



07 FEB 2018

**Memorandum**

From: Rich Rainer, Town Administrator  
To: Portsmouth Town Council

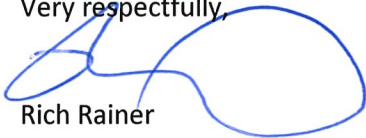
SUBJ: PORTSMOUTH SUBLEASE AGREEMENT - RICCA

Dear Honorable Council,

Green Development (formerly known as Wind Energy Development) is seeking your approval of a sublease agreement to the Rhode Island Convention Center Authority. This sublease agreement is essentially the same as the existing sublease agreement to Coventry. The energy production of the wind turbine is higher than expected and this sublease agreement will allow the sale of excess energy to the convention center.

I recommend approval of this request.

Very respectfully,

  
Rich Rainer

## SUBLEASE AGREEMENT

This Sublease Agreement (the "Agreement") is entered into as of the 12th day of February, 2018 by and between **WED PORTSMOUTH ONE, LLC**, a Rhode Island limited liability company having a principal place of business located at 3760 Quaker Lane, North Kingstown, RI 02852 (the "Lessee") and the **Rhode Island Convention Center Authority**, a public corporation of the state of Rhode Island, having principal offices located at DDC – Administrative Offices, One LaSalle Square, Providence, Rhode Island 02903 (the "Sub-Lessee"), and **Town of Portsmouth, Rhode Island**, a municipality of the State of Rhode Island having principal offices located at 2200 East Main Road, Portsmouth, RI 02871 (the "Lessor").

### WITNESSETH

**WHEREAS**, Lessor entered into that certain Wind Energy Lease dated November 6, 2014, as amended (the "Master Lease"), with Lessee respecting Lessor's leasing to Lessee certain property located on Education Lane in the Town of Portsmouth, County of Newport, State of Rhode Island, comprising a portion of Tax Assessor's Plat 28, Lot 71-A, more particularly set forth in the Master Lease (the "Leased Property"), a copy of which Master Lease is attached hereto as Exhibit 1;

**WHEREAS**, the Master Lease was entered into between Lessor and Lessee in conjunction with and in support of a municipal net metering finance agreement (power purchase agreement) dated November 6, 2014, as amended (the "Portsmouth PPA") between Lessee (as seller) and Lessor (as buyer) under which Lessor would purchase from Lessee the electric energy produced from the wind powered electric generating project owned by Lessee and located at the Leased Property (the "Project");

**WHEREAS**, Lessee has also entered into a net-metering financing arrangement agreement dated as of February 12, 2018 between Lessee (as seller) and Sub-Lessee (as buyer) (the "Sub-Lessee NMFA") under which: (a) Lessee owns and operates an eligible net-metering resource on behalf of Sub-Lessee; (b) the eligible net-metering resource is located on the Leased Property, which Leased Property is controlled by Sublessee by means of this Agreement; and (c) the production from the eligible net-metering resource and primary compensation paid by Sub-Lessee to Lessee for such production through the Sub-Lessee NMFA is directly tied to the consumption of electricity occurring at the designated net-metered accounts as a result of the eligible net metering resource; and

**WHEREAS**, in conjunction with and in support and furtherance of the Sub-Lessee NMFA, and pursuant to the rights of Lessee to assign and sublease as further described in *Section 14* of the Master Lease, Lessee desires to sublease the Leased Property to Sub-Lessee on a concurrent use basis with Lessee's lease of the Leased Property under the Master Lease, meaning that: both Lessee and Sub-Lessee shall be deemed to be lessees thereunder and to have concurrent use of the Leased Property for purposes of satisfying any and all site control requirements as may be required by applicable law, regulation, tariff, or requirement of the local utility provider in conjunction with the Sub-Lessee NMFA; provided, however, that any and all obligations, duties, and responsibilities of or to be performed by the lessee under the Master Lease shall be performed solely by Lessee and not in any manner by Sub-Lessee; and

**WHEREAS**, the Master Lease provides to Lessee with respect to Leased Property exclusive control over and the exclusive right to construct, operate, and maintain the eligible net-metering resource, specifically including but not limited to those rights, benefits, and privileges described in the sections of the Master Lease, to the extent applicable, that address the following matters: (i) permitted uses ; (ii) upgrading the power-generating equipment; (iii) grant of operating easements; (iv) lessor easements ; (v) easements in general; (vi) location of certain easements and the power generating equipment; (vii) improvements in property of Lessee; (viii) waiver; (ix) exclusive rights; (x) third-party access; (xi) planning and zoning; (xii) taking; (xiii) right to mortgage and assign; (xiv) cooperation; (xv) no interference by lessor; (xvi) lessee exclusive rights; (xvii) rights of sublessees; (xviii) quiet enjoyment; and (xix) covenants running with the land (all of such rights, benefits, and privileges

described in this paragraph and in the corresponding sections of the Master Lease being collectively referred to as "Lessee's Control Rights");

**NOW THEREFORE**, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Lessee does hereby sublease to Sub-Lessee the Leased Property, with such sublease made subject to the following terms and conditions.

1. Sublease by Lessee. Other than as specifically set forth in this Agreement to the contrary, Sub-Lessee agrees to be and shall hereby be bound by all of the terms, conditions, and obligations of the Master Lease. However, this Agreement is made on a concurrent use basis with Lessee's lease of the Leased Property under the Master Lease, meaning that: both Lessee and Sub-Lessee shall be deemed to be lessees thereunder, to have concurrent use of the Leased Property for purposes of satisfying any site control requirements as may be required by applicable law, regulation, tariff, or requirement of the local utility provider in conjunction with the Sub-Lessee NMFA, and to enjoy on a concurrent basis in all respects Lessee's Control Rights as if and to the same extent that all of such rights, benefits, and privileges described above and in the corresponding sections of the Master Lease had been set forth in full in this Agreement; provided, however, that any and all obligations, duties, and responsibilities of or to be performed by the lessee under the Master Lease shall be performed solely by Lessee and not in any manner by Sub-Lessee; and Sub-Lessee shall not interfere with Lessee's performance under and obligations with respect to the Master Lease.

2. Term. The term of this Agreement (the "Sublease Term") shall be for the same term as the Sub-Lessee NMFA.

3. Rent. No rent amounts shall be due from Sub-Lessee to Lessee or from Sub-Lessee to Lessor with respect to the Master Lease and any and all lessee rent payment obligations under the Master Lease shall be satisfied solely by Lessee and not in any manner by Sub-Lessee.

4. Insurance. At no cost to Sub-Lessee, Lessee shall maintain, during the Sublease Term, Sub-Lessee as an additional insured under the insurance policies required to be maintained by Lessee under Section 10.2 of the Master Lease, such insurance to be on a primary and non-contributing basis as to Sub-Lessee. Lessee shall provide Sub Lessee with appropriate certificates of insurance demonstrating such coverage.

5. Indemnification. Lessee shall indemnify, defend and hold harmless Sub-Lessee, its commissioners, officers, agents, and employees to the same extent as Lessee is obligated to indemnify Lessor under the Master Lease and from any losses, damages, costs or expenses to the extent incurred by Sub-Lessee as a direct result of any person or entity seeking to hold Sub-Lessee liable for any and all obligations, duties, and responsibilities of or to be performed by the Lessee under the Master Lease. Additionally, Sub-Lessee shall not be responsible or liable for any third party claims for personal injury or property damage caused by or occurring upon the eligible net-metering resource or any individual component thereof or on the Leased Property, unless any such liabilities, damages, or claims arise from the acts of Sub-Lessee. Lessee shall defend, indemnify and hold harmless Sub-Lessee, its commissioners, officers, agents, and employees from and against any and all claims, demands, liens, lawsuits, judgments or actions of any nature that may be brought by third parties on account of the construction, installation, operation, maintenance, repair or replacement of the eligible net-metering resource or any component thereof, or in regard to this Agreement. Notwithstanding anything in this Section 5 to the contrary, Lessee shall have no duty to indemnify, defend, or hold harmless to the extent that damages, claims, or liabilities, as further described above, arise from the acts of any of the parties otherwise entitled to indemnify hereunder.

