

EXHIBIT H: MODEL OPTION TO LICENSE AGREEMENT

OPTION TO LICENSE AGREEMENT FOR FUEL CELL ENERGY FACILITY POWER PURCHASE AND LICENSE AGREEMENT (Fuel Cell at Flood Middle School)

This Option to License Agreement For Fuel Cell Energy Facility Power Purchase and License Agreement (the **"Option Agreement"**) is made this ____ day of _____, 20__ (the **"Effective Date"**) by and between the Town of Stratford, Connecticut, a municipal corporation existing under and by virtue of the laws of the State of Connecticut with an address of 2725 Main St, Stratford, CT 06615 (the **"Town" or "Owner"**), and [Fuel Cell Developer], a [STATE] limited liability company whose principal place of business is located at [ADDRESS] (the **"Grantee"**). Each of Owner and Grantee is sometimes referred to as a **"Party"** and collectively as the **"Parties."**

RECITALS

A. Owner owns the real property located at 490 Chapel Street, in Stratford, Connecticut, consisting of approximately 27.5 acres (the **"Property"**), and more particularly the portions of such property proposed for fuel cell use totaling approximately ____ acres shown on the attached Exhibit A (as may be updated from time to time) and incorporated herein by this reference (the **"Option Premises"**), subject only to the encumbrances and conditions set forth in Exhibit B attached hereto (the **"Permitted Exceptions"**).

B. Grantee seeks from Owner, and Owner is willing to grant to Grantee, an exclusive, irrevocable option and right (without any obligation) to enter into a long-term fuel cell energy facility power purchase agreement and license agreement for the Option Premises and such other portions of the Property (the **"PPA and License Agreement"**) substantially according to the terms and conditions attached to this Option Agreement at Exhibit C and incorporated herein by this reference, all upon the terms and conditions for exercising this option, set forth in this Option Agreement.

NOW, THEREFORE, in consideration of these promises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Grantee agree as follows:

AGREEMENT

1. Exclusive License Option. Owner grants to Grantee an exclusive right and option (the **"License Option"**), which may be exercised at any time during the Option Period (as defined in Section 2 below), to obtain an exclusive license for access to and use of the Option Premises or any portion thereof and obtain certain easement and other rights over the remainder of the Property at reasonable times and upon reasonable notice for the purposes of designing, constructing, installing, inspecting, testing, owning, operating, monitoring, maintaining, repairing, removing and selling of electricity from a Fuel Cell Energy Facility (the **"System"**), substantially on the terms and conditions set forth in the attached PPA and License Agreement Term Sheet for the System attached hereto as Exhibit C and incorporated herein by this reference (the **"Term Sheet"**). As outlined in the Term Sheet, the PPA and

License Agreement will include annual savings on the Owner's electric bills [of approximately \$_____ / at the equivalent of the fixed rate of \$0.____ per kWh (which is \$0.____ below the current effective rate)], over a term of no less than twenty (20) years. The activities which may be conducted pursuant to the Term Sheet are referred to hereinafter as **"Fuel Cell Operations."**

1.1 Exercise of License Option. Grantee may exercise the License Option for all or any portion of the Option Premises by delivering to the Owner written notice of exercise of the License Option in the form set forth in Exhibit D attached hereto and incorporated herein by reference (the **"Notice of Exercise"**), which may be delivered at any time during the Option Period. Such Notice of Exercise shall include (a) the proposed commencement date for the PPA and License Agreement, which shall be no later than thirty (30) days following the date of the Notice of Exercise, (b) a legal description of the Option Premises to be licensed by the Grantee, or such other description or depiction of the Option Premises and easement areas reasonably acceptable to Owner, and (c) a proposed site layout of the System. Within thirty (30) business days after receipt of the Notice of Exercise by Owner, the Parties shall finalize, execute, and deliver to each other the PPA and License Agreement for the Property with the commencement date, Property and Option Premises description, and proposed site layout of the System completed.

1.2 Lapse of Option. In the event Grantee does not deliver a Notice of Exercise to Owner during the Option Period, then subject to the cure provisions set forth in Section 8.1 of this Option Agreement, the Owner shall have the right to terminate this Option Agreement, and the rights granted by Owner to Grantee in this Option Agreement shall be of no further force or effect.

1.3 Cure Rights. Notwithstanding anything to the contrary contained in this Option Agreement, no default shall be deemed to have occurred unless and until the non-defaulting party shall have given written notice describing the nature of the default claimed and the default shall have continued beyond the applicable cure periods provided herein in Section 8.1.

1.4 Acknowledgement. Notwithstanding anything to the contrary contained in this Option Agreement, Grantee acknowledges that the Property is an active public school. The Parties acknowledge that the Owner has certain obligations with respect to the operations and maintenance of the public school. The Grantee shall be responsible for obtaining any permits and approvals from CT DEEP which are required for the Grantee's use of the Property (or such portion of the Property licensed by the Grantee).

2. Term. This License Option will become effective on the Effective Date and will expire twelve (12) months thereafter, unless earlier terminated in accordance with the provisions herein (the **"First Option Term"**). Grantee reserves the right to extend the Option Agreement no more than one time for an additional twelve (12) months (the **"Second Option Term"**) by written notice to Owner in the form set forth in Exhibit E attached hereto and incorporated herein by reference (the **"Option Term Extension"**). The total of any such Option Term Extension or Extensions shall not exceed an additional twelve (12) months. The First Option Term and any Option Term Extension constitute the **"Option Period,"** that in total shall not exceed twenty-four (24) months. The Option Period shall also terminate upon the date of commencement of the PPA and License Agreement made effective by the exercise of the License Option.

