

MEMORANDUM OF UNDERSTANDING
Between
Town of Coventry and Microgrid Provider

This Memorandum of Understanding ("MOU") is entered as of the ___ day of December ____, 2017 ("Effective Date") by and between the Town of Coventry Connecticut and ("Coventry" or the "Town"), and EcoSolar Installations LLC, Pequot Group, LLC, and Tumulow Energy Ingenuity, Inc. ("Microgrid Provider".) Coventry and Microgrid Provider are sometimes together referred to as the "Parties" in this MOU.

A. Background:

As result of electrical grid outages experienced due to severe weather events and the related consequences (including concerns about the availability of electricity for critical and emergency services), Coventry retained the services of the Michaud Law Group LLC and the ECG Group to deploy a Request for Proposals ("RFP") to help Coventry select a qualified microgrid provider to design, install, own, operate and maintain a microgrid for the Town. This RFP resulted in Coventry selecting Microgrid Provider to pursue a microgrid plan for the Town in accordance with Microgrid Provider's microgrid proposal (as amended and/or supplemented).

As the selected microgrid provider, Microgrid Provider will be applying for participation of its microgrid proposal in the Connecticut Microgrid Grant Program, a state program administered by the Connecticut Department of Energy and Environmental Protection ("DEEP") to support local distributed energy generation for critical facilities. Under the Microgrid Grant Program, DEEP may award Microgrid Provider up to a \$4,000,000.00 grant ("Microgrid Grant") to implement the microgrid on behalf of Coventry.

The Parties desire this MOU to address the terms and conditions under which Microgrid Provider would design, install, own, operate and maintain a microgrid for Coventry if Microgrid Provider is awarded the Microgrid Grant by DEEP.

B. MOU:

Coventry and Microgrid Provider agree as follows:

1. The Microgrid.

Subject to Coventry's written consent Microgrid Provider shall prepare and submit a microgrid application to DEEP. This MOU addresses the design, installation, ownership, maintenance, and operation of the microgrid infrastructure and on-site generation to be depicted in Microgrid Provider's microgrid grant application to DEEP. Coventry retains the right to elect not to proceed even if DEEP awards a grant in its discretion.

2. **Microgrid Services.**

- (a) *Nature of Service Request.* Coventry has selected Microgrid Provider to design, install, own, operate, and maintain a microgrid capable of serving the Town facilities on a continuous basis, including circumstances during which electrical service within Coventry through Eversource's existing distribution system has experienced an unplanned outage. This will be accomplished by Microgrid Provider designing the microgrid so that it can automatically switch into island mode whereby the on-site microgrid generation will directly supply power to the Town Facilities and be isolated from the rest of the Eversource network. Coventry acknowledges that after installation, the microgrid will function as an integrated component of Eversource's electrical grid system. Microgrid Provider agrees to operate the microgrid in island mode whenever necessary to ensure a reliable flow of power to the Town Facilities.
- (b) *No Cost Reimbursement.* If selected by DEEP under the Microgrid Grant Program Microgrid Provider shall receive all grant funds directly from DEEP.
- (c) *Increased Construction Costs.* Coventry agrees to use reasonable efforts to expedite required municipal permitting.
- (d) *Design; Ownership.* Microgrid Provider will design (to Coventry's and Eversource's specifications), install, own, operate and maintain the microgrid. Microgrid Provider (or through its partners) will solely own all electrical and civil infrastructure, and microgrid generation, including splice chambers, duct line, pad-mounted electrical system, and primary service laterals to proposed service locations installed as part of the microgrid. Microgrid design and construction will meet or exceed applicable codes and industry practices. Generation portions of the microgrid project will sell Coventry energy at a PPA or lease format. These generation portions are owned by a finance group and as such are not owned by Microgrid Provider. These finance entities will negotiate contracts with the Town on management and disposition of these assets. Coventry will not receive any ownership or other rights or interest in the microgrid because of this MOU or otherwise; *provided* that Coventry shall retain ownership of any infrastructure at the Town Facilities currently owned by it that have been

upgraded or otherwise modified by Microgrid Provider regarding the microgrid.

3. **Construction.**

- (a) *Cost-Effective Construction.* Microgrid Provider will endeavor to implement the microgrid to achieve environmentally-sound, safe and cost-effective construction methods. Without limiting the generality of the foregoing, the Parties will confer to analyze and address potential schedule and project constraints and to otherwise collaborate to advance the microgrid.
- (b) *Construction Permitting.* Microgrid Provider will be responsible for obtaining all permits required for construction of the microgrid. Coventry will assist Microgrid Provider in the process for procuring any applicable excavation and building permits, including implementing a process that allows the issuance of an excavation permit to Microgrid Provider, whether through a temporary permit or other appropriate means.
- (c) *Underground Infrastructure.* The Parties will coordinate all required replacement, relocation and/or planned new installation of infrastructure regarding the microgrid to facilitate efficient construction methods, including the minimization of road openings and other excavations. In furtherance of the foregoing, Coventry will use reasonable efforts to:
 - (i) identify (including through as-built drawings and mark-outs) any existing municipal utilities, infrastructure and other underground installations located or to be located in that portion of the microgrid route;
 - (ii) provide Microgrid Provider with information known to Coventry regarding non-municipal underground infrastructure and other existing installations that could be affected by the microgrid;
 - (iii) make available to Microgrid Provider all design and other information regarding any paving, underground and/or other infrastructure installation pending and/or planned by Coventry near the microgrid route; and
 - (iv) furnish available information submitted to Coventry regarding any underground and/or other infrastructure installation pending and/or planned by private parties near

the microgrid route. Coventry will promptly notify Microgrid Provider of any municipal paving projects and/or planned or proposed underground installation(s) near the microgrid route. The Parties will develop a plan that will manage the sequencing and methodologies for any municipal infrastructure work so that, to the extent practical, the microgrid and such municipal work will be installed in a coordinated sequence.

- (d) *Work Hours.* Normal work hours for Microgrid Provider and its contractors will be a window of twelve (12) consecutive hours during each day ("Normal Work Hours"). Coventry recognizes that the first hour of Normal Work Hours may vary based on the nature of the work. Microgrid Provider and/or its contractor(s) will work between 7:00 am and 7:00 pm. Coventry acknowledges that Microgrid Provider and/or its contractors may need to expand Normal Work Hours, including due to exigent circumstances and to maintain a safe work environment, in which case Microgrid Provider will provide notice of such expansion as appropriate under the circumstances. The Parties also will coordinate work hours and practices with the portions of the microgrid located at any schools, including any restrictions of activities during the school year.
- (e) *Traffic Control.* To the extent that construction activities require traffic control measures, Microgrid Provider will utilize measures that represent the least cost resources capable of performing such work in accordance with applicable standards (including safety). In furtherance of the foregoing, Coventry authorizes Microgrid Provider's use of private security, flaggers and/or other suitable private traffic control crews to provide traffic control services, if required; *provided* that if the Coventry Police Department requires, and/or circumstances justify, the use of police officers in connection with any construction and/or related activities (including for traffic control), Coventry shall be solely responsible for, and shall directly pay, all costs and expenses associated with such police services.
- (f) *Support Site(s).* If Microgrid Provider and/or its contractors determine that Coventry owns an area suitable for storage, staging, laydown and work regarding the microgrid and Coventry determines that that area can be used without compromising municipal operations, Coventry will grant Microgrid Provider, the right to use such site(s), to the extent available, without charge or other cost of whatever nature. After its use, Microgrid Provider shall restore such area to its previous condition. If requested by

Microgrid Provider, Coventry will provide guidance in the processing of any permits, approvals, and/or other actions required from Coventry for the use of any parcel (whether or not owned by Coventry) as a support site.

- (g) *Excess Materials.* Microgrid Provider will be responsible for managing and, if necessary, disposing of any excess materials resulting from the installation of the microgrid. Coventry acknowledges that Microgrid Provider, in its discretion, will determine whether to characterize, in advance and/or after excavation, if at all, any excess materials.
- (h) *Restoration.* Microgrid Provider (or its contractors) will restore locations affected by Microgrid Provider's work on the microgrid in accordance with applicable laws and standards.
- (i) *Conflict Management.* To the extent that Microgrid Provider notifies appropriate Coventry town officials of its construction plans, Coventry will notify Microgrid Provider of any concerns about Microgrid Provider's construction and/or any other action under, or regarding, the microgrid before Coventry takes any enforcement action with respect thereto so that to the extent practical, the Parties can develop and implement a plan that resolves such concerns. The Parties acknowledge that it is in their mutual interest to resolve any such concern without resorting to formal proceedings and/or other action; accordingly, the Parties will negotiate in good faith to identify a mutually acceptable resolution.

