

CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.
REQUEST FOR PROPOSALS FOR SOLAR PV AND BATTERY SYSTEMS
ROUND 7

RESPONSE TO DEVELOPER QUESTIONS
POSTED AND EMAILED 6.14.24

1. PLEASE FURTHER DESCRIBE THE FORM OF DECOMMISSIONING AGREEMENT.

Please refer to the RFO Section 2.5 Decommission and Site Restoration which reads in part, “The Developer will be required to enter into a deposit control account agreement with [UCC] Article 9 as the form of decommissioning assurance to be used as security for its decommissioning obligations. “ Please refer to the entirety of Section 2.5 of the RFP and in more particular Section 11 of the Solar Power Purchase and Development Agreement Template.

Please also refer to the **Sample Deposit Account Control Agreement below as Attachment A.** CVEC understands that the parties may agree to have the funds deposited with the developer’s banking institution . other than CVEC’s, which may require additional or alternative language provided that there are no substantive changes to the provisions of Article 9.

2. FOR THE TISBURY SENIOR CENER, THE PRODUCTION RATION SEEMS VERY HIGH. IS THERE A REASON WHY THE RATION IS TO HIGH COMPARED TO OTHER PROJECTS?

CVEC’s specifications are for a 31kW system with an anticipated output of 36,000 kWh annually (approximately 1,160 kWh/kW installed).

3. IS THERE FLEXIBILITY TO INCREASE/DECREASE THE SIZE OF THE ARRAYS?

There’s flexibility to increase/decrease the size of the arrays, but a substantial decrease in size is less favorable.

4. THERE ARE NO CARPORTS AT ANY OF THE SITES.

5. WHAT SHALL WE DO IF WE HAVE ADDITIONAL QUESTIONS?

CVEC will answer any additional developer questions by providing a response to all known prospective respondents via email and post the questions and responses at <https://cvecinc.org/programs-resources/requests-for-proposals-qualifications/>. Developers should check the site periodically. Alternatively, the developer may provide its assumptions in written form in the body of the Non-Price and/or Price Proposal as a footnote.

ATTACHMENT A

KO LAW DRAFT DATED 6/10/24

DEPOSIT ACCOUNT CONTROL AGREEMENT

This DEPOSIT ACCOUNT CONTROL AGREEMENT (“Agreement”) is dated as of [insert] and is made by and among the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts governmental entity and cooperative corporation (“CVEC”), [insert bank name] (“Bank”), and [insert developer name] (“Bank Customer”), and is effective as of [insert].

WHEREAS, Bank has established a certain deposit account in the name of [name of account] with an account number ending in XXXX (the “Deposit Account”);

WHEREAS, through this Agreement, Bank Customer has granted CVEC a security interest in the Deposit Account; and

NOW THEREFORE, Bank Customer, CVEC and Bank are entering into this Agreement to perfect the security interest of CVEC in the Deposit Account.

1. **CVEC’s Interests in Deposit Account.** All parties agree that the Account is a “deposit account” within the meaning of Article 9 of the Uniform Commercial Code of the Commonwealth of Massachusetts. Bank Customer hereby grants and confirms the security interest granted by Bank Customer to CVEC in all of Bank Customer’s right, title and interest in and to the Deposit Account and all sums now or hereafter on deposit in or payable or withdrawable from the Deposit Account (the “Deposit Account Funds”).

2. **CVEC Control.** Bank will comply with instructions originated by CVEC directing disposition of the funds in the Account without further consent by Bank Customer or any other person. Bank will not permit the withdrawal or other disposition of Deposit Account Funds by Bank Customer without CVEC’s prior consent. Bank has not and will not comply with any third-party instructions or other directives concerning the Deposit Account. Bank agrees to comply with any disposition instructions provided by CVEC.

3. **Access to Deposit Account.** Notwithstanding Section 2 above, CVEC agrees that Bank Customer will be allowed access to the Deposit Account until Bank receives written notice from CVEC directing that Bank Customer no longer has access to the Deposit Account (an “Access Termination Notice”). Bank Customer irrevocably authorizes Bank to comply with any Access Termination Notice even if Bank Customer objects to them in any way, and agrees that Bank may pay any and all Deposit Account Funds to CVEC in accordance with any disposition instructions provided by CVEC. Bank Customer further agrees that after Bank receives an Access Termination Notice, Bank Customer will not have access to the Deposit Account or Deposit Account Funds.

4. **Priority of CVEC’s Security Interests.** Bank subordinates in favor of CVEC any security interest, lien, or right of setoff it may have, now or in the future, against any Deposit

Account or any Deposit Account Funds, except that Bank will retain its prior lien on any Deposit Account Funds in such Deposit Account to secure payment of normal bank charges and fees for such Deposit Account.

5. **Statements, Notices and Confirmations.** Bank will send copies of all statements, notices and confirmations concerning the Deposit Account to Bank Customer and CVEC at the addresses set forth at the end of this Agreement. Upon receipt of written notice of any lien, encumbrance or adverse claim against the Deposit Account or any funds credited thereto, Bank will make reasonable efforts promptly to notify CVEC and Bank Customer thereof.

6. **Indemnity.** Bank Customer hereby agrees to indemnify and hold harmless Bank and CVEC and each of their respective directors, officers, agents and employees from and against any and all claims, causes of action, liabilities, lawsuits, demands and damages, including without limitation, any and all court costs and reasonable attorney's fees, in any way related to or arising out of or in connection with this Agreement or any action taken or not taken pursuant hereto, except to the extent caused by Bank's or CVEC's gross negligence or willful misconduct, as applicable.

7. **Termination.** This Agreement may be terminated by CVEC upon written notice to Bank and Bank Customer. Bank may terminate this Agreement upon thirty (30) days' written notice to CVEC and Bank Customer. Bank Customer may not terminate this Agreement without the prior written consent of CVEC.

8. **PPA.** Bank Customer and CVEC have also entered into a Solar Power Purchase and Development Agreement dated as of [insert date] (the "PPA") which sets forth other obligations and duties regarding Bank Customer's and CVEC's related rights and responsibilities regarding use and return of the Deposit Account Funds.

9. **Miscellaneous.**

a. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns.

b. Bank Customer may assign or delegate any of its rights and/or duties under this Agreement only with CVEC's consent.

c. CVEC may assign its rights and/or duties under this Agreement by written notice to Bank Customer and such assignment shall be effective as to Bank Customer upon written notice to same.

d. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. A signature delivered by facsimile transmission or other electronic means shall be deemed the equivalent of an original signature for all purposes.

e. This Agreement shall be governed by the laws of the Commonwealth of

Massachusetts. Any disputes arising under this Agreement between CVEC and Bank Customer shall be resolved through the dispute resolution procedures in the PPA.

f. This Agreement may be amended only by a written instrument executed by all parties acting by their respective duly authorized representatives.

g. As between CVEC and Bank Customer, for the purpose of giving full and proper effect to this Agreement, the PPA and this Agreement shall be read together and construed harmoniously. The terms of this Agreement shall prevail in the event of any direct conflict with the PPA.

IN WITNESS HEREOF, the parties have caused their names to be signed hereto by their respective representatives thereunto duly authorized as of the date first above written.

Cape & Vineyard Electric Cooperative, Inc.

William T. Lake, President
23H2 Whites Path, Suite 2
South Yarmouth, MA 02664

Date

CVEC OFFICER
23H2 Whites Path, Suite 2
South Yarmouth, MA 02664

Date

[Bank]

Name/Title:
Address:

Date

[Bank Customer]

Name/Title:
Address:

Date