6. Miscellaneous.

6.1. Notices. All demands, notices, requests, and other communications hereunder shall be in writing and shall be deemed to have been duly given and received: (i) if mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth herein, on the earlier to occur of

three (3) days after the date that the same is so deposited in the United States mail or the date of receipt as disclosed on the applicable return receipt; (ii) if sent by a reputable overnight courier service that promises next business day delivery, addressed as set forth herein, on the next business day; and (iii) if sent by hand delivery, on the date delivered. . Rejection or other refusal to accept or the inability to deliver due to a changed address for which no notice was given shall be deemed receipt of any such notice. All notices hereunder shall be addressed as indicated above or as otherwise specified by the parties hereto by notifying each other of the same in writing from time to time as provided herein.

6.2. Severability; Separability; Supersedure; Entire Agreement; Binding Effect; Recitals. Any of the parts, provisions, warranties, or covenants set forth herein are severable and separable, and in the event that they, or any one of them, shall be deemed to be void, invalid, or unenforceable by a court of competent jurisdiction; then this Agreement shall be interpreted as if such void, invalid, or unenforceable parts, provisions, warranties, or covenants were not set forth herein, and the remaining provisions hereof shall remain enforceable to the extent permitted by applicable law. This Agreement supersedes all prior negotiations and agreements, whether written or oral, between the parties hereto, and sets forth the entire understanding and agreement of the parties hereto with respect to the transactions contemplated hereunder. Any and all recitals herein set forth are hereby deemed to be true and correct, and shall further be deemed incorporated by reference into and made a part hereof.

6.3. Assignment; Amendment. This Agreement, whether in whole or in part, may not be assigned, transferred, or pledged by any party hereto, whether by operation of law or otherwise, without the written consent of the parties hereto. No modification or amendment of this Agreement, whether in whole or in part, shall be effective unless made in writing and signed by the parties hereto.

6.4. Governing Law; Consent to Jurisdiction; Counterparts; Exhibits and Schedules. This Agreement is being delivered and is intended to be performed in the State of Rhode Island and shall be construed and enforced in accordance with the laws of that state without reference to the rules of conflicts of laws thereof. In any litigation connected with or arising from this Agreement, the parties hereto hereby consent to and confer exclusive jurisdiction on the courts of the State of Rhode Island and on the United States District Court for the District of Rhode Island, and hereby expressly waive any objections to personal jurisdiction, venue, and *forum non conveniens* in any such courts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any exhibits or schedules annexed hereto are hereby deemed incorporated by reference into and a part hereof as if the same had been set forth verbatim herein.

[Intentionally left Blank]

6.5. Conflict; Harmonious Interpretation. In the event of a conflict between the terms of this Sublease and the terms of the Master Lease, the terms of each document are to be read harmoniously solely as to the common goal of permitting concurrent use and control of the Leased Property for purposes of satisfying any and all site control requirements as may be required by applicable law, regulation, tariff, or requirement of the local utility provider in conjunction with the Sub-Lessee NMFA.

IN WITNESS WHEREOF, Lessee and Sub-Lessee have caused this instrument to be executed on the day and date first above written.

WITNESS:

WED PORTSMOUTH ONE, LLC, Lessee

\_\_\_\_\_

Name:

By \_\_\_\_\_

Mark P. DePasquale, Manager

Rhode Island Convention Center Authority, Sub-

\_\_\_\_\_

Name:

By \_\_\_\_\_

Name:

Title:

Town of Portsmouth, Rhode Island

\_\_\_\_\_

Name:

By \_\_\_\_\_

Name:

Title: