


Municipal Contracting Issues

For Third-Party Financed Renewable Energy Facilities

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Why Third Party Facility?


- **Advantages:**
 - Developer constructs, operates & maintains
 - Reduced energy costs for municipality
 - Lease & tax revenue for municipality
 - Path to ownership
- **Disadvantages:**
 - You do not own facility
 - You do not own **SRECs** (“green attributes”)
 - Long term contract (15+ years)



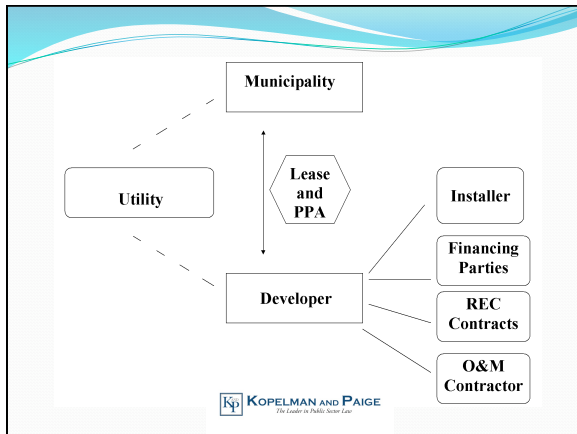
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Why Developer Offers Savings?

- Answer: To finance the deal
- Revenue sources for developer:
 - SRECs
 - Tax Benefits
 - Electricity/net metering credit sales
- Developer transfers benefits through discounted electricity/net metering credits



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PPA Contract Issues

- Purchase Provisions
- What's a Good Deal?
- Interconnection/Host Customer
- Payment of Taxes
- Term & Termination
- Default & Damages
- Guaranteed Production
- Purchase Option

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Purchase Provisions

- You buy **all** electricity/net metering credits
- Consider:
 - Can you use all electricity/credits
 - Will you sell credits to other qualified purchaser
 - Eligibility to receive net metering credits
 - 10 MW cap for municipality
 - Future energy conservation projects
 - Future municipal renewable energy projects

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Purchase Provisions

- Pricing Structures:
 - Fixed price
 - Fixed price with escalator
 - Fixed price with maximum cap
 - Variable price
 - Variable price with floor
- Difference: Who bears risk of declining prices



What's a good deal?

- What is the "deal"?
 - Electricity/net metering credit purchase price
 - Lease payment
 - Payment of taxes
- Look at entire deal, not just one piece
- Only so much "deal" to go around: E.g., higher lease payment will result in higher kWh rate for electricity/net metering credits



What's a Good Deal

- True comparisons difficult to make
 - "What the last person paid"
 - Size, type, and location of system
 - Investor/financing requirements
 - Utility upgrade costs paid by developer
 - Laws & regulations
 - Market for electricity, SRECs



Payment of Taxes

- Generally, once leased, municipal property subject to tax to lessee under G.L. c. 59, s. 2B
 - Leased for non-public uses
 - Even if municipality benefits
 - Taxed to lessee as if owner of property
- Generally, electric generating equipment also subject to tax
 - Assessor decides if equipment will be taxed as part of real property or as personal property



Payment of Taxes

- Exception: G.L. c. 59, s. 5, cl. 45
 - Must be primary or auxiliary power for property
 - DOR interprets narrowly
- Require developer to pay taxes in RFP/PPA
 - Will likely result in higher electricity price or lower lease payment, but still “new” revenue
- Miscellaneous:
 - PILOT possible (G.L. c. 59, s. 38H(b))
 - TIF possible (G.L. c. 40, s. 59)



Interconnection/Host Customer

- Developer is “Interconnection Customer”
 - Applies for interconnection
 - Pays for any upgrade costs
 - Pays for insurance
 - Signs interconnection agreement with utility
- Municipality is “Host Customer”
 - Signs Host Customer Agreement with utility
 - File “Schedule Z” with utility



Term & Termination

- Long-term contracts
 - 20 years typical
- Risks & considerations
 - Termination rights limited
 - Remember considerations noted earlier:
 - 10 MW cap for municipality/governmental entity
 - Future municipal renewable energy facilities?
 - Future energy conservation projects?



Default & Damages

- Default: “material breach” of contract
 - Failure to pay for electricity – Require Notice
 - Breach of material provision – Cure Rights
- Insurance: Confer with insurer/risk advisor
- Indemnification: Require developer to indemnify
- Damages for breach can be **significant**
- Liquidated damages vs. actual damages



Repairs of Leased Property

- Rooftop/Landfill:
 - Structural issues: Consider at RFP stage
 - Legal requirements (e.g., landfill)
- Removal of all/part of the facility for repairs
 - Removal cost?
 - Curtailment (of energy) cost?
- Retain right to access and examine property



Guaranteed Production

- Developer has incentive to optimize, but . . .
- Require guaranteed production:
 - Level of guarantee will be % of “capacity”
 - Allows predictability for planning
 - Incentivizes developer to:
 - Optimize production
 - Design system to produce reliable output
 - Developer pays for shortfall (liquidated damages)



Purchase Option

- Do you want option to purchase?
- If so:
 - Consider system quality at procurement stage
 - You will be responsible for O&M and removal
 - Typically not allowed before sixth year
- Purchase Price
 - Parties select independent appraiser, or
 - Schedule of purchase values appended to PPA



Miscellaneous

- **Where Does the Money Go?**
 - Net Metering Credits (payment in lieu thereof)
 - Lease Payments & Taxes
- **Town Meeting votes:**
 - land lease
 - PPA
 - Lease of buildings
- **Procurement for 3rd Party Owned Facilities**
 - Rooftop
 - Open Land



Miscellaneous

- **Prevailing Wages:** May be required
- **Competitive Supplier Agreements**
 - Check for exclusivity requirements
 - Implement consolidated billing
- **Bonds**
 - Performance/payment (during construction)
 - Maintenance
 - Removal
 - Other security?



Contact

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