4. **Special Conditions.**

- (a) *Easement Areas.* Coventry shall provide Microgrid Provider with copies of surveys and other real estate-related documents reasonably available to Microgrid Provider with respect to the properties owned by Coventry and affected by the microgrid. If Microgrid Provider, in its discretion, desires to survey any of such Coventry properties, Coventry hereby grants Microgrid Provider permission to survey such Coventry properties and perform other due diligence to confirm the nature and extent of the required easement rights. Coventry will use reasonable efforts to grant any necessary and reasonable easements to Microgrid Provider in the furtherance of the microgrid.
- (b) *Environmental Land Use Restrictions.* If Coventry or any other owner of any easement area prepares, processes and obtains DEEP (or its successor) approval of an Environmental Land Use

Restriction ("ELUR") to be recorded on the Coventry land records with respect to such easement area, then Coventry shall cooperate with Microgrid Provider to obtain a waiver from DEEP of any requirement for Microgrid Provider to subordinate its rights to the provisions of the ELUR. In the event such a waiver is not obtained, then Microgrid Provider will enter a subordination MOU, which form shall contain certain conditions including the following: (i) that any additional expense incurred by Microgrid Provider because of compliance with the ELUR or with any MOU to subordinate or otherwise related to such subordination will be borne entirely by Coventry

- (c) *Health and Safety.* Microgrid Provider shall be responsible for the costs associated with the handling, removal, and disposal of any solid waste or contaminated soil regarding the microgrid route. If Microgrid Provider or its contractors are not provided a safe working condition, Microgrid Provider, without any liability whatsoever and in Microgrid Provider's sole discretion, (i) may refrain from performing any work until the unsafe condition has been removed or rectified by Coventry; or (ii) remove or rectify such unsafe condition, in each case at Coventry's sole cost and expense.

- 5. **Representations and Warranties.** Each Party represents, covenants and warrants to the other that (a) it is duly authorized to execute and deliver this MOU, (b) it has obtained all necessary consents, waivers and approvals under its organizational documents and under applicable law to execute, deliver and perform under this MOU; and (c) this MOU is enforceable against such party in accordance with its terms, and its performance does not and will not violate the terms or provisions of any other MOU or contract which such party is bound. Simultaneously with the execution and delivery hereof, Coventry will deliver to Microgrid Provider an opinion letter and/or other proof, the form of which must be reasonably acceptable to Microgrid Provider, that Coventry has obtained all necessary federal, state and local consents, waivers and approvals to execute, deliver and perform under this MOU.
- 6. **Indemnification.** To the extent permitted by law, Coventry shall release and fully discharge and defend, indemnify and hold Microgrid Provider, each of its affiliates, successor and assignees and each of their shareholders, directors, officers, employees and agents harmless from and against any and all claims, penalties, damages, liabilities, causes of action, proceedings, demands, suits, costs, losses and expense, including reasonable attorneys' fees, attributable to any environmental condition, site conditions, personal injury, bodily damage, or damage to real or personal property arising out of, and/or relating to (a) Coventry's breach of any

term or condition of this MOU except to the extent that such claims arise out of or relate to Microgrid Provider's acts or omissions. Microgrid Provider shall release and fully discharge and defend, indemnify and hold Coventry and its officials, employees and agents from and against any and all claims, penalties, damages, liabilities, causes of action, proceedings, demands, suits, costs, losses and expense, including reasonable attorneys' fees, attributable to any environmental condition, site conditions, personal injury, bodily damage, or damage to real or personal property arising out of, and/or relating to the initial construction of the microgrid in the microgrid route, except to the extent such claims arise out of, or relate to, Coventry's acts or omissions. Coventry specifically acknowledges that the foregoing Microgrid Provider indemnity does not extend to the operation and maintenance of the microgrid, including as a microgrid. **In no event shall either the Town of Coventry or Microgrid Provider be liable for consequential, special or indirect damages.**