3. Option Fees. Unless Grantee shall have otherwise elected to terminate this Option Agreement as set forth in Section 4 below, then commencing on the Effective Date and continuing on any extension of the First Option Term, Grantee shall make the payments to the Owner as set forth below (each payment an “**Option Fee,**” and collectively, “**Option Fees**”), in which case the Option Period shall continue accordingly. In addition to the foregoing, for clarity purposes, Grantee’s obligation to make the Option Fee payments shall terminate as of the date that Grantee exercises the option to license the Property, in which event the Parties shall instead comply with the terms of the PPA and License Agreement. All payments made pursuant to this Option Agreement shall be paid to the Owner on the Effective Date, or for any extension, on the date of the execution of the Option Term Extension. All payments made pursuant to this Option Agreement shall be non-refundable.

<u>Option Period</u>	<u>Option Fee</u>
First Option Term (12 months)	\$2,000 for twelve (12) months
Second Option Term (additional 12 months)	\$2,500 for twelve (12) months

4. Termination; Removal of Equipment.

4.1 Termination Rights. At any time prior to sending a Notice of Exercise, Grantee shall have the right to terminate this Option Agreement by providing written notice of such termination to the Owner, and thereafter neither Party shall have any further obligation hereunder except Grantee's obligation to pay any unpaid Option Fees or reimbursements which become due prior to such termination and those obligations expressly stated to survive the term of this Option Agreement (the date of such termination, a “**Termination Date**”). Any termination of this Option Agreement, whether by an event of default or pursuant to the terms of this Option Agreement, shall also terminate any future obligation of Grantee to pay any Option Fee due after a Termination Date.

4.2 Documentation of Termination. In the event that Grantee does not deliver the Notice of Exercise on or prior to the expiration of the Option Period, then upon the expiration of the Option Period or as of a Termination Date, as applicable, the Grantee shall, upon the request of the Owner, execute and record such further documentation as the Owner may reasonably request evidencing the termination of Grantee’s right, title, and interest in and to the Property under this Option Agreement.

4.3 Removal of Equipment. Grantee shall, within sixty (60) days after a Termination Date or expiration of the Option Period, whichever is applicable, remove all of Grantee’s equipment and materials from the Property, and restore the soil, to the extent disturbed by Grantee, to a condition reasonably similar to its original condition as of the Effective Date, ordinary wear and tear excepted. If Grantee fails to remove any such equipment or materials, or restore the soil with respect to any disturbance of the Property caused by Grantee within sixty (60) days after the expiration or termination of this Option Agreement, Owner may do so, in which case Grantee shall reimburse Owner for all reasonable and actual costs of removal and restoration incurred by Owner within thirty (30) days after receipt of an invoice from Owner.

5. Binding Effect of Option Agreement. The undersigned each represents and warrants that he/she has the authority to bind the Party for which he/she signs this Option Agreement to all of its terms. The Parties intend that this Option Agreement create a valid right in favor of Grantee to license the Property on the terms and conditions set forth in the attached Term Sheet attached hereto as Exhibit C. Therefore, upon recording a memorandum of this Option Agreement in the real property records of the Town of Stratford, Connecticut, the exclusive right and option granted to Grantee in Section 1 shall be deemed an encumbrance upon the Property that shall run with the land and shall be binding upon the Property, Owner, and its successors and assigns, and shall inure to the benefit of each of the Parties hereto and their respective successors and assigns. The Owner covenants and agrees that during the Option Period, any conveyance, sale, or transfer of the Property or any interest therein, and any lien or encumbrance attached to the Property, shall be subject to Grantee's rights under this Option Agreement.

6. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants and covenants to Grantee, which representations, warranties, and covenants shall be effective as of the execution of this Option Agreement, and shall continue to be effective at and survive commencement of any PPA and License Agreement:

6.1 Exclusivity. The License Option granted hereunder is exclusive to the Grantee, and in no event will the Owner, during the Option Period, grant a license, easement, Environmental Land Use Restriction, option, leasehold, or other rights or limitations affecting the Property to any person, utility, or other entity seeking, directly or indirectly, to develop the Property for fuel cell energy purposes or any other use that would impair fuel cell energy development or any of the rights contemplated to be granted to Grantee pursuant to the PPA and License Agreement.

6.2 Owner's Use. The Owner shall continue to have the right to use the Property during the Option Period for its own accord provided that such use (i) does not change the topography of the Property; (ii) does not create any encumbrance which would have an effect on title to the Property which would be superior to Grantee's license or other rights contemplated to be granted under the PPA and License Agreement; and (iii) does not otherwise interfere with Grantee's exercise of its rights under this Option Agreement or the rights contemplated to be granted under the PPA and License Agreement. The Owner shall be able to perform any and all continuing obligations concerning the active use of the Property as a public school.

6.3 Owner's Authority. Owner has the full power and authority, and has complied with all public hearing and other procedural requirements, needed to enter into and consummate this Option Agreement, and any PPA and License Agreement with respect to its ownership interest in the Property.

6.4 Owner's Cooperation. As of the Effective Date, the Owner's interest in the Property may be subject to one or more encumbrances and conditions recorded in the real property records of the Town of Stratford, Connecticut, as set forth in the Permitted Exceptions in Exhibit B attached hereto. Owner agrees that it will cooperate with the Grantee, at Grantee's expense, in attempting to obtain any necessary consent, non-disturbance, or cooperation agreement from any and all other persons having an interest in the Property.

6.5 Access. There is insurable ingress and egress to and from the Property, as well as reasonably available, suitable, and sufficient access to the Property from adjacent or nearby public roadways.

6.6 Litigation regarding the Property. No litigation, bankruptcy proceeding, or condemnation of, or relating to, the Property is pending and, to the best of Owner's knowledge, no litigation or administrative actions are proposed, threatened, or anticipated with respect to any matter affecting the Property. If the Owner learns of any additional litigation or administrative action proposed, threatened, or instituted with respect to the Property prior to the execution of a PPA and License Agreement, the Owner shall promptly deliver notice thereof to Grantee.

6.7 Property in Compliance. To the best of the Owner's knowledge, the Property, and Owner's title to and use thereof, is currently in full and complete compliance with all governmental laws, ordinances, orders, rules, and regulations applicable to the Property. Owner acknowledges that, as between Owner and Grantee, Owner is and shall be deemed to be the "operator" of the Property and all Hazardous Materials existing at, or brought on to, the Property except to the extent brought to the Property by Grantee, its agents, employees, or contractors. The term "**Hazardous Materials**" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or the environment including conditions on, under, or about the Property.

6.8 Leases on the Property. There are no existing leases on the Property that would negatively impact the Grantee's ability to exercise its rights under this Option Agreement, or other rights of occupancy or possession that would interfere with the Grantee's rights under this Option Agreement or be superior to any license of Grantee under the PPA and License Agreement entered into if Grantee sends the Owner a Notice of Exercise hereunder.

7. Grantee's Representations, Warranties and Covenants. Grantee hereby represents, warrants and covenants to Owner, which representations, warranties, and covenants shall be effective as of the execution of this Option Agreement, and shall continue to be effective at and survive commencement of any PPA and License Agreement:

7.1 Owner's Use During Option Period. Subject to the provisions of Section 6.2 above, the Owner shall have the right to use the Property during the Option Period and retain any income derived therefrom. Grantee shall be responsible for any damage to Owner's facilities, equipment or other personal property directly caused by Grantee's activities on the Property during the Option Period.

7.2 Construction Liens.

(a) Grantee shall not create or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's, or materialmen's lien upon the Property arising from or relating to any of Grantee's Investigations and Grantee will not suffer any other matter arising out of Grantee's use and occupancy of the Property where the estate, rights and interests of Owner in the

Property or any part thereof might be impaired, except in accordance with, and subject to, the provisions of this Option Agreement.

(b) If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Property arising from or relating to any work done by, or at the request of, Grantee, Grantee within twenty (20) days after notice to Grantee of the filing thereof, shall cause such lien to be discharged of record or bonded over by payment, deposit, bond, insurance, or otherwise, or Grantee will be declared in default of this Option Agreement. If Grantee shall fail to discharge any such lien, the Owner may, at its option, discharge the same and Grantee shall be obligated to reimburse Owner for all costs and expenses, including reasonable attorneys' fees within ten (10) days after Grantee's receipt of notice and reasonable supporting documentation; it being hereby expressly covenanted and agreed that such discharge by Owner shall not be deemed to waive, or release, the default of Grantee in not discharging the same.

7.3 Insurance.

(a) During the Option Period, Grantee, at its sole cost and expense, shall procure and maintain the following insurance:

(i) Workers' Compensation Insurance in the form and in such amounts as may be currently required to comply with the Labor Laws of the State of Connecticut.

(ii) Automobile Liability Insurance: a policy with a combined single limit of \$1,000,000.00 and rider CA9948 or equivalent. This policy shall include all liability of the Grantee arising from the operation of all self-owned motor vehicles used in the performance of the Contract; and shall also include a "non-Ownership" provision covering the operation of motor vehicles not owned by the Grantee, but used in the performance of the work;

(iii) Commercial General Liability insurance: (A) Bodily Injury and Property Damage: \$1,000,000.00 each occurrence / \$2,000,000.00 aggregate; (B) Products/Completed Operations: \$1,000,000.00 each occurrence / \$2,000,000.00 aggregate. This policy shall include Subcontractor's Liability coverage, protecting the Grantee and the Owner against liability arising out of the activities of Subcontractors engaged by the Grantee in the performance of the work.

(iv) Umbrella Liability Insurance: An umbrella policy in the amount of \$5,000,000.00 covering general liability, auto liability, and employer liability is required.

(v) Errors & Omissions Insurance: The Grantee will be required to furnish and maintain Architect's Errors and Omissions coverage, as well as Comprehensive General Liability coverage, at limits that will be satisfactory to the Town. A certificate of insurance must be provided and approved prior to the commencement of any work, and must indicate that the Town is named as additional insured for both lines of coverage. The insurance coverage must be provided by companies licensed in the State of Connecticut with an AM Best rating of A or better. Minimum coverage limit: \$5,000,000.00.

(vi) Waiver of Subrogation: Waiver of subrogation is required on all policies.

(vii) Additional Insureds: The Town of Stratford, its officers, officials, employees, agents, boards, and commissions shall be named as Additional Insureds. The coverage shall be primary and noncontributory and contain no special limitations on the scope of protection afforded to the Town of Stratford. A waiver of subrogation applies under general liability, auto liability and worker's compensation. The coverage shall be primary and noncontributory and contain no special limitations on the scope of protection afforded to the Town of Stratford. A waiver of subrogation applies under general liability, auto liability and worker's compensation.

(viii) Subcontractor's Insurance: Each Subcontractor engaged by the Grantee to perform any work under the Contract shall obtain all insurance required of the Grantee in the same amounts and subject to the same provisions specified above for the Grantee, including the Additional Insured requirement. Certificates of Insurance shall be submitted to the Grantee and the Town and approved by the Town, before commencing any work.

7.4 Indemnity.

(a) Each Party (the "**Indemnifying Party**") will indemnify, defend, and hold the other Party and its members, managers, officers, directors, employees, lenders, agents and affiliates (the "**Indemnified Parties**") harmless from and against all actions, claims, demands, expenses (including reasonable attorneys' fees and costs), losses and liabilities ("**Liabilities**") resulting from third party actions arising directly or indirectly from the breach of any representation or warranty set forth in this Option Agreement and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the gross negligent acts or omissions of, the willful misconduct of, fraud by, or criminal conduct by the Indemnifying Party, its agents, employees, contractors or invitees, including the Grantee's Investigations described in Section 10 below, and Removal of Equipment in Section 4.3 above, including restoration or any other aspect arising out of Grantee's use or occupancy of the Property; except to the extent such damages, injuries, or death are caused by, or result from, the gross negligence or willful misconduct of the Indemnified Parties, or are the result of the prior use of the Property as a solid waste disposal facility independent of Grantee's activities. The Party's obligations under this Section shall survive the expiration or earlier termination of this Option Agreement.

8. Default; Remedies.

8.1 Event of Default and Cure Provisions. Subject to the cure rights set forth in Section 1.3 and the cure provisions in this Section of the Option Agreement, each of the following events shall constitute an event of default by the Parties (collectively, "**Event of Default**").

(a) The failure or omission by any Party to observe, keep, or perform any of the nonmonetary material terms, agreements, or conditions set forth in this Option Agreement, and such failure or omission has continued for thirty (30) days, or such longer period required to cure such failure or omission, not to exceed ninety (90) days, if such failure or omission cannot reasonably be cured within such thirty (30)-day period, after written notice from the other Party. The failure or

omission by any Party to perform any monetary obligation and such nonperformance has continued for ten (10) days after such notice of such failure from the other party; provided however it is understood that Grantee has no obligations to pay any Option Fees other than those which are actually paid by Grantee to Owner or otherwise come due prior to any termination of this Option Agreement.

(b) A Party files for protection or liquidation under the bankruptcy laws of the United States or under any similar law of the United States or of any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within thirty (30) days after filing.

8.2 Remedies.

(a) Acknowledgement. Each Party hereto acknowledges that if this Option Agreement is breached, the non-breaching Party hereto may be irreparably harmed and may not be made whole by monetary damages. Accordingly, it is agreed that, in addition to any other remedy to which it may be entitled in law or in equity, any non-breaching Party may be entitled to an injunction or injunctions to prevent breaches of this Option Agreement and/or to compel specific performance.

(b) Default by Grantee. Upon an Event of Default by Grantee, and subject to the cure rights and cure provisions in Sections 1.3 and 8.1 of this Option Agreement, the Owner shall (i) have the right to (A) terminate this Option Agreement, (B) retain the Option Fees actually paid by Grantee as of the date of such Event of Default, (C) have Grantee pay any unpaid Option Fees which have become due prior to such Event of Default (including the payment of any Option Fees where the failure to pay within the applicable grace period constitutes the Event of Default), (D) have Grantee pay any and all reimbursements due under this Option Agreement as of the date of such Event of Default, and (E) have Grantee remove any equipment and personal property from, and restore the Property as provided in Section 4.3 hereof; and (ii) remain entitled to the indemnifications provided by Grantee pursuant to Sections 7.2 and 7.4 hereof. The Owner agrees that under the circumstances existing as of the Effective Date of this Option Agreement, the Owner's retention of Option Fees actually paid by Grantee and being paid Option Fees which come due prior to any Event of Default (including the payment of any Option Fees where the failure to pay within the applicable grace period constitutes the Event of Default) as provided for in this Section represent a reasonable estimate of the damages which the Owner will incur as a result of the Owner's having kept the Property off the market. The Owner agrees that the retention by the Owner of the Option Fees actually paid to the Owner as of the date of such default, the Owner's right to be paid any unpaid Option Fees which become due prior to such Event of Default or as a result of such Event of Default (including the payment of any Option Fees where the failure to pay within the applicable grace period constitutes the Event of Default), and the retention by the Owner of the rights set forth in clauses (i)(C), (i)(D), (i)(E), and (ii) above, shall be in lieu of any other monetary relief, or specific performance, to which the Owner might otherwise be entitled under this Option Agreement for Grantee's default, and shall be the Owner's sole and exclusive rights and remedies under this Option Agreement for Grantee's default.

(c) Default by Owner. Upon an Event of Default by Owner, and subject to the cure provisions in Section 8.1 above, the Grantee shall be entitled to (i) specific performance of this Agreement together with reimbursement of all reasonable costs and expenses incurred by the Grantee

to obtain specific performance, or (ii) if Owner shall have taken any action which would preclude the availability of specific performance of Owner's obligations hereunder, Grantee shall be entitled to all remedies at law and in equity.

9. Assignment.

9.1 Assignment; Binding Effect. Except as provided in this Option Agreement, the Grantee shall not have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this Option Agreement without the prior written consent of the Owner, which consent shall not be unreasonably withheld, conditioned or delayed.

9.2 Permitted Assignment by Grantee. Notwithstanding anything to the contrary herein, the Grantee may assign its rights and obligations hereunder without the need of any consent by Owner, (i) to one or more Affiliates (as defined below) or (ii) to any person succeeding to all or substantially all of the assets of Grantee; provided such person has a net worth equal to or greater than that of Grantee and has, or will contract with contractors who have, sufficient professional experience, operational capabilities and financial integrity and capacity to construct, operate and maintain the System and fulfill the other obligations of Grantee hereunder. In the event of any such assignment, Grantee shall provide written notice to the Owner promptly following such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or as of the closing of such transaction will assume) all Grantee's rights and all of the Grantee's obligations under this Option Agreement. Owner agrees, at Grantee's sole cost and expense, promptly to execute any document reasonably requested in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof. Subject to the foregoing restrictions on assignment, this Option Agreement will inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns. For purposes hereof, "**affiliate**" means any entity which, directly or indirectly, controls or is under common control with Grantee; "**control**" (including, with its correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

9.3 Financing Provisions. Notwithstanding any contrary provisions contained in this Option Agreement, including without limitation Sections 9.1 and 9.2, Owner specifically agrees (i) without any further request for prior consent but with advance written notice to Owner, to permit Grantee to mortgage, collaterally assign or otherwise encumber and grant a security interest in, all of Grantee's interest in this Option Agreement as collateral for the purpose of obtaining financing or refinancing in connection with the System, or any portion thereof, and (ii) to, at Grantee's sole cost and expense, sign any agreement reasonably requested by Grantee or its lenders to acknowledge and evidence such agreement.

