

Orr&Reno

Douglas L. Patch
dpatch@orr-reno.com
Direct Dial 603.223.9161
Direct Fax 603.223.9061
Admitted in NH and MA

August 27, 2020

Via Email Only

Pamela Monroe, Administrator
New Hampshire Site Evaluation Committee
c/o New Hampshire Public Utilities Commission
21 South Fruit St., Suite 10
Concord, NH 03301-2429

Re: SEC Docket No. 2019-02, Application of Chinook Solar, LLC for a Certificate of Site and Facility for the Construction and Operation of a 30MW Solar Generating Facility in Fitzwilliam, New Hampshire – Memorandum of Understanding between the Town of Fitzwilliam and Chinook Solar, LLC

Dear Ms. Monroe:

Enclosed is a copy of the executed Memorandum of Understanding between the Town of Fitzwilliam and Chinook Solar, LLC.

If you have any questions, please do not hesitate to contact me.

Thank you for your assistance.

Sincerely,



Douglas L. Patch

DLP/eac
Enclosure

cc (via email): Service List in SEC Docket 2019-02

2864082_1

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT (“Agreement”) is entered into this 24th day of August 2020, between the Town of Fitzwilliam, New Hampshire (the “Town”) and Chinook Solar, LLC (“Chinook Solar”), collectively (the “Parties”). As used herein, Town refers to the Town and its agents and Chinook Solar refers to Chinook Solar and its agents.

WHEREAS, Chinook Solar is proposing to construct, own, operate and maintain a 30-megawatt solar electric generation facility in Fitzwilliam, New Hampshire known as the Chinook Solar Project (the “Project”); and

WHEREAS, Chinook Solar has applied for a Certificate of Site and Facility (“Certificate”) for the Project to the New Hampshire Site Evaluation Committee (“SEC”); and

WHEREAS, both the Town and Chinook Solar desire that the Project be constructed in a manner that, to the extent practical, minimizes environmental impact and disruption to the public; provides reasonable assurance to the Town and its residents that construction impacts will be avoided, minimized and mitigated; and facilitates the use of efficient construction methods; and

WHEREAS, it is in the best interests of the Town and Chinook Solar to maintain an open line of communications regarding the construction of the Project in order to achieve common goals and establish consistent practices in furtherance of such goals; and

WHEREAS, the Town desires that Chinook Solar comply with the following provisions during the Project, including construction, operation, and decommissioning; and

WHEREAS, the Town and Chinook Solar desire that the SEC adopt these provisions as conditions and incorporate them into any Certificate of Site and Facility it may grant Chinook Solar for the Project; and

NOW, THEREFORE, in consideration of the foregoing, the Town and Chinook Solar hereby agree as follows:

I. PUBLIC INFORMATION, COMMUNICATIONS, AND COMMENTS

- A. Public Inquiries and Comments. Chinook Solar desires to keep the public current with respect to information about the construction, operation, and decommissioning of the Project. For a period of 30 days prior to the commencement of construction, during construction or reconstruction, during operation, and during decommissioning, Chinook Solar will maintain a public outreach program to inform the Town and abutting and nearby property owners of the status of the Project, including, without limitation, upcoming construction activities and schedules, and to respond to any public concerns and/or complaints in a timely manner. In particular, Chinook Solar shall, at a minimum:

1. During construction, designate an e-mail address and phone number to receive any project concerns, acknowledge receipt of such concerns prior to the end of the following business day, and make commercially reasonable efforts to respond to such concerns within three (3) days of receipt.
2. Establish and maintain a public website with weekly updates during construction, reconstruction, and decommissioning, and annual updates during operation. It is anticipated that sometimes there will be no change in the status and in that case the Parties expect Chinook Solar to provide only a simple update that the status has not changed.
3. Before the start of construction, Chinook Solar shall provide a brief FAQ or similar document to the Town to assist the Town if it receives inquiries about the Project. The FAQ will also include the Chinook Solar phone number and email and website addresses to which the Town representative may refer the inquirer.
4. Any other measures as mutually agreed to by the Parties.

This process shall not preclude the Town from responding to public comments, provided however, that nothing in this section shall be construed to allow the Town to respond on behalf of Chinook Solar.

- B. Signs. Signs during construction, operation, and decommissioning shall be reasonably sized and limited to those necessary to facilitate construction, operation, and decommissioning, including but not limited to the identification of Project, warnings or liability information, construction information, identification of private property, and/or property access accommodations. Signs shall comply with the all applicable laws and shall comply with the Town of Fitzwilliam Zoning Ordinance §127-31.

II. EQUIPMENT AND FACILITIES

- A. Electrical Components. All electrical components of the Project shall conform to relevant and applicable state and national codes.

B. Emergency Response. Chinook Solar shall provide access to the Project to the Town's Fire Department via a knox box or daisy chain and shall comply with its proposed Emergency Response and Fire Safety Plan (Appendix 16D of its 10/18/2019 Application to the SEC), as approved by the SEC, any SEC emergency response conditions, and any other aspect of the Certificate of Site and Facility regarding emergency response. Chinook Solar has designed the Project in such a way that the Town's largest emergency vehicle (a 34-foot fire truck) can access and turn around within the Project. Additionally, Chinook Solar shall coordinate with the Town's emergency services to determine the need for the purchase of any equipment and/or the provision of any orientation, including ongoing orientation at least annually, required to

provide an adequate response to an emergency at the Project, as originally permitted or as it may be permitted to be expanded or altered, that would not otherwise reasonably need to be purchased or provided by the Town. Chinook Solar shall solely bear all expenses of any such equipment or orientation reasonably determined by both Parties to be needed. The Town and Chinook Solar shall review together on an annual basis the equipment and orientation requirements for emergency response at the Project, as necessary. In the event of an emergency response event that creates an expense for the Town based on obligations under a mutual aid agreement, Chinook Solar shall reimburse the Town for any direct expenses, which the Town can demonstrate would not otherwise have been incurred.

III. REPORTS TO THE TOWN

- A. Incident Reports. During construction of the Project, when an incident caused by Chinook Solar occurs within the Town, Chinook Solar shall provide the following to the Chair of the Board of Selectmen or the Chair's designee by the later of five (5) calendar days after the incident or contemporaneous to it being provided to any governmental agency other than the Town: copies of all reports of environmental incidents or industrial accidents that require a report to the U.S. Environmental Protection Agency (EPA), New Hampshire Department of Environmental Services (NHDES), Occupational Safety and Health Administration (OSHA) or another federal or state government agency.

IV. ROADS

- A. Public Roads. In the event that Chinook Solar wishes to utilize Town roads for construction, reconstruction, or decommissioning, then Chinook Solar shall:
1. Construction access (including deliveries and construction traffic) shall enter Fitzwilliam via state Routes 12 and/or 119. Local roads for deliveries and construction traffic shall include Fullam Hill Road (and the unnamed Class VI local road off of Fullam Hill Road) and Crane Road. To the maximum extent practicable, Chinook Solar shall not use Crane Road for heavy vehicles even if the vehicles do not exceed the applicable weight limit. Future access to the site, post-construction, shall be off of Fullam Hill Road (and the unnamed Class VI local road off of Fullham Hill Road) and would be primarily for maintenance of the solar facility.
 2. Identify and notify the Town of all local public roads to be used within the Town to transport equipment and parts for construction of the Project. No less than ten (10) days prior to the commencement of travel over Town roads by vehicles that shall exceed the Town's applicable road weight limits, Chinook Solar shall file a road weight limit exceedance notification with the Town that identifies the proposed

portions of all Town roads over which any project related vehicles whose weight and load exceeds the applicable road weight limits will be traveling.

3. In accordance with the New Hampshire Department of Transportation Utility Accommodation Manual, Chinook Solar shall document, photograph and take videos of local road conditions prior to construction and as soon as possible after construction is completed or as weather permits. Chinook Solar shall provide copies of said documents, photographs, and videos to the Town as soon as practicable and within thirty (30) days of their creation.
 4. As soon as possible, and within 30 days, Chinook Solar shall temporarily repair, at Chinook Solar's sole expense, any Town road damage caused by Chinook Solar at any time to ensure safe passage. Final repair of Town roads shall be accomplished within one year of the date of achieving commercial operations of the Project, at Chinook Solar's sole expense and to the reasonable satisfaction of the Fitzwilliam Road Agent or other representative of the Town designated by the Town of Fitzwilliam Selectboard. The Fitzwilliam Road Agent or other representative of the Town designated by the Town of Fitzwilliam Selectboard for this purpose shall have the right to review and reasonably approve any proposed permanent repair before Chinook Solar undertakes such repair.
 5. Chinook Solar shall be solely responsible for all aspects of flaggers, if required to direct or monitor traffic within the Town limits during construction of the Project.
- B. Emergency Access Roads. Chinook Solar shall construct and maintain access roads for year-round access to the Project at a level that permits passage of emergency response vehicles throughout the construction period. Upon completion of the construction of the Project, Chinook Solar shall restore the lands that it owns that was used for temporary, construction-Period emergency access to its approximate pre-existing condition. For lands leased by Chinook Solar, Chinook Solar shall restore the land used for temporary, construction-Period emergency access to its approximate pre-existing condition unless the landowner shall otherwise agree. Chinook Solar shall document, photograph, and take videos of the pre-existing conditions prior to construction of access roads and as soon as possible after the land is restored. Chinook Solar shall provide copies of said documents, photographs, and videos to the Town as soon as practicable and within thirty (30) days of their creation.
- C. Temporary Roads. For all temporary roads constructed during the construction-period, whether for access, service, or any other purpose whatsoever, Chinook Solar shall restore lands that it owns to its approximate pre-existing condition. For lands leased by Chinook Solar, Chinook Solar

shall restore the land to its approximate pre-existing condition unless the landowner shall otherwise agree.

- D. For the approximately 4/10 of a mile of the Class V highway of Fullam Hill Road to the access road to the site, Chinook Solar will completely repave that portion within thirty (30) days of completion of construction. It is anticipated that the cost of such repaving will not exceed thirty thousand dollars (\$30,000.00). If the cost of such repaving exceeds that amount, the Town shall pay any amounts over thirty thousand dollars (\$30,000.00) so long as the Town has approved the scope of work beforehand. The Town agrees that Chinook Solar has the right to install necessary utility distribution lines within or adjacent to the unnamed Class VI local road off of Fulham Hill Road, including the access road.

V. PROJECT CONSTRUCTION COMMITMENTS

- A. Stormwater Pollution Prevention Plans – Prior to the commencement of construction of the Project, Chinook Solar shall provide the Town with a copy of the New Hampshire Stormwater Pollution Prevention Plan showing the construction layout of the Project.
- B. Construction Schedule. Upon request of the Town, prior to the commencement of construction activities for the Project, Chinook Solar shall provide the Town with an overall schedule for construction activities. The construction schedule shall be subject to change and the Town shall be notified of any significant changes and provided updates pursuant to Section I.
- C. Meetings: Upon request of the Town, Chinook Solar will meet, conference, telephone, and/or correspond via U.S. Mail or electronic mail with Town officials, on at least a monthly basis, to provide an update on the status of construction of the Project, answer questions and otherwise discuss the Project.
- D. Construction Operation.
 - 1. Chinook Solar shall notify the Town both prior to the start of construction and prior to the first use of Town roads at least twenty-four (24) hours in advance.
 - 2. Construction of the Project shall not begin before 7:00 am and shall not continue after 5:30 pm Monday through Saturday (“Work Hours”). Construction shall not be conducted outside of Work Hours, on Sundays or any federal or New Hampshire holidays, except as follows: outage-related construction work, delays caused by weather, or other extraordinary circumstances. Before commencing work outside of Work Hours, Chinook Solar shall update the Town as soon as practicable and

at least twenty-four (24) hours in advance. Such update shall be to the Fitzwilliam Road Agent or other representative of the Town designated by the Town of Fitzwilliam Selectboard for this purpose. For any such update Chinook Solar may need to provide when the Town offices are closed and/or the Road Agent is not available, Chinook Solar shall contact the Town Administrator by email to Fitzwilliamnh@fitzwilliam-nh.gov and/or phone call to the Selectboard phone number (603) 585-7723, with Chinook being authorized to leave a message at either the email and/or the phone number. Electrical testing and commissioning and any activity that requires only a pickup truck should be excluded from Work Hour restrictions.

3. The start-up and idling of trucks and equipment will conform to all applicable New Hampshire Department of Transportation or other regulations. The start-up and idling of trucks and equipment is part of construction and will occur only during Work Hours. Beyond applicable regulations, Chinook Solar shall minimize all idling to the minimum required for any vehicle or equipment to perform its function.
- E. The Town recognizes that in order to connect the Project to the electric transmission grid, Chinook Solar must build a substation, including a switchyard and collection substation, and that, once constructed, Chinook Solar must transfer the substation and the land on which it is located, to National Grid, the owner and operator of the transmission line with which the Project will interconnect and to another third party. For the purpose of the Project, the Town recognizes the preemptive authority that the SEC has over Town permitting and other requirements, and, therefore, agrees to waive its enforcement authority related to above-referenced transfers and any otherwise applicable requirements or local ordinances, including any land use, zoning, site plan or subdivision requirements, which would otherwise be at issue if the SEC did not have jurisdiction. The Town agrees that strict conformity to its land use regulations would cause undue hardship for Chinook Solar and that the spirit of the land use regulations, public convenience and welfare will not be adversely affected by this transfer of land and equipment to National Grid and the other third party for these purposes. The Town further agrees that the SEC certificate of site and facility, combined with this Agreement, shall be deemed sufficient to satisfy any statute or regulation requiring the approval of any local board or governing body, including RSA 676:18. Chinook Solar agrees to abide by any and all conditions related to the substation imposed by the SEC as part of a certificate of authority to construct, own and operate the Project. Chinook Solar further agrees that, as a condition of the subdivision, it will take appropriate actions to ensure all subsequent owners and operators of the subdivided substation lot are required to comply with all the noise and sound requirements and conditions set forth in this Agreement and in the Certificate of Site and Facility. The Town, including as necessary the Select Board, the Planning Board and the Zoning Board, agrees to support in good

faith efforts by Chinook Solar to accomplish the recording of any deeds, plans or certificates with the Cheshire County Registry of Deeds related to the above-referenced transfers of land and improvements to National Grid and the other third party.

VI. PROJECT NOISE & DECOMMISSIONING COMMITMENTS

- A. Noise. The Project shall comply with all SEC sound conditions during construction, reconstruction, and decommissioning. The Project shall not exceed the ambient noise levels, measured at the L- 90 sound level, at the nearest property line by more than 10 dBA during normal operations once construction is complete. In the event the Project does exceed the ambient noise level by more than 10 dBA, Chinook Solar will mitigate the noise to bring the Project into compliance with this section.
- B. Decommissioning. Chinook Solar will develop a decommissioning plan and be responsible for decommissioning of the Project, including associated costs. The decommissioning plan will be initiated within 12 months of the completion of the Project's useful life. The decommissioning plan will be designed to ensure public health and safety, environmental protection, and compliance with then applicable regulations.
- C. The mechanism of the financial assurance Chinook Solar will provide shall be a bond in the amount of approximately \$900,432.

VII. ENVIRONMENTAL & AESTHETIC STANDARDS

- A. Environmental Protection. As applicable, prior to commencing construction, Chinook Solar shall provide the Town with copies of all protocols and plans for construction-period and post-construction monitoring and impact mitigation related to wildlife, water resources, and any other natural resources that are contained in any permit condition or as a condition of the Certificate of Site and Facility issued by the SEC.
- B. Pesticides and Herbicides. Chinook Solar shall not use synthetic herbicides, fungicides, pesticides, or similar products, except to manage invasive species or only as a last resort.
- C. Visual Appearance. The solar panels shall not be artificially lighted, except to the extent required by the Federal Aviation Administration or any other applicable authority that regulates air safety. Lights shall be shielded to the greatest extent possible from viewers on the ground. Panels shall not display advertising, except for reasonable identification of the panel manufacturer and/ or Owner.
- D. Vegetative Cover. Chinook Solar shall use for ground cover after construction

species of plants that would support pollinator species such as bees, wasps, and butterflies, as agreed to in consultation with DES and NH Fish and Game.

- E. Chinook Solar shall implement all the recommendations set forth in the July 14, 2020 report from the Town's environmental consultant, Ecosystem Management Consultants, R. Van de Poll, CWS #110, which resulted from a joint site visit of Mr. Van de Poll and Chinook Solar's environmental consultant, TRC Engineers, Dana Valleau, said report attached as Exhibit A and incorporated into the Agreement.

VIII. HISTORICAL RESOURCES

- A. Chinook Solar shall take all appropriate and necessary steps to avoid and/or minimize impacts to identified historic resources (i.e., eligible for or listed in the National Register of Historic Places) located in the Town of Fitzwilliam.
- B. In the event that new information or evidence of historic sites, archeological sites or other archeological resources is found within the direct area of potential effect of the Project, Chinook Solar shall report said findings in accordance with applicable laws and conditions imposed by the SEC.
- C. In the event that changes in construction plans of the Project affect any archeological resources, historic sites, or other cultural resources, Chinook Solar shall notify the Town, SEC and DHR of any such change.

IX. LIABILITY & INDEMNIFICATION

- A. Liability Insurance. Chinook Solar shall maintain a current general liability policy covering bodily injury and property damage with limits of at least \$10 million in the aggregate. Certificates of insurance shall be provided to the Town in advance of commencing construction and annually after that.
- B. Indemnification. Chinook Solar specifically and expressly agrees to indemnify, defend, and hold harmless the Town (hereinafter "Indemnitees") against and from any and all claims, demands, suits, losses, costs, and damages, of every kind and description, including reasonable attorneys' fees and/or litigation expenses, made against the Indemnitees resulting from or arising out of any negligence or wrongful acts of Chinook Solar in the connection with the Project. The indemnity obligations under this section shall include without limitation:
 - 1. Loss of or damage to any property of the Town or Chinook Solar; and
 - 2. Bodily or personal injury to, or death of any person(s), including without limitation employees of the Town or of Chinook Solar.

Chinook Solar's indemnity obligation under this section shall not extend to any liability caused by the negligence or wrongful acts of any of the Indemnitees.

- C. Warnings. Chinook Solar intends to follow good utility practice, and all applicable codes and conditions imposed by the SEC. To the extent not inconsistent with and/or more protective of safety than such practice, codes and conditions, Chinook Solar shall also proceed as follows:
 - 1. A clearly visible warning sign concerning voltage must be placed on all of the Project's facilities, including switching or interconnection facilities, and substations. Visible, reflective, colored objects, such as flags, reflectors, or tape shall be placed on the Project's guy wires, if any, and along the guy wires up to a height of ten feet from the ground.
- D. Project Site Security. All access doors to the Project and electrical equipment shall be locked, fenced, or both, as appropriate, to prevent entry by non-authorized persons. Entrances to restricted areas shall be gated and locked during non-working hours. If the Owner identifies problems with unauthorized access, the Owner shall work to implement additional security measures.

X. PROJECT MITIGATION

- A. Conservation Easement – Non-Project Lands. Within one (1) year of achieving commercial operation of the Project, Chinook Solar shall convey a conservation easement to a qualified organization burdening all areas of land it purchases for the Project, but which are not required for the Project's operation.
- B. Conservation Easement – Project Lands. Within one (1) year of decommissioning, Chinook Solar shall either (a) convey a conservation easement to a qualified organization burdening the remainder of the land it purchased for the Project; or (b) it could continue the same project or a similar renewable energy generating facility with similar vertical, horizontal, and subsurface footprint and impact, subject to relevant regulatory approval.
- C. Restoration. Chinook Solar shall reasonably cooperate with the Town to develop a restoration plan to allow natural reforestation on the lands it purchases for the Project, but which are not required for the Project's operation. Said plan shall require Chinook Solar to begin to implement such a plan within one (1) year of receiving a Certificate of Site and Facility. Chinook Solar also shall cooperate with the Town to develop a restoration plan to, within one (1) year of decommissioning, if any, stabilize and re-seed any areas disturbed during decommissioning for the remainder of the lands it purchases for the Project. All expenses associated with developing and

implementing such plan shall be borne exclusively by Chinook Solar, including the Town's reasonable expenses.

- D. Community Benefit Payment. Chinook Solar shall, upon commencement of operations, pay the Town a one-time payment in the amount of Three Hundred Thousand Dollars (\$300,000.00) for the Town to use at the Town's sole discretion.

XI. FORCE AND EFFECT

- A. The Effective Date of this Agreement is the later of the date which it is fully executed, or the date first written above.
- B. This Agreement is a contract between the Parties.
- C. If Chinook Solar submits to the SEC any amendment to the Project that, if approved, would change the Project in more than a de minimus way, Chinook Solar shall notify the Town and shall confer with the Town for the Parties to mutually determine whether this Agreement should be amended. Any dispute in this respect shall be resolved pursuant to the dispute resolution provisions of this Agreement.

XII. MISCELLANEOUS

- A. Copies. Contemporaneous with submission, Chinook Solar shall provide to the Town the following copies of any applications for any governmental approval, permit, or other entitlement:
 - 1. One (1) electronic copy to counsel for the Town;
 - 2. Four (4) electronic copies directly to Town Offices (directed to Debbie Favreau, Town Administrator); and
 - 3. Four (4) paper copies directly to town offices (also directed to Debbie Favreau).

Within seven (7) days of receipt of any approval, permit, or other grant of any entitlement, Chinook Solar shall provide to the Town the same numbers and types of copies of the approval, permit, or other grant of entitlement.

Should the SEC become defunct and not be replaced by an organization with similar authority or should it, or its replacement, experience chronic resource shortfalls such that enforcement oversight is eliminated, the Town shall have an independent right of enforcement against Chinook Solar with respect to the terms and conditions of approval of the Certificate of Site and Facility. Before exercising any such independent right of enforcement, the Town shall first be subject to the alternative dispute resolution procedures of this Agreement.

- B. Amendment. The Parties may amend this Agreement only by written

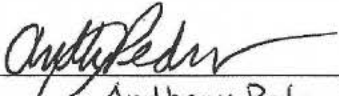

agreement signed by both Parties.

- C. Resolution of Disputes. The Parties agree to resolve disputes arising out of this Agreement in the following manner. In the event of any dispute, the Parties agree to first work in good faith with each other to reasonably and mutually resolve any and all disputes. If the parties are unable to produce a result acceptable to both Parties, the Parties agree to, second, work in good faith with the SEC to reasonably and mutually resolve any and all disputes. If the dispute remains not fully resolved, the Parties agree to, third, engage in a mediation with a neutral third party acceptable to both parties, with Chinook Solar bearing the cost of the mediator. If the dispute is still not fully resolved after that, either party may pursue any other legal remedy or action. In the event that a dispute is resolved substantially in favor of the Town's position, Chinook Solar shall pay the Town's costs in connection with the dispute.
- D. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

Respectfully Submitted,

Chinook Solar, LLC

Town of Fitzwilliam

By:  By: 
Anthony Pedroni, Vice President & Daniel Baker, Selectman
Date: 8/24/2020 Date: 8.25.2020