

**Agenda**  
**Board of Selectmen's Meeting**  
**Town of Damariscotta, Maine**  
**June 5, 2019, 5:30 PM**  
**Damariscotta Town Hall**

- I. Pledge of Allegiance**
- II. Call to Order**
- III. Minutes**
  - 1. May 15, 2019
- IV. Financial Reports**
  - 1. Payroll Warrant # 66
  - 2. Accounts Payable Warrant # 67
- V. Presentations**
- VI. Citizen Comments and General Correspondence**
- VII. Town Manager Items**
  - 1. Reminder on Annual Town Meeting - June 11&12
  - 2. Public Hearing for YMCA CDBG Application – June 14
  - 3. Annual Town Report
  - 4. Review of Bristol Road Sidewalk Project RFP Process
- IX. Official Action Items**
  - 1. Contract for Solar Array Installation and Power Purchase Agreement
  - 2. Warrant for Special Town Meeting
  - 3. Town Personnel Policy
  - 4. Town Employee Pay Scale
- X. Selectmen's Discussion Items**
- XI. Adjournment**

Town Manager Notes  
Board of Selectmen's Meeting  
June 5, 2019

**Town Manager Items-** Verbal updates

**Official Action Items**

1. **Contract for Solar Array Installation and Power Purchase Agreement (tabled from 5/1/2019 and 5/15/19)** - In early April, the Town sent out a request for proposals for the installation of a solar array on the Town's former landfill site and a Power Purchase Agreement (PPA).

In brief, the Town would finance the system through the PPA. The investors in the PPA would build the array on Town property and benefit financially through a federal income tax credit (30% through 2019), which in turn results in a discounted energy cost for the Town. The energy produced is metered and credited back to the Town on its energy bills. The Town will have a modest reduction in its electric energy costs for the first six years and on the anniversary of the sixth year and annually each year thereafter the Town can opt purchase the system for its fair market value. Perhaps equally important to the savings that the Town will accrue over the longer term, the use of a dedicated solar system for its electric power makes a very important public statement about the Town's commitment to reduce its reliance on fossil fuels.

The Town received one proposal, from Sundog Solar, LLC, by the bid deadline of April 23. Sundog Solar has installed similar systems for the Towns of Bristol, Waldoboro and Tremont. Because the RFP that the companies were asked to bid on included the Town of Bremen as a partner, I asked Sundog Solar to modify their proposal to address the Town of Bremen's subsequent decision not to be part of the agreement.

A solar committee comprised of Paul Kando, Marnie Sinclair, Roger Panek and myself reviewed the proposal. John Roberts has also assisted in the review process.

The PPA contract was not delivered until a few minutes before your May 15 meeting, thus prompting the Board to table further action to give the Committee and the Selectmen a chance to review it. The attached agreement is very similar to the copy that the Board received at your May 15 meeting with the major exception of the reduction in power that would be sold to the Town from 98,000 kWh to 82,688 kWh. The reduction is due to the fact that that the power to operate street lights cannot be included in the contract because the energy to these fixtures is not metered. Several other less substantive changes were in the revised draft.

The owner of the company provided the following response to a number of questions that several us asked during a telephone meeting on May 23:

*Attached is the updated PPA for you and the select board to review. I've added "and premises" after "facility" throughout section 8C. This section is referring to any electrical equipment that could interfere with the operation of the PV array. Since we will own the equipment at the site, this won't be the towns responsibility. The responsibility landing on the town, would be to keep the account in place with CMP so the PV array can continue to operate. Maintain the land cap, road way onto the land cap etc. This is to protect the operation of the array for 25 years. Let me know if you want to discuss this more to create more clarity.*

*We would prefer a lease from the town. The contract language indicates a lease throughout it, so it will stay consistent with the PPA contract.*

*I've made the other suggested changes. Thank you for looking it over well.*

*Also, I've included a PV Watts production estimate to go along with the expected production in the change of system size.*

Please note on the copy that I sent you last Thursday that Exhibit 2 needs to be changed to reflect the revised numbers for the energy to be purchased.

If the Board decides to proceed with the contract with Sundog, the lease of the portion of the former landfill site will need to be approved by Town Meeting. The company's plan for the site will also need to be reviewed and, following a public hearing, approved by the Planning Board. Unfortunately, we have missed the timeline for the notice requirements for the June 12 Annual Town Meeting, so I have tentatively set up a public hearing and special town meeting to precede your June 19 meeting. If you decide not to approve the contract, we will cancel that meeting.

The earlier draft of the contract was reviewed by the Town's legal counsel Amanda Meader. Amanda had a number of questions that I was able to address. The Solar Committee has also reviewed the draft contract and is recommending Board approval.

**Recommended Action: Waive Town Charter bid guidelines and authorize the Town Manager to execute a negotiated Power Purchase Agreement with Sundog Solar, LLC for the installation and financing of a solar array at the Town's former landfill site.**

2. **Warrant for Special Town Meeting-** As noted above, the next step in the process for the construction of a solar array on the Town's former landfill site will be a public hearing and a special town meeting to approve the lease of the Town-owned land where the array will be located. In order to continue to move the process forward, I am asking the Board approve a public hearing and special town meeting warrant for June 19. To meet the public notice requirements, staff has already placed the public notice in this week's Lincoln County

News. If the Board decides not to go forward with the contract, we will cancel the hearing and special meeting. I will email the draft warrant for the special town meeting early this week.

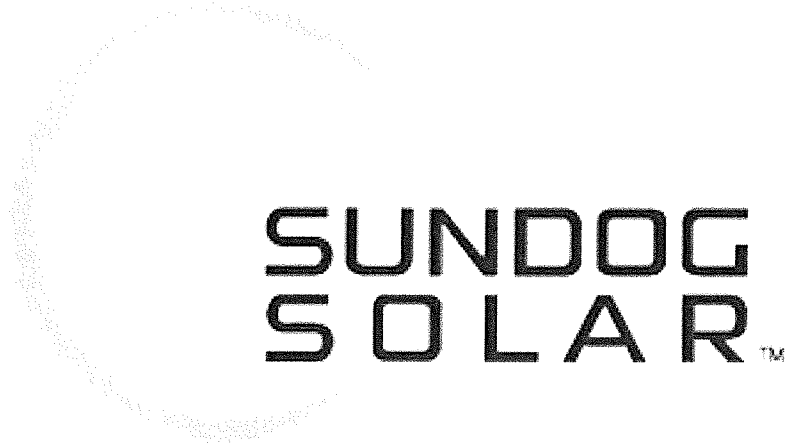
**Recommended Action: Approve the warrant for a special town meeting for June 19 at 5:30 PM at Town Hall for the purpose of considering the lease of a portion of the Town's former landfill site for a solar array. The special town meeting will take place immediately following a public hearing on this matter.**

3. **Revised Town Personnel Policy-** Copies of a draft updated Personnel Policy along with a summary of the proposed changes were distributed to the Board at your May 15 meeting. The Selectmen were asked to submit any changes to Cheryl in time for final review and approval at the June 5 meeting. Cheryl will review the changes suggested by the Selectmen at your meeting Wednesday.,

**Recommended Action: Approve the Updated Town Personnel Policy**

4. **Town Employee Pay Scale-** The attached proposed employee wage scale was distributed to the Board via email two weeks ago. A wage scale is called for the Town' personnel policy and is something that the Board has requested during the past. The scale allows employees to progress through ranges that are set by the Board versus having the Board approve specific pay amounts for each employee each year. Note that the range for each step in the wage scale provides for some discretion by supervisors based on employee performance. The ranges for each of the non-contract positions listed were based on a survey of roughly comparable positions in similar size towns.

**Recommended Action: Approve the FY 2020 Wage Scale for Non-contract Town Employees**



**Town of Damariscotta  
Solar Power Purchase Agreement**

### Solar Power Purchase Agreement

This Solar Power Purchase Agreement (this "Agreement") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Seller below (the "Effective Date").

<b>Purchaser:</b>	<b>Town of Damariscotta Maine</b>	<b>Seller:</b>	<b>Damariscotta Solar LLC</b>
<b>Name and Address</b>	<b>Town of Damariscotta</b> 21 School St. Damariscotta, ME 04543 Attention: Matt Lutkus, Town Manager	<b>Name and Address</b>	<b>Damariscotta Solar, LLC</b> <b>c/o Sundog Solar, LLC</b> 222 E. Main St. Searsport, ME 04974 Attention: Danny Piper
<b>Phone</b>	(207) 563-5168	<b>Phone</b>	(207) 548-1100
<b>E-mail</b>	MLutkus@damariscottame.com	<b>E-mail</b>	danny@sundog.solar
<b>Premises Ownership</b>	Purchaser <input checked="" type="checkbox"/> owns <input type="checkbox"/> leases the Premises. List Premises Owner, if different from Purchaser: _____	<b>Additional Seller Information</b>	

This Agreement sets forth the terms and conditions of the purchase and sale of solar generated electric energy from the solar panel system described in **Exhibit 2** (the "System"), interconnected to the Purchaser's facility described in Exhibit 2 (the "Facility"), and installed on the property upon which the System and Facility are located as described in **Exhibit 6** (the "Premises").

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Basic Terms and Conditions
- Exhibit 2** System Description
- Exhibit 3** Credit Information (Omitted)
- Exhibit 4** General Terms and Conditions
- Exhibit 5** Form of Memorandum of License
- Exhibit 6** License

**Purchaser: Town of Damariscotta Maine**

**Seller: Damariscotta Solar, LLC**

By (signature): \_\_\_\_\_

By (signature): \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Danny Piper \_\_\_\_\_

Title: \_\_\_\_\_

Title: Managing Member, Damariscotta Solar, LLC

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit 1**  
**Basic Terms and Conditions**

**1. Initial Term:** Twenty five (25) years, beginning on the Commercial Operation Date.

**2. Additional Terms:** One (1) Additional Term of five (5) years.

**3. Environmental Incentives and Environment Attributes:** Accrue to Seller. Seller may sell Environmental Incentives and Environment Attributes, including Renewable Energy Credits (RECs), to third parties.

**4. Contract Energy Price per kilowatt hour (\$/kWh):** Purchaser hereby agrees, for the duration of this Agreement, to purchase energy generated by the System at the fixed energy price per kWh (\$/kWh) set forth in the schedule below:

Contract Year	Estimated Energy Production (kWh)	Fixed Energy Price per \$/kWh
1	82,688	.125
2	82,275	.125
3	81,863	.125
4	81,454	.125
5	81,047	.125
6	80,641	.126
7	80,238	.128
8	79,837	.129
9	79,438	.130
10	79,041	.131
11	78,645	.133
12	78,252	.134
13	77,861	.135
14	77,472	.137
15	77,084	.138
16	76,699	.139
17	76,315	.141
18	75,934	.142
19	75,554	.144

20	75,176	.145
21	74,800	.147
22	74,426	.148
23	74,054	.150
24	73,684	.151
25	73,316	.153

5. **Condition Satisfaction Date:** Dec. 31, 2019

6. **Anticipated Commercial Operation Date:** December 20, 2019

7. **Purchaser Options to Purchase System.**  None, or  As set forth in Section 16.b of Exhibit 4.

8. **Outside Commercial Operation Date:** December 31, 2019.

9. **System Installation:**

<b>Includes</b>	<input checked="" type="checkbox"/> Design, ME PE stamped engineering, permitting, installation, on line performance monitoring & town website link support, rebate application and paperwork processing of the System.
	<input checked="" type="checkbox"/> Limited Warranty. <input type="checkbox"/> List of Approved Subcontractors <input checked="" type="checkbox"/> Any like substantive equipment, in the sole discretion of the Seller. <input type="checkbox"/> State or Utility Rebate, if any. Describe: _____
<b>Excludes:</b>	Upgrades or repairs to the Facility or utility electrical infrastructure, utility impact study if applicable, payment bonds, performance bond(s), prevailing wage construction, tree removal, tree trimming, or energy audit, if required.



## Exhibit 2

### System Description

- 1. System Location:** Town of Damariscotta Maine closed landfill (located on Standpipe Rd. near Biscay Rd.)
- 2. System Size:** 79.18 kW DC ( photovoltaic array nameplate capacity), 66.6 kW AC (inverter nameplate rating).
- 3. Expected First Year Energy Production (kWh):** 98,000 kWh. Expected energy production shall be de-rated by one half of one percent (0.5%) annually. Annual energy production is based on NREL's PVwatts projections.
- 4. Expected Structure:**  Ground Mounted  Roof Mount  Parking Structure  Other
- 5. Expected Module(s):**

Manufacturer/Model	Quantity
Tier 1 solar panels with 12 year manufacturer warranty and 25-year manufacturer's performance warranty or equivalent module to meet total system DC capacity rating	214 (370 Watt nameplate rating)

**6. Expected Inverter(s):**

Manufacturer/Model	Quantity
SolarEdge 66.6 kW, 3 phase, 480V inverter or industry accepted equivalent	1

**7. Facility and System Layout: See Exhibit 2, Attachment A**

Aerial Image of Facility and Premises	See Attachment A: Site Plan Drawing. (Provided within 30 days of agreement signing.)
ME PE Engineering Assessments	See Attachment's : One-Line electrical drawing, (To Be Provided within 30 days of Agreement signing), Wind Load Analysis, Settlement Analysis
Location of System Components	Solar array will be located on the town owned closed landfill, towards the North end of the landfill. Town of Damariscotta's closed landfill is located on Standpipe rd., near Biscay Rd. Inverters to be co-located with the array or other location on the premises as agreed upon by the Parties.
Delivery Point	On utility side of Revenue Grade Meter and data logger as shown in One-Line Electrical Drawing.
Access Points	Access shall be by existing drives and ways and as mutually agreed by the parties. Access shall be adequate to allow full and timely access to the premises for installation and maintenance. See also Site Plan.

**8. Utility:** Central Maine Power

**9. Participating Meters:**

a. Generation Meter: A new service and account will be created with Central Maine Power to service the solar electric system.

b. Utility Load Meters (account numbers and addresses shown):

- ii.
- iii.
- iv.
- v.
- vi.
- vii.
- viii.
- ix.
- x.

**Exhibit 3**  
**Credit Report**  
**[omitted]**

## **Exhibit 4**

### Solar Power Purchase Agreement General Terms and Conditions

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement. The rule of construction that ambiguities in an agreement are to be construed against the drafter will not be invoked or applied in any dispute regarding the meaning of any provision of this Agreement.

2. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electric energy generated by the System as supplied at the Delivery Point during the Initial Term and any Additional Term (as defined in **Exhibit 1**, and collectively the "Term"). Electric energy generated by the System will be delivered to Purchaser at the delivery point identified in **Exhibit 2** (the "Delivery Point"). Purchaser shall take title to the electric energy generated by the System at the Delivery Point, and risk of loss will pass from Seller to Purchaser at the Delivery Point. Purchaser may purchase electric energy to meet the purchasers aggregate electrical needs from other sources. If pre-commissioning testing is requested by Seller or Seller's Financing Parties, any purchase, sale and/or delivery of electric energy generated by the System prior to the Anticipated Commercial Operation Date shall be treated as purchase, sale and/or delivery of limited amounts of test energy only and shall not indicate that the System has been put in commercial operation by the purchase, sale and/or delivery of such test energy. The purchaser shall pay for energy produced during the startup period.

3. **Term and Termination.**

**A. Initial Term.** The initial term ("Initial Term") of this Agreement shall commence on the Anticipated Commercial Operation Date (as defined below) and continue for the length of time specified in Exhibit 1, unless earlier terminated as provided for in this Agreement. The "Anticipated Commercial Operation Date" is the date Seller gives Purchaser written notice that the System is mechanically complete and capable of providing electric energy to the Delivery Point. Such notice shall be deemed effective unless Purchaser reasonably objects within five (5) days of the date of such notice. Upon Purchaser's request, Seller will give Purchaser copies of certificates of completion or similar documentation from Seller's contractor and the interconnection or similar agreement with the entity authorized and required under applicable law to provide electric distribution service to Purchaser at the Facility (the "Utility"), as set forth on Exhibit 2. This Agreement is effective as of the Effective Date and Purchaser's failure to enable Seller to provide the electric energy

by preventing it from installing the System or otherwise not performing shall not excuse Purchaser's obligations to make payments that otherwise would have been due under this Agreement.

**B. Additional Terms.** Prior to the end of the Initial Term or of any applicable Additional Term, as defined below, if Purchaser has not exercised its option to purchase the System, either Party may give the other Party written notice of its desire to extend this Agreement on the terms and conditions set forth herein for the number and length of additional periods specified in **Exhibit 1** (each such additional period, an "Additional Term"). Such notice shall be given, if at all, not more than one hundred twenty (120) and not less than sixty (60) days before the last day of the Initial Term or the then current Additional Term, as applicable. The Party receiving the notice requesting an Additional Term shall respond positively or negatively to that request in writing within thirty (30) days after receipt of the request. Failure to respond within such thirty (30) day period shall be deemed a rejection of the offer for an Additional Term. If both Parties agree to an Additional Term, the Additional Term shall begin immediately upon the conclusion of the Initial Term or the then current term on the same terms and conditions as set forth in this Agreement. If the Party receiving the request for an Additional Term rejects or is deemed to reject the first Party's offer, this Agreement shall terminate at the end of the Initial Term (if the same has not been extended) or the then current Additional Term.

## 4.

**Billing and Payment.**

**A. Quarterly Energy Charges.** Purchaser shall pay Seller quarterly invoicing under subsection (c) of this Section 4) for the electric energy generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"). The periodic payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of energy generated during each month of the applicable billing period, as measured by the System meter.

**B. [Intentionally Omitted]**

**C. Quarterly Invoices.** Seller shall invoice Purchaser quarterly in arrears, by mail or electronic mail. Such quarterly invoices shall state (i) the amount of electric energy produced by the System and delivered to the Delivery Point, (ii) the energy rates applicable to, and charges incurred by, Purchaser under this Agreement and (iii) the total amount due from Purchaser.

**D. [Intentionally Omitted]**

**E. Taxes.** The system shall be exempt from personal property tax of the Town of Damariscotta. In the event any personal property tax is charged, Purchaser will reimburse Seller for the tax. The pricing hereunder includes sales and other taxes as in effect on the date of the Agreement. In the event of new or additional taxes, Purchaser will reimburse Seller. In the event any personal property tax is charged, Purchaser will reimburse Seller for the tax. The pricing hereunder includes sales and other taxes as in effect on the date of the Agreement. In the event of new or additional taxes, Purchaser will reimburse Seller.

**F. Payment Terms.** All amounts due under this Agreement shall be due and payable net thirty (30) days from receipt of invoice. All correct portions of the invoice amount not paid when due and payable shall accrue interest at the rate of one percent (1.0%) per month (but not to exceed the maximum rate permitted by law).

5. **Environmental Attributes and Environmental Incentives.**

Unless otherwise specified in Exhibit 1, Seller is the owner of all Environmental Attributes and Environmental Incentives and is entitled to the benefit of all Tax Credits for as long as the Seller owns the system, and Purchaser's purchase of electricity under this Agreement does not include Environmental Attributes, Environmental Incentives or the right to Tax Credits or any other attributes of ownership and operation of the System, all of which shall be retained by Seller. Purchaser shall cooperate with Seller in obtaining, securing and transferring all Environmental Attributes and Environmental Incentives and the benefit of all Tax Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available Environmental Attributes, Environmental Incentives and Tax Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any Environmental Incentives are paid directly to Purchaser, Purchaser shall pay such amounts over to Seller as soon as practicable.

**RECs.** Except for Contract Years in which Purchaser purchases RECs, Seller has the exclusive right to (i) claim that electric energy provided to Purchaser was generated by the Project, (ii) Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy and (iii) Seller is entitled to all credits, certificates, registrations, evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement. To avoid any conflicts with fair trade rules regarding claims of solar or renewable energy use, Purchaser shall submit to Seller for approval any press releases regarding Purchaser's use of solar or renewable energy and shall not submit for publication any such releases without the approval of Seller.

**"Environmental Attributes"** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the System, the production of electrical energy from the System and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide,

hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives and Tax Credits. Purchaser and Seller shall file all tax returns in a manner consistent with this Section 5. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, emissions allowances, green tags tradable renewable credits and Green-e® products.

**“Environmental Incentives”** means any and all credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into the System, environmental benefits of using the System, or other similar programs available from the Utility, any other regulated entity, the manufacturer of any part of the System or any Governmental Authority, except in no case related to the levying or assessment of property taxes.

**“Governmental Authority”** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission, a state Public Utilities Commission or Independent System Operator), or any arbitrator with authority to bind a party at law.

**“Tax Credits”** means any and all (a) investment tax credits, (b) production tax credits and (c) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

## **6. Conditions to Obligations.**

**A. Conditions to Seller's Obligations.** Seller's obligations under this Agreement are conditioned on the completion of the following conditions to Seller's reasonable satisfaction on or before the Condition Satisfaction Date:

- i. Completion of a physical inspection of the Facility and the property upon which the Facility is located (the **“Premises”**) including, if applicable, geotechnical work, and real estate due diligence to confirm the suitability of the Facility and the Premises for the System;
- ii. Seller has obtained financing for the System on terms and conditions deemed satisfactory by Seller from CEI, and Seller's Financing Parties including CEI have approved (A) this Agreement and (B) the Construction Agreement (if any) for the System; “Construction Agreement” as used in this subsection means an agreement between Seller and any contractor or subcontractor to install all or part of the System;
- iii. Confirmation that Seller will obtain all applicable Environmental Incentives and Tax Credits;
- iv. Receipt of all necessary zoning, land use and building permits.
- v. Execution of all necessary agreements with the Utility for interconnection of the System to Facility electrical system and/or the Utility's electric distribution system.

**B. Failure of Conditions.** If any of the conditions listed in subsection (a) are not satisfied by the Condition Satisfaction Date, the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate new dates then either Party may terminate this Agreement upon ten (10) days written notice to the other Party without liability for costs or damages or triggering a default under this Agreement.

**C. Commencement of Construction.** Seller's obligation to commence construction and installation of the System is conditioned on Seller's receipt of (A) proof of insurance for all insurance required to be maintained by Purchaser

under this Agreement, (B) written confirmation from any person holding a mortgage, lien or other encumbrance over the Premises or the Facility, as applicable, that such person will recognize Seller's rights under this Agreement for as long Seller is not in default hereunder and (C), a signed and notarized original copy of the lease agreement suitable for recording, substantially in the form attached hereto as **Exhibit 6** (the "**Lease Agreement**").

**D. Conditions to Purchaser's Obligations.** Purchaser's obligations under Section 4.a are conditioned on the occurrence of the Anticipated Commercial Operation Date for the System by the Outside Commercial Operation Date.

**7. Seller's Rights and Obligations.**

**A. Permits and Approvals.** Seller, with Purchaser's reasonable cooperation, shall use commercially reasonable efforts to obtain, at its sole cost and expense:

- i. any zoning, land use and building permits required to construct, install and operate the System;
- ii. any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system; and
- iii. any agreements and approvals from the Utility or Public Utilities Commission necessary in order to group net meter energy produced by the System among Purchaser's various Utility meters and/or accounts.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such agreements, permits and approvals. Where required, Purchaser shall obtain all such agreements, permits and approvals in Purchaser's name to enable and benefit operation of the System, however, Seller shall pay or reimburse Purchaser for all fees required.

**B. Standard System Repair and Maintenance.** Seller shall construct and install the System at the Facility. During the Term, Seller will operate and perform all routine and emergency repairs to, and maintenance of, the System at its sole cost and expense, except for any repairs or maintenance resulting from Purchaser's negligence, willful misconduct or breach of this Agreement. Seller shall not be responsible for any work done by others, agents or employees on any part of the System unless Seller authorizes that work in advance in writing. Seller shall not be responsible for any loss, damage, cost or expense arising out of or resulting from improper environmental controls or improper operation or maintenance of the System by anyone other than Seller or Seller's contractors. If the System requires repairs for which Purchaser is responsible, Purchaser shall pay Seller for diagnosing and correcting the problem at Seller or Seller's contractor's then current standard rates. Seller shall provide Purchaser with reasonable notice prior to accessing the Facility to make standard repairs.

**C. Non-Standard System Repair and Maintenance.** If Seller incurs incremental costs to maintain the System due to conditions at the Premises or due to the inaccuracy of any information provided by Purchaser and relied upon by Seller, the pricing, schedule and other terms of this Agreement will be equitably adjusted to compensate for any necessary work in excess of normally expected work required to be performed by Seller. In such event, the Parties will meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to reach agreement on such amendments then either Party may submit the disagreement for dispute resolution pursuant to section 22.b of this Agreement.

**D. Breakdown Notice.** Seller shall notify Purchaser within twenty-four (24) hours following Seller's discovery of (i) any material malfunction in the operation of the System or (ii) an interruption in the supply of electrical energy from the System. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times, twenty-four (24) hours per day, including weekends and holidays. Purchaser shall notify Seller immediately upon the discovery of an emergency condition affecting the System.

**E. Suspension.** Notwithstanding anything to the contrary herein, Seller shall be entitled to suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System and such suspension of service shall not constitute a breach of this Agreement; provided, that Seller shall use all reasonable means

efforts to minimize any interruption in service to the Purchaser.

**F. Use of Contractors and Subcontractors.** Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement, provided however, that such contractors and subcontractors shall be duly licensed and shall provide any work in accordance with applicable industry standards. Notwithstanding the foregoing, Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.

**G. Liens and Payment of Contractors and Suppliers.** Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement and shall keep the Facility free and clear of any liens related to such charges, except for those liens which Seller is permitted by law to place on the Facility following non-payment by Purchaser of amounts due under this Agreement. Seller shall defend, indemnify and hold Purchaser harmless for all claims, losses, damages, liabilities and expenses resulting from any liens filed against the Facility or the Premises in connection with such charges; provided, however, that Seller shall have the right to contest any such lien, so long as it provides a statutory bond or other reasonable assurances of payment that either remove such lien from title to the Facility and the Premises or that assure that any adverse judgment with respect to such lien will be paid without affecting title to the Facility and the Premises. Seller shall remove any lien or encumbrance filed by any third party in the Lincoln County Registry of Deeds that affects title to the Premises within forty-five (45) days of notification by Purchaser. Seller's obligations under this paragraph shall survive termination of this Agreement.

**H. Warranty.** SUND OG warrants to the original purchaser that its Work –including labor and materials- is free from manufacturing and/or installation defects under normal use, service, and ordinary wear and tear for six (6) years from the date of installation except where specified below:

i. Limitation on Warranty: SUND OG'S obligation under the above warranty is limited to repair or replacement of the defective part(s) at its option, after inspection, due to a manufacturing defect of any materials installed by the Company; or, any labor defects related to the installation. Sundog shall not be liable for the loss of, or use of, the property; loss of, or damage to, personal property; other expenses or any other incidental or consequential damages incurred by the purchaser, or any other person or entity. Sundog will examine the Work including site conditions at the time of warranty claim, on going required maintenance of the Work, and test the system(s) to determine operational status. If SUND OG, in its exclusive discretion, determines that the defect or damaged Work is covered under this limited warranty, SUND OG will repair or replace the Work at that time at no cost to the Customer.

## **8. Purchaser's Rights and Obligations.**

**A. License to the Premises; Facility Access Rights.** Purchaser grants to Seller and to Seller's agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises, as generally depicted in the Site Plan in Exhibit 2, Attachment A, for the purposes of (i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Facility, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of injury or damage to persons or property. The term of the License shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of this Agreement (the "**License Term**"). During the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Facility are preserved and protected. Purchaser shall not interfere with nor permit any third parties to interfere with such rights or access. The grant of the License shall survive termination of this Agreement by either Party. At request of Seller, Purchaser shall execute a Memorandum of License, and which shall be in form and substance set forth **Exhibit 5**, or other form agreed to by the parties. Seller may, at its sole cost and expense, record such memorandum of License with the appropriate land registry or recorder's office.

**B. OSHA Compliance.** Both parties shall ensure that all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws or codes are adhered to in their performance under this Agreement.

**C. Maintenance of Facility.** Purchaser shall, at its sole cost and expense, maintain the leased Facility and premises in good condition and repair. Purchaser will ensure that the Facility and premises remains interconnected to the Utility's electric distribution system at all times and will not cause cessation of electric service to the Facility and premises from the Utility. Purchaser is fully responsible for the maintenance and repair of the Facility's and premises electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System.

**D. No Alteration of Facility.** Purchaser shall not make any alterations or repairs to the Facility which could adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs, shall be done by Seller or its contractors at Purchaser's cost. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during such disconnection or removal; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during such disconnection or removal; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during such disconnection or removal; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during such disconnection or removal. Determination of the amount of energy that would have been produced during any disconnection or removal shall be in accordance with the procedures in Section 10.b. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.

**E. Outages.** Notwithstanding anything to the contrary in Section 8.d or elsewhere in this Agreement, Purchaser shall be permitted to be offline for a total of forty-eight (48) daylight hours (each, a "Scheduled Outage") per calendar year during the Term, during which hours Purchaser shall not be obligated to accept or pay for electricity from the System; provided, however, that Purchaser must notify Seller in writing of each such Scheduled Outage at least forty-eight (48) hours in advance of the commencement of a Scheduled Outage, unless Purchaser determines that such outage is required on an emergency basis. In the event that Scheduled Outages exceed a total of forty-eight (48) daylight hours per calendar year or there are unscheduled outages, in each case for a reason other than a Force Majeure event, Purchaser shall pay Seller, for the period of time the outage exceeds (48) daylight hours, an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the outage; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the outage; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the outage; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the outage. Determination of the amount of energy that would have been produced during the removal or disconnection shall be in accordance with the procedures in Section 10.b.

**F. Liens.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Purchaser shall immediately notify Seller in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim. Notwithstanding



anything else herein to the contrary, pursuant to Section 19.a), Seller may grant a lien on the System and may assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party.

**G. Security.** As set forth in the Lease Agreement attached as Exhibit 6, Seller may install a fence around the System. Purchaser shall not be responsible for any damage caused to the System by third parties. Purchaser will not conduct activities on, in or about the Premises or the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

**H. Insolation.** Purchaser understands that unobstructed access to sunlight ("Insolation") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System's Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System's existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 8(h) against Purchaser. If Purchaser allows vegetation to shade the System or causes any activity or condition that diminishes Insolation levels specified in Exhibit 2 Attachment A so as to cause energy generation of the System to fall more than 5% below projections in Exhibit 1, Purchaser and Seller agree that until the activity ceases or conditions are returned to Insolation levels specified in Exhibit 2 Attachment A, Seller may bill for energy based on the amount of energy that would have been produced in accordance with the procedures in Section 10.b.

**I. Breakdown Notice.** Within twenty-four (24) hours following the discovery by a party of (i) any material malfunction in the operation of the System; or (ii) any occurrences that could reasonably be expected to adversely affect the System, the discovering party shall notify the other of such malfunction or occurrence. Upon the discovery of an emergency condition respecting the System, the discovering party shall notify the other of such condition immediately. Purchaser and Seller shall each designate personnel and establish procedures such that each Party may provide notice of such conditions requiring Seller's repair or alteration at all times. Sundog Solar will notify the town manager.

**9. Change in Law.**

"Change in Law" means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this Agreement (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Seller's obligations hereunder and which has a material adverse effect on the cost to Seller of performing such obligations; provided, that a change in federal, state, county or any other tax law after the Effective Date of this Agreement shall not be a Change in Law pursuant to this Agreement.

If any Change in Law occurs that has a material adverse effect on the cost to Seller of performing its obligations under this Agreement, then the Parties shall, within thirty (30) days following receipt by Purchaser from Seller of notice of such Change in Law, meet and attempt in good faith to negotiate amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller shall have the right to terminate this Agreement without further liability to either Party except with respect to payment of amounts accrued prior to termination.

**10. Relocation of System.**

**A. System Relocation.** If Purchaser ceases to conduct business operations at the Facility, or otherwise vacates the Facility prior to the expiration of the Term, Purchaser shall have the option to provide Seller with a mutually agreeable substitute premises located within the same utility district as the terminated System or in a location with similar utility rates and Insolation. Purchaser shall provide written notice at least sixty (60) days but not more than one hundred eighty (180) days prior to the date that it wants to make this substitution. In connection with such substitution, Purchaser shall execute an amended agreement that shall have all of the same terms as this Agreement except for the

(i) Effective Date; (ii) License, which will be amended to grant rights in the real property where the System is relocated to; and (iii) Term, which will be equal to the remainder of the Term of this Agreement calculated starting at the shutdown of the System pursuant to such relocation, and shall toll until the relocated System achieves commercial operation of such new location. Such amended agreement shall be deemed to be a continuation of this Agreement without termination. In addition, Purchaser shall be obligated to provide a new executed and notarized Lease agreement covering the substitute premises in form and content substantially similar to the Lease Agreement. Purchaser shall also provide any new consents, estoppels, or acknowledgments reasonably required by Financing Parties in connection with the substitute premises.

**B. Costs of Relocation.** Purchaser shall pay all costs associated with relocation of the System, including all costs and expenses incurred by or on behalf of Seller in connection with removal of the System from the Facility and installation and testing of the System at the substitute facility and all applicable interconnection fees and expenses at the substitute facility, as well as costs of new title search and other out-of-pocket expenses connected to preserving and refiling the security interests of Seller's Financing Parties in the System. In addition, Purchaser shall pay Seller an amount equal to the sum of (i) payments that Purchaser would have made to Seller hereunder for electric energy that would have been produced by the System during the relocation; (ii) revenues that Seller would have received with respect to the System under the any rebate program and any other assistance program with respect to electric energy that would have been produced during the relocation; (iii) revenues from Environmental Attributes that Seller would have received with respect to electric energy that would have been produced by the System during the relocation; and (iv) Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) would have received with respect to electric energy that would have been produced by the System during the relocation. Determination of the amount of energy that would have been produced during the relocation shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the System in the same period in the previous Contract Year, unless Seller and Purchaser mutually agree to an alternative methodology. "Contract Year" means the twelve month period beginning at 12:00 AM on the Anticipated Commercial Operation Date or on any anniversary of the Anticipated Commercial Operation Date and ending at 11:59 PM on the day immediately preceding the next anniversary of the Anticipated Commercial Operation Date, provided that the first Contract Year shall begin on the Anticipated Commercial Operation Date.

**C. Adjustment for Insolation: Termination.** Seller shall remove the System from the vacated Facility prior to the termination of Purchaser's ownership, lease or other rights to use such Facility. Seller will not be required to restore the Facility to its prior condition but shall promptly pay Purchaser for any damage caused by Seller during removal of the System, but not for normal wear and tear. If the substitute facility has inferior Insolation as compared to the original Facility, Seller shall have the right to make an adjustment to **Exhibit 1** such that Purchaser's payments to Seller are the same as if the System were located at the original Facility, increased to the extent necessary to compensate Seller for reduced revenues from Environmental Attributes and reduced Tax Credits that Seller (or, if Seller is a pass-through entity for tax purposes, Seller's owners) receive as a result of the relocation. If Purchaser is unable to provide such substitute facility and to relocate the System as provided, any early termination will be treated as a default by Purchaser.

**11. Removal of System at Expiration.** Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option), Seller shall, at its expense, remove all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one-hundred and twenty (120) days after the expiration of the Term. Excluding ordinary wear and tear, the Facility shall be returned to its original condition to Purchaser's reasonable satisfaction. Seller shall not be obligated to remove below grade structures, including gravel, foundations and conduits, or roads, unless required to do so by law.

Notwithstanding anything to the contrary herein, Seller shall be responsible for removing any above ground hardware supporting the System. Seller shall leave the Facility in neat and clean order. Purchaser shall provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal, which Seller shall use at its own risk. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Seller's cost.

**12. Measurement.** Seller shall install one or more RGM meter(s), as Seller deems appropriate, at or immediately before the Delivery Point to measure the output of the System. Such meter shall meet the general commercial standards of the solar photovoltaic industry or the required standard of the Utility. Seller shall maintain the meter(s) in accordance with industry standards. Seller shall provide a remote accessible data logging and reporting system during the Term to enable Seller and Purchaser to remotely record the amount of electric energy generated by the System. During such time the monitoring and/or reporting system ceases to function, but not longer than 180 days, Seller may reasonably estimate the amount of electric energy that was generated in accordance with Section 10.b and invoice Purchaser for such amount in accordance with Section 5. Within 180 days of invoicing estimated charges, the estimated production shall be compared to actual production based on a physical reading of the on-site meter and Seller shall issue an invoice or credit, as the case may be, to correct overages or underages that occurred during the period invoices were based on estimated production.

**13. Default, Remedies and Damages.**

**A. Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed to be the “Defaulting Party”, the other Party shall be deemed to be the “Non-Defaulting Party”, and each event of default shall be a “Default Event”:

- i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay (“Payment Default”);
- ii. failure of a Party to substantially perform any other material obligation under this Agreement within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (A) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (B) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
- iii. if any representation or warranty of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
- iv. Purchaser loses its rights to occupy and enjoy the Premises;
- v. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect, and, if any such bankruptcy or other proceedings were initiated by a third party, if such proceedings have not been dismissed within sixty (60) days following receipt of a written notice from the Non-Defaulting Party demanding such cure; or
- vi. Purchaser (a) prevents Seller from installing the System or (b) otherwise fails to perform in a way that prevents the delivery of electric energy from the System. Such Default Event shall not excuse Purchaser’s obligations to make payments that otherwise would have been due under this Agreement.

**B. Remedies.**

- i. **Remedies for Payment Default.** If a Payment Default occurs, the Non-Defaulting Party may suspend performance of its obligations under this Agreement. Further, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages.

ii. **Remedies for Other Defaults.** On the occurrence of a Default Event other than a Payment Default, the Non-Defaulting Party may (A) at any time during the continuation of the Default Event, terminate this Agreement or suspend its performance of its obligations under this Agreement, upon five (5) days prior written notice to the Defaulting Party, and (B) pursue any remedy under this Agreement, at law or in equity, including an action for damages. Nothing herein shall limit either Party's right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. Notwithstanding any other provision of this Agreement, if Purchaser terminates this contract without cause prior to commencement of System installation, a design cancellation fee of five thousand dollars (\$5,000) shall also apply in addition to any other remedy available to Seller.

iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement by the Non-Defaulting Party as a result of a Default Event by the Defaulting Party, the Defaulting Party shall pay a Termination Payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):

A. **Purchaser.** If Purchaser is the Defaulting Party and Seller terminates this Agreement, the Termination Payment to Seller shall be equal to the sum of (1) reasonable compensation, on a net after tax basis assuming a tax rate of thirty-five percent (35%), for the loss or recapture of (a) the investment tax credit equal to thirty percent (30%) of the System value; (b) MACRS accelerated depreciation equal to eighty five percent (85%) of the System value, (c) loss of any Environmental Attributes or Environmental Incentives that accrue or are otherwise assigned to Seller pursuant to the terms of this Agreement (Seller shall furnish Purchaser with a detailed calculation of such compensation if such a claim is made), (d) other financing and associated costs not included in (a), (b) and (c), (2) the net present value (using a discount rate of three and two tenths percent (3.20%)) of the projected payments over the Term post-termination, had the Term remained effective for the full Initial Term, (3) removal costs as provided in Sections 11 and 13.b.iii.C, and (4) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Seller. The Parties agree that actual damages to Seller in the event this Agreement terminates prior to the expiration of the Term as the result of a Default Event by Purchaser would be difficult to ascertain, and the applicable Termination Payment is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement. The Termination Payment shall not be less than zero.

B. **Seller.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser shall be equal to the sum of (1) all costs reasonably incurred by Purchaser in re-converting its electric supply to service from the Utility (but not including any differences in the price of delivered energy); (2) any removal costs incurred by Purchaser to return the Premises to its prior condition pursuant to Section 11, (3) all costs incurred by Purchaser in installing the Facility and connecting it to the Utility; and (4) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment shall not be less than zero.

C. **Obligations Following Termination.** If a Non-Defaulting Party terminates this Agreement pursuant to this Section 13(b), then following such termination, Seller shall, at the sole cost and expense of the Defaulting Party, remove the System and return the Premises to its prior condition pursuant to Section 11. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

#### **14. Representations, Warranties and Covenants.**

A. **General Representations and Warranties.** Each Party represents and warrants to the other the following as of the Effective Date:

i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this Agreement is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).

ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental

Authority (including with respect to Purchaser, any laws, rules or ordinances applicable to Purchaser) or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

**B. Purchaser's Representations, Warranties and Covenants.** Purchaser represents and warrants to Seller the following as of the Effective Date and covenants that throughout the Term:

i. License. Purchaser has title to the Premises. Purchaser has the full right, power and authority to grant the License contained in Section 8(a). Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Facility and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Facility.

ii. Other Agreements. Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser or the Facility is Bound.

iii. Accuracy of Information. All information provided by Purchaser to Seller, as it pertains to the Facility's physical configuration, Purchaser's planned use of the Facility, and Purchaser's estimated electricity requirements, is accurate in all material respects.

iv. Purchaser Status. Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. Hazardous Substances. There are no Hazardous Substances at, on, above or near the Premises; provided that Seller does not penetrate the cap on the landfill, as referenced in Section 17(d).

vi. No Pool Use. No electricity generated by the System will be used to heat a swimming pool.

**15. System and Facility Damage and Insurance.**

**A. System and Facility Damage.**

i. Seller's Obligations. If the System is damaged or destroyed other than by Purchaser's gross negligence or willful misconduct, Seller shall promptly repair and restore the System to its pre-existing condition; provided, however, that if more than fifty percent (50%) of the System is destroyed during the last five (5) years of the Initial Term or during any Additional Term, Seller shall not be required to restore the System, but may instead terminate this Agreement, unless Purchaser agrees (A) to pay for the cost of such restoration of the System or (B) to purchase the System "AS-IS" at the Fair Market Value of the System, In each case (A) and (B) shall be reduced by the amount of any insurance proceeds available to Seller.

ii. Purchaser's Obligations. If the Facility or Premises is damaged or destroyed by casualty of any kind or any other occurrence other than Seller's gross negligence or willful misconduct, such that the operation of the System and/or Purchaser's ability to accept the electric energy produced by the System are materially impaired or prevented, Purchaser shall promptly repair and restore the Facility or Premises to its pre-existing condition; provided, however, that if more than 50% of the Facility is destroyed during the last five years of the Initial Term or during any Additional Term, Purchaser may elect either (A) to restore the Facility or (B) to pay the Termination Payment and all other costs previously accrued but unpaid under this Agreement and thereupon terminate this Agreement.

**B. Insurance Coverage**. At all times during the Term, Seller and Purchaser shall maintain the following insurance:

- i. **Seller's Insurance.** Seller will procure and maintain (A) property insurance on the System for the replacement cost thereof, (B) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate, employer's liability insurance with coverage of at least \$1,000,000, and insurance as required by law.
- ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least the amount of Four Hundred Thousand Dollars (\$400,000) per occurrence for causes of action pursuant to the Maine Tort Claims Act, and will be increased from time to time, if required to meet the maximum coverage provisions of the Maine Tort Claims Act, as it may be amended, and in at least the amount of 1 million dollars (\$1,000,000) for each occurrence and 2 million dollars (\$2,000,000) in the aggregate for causes of action pursuant to federal law or State law for which immunity is not provided under the Maine Tort Claims Act.

**C. Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other party. The Seller's policy shall name the Purchaser as an additional insured party.

**D. Certificates.** Upon the other Party's request each Party shall deliver the other Party certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

**E. Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles or self-insured retention amounts.

**16. Ownership; Option to Purchase.**

**A. Ownership of System.** Throughout the Term (except as otherwise permitted in Section 19), Seller shall be the legal and beneficial owner of the System at all times, including all Environmental Attributes (unless otherwise specified on Exhibit 1), and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Facility or the Premises. Each of the Seller and Purchaser agree that the Seller (or the designated assignee of Seller permitted under Section 19) is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Facility or the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder. As the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Facility is located.

**B. Option to Purchase.** Beginning on the sixth (6th) anniversary of the Anticipated Commercial Operation Date (i.e., beginning in the seventh Contract Year) and on each anniversary date thereafter, provided Purchaser is not in default under this Agreement, Purchaser shall annually have the option to purchase the System from Seller at a price greater or equal to the Fair Market Value of the System at such anniversary date. Purchaser must provide a notification to Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Any such purchase shall be on an as-is, where-is basis, and Seller shall not provide any warranty or other guarantee regarding the performance of the System; provided, however, that Seller shall assign to Purchaser any Manufacturer's Warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase, Seller shall provide all maintenance and operational records to Purchaser.

**C. Determination of Fair Market Value.** "Fair Market Value" means, in Seller's reasonable determination, the lesser of: (i) the amount that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer, neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age, condition and performance of the System and advances in solar technology, provided that installed equipment shall be valued on an installed basis, shall not be valued as scrap if it is functioning and in good condition and costs of removal from a current location shall not be a deduction from the valuation, and (ii) for any given Contract Year, the amount set forth on Exhibit 4, Attachment A attached hereto. Seller shall determine Fair Market Value within thirty (30) days after Purchaser has exercised its option to Purchase the System. Seller shall give written notice to Purchaser of such determination, along with a full explanation of the calculation of Fair Market Value, including without limitation, an explanation of all assumptions, figures and values used in such calculation and factual support for such assumptions, figures and values. If Purchaser reasonably objects to Seller's determination of Fair Market Value within thirty (30) days after Seller has provided written notice of such determination, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System based on the formulation set forth herein, and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Upon purchase of the System, Purchaser will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Seller shall have no further liabilities or obligations hereunder.

**D. Post Purchase Maintenance Terms.** In connection with the purchase of the System, Seller will offer to Purchaser to continue to provide maintenance services, and for the fee and other standard terms and conditions agreed at the time.

**17. Indemnification and Limitations of Liability.**

**A. General.** Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all third party loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") arising out of the performance of this Agreement or the breach of any representation or warranty set forth in Section 14 and resulting in injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 17(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 17(c).

**B. Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party shall assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 17(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 17(b) for any Claim for which such notice is not provided or delayed to the extent that that the failure or delay in notice prejudices the Indemnifying Party.

**C. Environmental Indemnification.** Seller shall indemnify, defend and hold harmless all of Purchaser's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 17((d.i)) to the extent deposited, spilled, or otherwise caused by

Seller or any of its contractors or agents. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors or agents.

**D. Hazardous Substances.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises or the Premises generally or any deposit, spill or release of any Hazardous Substance.

"**Hazardous Substance**" means any chemical, waste or other substance (A) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (B) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (C) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (D) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (E) for which remediation or cleanup is required by any Governmental Authority.

The Parties acknowledge certain contractual and regulatory obligations are in place relating to the cleanup, remediation, and monitoring of the Premises. Purchaser and Seller each agree and covenant that at all times they shall comply with any and all obligations under the Landfill Closure and Remediation Program, 38 M.R.S.A. §1310-C et. seq., and in respect of any agreements between Purchaser and its designated environmental consultant or other entity contracted to perform remediation and/or monitoring activities, which have been disclosed to Seller (collectively the "Remediation Obligations"). Each party shall indemnify the other for any and all costs, damages or losses incurred by the indemnified party as a result of the failure of an indemnifying party to comply with such Remediation Obligations.

**E. Limitations on Liability.**

i. **No Consequential Damages.** Except with respect to indemnification for third party claims pursuant to this Section 17 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees, subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such. The Parties agree that (1) in the event that Seller is required to recapture any Tax Credits or other tax benefits as a result of a breach of this Agreement by Purchaser, such recaptured amount shall be deemed to be direct and not indirect or consequential damages, and (ii) in the event that Seller is retaining the Environmental Attributes produced by the System, and a breach of this Agreement by Purchaser causes Seller to lose the benefit of sales of such Environmental Attributes to third parties, the amount of such lost sales shall be direct and not indirect or consequential damages. Further, the damages set forth under this Agreement, including but not limited to any applicable Termination Payment, will not be deemed indirect, special, incidental, exemplary, or Consequential.

ii. **Actual Damages.** Except with respect to indemnification for third party claims pursuant to Section 17, available insurance coverage pursuant to Paragraph 15.b.i, and damages that result from the willful misconduct of Seller, Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement shall not exceed the total payments made (or, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section (17)(e)(ii) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise. Any action against Seller must be brought within two (2) years after the cause of action accrues.

**18. Force Majeure.**

a. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; extreme weather condition or action of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted



in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.

b. Except as otherwise expressly provided to the contrary in this Agreement, if either Party is rendered wholly or partly unable to timely perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.

c. Notwithstanding anything herein to the contrary, the obligation to make any payment due under this Agreement shall not be excused by a Force Majeure event that solely impacts Purchaser's ability to make payment.

d. If a Force Majeure event continues for a period of one-hundred and twenty (120) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then at any time during the continuation of the Force Majeure event, the Party not claiming the Force Majeure shall have the right to terminate this Agreement without fault or further liability to either Party (except for amounts accrued but unpaid). Such termination shall not trigger a default under this Agreement.

## 19. **Assignment and Financing.**

**A. Assignment.** This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, with the prior written consent of Purchaser, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement and the System to any Financing Party, (ii) assign this Agreement and the System to an affiliate or subsidiary of Seller, and (iii) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Seller. However, any assignment of Seller's right and/or obligations under this Agreement, shall not result in any change to Purchaser's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

**B. Financing.** The Parties acknowledge that Seller may obtain construction and long-term financing or other credit support from one or more Financing Parties. "Financing Parties" means person or persons providing construction or permanent financing to Seller in connection with construction, ownership, operation and maintenance of the System, or if applicable, means, if applicable, any person to whom Seller has transferred the ownership interest in the System, subject to a leaseback of the System from such person. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter in a material manner any of the material terms of this Agreement. In connection with an assignment pursuant to Section 19(a)(i)-(iii), Purchaser agrees to execute any consent, estoppel or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

**C. Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Seller or its affiliates by Financing Parties, that such Financing Parties may require that Seller or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Purchaser's consent not to be unreasonably withheld.

## 20. **[Intentionally Omitted]**

**21. Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. Neither Party shall make any public statements that inaccurately reflect the rights and obligations of the Parties under this Agreement, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

**22. Miscellaneous Provisions**

**A. Choice of Law.** The law of the State of Maine shall govern this Agreement without giving effect to conflict of laws principles.

**B. Dispute resolution.** The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party. If, after such negotiation, the Dispute remains unresolved, and if the Parties mutually agree, Disputes arising in connection with or under this Agreement, may be finally resolved by binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules/Fast Track Procedures. Unless otherwise agreed in writing by the Parties, the proceedings shall be held in Lincoln County, Maine. If binding arbitration is approved by both parties in writing, any such decision rendered by the arbitrator shall be final, binding, and non-appealable. If the Parties agree, a mediator may be consulted prior to arbitration. In the event the parties do not resolve their dispute as set forth above, the parties hereby consent to the exclusive jurisdiction of the Superior Court (Lincoln County) in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court.

**C. Notices.** All notices under this Agreement shall be in writing and shall be by personal delivery, facsimile Transmission, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either party may specify in writing. Each party shall deem a document faxed, emailed or electronically sent in PDF form to it as an original document.

**D. Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 4 (Representations and Warranties), Section 7(h) (No Warranty), Section 15(b) (Insurance Coverage), Section 17 (Indemnification and Limits of Liability), Section 22(a) (Choice of Law), Section 22(b) (Arbitration), Section 22(c) (Notices), Section 22(g) (Comparative Negligence), Section 22(h) (Non-Dedication of Facilities), Section 22(m) (Service Contract), Section 22(n) (No Partnership), Section 22(o) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 22(q) (No Third Party Beneficiaries).

**E. Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

**E. Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time (other than with respect to and/or relating to the obligation to make any payment due under this Agreement); provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this Agreement will be deemed to be a waiver. No exercise of any right or remedy under this Agreement by Purchaser or Seller shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under

this Agreement shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this Agreement shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.

**G. Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

**H. Non-Dedication of Facilities.** Nothing herein shall be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party shall knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party shall assert in any proceeding before a court or regulatory body that the other Party is a public utility by virtue of such other Party's performance under this agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use all reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller shall have the right to terminate this Agreement without further liability, and Seller shall remove the System in accordance with Section 10 of this Agreement.

**I. Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

**J. Capacity & Ancillary Services.** Seller shall be entitled to receive any payments for electric capacity or ancillary services that may become available as a result of the construction or operation of the System. Purchaser shall provide reasonable assistance to Seller in order for Seller to receive such payments, and if Purchaser is deemed to be the owner or provider of such capacity or services, Purchaser shall assign the same to Seller, provided that Seller shall be responsible for the preparation and submission of any necessary applications or other documents. If Purchaser receives any payments in respect of capacity or such services it shall promptly pay them over to Seller.

**K. No Resale of Electricity.** Except as contemplated by the provisions of this Agreement, the electricity purchased by Purchaser from Seller under this Agreement shall not be resold, assigned or otherwise transferred to any other person without prior approval of the Seller, which approval shall not be unreasonably withheld, and Purchaser shall not take any action which would cause Purchaser or Seller to become a utility or public service company.

**L. Seller Is Not A Utility.** Neither Party shall assert that Seller is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Seller's obligations or performance under this Agreement.

**M. Service Contract.** The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.

**N. No Partnership.** No provision of this Agreement shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.

**O. Full Agreement, Modification, Invalidity, Counterparts, Captions.** This Agreement, together with any Exhibits, completely and exclusively states the agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

**P. Forward Contract.** The transaction contemplated under this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

**Q. No Third Party Beneficiaries.** This Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person except for assignees and Financing Parties permitted under Section 19, as set forth therein.

**R. Bonding.**

i. Performance bond liability. Any performance bond issued for a site or system will cease one (1) year from the completion of construction. If a warranty or guarantee is provided under the terms of this Agreement, the balance of any warranty or guarantee beyond one year term of the applicable performance bond shall continue to be guaranteed solely by Seller under the terms of this Agreement. The performance bond does not guarantee any property restorative requirements.

ii. Payment bond liability. Any payment bond issued will cease at the termination of any time required by law.

iii. Performance Guarantee. Neither payment bonds, whether for labor or materials, nor performance bonds are applicable to any specific performance guarantee.

**Exhibit 4  
Attachment A  
Termination Payment**

<b>Contract Year</b>	<b>Termination Payment Amount</b>	<b>Fair Market Value</b>
1	Section 16.b.	
2	Section 16.b.	
3	Section 16.b.	
4	Section 16.b.	
5	Section 16.b.	
6	Section 16.b.	
7	Section 16.b.	89,375
8	Section 16.b.	\$77,756.25
9	Section 16.b.	\$67,647.94
10	Section 16.b.	\$58,853.71
11	Section 16.b.	\$51,202.72
12	Section 16.b.	\$44,546.37
13	Section 16.b.	\$38,755.34
14	Section 16.b.	\$33,717.15
15	Section 16.b.	\$29,333.92
16	Section 16.b.	\$25,520.51
17	Section 16.b.	\$22,202.84
18	Section 16.b.	\$19,316.47
19	Section 16.b.	\$16,805.33
20	Section 16.b.	\$14,620.64
21	Section 16.b.	\$12,719.96
22	Section 16.b.	\$11,066.36
23	Section 16.b.	\$9,627.73
24	Section 16.b.	\$8,376.13

25	Section 16.b.	\$7,287.23
After Year 25	Fair Market Value	Fair Market Value

End of Exhibit 4

**Exhibit 5**  
**Form of Memorandum of License**

NOTICE OF LICENSE

Notice is hereby given that pursuant to a Solar Power Purchase Agreement between the parties listed below, dated as of [\_\_\_\_\_] (the "**Solar Agreement**"), such Solar Agreement includes a License granted by Purchaser (as licensor) and Seller (as licensee) over the premises, pursuant to the terms of the Solar Agreement. This Notice of License may be executed in counterparts by the Parties to the Solar Agreement.

**Signature pages follow:**

Parties to the Solar Agreement:

Seller: Damariscotta Solar, LLC  
Sundog Solar, LLC  
222 East Main St. Damariscotta, ME 04974

Purchaser: Town of Damariscotta  
21 School St.  
Damariscotta, ME 04543

Date of Execution of Solar Agreement: [\_\_\_\_\_]

Description of Premises: See **Exhibit 5, Attachment A**

\* (Legal description of Premises to be supplied by the Town of Damariscotta within 30 days of Agreement signing)

TERM OF AGREEMENT:

The term of the Solar Agreement shall be until the last day of the calendar month in which the twenty-fifth (25th) anniversary of the Anticipated Commercial Operation Date (as that term is defined in the Solar Agreement) occurs, subject to any Additional Terms or early termination pursuant to the terms of the Solar Agreement.

IN WITNESS WHEREOF, this Memorandum of License has been executed and delivered under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 .

GRANTOR:  
\_\_\_\_\_

GRANTEE:  
\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MAINE County of Lincoln \_\_\_\_\_, 2019

Personally appeared before me the above-name \_\_\_\_\_, Town Manager for the Town of Damariscotta , and acknowledged the foregoing instrument is her free act and deed in said capacity, and the free act and deed of the said Town of Damariscotta.

\_\_\_\_\_  
Notary Public/Attorney-At-Law

Typed or Printed Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

STATE OF MAINE  
County of Lincoln \_\_\_\_\_, 2019

Personally appeared before me the above-named \_\_\_\_\_,  
\_\_\_\_\_ for Damariscotta Solar, LLC and acknowledged the foregoing instrument is his or her free act and deed in said capacity, and the free act and deed of the said limited liability company.



\_\_\_\_\_  
Notary Public/Attorney-At-Law

Typed or Printed Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

**Exhibit 6  
Lease Agreement**

This Lease AGREEMENT (this "Agreement") is made and entered into this \_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by and between the Town of Damariscotta ("Town"), a municipality in the State of Maine with a mailing address of 21 School St, Damariscotta, ME 04543, and Damariscotta Solar, LLC ("Grantee"), a Maine Limited Liability Company with a mailing address of P.O. Box 465, Searsport, Maine 04974.

**Recitals**

A. Town is the owner of the building and tract of land located in the Town of Damariscotta, County of Lincoln, State of Maine, and more particularly described by metes and bounds on **Exhibit 5, Attachment A** attached hereto and incorporated herein (all of which parcels or tracts of ground are referred to herein as the "Premises").

B. Town and Grantee entered into a certain Solar Power Purchase Agreement (the "Solar Agreement") dated \_\_\_\_\_ pursuant to which Grantee has agreed to design, construct, install, operate and maintain a certain solar photovoltaic system on the Premises (the "System") for the purpose of providing electric energy to the Town.

C. Subject to the terms and conditions set forth herein, Town desires to grant to Grantee the rights described herein for the purposes of designing, installing, operating, maintaining and removing the System on and from the Premises.

**Agreement**

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants and agreements set forth below, and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged and confirmed by Town, Town and Grantee hereby agree as follows:

1. **Grant of Lease.** Subject to the terms and conditions of the Solar Agreement, Town hereby grants and conveys unto Grantee, its successors and assigns, a non-exclusive lease for the period of time set forth herein, across, over, under and above the Premises in order to construct, install, alter, protect, repair, maintain, replace, operate, maintain and remove the System, including any related interconnection equipment and any facilities or equipment appurtenant thereto as Grantee may from time to time require. Town also hereby grants and conveys unto Grantee all other leases across, over, under and above the Premises as reasonably necessary to provide access to and services reasonably required for Grantee's performance under the Solar Agreement. The leases granted hereunder shall run with and burden the Premises for the term of this Agreement.

2. **Term.** This Agreement shall be for a period commencing on the Effective Date and expiring on the date that is the earlier of (a) the thirtieth (30th) anniversary of the Effective Date, and (b) one hundred twenty (120) days following expiration or earlier termination of the Solar Agreement. No delay or interruption by Grantee in the use or enjoyment of any right or lease hereby granted shall result in the loss, limitation or abandonment of any of the rights granted hereby.

3. **Obstructions.** In addition to the rights afforded Grantee under the Solar Agreement, and subject to the terms and conditions set forth therein, Grantee, with the Town's prior written consent, which shall not be unreasonably withheld, delayed, or conditioned, may from time to time remove structures, trees, bushes, or other obstructions within

such portions of the Facility, and may level and grade such portions of the Premises, to the extent reasonably necessary to carry out the purposes set forth herein. The Town covenants for itself, its heirs, successors and assigns that:

a. The Town will not build or place, or allow to be built or placed, any structure or obstruction of any kind within such portions of the Premises on which is located any portion of the System, including any related interconnection equipment; and

b. If such a structure or obstruction is built or placed within any portion of the Premises on which is located any portion of the System, including any related interconnection equipment, the Town will remove the same at the request of the Grantee at no cost to the Grantee. The Grantee may erect a fence on such portions of the Premises or the Facility on which any portion of the System, are located in order to exclude Grantor and others from accessing such areas provided that Grantor gives its prior written consent, such consent not to be unreasonably withheld, delayed or conditioned.

4. **Reservation of Rights.** The Town reserves the right to use or authorize others to use the Premises in any manner not inconsistent with or which will not unreasonably interfere with the rights granted herein, provided, however, that the Town shall not, nor shall willingly permit others to, disturb the System, including any related interconnection equipment, in any way without prior written approval of the Grantee. The Town reserves all other rights not inconsistent or incompatible with the rights granted herein to Grantee. Grantee acquires no other rights in and to the Property, except as set forth herein.

5. **Title.** The Town represents and warrants to Grantee that (a) the Town holds fee simple title to the Premises, free and clear of all liens and any other encumbrances, and (b) no lien or other encumbrance to which the Premises is subject would reasonably be expected to adversely impact Grantee's rights hereunder or under the Solar Agreement. The Town further represents and warrants to Grantee that the Town has the right to execute and deliver this Agreement and to grant to Grantee the leases and other rights hereunder, and that such grant does not, and will not, violate or breach the Town's organizational or governance documents, any law, rule or regulation, or any contract, agreement or arrangement to which the Town is a party or by or to which any of the Town's assets or properties, including the Premises, is bound or subject. In the event that, after the date of this Agreement, the Town duly grants a mortgage for additional value (the "Subsequent Mortgage"), the Town shall, prior to and as a condition to the effectiveness of such grant of a mortgage, cause the mortgagee under the Subsequent Mortgage to execute and deliver to the Grantee an agreement, in customary form and in form and substance reasonably acceptable to Grantee, acknowledging the subordination of the Subsequent Mortgage to the grant of the lease pursuant to this Agreement (the "**Subordination Agreement**").

6. **Recordation; Possession.** This Agreement may be recorded in the Lincoln County Registry of Deeds by Grantee at Grantee's sole cost and expense. The Town covenants and agrees, for itself and its assigns and successors, that the Grantee shall be entitled to exercise its rights under this Agreement upon execution and delivery of this Agreement by the Parties hereto, while this Agreement is in effect, whether or not this Agreement is recorded.

7. **Governing Law.** This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of the State of Maine, without regard to conflicts of law principles.

8. **Severability.** All provisions of this Agreement are severable and the invalidity or unenforceability of any provision shall not affect or impair the validity or enforceability of the remaining provisions.

9. **Binding Effect; Successors and Assigns.** Grantee shall have the right to assign, apportion, or otherwise transfer any or all of its rights, benefits, privileges, and interests arising in this Agreement in accordance with the terms of the Solar Agreement. Without limiting the generality of the foregoing, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors and assigns. This Agreement may be amended, modified or terminated only by written instrument, executed and acknowledged by the Parties hereto.

10. **Headings.** The headings used herein are for convenience only and are not to be used in interpreting this Agreement.

11. **Entire Agreement.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereto

and supersedes any prior written or oral agreements with respect to the matters described herein.

12. **Amendments; Acknowledgments.** The Town shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee's lender, any assignee of rights under this Agreement, or the lender of any assignee hereunder, provided, however, that such amendments shall not result in any substantial change to the Town's rights and obligations under this Agreement or the Solar Agreement. Both parties agree to consider future expansion of the solar array if desired by purchaser.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed the original, but which together shall constitute one and the same instrument.

**WITNESS WHEREOF**, this Lease Agreement has been executed and delivered under seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Town of Damariscotta:  
\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MAINE  
County of Lincoln \_\_\_\_\_, 2019

Personally appeared before me the above-named Matt Lutkus, Town Manager for the Town of Damariscotta , and acknowledged the foregoing instrument is her free act and deed in said capacity, and the free act and deed of the said Town of Damariscotta.

\_\_\_\_\_  
Notary Public/Attorney-At-Law

Typed or Printed Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

Damariscotta Solar, LLC  
\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF MAINE  
County of Lincoln \_\_\_\_\_, 2019

Personally appeared before me the above-named \_\_\_\_\_,  
\_\_\_\_\_ for Damariscotta Solar, LLC and acknowledged the foregoing instrument is his or her free act and  
deed in said capacity, and the free act and deed of the said limited liability company.

\_\_\_\_\_  
Notary Public/Attorney-At-Law

Typed or Printed Name: \_\_\_\_\_

Commission Expires: \_\_\_\_\_



# RESULTS

# 82,688 kWh/Year\*

System output may range from 79,215 to 85,011 kWh per year near this location.

Caution: Photovoltaic system performance predictions calculated by PVWatts® include many inherent assumptions and uncertainties and do not reflect variations between PV technologies nor site-specific characteristics except as represented by PVWatts® inputs. For example, PV modules with better performance are not differentiated within PVWatts® from lesser performing modules. Both NREL and private companies provide more sophisticated PV modeling tools (such as the System Advisor Model at <https://sam.nrel.gov>) that allow for more precise and complex modeling of PV systems.

The expected range is based on 30 years of actual weather data at the given location and is intended to provide an indication of the variation you might see. For more information, please refer to this NREL report: The Error Report.

Disclaimer: The PVWatts® Model ("Model") is provided by the National Renewable Energy Laboratory ("NREL"), which is operated by the Alliance for Sustainable Energy, LLC ("Alliance") for the U.S. Department Of Energy ("DOE") and may be used for any purpose whatsoever.

The names DOE/NREL/ALLIANCE shall not be used in any representation, advertising, publicity or other manner whatsoever to endorse or promote any entity that adopts or uses the Model. DOE/NREL/ALLIANCE shall not provide

any support, consulting, training or assistance of any kind with regard to the use of the Model or any updates, revisions or new versions of the Model.

YOU AGREE TO INDEMNIFY DOE/NREL/ALLIANCE, AND ITS AFFILIATES, OFFICERS, AGENTS, AND EMPLOYEES AGAINST ANY CLAIM OR DEMAND, INCLUDING REASONABLE ATTORNEYS' FEES, RELATED TO YOUR USE, RELIANCE, OR ADOPTION OF THE MODEL FOR ANY PURPOSE WHATSOEVER. THE MODEL IS PROVIDED BY DOE/NREL/ALLIANCE "AS IS" AND ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL DOE/NREL/ALLIANCE BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO CLAIMS ASSOCIATED WITH THE LOSS OF DATA OR PROFITS, WHICH MAY RESULT FROM ANY ACTION IN CONTRACT, NEGLIGENCE OR OTHER TORTIOUS CLAIM THAT ARISES OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE MODEL.

The energy output range is based on analysis of 30 years of historical weather data for nearby, and is intended to provide an indication of the possible interannual variability in generation for a Fixed (open rack) PV system at this location.

Month	Solar Radiation ( kWh / m <sup>2</sup> / day )	AC Energy ( kWh )	Value ( \$ )
January	3.55	5,721	715
February	4.66	6,734	842
March	5.24	8,074	1,009
April	5.49	7,793	974
May	5.42	7,851	981
June	5.33	7,248	906
July	6.04	8,373	1,047
August	5.93	8,133	1,017
September	5.52	7,515	939
October	4.01	5,956	745
November	3.18	4,736	592
December	2.90	4,554	569
<b>Annual</b>	<b>4.77</b>	<b>82,688</b>	<b>\$ 10,336</b>

## Location and Station Identification

Requested Location	standpipe Rd., damariscotta, me
Weather Data Source	Lat, Lon: 44.05, -69.5 0.8 mi
Latitude	44.05° N
Longitude	69.5° W

## PV System Specifications (Commercial)

DC System Size	65 kW
Module Type	Standard
Array Type	Fixed (open rack)
Array Tilt	35°
Array Azimuth	180°
System Losses	21%
Inverter Efficiency	97%
DC to AC Size Ratio	1.01

## Economics

Average Retail Electricity Rate	0.125 \$/kWh
---------------------------------	--------------

## Performance Metrics

Capacity Factor	14.5%
-----------------	-------

Damariscotta personnel policy as of 12/1/10

Be it hereby resolved by the Damariscotta Board of Selectmen of Damariscotta, Maine:

### **Section 1 – Mission Statement**

The Town of Damariscotta (hereafter “Town”) recognizes that employment with its government shall be based on merit and qualifications, without regard to personal or political considerations.

The personnel policy that follows is designed to promote and maintain equal employment conditions for all Town employees. Positions have been grouped, where necessary, to clarify policies which apply strictly to employees with similar duties, authority, compensation or responsibilities. This policy is adaptive in nature and may be amended to meet the Town’s future needs. This handbook is not a contract of employment. No contract for employment is effective unless approved in writing by an authorized Town Official or officials.

### **Selection 2 – Definitions**

1. Appointing authority: The Town Manager or the Board of Selectmen, as applicable.
2. Employee: Denotes any person appointed to a regular position by the Town Manager.
3. Regular, Full-Time: Employees who are not in a temporary, per diem, or probationary status and who are regularly scheduled to work the Town’s full-time schedule are, generally, eligible for the Towns benefit package, subject to the terms, conditions and limitations of each benefit program.
4. Part-Time: Employees who are not assigned to a temporary or probationary status and who are regularly scheduled to work less than a full-time schedule. Although these employees receive all legally mandated benefits such as Social Security and Worker’s Compensation insurance, they are ineligible for any of the Town’s other health related benefits. Part-time employees may accrue earned time on a pro-rated basis.
5. Probationary: Employees whose performance is being evaluated to determine whether further employment in a specific position or with the Town is appropriate. Probationary employees may not utilize the grievance procedures set forth in this policy manual. Employees who satisfactorily complete the probationary period will be notified of their new employment classifications.
6. Temporary: Employees who are hired as interim replacements; or assigned work on an intermittent, varying, seasonal and/or unpredictable basis to temporarily supplement the work force; or who are hired to assist in the completion of a specific project. Temporary employees may not utilize the grievance procedures set forth in this policy manual. Employment assignments in this category are of a limited duration. Employment beyond any initially stated period does not; in any way imply a change in employment status.

Temporary employees retain their status until they are officially notified of a change. A change to or from this category can be accomplished only with the written consent of the Town Manager. Although temporary employees receive legally mandated benefits such as Social Security and Workers Compensation insurance, they are ineligible for any of the Town’s other benefit programs.

7. Contract Employee: Employees who routinely work either a full-time or a part-time schedule and who accept additional compensation in lieu of participation in all but legally-mandated benefit programs. The Town offers this category in limited classifications and to a limited

number of employees, such as, Rescue EMT's. Service in this category cannot be credited in any way toward any benefit program, even if the employee is later assigned to a benefit eligible category. A change to or from this category can be accomplished only with the written consent of the Town Manager. Contract employees may not utilize the grievance procedures set forth in this policy manual.

8. FLSA: Fair Labor Standard Act.
9. Full-time Schedule: For the purposes of determining benefits eligibility, a full-time schedule means a minimum of thirty-seven and one half (37.5) hours per week, based on a 5 day-8 hour work week or thirty-eight (38) hours based on a 4 day-10 hour day within a fiscal calendar year.

### **Section 3 – Administration**

The Town Manager shall be the Administrator of the Personnel Rules and Regulations. It shall be his/her duty to:

- a. Encourage and exercise leadership in the development of sound personnel practices among the departments of the Town
- b. Advise the Damariscotta Board of Selectmen regarding ~~manpower~~ staffing needs and utilization.
- c. Foster and develop programs for the improvement of employee effectiveness; including training, safety, health, counseling and courtesy when dealing with the public respectfulness and proper care, of municipal property.
- d. Establish and maintain records of all Town employees in the public service, setting forth as to each employee: group, title, salary or status, ~~sick leave, vacation~~ earned time and any other relevant data.
- e. Apply and carry out this policy and perform any act, which may be necessary or desirable to carry out the purposes and provisions of the Personnel Rules and Regulations.

The Town Manager may appoint a designee to carry out personnel officer duties as he/she deems fit.

The Board of Selectmen shall deal with administrative services solely through the Town Manager and will not give orders or direction to any subordinate of the Town Manager either publicly or privately. This does not prevent the Selectmen from appointing committees or commissions of its own members or of citizens to conduct investigations into the conduct of any official or department, or any matter relating to the welfare of the Town.

### **Section 4 – Equal Opportunity Employment**

As an Equal Opportunity Employer, the policy of the Town of ~~Damariscotta~~ is to provide equal opportunity to all employees, applicants and those seeking promotions without regard to religion, age, sex, sexual orientation, genetic pre-disposition, race, color, ancestry, national origin, physical or mental handicap, except as a bona fide occupational qualification. The Town will endeavor to select the best qualified persons who are available at the salary level established for the position, with first preference being given to citizens of the Town, all other factors being equal.

### **Section 5 – Employment**

1. Applications

1. ~~Original hires~~ Notice for vacancies to positions in Group I, II, III, and IV shall be announced by posting notices in the Town Office, Town website or Town's various Social Media sites ~~post office or~~ and such other places within the Town as may be deemed appropriate by the Town Manager, including at least one newspaper of general circulation. The Town Manager shall have final hiring authority on all municipal hires where not stated by Charter.
2. Applications shall be made on forms provided by the Town. Such forms shall require information covering training, experience and other pertinent information. All applicants must sign and fully complete their application forms. Any misrepresentations, falsifications, material omissions or failure to complete such forms may result in an applicant's ~~exclusion~~ ineligibility for hire; or, if the person has been hired, shall constitute sufficient cause for immediate termination of employment.
3. The department supervisor may establish appropriate testing procedures to determine applicant's qualifications, if specified in the job description as required skill(s).
4. Preference may be given to qualified applicants who are residents of the Town of ~~Damariscotta~~.
5. Vacancies in positions above the entrance level shall be filled by promotion whenever, in the judgement of the Town Manager, it is in the best interests of the Town to do so. In the case of promotion, appropriate consideration shall be given to the applicant's qualifications, record of performance or seniority; however, no one of these factors shall be deemed to require the Town to select any candidate or applicant over another.
6. A person responsible for the hiring of new employees within a department may not hire a relative. A relative is a "person connected with another by blood or affinity".
7. The Town of ~~Damariscotta~~ is an Equal Opportunity Employer and is committed to complying fully with the Americans with Disabilities Act (ADA), the Americans with Disabilities Act as Amended Act of 2008 (ADAAA) and the Maine Human Rights Act (MHRA).
8. The Town of ~~Damariscotta~~ complies with the Immigration Reform and Control Act of 1986. Each new employee must complete Employment Eligibility Verification Form I-9 and present documentation establishing identity and employment eligibility.
9. The Town of ~~Damariscotta~~ regularly checks references of qualified job applicants.
10. Upon a conditional offer of employment from the Town, a prospective employee may be required to provide the Town with a release authorizing the Town to complete and/or obtain, as deemed appropriate by the Town: a medical examination, a psychological examination, criminal background check, a fitness for duty test, a credit check, a ~~drivers~~ driver's license check, a DHS background check, and/or a drug and alcohol test.
11. Upon acceptance of employment with the Town of ~~Damariscotta~~, the employee is responsible to insure that she/he understands each and every provision of this policy. The supervisor will be available to explain the policy if needed, and any other department operating procedures/policies which may be required for the employee to properly perform his/her duties. The employee shall be required to sign a copy of this policy and any department policy. The signed policy or policies will be evidence that the employee understands the Employer's requirements for the position and what disciplinary actions will be taken by the Employer for failure to adhere to the rules and regulations of such policies. The signed policies will be kept in the employee's personnel file.

## 2. Classifications:

The Town Manager shall ascertain and record the duties and responsibilities of all positions in Group I, II, III, and IV and shall recommend a classification plan for such positions. The classification plans shall consist of job descriptions specifying title, typical duties and responsibilities. A statement of training, experience and other qualifications shall be required of applicants for the various positions. The



~~Town Manager shall assign the applicants for the various positions.~~ The Town Manager shall assign the appropriate employment classification to the applicant a salary or wage range.

Before the classification plan, or any part thereof, shall become effective, it shall be approved, by resolution, by the Damariscotta Board of Selectmen

The Town has four (4) employment classifications.

1. Group I: All full time, exempt salaried employees.
2. Group II: All full-time, non-exempt hourly paid employees.
3. Group III: All ~~percent~~ part-time employees (less than 37.5 hours per week, based on 5 day work schedule or less than 38 hours per week, based on 4 day work scheduled).
4. Group IV: All probationary, temporary, casual and per-diem employees. (This category does not include full-time hires in probationary status.)

A full-time schedule means a minimum of thirty-seven and one half (37.5) hours per week, based on a 5 day-8 hour work week or thirty-eight (38) hours based on a 4 day-10 hour day, with a paid ½ hour lunch and two fifteen minutes breaks, based on a fiscal year.

### 3. Probation-

The probationary period is intended to give a new employee the opportunity to demonstrate his/her ability to achieve a satisfactory level of performance and to determine whether the new position meets his/her expectations.

The Town uses this period of time to evaluate employee capabilities, work habits, and over-all performance. The employee is considered to be “at will” during this period. Either the employee or the Town may end the employment relationship at any time during the probationary period, with or without cause, advance notice or use of the grievance process.

All new or rehired employees shall work on a probationary basis for the first six (6) months, with a 3-month review, from their date of hire or as established by the Town Manager. The failure to schedule a performance review during any probationary period (or at any other time during employment with the Town) shall not be construed as either an endorsement or a criticism of the employee’s performance. Law enforcement employees shall work on a probationary period for the first 12 months as provided by state statute. Probationary basis shall be consistent with regulations as established by the FLSA. The Town Manager at his/her discretion may extend an employee’s probationary status, but not for longer than an additional six (6) months. Upon satisfactory completion of the; probationary period, employees enter the “regular” employment classification.

Any significant absence from work (over one week) will automatically extend probationary period by the length of the absence.

In cases of promotions, or transfers within the Town, an employee who (in the sole judgement of management) is not successful in the new position can be removed from that position at any time during the ~~introductory~~ probationary period. The supervisor will also provide the employee with a 3-month status check. The failure to schedule a performance review during any probationary period (or at any other time during employment with the Town) shall not be construed as either an endorsement or criticism of the employee’s performance. If this occurs, the employee may be allowed to return to his/her former job or to a comparable job for which the employee is qualified, depending on the availability of such positions and the Town’s needs.

During the initial probationary period, new employees are eligible for those benefits that are required by law, such as Social Security and Worker's Compensation insurance. They may also be eligible for Town-provided benefits, subject to the terms and conditions of each specific benefits program. Employees should read the information for each specific benefits program for eligibility requirement.

Employment status is not changed during the secondary, probationary period that results from a promotion or transfer within the Town of ~~Damariscotta~~.

#### 4. Conduct

All employees of the Town are expected to follow rules of conduct that will protect the interest and safety of all employees and the organization. It is not possible to list all forms of behavior that are considered unacceptable in the workplace. The following are examples of infractions that may result in disciplinary action, up to and including termination of employment. This list is not intended to be exclusive.

1. Theft or inappropriate removal, possession or abuse of property.
2. Falsification of time-keeping records.
3. Working under the influence of alcohol, marijuana, or illegal drugs or prescription drugs which may impair an employees judgement.
4. Fighting or threatening in the workplace.
5. Boisterous or disruptive activity in the workplace.
6. Negligence or improper conduct leading to damage of employer-owned or ~~customer~~ citizen owned property.
7. Insubordination or other disrespectful conduct.
8. Violation of safety or health rules.
9. Sexual or other unlawful or unwelcome harassment.
10. Possession of dangerous or unauthorized materials such as explosives/firearms in the workplace.
11. Excessive absenteeism, lateness, leaving early without permission, or any absence without notice
12. Unauthorized absence from work.
13. Unauthorized use of telephones, mail systems or any other employer-owned equipment.
14. Violation of the Personnel Rules and Regulations, Departmental standard operating procedures, Charter provisions, or any applicable codes, ordinance or codes of conduct.
15. Unsatisfactory performance or conduct.
16. Loss or suspension of any certificate, license required by the Town, or insurability to drive.

#### 5. Dress

Employees are the representatives of the Town. Accordingly, employees are required to dress and groom themselves appropriately for their work environment. Employees may be sent home if their personal appearance is not proper for their work situation. Under these circumstances, employees will not be compensated for their time. Unacceptable dress includes but not limited to holes in clothing, sweatshirts, faded jeans, visible undergarments, or stains on clothing.

#### 6. Smoking and other tobacco products

Smoking and tobacco use is not allowed on any municipally owned property or in any municipally owned or operated vehicle. Violations will result in disciplinary action, which may include termination.

#### 7. Drug Free Workplace Act

Under the Drug-Free Workplace Act, any employee who performs work for a government contract or grant must notify the Town of ~~Damariscotta~~ of a criminal conviction for a drug-related activity occurring in the workplace. No employee may use, possess, distribute, sell or be under the influence of alcohol or drugs. Prescription drugs may be used only if they do not impair the employees job performance. Employees concerned with substance dependency and abuse issues are encouraged to discuss these matters with the supervisor or to the Town Manager.

#### 8. Personnel Files

The Town maintains a personnel file on each employee. Portions of such files are confidential by statute and are the property of the Town. Personnel files are to be kept locked and secured under the Town Manager's control. Employees or former employees may review their personnel files, under supervision, during normal office hours at the location where the personnel files are maintained upon written request from an employee or former employee.

#### 9. Outside Employment

A Town employee may engage in outside employment. However, no employees may engage in outside employment which in any manner interferes with the proper and effective performance of the duties of their position, results in a conflict of interest, or if it is reasonable to anticipate that such employment may subject the Town to public criticism or embarrassment. Employees must inform their department head who shall inform the Town Manager of their outside employment. If the Town Manager determines that such outside employment is disadvantageous to the Town, she/he shall notify the employee in writing that the outside employment must be terminated. Any employee who engages in employment outside his/her regular working hours shall be required to perform their Town duties first. The Town will not be responsible to grant sick leave or benefits (if provided) in the case of any injury or illness which is incurred while the employee is engaged in secondary employment. This does not affect employees in Group III.

#### 10. Vital Information-

It is the responsibility of the employee to notify the Town Manager, should any personal or vital information change; i.e., telephone number, address, emergency notification, etc.

#### 11. Seniority

- A. Rank, skill sets and licenses/certificates desirable to the Town supersede seniority.
- B. Seniority will be determined by date of hire and time employed by the Town of ~~Damariscotta~~.

#### 12. Workforce Reduction

A. In the event that the Town of ~~Damariscotta~~ has to reduce its work force, seniority will be just one, but not the sole determining factor. Other factors to be considered include but are not limited to evaluation, training, total law enforcement experience (in the case of police), skill sets, licensure, certificates, past disciplinary actions, and whether the employees position is critical to or desired by the

Town of ~~Damaris~~seotta. Sole determination of what experience is used will be at the discretion of the Town Manager in conjunction with the department head. Employees will be given a minimum of two weeks' notice before the effective date of the reduction in workforce.

### **Section 6 – Hours of Work**

1. Start/End/Lunch. The hours of work (starting times, quitting times, lunch times and over time) will be established within each department subject to the Town Managers approval. The hours of work may be changed by mutual agreement of the department head and the department employees, subject to the Town Manager's approval.
2. Overtime
  - A. Non-exempt employees: Any time actually worked by non-exempt employees in excess of forty (40) hours per work-week shall be compensated by overtime pay at a rate of time and one-half and in accordance with the Fair Labor Standards Act (FLSA). This policy does not prevent the use of Section 7K exemptions allowed for police and firefighters if it is appropriate to use them under the ~~Fair Labor Standards Act~~ FLSA. The Town Manager may adjust work schedules to minimize the need to pay overtime as permitted by the Act. All overtime work must be pre-authorized by an appropriate supervisor or by the Town Manager.
  - B. Exempt employees: For those employees who are exempt from overtime requirements, it is understood that compensation is based on the job responsibility and salary. The person filling the position will be expected to accomplish the work assigned to the position regardless of hours required.
3. Absences. Employees shall be at work in accordance with departmental regulations pertaining to payroll purposes and shall furnish the Town Manager such periodic reports as he/she may request. In the event of a necessary absence because of illness or any other cause, it is the responsibility of employees to see that their department head is advised of the reasons for absence, either on the same day or within three working days. Employees should notify supervisors of tardiness or absence as soon as possible. Poor attendance and excessive tardiness may lead to disciplinary action and possible termination.
4. Emergencies. Emergencies such as severe weather, fire or power failures, which force the closure of all or some of the Town's facilities will be announced on ~~local radio~~ and television stations, Town's website, and/or social media sources. Employees who are willing and able to work will be paid during official closures. Previously scheduled time off, or when an employee calls in absence before such closure is announced, employee will be required to use their earned time off or the time will be unpaid. Emergency and essential staff may be asked to work during official closures and will receive regular pay.

### **Section 7 – Applicability of Rules and Regulations**

This policy shall be applicable to all employees in Groups I, II, III and IV. The rules and regulations herewith shall coincide with the Town of ~~Damaris~~seotta's fiscal year.

### **Section 8 – Benefits**

1. Social Security: The Town participates, jointly, with employees in Social Security payments. Benefits are dependent on current Federal Government standard reimbursements.
2. Optional Retirement Plan: Employees in Groups I and II are eligible to participate in the ~~ING~~ 457-deferred Defined Benefit Pension Plan or the Defined Contribution Maine Start 457 Plan through Maine Public Employees Retirement System ME Pers. or the 457-deferred

~~compensation retirement plan~~, for which the Town will match up to 7.5% or percentage as directed by ME Pers of base salary. All new employees shall be subject to a ~~three~~ five year vesting status as required by ME Pers effective date of Restated Plan 10/01/2006. Vesting status refers to the amount of time that you must remain in the Town's employment before you retain ownership of the Town's contribution. Retirement contributions will be effective with the first paycheck, or when the proper paperwork has been filed. If paperwork is not filed timely with the ~~administrative offices~~, there will be no retroactive contributions.

3. Health and Major Medical Insurance: Coverage is as follows:

**A. Employees in Groups I and II:** The employees in Group I and II are eligible to participate in a Town sponsored group health insurance plan, ~~which includes hospitalization and Major Medical which is provided by Maine Municipal Association (MMA) Employees Health Trust (MMEHT) its comprehensive health care program designated as PPO500 or similar and/or comparable plan.~~ If the comparable plan has higher deductibles the town will pay 100% of the deductibles and co-insurance (not to include co-pays.) The money for these items will be placed into a Health Reimbursement Account provided by the Town. For employees hired on or before July 31, 2007 the Town will pay 100% of the costs for single coverage and 72% of a family plan. For employees hired on or after, August 1, 2007 the Town will pay 90% of the cost for single coverage and 65% towards the family plan. The Town will provide up to family subscriber coverage. The town shall pay 95% of employee-only option and the cost to the employee for medical insurance shall be capped and shall not exceed \$250.00 per month.

**B. Payment in lieu:** An employee may choose to get their health insurance through their spouse. Employees who do not receive health insurance through the Town will be paid 25% of the applicable cost of the premium that they would otherwise be eligible for. This payment will be made on a fiscal year basis in two installments, the first on or about January 1 and the second on or about July 1 for each of the previous six months. To be eligible for this benefit the recipient must show proof, satisfactory to the Town that they have health insurance from another source. This health insurance must be substantially equal to the policy that would otherwise be offered by the Town.

**C. Dental Insurance:** The Town offers Dental Insurance provided through MMEHT; all premiums are to be paid by the employee and the employer does not contribute or sponsor any portion of the dental insurance.

Benefits will begin on the first day of the month following the date of hire. Presently, the MMA is self-insured under the Maine Municipal Employees Health Trust for Major Medical Insurance; however, the Town reserves the right to change carrier and coverage without notice. When a salary ceases, the Town will terminate payment of this benefit.

NOTE: The Town will provide spousal medical benefits only in cases where an employee's spouse does not have access to coverage under another medical plan.

**B. Employees in Group III and IV:** Not Eligible for any coverage or benefits

4. Optional Health Insurances: The Town currently contracts with AFLAC Washington National Insurance Co. to provide a section 125 cafeteria plan that provides benefits above and beyond the Town sponsored plan. All premiums are contingent upon the coverage chosen and all premiums are to be paid by the employee.

5. Earned Time: Earned time is an alternative approach to the traditional manner of covering absences from work. Earned time hours are used for vacation/personal leave, sick leave, interim disability, and military leave. Paid holidays are in addition to Earned Time.

A. Accrual Rate

The exact number of Earned Time hours available to an employee each year will depend on base budgeted hours and years of service to the Town. Earned Time does not accrue on overtime hours worked.

Schedule of Earned Time Calculations		
Years of Employment		Rate Earned Per Hour
At Least	Up to, but not including	
Hire date	<u>6-5</u>	.0693 5.544 3.60wks
<del>6-5</del>	<del>12-10</del>	.0846 6.768 4.26wks
<del>12-10</del>	<del>18-15</del>	.1082 8.656 5.62wks
<del>18 and over 15</del>	<u>20</u>	.1308 10.464 6.80wks
<u>20</u>	<u>25</u>	.1524 12.192 7.92wks
<u>25 and over</u>		.1730 13.84 8.99wks

B. Usage

Earned Time hours may be used any time after being earned, including during the employee's introductory probationary period. Earned Time hours will be used to cover any absence from the job for which an employee wishes to be paid with the exception of holidays. All planned absences must be mutually agreed upon by the employee and supervisor. A physician's statement may be required at any time to substantiate an absence due to illness. Exceptions may be made at the discretion of the Town Manager. Annual leave shall be arranged by the department head in such a manner as to cause a minimum loss of service to the public. All department heads' leave shall be approved by the Town Manager. Due consideration will be given to an employee's seniority in regard to scheduling vacations.

Exceptions may be made at the discretion of the Town Manager; ~~provided, however, with respect to the Town Manager's own annual leave, he/she must, each year, advise the Board of Selectmen of the status of his/her annual leave and, if applicable, request written permission from the Board of Selectmen to carry the same forward to the next year. Copies of the Town Manager's status report on his/her own annual leave and Board of Selectmen's written response shall be placed in the Town Manager's personnel file.~~

C. Maximum Accrual

The maximum accrual of Earned Time and all unused Earned Time is ~~40~~ 120 hours. A maximum of 80 hours of Earned Time may be carried over into each Fiscal Year. Employees are required to use all other Earned Time hours, based on years of service prior to June 30 of each year. All unused Earned Time hours over 80 hours will be subtracted from the staff member's Earned Time balance prior to ~~it's~~ the balance being carried forward into the new fiscal year. The Town Manager may allow more hours to be carried over under his/her

discretion. Employees with less than six months of service are exempt from minimum usage requirements.

Usage will be prorated for percent time employees and employees hired prior to ~~January~~ July 1 of each year.

D. Leave Reserve Fund:

Employees may donate ~~personal days and vacation~~ Earned Time leave to the Reserve Fund. The Reserve Fund shall be administered under the following guidelines:

- The employee must be out for an extended period of time due to non-work related injury/illness
  - The employee's time away is eligible under the FMLA for extended leave as required by the Law and documented by their attending physician.
  - The employee has used all of their Eared Time before any donations occur.
  - The Town Manager or their designee will notify the Treasurer to establish a Reserve for possible donations of time.
  - Employees will be notified that they "may choose to donate" Earned Time to the Reserve. However, no employee may be allowed to deplete their Earned Time to a level of less than 50% (fifty) of what they may accrue in a year, if they choose to donate time.
  - During this leave period, the affected employee may accrue additional Earned Time except as provided by the FMLA provisions and town policy.
  - Donations may occur up to the time that the affected employee severs their Employment with the Town. If the affected employee is considered employed and are maintaining their health insurance premiums current at their expense, any donated leaves may still be provided. However, should the affected employee cease to maintain their health insurance premiums current, they will no longer be eligible for the donated leave time.
  - Upon complete exhaustion of the affected employee's Earned Time, the Treasurer shall bi-weekly draw from the Reserve Fund no more than the number of hours equal to what the affected employee would have drawn at their regular weekly wage. Once the Reserve is depleted there would be no further payments to the affected employee.
  - All employees directing a donation, shall complete a simple authorization form specifying the extent of the donation to the Reserve for that affected employee.
  - The maximum amount of leave days that may be donated in total to any one event for an affected employee is twenty five (25) days. At the discretion of the Town Manager, additional days may be authorized to the Reserve. Payment to the affected employee or their family member may be taken in amounts no greater than the equivalent of five working days per calendar week period, at the affected employee's rate of pay. This ceases when the attending physician indicates the affected employee may return to work or the affected employee leaves the Town's Employ.
  - The Treasurer shall revalue all donated leave to the equivalent rate of pay of the affected employee for the purposes of distribution.
6. Bereavement Leave: Special leave with pay shall be granted to employees in Groups I, II, and III, for up to ~~three (3)~~ four (4) days for absence caused by the death of a member of the immediate family, as outlined below, and shall be paid his/her regular rate of pay. Immediate family includes parents, stepparents, spouse, domestic partner, brother, sister, children





<u>Memorial Day</u>	<u>Thanksgiving Day</u>
<u>Independence Day</u>	<u>Christmas Day</u>

(a.) When a holiday falls on a Sunday, the following Monday shall be observed. When a holiday falls on a Saturday the preceding Friday shall be observed. If New Year's Day or Christmas day falls on a Tuesday or Thursday, the Board of Selectmen, at their discretion, may determine the Monday before or the Friday after the holiday to be taken as part of the holiday period and if the time will be paid or not. Employees who without prior permission fail to report to work either on the day prior to or following a holiday may be deemed to have forfeited the holiday pay. This section does not apply to full-time officers.

(b.) Because of the nature of the position, certain employees in Groups I, II, & III may be required to work during a holiday. Should this occur, hourly paid employees will be paid time and a half for the hours worked on the holiday plus applicable holiday pay. This means 2.5 times normal hourly rate. ~~This means that full time police officers will be paid holiday pay for working on the actual date of the holiday. For example if Christmas falls on a Saturday and an officer works Tuesday thru Friday this officer will not be entitled to holiday pay. The officer who works Wednesday thru Saturday will be paid holiday for working on Saturdays since it is the date of the actual holiday.~~

(c.) A person on a leave of absence without pay shall not be entitled to holiday, ~~sick or vacation earned time~~ pay.

(d.) Holiday pay is considered to be eight (8) hours of pay for full time employees with a 5-day 8-hr work week, or ten (10) hours of pay for full time employees with a 4-day 10-hr work week, ~~except for full time police officers who will receive an equal amount of holiday pay in regards to a normal days pay. Holiday pay will~~ may be pro-rated for ~~percent~~ part-time employees. When occasion warrants, employees may be required to work whole or part of a holiday. Non-exempt Employees working a holiday shall receive straight time pay plus their applicable holiday pay.