10. Grantee's Investigations.

10.1 Feasibility & Geotechnical Studies. Commencing as of the Effective Date and continuing throughout the Option Period, Grantee shall have the right to make, at Grantee's sole cost, such investigations, examinations, and studies of the Property as Grantee deems necessary or desirable

(the “**Feasibility Studies**”), including, without limitation, reviewing the condition of title, any lease or sublease affecting the Property, any contract or other commitment with respect to the Property, tax and appraisal issues, preliminary construction issues; conducting studies of the existing energy infrastructure on the Property, and the energy use of the Property; conducting soil tests and studies, environmental, endangered/threatened species and archaeological assessments and surveys; investigating and pursuing land use, permitting and energy development regulatory matters contemplated under Section 10.6 below related to Grantee’s Fuel Cell Operations, including, without limitation, engaging in discussions with governmental authorities regarding environmental and land use issues with respect to the Property; and subject to any reasonable restrictions imposed by the Owner and approvals by relevant governmental authorities, performing drilling, excavation and other geotechnical activities (the “**Geotechnical Studies**”) in, and under the Property. Grantee’s conduct of Feasibility Studies and Geotechnical Studies are referred to hereinafter as the “**Grantee’s Investigations.**”

10.2 Owner’s Reports. During the Option Period, Owner shall give Grantee reasonable access to review any surveys, title reports, surface reports (e.g., soil, drainage, geotechnical, environmental and flood control reports) (the “**Owner’s Reports**”) that Owner has in its possession or under its control. Within ten (10) business days after the Effective Date, Owner shall make available to Grantee (and maintain such availability during the Option Period) any Owner’s Reports that are in Owner’s possession as of the Effective Date and permit Grantee to make copies thereof at any time during normal business hours during the Option Period; and (b) give consent to any third party in possession of other Owner’s Reports to allow Grantee to copy or review each such report at any time during normal business hours during the Option Period. If Owner determines that any Owner Report or portion thereof is confidential, then Grantee shall treat said reports or portions thereof as confidential and shall execute any such documents as necessary to preserve that confidential designation. Grantee shall assume all costs and expenses concerning the replication, review and assessment of any and all Owner’s Reports.

10.3 License. Owner grants to Grantee for the entire Option Period, subject to all existing rights in, and encumbrances affecting, the Property, a non-exclusive right of entry coupled with a non-exclusive license to enter, access and use the Property for the purposes of conducting Grantee’s Investigations, together with a non-exclusive right of ingress and egress on, over, and across the Property for such purposes.

10.4 Notice to Owner. As the Property contains controlled areas and/or areas that are active public school facilities, Grantee shall be required to provide notification to the Owner of each proposed instance of entry and site access including details of the proposed site work to be performed (including locations of any sampling), and receive approval from Owner prior to such entry, access, or proposed work, such approval not to be unreasonably withheld, conditioned or delayed. If Owner shall not have provided notice to Grantee of Owner’s disapproval of any proposed Grantee’s Investigation (together with a reasonable detail of why Owner so disapproves) within five (5) business days of Owner’s receipt of notice of such Grantee’s Investigation from Grantee, Owner shall be deemed to have approved such Grantee’s Investigation as described in such notice from Grantee. Owner reserves the right to have a representative of Owner present at any and all Grantee’s Investigations; provided, however the failure of the Owner’s representative to attend any of Grantee’s Investigations as scheduled shall not require any postponement of any such Grantee’s Investigations.

10.5 Samples; Results. Owner shall cooperate with Grantee regarding all Grantee's investigations. Grantee shall provide Owner with at least twenty-four (24) hours' notice of Grantee's or Grantee's employees', agents', consultants' or representatives' entry upon the Property. Grantee shall cooperate with any reasonable request by Owner concerning the timing, manner and location in which all Grantee's Investigations are performed. Grantee shall split samples with Owner if requested by Owner. Grantee shall provide Owner with copies of all reports, laboratory test results, wetland and other surveys, prepared by third parties. The cost of, and responsibility for, off-site disposal of media removed from the Property by, or for, Grantee will be paid for by Grantee.

10.6 Permitting and Approvals. So long as such activity by Grantee is performed in a manner which does not disrupt the active operations of the school, the Owner hereby agrees that Grantee may, in its sole discretion and immediately following execution of this Option Agreement, commence taking any and all actions as may be necessary or proper for permitting of Fuel Cell Operations on the Property including, without limitation, submitting an electrical interconnection request. The Owner shall cooperate with Grantee in Grantee's efforts to effectuate the permitting of the portion of the Property that will be the property finally licensed for construction, development, and Fuel Cell Operations, including, but not limited to, execution and return of any required documentation to Grantee within ten (10) business days of receipt of written request therefor. Prior to submitting any application or request to any governmental authority with jurisdiction over the System, including CT DEEP, for any approval or consent which is required for any of Grantee's Investigations, Grantee shall provide Owner with a copy of such application or request with a reasonable time to review each such application or request and provide comments. Owner also agrees to take whatever actions are reasonably necessary to apply for, and obtain, any and all regulatory and other approvals necessary for Grantee's use of the Property, or any portion thereof, for its Fuel Cell Operations due to the active use of the Property as a school at Grantee's sole cost and expense.

10.7 Site Plans, Schedules, and Updates. Grantee agrees to provide up-to-date site plans, and a schedule of proposed Grantee's Investigations, as well as bi-weekly updates on Grantee's development efforts to the Owner commencing within sixty (60) days of the commencement of the Option Period.

10.8 No Construction of the System. Notwithstanding anything contained herein, Grantee shall not have the right to commence construction or installation of the System during the Option Period.

10.9 Results of Grantee's Investigations. In the event that Grantee is not satisfied, in its sole discretion, with the results of Grantee's Investigations, Grantee may elect to terminate this Option Agreement according to Section 4 above.

11. Reserved.

12. Miscellaneous Provisions.

12.1 Notices.

(a) All notices, payments, and other communications to the Parties under this Agreement (each herein called a **“Notice”**) must be in writing and be delivered by (a) certified or registered mail (return receipt requested), (b) personal delivery, (c) nationally recognized overnight courier service which provides written evidence of delivery, or (d) (excepting payment) confirmed facsimile or email with an original copy thereof sent to the recipient by one of the means described in clauses (a), (b) or (c) above no later than one (1) business day thereafter, in each case to the addresses below, or to such other addresses as the Parties may, by such notice, specify from time to time:

If to Owner: Town of Stratford
Attn: _____

Stratford, CT 06615
Tel: 203-XXX-XXXX
Fax: 203-XXX-XXXX
Email: XXXXXX@YYYYYYY.GOV

If to Grantee: _____

Tel: AAA-BBB-CCCC
Fax: AAA-BBB-CCCC
Email: AAAAA@BBBBB.COM

(b) All Notices shall be deemed given upon the earlier of (i) actual receipt by the Party to whom the Notice is addressed; (ii) upon refusal to accept delivery by the Party to whom the Notice is addressed; or (iii) upon first attempted delivery if delivery cannot be completed due to a change in address of the intended Party without notice of such change of address having been given to the other Party as provided herein. The term **“Business Day”** as used herein shall mean any day that is not a Saturday, Sunday, or a day in which commercial banks in Hartford, Connecticut, are required or authorized by law to close.

(c) Any Notices may be delivered on behalf of either Party by such Party’s counsel.

12.2 **Waiver.** The failure of a Party to insist on the strict performance of any provision of this Option Agreement or to exercise any right, power, or remedy upon a breach of any provision of this Option Agreement will not constitute a waiver of any provision of this Option Agreement or limit the Party’s right to enforce any provision or exercise any right in the future.

12.3 **Modifications; Amendments.** No modification or amendment of this Agreement is valid unless made in writing and executed by the Parties.

12.4 Governing Law/Attorney's Fees. This Option Agreement and any disputes arising out of this Agreement shall be governed by, and construed under, the laws of the State of Connecticut, without regard to principles of conflicts of law. Venue for any action to enforce or interpret this Option Agreement shall be New Haven County, Connecticut. In the event of any action or proceeding to enforce a term or condition of this Option Agreement, any alleged disputes, breaches, defaults, or misrepresentations in connection with any provision of this Option Agreement or any action or proceeding in any way arising from this Option Agreement, the prevailing party in such action, or the non-dismissing party when the dismissal occurs other than by a settlement, shall be entitled to recover its reasonable costs and expenses, including without limitation reasonable attorneys' fees and costs of defense paid or incurred in good faith.

12.5 Consequential Damages Waiver. EXCEPT WITH RESPECT TO THIRD-PARTY CLAIMS SUBJECT TO INDEMNIFICATION AS PROVIDED IN SECTION 7.4, THE PARTIES SHALL HAVE NO LIABILITY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS OPTION AGREEMENT. FOR THE AVOIDANCE OF DOUBT, ACTUAL DAMAGES, COMPENSATORY DAMAGES, AND DIRECT DAMAGES, SHALL NOT CONSTITUTE CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS AGREEMENT.

12.6 Counterparts. This Option Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument.

12.7 Time of the Essence. The Parties acknowledge and agree that, if the License Option is exercised and Grantee is not otherwise in default hereunder, time is of the essence in this Option Agreement with respect to Owner's obligation to execute the PPA and License Agreement within the time period provided in Section 1.1 hereof.

12.8 Recording. Simultaneously with the execution hereof, Owner and Grantee will execute a memorandum of this Option Agreement in the form of Exhibit F attached hereto (the "Memorandum of Option"). Grantee may, at its expense, record such memorandum in the real property records of the Town of Stratford, Connecticut.

12.9 No Partnership. Nothing contained in this Option Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the Parties to this Option Agreement.

12.10 Entire Agreement. This Option Agreement, including the attached Exhibits, contains the entire and final understanding of the Parties and supersedes all prior agreements and understandings between the Parties related to the subject matter of this Option Agreement.

12.11 Time for Performance. In the event any time period or due date set forth in this Agreement would otherwise fall on a Saturday, Sunday or holiday, such time period shall be automatically extended to the next business day.

IN WITNESS WHEREOF, Grantee and Owner have caused this Option Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

GRANTEE:

By: _____

Name: _____

Title: _____

Date: _____

OWNER:

TOWN OF STRATFORD,
a duly constituted governmental authority

By: _____

Name: _____

Title: _____

Date: _____

Exhibits Included:

- Exhibit A: Property Description
- Exhibit B: Permitted Exceptions
- Exhibit C: PPA and License Agreement Term Sheet
- Exhibit D: Form of Notice of Option Exercise
- Exhibit E: Form of Notice of Option Term Extension of the Option Agreement
- Exhibit F: Form of Memorandum of Option

EXHIBIT A TO OPTION AGREEMENT

DESCRIPTION OF THE PROPERTY

The land referred to herein is situated in the Town of Stratford, County of New Haven, State of Connecticut, and is described as follows:

Select portions of the parcel at 490 Chapel Street, in Stratford, Connecticut, which are currently owned by the Town of Stratford.

As this parcel has many buildings and facilities, only select portions of the parcel would be included under this Option Agreement (and thus ultimately used for the System). An approximate outline of that area is shown below (red dashed line). The area inside the outline is approximately ____ acres of the total 27.5 acres in the Property, such area being the "Option Premises" referenced herein.

[Insert property map here...]

EXHIBIT B TO OPTION AGREEMENT

PERMITTED EXCEPTIONS AND ENCUMBRANCES

A preliminary review of the Town land records by the Town Clerk's office for the parcel comprising the Flood Middle School Property at 490 Chapel Street revealed [no exceptions, easements, or encumbrances on the parcel / the following exceptions, easements, or encumbrances on the parcel].

Grantee is encouraged to engage in their own due diligence and title search to confirm the Town's preliminary review.

EXHIBIT C TO OPTION AGREEMENT

PPA AND LICENSE AGREEMENT TERM SHEET FOR FUEL CELL ENERGY FACILITY

1. Licensed Premises. The “**Licensed Premises**” means the Owner/Buyer’s Property described in Exhibit A to the Option Agreement, together with an exclusive license for Licensee/Seller’s access to and use of the Owner/Buyer’s Property at reasonable times and upon reasonable notice for the purposes of designing, constructing, installing, inspecting, testing, owning, operating, monitoring, maintaining, repairing, removing and selling of electricity from the Fuel Cell Energy Facility (the “**System**”).

2. Participation in the Non-Residential Program. Licensee/Seller intends to bid into The United Illuminating Company’s (the “**Utility**”) Non-Residential Renewable Energy Tariff Program competitive procurement for Low Emission Technology Projects, established pursuant to Section 3 of Public Act 19-35, Conn. Gen. Stat. § 16-244z, and Public Utilities Regulatory Authority Docket No. 22-08-03 (the “**Non-Residential Program**”). If selected in the Non-Residential Program competitive procurement, the Licensee/Seller will enter into a binding Electricity Purchase Commitment with the Utility, pursuant to which the Utility will purchase electricity, renewable energy credits, and environmental attributes generated from the System (the “**Electricity Purchase Commitment**”) at the Licensee/Seller’s bid price (the “**Tariff Rate**”), for a twenty (20) year term commencing after the System’s In-Service date.

3. Term. The Initial Term of the PPA and License Agreement shall be for a minimum period of twenty (20) years commencing after the System’s In-Service Date, running concurrently with the term of the Licensee/Seller’s Electricity Purchase Commitment with the Utility (as defined above). The Initial Term may be renewed for up to two (2) additional Renewal Terms of five (5) years each.

4. PPA Rate. Beginning on the System’s In-Service Date, the Owner/Buyer shall purchase all of the electricity generated by the System for use at the Property, and/or to offset electricity use at the Owner/Buyer’s Beneficial Accounts through Virtual Net Metering, [yielding annual electricity bill savings of approximately \$_____ for the Owner/Buyer / at the equivalent of the fixed rate of \$0.____ per kWh (which is \$0.____ per kWh below the current effective rate)], based on the assignment of a percentage of the Tariff Rate to the Licensee/Seller, as a Tariff Payment Beneficiary under the Non-Residential Program.

5. Surrender of Licensed Premises. Upon the expiration of the Initial Term of the PPA and License Agreement, or any Renewal Term or Terms of the PPA and License Agreement, Licensee/Seller shall remove any buildings, equipment, and personal property constructed and installed by Licensee/Seller for the System from the Licensed Premises.

6. Good Faith Negotiations. The Owner/Buyer and Licensee/Seller shall enter into good faith negotiations regarding other terms and conditions of the PPA and License Agreement.

7. Capitalized Terms. Capitalized terms used but not defined herein have the meanings ascribed to them in the Option Agreement by and between the Owner/Buyer and Licensee/Seller.

EXHIBIT D TO OPTION AGREEMENT

FORM OF NOTICE OF OPTION EXERCISE

(On the Letterhead of Licensee/Seller)

VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

To Owner: Town of Stratford
 Attn: _____
 2725 Main Street
 Stratford, CT 06615

Re: Option Agreement for Fuel Cell Energy Facility Power Purchase and License Agreement dated as of _____, 20__, by and between the Town of Stratford, a municipal corporation existing under and by virtue of the laws of the State of Connecticut (“Owner/Buyer”), and _____, a [State, corporate form] (“Licensee/Seller”) (“Option Agreement”).

Notice of Exercise of Option (“**Notice of Exercise**”)

To Whom it May Concern:

Please take notice that pursuant to the terms of the above described Option Agreement, Licensee/Seller hereby exercises its License Option to make effective the Fuel Cell Energy Facility Power Purchase and License Agreement (“**PPA and License Agreement**”) between the Owner/Buyer and Licensee/Seller and thereby license all of the real property described by the legal description attached hereto, marked Exhibit “1” (the “**Licensed Premises**”). Please note that the description of the Licensed Premises [is the same as/varies from] the description as set forth in Exhibit A to the Option Agreement. The Commencement Date of the PPA and License Agreement shall be _____, 20__ [a date not more than thirty (30) days after the date of this Notice of Exercise]. Capitalized terms used herein shall have the meaning given them in the Option Agreement unless otherwise defined herein.