7. **Insurance.** Microgrid Provider shall name, and shall cause any subcontractors to name, Coventry as an additional insured. The limits of coverage shall be accepted to the Town of Coventry's insurance carrier CIRMA.
8. **General.**
 - (a) *Assignment.* Neither Party may assign this MOU without the written consent of the other party, which consent shall not be unreasonably withheld, provided however, that Microgrid Provider must transfer or assign this MOU to a limited liability company (or other legal entity) for the purpose of consolidating the entities comprising Microgrid Provider. Microgrid Provider shall make said transfer or assignment within sixty (60) days of the Effective Date of this MOU.
 - (b) *Waiver.* Any waiver of any breach of any provisions of this MOU shall not be a waiver of any subsequent breach of the same or of any other provisions of this MOU.
 - (c) *Entire MOU.* This MOU, including all the Attachments attached hereto, constitutes the entire MOU between the parties respecting the subject matter contained herein and supersedes all prior and contemporaneous MOUs and understandings between the parties with respect to such subject matter.
 - (d) *Amendments.* This MOU may not be modified or amended except by a writing signed by duly authorized representatives of the parties.

- (e) *Invalidity.* In case one or more of the provisions of this MOU is determined to be invalid, illegal, or unenforceable in any respect, such provisions shall be reformed to the minimum extent necessary to cause such provision to be valid, legal or enforceable. If no such reformation is possible, then such provisions shall be deemed omitted, and the balance of this MOU shall remain valid and enforceable.
- (f) *Notices.* All notices shall be in writing and delivered personally, by mail, return receipt requested or by overnight courier, addressed to the other party as follows or at such address as such party from time to time may indicate by written notice to the other party:

If to Town of Coventry:
John A. Elsesser, Town Manager
Town of Coventry
1712 Main Street
Coventry, CT 06238

If to Microgrid Provider:
John O'Brien
EcoSolar Installations, LLC
12 Huntington Drive
Branford, CT 06405

Any such notice shall be deemed given on the date delivered.

- (g) *Applicable Law.* This MOU shall be governed and construed in accordance with the laws of the State of Connecticut, without regard to its conflicts of laws principles.
- (h) *Survival.* All requirements, terms, conditions, and provisions of this MOU which by their nature are incapable of being fully performed within the period of performance hereof shall survive cancellation, termination or expiration of this MOU.
- (i) *Publicity.* The parties shall coordinate all public relation communications, including press releases and conferences, public announcements and published materials (including advertisements, brochures, electronic or video communications or presentations, and other promotional materials) by Coventry concerning the Project and this MOU to assure accuracy before public dissemination.
- (j) *Waiver of Jury Trial.* Each party waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury

in respect of any suit, action or proceeding arising out of, resulting from or in any way relating to this MOU. As an alternative both parties agree to using an alternative means of arbitration such as the American Arbitration Association or agreed upon equivalent.

- (k) *Interpretation.* Captions of the sections of this MOU are for convenience only and shall form no part of this MOU. Whenever the words "include", "includes" or "including" are used in this MOU, they shall be deemed to be followed by the words "without limitation" or equivalent words. The phrase "and/or" shall be deemed to mean the words both preceding and following such phrase, or either of them.
- (l) *Counterparts.* This MOU may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile, "portable document format" (PDF) or other means of electronic transmission of signatures shall be deemed to have the same legal effect as original signatures.
- (m) *RFP Fees:* A condition of this MOU is that Microgrid Provider shall pay all RFP Fees regarding the RFP (as amended) to Michaud Law Group LLC and ECG Group.
- (n) *Joint and Several Legal Obligation:* EcoSolar Installations LLC, Pequot Group, LLC, and Tumalow Energy Ingenuity, Inc. agree that each and together are legally obligated under this MOU.

[Signature page follows]

The Parties have executed this MOU as of the Effective Date.

TOWN OF COVENTRY

By: _____
Name:
Title:

MICROGRID PROVIDER

EcoSolar Installations LLC

By: _____
Name:
Title:

Pequot Group, LLC

By: _____
Name:
Title:

Tumalow Energy Ingenuity, Inc.

By: _____
Name:
Title: