

Agreement between

Town of Sandwich

and

Barrington Power, LLC

This agreement (“Agreement”) made and entered into at Carroll County, New Hampshire, this 31st day of August 2023, by and between Town of Sandwich, New Hampshire, (the “Town”) with an address of PO Box 194, Center Sandwich, NH 03227 and Barrington Power L.L.C., (“Barrington Power”) with an address of 226 Merry Hill Road, Barrington NH 03825.

WHEREAS, the Town desires professional services to install and commission a solar energy system on the land north of the Town’s municipal sewage leach field with an address of Tax Map R12, Lot 81A, (the Project); and

WHEREAS, Barrington Power submitted a proposal dated August 31, 2023 for installation and implementation of such solar arrays (the “Proposal”) which Proposal has been accepted by the Town;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Article 1: Scope of Services and Schedule

Barrington Power shall perform the Scope of Services as set forth in the proposal dated 8/31/23 and attached as Exhibit A. Specifically, upon execution of this Agreement Barrington Power will prepare and submit an interconnection application with Eversource. As part of determining the cost and any constraints of a solar energy system that can be interconnected at this location Eversource will perform a system impact study. Barrington Power and the Town will review the results of the study and together determine a system design and construction schedule that is most beneficial to the town and that does not exceed \$xxxxx.

Article 2: Barrington Power’s Responsibilities

- A. The Town has deemed that Barrington Power is qualified to provide services under this Agreement based upon information provided by Barrington Power in its Proposal. Barrington Power is responsible for providing notice to the Town upon change of any information or representations made in its Proposal, as amended by this Agreement.
- B. Barrington Power shall provide to the Town all services in Exhibit A: Scope of Services for the cost set forth in Exhibit B. Barrington Power will perform the services in the Agreement

with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services under similar conditions.

- C. Barrington Power agrees to comply with State of New Hampshire and Federal requirements with respect to all services provided in this Agreement. Barrington Power agrees to assist the Town with submission of any documents required by State and Federal agencies for permitting and/or reporting.
- D. Barrington Power will provide the Town with invoices for work completed during the invoice period. Completion of each benchmark for payment are set forth more fully in Exhibit B.

Article 3: Town's Responsibilities

- A. The Town shall assist Barrington Power by compiling and providing all available information pertinent to the PROJECT, upon request by Barrington Power. The Town shall be responsible for the accuracy and completeness of information furnished to Barrington Power for use in providing the services.
- B. The Town will make provisions for Barrington Power to enter upon public and private lands, municipal facilities and industrial establishments as required to perform work under this Agreement.
- C. The Town agrees to comply with State of New Hampshire and Federal requirements with respect to Town's obligations under this Agreement. The Town agrees it shall be responsible for acquiring, with the assistance of Barrington Power, all the necessary approvals, permits licenses or consents necessary.
- D. The Town agrees to pay Barrington Power for work performed in accordance with the terms of this Agreement. The Town also agrees to pay all application and permit fees associated with approvals and permits from governmental authorities having jurisdiction over the work set forth in the Scope of Services.
- E. The Town will pay invoices within thirty days; however, the Town may withhold payment if an invoice is disputed, provided the Town advises Barrington Power within 15 days of receipt of the invoice of the reason for withholding payment for all or part of an invoice. The Town agrees to pay those portions of the invoice which are not disputed. If Town and Barrington Power are unable to informally resolve any dispute related to an invoice within sixty (60) days of notice to Barrington Power of a dispute, each agrees to use the process set forth at Article 10 for dispute resolution. Undisputed invoices unpaid after thirty (30) days will be charged a late charge at the rate of 1.5% per month with a one-time 1% penalty.

Article 4: Fees and Compensation

- A. The Town agrees to make payment to Barrington Power, for services rendered on the fee schedule set forth at Exhibit B within thirty (30) days of receipt of an invoice for the Project except in the case of dispute as described above.
- B. If the Town does not make payment to Barrington Power within the terms of the Agreement, Barrington Power may suspend services after giving the Town fifteen (15) days' notice. Barrington Power may resume services upon receipt of payment if mutually agreed by both parties.

Article 5: Insurance and Bond

- A. Barrington Power shall procure and maintain insurance in the minimum amounts below and provide proof of coverage, the certificate of which shall be included in this Agreement as Exhibit C - Barrington Power's Certificate of Insurance. The required insurance must be written by a Company in good standing and licensed to do business in New Hampshire at the time the policy is issued.
- B. Barrington Power shall procure and maintain minimum insurance coverage for the duration of the Agreement. Minimum coverage required is as follows:

Commercial General Liability with limits of liability of at least \$1,000,000.00 per occurrence, \$2,000,000.00 aggregate, as well as completed operations coverage applicable to the work performed under this Agreement. The commercial general liability policy must also contain contractual liability coverage applicable to the contractual indemnification obligation set forth in this Agreement;

Workmen's Compensation Insurance with coverage meeting State of New Hampshire required statutory limits and providing employer's liability coverage.

Commercial Automobile Liability with limits of liability of \$1,000,000.00 per accident for bodily injury and property damage;

Errors and Omissions coverage with minimum limits of \$1,000,000 per claim and \$2,000,000 aggregate;

Builders risk coverage applicable to the project with coverage limits at completed value naming the Town as loss payee;

Umbrella liability coverage of at least \$3,000,000.

- C. The Town and its officials, agents, volunteers and employees shall be named as additional insured on the commercial general liability, commercial automobile liability and umbrella insurance policies on a primary and noncontributory basis. If Barrington Power's liability policies require endorsements to effectuate additional insured status, Contractor must provide the endorsements to the Town prior to the effective date of this Agreement.

- D. Barrington Power shall provide the Town with reasonable notice of changes to any policy and update Exhibit C accordingly.
- E. Barrington Power shall require that any subcontracts retained for the Project, carry insurance coverage of the types and in the amounts specified above listing the Town as an additional insured on their commercial general liability policy.
- F. Barrington Power will provide the Town with copies of its General Liability Insurance coverage which includes any of the work being done for the Town
- G. To the extent Barrington Power uses the services of architect, engineer, surveyor or any other industry professional, all such professionals, in addition to the general liability and automobile liability coverages described above, must carry professional liability or errors and omissions insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 aggregate. Such professionals shall name the Town and its officials, agents, volunteers and employees additional insureds on the general liability and automobile coverages by certificate and amendatory endorsement.
- H. Barrington Power shall obtain and provide to the Town, a Bond per NH RSA 447:16

Article 6: Use, Transfer, and Ownership of Documents

- A. All documents, Data, calculations and work papers prepared or furnished by Barrington Power are instruments of service and will remain Barrington Power's property.
- B. Final documents prepared by Barrington Power under this Agreement shall become the property of the Town upon completion of the services and payment in full of all monies due to Barrington Power. Under no circumstances shall the transfer of ownership of Barrington Power's documents, electronic files, or other instruments of services be deemed a sale by Barrington Power.
- C. The Town shall be copied on all correspondence with State and Federal agencies relating to funding, permits, authorizations, and other regulatory aspects of the Project. Barrington Power shall provide copies of any final applications and permits it prepares to the Town.
- D. Upon request Barrington Power shall provide documents in electronic format to the Town. When transferring documents in electronic media format, Barrington Power makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by Barrington Power at the beginning of each Task Order.

Article 7: Suspension and Termination

- A. The Town may terminate or suspend this Agreement at any time or terminate any part of or all of the work required of Barrington Power under this Agreement, for cause, with a fifteen (15) day written notice of such interruption or termination transmitted to Barrington Power by the Town.
1. If this Agreement is terminated by the Town for cause, which shall be defined as a failure to perform any obligation of this Agreement, violation of any state or federal law or regulation or failure to meet the standard of care, Town shall provide notice that all work by Barrington Power cease immediately upon such notice.
 2. In the event of termination of any part of or all of this Agreement without fault on the part of Barrington Power, Barrington Power shall be entitled to compensation for all work performed and materials installed or purchased for the project to the date of the Notice of Termination and pursuant to this Agreement. The Town shall retain ownership of any materials it pays for.
- B. Barrington Power may suspend work on the project in the event any payment under this contract is not made within thirty (30) days of invoice until such payment is made, or may terminate this Agreement for cause with fifteen (15) days prior written notice to Town. Cause shall be defined as failure to perform any obligation under this Agreement. Failure of Town to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Barrington Power has been paid in full all amounts due for services, expenses, and other related charges.

Article 8: Indemnification

- A. To the fullest extent permitted by law, Barrington Power shall protect, indemnify, save and hold harmless Town, its officers, directors, partners, employees, agents and representatives, (“Indemnified Parties”) from and against any and all liabilities, obligations, claims, damages, penalties, causes of action, costs, interest and expenses, including but not limited to payment of reasonable attorney and paralegal fees, which Indemnified Parties may become obligated or suffer by reason of any accident, bodily injury, personal injury, death of a person, economic injury or loss of or damage to property arising indirectly or directly under, out of, in connection with, or as a result of this Agreement or the activities of Barrington Power or its agents, employees, contractors or subcontractors and even if caused in part by any negligent act or omission of Indemnified parties.

In addition, and regardless of respective fault, Barrington Power shall defend, indemnify and hold harmless the Indemnified Parties for any costs, expenses and liabilities arising out of a claim, charge or determination that Barrington Power’s officers, employees, contractors subcontractor or agents are employees of the Indemnified Parties, including but not limited to claims or charges for benefits, wages, fees, penalties, withholdings, damages por taxes brought in connection with laws governing workers compensation, unemployment

compensation, social security, Medicare, state or federal taxation and/or any other similar obligation associated with an employment relationship.

- B. If Barrington Power retains the services of a sub-contractor to perform services under this Agreement, Barrington Power shall require that any subcontracts retained for the Project, agree to indemnify the Town under the same terms as in paragraph A above.
- C. The provisions of the Indemnification shall survive the termination of this Agreement without regard for the reason for termination.

Article 9: Independent Contractor & Disclaimer of Joint Venture, Partnership, and Agency

- A. Independent Contractor: Barrington Power's relationship with the Town under this Agreement shall be that of an independent contractor. The employees, procedures, equipment and facilities used by Barrington Power shall at all times, be under its exclusive direction and control. Nothing in this Agreement shall be construed to designate Barrington Power, or any of its employees, agents or subcontractors, as employees, agents, joint ventures or partners of the Town. Barrington Power's principals, officers, agents, employees, personnel, contractors and subcontractors are not employees or agents of Town within the meaning or application of any federal, state or local law, rule or regulation, including without limitation, laws rules and regulations regarding or related to unemployment benefits, workers' compensation, labor, or taxes of any kind. Barrington Power shall assume sole and exclusive responsibility for the payment of wages and all applicable taxes and insurance for its employees and shall require the same of any contractor or subcontractor it retains in connection with this Agreement. Barrington Power shall protect indemnify, safe and hold harmless TOWN from any third-party claims stemming from the subject of this paragraph.
- B. Disclaimer of Joint Venture, Partnership, and Agency: This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon either party. Neither party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent of representative of, or to otherwise bind, the other party unless explicitly contracted to do so.

Article 10: Dispute Resolution

- A. The Town and Barrington Power agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement to non-binding mediation.
- B. Either party may demand mediation by serving a written notice stating the essential nature of the dispute, the damages claimed. A mediator shall be selected jointly by the Town and Barrington Power and mediation will take place within forty-five (45) days of the notice to mediate.

C. No action or suit shall be commenced unless mediation has occurred and did not settle the dispute or unless a statute of limitation period would expire if suit were not filed prior to expiration of the forty-five (45) day notice required under paragraph B above.

Article 11: Hazardous Materials or Conditions; liability for damage to existing electrical system

- A. The Town and Barrington Power agree that Barrington Power’s scope of services does not include any services related to the presence of asbestos, PCBs, petroleum, hazardous waste or radioactive materials at the Project site. The Town acknowledges that Barrington Power is performing professional services for Town and Barrington Power is not and shall not be required to become an “arranger,” “operator,” “generator” or “transporter” of hazardous substances.
- B. If the Town or Barrington Power becomes aware of any hazardous materials, hazardous conditions, environmental concerns, or safety concerns within a PROJECT site or related to the Project, the parties agree to immediately disclose that information to the other party. The Town and Barrington Power may then negotiate additional scope and fee to amend a Task Order, prepare a separate Task Order, and/or incorporate additional terms as amendment to this Agreement as relates to the hazardous materials, conditions, or concerns.
- C. Except to the extent any claim of liability, loss or damage to the existing electrical system arises out of the misconduct or negligent act(s) or omission(s) of Barrington Power, its officer, members, employees, agents, representatives, contractors or subcontractors, Barrington Power LLC will not be responsible for the condition of the existing Town electrical system.

Article 12: Notices: Any notice required pursuant to this contract shall be deemed adequate when sent to the recipient by email to the representative of either party listed below or by certified mail, return receipt requested.

A. TOWN:

B. FOR Barrington Power LLC.:

Article 13: Severability: If any of the terms and conditions of this agreement are deemed unenforceable or invalid, in whole or in part, by judgment or order of a court, that shall not affect the remaining terms and conditions of the Agreement and they shall remain in full force and effect.

Article 14: Waiver of Provisions: Non-enforcement of any provision of this Agreement by the Town or Barrington Power shall not constitute a waiver of that provision; and non-enforcement shall not prohibit subsequent enforcement of the provision or any other provision of the Agreement.

Article 15: Governing Law, Jurisdiction and Venue: This Agreement shall be administered and interpreted under the laws of the State of New Hampshire. Jurisdiction of litigation arising from the Agreement, if any, shall be in the State of New Hampshire, County of Carroll regardless of Barrington Power’s corporate office location or location where Barrington Power performs services for the Town.

Article 16: Entire Agreement: This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understandings with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day, month, and year below.

FOR THE TOWN
Town of Sandwich

Town Manager

Date

FOR Barrington Power
Barrington Power, LLC

Name and Title

Date

Exhibits

EXHIBIT A: 8/31/23 Proposal provided by Barrington Power

EXHIBIT B: Payment and Payment Schedule

EXHIBIT C: Barrington Power's Certificate(s) of Insurance

EXHIBIT A

EXHIBIT B

Payment and payment schedule

Barrington Power will submit invoices for each portion of work completed as set forth below. All payments will be due within fifteen (15) days of invoice. A late charge of 1.5% per month will be charged for late payments together with a one-time 1% penalty or the maximum penalty permitted by law, whichever is less.

Turnkey Project Total: \$ 351,964.00

Payment Milestones Due Upon:

Execution of Contract:	\$ 52,795
Delivery of Major Equipment:	\$ 175,982
Mechanical Completion	\$ 87,991
Interconnection approval to turn system on	\$ 35,196

EXHIBIT C

See insurance certificates on following two pages