equipment that is exempted from taxation by the provisions of General Laws Chapter 59, section 5(44) or other applicable laws or regulations in effect from time to time; or (iii) equipment installed as required by or in response to any statute, law, regulation, consent decree, order, or case mandating additional control of any emission or pollution.

3. Calculation of Adjustment. Except as otherwise provided in Paragraph 2, to the extent that on or after the Completion Date, Developer makes capital improvements to the Project or adds new Personal and Real Property or equipment to the Project that would increase the value of the Project under applicable Massachusetts Department of Revenue regulations, the remaining annual payments in lieu of taxes under this Agreement will be increased by the product of the mill rate per thousand dollars of valuation at the time of the capital improvement multiplied by the actual cost of the capital improvement or additional Personal and Real Property or equipment and levelized over twenty years. To the extent that on or after the Completion Date, Developer retires or removes property from the Project, the remaining annual payments in lieu of taxes under this Agreement will be decreased by the product of the mill rate per thousand dollars of valuation at the time of the removal of the property times the original cost of such retired or removed property. Except as otherwise provided in Paragraph 2, in the event that new property or equipment added to the Project replaces existing property or equipment, the depreciated original cost (net book value) of the existing property or equipment will be deducted from the actual value of the new property or equipment for purposes of the payment in lieu of tax adjustment. In calculating changes in value (+ and -), the tax rate for the then current tax year shall be used in the calculation.

4. Inventory. Within six (6) months after the Completion Date, the Parties will agree on a mutually acceptable inventory of Personal and Real Property incorporated into the Project as of the Completion Date (the "Inventory"). The Inventory will itemize and indicate the current value of all Personal and Real Property subject to taxation and adjustment pursuant to Paragraph 3, and all Personal and Real Property exempted from taxation and adjustment pursuant to Paragraph 3. The Parties agree that the Inventory will include all costs for taxable items that will be incurred by Developer in completing the Project. The Town, its officers, employees, consultants, and attorneys will have the right to inspect the Project in connection with the preparation of the Inventory. Developer will update the Inventory annually as of January 1 of each year, and an updated written Inventory will be provided to the Town on or before March 1 of each year. The Town, its officers, employees, consultants, and attorneys will have the right to periodically inspect the Project on reasonable prior notice to Developer (subject to the Town agreeing to comply with all Developer safety requirements), and to review documents in the possession of Developer that relate to the inventoried property for the purpose of verifying that Developer has accurately updated the Inventory.

5. Payment Collection. All rights and remedies available to the Town for the collection of taxes shall apply to the payments in lieu of taxes hereunder, including, but not limited to, the rights and remedies provided in G.L. c. 59 and G.L. c. 60, and all such rights and remedies are hereby reserved notwithstanding anything to the contrary herein. The provisions of the General Laws, including but not limited to G.L. c. 59 and G.L. c.60, will govern the establishment of liens and the collection of any payments in lieu of taxes provided for in this Agreement as though said payments were Personal and Real Property taxes due and payable to the Town.

6. Tax Status, Separate Tax Lot. The Town agrees that during the term of this Agreement, the Town will not assess Developer for any Personal and Real Property taxes with respect to the Project to which Developer might otherwise be subject under Massachusetts law, and the Town agrees that this Agreement will exclusively govern the payments of all ad valorem Personal and Real Property taxes and payments in lieu of such taxes that Developer will be obligated to make to the Town with respect to the Project, provided, however, that this Agreement is not intended to affect, and will not preclude, other assessments of real property taxes or the general applicability by the Town for excise taxes on vehicles due pursuant to G.L. c.60A and/or for services provided by the Town to the Project, including but not limited to, permit fees and consultant services.

The Town agrees that no Personal and Real Property taxes will be due from or assessed to Developer with regard to the Property or the associated Personal and Real Property other than the payments in lieu of taxes described in this Agreement.

7. Successors and Assigns. This Agreement will be binding upon the successors and assigns of Developer, and the obligations created hereunder will run with the Project and Developer's interest in the Property. In the event that Developer transfers or assigns its interest in the Property, or all or substantially all of its interest in the Project, this Agreement will thereafter be binding on the transferee or assignee. A Notice of this Agreement may be recorded in the applicable Registry of Deeds forthwith upon execution. In the event of bankruptcy of Developer, the Town may revoke this Agreement. Developer shall provide no less than thirty (30) days advance written notice of any intent to transfer or assign its interest in the Property or all or substantially all of its interest in the Project.

8. Statement of Good Faith. The Parties agree that the payment obligations established by this Agreement were negotiated in good faith in recognition of and with due consideration for the full and fair cash value of the Project, to the extent that such value is determinable as of the date of this Agreement in accordance with G.L. c.59, §38H. Each Party was represented by counsel in the negotiation and preparation of this Agreement and has entered into this Agreement after full and due consideration and with the advice of its counsel and its independent consultants. The Parties further acknowledge that this Agreement is fair and mutually beneficial to them because it reduces the likelihood of future disputes over Personal and Real Property taxes, establishes tax and economic stability at a time of continuing transition and economic uncertainty in the electric utility industry in Massachusetts and the region, and fixes and maintains mutually acceptable, reasonable and accurate payments in lieu of taxes for the Project that are appropriate and serve their respective interests. The Town acknowledges that this Agreement is beneficial to it because it will result in

mutually acceptable, steady, predictable, accurate and reasonable payments in lieu of taxes to the Town. Developer acknowledges that this Agreement is beneficial to it because it ensures that there will be mutually acceptable, steady, predictable, accurate, and reasonable payments in lieu of taxes for the Project.

9. Additional Documentation and Actions. Each Party will, from time to time hereafter, execute and deliver (or cause to be executed and delivered), such additional instruments, certificates, and documents, and take all such actions, as the other Party reasonably requests for the purpose of implementing or effectuating the provisions of this Agreement and, upon the exercise by a Party of any power, right, privilege or remedy pursuant to this Agreement that requires any consent, approval, registration, qualification or authorization of any third party, each Party will execute and deliver all applications, certifications, instruments and other documents and papers that the exercising Party may be so required to obtain.

10. Partial Invalidity. If for any reason, including a change in applicable law, it is ever determined that this Agreement may not apply to the Personal and Real Property the parties agree that notwithstanding said determination or change in law that this Agreement will be deemed to continue to apply to the Personal and Real Property, and the Town will thereafter be entitled to assess and tax the real property in accordance with G.L. c. 59 and G.L. c. 60, and Developer will be entitled to challenge such assessments and taxes in accordance with Massachusetts law, with the Parties having all rights of a Town and a taxpayer with regard to such real estate taxes. This Agreement will not apply to real estate taxes. The Parties will cooperate with each other, and use reasonable efforts to defend against and contest any challenge to this Agreement by a third party. If for any reason, including a change in applicable law, a property tax is imposed on the Project or the Property in addition to the payments in lieu of taxes due under this Agreement, the payments in lieu of taxes due under this Agreement will be decreased on an annual basis by the amount of the property taxes actually paid to the Town for each year. If for any reason, including a change in applicable law, a payment in lieu of taxes is provided for that is less than that provided for in Paragraph 1 of this Agreement, any amount provided for in this Agreement over and above such lesser amount shall be considered a payment by Developer to the Town as the host community of the Project. In no event, except as provided for in Paragraph 2 and 3 hereof, shall the payment amounts provided for herein be reduced below the level called for in Paragraph 1. Only in the event that this Agreement is determined to be invalid in accordance with applicable law shall this agreement be void and of no further effect and the Developer shall continue to make payments as noted above.

11. Notices. All notices, consents, requests, or other communications provided for or permitted to be given hereunder by a Party must be in writing and will be deemed to have been properly given or served upon the personal delivery thereof, via courier delivery service or otherwise. Such notices shall be addressed or delivered to the Parties at their respective addresses shown below.

To: Developer
Kearsarge Granby 2 LLC
480 Pleasant St., Suite B110

Watertown, MA 02472

To: Town of Granby

10-B West State Street
Granby, MA 01033
Attn: Board of Selectman Town of Granby

Any such addresses for the giving of notices may be changed by either Party by giving written notice as provided above to the other Party. Notice given by counsel to a Party shall be effective as notice from such Party.

12. Applicable Law. This Agreement will be made and interpreted in accordance with the laws of the Commonwealth of Massachusetts. The Parties agree that sole and exclusive jurisdiction and venue for any action or litigation arising from or relating to this Agreement shall be an appropriate federal court located in the Commonwealth of Massachusetts, provided that such court has jurisdiction. Absent such federal jurisdiction, the Parties agree that sole and exclusive jurisdiction and venue for any action or litigation arising from or relating to this Agreement shall be an appropriate state court located in the Commonwealth of Massachusetts.

13. Good Faith. The Parties shall act in good faith to carry out and implement this Agreement.

14. Force Majeure. The Parties recognize that there is the possibility during the term of this Agreement that all or a portion of the Property or Project may be damaged or destroyed or otherwise rendered unusable due to events beyond the control of either Party. These events are referred to as "Force Majeure." As used herein, Force Majeure includes, without limitation, the following events:

- a. Acts of God including floods, winds, storms, earthquake, fire or other natural calamity;
- b. Acts of War or other civil insurrection or terrorism; or
- c. Taking by eminent domain by any governmental entity of all or a portion of the Property or the Project.

If a Force Majeure event occurs during the term of this Agreement with respect to any portion of the Property or Project that renders the Property or Project unusable for the customary purpose of the production of electricity for a period of more than sixty (60) days, then Developer may, at its election, notify the Town of the existence of this condition as well as of its decision whether or not to rebuild that portion of the Property or Project so damaged or destroyed or taken.

If Developer elects not to rebuild, then it may notify the Town of its termination of this Agreement

and the Property and Project will thereafter be assessed and taxed as though this Agreement does not exist.

15. Default.

a. "Default" hereunder shall mean the filing by Developer for bankruptcy protection, or if the Developer shall fail to pay any payment required hereunder within thirty (30) days from the date of notification by Town to Developer of such failure and a demand for payment. At all times, Developer's lender will have the right to cure any and all defaults, and shall have a reasonable period of time (but in any event not more than thirty (30) days) to cure such defaults.

b. In the event the Developer files for bankruptcy protection, this Agreement shall become null and void from and after the date of such filing, and any taxes accrued from the date of filing shall be in accordance with the Massachusetts General Laws and not calculated or governed by this Agreement.

c. In the event of a Default hereunder which is not cured by Developer's lender within the aforementioned thirty (30) day period, then the Developer shall be responsible for and be required to pay to the Town within thirty (30) days all Personal and Real Property taxes that would have been due on the Project up to the date of default as if the Project had been fully taxed and this Agreement were not in place, from the date of this Agreement to the date of Default, after which time this Agreement shall be null and void and of no further force and effect.

16. A. Covenants of Developer. During the term of the Agreement, Developer will not voluntarily do any of the following:

a. seek to invalidate this Agreement, or otherwise take a position adverse to the purpose or validity of this Agreement, except as expressly provided herein;

b. convey by sale, lease, or otherwise any interest in the premises to any entity or organization that qualifies as a charitable organization pursuant to M.G.L. c.59 Section 5 (Third); or

c. fail to pay the Town all amounts due hereunder when due in accordance with the terms of this Agreement.

B. Representations and Warranties of Developer and Town:

Developer and Town each represents and warrants on its own behalf as follows:

a. It is a corporation, municipal corporation, or other business entity duly organized, validly existing, and in good standing under the laws of the state in which it was formed, and if a foreign corporation, is registered with the Massachusetts Secretary of State, and has full power and authority to carry on its business as it is now being conducted.

b. This Agreement constitutes its legal, valid, and binding obligation enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency, or other laws affecting other enforcement of creditors' rights generally or by general equitable principles.

c. It has taken all necessary action to authorize and approve the execution and delivery of this Agreement.

d. None of the documents or information furnished by it or on its in connection with negotiation and execution of this Agreement contains any untrue statement of a material fact or omits to state any material fact required to be stated therein, or necessary to ensure that the statements contained herein or therein, in the light of the circumstances in which they were made, are not misleading.

e. The person executing this Agreement on its behalf has the full power and authority to bind it to each and every provision of this Agreement.

C. Developer represents and warrants that:

a. Developer is a "generation company" or "wholesale generation company" as those terms are used and defined in G.L. c. 59, § 38H(b) and G.L. c. 164 § 1.

b. Developer does not qualify for a manufacturing classification under G.L. c. 59, § 5(16)(3).

17. Covenants of the Town of GRANBY. So long as Developer is not in breach of this Agreement during its term, the Town will not do any of the following:

a. seek to invalidate this Agreement or otherwise take a position adverse to the purpose or validity of this Agreement;

b. seek to collect from Developer any property tax upon the Property or the improvements thereon (including the Project) in addition to the amounts herein;

c. impose any lien or other encumbrance upon the Property or the improvements thereon (including the Project) except as is expressly provided herein;

18. Required Approval and Termination: This Agreement shall not be effective unless and until it is approved by; the GRANBY Board of Assessors; and the GRANBY Board of Selectmen. Notwithstanding anything to the contrary herein, this Agreement may be terminated by either Party upon notice to the other Party if: (i) this Agreement is not approved by the Town acting by affirmative votes of its Town Meeting, Board of Assessors, and Board of Selectmen on or before _____ and (ii) the Completion Date has not occurred by _____.

20. Certification of Tax Compliance. Pursuant to G.L. c. 62C, s49A, the undersigned Developer by its duly authorized representative certifies that it is in tax compliance with the tax laws of the Commonwealth of Massachusetts.

Executed under seal by the undersigned as of the day and year first written above, each of whom represents that it is fully and duly authorized to act on behalf of and bind its principals.

TOWN OF GRANBY

KEARSARGE GRANBY 2 LLC

By: _____

By: _____

By: _____

By: _____

Title: _____

By: _____

By: _____

Approved by the Board of Assessor's on the __ day of _____, 2016.

By: _____

By: _____

By: _____

EXHIBIT A Site Description

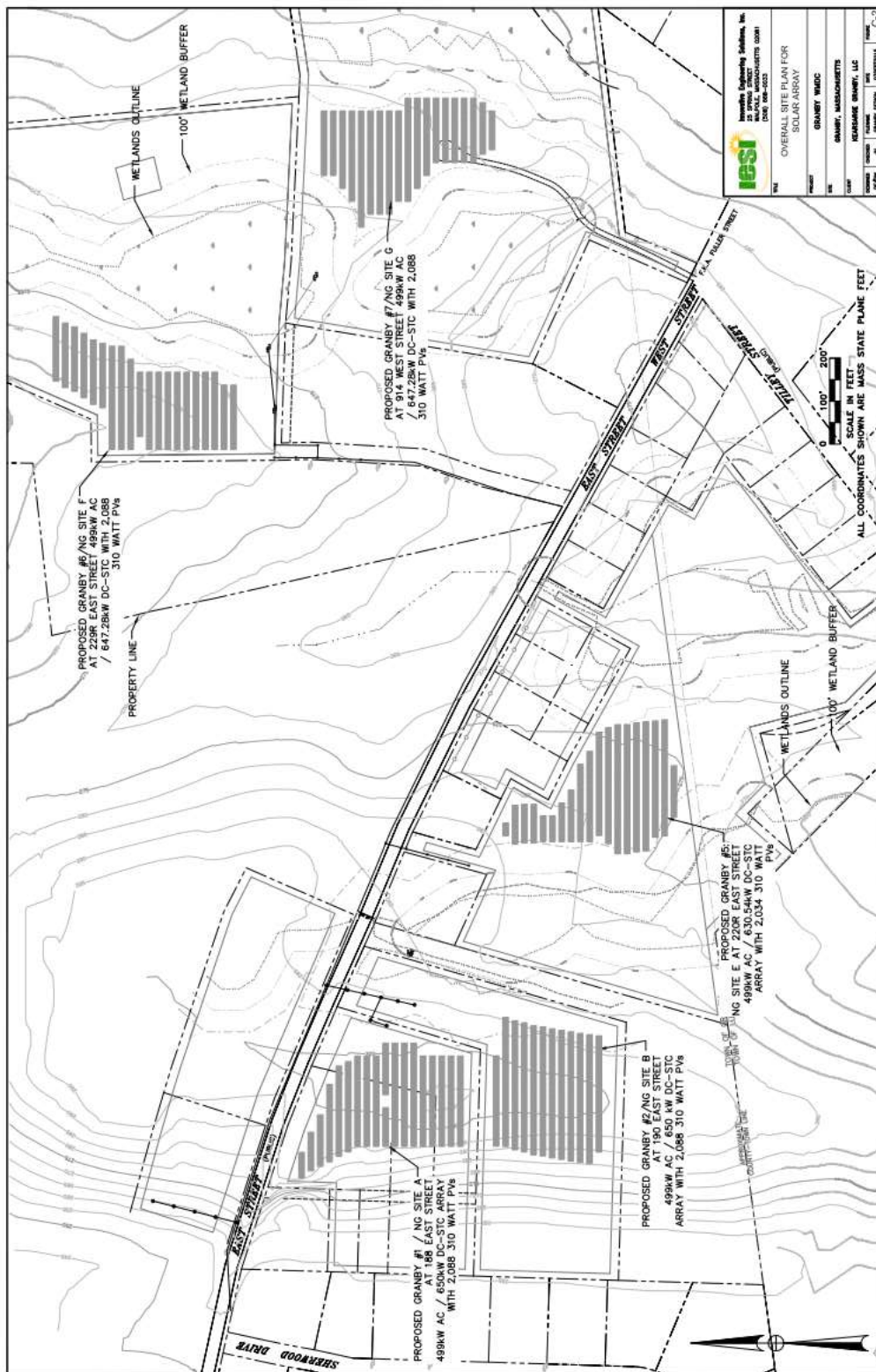


EXHIBIT B

PILOT Payments

\$10,900 per DC MW

Based on a 0.650 MW DC System

\$7,085/year