12. Jury duty: A Town employee called for jury duty will receive his or her regular pay check when they turn in their jury duty pay. This procedure will compensate employees for any difference in pay. Employees excused from jury duty shall report to work as scheduled. The employee is required to inform the Town of the dates of jury duty as soon as known, and to also represent copies of his/her jury duty orders to the Town Manager prior to taking the leave. Travel and/or meal expenses will not be reimbursed by the Town. The employee is expected to report to work on any days or partial days when the employee is not required to be in court.

13. Witness Leave: When a full time employee is called to fulfill civic responsibilities as a witness, he or she may be granted a leave of absence for the period of time involved. The employee is required to inform the Town of the dates of leave as soon as known, and to also present copies of his/her subpoena to the Town Manager. The Town will pay the difference between his or her witness pay, and his or her normal pay exclusive of travel, for a period not to exceed two (2) weeks. Should an employee be subpoenaed as a witness, resulting from activities affiliated with a job other than his or her employment for the Town, the employee will not be eligible for Town pay during his or her absence. Employees utilizing such leave are required to use any banked and accrued vacation, sick earned and/or compensation time during such period(s). Employees who have ~~who have~~ no such leave banked and accrued shall receive unpaid leave.

14. Victims of Violence Leave: The Town will grant reasonable and necessary unpaid leave from work for eligible regular full-time and part-time employees who are victim of domestic violence, stalking, or sexual assault as provided for in State law Title 26 M.R.S.A Sec. 850 (Employment Leave for Victims of Violence):

Leave will be granted for an employee to:

- A. Prepare for and attend court proceedings;
- B. Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or domestic partner.
- C. Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of violence, assault, sexual assaults under Title 17-A, chapter 11, stalking or any act that would support an order for protection under Title 19-A, chapter 101. Employees will accrue vacation and sick leave benefits during such leave. As soon as an employee becomes aware of the need of a leave of absence, they must make a written request for leave from his/her supervisor. This request shall be forwarded to the Town Manager or his/her designee for approval as soon as possible. The request must specify the length of leave requested, the reason for the leave, and estimated dates of departure and return. Employees utilizing such leave are required use any banked and accrued vacation, sick and/or compensation time during such period(s). Employees who have no have no such leave banked and accrued shall receive unpaid leave.

15. Emergency Leave: Each day that an employee in Group I or II is unable to report to work (on a regularly-scheduled day) due to inclement weather, commuting difficulties or other emergencies not involving sickness; that employee shall have each of these days charged to his or her ~~personal~~ annual earned time leave.

16. Family and Medical Leave Act: The Town complies with all relevant provisions of the Federal and State Family and Medical Leave Acts (FMLA). Employees wishing to exercise their rights under these Acts, should make their requests to the Town Manager and complete information on employee's benefits under these Acts will be provided. The Town reserves the right to designate any qualifying absences as Family Medical Leave and to designated the method by which the entitlement period is calculated. See attached Appendix A for the Town's FMLA policy.

## **Section 9 – Compensation**

### 1. COLA/Raises/Bonuses

To the extent any salary or wage adjustment based on cost of living are granted by the Town, such adjustments will commence on July 1, of each respective year. Merit raises will be based on an employee annual performance evaluation. Merit raises ~~will~~ may be awarded as determined by the department supervisor and Town Manager. Bonus pay may be awarded as determined by the Town Manager and contingent upon funding availability.

### 2. Pay Schedule

The Town Manager shall prepare a pay schedule for all positions in the Town. The pay schedule shall reflect fairly the difference in duties and responsibilities and shall be related to compensation for comparable positions in other public and private employment.

The Town Manager shall submit the compensation pay schedule to the Damariscotta Board of Selectmen in the form of a resolution. The Board may adopt the pay schedule with or without amendment. Thereafter, no position shall be assigned a salary higher than the maximum provided for the position unless the pay schedule is amended in the same manner as herein provided for its adoption.

Any pay schedule amendments of job class re-assignment requests shall be brought to the attention of the Town Manager by the Town's department heads. Changes will be made by the Town Manager in writing and will be based on employee merit.

3. Pay Dates

All employees are paid bi-weekly. If payday falls on a regularly scheduled holiday, employees will receive pay on the last day of work before the regularly scheduled payday. To receive pay before a scheduled vacation ~~or to have pay direct deposited to bank account~~ employees must submit a written request to the Town's Treasurer. All volunteer and stipend positions will be paid two (2) times per year. Any questions concerning payroll deductions may be addressed to the Town Manager and/or Treasurer.

4. Position Changes

Whenever an individual position is changed by reorganization, creation of a new position, or a change in duties and responsibilities, revisions of the classification plan are necessary and the Town Manager shall recommend the necessary revisions to the Board of Selectmen for their approval.

When a regular employee is out for an extended period of time due to illness or injury, the department head must review the vacancy to determine if the operations can continue without being filled temporarily. The analysis must include the cost benefits of using existing personnel, any overtime incurred versus hiring to fill the vacancy. If it is determined that the position must be filled during that period the following shall apply:

Promotions: In those cases where a regular part time employee is temporarily promoted to fill the full time vacancy, the person promoted shall be entitled to receive, along with any other fringe benefits provided for by the personnel policies, holiday pay. The time served in the temporary position shall count toward service time with the Town of Damariscotta and their second probationary period. Should the individual be returned to their regular part time status, they shall only receive those benefits allocated to part time personnel.

Hire: If a new person is hired temporarily to fill the full time vacancy they shall only be entitled to the legally mandated benefits and Holiday pay. If they are appointed to the position as a full time regular employee, then the time worked shall count towards their service to the Town of Damariscotta and their six month probationary period.

5. Overtime and Compensatory Time.

All municipal positions are designated as either "exempt" or "non-exempt" according to the Fair Labor Standards Act regulations. Employees in group I are "exempt" from overtime

payment requirements. Employees in groups II, III, and IV are “non-exempt.” Non-exempt employees are entitled to additional compensation either in cash or compensatory time off when they work more than forty (40) hours during a work-week period. Overtime pay (in addition to compensation time) is calculated at one and one-half times the employees’ regular rate of pay for all time worked beyond forty (40) hours in the established work period.

In accordance with the FLSA, overtime compensation is based on actual time worked. Accordingly, actual work time does NOT include holidays, ~~vacation~~, earned time, leave time of any nature, time out on compensatory time, ~~sick time~~ and time out on FMLA or Worker’s Compensation leave.-

Compensatory time, which may be accrued by any non-exempt employee shall not exceed a balance greater than 40 hours (i.e., not more than 26.67 of actual overtime hours worked). Compensatory time shall be earned at a rate of not less than one and one-half hours for each hour employment for which overtime compensation is required. An employee who has accrued the maximum number of compensatory hours shall be paid overtime compensation for any additional overtime hours worked. An employee shall be permitted to use accrued compensatory time within a reasonable period after it is requested if to do so would not unduly disrupt the operations of the department. Compensatory time will not accrue until after 40 hours have been worked. ~~Public safety employees may work schedules in excess of forty hours for straight time in compliance with the Fair Labor Standards Act (FLSA).~~ This policy does not prevent the use of Section 7K exemptions allowed for police and firefighters if is appropriate to use them under the Fair Labor Standards Act. Public safety employees may work schedules in excess of forty hours for straight time in compliance with the Fair Labor Standards Act (FLSA). The Town Manager may adjust work schedules to minimize the need to pay overtime as permitted by the Act. All overtime work must be authorized by an appropriate supervisor or by the Town Manager. The Town further reserves the right to assign employees to use accrued compensatory time if the Town deems it in the Town’s best interests.

Payment for accrued compensatory time upon termination of employment shall be calculated at the employee’s regular rate of pay at the time of termination or separation.

6. Fire/Rescue Call-out Time

Fire and rescue call out time is calculated on a per call basis.

7. Outside compensation

Any employees receiving payment for services from non-Town sources rendered during his/her normal work day and for which ~~s/he~~ he/she received compensation from the Town, shall turn the entire amount of that outside compensation over to the Treasurer of the Town of ~~Damariscotta~~. This provision does not apply to activities outside the normal Town workday or during periods of vacation.

8. Call Bay Pay

“Call back pay” is pay to an employee called back to work after leaving for the day. Eligible employees include employees in groups II and III. When such employees are called in by a supervising authority after leaving for the day ~~and at a time that precedes the start of~~

the next regular working day, the employee will receive call back pay. Pay is 1.5 times the base salary with a guaranteed three hour minimum.

### **Section 10 – Confidentiality Policy**

During the course of their duties, employees of the Town of Damariscotta often are privy to information about individuals, which is sensitive and should be kept confidential. Examples include, but are not limited to, labor relations, general assistance, and personnel actions. Employees are expected to respect the confidential nature of such information. Employees must not use this confidential and/or privileged information to their private advantage or to provide friends or acquaintances with private information. Each employee is charged with the responsibility of releasing only information which is required under the “right to know” law MRSA Title 1 sections 401-412. Any employee who receives a request for information under the “right to know” statute must notify their department head or the Town Manager of the request before producing any materials.

### **Section 11 - Office Systems and Equipment**

The Town’s telephone, computer systems and all other office equipment are owned by the Town, and generally to be used for business purposes. Employees should not use vulgarities, obscenities, sarcasm or exaggeration in e-mail messages or in any other communications originating in this office. The use of foul or abusive language may be grounds for disciplinary action or dismissal.

The Town reserves the right to monitor without prior notice all Town systems, including but not limited to e-mail messages, viewed websites and documents on Town computers. Employees are not permitted to download movies, videos, music, games, or pornography on town systems. Use of the internet should be limited to Town-related business. Telephone conversations may be monitored at any time in order to assure the citizens are receiving quality service and that the guidelines set forth above are being observed by all employees.

The Town also reserves the right to examine the contents of all offices including items contained in desks, file cabinets, shelves and other storage devices, but only when the Town determines, in its sole discretion, that there is a legitimate business reason for doing so.

Any violation of this policy may result in discipline, including but not limited to termination of employment.

### **Section 11 12 – Discipline, Discharge, Suspension and Probation**

1. **Just Cause.** The Town shall base disciplinary actions or measures on a “just cause.” For purposes of this policy, cause is defined as a just, reasonable, appropriate and substantial reason for discipline up to and including termination that relates to the employee’s performance of his/her duties or the public’s rights or interests, subject to notice to the employee of problems and a reasonable opportunity to correct the problem if in the judgement of the Town or its designee the problem is correctable.
2. **Disciplinary Actions.** The appointing authority shall have the right to impose disciplinary action, including warnings, demotions, suspensions or discharge on any employee whose work performance or conduct, in the judgement of the appointing authority, justifies such action. There are certain types of employee problems that are serious enough to justify immediate suspension or termination without resorting to any prior notice or warnings.- Notice of such action against an employee must be in writing and filed with the employee not later than the effective date of action. Such notice shall specify the penalty and contain a statement of the reason or reasons therefore. The employee shall have the right to appeal, as outlined in the grievance procedure.

3. Employee Termination. At the time of employee termination for (1) resignation (voluntary employment termination initiated by an employee); (2) discharge (involuntary employment termination initiated by ~~an~~ the organization); (3) layoff (involuntary employment termination initiated by the organization for non-disciplinary reasons) or (4) retirement (voluntary employment termination initiated by the employee meeting age, length of service and any other criteria for retirement from the organization), an exit interview may be scheduled. Employees will receive final pay in accordance with State law.
4. Town Property. Employees must return all property belonging to the Town of ~~Damarisetta~~ at the time of their termination or upon immediate request.

### **Section 12-13 – Evaluations/Reviews**

Supervisors and employees are strongly encouraged to discuss job performance, goals and professionalism. Formal Performance Evaluations are to be scheduled ~~and concluded prior to July 1<sup>st</sup> of~~ annually every year. Employee evaluations shall be signed by the employee, department head and Town Manager. An employee may attach a written statement within ten (10) calendar days after any evaluation given. No evaluation will be placed in an employee's file without review by the employee. The failure or inability to timely schedule a performance review shall not be construed as either an endorsement or criticism of the employee's performance.

### **Section 13-14 – Grievance Procedure**

1. Any non-probationary ~~Category~~ Group I or II employee or municipal official who deems himself or herself aggrieved will have recourse to an impartial meeting, provided the following steps are taken:

Step 1: The employee shall present the grievance in writing to be his or her department head within five (5) working days of the incident. The department head shall inform the Town Manager in writing, of the nature of the grievance and all facts known to the department head. In the event the grievance is not resolved in Step 1 within a reasonable length of time not to exceed five (5) working days, the employee may then refer to Step 2. Any failure by the employee to timely bring a grievance under Step 1 shall be deemed a waiver of the grievance and any subsequent appeal rights.

Step 2: The unresolved complaint shall be referred, in writing, to the Town Manager through the employee's immediate supervisor within a reasonable length of time, not to exceed five (5) working days from the conclusion of Step 1. The written grievance shall include all facts and circumstances of the grievance. The Town Manager, Department Head and employee shall meet to discuss the grievance. In the event the grievance is not resolved in Step 2, within ten (10) working days from the receipt of said determination of the Town Manager, the employee may then refer to Step 3. Any failure by the employee to timely bring a grievance under Step 2 shall be deemed a waiver of the grievance and any subsequent appeal rights.

Step 3. The unresolved complaint shall be referred, in writing, to the Board of Selectmen within ten (10) working days from the conclusion of the time for Step 2. The Board of Selectmen will hold a hearing ~~(in executive session)~~ per Title 1 M.R.S.A §405(6)(A), at the next scheduled selectmen's meeting as soon as practicable. The Board then has ten (10) working days in which to render a decision. The decision of the Board shall be final.

### **Section 14-15 – Harassment Sexual and Other**

It is the policy of the Town of ~~Damarisetta~~ that all our employees should be able to work in an environment free from all forms of harassment. Harassment, as defined by this policy, is prohibited. All

employees must avoid offensive and inappropriate sexual or harassing behavior at work and are responsible for assuming that the workplace is free from sexual and hostile behavior at all times.

This policy refers not only to supervisor-subordinate actions but also actions between coworkers. Any complaints of harassment will be investigated promptly. There will be no intimidation, discrimination or retaliation against any employee who makes a report of harassment.

1. Sexual Harassment:

It is Town's policy to provide a workplace free of sexual harassment. Sexual harassment is not only a violation of town policy, but may also be a violation of both state and federal law. Sexual harassment will not be tolerated.

Sexual harassment is defined as follows: Any unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when (i) submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, (ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions effecting such individual, or (iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment

Verbal conduct alone may constitute impermissible harassment and an employee's conduct may constitute harassment even if the employee "meant no harm by it." By way of illustrative examples, sexual harassment may include, but it not limited to, any of the following:

- Verbal jokes of a sexual nature or lewd remarks
- Pictures of a sexual nature
- Subtle pressure for sexual activity
- Physical contact such as hugging, patting, pinching, constant brushing against another's body or kissing.

In addition, unwelcome sexual advances need not occur at work in order to be considered harassment. The activity is not permitted regardless of where it occurs, if the harassing activity creates a hostile or offensive work environment.

Individuals who believe that they have been subjected to or witnessed sexual harassment by a non-employee, a supervisor or co-worker should bring their concerns to the attention of any department head, the Town Manager or the Chairperson of the Select Board, either verbally or in writing. Employees who observe or learn of conduct which could be construed as sexual harassment should immediately bring those concerns to the town's attention.

The individual may also contact the Maine Human Rights Commission at:

Maine Human Rights Commission  
51 State House Station  
Augusta, ME 04333  
207-624-6050

All reported complaints will be investigated by a person assigned by the Town, and we will seek to keep any information obtained as confidential as possible, although confidentiality cannot be assured. In determining whether the conduct in question is sexual harassment, the nature of the conduct and the context in which it occurs must be examined. In the event that it is determined that sexual harassment has occurred, appropriate action will be taken, up to and including the dismissal of the person engaging in the harassment.

Retaliation Prohibited: Employees should feel free to report concerns about sexual harassment without any fear of reprisal. Any person who brings a sexual harassment complaint or concern will be protected

from retaliation in any form, and should report any retaliation immediately to any department head, the Town Manager or the Chairperson of the Select Board. All complaints of retaliation will be investigated and prompt remedial action will be taken.

In addition, the Town also encourages employees to report other conduct which effects the workplace and working conditions, including harassment based on any other protected category, such as race, national origin, age, etc. Harassment under such circumstances is prohibited. All such complaints will be addressed and, if necessary, appropriate action will be taken. Employees who report such conduct will be protected from retaliation in any form, and should report any retaliation immediately to any department head, the Town Manager, or the Chairperson of the Select Board. All complaints of retaliation will be investigated and prompt remedial action will be taken.

### **Section 15 16 – Political and Outside Activities**

#### **1. Public Office.**

Town employees shall refrain from seeking or accepting nomination or election to any office in the Town of ~~Damariscotta~~ or from using their influence publicly in any way, for or against any candidate for elective office in the Town government during working hours. Town employees shall not circulate petitions or campaign literature for elective Town officials. In addition, they must not solicit contributions or political service from any person, for any purpose, pertaining to the government of the Town. This rule is not to be construed to prevent Town employees from becoming or continuing to be members of any political organization, from attending political organization meetings, from expressing their views on political matters or from voting with complete freedom in any election.

Town management shall keep all municipal buildings free of political or campaign literature and materials.

#### **2. Purchasing-Conflict of Interest.**

It is the Policy of the Town that the proper operation of democratic government requires that public officials be independent, impartial and responsible to citizens, that public office not be used for personal gain, and that the public have confidence in the integrity of its municipal government. The purpose of this is to promote the objective of protecting the integrity of the government of the Town against actual or reasonably perceived conflicts of interest, either financial or because of a personal relationship, without creating barriers to public service.

A. No Town employee who is authorized to make purchases shall have any interest, either directly or indirectly in any contract with the Town that is in conflict with the state conflict of interest statute, **30-A M.R.S.A § 2605**. No Town employee shall accept gratuities, of any type, from any person or organization, with whom that employee or any other Town employee deals.

An actual or potential conflict of interest occurs when an employee is in a position to influence a decision that may result in a personal gain for that employee for a ~~relative, personal relationship~~, as a result in a personal gain for that employee or for a ~~relative-the personal relationship~~, as a result of the Town's ~~of Damariscotta's~~ business dealings. For the purposes of this policy, a ~~relative is any person who is related by blood or marriage; a personal relationship means or whose relationship with the employee is similar to that of persons who are related by blood or marriage persons who are husband and wife, parent and child; persons who acknowledge an ongoing romantic relationship with each other; persons who live together in same residence; persons who intermingle their financial~~



assets without an accounting of separate ownership interests; and/or persons with any other financial involvement.

No “presumption of guilt” is created by the mere existence of a relationship with outside firms. However, if employees have any influence or transactions involving purchases, contracts or leases, it is imperative that they disclose, as soon as possible to an officer of the Town of ~~Damariscotta~~, the existence of any actual or potential conflict of interest so that safeguards can be established to protect all parties.

Personal gains may result not only in cases where any employee or relative has a significant ownership in a firm as defined under **30-A M.R.S.A § 2605**, with which the Town of ~~Damariscotta~~ does business, but also when an employee or relative receives any kickback, bribe, substantial gift or special consideration, as a result of any transaction or business dealings involving the Town of ~~Damariscotta~~.

### 3. Receipts of Gifts

A ~~T~~own employee is prohibited from soliciting or accepting any gift, gratuity, favor, entertainment, loans, or any other item of monetary value from any person, within or outside Town employment, whose interests may be affected by the employee’s performance of his/her official duties. Acceptance of nominal gifts, such as food and refreshments, flowers or plants in the ordinary course of business ~~meetings~~, or unsolicited advertising or promotional materials such as pens, note pads, calendars, etc. is permitted.

### Section 16 17 – Resignations

An employee may resign from Town service in “good standing.” “Good standing” shall mean the submittal of a written fourteen (14) calendar days in advance of the last day of actual work. Failure of a resigning employee to comply with this rule may be cause for denying future employment with the Town. The Town Manager may permit a shorter period of notice if extenuating circumstances exist.

### Section 17 18 – Safety

1. All accidents to personnel, no matter how minor, during the work schedule must be reported immediately to the department head or the Town Manager. A written report shall be made on forms for that purpose within three (3) days of an incident.
2. The Town will strive to meet applicable municipal, federal and state safety standards.
3. All employees suffering an on-the-job accident should seek medical attention. All employees are to return paperwork to their department head for workers compensation regulations.
4. When an employee is injured on the job or disabled by an occupational disease arising out of, or in the course of, his or her employment, a valid worker’s compensation claim must be filled out.
5. Employees are ~~expected~~ required to abide by all other safety rules and regulations, which shall be posted on bulletin boards announced at staff meetings or otherwise communicated by supervisors. Failure to adhere to these mandates may result in disciplinary action and/or termination.
6. An ~~E~~mployee who has been out from work due to (1) a work related injury or illness or personal injury for any period of time or (2) a personal injury illness for three (3) or more consecutive days shall be able to return to work only upon a written approval of the attending physician that indicates the employee is capable of resuming their position’s full requirements. It shall be the responsibility of the employee to provide the attending physician with a current copy of the employee’s position description noting the full requirements that are expected of any employee when they return to work. The physician’s written approval shall be turned over to the employee’s supervisor and approval by the supervisor or department head must be given before the employee resumes their work schedule. A supervisor may waive this requirement only for a

non-work related injury or illness and only if it is clear to their supervisor they can perform all of the requirements of his or her position.

7. The Town Manager has responsibility for implementing, administering, monitoring, and evaluating safety programs. Employees have a responsibility to immediately report any safety or health issues to the Town.
8. The federal Occupational Safety and Health Administration (OSHA) has established mandatory safety guidelines for business and appropriate safety procedures have been instituted throughout the Town. Working safely and complying with such safety procedures is a condition of employment – required by our policies and by law. You are responsible for cooperating in the prevention of injuries to yourself and/or others by observing the following safety rules:
  - a. Know your duties and perform them in the safest possible manner, following proper work methods.
  - b. Understand and adhere to safety policies and procedures; comply with all Town safety requirements of any safety equipment and/or clothing.
  - c. Avoid accidents by being alert to, identifying and correcting unsafe conditions and practices; keep premises free of safety hazards.
  - d. The Town has invested in equipment that is designed to enable you to do your work more efficiently and effectively; you are responsible for the proper care and use of this equipment to maintain it in good operating condition.
  - e. If you are operating a vehicle – your own or the Town’s – as part of your job duties, you are expected to observe all traffic regulations and practice safe driving at all times.
  - f. Immediately report to your supervisor all identified hazards, unsafe conditions and/or practices, defective or malfunctioning equipment, and any illness, accident or discomfort experienced in the workplace.

#### **Section 18 19 – Severability**

If any provision of these personnel rules or the application hereof to any person or circumstance(s) is held invalid, this invalidity does not affect other provisions or applications of the personnel rules which can be given effect without the invalid provision or application. For this purpose, the personnel rules provisions are severable.

#### **Section 19 20 – Travel Expenses**

1. ~~Authorization for personal car use by employees in Group I for routine town business will be at the discretion of the Town Manager. All employees must show proof of insurance and a valid driver’s license. In order to use your own vehicle you must have a valid unrestricted license and a current vehicle registration and inspection sticker. All employees must show proof of insurance, minimum \$50,000 bodily injury per person per accident. \$100,000 bodily for all persons per accident, \$25,000 property damage liability, \$2,000 medical payment coverage per person and \$50,000/\$100,000 underinsured motorist coverage.~~
2. Authorization for personal car use by employee in Groups II, III, IV shall be for a specific purpose and approved in advance by the Town Manager or his or her authorized representative.
3. All out-of-town travel expenses for employees in Groups I, II, III and IV must be authorized by the Town Manager, in writing, in advance of the use for which reimbursement is sought. This does not include travel for
4. Mileage Reimbursement for authorized personal car use shall be at a rate as determined by the Town Manager consistent with Maine State mileage standards.
5. Travel costs shall not be incurred from travel between employee’s home and principal point of employment in a regular and routine performance of work.

6. When two or more persons travel together on official authorized trips costs shall be paid to one employee based on the total mileage involved.
7. Distances shall be determined by beginning and ending odometer reading or mapping website such as MapQuest or Google and any substantial deviations from distances shown on highways mileage guides must be justified.
8. Costs such as tolls or parking meters shall be added to the expenses incurred. Valid receipts must accompany request. You are responsible for paying any fines associated with parking, speeding, or other violation tickets that are issued whether it is a Town-owned vehicle or the employee's personal vehicle. Because your driving record and accident history have a direct impact on insurance coverage costs paid by the Town, repeated traffic violations or motor vehicle accidents may result in loss of vehicle privileges and shall be cause for disciplinary action. The Town may conduct driver license and/or driving record checks.
9. Reimbursement for expenses will be made upon submission of a reasonable substantiated purchase order. Meal reimbursements will be reimbursed for overnight travel; day trainings will not have meal reimbursements as this would be part of the employee's normal day.
10. All authorized, personal car use shall be computed from the Damariscotta Town Office at 21 School Street, Damariscotta, Maine or the shortest route.

Appendix: The Family and Medical Leave Act policy

This policy hereby repeals and replaces the original personnel policy dated January 1, 1997 and revises the policy dated August 2<sup>nd</sup>, 2007, July 2, 2008, August 26, 2009, and December 1, 2010.

Signed this \_\_\_\_ day of June, 2019

\_\_\_\_\_  
 Roberta Mayer

\_\_\_\_\_  
 Amy Leshure

\_\_\_\_\_  
 Ronn Orenstein

\_\_\_\_\_  
 Louis Abbotoni

\_\_\_\_\_  
 Mark Hagar

\_\_\_\_\_  
 Board of Selectmen  
 Damariscotta, Maine

**Fiscal Year 2020 Wage scale for Municipal Personnel  
(non-contract personnel)**

	Town Clerk, Gen Asst Administrator, Registrar	Tax Collector, Web Site Administrator, Shellfish Liason	Treasurer, Office Manager, Human Resources, IT Liason	Road Commissioner	Code Enforcement **	PD Administrative Asst.
Step 1 Merit Range	\$ 17.75 \$ 18.28	\$ 18.35 \$ 18.90	\$ 18.75 \$ 19.31	\$ 19.00 \$ 19.57	\$ 18.00 \$ 18.54	\$ 17.50 \$ 18.03
Step 2 Merit Range	\$ 18.92 \$ 19.58	\$ 19.47 \$ 20.05	\$ 19.89 \$ 20.49	\$ 20.16 \$ 20.76	\$ 19.10 \$ 19.67	\$ 18.57 \$ 19.12
Step 3 Merit Range	\$ 20.27 \$ 20.98	\$ 20.65 \$ 21.27	\$ 21.10 \$ 21.74	\$ 21.38 \$ 22.03	\$ 20.26 \$ 20.87	\$ 19.70 \$ 20.29
Step 4 Merit Range	\$ 21.71 \$ 22.47	\$ 21.91 \$ 22.57	\$ 22.39 \$ 23.06	\$ 22.69 \$ 23.37	\$ 21.49 \$ 22.14	\$ 20.90 \$ 21.52
Step 5 Merit Range	\$ 23.26 \$ 24.07	\$ 23.25 \$ 23.94	\$ 23.75 \$ 24.46	\$ 24.07 \$ 24.79	\$ 22.80 \$ 23.49	\$ 22.17 \$ 22.83
Step 6 Merit Range	\$ 24.92 \$ 25.79	\$ 24.66 \$ 25.40	\$ 25.20 \$ 25.95	\$ 25.53 \$ 26.30	\$ 24.19 \$ 24.92	\$ 23.52 \$ 24.22
Step 7 Merit Range	\$ 26.69 \$ 27.63	\$ 26.16 \$ 26.95	\$ 26.73 \$ 27.54	\$ 27.09 \$ 27.90	\$ 25.66 \$ 26.43	\$ 24.95 \$ 25.70
Step 8 Merit Range	\$ 28.59 \$ 29.59	\$ 27.76 \$ 28.59	\$ 28.36 \$ 29.21	\$ 28.74 \$ 29.60	\$ 27.23 \$ 28.04	\$ 26.47 \$ 27.26
Step 9 Merit Range	\$ 30.63 \$ 31.70	\$ 29.45 \$ 30.33	\$ 30.09 \$ 30.99	\$ 30.49 \$ 31.40	\$ 28.88 \$ 29.75	\$ 28.08 \$ 28.92
Step 10 Merit Range	Cost of Living Adjustments only					
Year 10 Longevity = \$250.00	<i>Could be a gift cert to a local business which thanks employee for longevity as well as keeping within local economy.</i>					
Year 20 Longevity = \$250.00	<i>Could be a gift cert to a local business which thanks employee for longevity as well as keeping within local economy.</i>					

Upon Certification \$1.50/hr incr  
 This is a payscale tool and rates will continue to be adjusted as merit or COLA increases are awarded.  
 \*\*Code Enforcement Officer is currently Waldoboro employee, this scale is currently not applicable.

CURRENT FY 20 RATE \$ 24.59 Yr \$ 21.80 Yr \$ 26.68 Yr \$ 20.35 Yr \$ 24.06 Yr \$ 21.73

## Summary of Changes to the proposed Personnel Policy for 2019

Changed calendar year to fiscal year in various sections; vacation, sick & personal days are now referenced as earned time, which was adopted in the 2010 policy.

Section 2-Defined full-time schedule to include the 4 day work week as well the 5 day work week.

Section 3-Reiterated Charter verbiage for BOS and administrative services solely go through Town Manager. Added the authority of the TM to delegate personnel duties.

Section 5-1.1. Included Town's social media and web page for advertisements of employment  
4. included marijuana, &/or prescription drugs that may impair judgement  
5. expanded unacceptable dress code. (yes this needed to be spelled out)

Section 6-4. expanded on closure of office-when it's paid or unpaid

Section 8-2. Referenced the retirement plans w/Maine Public Employees Retirement System the Town participates in and removed ING. Added 'timely submission' of paperwork.

3. A. Replaced former insurance plan with new PPO500 plan. Added/amended the town & employee responsibility of insurance costs. This was taken verbatim to mirror the police collective bargaining agreement.

B. Added payment in lieu-also taken verbatim to mirror police CBA.

C. Added the dental insurance benefit, all premiums are paid by the employee, but the previous personnel policy did not mention dental as a benefit.

5. A.- Accrual Rate chart-decreased years in service before increase of earned time benefits in year increments instead of 6 years. The first one of 3.60wks is not all vacation time, this is the equivalent to 5 sick days, 5 personal days, and 5.6 vacation days.

5.B- Removed language in regards to the Town Managers own annual leave; this is covered within TM contract.

5.C-Increased amount of accrual from 40 to 120 hours; added language to clarify amount allowable for carry over of earned time. This also mirrors the CBA to treat all employees fairly and equally.

6.-Increased bereavement leave from 3 days to 4 days. Included step parents and step grandparents.

8. & 9.- Removed sections in entirety, these leaves are covered within the earned time off benefit.

11.- Reduced the number of holidays for Group III employees from 12 to 6 for 'major' holidays. Group III employees are part-time.

11.b- Removed explanation of holidays for police officers who work Christmas.

11.d.-Clarified holiday pay to be equivalent for a 4 day or 5 day work week.

Section 9-Added the option of bonus pay at the TM's discretion and availability.

Section 16-Included language of assurance with conflict of interest policy. Removed 'relative' and replaced with personal relationship and expanded on what personal relationship includes to reflect current climate.

Section 18.8-Added OSHA language to assure safety precautions are followed.

Section 20.1-Included Maine minimum insurance requirements.

20.4-Clarified mileage will be a Maine's mileage reimbursement rate.

20.8-Added language that employees are responsible for any fines associated with violations.

20.9-Clarified meal reimbursements.