Thank you in advance for your anticipated cooperation in this matter. Very truly yours,

[DEVELOPER],

a [State, corporate form]

By: _____

Its: _____

EXHIBIT E TO OPTION AGREEMENT

FORM OF NOTICE OF OPTION TERM EXTENSION OF THE OPTION AGREEMENT

(On the Letterhead of Licensee/Seller)

VIA CERTIFIED MAIL / RETURN RECEIPT REQUESTED

To Owner: Town of Stratford
Attn: _____
2725 Main Street
Stratford, CT 06615

Re: Option Agreement for Fuel Cell Energy Facility Power Purchase and License Agreement dated as of _____, 20__, by and between the Town of Stratford, a municipal corporation existing under and by virtue of the laws of the State of Connecticut ("Owner/Buyer"), and _____, a [State, corporate form] ("Licensee/Seller") ("Option Agreement").

Notice of Option Term Extension ("**Notice of Extension**")

To Whom it May Concern:

Please take notice that pursuant to the terms of the above described Option Agreement, Licensee/Seller is hereby extending the First Option Term of the Option Agreement by an additional twelve (12) months, which shall now be considered the Second Option Term. This Option Term Extension does not change or modify any of the terms or conditions of the Option Agreement, other than the Term in Section 2 of the Option Agreement. The First Option Term for the Option Agreement expires on _____, 20___. By this Notice of Extension, the Second Option Term will expire on _____, 20__.

In accordance with Section 3 of the Option Agreement, Grantee is, simultaneously with the delivery of this Notice of Extension, delivering to Owner an additional Option Fee of \$2,500 for the Second Option Term.

Thank you in advance for your anticipated cooperation in this matter.

Very truly yours,

[DEVELOPER],

a [State, corporate form]

By: _____

Its: _____

EXHIBIT F TO OPTION AGREEMENT

FORM OF MEMORANDUM OF OPTION AGREEMENT

REQUEST BY AND
WHEN RECORDED RETURN TO:

[Developer Name]
[Developer Address]
Attn: [Developer]

APN:

(Space above this line for Recorder's use only)

**MEMORANDUM OF OPTION AGREEMENT FOR
FUEL CELL ENERGY FACILITY POWER PURCHASE AND LICENSE AGREEMENT**

THIS MEMORANDUM OF OPTION AGREEMENT FOR FUEL CELL ENERGY FACILITY POWER PURCHASE AND LICENSE AGREEMENT (this "Memorandum") is dated as of _____, 20__ (the "**Effective Date**"), by and between the **TOWN OF STRATFORD**, a municipal corporation existing under and by virtue of the laws of the State of Connecticut (the "**Owner**"), and **[DEVELOPER]**, a [State, corporate form] (the "**Grantee**").

A. Grantee and owner entered into a certain binding Option Agreement for a Fuel Cell Energy Facility Power Purchase and License Agreement dated as of the date hereof (the "**Option Agreement**"), which by its terms grants to Grantee an option to license all, or any part of, that certain land which is more particularly described in Attachment A attached hereto and incorporated by this reference (the "**Option Premises**").

B. Owner and Grantee have executed and acknowledged this Memorandum for the purpose of providing record notice of the Option Agreement.

C. Capitalized terms used but not otherwise defined in this Memorandum shall have the meanings assigned to them in the Option Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and sufficient consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and Grantee provide record notice of the following:

1. Term. For an Option Period which shall not extend beyond [Effective Date + 24 months], Grantee shall have the exclusive right to execute with Owner a Power Purchase and License Agreement on terms set forth in the PPA and License Agreement Term Sheet for Fuel Cell Energy Facility attached to the Option Agreement as Exhibit C (the "**Term Sheet**").

2. Notice of Exercise; Term of Power Purchase and License Agreement. If Owner and Grantee execute the Power Purchase and License Agreement, Grantee will have, for a term commencing upon the execution of the Power Purchase and License Agreement, including all renewal terms, at least thirty (30) years of a license and certain rights and servitudes on, over, and across the Property.

3. No Conflict. In the event of any conflict or inconsistency between the provisions of this Memorandum and the provisions of the Option Agreement, the provisions of the Option Agreement shall control. Nothing in this Memorandum shall be deemed to amend, modify, change, alter, amplify, limit, interpret or supersede any provision of the Option Agreement or otherwise limit or expand the rights and obligations of the parties under the Option Agreement.

4. Address of Owner. The address of the Owner is 2725 Main Street, Stratford, CT 06615.

5. Address of Grantee. The address of the Grantee is _____.

6. Option Agreement on File with Owner and Grantee. Copies of the executed Option Agreement are on file with the Owner and Grantee.

7. Counterparts. This Memorandum may be executed in counterparts, which together shall constitute a single instrument.

IN WITNESS WHEREOF, Owner and Grantee have caused this Memorandum to be executed and delivered by their duly authorized representatives as of the Effective Date.

WITNESSES:

Name:

Name:

WITNESSES:

Name:

Name:

OWNER:
TOWN OF STRATFORD

By: _____
Name:
Title:

GRANTEE:
[DEVELOPER]

By: _____
Name:
Title:

STATE OF CONNECTICUT)
) ss. _____, _____, 20__
COUNTY OF _____)

Personally appeared _____, _____ of TOWN OF STRATFORD, a municipal corporation existing under and by virtue of the laws of the State of Connecticut, signer and sealer of the foregoing instrument, and acknowledged the same to be his/her free act and deed as such Officer and the free act and deed of said municipal corporation, before me.

Name:
Commissioner of the Superior Court
Notary Public
My Commission Expires: _____

STATE OF CONNECTICUT)
) ss. _____, _____, 20__
COUNTY OF _____)

Personally appeared _____, _____ of [DEVELOPER], a [State] limited liability company, signer and sealer of the foregoing instrument, and acknowledged the same to be his/her free act and deed as such Officer and the free act and deed of said limited liability company, before me.

Name:
Commissioner of the Superior Court
Notary Public
My Commission Expires: _____