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February 10, 2015

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, Massachusetts 02110

Re: Western Massachusetts Electric Company, D.P.U. 14-123

Dear Secretary Marini:

On behalf of Western Massachusetts Electric Company d/b/a Eversource Energy (the “Company”), enclosed please find a redacted version of Confidential Attachment DPU-1-10(f) for the public record in the above-referenced proceeding. Please note that an unredacted copy of Confidential Attachment DPU-1-10(f) was originally provided by the Company to the Hearing Officer and the Attorney General on February 2, 2015, subject to a Motion for Protective Treatment.

Thank you for your attention to this matter.

Sincerely,



Daniel P. Venora, Esq.

Enclosures

cc: Sarah Bresolin, Hearing Officer
Elizabeth Anderson, Assistant Attorney General
Jamie Tosches, Assistant Attorney General
Alexander Early, Assistant Attorney General
Service List

**FIXED PRICE ENGINEERING, PROCUREMENT AND
CONSTRUCTION AGREEMENT**

BETWEEN

**NORTHEAST UTILITIES SERVICE
COMPANY, as agent for**

WESTERN MASSACHUSETTS ELECTRIC COMPANY, AS OWNER

AND

AMERICAN CAPITAL ENERGY, INC., AS CONTRACTOR

COTTAGE STREET SOLAR FACILITY

DATED: September 16, 2013

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FIXED PRICE ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

THIS FIXED PRICE ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT, made as of the 16th day of September, 2013 ("*Effective Date*"), by and between **NORTHEAST UTILITIES SERVICE COMPANY, as agent for WESTERN MASSACHUSETTS ELECTRIC COMPANY** ("*Owner*"), a Massachusetts corporation, with offices at One Federal Street, Building 111, Fourth Floor, Springfield, Massachusetts, and **AMERICAN CAPITAL ENERGY, INC.** ("*Contractor*"), a New Jersey corporation, with offices at 1001 Pawtucket Blvd. Suite 278, Lowell, Massachusetts 01853.

W I T N E S S E T H:

WHEREAS, Owner issued the RFP for the Work; and

WHEREAS, Contractor submitted a proposal in response to the RFP, and after negotiation, Owner has selected Contractor to provide such equipment, materials and services comprising the Work for the Fixed Contract Price in reliance upon Contractor's qualifications, skill and expertise in engineering and design, planning, procuring, installing and constructing photovoltaic solar generation facilities similar to the Facility; and

WHEREAS, Owner desires to engage Contractor to perform the Work under the terms and conditions of the Contract Documents.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1. DEFINITION OF TERMS; INTERPRETATION

1.1. Definitions.

As used herein, the following terms shall have the following meanings; *provided*, that Owner may interpret any ambiguities or inconsistencies in any of the Contract Documents, and its determination shall be binding on the Parties.

"AC" shall mean alternating current.

"*Acceptance Test*" and "*Acceptance Testing*" shall mean the tests performed by Contractor or its testing contractor in accordance with Article 9.

"*Affiliate*" shall mean, when used with reference to a specified Person, any Person that directly or indirectly controls or is controlled by or is under common control or ownership with the specified Person, including, in case of each Party, the ultimate parent company of such Party. For purposes of this definition, "*control*" means the power to direct the management and policies of the specified Person.

"*Agreed Change*" shall mean any change to the Work, the Fixed Contract Price, the Work Schedule and/or any other terms and/or conditions under the Contract Documents that is (a) agreed upon by the Parties as evidenced by an Agreed Change Order duly executed and delivered by the Parties, or (b) implemented in an Agreed Change Order agreed upon by the Parties through Contractor's automatic acceptance of Owner's Change Order Request by Contractor's failure to assert a timely Claim pursuant to Section 8.8.

"*Agreed Change Order*" shall mean the written document duly executed and delivered by both Parties or automatically accepted and agreed to by Contractor under the provisions of Section 8.8 governing Disputes over Changes.

"*Agreement*" shall mean this Fixed Price Engineering, Procurement and Construction Agreement, including all exhibits, schedules, appendices and attachments hereto or thereto, as well as any and all items specifically incorporated by reference herein or therein, and any and all amendments hereto or thereto agreed to in writing by the Parties.

"*Annual Production Report*" has the meaning set forth in Attachment 2 to Appendix A-1 to the Technical Specifications.

"*Anticipated Excavation Activities*" shall mean the Excavation activities of Contractor specified in the Excavation Plan approved by Owner.

"*As-Built Drawings*" shall mean the drawing(s) reflecting the as-built condition of the applicable installation.

"*Bankrupt*" shall mean with respect to a Person, if such Person or any of its Affiliates (a) files a petition or otherwise commences a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it; (b) makes an assignment or any general arrangement (other than an assignment undertaken in connection with a financing) for the benefit of creditors; (c) otherwise becomes bankrupt or insolvent (however evidenced); (d) has a liquidator, administrator, receiver, bankruptcy trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (e) is generally unable to pay its debts as they fall due.

"*Base Design*" has the meaning set forth in Schedule 7.2(a)(v).

"*Baseline Production Report*" has the meaning set forth in Attachment 2 to Appendix A-1 to the Technical Specifications.

"*BUD*" shall mean that portion of the Vegetative Support Layer that consists of materials managed pursuant to Beneficial Use Determination(s) from MassDEP.

"*BUD Area*" has the meaning set forth in Paragraph I.9 of the Site Restrictions.

"*Business Day*" shall mean any day other than Saturday, Sunday and the day when the following holidays are celebrated: New Year's Day; Presidents' Day; Patriots' Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; day after Thanksgiving; and Christmas Day.

"*Capacity Guarantee*" has the meaning set forth in Attachment 1 to the technical requirements within the Technical Specifications.

"*Certificate of Completion and Request for Final Acceptance*" shall mean the certificate in the form set forth in Schedule 9.6.

"*Certificate of Substantial Completion*" shall mean the certificate in the form set forth in Schedule 9.3(b).

"*CFR*" shall mean the Code of Federal Regulations.

"Change" shall mean any Agreed Change or Directed Change.

"Change Order" shall mean any Agreed Change Order or Directed Change Order, each substantially in the form set forth in Appendix C-1 to Exhibit C.

"Change Order Request" shall mean any request by Contractor or Owner for a Change Order, which request shall be made in the form of a proposed Change Order.

"Claim" shall mean the assertion by Contractor, Owner, or any Indemnified Person (in addition to Owner) of a position, right, and/or remedy, and/or a demand for monetary or other relief, including any documentary submission made by Contractor, Owner, or any Indemnified Person (in addition to Owner) to evidence such assertion.

"Claiming Party" has the meaning set forth in the definition of Force Majeure in this Section 1.1.

"CMR" shall mean Code of Massachusetts Regulations.

"Competent Person" shall have the meaning set forth in OSHA 29 CFR Section 1926.650.

"Consent and Release" shall mean the Consent and Release dated April 30, 2013, executed and delivered by the Site Owner in favor of Owner, a copy of which has been provided to Contractor.

"Construction Documents" shall mean all drawings, including design and engineering, development and construction drawings (including Contract Drawings and the Final Design), computer software, plans, studies, data, reports, calculations, specifications, engineering data (including that furnished pursuant to the Technical Specifications) and other documents that describe the Work and are developed pursuant to the Contract Documents.

"Construction Equipment Plan" shall mean Contractor's plan for vehicles and equipment to be used in performing the Work at the Site, which Contractor shall develop and submit to Owner for approval in accordance with Section 2.5(b).

"Contract Documents" shall mean the collective term used to describe this Agreement, any items specifically incorporated by reference herein and/or issued with respect hereto, any and all amendments to the foregoing agreed to (in writing or through Contractor's automatic acceptance of Owner's Change Order Request pursuant to Section 8.8) by the Parties, including any and all Agreed Change Orders, and any and all Directed Change Orders.

"Contract Drawings" shall mean drawings (including shop drawings) that define the scope of Work, design criteria, design methodology, or construction methods to be used by Contractor in performance of the Work.

"Contractor" shall mean American Capital Energy, Inc. and its successors and permitted assigns.

"Contractor Permits" shall mean all of the Permits required to perform the Work in accordance with the terms and conditions of the Contract Documents, including those set forth on Schedule 5.3(a), *excluding, however*, the Owner Permits.

"Contractor's Representative" shall mean the project manager identified by Contractor pursuant to Section 4.2(a) with authority to act on behalf of Contractor with respect to the Work.

"*Contractor's Safety Program*" has the meaning set forth in Schedule 5.5.

"*Coordination Schedule*" has the meaning set forth in Schedule 4.7(c).

"*CPM Schedule*" shall mean the Critical Path schedule prepared and revised in accordance with, and as defined in, Appendix J-1 to Exhibit J.

"*CPR*" means the CPR Institute for Dispute Resolution (formerly known as the Center for Public Resources).

"*CPR Mediation Procedure*" means the procedures developed by CPR to facilitate the conduct of the mediation process.

"*CPR Panels of Distinguished Neutrals*" means a list of qualified mediators and arbitrators developed and maintained by CPR available to help resolve complex business disputes.

"*CPR Rules for Non-Administered Arbitration*" means the rules developed by CPR to facilitate the conduct of the arbitration process.

"*Critical Path*" shall mean the particular sequence of Critical Path Events associated with performance of the Work that must be accomplished as scheduled in order for the Work as a whole to be completed on time and in accordance with the Contract Documents, including the Work Schedule; each Critical Path Event is in whole or in part a condition precedent for a later Critical Path Event and may not be delayed without adversely affecting the ability of Contractor to complete the Work within the time scheduled for Substantial Completion in accordance with the Work Schedule.

"*Critical Path Event*" shall mean any of the Critical Path tasks, activities and/or Milestones.

"*DART*" shall mean work-related injuries or illnesses that cause days away from work, days of restricted work or job transfers, as calculated in accordance with OSHA regulations.

"*DC*" shall mean direct current.

"*DEP*" shall mean any Governmental Authority substantially responsible for the Environment in any state or commonwealth in which Contractor performs Work including MassDEP, and any successor agencies thereto.

"*Dig Safe®*" has the meaning set forth in the caption for Section 5.7.

"*Directed Change*" shall mean any change to the Work, the Fixed Contract Price, the Work Schedule and/or any other terms and/or conditions under the Contract Documents, that is not agreed upon (in writing or through Contractor's automatic acceptance of an Agreed Change Order pursuant to Section 8.8) between Contractor and Owner at the time of issuance of a Directed Change Order and which is therefore the subject of Owner's written direction issued and applicable to Contractor's performance thereof pursuant to this Agreement and the other Contract Documents.

"*Directed Change Order*" shall mean the written document duly executed and delivered by Owner implementing a Directed Change pursuant to the terms and conditions of the Contract Documents.

"*Direct Incremental Costs*" shall mean a measure of all reasonable charges incurred by Contractor for labor, fringe benefits, direct supervisory personnel, equipment, materials, rentals and as-billed charges of Subcontractors, excluding mark-up of any kind by, and profit of, Contractor and its Affiliates.

"*Dispute*" shall mean a disagreement or disagreeing in whole or in part between Contractor and Owner with respect to a Claim including: (a) any disagreement or disagreeing as to whether the basis for a Claim exists; and/or (b) any disagreement or disagreeing as to the nature and/or extent of scope, schedule, cost and/or other impacts of a Claim.

"*DOT*" shall mean any Governmental Authority substantially responsible for the negotiations and agreements concerning state/commonwealth-owned rights-of-way in any state or commonwealth in which Contractor performs Work, including MassDOT, and any successor agencies thereto.

"*Effective Date*" has the meaning set forth in the first paragraph of this Agreement.

"*Environment*" shall mean soil, land surface or subsurface strata, real property, surface waters, groundwater, wetlands, sediments, drinking water supply, ambient air (including indoor air) and any other environmental medium or natural resource.

"*Environmental Coordinator*" shall mean the Person designated as the on-Site environmental coordinator by Contractor for the Work pursuant to Section 5.4(f).

"*Environmental Law*" shall mean Law relating to: (a) the regulation, protection and use of the Environment; (b) the conservation, management, development, control and/or use of land, natural resources and wildlife; (c) the management, manufacture, possession, presence, use, generation, transportation, treatment, storage, disposal, release, threatened release, abatement, removal, remediation, or handling of, or exposure to, any Hazardous Materials, including all applicable common law pertaining to actions for personal injury and/or property damage resulting from Hazardous Materials with respect to both on-Site and off-Site contamination; or (d) noise.

"*EPA*" shall mean the United States Environmental Protection Agency and any successor agency thereto.

"*EPC*" shall mean the basis for Contractor's performance of the Work whereby Contractor accepts the obligation of full performance, and the burden of all risks related thereto, including design and engineering, procurement, construction and installation of the Work, delivering an end state as defined and as set forth herein (including in the Technical Specifications) including: (a) fulfillment of all requirements and duties associated with Final Acceptance, and (b) compliance with all requirements of Law and the Contract Documents, to the satisfaction of Owner.

"*Equipment Storage Area*" shall mean collectively that portion of the Site located outside of the Landfill Cap and/or any other location(s) in Springfield, Massachusetts secured by Contractor for the storage of equipment, materials and supplies pending installation in the Project.

"*Event of Default*" has the meaning set forth in Section 13.4.

"*Excavation*" shall mean any excavation, penetration, trenching, tunneling, leveling, grading and/or other activities and/or disturbance of whatever nature below ground surface. "*Excavate*" shall have the same meaning in the verb form.

"*Excavation Plan*" shall mean Contractor's plan for conducting Excavation activities at the Site,

which Contractor shall develop and submit to Owner for approval in accordance with Section 2.7(a).

"*Excess Material*" shall mean any soil, vegetation, rock, asphalt, water (including standing, run-off and groundwater and snow), and other materials in whatever form (including waste and debris) Excavated and/or removed from the Site that is not used as backfill in the same location at the Site in connection with the Work, in all cases in accordance with the terms and conditions of the Contract Documents and with Law (including the PCU Permit).

"*Executive Sponsor*" shall mean an executive officer of Contractor having overall responsibility for Contractor's performance of the Work and holding the position of vice president or above.

"*Existing Facilities Damage*" has the meaning set forth in Section 2.7(g).

"*Facility*" shall mean Owner's Cottage Street Solar Facility located on the Site.

"*Final Acceptance*" shall mean that the Project has properly functioned in accordance with the Contract Documents and all of the Work has been completed after achievement of Substantial Completion and pursuant to Article 9 to the point of (a) fulfillment of all physical and regulatory requirements of the Contract Documents including the environmental and other requirements contained in the Work Protocols and the Permits, and (b) compliance with all other requirements of the Contract Documents including: (i) delivery of all documentation required or requested in connection therewith; (ii) completion of the construction of the Project, including all Punch List Items; (iii) removal, transportation, and disposal (as approved by Owner) of any and all waste(s) and debris (including construction debris) relating to the Work; (iv) completion of restoration of the Site in accordance with the Contract Documents, including the removal of erosion and sedimentation control measures (unless necessary to maintain Site stabilization pursuant to a plan accepted by Owner in accordance with the Technical Specifications); and (v) delivery and inventorying of all spare parts, material and equipment identified in Schedule 2.11 to storage facilities designated by Owner.

"*Final Design*" shall mean the fully integrated design for the Project as accepted by Owner pursuant to the Contract Documents, including the final site layout from the Preliminary Design updated for (a) any field conditions that could affect the Landfill Modifications; (b) the specific location of PV Modules and all other components of the Project (including inverters); (c) the comprehensive electrical layout and details including complete wiring diagrams; (d) grounding layout and details; (e) structural layout including structural details and mounting details (including ballasts and racking system); (f) the location of all subsurface installations including construction means; and (g) such other layouts, details and other information as are appropriate for the complete installation of the Project, all of which shall be signed and sealed by a licensed professional engineer of the appropriate discipline.

"*Final Payment*" shall mean that payment to be made to Contractor by Owner after Final Acceptance.

"*Fixed Contract Price*" shall mean [REDACTED] as adjusted pursuant to Section 7.2 with respect to Changes.

"*Force Majeure*" shall mean an event or circumstance that prevents one Party from performing its obligations under the Contract Documents, which event or circumstance (a) was not anticipated as of the Effective Date; (b) is not within the reasonable control of the Party asserting the effects of such event or circumstances as an excuse for delay in accordance with Section 6.5 (the "*Claiming Party*"); (c) does not result from the fault or negligence of the Claiming Party or from a breach of any of the Claiming Party's obligations under the Contract Documents; (d) the Claiming Party is unable to overcome or avoid

or cause to be avoided by the exercise of Prudent Industry Practices; and (e) is caused by one or more of the following (to the exclusion of all other events or circumstances):

- (i) act of God (including fire, flood or other significant, unpredicted and unusual natural catastrophe) having general application to the Site; excluding, however, inclement weather (including rain, snow, ice, high winds and extreme heat) experienced from time to time;
- (ii) any Governmental Authority having jurisdiction over any or all of the Work suspends or otherwise prohibits the performance of such Work, excluding, however, (1) any actions by any Governmental Authority resulting from the breach or alleged breach by the Claiming Party of any Law or Permit condition; and (2) any delay, rejection or other adverse action (including the imposition of conditions and/or hourly restrictions) taken by any Governmental Authority with respect to any Permit for the Work to be acquired by the Claiming Party after the Effective Date, except to the extent such delay, rejection or other adverse action results from acts or omissions of the other Party;
- (iii) act of war, terrorism or sabotage; or
- (iv) nationwide labor strike or labor strike by employees of the other Party, *provided* that any such strike is not due in whole or in part to acts or omissions of the Claiming Party or any subcontractor of or supplier to the Claiming Party.

For the avoidance of doubt, neither (A) strikes, work stoppages or other labor disputes affecting Contractor (and/or any Subcontractor(s) or suppliers to Contractor), other than those referenced in subsection (iv) above, nor (B) commercial impracticability experienced by Contractor (including market changes, increased costs and/or insufficient money) shall constitute a Force Majeure.

"*Governmental Authority*" shall mean any federal, state, commonwealth, county, local or other governmental, quasi-governmental, regulatory or administrative authority, agency, body, commission, department, board, or other governmental subdivision, court, tribunal, arbitral body, EPA, DEP, OSHA, DOT, or any other governmental or quasi-government authority or any Person exercising or purporting to exercise any governmental or quasi-governmental authority or prerogative.

"*Hazardous Materials*" shall mean: (a) any petrochemical or petroleum products, oil, waste oil, asbestos in any form that is or could become friable, urea formaldehyde foam insulations, lead-based paint and polychlorinated biphenyls; (b) any products, mixtures, compounds, materials or wastes, air emissions, toxic substances, wastewater discharges or any chemical, material or substance that may give rise to liability pursuant to, or is listed or regulated under, or the human exposure to which or the release of which is controlled or limited by Environmental Law and/or the Work Protocols; and (c) any materials or substances defined in Environmental Law as "hazardous", "toxic", "pollutant", or "contaminant", or defined in Environmental Law using any words of similar meaning or legal or regulatory effect.

"*Hold Point*" shall mean a step in the construction, fabrication, examination, and/or installation process where Contractor must wait for signed approval of Owner to proceed, as designated in Exhibit F, as may be revised at any time by Owner.

"*Indemnified Environmental Obligations*" has the meaning set forth in Section 15.2.

"*Information*" shall mean any and all Intellectual Property, Construction Documents, Contract

Documents, computer software and documentation, studies, data, reports, documents, designs, plans, drawings, calculations, specifications or other information, arising out of, used and/or produced in connection with the Work, all in whatever form or media.

"*Infringement Losses*" has the meaning set forth in Section 15.3(a).

"*Intellectual Property*" shall mean any and all: (a) patents, trademarks, servicemarks, copyrights or trade secrets developed or capable of being developed; (b) devices, drawings, designs, methods, calculations, specifications, data and databases, studies, analyses or written works developed or capable of being developed during the course of the Work; (c) software programs and applications; (d) instructions and operating and maintenance manuals; and (e) other Construction Documents and Information entitled to protection under law and owned, prepared and/or furnished by, through, or on behalf of Contractor to, for or on behalf of Owner in accordance with the terms and conditions of the Contract Documents.

"*Key Personnel*" shall mean the Executive Sponsor, the Contractor's Representative and any individuals (including personnel of Subcontractors) assigned to the Work from time to time by Contractor in accordance with the terms and conditions of the Contract Documents holding the position of "general foreman" (or equivalent) or above and/or listed in Schedule 4.3(d).

"*Landfill Cap*" shall mean the protective layer of materials over the landfill currently installed at the Site, including a 40-mil high density polyethylene (HDPE) liner ("*Landfill Liner*"), covered by the Sand Drainage Layer and topped with the Vegetative Support Layer.

"*Landfill Expert*" shall mean the Person retained by Contractor for the Work pursuant to Section 5.4(f).

"*Landfill Liner*" has the meaning set forth in Landfill Cap.

"*Landfill Gas System Modifications*" has the meaning set forth in Paragraph 2.4(3) of the technical requirements within the Technical Specifications.

"*Landfill Modifications*" shall mean collectively the Landfill Gas System Modifications, the Landfill Stormwater System Improvements, and the other Work performed and/or to be performed at the Site by Contractor pursuant to Paragraph 2.4 of the technical requirements within the Technical Specifications.

"*Landfill Operator*" shall mean Waste Management of Massachusetts, Inc.

"*Landfill Stormwater System Improvements*" shall mean the Work performed and/or to be performed at the Site by Contractor pursuant to Paragraph 2.4(2) of the technical requirements within the Technical Specifications.

"*Law*" shall mean any and all constitutions, charters, acts, statutes, laws, ordinances, codes, rules, regulations, orders, consent decrees, specified standards or objective criteria of any Governmental Authority, whether or not contained in any Permit, applicable to all or any portion of the Work or the Contract Documents; any other legislative or administrative actions of the United States of America, the Commonwealth of Massachusetts, any county or municipality having jurisdiction concerning all or any portion of the Work or the Contract Documents, or any other Governmental Authority, applicable to all or any portion of the Work or the Contract Documents; any and all final decrees, judgments or orders of any court applicable to all or any portion of the Work or the Contract Documents; any and all codes of conduct

that must be met in order to perform all or any portion of the Work or the Contract Documents; and any and all applicable design, engineering, construction, building, safety, fire, blasting or electrical codes applicable to all or any portion of the Work or the Contract Documents.

"*Letter of Credit*" has the meaning set forth in Schedule 12.2.

"*Lien*" shall mean any lien, security interest, charge, claim (including any statutory, contractual or other right of any Subcontractor), mortgage, pledge, equitable interest, encumbrance, restriction on transfer, conditional sale or other title retention device or arrangement, transfer for security for the payment of any indebtedness, or other restriction or blemish on the free and full use and ownership of property.

"*LOC Issuer*" has the meaning set forth in Schedule 12.2.

"*LSP*" shall mean a Person licensed as a Licensed Site Professional in the Commonwealth of Massachusetts.

"*Manuals*" has the meaning set forth in Section 9.8.

"*MassDEP*" shall mean the Massachusetts Department of Environmental Protection and any successor agencies thereto

"*MassDOT*" shall mean the Massachusetts Highway Department and any successor agencies thereto

"*Material Handling Guideline*" shall mean the Material Handling Guideline attached hereto as Appendix I-1 to Exhibit I.

"*M.G.L.*" shall mean the Massachusetts General Laws.

"*Milestone*", "*Milestone Schedule*" and "*Milestone Deadline*" shall be as set forth in Exhibit E and incorporated into the Work Schedule.

"*Notice of Readiness for Testing*" shall mean the notice in the form set forth in Schedule 9.2(b).

"*Notice to Proceed*" shall mean a written notice to proceed issued by Owner with respect to all or a portion of the Work, in substantially the form of Schedule 6.2(a).

"*OSHA*" shall mean the United States Occupational Safety and Health Administration and any successor agency thereto.

"*Owner*" shall mean Western Massachusetts Electric Company and, in general, shall mean and refer to Western Massachusetts Electric Company acting herein through its duly authorized agent Northeast Utilities Service Company and their respective successors and permitted assigns.

"*Owner Permits*" shall mean those Permits set forth on Schedule 5.3(b) to be obtained by Owner in accordance with Section 5.3(b).

"*Owner's Representative*" shall mean the individual(s) identified by Owner pursuant to Section 4.2(b) with authority to act on behalf of Owner with respect to the Work.

"Party" shall mean either Contractor or Owner, and "Parties" shall mean both of them.

"Payment Schedule" shall mean the schedule of payments as set forth in Appendix E-1 to Exhibit E.

"PCU Permit" shall mean the post-closure use permit (including the applications and other documentation submitted in connection therewith) issued by MassDEP for the Facility on March 15, 2013 and clarified by a letter issued by MassDEP on August 16, 2013, copies of which are attached as Appendix B-3 hereto, as the same may be amended from time to time.

"PCU On-Site Engineer" shall mean the third party, on-site engineer retained from time to time in accordance with the PCU Permit.

"Performance Consumables" shall mean the consumables (including utilities) required or consumed by Contractor in connection with the Work prior to Final Acceptance.

"Permits" shall mean collectively all approvals, certificates, permits (including the PCU Permit), agreements, orders, consent orders, and licenses as may be required for the execution and completion of the Work or Contractor's performance of its other obligations under the Contract Documents, as required by any Governmental Authority or by Law.

"Person" shall mean a natural person, a corporation, a partnership, a limited liability company, a limited liability partnership or any other entity.

"Pre-existing Hazardous Materials" shall mean Hazardous Materials existing at the Site, excluding any and all Hazardous Materials managed, used, stored, generated and/or otherwise brought onto the Site by Contractor, any Subcontractor and/or any of their respective agents or employees.

"Preliminary Design" shall mean the design for the Project prepared by Contractor in accordance with the Contract Documents that, at a minimum, (a) contains the final site layout for the Project (including the Work relating to the Landfill Modifications); (b) confirms the installed capacity of the Project (including the number and type of PV Modules) relative to such layout; and (c) specifically identifies any and all changes from the Base Design and any further modifications to the Base Design anticipated by Contractor.

"Preliminary Development" shall mean Contractor has achieved the following progress in the development and planning of the Project:

- (a) the Preliminary Design has been submitted to Owner in accordance with the Contract Documents;
- (b) the Parties have established the WBS in accordance with Appendix J-1 to Exhibit J and Contractor has submitted the initial Coordination Schedule specifically identifying all activities for which the WBS is dependent on the performance and/or interface with work outside of Contractor's scope under the Contract Documents;
- (c) Contractor has verified its procurement plan submitted to Owner in response to the RFP, such plan is consistent with the Work Schedule, and Contractor has submitted to Owner a summary (including all available supporting documentation) of proposed Subcontractors, the scope of each Subcontractor, and the integration of subcontracted Work in the WBS;
- (d) Contractor shall have submitted to Owner a draft Excavation Plan that takes into account Permits issued through the date of submission and the final site layout in the Preliminary

- (e) Design, and otherwise compiles with the Contract Documents and Law; Contractor shall have submitted to Owner a draft Construction Equipment Plan that accounts for the Site Restrictions and otherwise compiles with the Contract Documents and Law;
- (f) if required under the Technical Specifications due to impervious area proposed by Contractor, Contractor shall have submitted to Owner a stormwater analysis to demonstrating that acceptable peak flows after Final Acceptance;
- (g) Contractor shall have (i) identified the need for off-Site storage yards (including the requirements of the Equipment Storage Area), laydown staging and/or show-up area(s), and parking area(s); (ii) assigned the function(s) of each of such off-Site areas (including, where applicable, by equipment and materials (including Excess Materials)) and any areas on the Site for such functions (subject to the Site Restrictions); and (iii) assessed and developed a plan for logistical requirements for equipment, materials and supplies (whether just-in-time, storage and/or any other combination and/or method), security, and fencing for the Work; and
- (h) Contractor shall have submitted to Owner a draft of Contractor's Safety Program.

"*Pricing Schedule*" shall mean the rates, charges and methodologies applicable to Changes as set forth in Exhibit G.

"*Project*" shall mean that portion of the Facility designed, equipped and constructed by Contractor through performance and completion of the Work pursuant to the Contract Documents.

"*Proprietary Information*" shall mean business plans, budgets, Intellectual Property, customer contracts and lists, drawings, information (including financial information, technical information, business information and Information), know-how, specifications, sketches, models, samples, tools, computer programming, including object codes and source codes, models, algorithms, customized terminal applications, materials and documents, contained in or communicated through any media, including electronic, written or oral, in whole or in part, either non-public or proprietary in nature, concerning either Party or their respective businesses, marked or identified as proprietary. Proprietary Information shall not include any information or other items listed above in this definition that: (a) are in or become part of the public domain by any means other than the receiving Party breaching its obligations hereunder; (b) can be demonstrated as known to the receiving Party at the time of disclosure by the disclosing Party; (c) are, at any time, disclosed without restriction to the receiving Party by any Third Party reasonably believed by the receiving Party as having the right to disclose such information; or (d) are independently developed by the receiving Party without use of or reference to any Proprietary Information disclosed by the disclosing Party.

"*Prudent Industry Practices*" shall mean good utility practices and those practices, methods, procedures and standards generally prevailing, and as may change from time to time, that are commonly used or applied in the United States of America in the economical and prudent performance of work that is identical or substantially similar to the Work and in the economical and prudent engineering, design, procurement, fabrication, assembly and construction of photovoltaic solar generation facilities similar to the Facility; *provided* that Prudent Industry Practices shall also include any of the practices, methods and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost. Prudent Industry Practices are not intended to be the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in the applicable industry.

"*Punch List Items*" has the meaning set forth in Section 9.4.

"PV" shall mean photovoltaic.

"PV Modules" shall mean PV modules identified in the Technical Specifications (including by manufacturer and model) for installation in the Project.

"Readiness for Testing" shall mean the Project and all components and subsystems thereof have been installed and checked for proper operation, and are otherwise ready, in Contractor's reasonable opinion, for commencement of Acceptance Testing in accordance with the test plan approved by Owner pursuant to Section 9.2(a).

"Ready for Landfill Construction" shall mean Contractor has fully satisfied all prerequisites to commence construction activities at the Site with respect to the Landfill Modifications including:

- (a) the Final Design for that portion of the Project relating the Landfill Modifications has been accepted by Owner in accordance with the Contract Documents;
- (b) the Excavation Plan has been accepted by Owner in accordance with the Contract Documents, and Contractor has completed all prerequisites to the commencement of Excavation activities under the Excavation Plan;
- (c) Contractor has submitted a complete and fully loaded CPM Schedule for that portion of the Work relating to the Landfill Modifications;
- (d) all Contractor Permits for the Landfill Modifications have been issued and remain in full force and effect at that time;
- (e) with respect to Subcontractors performing Work for the Landfill Modifications:
 - (i) Contractor has entered into subcontracts with such Subcontractors that will furnish and/or perform any portion of the Landfill Modifications;
 - (ii) documentation, including copies of all of such subcontracts, have been furnished to Owner in support of such Work furnished by such Subcontractors in accordance with the fully loaded CPM Schedule accepted by Owner, together with reasonable evidence that all such subcontracts remain in full force and effect; and
 - (iii) all Subcontractor personnel performing such Work have been fully identified and integrated in such fully loaded CPM Schedule;
- (f) all field personnel associated with the commencement of the Landfill Modifications have been identified consistent with the fully loaded CPM Schedule accepted by Owner, are immediately available for the Work, and have received appropriate training;
- (g) all reporting mechanisms with respect to construction activities have been fully implemented and are capable of functioning to Owner's satisfaction;
- (h) Contractor shall have provided evidence to Owner of Contractor's submission of Contractor's Safety Program to MassDEP, and Contractor shall have implemented, to Owner's satisfaction, Contractor's Safety Program;
- (i) the Construction Equipment Plan has been accepted by Owner in accordance with the Contract Documents;
- (j) Contractor has flagged aboveground facilities at the Site, installed protective barriers for such facilities, and otherwise fulfilled all conditions to the commencement of construction activities on the Site under the PCU Permit;
- (k) Contractor shall have conducted a pre-construction Site walk-down with the Owner's Representative and the PCU On-Site Engineer with regard to the Work relating to the Landfill Modifications, and Contractor shall have addressed any concerns resulting therefrom to the satisfaction of all participants;
- (l) all insurance coverage (including the naming of the Site Owner as an additional insured) and performance assurance required under Article 12 shall be in full force and effect;

- (m) Contractor has completed the test pitting of the existing access road pursuant to Paragraph 2.4(1)(a) of the technical requirements within the Technical Specifications; and
- (n) Contractor is in full compliance with the Contract Documents, and there are no circumstances at such time that constitute an Event of Default or with the passage of time, the giving of notice, or both, would constitute an Event of Default.

"Ready for PV Construction" shall mean Contractor has fully satisfied all prerequisites to commence all construction activities at the Site including:

- (a) Contractor shall have satisfied all prerequisites to achieve Ready for Landfill Construction;
- (b) the complete Final Design has been accepted by Owner in accordance with the Contract Documents;
- (c) Contractor has submitted a complete and fully loaded CPM Schedule for all Work (including (i) all labor, equipment, materials and supplies necessary to complete the Project, (ii) all Subcontractors that will be retained for the Work and the labor, equipment, materials and/or supplies to be furnished by such Subcontractors; and (iii) a fully integrated Coordination Schedule) which has been accepted by Owner in accordance with the Contract Documents;
- (d) all Contractor Permits have been issued and remain in full force and effect at that time;
- (e) with respect to Subcontractors:
 - (i) Contractor has entered into subcontracts with all Subcontractors that will furnish and/or perform any portion of the Work;
 - (ii) documentation, including copies of all of such subcontracts, have been furnished to Owner in support of the Work furnished by such Subcontractors in accordance with the fully loaded CPM Schedule accepted by Owner, together with reasonable evidence that all such subcontracts remain in full force and effect;
 - (iii) all Subcontractor personnel performing Work have been fully identified and integrated in such fully loaded CPM Schedule; and
 - (iv) Contractor shall have submitted to Owner a complete list of all equipment to be installed in the Project including vendor, model, and quantity, and confirmation of shipment and delivery dates for all equipment (including the PV Modules);
- (f) all field personnel (in addition to those performing Work related to the Landfill Modifications) associated with construction activities have been identified consistent with the fully loaded CPM Schedule accepted by Owner, are immediately available for the Work, and have received appropriate training;
- (g) all reporting mechanisms with respect to construction activities have been fully functioning to Owner's satisfaction;
- (h) Contractor shall have secured all necessary off-Site parking and storage facilities, including the Equipment Storage Area;
- (i) Contractor shall have conducted a pre-construction Site walk-down with the Owner's Representative and the PCU On-Site Engineer with regard to the Work relating to the installation of the PV Modules and related equipment and materials, and Contractor shall have addressed any concerns resulting therefrom to the satisfaction of all participants;
- (j) the methodologies and calculations of Acceptance Testing associated with the Capacity Guarantee has been accepted by Owner in accordance with the Contract Documents;
- (k) Contractor has submitted to Owner a pro-forma Baseline Production estimate and an

- example of the Annual Production Report, each in accordance with Attachment 2 to Appendix A-1 to the Technical Specifications; and
- (l) Contractor is in full compliance with the Contract Documents and the Construction Documents (including Contractor's Safety Program, the Construction Equipment Plan and the Excavation Plan), and there are no circumstances at such time that constitute an Event of Default or with the passage of time, the giving of notice, or both, would constitute an Event of Default.

"Record Documents" shall mean record drawings, record specifications, record product data, record samples, miscellaneous record submittals, and documents for warranties and other security.

"Reporting Period" shall mean a time period of one (1) week, commencing on Sunday, 12:01 am and ending on Saturday at midnight.

"RFP" shall mean Request for Proposal - Cottage Street Solar Project dated December 3, 2012, including all addenda issued thereto by Owner.

"Safety and Health Representative" shall mean the Person designated by Contractor as the safety and health representative pursuant to Schedule 5.5.

"Sand Drainage Layer" shall mean the twelve (12) inches (approximate) of a sand drainage layer covering the Landfill Liner and beneath the Vegetative Support Layer.

"Site" shall mean those parcels of real estate and rights of way further described on Exhibit H for the location of the Facility as well as any and all other property directly or indirectly impacted by such Work, in each case as such locations may be modified and/or otherwise changed in connection with the terms and conditions of the Permits or of the Contract Documents.

"Site Owner" shall mean Cottage Developers, LLP, a Massachusetts limited liability partnership.

"Site Plan" shall mean the site plan entitled "WMECO Cottage Street Springfield Massachusetts Cottage Street Landfill Solar Project Site Plan" dated September 9, 2013, prepared by Weston & Sampson and included in Appendix A-3.

"Site Restrictions" shall mean the restrictions, conditions and other limitations affecting the Site as set forth in Exhibit B.

"Subcontractor" shall mean any subcontractor, licensor or supplier at any tier who furnishes (or is required to furnish) Information, materials, supplies, equipment, facilities and/or services to Contractor to meet Contractor's obligations under the Contract Documents.

"Substantial Completion" shall mean (a) all Site preparation Work (including the Landfill Modifications) has been fully completed in accordance with the Site Plan and the other Contract Documents; (b) the Facility has achieved Readiness for Testing; (c) the Project has successfully completed all Acceptance Tests required for the Project to be placed in full commercial operation in compliance with all Permits and to be permanently interconnected with Owner's system; (d) Contractor has installed all equipment (including the required PV Modules) in accordance with the provisions of this Agreement and completed all of the other Work necessary for the Project to be placed in full commercial operation in compliance with all Permits and to perform in accordance with the requirements of the Technical Specifications; (e) Contractor has submitted to Owner the Punch List Items and Owner has verified the same; (f) any components of the Facility damaged or broken by Contractor and/or any

Subcontractor during delivery, storage, installation and/or functional testing have been fully repaired or replaced to Owner's satisfaction; (g) Contractor has submitted all red-line drawings (for use in the development of As-Built Drawings) and Manuals and completed all training required under the Contract Documents; and (h) the portions of the Site affected by the Work have been fully restored as required under this Agreement, except for Punch List Items, and Contractor has disposed of all plant, ancillary facilities, buildings, rubbish waste, unused materials and other equipment and materials belonging to it or used in the performance of the Work, except for equipment required by Contractor for the completion of Punch List Items.

"*Substantial Completion Deadline*" shall mean the date specified in the Milestone Schedule for achieving Substantial Completion, as such date may be modified, if at all, pursuant to a Change Order.

"*Technical Specifications*" shall mean the information, engineering data, job instructions, plans, drawings (including Contract Drawings) and conditions, including civil, electrical and mechanical specifications describing the Work, set forth in Exhibit A.

"*Third Party*" shall mean any Person other than the Parties or any of their respective Affiliates.

"*U.S.C.*" means the United States Code.

"*Vegetative Support Layer*" shall mean the existing top nine (9) to twelve (12) inch (approximate) vegetative support and topsoil layer of the Landfill Cap.

"*Warranty Period*" shall mean the period that commences with the achievement of Substantial Completion and expires five (5) years after Final Acceptance; *provided* that such period shall be extended in accordance with Section 11.5.

"*Weekly Schedule Update Meeting*" shall mean the weekly meeting contemplated under Section 6.3(b).

"*Weekly Report*" shall mean a weekly report substantially in the form of Appendix J-2.

"*Witness Point*" shall mean a step in the construction, fabrication, examination and/or installation process where Contractor must contact Owner and afford Owner a reasonable opportunity for Owner to witness, examine and/or otherwise inspect such Work, as identified in Exhibit F.

"*Work*" shall mean the term used to describe collectively all of the equipment, materials and services supplied or required to be supplied, and duties, obligations, and responsibilities undertaken or required to be undertaken by or on behalf of Contractor pursuant to the Contract Documents, including those related to design, architectural, technical, engineering, procurement, supply, transportation, storage and/or installation of materials and equipment, Site preparation (including the Landfill Modifications, temporary access roads, fencing, and erosion and sediment control measures), construction, commissioning, supervision or other related services, all in accordance with the Contract Documents, including as set forth in Exhibit A.

"*Work Breakdown Structure (WBS)*" shall mean Contractor's written plan for organizing, scheduling, and monitoring the Work and its progress (as developed in accordance with Appendix J-1); a hierarchical grouping of Work elements in which each descending level represents an increasingly detailed definition of a Work activity, task, or component; *provided* that if the WBS and any requirement(s) of this Agreement are inconsistent with one another in any respect, the requirements of this Agreement shall govern.

"*Work Protocols*" shall mean Owner's work protocols for the Facility, in the form of Exhibit I, as the same may be amended from time to time by Owner effective upon notice to Contractor.

"*Work Schedule*" shall mean the schedule for completion of the Work, a copy of which is attached hereto as Exhibit J, as further developed and updated by the Parties throughout the Work.

1.2. Entire Agreement; Interpretation.

(a) Entire Agreement. The Contract Documents contain the entire agreement between the Parties pertaining to the Work and supersede any and all prior oral or written agreements, terms, understandings, conditions, proposals, negotiations and representations with respect to such subject matter. Without limiting the generality of the foregoing, this Agreement supersedes the terms and conditions set forth in the RFP, and except for the provisions hereof referencing the RFP, the RFP shall have no further force and effect.

(b) Amendments. Other than under a Directed Change Order or under an Agreed Change Order resulting from Contractor's automatic acceptance of Owner's Change Order Request under the provisions of Section 8.8, no amendments or modifications of the Contract Documents shall be valid unless evidenced in writing, and signed and delivered by duly authorized officers or agents of Owner and Contractor.

(c) Contract Documents. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. Insofar as possible, all terms and conditions of the Contract Documents shall be construed and interpreted consistently. To the extent any activity or requirement is not specifically called out, but is necessary in Owner's opinion to the performance of the Work to achieve Final Acceptance, such activity or requirement shall be deemed to have been intended by the Parties and called for just as if it had been expressly set forth at length in the Contract Documents. Capitalized terms used in the Contract Documents shall have the meaning given in this Agreement unless otherwise specified in the applicable Contract Document(s). In any case of inconsistency, conflict or ambiguity between or among the Contract Documents (including any exhibits, schedules and/or appendices thereto), the order of precedence shall be as follows, except as otherwise designated in advance and in writing by Owner:

- (i) the body of this Agreement (excluding the exhibits and schedules);
- (ii) the Technical Specifications (including drawings (including Contract Drawings) and designs); in the absence of written direction from Owner to the contrary, the more/most stringent requirement of the Technical Specifications shall be deemed to apply in the event of any inconsistency, conflict, or ambiguity between or among two or more requirements therein;
- (iii) Pricing Schedule (together with any and all attachments thereto);
- (iv) all other exhibits (together with any and all attachments thereto) to this Agreement;
- (v) the schedules (together with any and all attachments thereto) to this Agreement;
- (vi) the appendices (together with any and all attachments thereto) to this Agreement; and
- (vii) any and all documents furnished or issued by Owner to Contractor in accordance with

this Agreement.

The provisions of Change Orders and other amendments to the Contract Documents shall have the priority of the Contract Documents to which they relate. Notwithstanding anything to the contrary in the foregoing, Owner's interpretation shall prevail in the event of any inconsistencies, conflict or ambiguity within, between or among the Contract Documents.

(d) Interpretation. Except where otherwise expressly provided or unless the context otherwise necessarily requires in the Contract Documents: (i) reference to a given Law shall mean such Law in effect as amended or modified as of the Effective Date, or on the date on which the reference is made, or performance and/or compliance is required; (ii) reference to a given agreement or instrument is a reference to that agreement or instrument as originally executed, and as modified, amended, supplemented and restated through the date as of which reference is made to that agreement or instrument or performance is required under that agreement or instrument; (iii) "include(s)", "including" or any other variant thereof means "include(s), without limitation" or "including, without limitation," or any other variant thereof as the context requires; (iv) the phrase "and/or" shall be deemed to mean the words both preceding and following such phrase, or either of them; (v) reference to a Person includes its heirs, executors, administrators, successors and permitted assigns; (vi) any pronoun includes the corresponding masculine, feminine or neuter forms; and (vii) reference to a given article, section exhibit, schedule, appendix or attachment is reference to an article, section, exhibit, schedule, appendix or attachment of this Agreement, unless otherwise specified. The words "will" and "shall" are used interchangeably throughout the Contract Documents; the use of either connotes a mandatory requirement; and the use of one or the other will not mean a different degree of right or obligation for either Party. Except as set forth in the captions for Sections 5.7 and 5.8, the headings and captions for the articles and sections contained in the Contract Documents have been inserted for convenience only and form no part of the Contract Documents and shall not be deemed to affect the meaning or construction of any of the terms or conditions of the Contract Documents.

(e) Days. Unless otherwise indicated, whenever this Agreement refers to a number of days, such number shall refer to calendar days. Where the Contract Document require performance (including the submission of documents, the making of an objection and/or reporting any occurrence) and/or any other actions within and/or by a specific period measured by days or Business Days, such period shall be deemed to expire on at 5:00 pm (New York time) for the purpose of determining compliance therewith.

(f) Non-waiver. Failure of Owner to exercise any of its rights under the Contract Documents will not excuse Contractor from compliance with the terms and conditions of such Contract Documents, nor constitute a waiver of, or otherwise prejudice any rights or remedies of Owner.

(g) Writing. No acknowledgment, consent, approval, direction or other authorization required or permitted under the Contract Documents from Owner shall be effective for any purpose unless such acknowledgment, consent, approval, direction or other authorization is in writing and signed by Owner or the Owner's Representative, as the context requires, and delivered to Contractor in accordance with Section 20.2.

1.3. No Reliance. Whenever Owner or the Owner's Representative performs inspections or provides its approval or authorization for Contractor's proposed action, such inspections, approval or authorization represent only the review, concurrence or consent of Owner or the Owner's Representative, as applicable, and shall neither relieve Contractor of its obligation to comply fully with the terms and conditions of the Contract Documents nor substitute Owner's or the Owner's Representative's judgment, as applicable, for that of Contractor concerning the propriety, usefulness or suitability of the matter subject to inspections or such action, as applicable, in fulfilling Contractor's obligations concerning the Work.

ARTICLE 2. SERVICES BY CONTRACTOR

2.1. Contractor's Scope. Contractor shall perform and complete the Work, including furnishing all equipment, materials, supplies, labor, general management and management support, physical and human resources, coordination, and project management, and otherwise conduct operations and perform services of whatsoever kind or nature (including design and engineering and use of any temporary equipment, facilities and procedures) as may be required by the Contract Documents or reasonably necessary to achieve Final Acceptance and otherwise comply with all requirements of the Contract Documents. Contractor shall be solely responsible for all construction means, methods, techniques and procedures in connection with the performance of the Work and for overall control of the construction activities on the Site within the requirements of the Contract Documents from the Effective Date through Final Acceptance of the Work; *provided* that Contractor shall not commence (a) any Work at the Site (other than survey work, flagging aboveground facilities, and installing protective barriers) with respect to the Landfill Modifications unless and until Contractor has achieved Ready for Landfill Construction; or (b) any other construction activities at the Site unless and until Contractor has achieved Ready for PV Construction.

2.2. Contractor's EPC Responsibility. Contractor shall perform the Work on an EPC basis. In regard thereto, notwithstanding any statements made or information furnished by or on behalf of Owner, Contractor represents and acknowledges that:

(a) Review of Site Restrictions. Contractor has examined and reviewed the Site Restrictions and fully understands and appreciates the limitations on activities at the Site. The Fixed Contract Price includes Contractor's assessment of the activities and time required to comply with the Site Restrictions, and Contractor assumes and bears all risks associated with completion of the Work in accordance with all requirements of the Contract Documents, including the Site Restrictions, within the time specified in the Work Schedule and for the Fixed Contract Price. Contractor shall not be entitled to any relief whatsoever in the form of a Change or otherwise as a result of compliance with the Site Restrictions.

(b) Review of Site Conditions. Contractor has had the opportunity to examine and review (i) the Site (including the "Limit of Constriction" depicted on the Site Plan); (ii) the Environment at the Site, including climatic conditions, traffic conditions, wetland buffer areas, topography, and Owner-provided information; (iii) existing facilities and structures; (iv) existing and proposed obstructions, roads, access roads, monitoring wells, landfill gas management equipment, and rights-of-way; and (v) lay-down areas and any other Site conditions (including the limited availability of on-Site lay-down, parking and storage areas). Subject to a Change Order issued under Sections 8.4 and/or 8.5, Contractor accepts such conditions and fully assumes the obligation to complete the Work in accordance with all requirements of the Contract Documents within the time specified in the Work Schedule and for the Fixed Contract Price.

(c) Review of Information. Without limiting the other provision of this Section 2.2, Contractor has had the opportunity to examine and review such documentation relating to the Site as may be known and reasonably available to Contractor pertaining to technical, engineering, design, operations, maintenance, and quality assurance; environmental management, waste quantity, and Site characterization; safety conscious work environment and other Owner programs, processes and procedures; and other information and data associated with the present status and condition of the Site and of the Facility. Contractor represents and warrants to Owner that Contractor is not aware of any defects, errors or omissions and/or other flaws in any such information that could result in the issuance of a Change Order; and Contractor accepts the obligation to complete the Work in accordance with all

requirements of the Contract Documents within the time specified in the Work Schedule and for the Fixed Contract Price.

(d) Investigations. Contractor has made all investigations essential to a full understanding of the Work and the difficulties that Contractor will or may encounter in the performance thereof, including requirements of Law, Permits, Site Restrictions, and all other legal and regulatory processes of every kind and nature related to the Work.

(e) Review of Consent and Release. Contractor has reviewed the Consent and Release and has planned the Work to satisfy, in all respects, the conditions to the release of Owner set forth in Section 5 of the Consent and Release. In connection with the Work, including the performance of the Landfill Modifications, Contractor shall take all actions required for Owner to receive the full benefit of such release.

2.3. Design Services; Deliverables; Ownership and Use; As-Built Drawings.

(a) Design Services. Contractor shall (i) perform and/or cause the performance of all design and engineering services required by the Contract Document to be performed by Contractor as part of the Work; and (ii) prepare and/or confirm all designs and drawings, including the Construction Documents, as part of the Work, in all cases in accordance with the terms and conditions of the Contract Documents, Prudent Industry Practices and Law. All engineering performed as part of the Work shall comply with applicable laws and regulations of the Commonwealth of Massachusetts, and any designs and drawings associated with such engineering shall be signed and sealed by a licensed professional engineer of the appropriate discipline licensed in the state and/or commonwealth where the Work is performed. Contractor shall conduct installation inspections and provide Owner with the results thereof (including copies of all test results and photographs (or similar documentary evidence)), all in accordance with the Technical Specifications. Contractor shall be solely responsible for any and all design defects in designs prepared by and/or on behalf of Contractor.

(b) Deliverables. For design documents produced by and/or on behalf of Contractor, Contractor shall submit complete and accurate design documents for review and acceptance by Owner prior to Contractor starting Work affected by such documents. The Parties shall reasonably coordinate the review and submission process to allow sufficient time for such review and acceptance process; *provided* that Contractor shall have sole responsibility with respect to the scheduling submissions to ensure adequate time for review and acceptance, in all cases without any adverse effect on the Work Schedule. Without limiting the generality of the foregoing, Contractor shall provide Owner with no less than (i) five (5) Business Days to review and comment on Preliminary Design submissions; and (ii) three (3) Business Days to review and comment on Final Design submissions, in each case allowing sufficient time under the Work Schedule for corrections and resubmissions for acceptance. In the event Owner withholds acceptance of any design documents, Contractor shall promptly take such corrective action as will cause such acceptance to occur and shall submit revised design documents to Owner. Such procedure shall be repeated as necessary until Owner accepts such design documents. Acceptance shall be deemed to have been achieved as of the date upon which Owner acknowledges acceptance in writing.

(c) Drawings. Contractor shall maintain a complete and currently marked set of the Contract Drawings at the Site, and shall provide Owner access to such Contract Drawings upon request. All drawings with respect to the Work shall conform to Owner's minimum requirements set forth in Schedule 2.3(c) and shall be produced in accordance with acceptable industry practices (including ANSI standards). In addition, paper reproductions (sepia acceptable) of original design documents shall be provided to Owner upon Owner's reasonable request.

(d) Owner's Approval. All materials, equipment and/or supplies shall conform to the details shown on drawings approved by Owner. Once design documents have been approved by Owner, Contractor shall not make any changes, revisions and/or other modifications in such design documents without the prior written approval of Owner, which may not be unreasonably withheld; *provided* that after acceptance thereof by Owner, Contractor shall not change, revise and/or otherwise modify the Final Design without the prior written approval of Owner (which may be in the form of an Agreed Change Order) which may be withheld in Owner's sole and absolute discretion. Contractor shall immediately notify Owner whenever design documents, any other Construction Documents and/or the Technical Specifications are found in Contractor's view to be unclear, incorrect or conflicting. Contractor shall not undertake any Work based upon such documents until such discrepancy has been resolved by Owner and Owner's decision in such regard shall be binding upon the Parties and upon any surety and/or issuer of any letter of credit and/or other performance assurance.

(e) Ownership and Use.

(i) Ownership. Owner shall have unrestricted and non-exclusive ownership rights to any and all design documents (including the Base Design, Preliminary Designs and the Final Design) and other Information; *provided* that Contractor shall retain title to any Intellectual Property of Contractor that is or may be the subject of one or more patents, copyrights, trademarks, service marks, proprietary interests and/or data rights. Contractor shall clearly mark or otherwise identify (in writing) all of such Intellectual Property at the time of submission to Owner or within a reasonable time thereafter (but in no event more than five (5) Business Days after each such submission). Contractor hereby irrevocably grants to Owner, in perpetuity, a non-exclusive right and license to use all of such Intellectual Property in connection with the Contract Documents, including the right to (1) share such Intellectual Property with others involved in the control, operation, management, monitoring and/or maintenance of Owner's electric distribution system, in whole or in part; (2) upon request of any applicable Governmental Authority, provide such Intellectual Property to any other Governmental Authority entitled to receive such Intellectual Property; (3) share such Intellectual Property with any contractor with respect to the Facility in the event of a termination of this Agreement pursuant to Article 13; and (4) transfer such license to any other owner of the Facility and its successors in interest. Owner shall not be required to pay any fee, royalty or other compensation to Contractor, any Subcontractor, or any of their respective Affiliates for such license.

(ii) Provision of Information. Contractor shall provide to Owner, without cost or charge whatsoever, any and all Information that could be used in connection with the construction, assembly, installation, control, operation, management, monitoring, maintenance and/or repair of the Work or the Facility and to allow Owner to satisfy any order of any Governmental Authority, including any and all updates, upgrades or other enhancements to any of such Information, and the perpetual license granted under Section 2.3(e)(i) shall extend to such updates, upgrades or other enhancements.

(iii) Title. Except for Intellectual Property of Contractor addressed in Section 2.3(e)(i), all Information shall be the property of Owner. Title to all Information (other than such Intellectual Property) shall pass to Owner upon submission or other delivery by Contractor to Owner. Contractor may retain, for its records only, copies of any Information furnished to Owner, and unless otherwise agreed to by the Parties, shall treat such Information in accordance with the requirements applicable to confidential information in accordance with (1) the requirements applicable to Owner's Proprietary Information whether or not each such document (or other embodiment of such Information) is so identified and (2) the record retention requirements described in Section 7.3(f).

(iv) Contractor's Rights. Contractor represents and warrants that it has the full legal right, title and ownership of the Information furnished or to be furnished pursuant to the Contract Documents.

(f) Accuracy. Contractor shall be responsible for the completeness and accuracy of design documents, drawings, specifications, reports and other documents prepared or compiled by, or on behalf of, Contractor in connection with the Work. Without limiting any and all other rights and remedies available to Owner at law and/or in equity and without limiting Contractor's indemnity set forth in Section 15.1, any and all cost necessary to correct matters attributable to such errors or omissions shall be covered by Contractor's indemnity set forth in Section 15.1. By such approval, Owner in no way assumes any part of Contractor's responsibility for acceptable design documents or for the satisfactory performance of resulting Work furnished in accordance with design documents.

(g) As-Built Drawings.

(i) Preparation. Contractor shall begin the process of preparing As-Built Drawings promptly upon Owner's acceptance of the Final Design. Contractor shall comply with Owner's requirements with respect to all As-Built Drawings in connection with the Work as set forth in Schedule 2.3(c), and with all of Owner's standards with respect to engineering and design services.

(ii) Delays. Any delays in completing and/or submitting the required As-Built Drawings to Owner for approval that are caused by or attributable to any Subcontractor shall be the responsibility of Contractor, and Contractor shall be solely responsible to Owner for the timeliness, completeness and accuracy of the drawings with respect to the Work and As-Built Drawings prepared by any Subcontractor. Contractor shall immediately notify Owner and the Owner's Representative if Contractor becomes aware that any As-Built Drawings will not be ready for submission by the due date thereof.

(iii) Corrections. If any As-Built Drawings submitted by Contractor to Owner hereunder are deemed unacceptable for any reason by Owner and/or by the Owner's Representative, then Contractor, at no cost to Owner, shall promptly correct such As-Built Drawings as directed by Owner and/or the Owner's Representative, and shall re-submit such As-Built Drawings to Owner for approval.

2.4. Material Handling and Storage.

(a) Identified Items. Contractor shall procure, acquire and otherwise furnish, at Contractor's sole cost and expense, all equipment, materials and supplies required to perform and complete the Work in accordance with the terms and conditions of the Contract Documents. To the extent that in its response to the RFP (including responses to questions posed by Owner), Contractor identified equipment, materials and/or supplies that Contractor intended to procure, acquire and/or otherwise furnish in connection with the Work, Contractor shall not use and/or install any alternate or substitute equipment, materials and/or supplies from those so identified, in each case without the prior written approval of Owner, which shall not be unreasonably withheld; *provided* that (i) if Owner has accepted the Final Design pursuant to the Contract Documents, then Owner may withhold such approval in Owner's sole and absolute discretion; and (ii) Contractor shall not change the manufacturer, model and/or wattage of the PV Module without the prior written approval of Owner which may withheld in Owner's sole and absolute discretion.

(b) Care. Contractor shall exercise reasonable due care in the handling of equipment, materials and supplies associated with the Work.

(c) Additional Site Usage. Contractor may use, in compliance with the Contract Documents (including the Coordination Schedule), areas outside of the Landfill Cap as identified in the Site Plan as the "Limit of Construction Staging Area" (see Contract Drawing C-9 of the Site Plan) for vehicles and equipment, laydown, storage, assembly, and temporary office requirements, in each case as identified to, and approved in writing by, the Owner's Representative. Contractor shall be responsible, at its sole cost and expense, for acquiring any necessary rights for additional off-Site parking, laydown and/or storage area(s) (including any off-Site Equipment Storage Area), each in the vicinity of (but not on) the Site and otherwise in accordance with the terms and conditions of the Contract Documents. Contractor shall not allow any personnel of Contractor and/or any Subcontractor to park on any public streets. Contractor shall provide, at its sole cost and expense, reasonable security and safety measures to protect adequately such parking, laydown and/or storage area(s) and field offices, and the materials, equipment and supplies stored thereon. Contractor shall keep the Owner's Representative reasonably apprised of Contractor's arrangements in such regard, and Contractor agrees to indemnify the Indemnified Persons in accordance with Section 15.1 with respect to any and all claims that may arise from any of such arrangements.

2.5. Performance Consumables.

(a) Consumables. Contractor shall provide, at its sole cost and expense, Performance Consumables.

(b) Equipment. Contractor shall provide for any necessary disassembly and reassembly and all other items necessary and normal to complete the Work, including all necessary construction tools and equipment, protective fencing, scaffolding, temporary structures, property of employees and any other similar property, as well as all process fluids and chemical charges. Contractor shall solely bear all costs and expenses associated with the furnishing, replacement, repair or loss of any such tools and equipment. Contractor shall prepare and submit to Owner as a shop drawing a Construction Equipment Plan for Owner approval, in Owner's sole and absolute discretion. The Construction Equipment Plan shall include all vehicles and equipment that Contractor and/or any Subcontractor will use to perform Work on, and to deliver materials to, the Site. The Construction Equipment Plan shall include detailed information on each equipment and vehicle (including specifications), the proposed use of each, and the anticipated loading of each. The maximum loading calculations also shall consider the anticipated loads carried by each vehicle. The Construction Equipment Plan also shall address the operation of vehicles and equipment on the Site including compliance with the requirements of the PCU Permit (including the

instructions to be given to operators pursuant to the PCU Permit) and the Site Restrictions. Contractor shall submit to Owner (i) a draft Construction Equipment Plan as a condition to achieving Preliminary Development; and (ii) the final Construction Equipment Plan for Owner's approval (which approval is a condition to achieving Ready for Landfill Construction). In the event Owner withholds approval of the Construction Equipment Plan, Contractor shall promptly make such revisions to address the concerns expressed by Owner in a manner that preserves the Work Schedule. Contractor shall not allow any construction vehicles and equipment on the Site until Owner approves the Construction Equipment Plan. Owner's approval of the Construction Equipment Plan shall not relieve Contractor of its obligation to comply fully with the terms and conditions of the Contract Documents and applicable Law, nor substitute Owner's judgment for that of Contractor concerning the propriety, usefulness or suitability of vehicles and/or equipment. Once Owner approves the Construction Equipment Plan, Contractor shall not make any changes, revisions and/or other modifications to the Construction Equipment Plan without the prior written approval of Owner (which may be in the form of an Agreed Change Order), which may be withheld in Owner's sole and absolute discretion.

2.6. Site.

(a) Site Preparation. Contractor, at Contractor's sole cost and expense, shall provide the labor, equipment, and material necessary to perform the Landfill Modifications and otherwise prepare the Site for the installation and maintenance of the Project in accordance with the Contract Documents, including the Technical Specifications, the Construction Drawings, and the Site Plan. Contractor shall perform such Work in full and strict compliance with all Law, Permits (including the PCU Permit), the Consent and Release, and Contract Documents, including the Technical Specifications and the Site Restrictions. Without limiting the generality of the foregoing, Contractor shall use an "Authorized Contractor" (as defined in the Consent and Release) to perform the Landfill Modifications, and if the Consent and Release requires the Site Owner's approval of such Authorized Contractor, then Contractor shall immediately notify the Owner's Representative of such requirement and shall coordinate the approval process with the Owner's Representative. If Contractor requires additional soil and/or other clean fill from outside of the Site in connection with such Site preparation (including for access roads) or otherwise in connection with the Work, Contractor shall provide, reasonably in advance of its proposed use, the Owner's Representative with documentation regarding the source and quality of such soil and/or fill (including analytical data verifying the absence of Hazardous Materials and other appropriate certifications of cleanliness). If the Owner's Representative expresses concern regarding such quality and/or analytical data, Contractor shall identify and use another source of such materials. At the time of delivery, Contractor shall supply documentation verifying the quality of all soil and/or clean fill brought on-Site consistent with that previously submitted to the Owner's Representative. Notwithstanding the issuance of the applicable Notice to Proceed, site preparation construction in affected areas shall not proceed until Contractor has received all necessary approvals regarding such areas from any relevant Governmental Authorities, and Contractor shall not be entitled to any relief (schedule, economic or otherwise) in the form of a Change or otherwise resulting from, or relating to, such approval process and any related delays.

(b) Security. In addition to its fencing obligations under Paragraph 2.4 of the technical requirements within the Technical Specifications, Contractor also shall provide, at its sole cost and expense, reasonable security measures to adequately protect the public, the Site and the materials, equipment and supplies stored thereon during the Work. Without limiting the generality of the foregoing, Contractor shall provide barriers and/or security, as appropriate, to provide adequate public safety, to control unauthorized use of and access to the Site and to ensure the protection of all materials, equipment, supplies and the Work from theft, vandalism, fire, and all other damage and loss. For security purposes, Contractor shall not leave the fencing at the Cottage Street entrance of the Site unsecured overnight. Contractor shall secure the Site at the end of each workday by means of temporary

fencing and/or twenty-four (24) hour manned security. Contractor shall comply with the security requirements, if established, of Owner and/or any other contractor of Owner regarding guard service, registration of personnel and vehicles, and use of designated construction gates.

(c) Traffic Control. Owner shall be responsible for the development and preparation of all traffic safety and control plans and procedures required in connection with the Work in accordance with Law, the Work Protocols and otherwise to maintain traffic safety and control. Contractor specifically assumes the full and sole obligation and responsibility to implement and comply with all such traffic safety and control plans and procedures developed for the Work, irrespective of any changes or other modifications made or imposed with respect to such plans and procedures (including permissible hours of operation), regardless of whether the same arise or result from any acts or omissions of Contractor and/or its Subcontractors. Contractor shall keep the Owner's Representative fully apprised of such traffic and safety related plans in the Weekly Reports submitted pursuant to Appendix J-1 to Exhibit J; *provided* that Contractor shall immediately notify Owner in writing of any and all modifications (proposed or implemented) thereto, including permissible hours of operation.

(d) Access. Contractor shall coordinate all access to the Site in advance with the Owner's Representative. Contractor shall comply with all Site Restrictions.

(e) Disruption. Contractor shall be responsible, at Contractor's sole cost and expense, for any disruption of services furnished to, impairment of access used by, and/or temporary relocation of, any Persons related to the Work. Contractor shall immediately report any such interruption, suspected or actual, to the Owner's Representative, followed by a written report of the incident and proposed remediation within one (1) Business Day after the event.

(f) Restoration. Contractor shall promptly repair and restore all property after completion of that portion of the Work affecting the Site in all cases in accordance with the Contract Documents, including the Site Restrictions and the requirements of all Permits and the Technical Specifications (including the Site Plan). Contractor shall protect all survey monuments located on the Site and shall immediately notify the Owner's Representative of any damage to survey caps, in which case the Parties shall coordinate the repair of such damage at Contractor's sole cost and expense.

(g) Clean-up. Contractor shall supply manpower and equipment required for general Site clean-up operations each day (or for continuous operations, after the completion of such Work), and Contractor shall keep the Site and all work areas in a neat, clean and safe condition and reasonably free from Contractor's waste materials and rubbish during the performance of the Work. Upon completion of any portion of the Work, Contractor shall promptly remove all of its equipment, temporary structures, waste and surplus construction and other materials and ancillary facilities not to be used at or near the same location during later stages of the Work.

2.7. Excavation; Excess Materials.

(a) Excavation Plan. Contractor shall prepare and submit to Owner an Excavation Plan for Owner approval, in Owner's sole and absolute discretion. The Excavation Plan shall address any proposed or required Excavation on the Site, including the compliance with the restrictions on Excavation in the Landfill Cap and the precharacterization, storage, handling, transportation, reuse or disposal of Excess Material, including any Pre-existing Hazardous Materials. Schedule 2.7 contains the minimum requirements of the Excavation Plan. Contractor shall submit to Owner (i) a draft Excavation Plan as a condition to achieving Preliminary Development; and (ii) the final Excavation Plan for Owner's approval (which approval is a condition to achieving Ready for Landfill Construction) and at least five (5) Business Days before Contractor intends to conduct any Excavation activities at the Site. In the

event Owner withholds approval of the Excavation Plan, Contractor shall promptly make such revisions to address the concerns expressed by Owner in a manner that preserves the Work Schedule. Owner's approval of the Excavation Plan shall not relieve Contractor of its obligation to comply fully with the terms and conditions of the Contract Documents and applicable Law (including the PCU Permit), nor substitute Owner's judgment for that of Contractor concerning the propriety, usefulness or suitability of Excavation planning. Once Owner approves the Excavation Plan, Contractor shall not make any changes, revisions and/or other modifications to the Excavation Plan without the prior written approval of Owner (which may be in the form of an Agreed Change Order), which may be withheld in Owner's sole and absolute discretion.

(b) Underground Conduit Installation. Without limiting the generality of Section 2.7(a), the Excavation Plan shall include a detailed plan as to where and how the installation of the conduit under the access road will be performed. Contractor's installation of underground conduit shall be a Hold Point.

(c) Excavation Activities. Contractor shall not Excavate any portion of the Site under any circumstances until (i) Owner has approved the Excavation Plan, and (ii) the achievement of Ready for Landfill Construction, including Owner's acceptance of that portion of the Final Design relating to the Landfill Modifications and Contractor's implementation, to Owner's satisfaction, of the approved Excavation Plan and Contractor's Safety Program. Contractor shall not commence any Excavation activities without first notifying Owner in compliance with the Excavation Plan and the Work Protocols, and initial Excavation in the portion of the Site covered by the Landfill Cap shall be a Hold Point, with all remaining Excavation (including initial vehicle use and stockpiling on the Landfill Cap) constituting Witness Points. Contractor shall perform all Excavation activities in full compliance with the Excavation Plan approved by Owner and the requirements of the other Contract Documents (including the Construction Equipment Plan), Governmental Authorities, the Permits and the Work Protocols (including storage, handling, transport, reuse and disposal requirements).

(d) Compliance. Notwithstanding anything in this Section 2.7 or elsewhere in the Contract Documents, Contractor shall not perform and/or permit any Excavation activities on the Site other than the Anticipated Excavation Activities. Without limiting the generality of the foregoing and in no way implying and/or otherwise creating any right in favor of, and/or other basis for a Claim by, Contractor, any Change Order Request by Contractor with respect to any Excavation of the Site other than the Anticipated Excavation Activities shall include a detailed plan with respect to Contractor's compliance with the PCU Permit and the Site Restrictions and the relevant aspects of the Excavation Plan; and any Agreed Change Order issued as a result of such Change Order Request shall not only require full compliance by Contractor and its Subcontractors with the Site Restrictions and an amended Excavation Plan in a manner acceptable to Owner in its sole and absolute discretion, but also such Agreed Change Order shall not provide Contractor any relief (schedule, economic or otherwise) in any manner whatsoever resulting from, or relating to, such additional Excavation.

(e) Spotter. Contractor shall designate a qualified Person (a "spotter") who shall be present at all times at the areas subject to Excavation activities in the Landfill Cap. Such spotter shall be dedicated to visual inspection of the Excavation area to ensure protection of the Landfill Cap (including avoiding any contact with the Landfill Liner and/or the penetration of the Sand Drainage Layer except to the extent contemplated in connection with the Landfill Gas System Modifications and the Landfill Stormwater System Improvements), and compliance with the Site Restrictions.

(f) Excess Material. The Fixed Contract Price includes the cost of precharacterizing and the on-Site and off-Site storing, handling, transportation, handling, reuse and/or disposal of all Excess Material, including Pre-existing Hazardous Materials. Contractor shall comply with the PCU Permit and all Site Restrictions applicable to Excess Materials. Without limiting the generality of the foregoing,

Excess Material may only be stored on the Site in accordance with applicable Law, Section 5.4, the Site Restrictions, the Work Protocols and the other applicable provisions of the Contract Documents. Any Excess Materials temporarily stored on the Landfill Cap shall be removed at the end of each work day. Notwithstanding anything in the Contract Documents, Contractor shall not remove from the Site any Excess Material, including any Pre-existing Hazardous Materials, except after prior written notice to, and written authorization from, Owner.

(g) Existing Facilities Damage. If any of the following (collectively, "*Existing Facilities Damage*") shall occur as a result of and/or in connection with the Work (other than as required to perform the Landfill Gas System Modifications or the Landfill Stormwater System Improvements in accordance with this Agreement, including the PCU Permit and the Technical Specifications),

- (i) the Sand Drainage Layer and/or the Landfill Liner is damaged or breached;
- (ii) any gas well and/or other gas collection and/or management system equipment at the Site is damaged, destroyed and/or otherwise rendered inaccessible and/or unusable for its intended purpose; and/or
- (iii) the stormwater management system equipment (including control structures) within the Landfill Cap is damaged or breached,

then Contractor shall immediately initiate applicable provisions in Contractor's Safety Program, cease all Work in the affected area of the Site, and contact the Owner's Representative. Owner shall be the primary interface with the Site Owner, the Landfill Operator and/or any Governmental Authority with regard to any Existing Facilities Damage. Accordingly, unless authorized by the Owner's Representative in writing, Contractor shall not contact the Site Owner, the Landfill Operator and/or any Governmental Authority regarding any Existing Facilities Damage and shall immediately notify the Owner's Representative of any inquiry or other communication from any of such Persons in that regard. Contractor shall coordinate repair of the Existing Facilities Damage with the Owner's Representative. Any repair, replacement and/or if applicable, relocation of the Existing Facilities Damage shall be subject to any required Governmental Authority approval and subject to approval by Owner. Work in the affected area of the Site shall not resume until authorized by the Owner's Representative. Contractor shall be solely responsible for all costs and expenses to repair, replace and/or relocate the Existing Facilities Damage and all associated components of the Landfill Cap damaged in connection with the Work. Contractor shall not be entitled to any relief (schedule, economic or otherwise) in any manner whatsoever resulting from, or relating to, repair replacement and/or relocation of the Existing Facilities Damage and associated components of the Landfill Cap damaged by Contractor.

2.8. Owner's Access and Inspection Rights.

(a) Owner's Access. Contractor shall advise Owner in writing of each location where Work is being performed or where equipment, materials and/or supplies for Work are being manufactured, stored, or prepared for use under the Contract Documents, in each case, reasonably in advance of conducting such Work or storing such items to allow Owner to witness or inspect the same. Contractor shall, on behalf of itself, its Subcontractors, and those under its and their respective control, provide reasonable access to Owner to such locations and assistance for inspection of Work and tests, upon reasonable notice to Contractor, during normal business hours of Contractor. Without prior notice to, and/or the authorization of, Contractor, Owner shall have the right to directly contact and engage any Subcontractor in discussions regarding the services, equipment, materials and/or supplies being furnished by such Subcontractor for the Project (including the schedule for the performance and delivery of such Subcontractor's scope).

(b) Inspection. Owner (directly, or by or through the Owner's Representative) shall have the right to inspect any and all Work at the applicable facilities of Contractor, its Subcontractors and those under its and/or their respective control, as well as at the applicable storage facilities and/or the Site

(including the Equipment Storage Area). Such inspections shall be conducted during normal business hours of Contractor or Subcontractor, as applicable, and may be conducted upon reasonable notice to Contractor. Such general inspection rights are in addition to, and not in limitation of, any and all inspection and testing rights of Owner and the Owner's Representative set forth in the Contract Documents.

(c) Coordination; Witness and Hold Points. The Parties shall reasonably coordinate in connection with factory tests, Witness Points and Hold Points set forth in Exhibit E; *provided* that Contractor shall have sole responsibility with respect to the scheduling of such tests and points to ensure the successful conduct and performance thereof with adequate time for inspection, stoppage and re-performance, in all cases without any adverse effect on the Work Schedule. Without limiting the generality of the foregoing, Contractor shall provide no less than five (5) Business Days advance notice to Owner of the occurrence of each Hold Point and Witness Point, respectively. Contractor shall, and shall cause any and all applicable Subcontractors to, observe all Hold Points and Witness Points.

(d) No Endorsements. For the avoidance of doubt, Owner's inspection (directly, or by or through the Owner's Representative) of equipment, materials and/or supplies to be supplied for Work is subject to the disclaimer in Section 1.3. Neither Owner, the Owner's Representative, nor any other Person on behalf of Owner shall have any obligation to perform such inspections, and no acceptance or endorsement of equipment, materials and/or supplies to be supplied for Work shall be construed to result from such inspections, or other actions by Owner or any other Person acting on its behalf.

(e) Notice. Contractor shall provide Owner with timely notice of the date, time and location of all tests affecting the Work in accordance with the Contract Documents.

(f) Re-inspection Rights. Re-inspection and/or re-testing of any Work may be ordered by Owner and/or the Owner's Representative at Contractor's sole cost and expense; *provided* that if such Work is found to be in accordance with the Contract Documents, Owner shall pay the reasonable costs of re-inspection and/or re-testing and proper restoration of such Work.

(g) Right to Reject. Owner shall have the right, in its sole and absolute discretion, to reject at any time any portion of the Work that does not conform to the requirements of the Contract Documents.

2.9. No Gifts or Inducements. Contractor represents and warrants to Owner that it has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee or agent of Owner for any purpose. Contractor shall not provide or offer any gifts, payments, or other inducements to any officer, employee or agent of Owner for any purpose and shall ensure that no employee, agent or Subcontractor offers such gifts, payments or inducements. In addition to the foregoing, Contractor represents and warrants to Owner that it has neither provided nor offered to provide any gifts, payments, or other inducements to any government official, employee or agent in violation of any laws or regulations, including the Foreign Corrupt Practices Act, and shall ensure that no employee, agent or Subcontractor offers such gifts, payments, or inducements.

2.10. Community and Public Relations. Without limiting the generality of Section 20.7, in the absence of specific direction and/or in exigent circumstances, Contractor shall direct all matters concerning community and/or public relations (including any media inquiries) to the Owner's Representative. Contractor shall provide the maximum possible advance notice to the Owner's Representative whenever Contractor believes, or has reason to believe, that any of the portion of the Work could reasonably be expected to implicate community relations, including any Work that could pose potential specific concerns with respect to the Environment, public relations, police, traffic, dust,

noise, and/or disruption to the public and/or any business.

2.11. Spare Parts. The Fixed Contract Price includes the provision and delivery (without additional costs and charges) of the spare parts listed on Schedule 2.11 attached hereto. Contractor shall coordinate the delivery of spare parts with Owner in connection with Acceptance Testing (to ensure the orderly and secure storage thereof at Owner's facilities in Massachusetts). Contractor shall develop, in consultation with Owner and before the occurrence of Readiness for Testing, a list of additional spare parts, necessary or advisable for the long-term operation and maintenance of the Project including expected lead times to purchase such spare parts and a price list for such spare parts.

ARTICLE 3. RESPONSIBILITIES OF OWNER

3.1. Project Interconnect. Owner shall furnish the interconnection and metering equipment identified on Schedule 3.1 as being supplied by Owner to Contractor. Owner shall be responsible for interconnecting the Project in accordance with Schedule 3.1. Such provision of equipment and interconnection shall be coordinated between the Parties in accordance with the Contract Documents, including Section 4.7(c). Contractor acknowledges that Owner's provision of such interconnection and metering equipment will facilitate Contractor's completion of Contractor's scope of the interconnection Work in compliance with the Work Schedule. Simultaneously with the delivery of such equipment, Owner hereby assigns, to the extent assignable, to Contractor any and all warranties obtained by Owner with respect to such equipment. Contractor accepts the obligation to complete the Work using such equipment, without relief or excuse of any nature (including under the Work Schedule) and the Fixed Contract Price includes and otherwise accounts for all obligations of Contractor with respect to the interconnection facilities. **OWNER MAKES NO GUARANTEES AND/OR WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH SUCH INTERCONNECTION AND METERING EQUIPMENT. CONTRACTOR SPECIFICALLY ACKNOWLEDGES ITS OBLIGATION TO VERIFY AND OTHERWISE OBTAIN ALL INFORMATION REQUIRED BY CONTRACTOR WITH RESPECT TO SUCH EQUIPMENT AND ASSESS THE RISK OF THE SUITABILITY, QUALITY AND OTHER ATTRIBUTES OF SUCH EQUIPMENT.** Without limiting the generality of the foregoing, Contractor shall be fully responsible for such interconnection and metering equipment as though Contractor originally had procured the same, including for purposes of all warranties of Contractor under Article 11, and without distinction from any other equipment, materials and supplies furnished by Contractor hereunder, irrespective of any recourse of Contractor or Owner against the seller of such equipment.

3.2. Site. Owner possesses or will acquire the right to locate the Project on the property constituting the Site, as identified for such purpose in the Contract Drawings.

ARTICLE 4. RELATIONSHIP OF PARTIES

4.1. Independent Contractor; No Agency. Except for the limited purposes of Massachusetts sales and use taxes in accordance with Section 7.4(a), Contractor, Subcontractors and those Persons under its or their control shall perform all Work as independent contractors and shall not be deemed to be the employees or agents of Owner for any purpose whatsoever. Nothing in the Contract Documents creates or is intended to create an association, trust, partnership, joint venture or other entity or similar legal relationship between the Parties, or impose a trust, partnership or fiduciary duty, obligation, or liability on or with respect to either Party.

4.2. Representatives.

(a) Contractor's Representative. Contractor shall identify in writing to Owner the Contractor's Representative for all Work by completing the form set forth in Schedule 4.2(a) for delivery to Owner within five (5) Business Days after the Effective Date and shall promptly update the information provided on such form after any updates thereto. The Contractor's Representative shall serve at the Site as a full time project manager, shall be responsible for planning, scheduling, updating, and reporting on the Work Schedule, and shall be deemed Key Personnel. The Contractor's Representative shall be authorized to receive all communications from Owner, provide all approvals or authorizations required from Contractor and act on behalf of Contractor in all matters concerning the Work. Owner reserves the right to require Contractor to remove and replace any Contractor's Representative for any reason and without cost or expense whatsoever to Owner.

(b) Owner's Representative. Owner shall identify in writing to Contractor the Owner's Representative for all Work by completing the form set forth in Schedule 4.2(b) for delivery to Contractor within five (5) Business Days after the Effective Date and shall promptly update the information provided on such form after any updates thereto. Owner's authorization of the Owner's Representative shall continue in effect unless and until Owner revokes such authorization, which Owner may elect to do at any time and for any reason, in its sole and absolute discretion. Owner shall provide (written) notice to Contractor of any such revocation and the identification of the applicable replacement. The Owner's Representative shall have the right but not the obligation to inspect the Work. The Owner's Representative also has authority to reject any and all Work that does not conform to the Contract Documents and to decide questions that arise in the execution of the Work to the extent of his scope of authority. The provisions of this Section 4.2(b) are in addition to, and not in limitation of, Owner's testing and inspection rights otherwise set forth in the Contract Documents.

4.3. Staffing.

(a) Qualified Staff. Contractor shall assemble and maintain a work force including Key Personnel, professionally qualified and properly trained to complete the Work in accordance with the Work Schedule and to fully meet the requirements, terms, conditions, and provisions of the Consent and Release, the Technical Specifications, and all other Contract Documents. Contractor shall provide and employ technically qualified, skilled, and experienced supervising construction managers, engineers, technical assistants and other Key Personnel in connection with the execution of the Work. Union personnel shall perform all Work related to the construction of the PV system within the Project. Whenever required by Law, Contractor shall employ the services of only licensed personnel (including professional engineers and certified welders) to perform the Work, and Contractor shall furnish to Owner, within two (2) Business Days after Owner's written request (or such shorter period as may be required by a Governmental Authority), copies of all credentials, certifications or other evidence of such qualifications of such personnel. Owner reserves the right to require additional qualifications for specialized tasks. Contractor shall promptly notify Owner in writing of any changes in the trade classifications or union affiliations of any of Contractor's employees.

(b) Organization Chart. Contractor shall provide to Owner within five (5) Business Days after the Effective Date a comprehensive organization chart for its staff and those Persons assigned to the Project (including Subcontractors and their respective personnel) and shall update such chart monthly.

(c) Supervision. Contractor shall ensure the efficient and continuous supervision of labor forces required to complete the Work. All craft workers shall be continuously assigned to the Work, and Contractor shall exercise its best efforts to provide additional temporary craft workers and equipment if requested by Owner during emergency conditions affecting Owner's facilities. In order to ensure public safety, each crew should have at least one (1) member with supervisory responsibilities who is fluent in English. Contractor shall not demobilize its work force to perform other work without the consent of the

Owner's Representative. Contractor shall at all times enforce strict discipline and good order among its forces, and shall avoid employing any unfit person or anyone not skilled in the tasks assigned under this Agreement. Contractor shall also provide to Owner the names, classifications and job locations of any employees who were former employees of Owner or any of its Affiliates that Contractor desires to assign to perform Work at the Site on behalf of Contractor and/or any Subcontractor at least three (3) Business Days prior to those employees performing any Work at the Site. Owner shall have the right to request Contractor to remove and replace (at no cost to Owner) any Person determined by Owner in its discretion to be unqualified or unfit to perform the Work, in which case Contractor shall do so (including reassignment to other work for Third Parties) to the extent allowable under Contractor's labor agreement(s) and Law.

(d) Key Personnel. As required by the Work or requested by Owner, Contractor shall, subject to Owner approval, name or cause to be named Contractor employees and others, as applicable, as Key Personnel, irrespective of whether such personnel are within or part of the organization of Contractor or of any Subcontractor. A current list of Key Personnel is set forth on Schedule 4.3(d). With respect to and for the duration of Work, Contractor shall not remove, replace, or reassign Key Personnel without the prior written consent of Owner, in Owner's sole and absolute discretion. Owner reserves the right to reject, at no cost to Owner, any proposed replacement that Owner, in the exercise of its reasonable judgment, believes to be unsuitable. Owner reserves the right, exercisable in Owner's sole and absolute discretion, to require the removal and replacement of the Contractor's Representative, the Environmental Coordinator and/or the Safety and Health Representative. Contractor's performance of its obligations under this Section 4.3(d) shall be without any cost or expense whatsoever to Owner.

(e) Review. The Contractor's Representative shall review and consult with the Owner's Representative on a regular basis concerning all assignments related to the Work to ensure adequacy of designated work requirements, labor, materials, and equipment. Owner's requests and/or reviews concerning any employees or agents of Contractor or any Subcontractor shall not be construed in any manner as creating any employment, contractual or other relationship between Owner and such Person, or otherwise granting Owner control over such Person and/or the performance of the related Work.

(f) Labor Disputes. Except as set forth in clause (iv) of the definition of Force Majeure contained in Section 1.1, Contractor shall be solely responsible for any and all strikes, work stoppages or other labor disputes affecting the Work, and Contractor shall not be entitled to any relief (schedule, economic or otherwise) in the form of a Change or otherwise resulting from, or relating to, any such labor actions.

4.4. Subcontractors.

(a) Engagement. Subject to Owner's prior consent, which consent may be granted or withheld in Owner's sole and absolute discretion, and, in the case of the Landfill Modifications, the Consent and Release, Contractor shall have the right to cause any or all of the Work to be performed and/or accomplished by Subcontractors pursuant to written subcontracts between Contractor and such Subcontractors. Except for the furnishing of expendable materials and minor component parts and except for any portion of the Work for which a specific Subcontractor is identified in the Contract Documents, before the retention of any Subcontractor, Contractor shall provide (written) notice to Owner identifying each such proposed Subcontractor, describing the Work to be performed and/or accomplished by such Subcontractor and the value of the subcontracted Work. Owner shall have the right to refuse, in its sole and absolute discretion, any such proposed subcontracting of any or all of the Work or any such proposed Subcontractor, and neither Contractor nor any Subcontractor shall enter into any subcontract with any Subcontractor, as to which Owner or, in the case of the Landfill Modifications, the Site Owner has made an objection. Any substitution for or replacement of actual or proposed

Subcontractors shall comply with the provisions set forth in this Section 4.4(a). Contractor shall submit a subcontracting plan to Owner in accordance with Section 5.8(b).

(b) Procurement Plan. Contractor shall furnish to Owner, promptly, but no later than five (5) days after Owner's request, information and documentation regarding Contractor's procurement of equipment, material and supplies, including shipping information (including guaranteed ship dates, method of transportation, ship notices, bills of lading, and packing slips).

(c) Subcontracts. None of the Contract Documents shall create a contractual relationship between Owner and any Subcontractor (of any tier). Contractor will incorporate and/or require the incorporation of the following into all subcontracts (at any tier) and/or any other agreements applicable to the performance of the Work:

- (i) Contractor's right to make unrestricted assignments to Owner and Owner being a direct beneficiary of all Subcontractor warranties;
- (ii) Owner's right to audit all records relating to such agreement and such Work, as further described in Section 7.3(f);
- (iii) Owner's right to enter into places of manufacture of such Subcontractor as set forth in this Agreement;
- (iv) such Subcontractor's obligation to pay any and all amounts due to any lower tier Subcontractor, whether for labor performed or materials furnished, not later than as required by Law, including M.G.L. c. 149, § 29E (if applicable to the particular lower-tier subcontract), but in no case later than thirty (30) days after the date that such Subcontractor receives payment from Contractor that encompasses the labor performed or materials furnished by such lower tier Subcontractor; and
- (v) a provision to require partial and final waivers and releases of any rights to mechanics and/or other Liens as a condition of payment for applicable Work.

Contractor also shall ensure that (1) all electrical Subcontractors at any tier shall be bound by the terms and conditions of the Contract Documents (including the provision of indemnities in favor of the Indemnified Persons, except to the extent that such indemnities are by their terms or by Law applicable only to Contractor) insofar as the same are applicable to the Work to be performed by such Subcontractor; and (2) all Subcontractors are eligible to perform work for Governmental Authorities, and otherwise have not been barred (and are not subject to any proceedings that could result in being barred) from entering into any contracts with any Governmental Authorities. Contractor shall submit to Owner each existing subcontract (including purchase orders) and amendment(s) thereto within fifteen (15) days after the Effective Date and each additional subcontract and/or amendment to any subcontract within fifteen (15) days after the execution thereof, in each case without redaction whatsoever (including pricing and other commercial provisions)

(d) Contractor's Responsibility. Contractor shall be fully responsible for the performance or non-performance of Subcontractors. Irrespective of the wording of any subcontract, purchase order, or other agreement entered into by Contractor or by any Subcontractor for Work or in any way related to Work, and irrespective of the existence or non-existence of Owner's consent thereto, no subcontract, purchase order or other agreement related to the Contract Documents, in whole or in part, or to any Work to be performed under such Contract Documents, shall relieve Contractor of its responsibility and liability for the full and faithful performance of the Work and other obligations set forth in such Contract Documents. Contractor shall be fully liable for the acts and omissions of its employees and agents, the employees and agents of Subcontractors, and all other Persons under the control of Contractor or any Subcontractor.

(e) Payment. Contractor guarantees that all of the Subcontractor rates included (by unit or duty) in the Pricing Schedule shall remain fixed and firm through Final Acceptance. Contractor shall pay each Subcontractor promptly in accordance with the terms and conditions of the subcontract between them and with Law including M.G.L. c. 149, §29E (if applicable to such subcontract); *provided that* Owner, in its sole and absolute discretion and upon notice to Contractor, may pay amounts directly to any Subcontractors. Without limiting the generality of the foregoing, in any case, Contractor shall pay any amounts due to any Subcontractor, whether for services performed and/or equipment and materials furnished, not later than thirty (30) days after the date that Contractor receives payment from Owner that relates to the services performed and/or equipment and materials furnished by such Subcontractor (or such shorter period as may be required under Law).

(f) Access. Contractor shall not allow access to the Site or any portion thereof by any Person not acting under the direction and control of Contractor, other than Owner, the Owner's Representative, other authorized representatives of Owner, other contractors engaged by Owner and Governmental Authorities.

(g) Owner's Review. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor submit, for Owner's review and approval in its sole and absolute discretion, all subcontracts with Subcontractors that are Affiliates of Contractor, including any and all modifications thereto or waivers of material rights thereunder.

4.5. Owner's Existing Electric Distribution System. Contractor shall immediately notify the Owner's Representative if it becomes aware of any injury to any natural person, or damage to or outage of the energized portions of Owner's electric transmission or distribution system (or of any other affected electric transmission or distribution system) or the facilities of any of Owner's customers. Contractor shall submit to the Owner's Representative on the next working day an outage report in the form of Schedule 4.5, and Contractor, at no cost to Owner, shall (a) provide root cause analysis for the interruption, to the extent such interruption was caused by Contractor and/or any Subcontractor; and/or (b) notify Owner promptly of any information known to Contractor and/or any Subcontractor with respect to the root cause of any such interruption, regardless of whether such interruption was caused by Contractor or any Subcontractor.

4.6. Training.

(a) Contractor shall require all Persons performing the Work to be familiar with the Work Protocols and to fully complete and satisfy all training and other educational programs required in connection with the Work to be performed by such Person. Contractor shall be responsible, at Contractor's sole cost and expense, for assembling personnel and holding all of such required training sessions, and shall notify Owner at least fifteen (15) days before commencing any such training. Contractor shall not allow any employee, agent, contractor or other Person under the direction and control of Contractor, including any Subcontractor or its employees, agents or contractors, to enter the Site and/or perform any Work absent such training. Contractor shall maintain complete and accurate records (including completion certifications from Persons performing such training) with respect to all such training at Contractor's field office, and Owner shall be entitled to review and/or copy all of such records upon notice to Contractor.

(b) Within fifteen (15) days after Owner's acceptance in accordance with the Contract Documents of the Final Design for that portion of the Project relating to the installation of the PV Modules and related equipment and materials, Contractor shall prepare and submit a training program to Owner for review and approval. Such training program shall provide a thorough and comprehensive familiarization and training of personnel in the operation and maintenance of the Project in accordance

with the Manuals. At a minimum, such training program shall (i) provide the recommended skills and/or expertise necessary for Owner to operate and maintain the Project, as designed; (ii) train Owner's employees and representatives who will be involved in the operations and maintenance of the Project; (iii) furnish a list of equipment that is necessary and/or helpful to operate, maintain and troubleshoot the Project; and (iv) fully address the items set forth in Schedule 4.6(b). Contractor shall supplement such training program to the extent necessary to satisfy such minimum requirements. Contractor shall administer and conduct such training prior to Substantial Completion.

4.7. Interfaces.

(a) Instruction to Proceed. Contractor shall not commence any Work absent the issuance of a Notice to Proceed by Owner pursuant to Section 6.2 applicable to such Work. Owner shall have the right to condition or otherwise impose restrictions with respect to such Work in such Notice to Proceed.

(b) Owner's Forces. Owner shall have the right to place its forces or those of its contractors at the Site to perform work not included in the Work. Contractor's forces shall work in harmony with all such other forces. Contractor shall be responsible for harmonious labor relations among its own employees, and with respect to Contractor's presence at the Site, among its own employees and the employees of Subcontractors, Owner's employees and the employees of any other contractors authorized by Owner to be on the Site.

(c) Cooperation. Contractor shall ensure that its forces coordinate and cooperate with the forces of any and all other contractors working at the Site. In furtherance (but not in limitation) of such obligation, Contractor shall manage and perform the Work consistent with the Coordination Schedule attached hereto as Schedule 4.7(c), as the same may be amended, modified, or otherwise refined in connection with construction of the Project. On a daily basis, the Contractor's Representative shall interface with Owner and other contractors involved with construction of the Facility. Contractor shall participate as a key team member in efforts to coordinate the overall Facility activities, and Contractor shall perform the Work in a manner consistent with Owner's plan for the construction of the Facility.

4.8. Owner's Systems. If Contractor and/or Contractor's employees are given access to Owner's computer equipment or systems, Contractor shall not use Owner's computer equipment and/or information for any purpose other than those contemplated in the Contract Documents. Contractor shall keep confidential in accordance with Schedule 20.6 any information it obtains in the course of performing Work. Contractor shall cause its and its Subcontractors' employees to comply with applicable provisions of Owner's information security policy as they pertain to Owner's employees.

ARTICLE 5. COMPLIANCE WITH LAW AND RULES

5.1. Lawful Compliance. Contractor, at its sole cost and expense, shall comply, and shall cause all Subcontractors to comply, with Law and the Contract Documents, and Contractor, at its sole cost and expense, also shall acquire, or shall cause its applicable Subcontractors to acquire, and comply, and shall cause its applicable Subcontractors to comply, with all terms and conditions of all Permits (whether Contractor Permits or Owner Permits). Without limiting the generality of the foregoing:

(a) Employment Laws.

(i) In connection with its performance of the Contract Documents, Contractor shall comply, and shall cause its Subcontractors to comply, with Law regarding non-discrimination and affirmative action, including the applicable provisions of Executive Order 11246 and the regulations issued pursuant thereto (generally 41 CFR Part 60-1), unless exempted by said regulations, particularly

the provisions of the Equal Opportunity Clause (41 CFR Section 60-1.4(a)), which are incorporated herein by reference; the provisions and regulations pertaining to nondiscrimination and affirmative action in employment (41 CFR Sections 60-1.4, 1.40, 1.41 and 1.42) and the filing of Standard Form 100 (EEO-1). Contractor certifies, in accordance with the requirements of 41 CFR Section 60-1.8, that its facilities for employees are not segregated. In addition, Contractor shall comply, and shall cause its Subcontractors to comply, with the provisions of the Affirmative Action Clause for Workers with Disabilities (41 CFR Section 60-741.5) and for Covered Veterans (41 CFR Section 60-250.5 and Section 60-300.5), which are also incorporated herein by reference.

(ii) Contractor shall comply with all Laws regarding employment, wages, workers compensation, and similar laws.

(b) PCU Permit. Contractor, at Contractor's sole cost and expense, shall (i) coordinate all Work on the Site with the PCU On-Site Engineer, including the provision of advance notice to the PCU On-Site Engineer as required by Condition #2.B of the PCU Permit, the oversight of all Excavation by the PCU On-Site Engineer, and the joint verification of the ground pressure of all equipment prior to allowing it to operate on the Landfill Cap, all as required by the PCU Permit; and (ii) perform such Work in full and strict compliance with all requirements of the PCU On-Site Engineer. If the PCU On-Site Engineer notifies Contractor of any concern regarding, and/or any violation and/or potential violation of, the PCU Permit in connection with Contractor's Site activities, Contractor, at Contractor's sole cost and expense, shall immediately initiate appropriate corrective action (including the cessation of all Work in the affected area of the Site) and contact the Owner's Representative. In such case, Contractor and the Owner's Representative shall coordinate any necessary and appropriate response to the PCU On-Site Engineer. Contractor shall not, directly or indirectly, contact MassDEP and/or any Governmental Authority with respect to the PCU On-Site Engineer, including any request to MassDEP for clarification and/or other direction regarding the interpretation of the PCU Permit. Contractor shall direct all such proposed communication to MassDEP, to the extent appropriate, to the Owner's Representative who, in his discretion, shall determine whether to contact MassDEP, and if so, whether to modify Contractor's request. Contractor shall not be entitled to any relief (schedule, economic or otherwise) in any manner whatsoever resulting from, or relating to, the acts or omissions of the PCU On-Site Engineer and/or MassDEP, and any act or omission by the PCU On-Site Engineer and/or MassDEP shall not relieve Contractor of any of its obligations hereunder, including the warranties set forth herein and the requirement to satisfy the Work Schedule.

(c) Codes; Rules. Contractor shall perform the Work in conformance with, and shall cause the Project to conform with, all applicable national, state and local environmental, construction, safety, and electrical codes and standards, and, in any event, in accordance with the Technical Specifications, the Work Protocols and Law. Contractor shall provide immediate oral notice, and written notice within one (1) Business Day, to the Owner's Representative of Contractor's discovery of any and all conflicts between the Technical Specifications and applicable electrical codes and standards. Contractor shall prepare all information required of Contractor under the Permits and submit such information to Owner at least ten (10) Business Days before the due date for submittal thereof to the applicable Governmental Authority.

In the event of any direct or indirect conflict between, or ambiguity with respect to, Law (including any Permits), Contractor shall comply with the most stringent requirement(s). Contractor shall immediately notify the Owner's Representative of any Site visit, inquiry or other communication from the Site Owner, the Landfill Operator and/or any Governmental Authority (including MassDEP).

5.2. Prudent Industry Practices. Contractor shall at all times perform the Work, and cause the Project to be constructed, in accordance with Prudent Industry Practices.

5.3. Permits.

(a) Contractor Permits. Contractor shall secure and maintain, at Contractor's sole cost and expense, all Contractor Permits in a manner that does not adversely affect the Work Schedule. Contractor shall advise Owner of any information required in the permitting process that relates to, and/or must be supplied by, Owner as soon as possible, but in no event less than fifteen (15) days before the anticipated submission date of a Permit application related to such information. Contractor shall prepare all applications for Contractor Permits sufficiently in advance of the requirement thereof to perform its obligations under the Contract Documents, and Owner reserves the right to review and provide comments on any such application or request (including any required supporting documentation) by Contractor, upon request by Owner. In the event of any such request by Owner, Owner shall review and provide any comments on such application or request (including any required supporting documentation) within fifteen (15) days after Contractor's submission thereof to Owner. Any such submission to Owner in connection with any Contractor Permit shall not relieve Contractor of its obligation to timely make such filing with the appropriate Governmental Authorities in accordance with such Contractor Permit. Contractor shall furnish to Owner copies of each application for a Contractor Permit simultaneously with the submission thereof to the applicable Governmental Authority. Contractor shall furnish to Owner copies of all Contractor Permits within five (5) Business Days after issuance, and in any event, before the commencement of any Work affected by such Permit. If required by Law or otherwise deemed appropriate by Owner, Owner may require that certain Contractor Permits be issued and/or held in the name of Owner.

(b) Owner Permits. Owner shall secure and maintain, at Owner's sole cost and expense, the Owner Permits in a manner and on terms consistent with Schedule 5.3(b). Owner shall prepare all applications for Owner Permits sufficiently in advance of the requirement thereof to avoid any delays in the performance of the Work in accordance with the Work Schedule; *provided* that Contractor shall advise Owner of Work progress in sufficient time to ensure that all Owner Permits required for each portion of the Work can be obtained without adverse impact to the Work Schedule. To the extent that any application for Owner Permits requires action by, or the participation of, Contractor, Owner shall submit the appropriate request, with any required supporting documentation, to the Contractor's Representative. Contractor shall (i) take the required action with respect to all such permitting matters within five (5) Business Days after such request by Owner and with all due diligence and in any event to avoid delays in the permitting process and the Work Schedule; (ii) in connection with such response, supply any information required in the permitting process that relates to the Work (to the extent not otherwise available to Owner in the Contract Documents, in the Construction Documents and/or in connection with the performance of the Work); and (iii) be responsible for providing Owner with such other reasonable cooperation and assistance as Owner may request in its efforts to obtain or comply with Owner Permits. Owner shall furnish to Contractor copies of Owner Permits issued after the Effective Date within five (5) Business Days after issuance.

(c) Changes. Contractor shall orally notify the Owner's Representative immediately (with written confirmation within one (1) Business Day) in the event that Contractor makes any change to the design, prosecution or other aspect of the Work that requires a change or other modification to any Permit. The Party responsible for initially obtaining the affected Permit shall retain responsibility for, and shall use reasonably diligent efforts to procure, such Permit modification, and the Parties shall reasonably cooperate to minimize any adverse effect on the Work Schedule. Notwithstanding anything in the foregoing or elsewhere in the Contract Documents, Contractor shall not proceed with any aspect of the Work that would violate a Permit absent such modification, and, to the extent possible, Contractor shall manage the Work around such occurrences in a way that does not impact cost or schedule.

(d) Coordination. The Parties shall reasonably coordinate permitting activities, consistent with their respective obligations under the Contract Documents and under the Work Schedule. If any Permit requires any submission on a periodic, occurrence and/or other basis, Contractor shall prepare such submission and submit such information to Owner sufficiently in advance to allow for Owner's review and approval in Owner's sole and absolute discretion, but in no event less than ten (10) Business Days before the due date for submission thereof. Such submission to Owner in connection with any Contractor Permit shall not relieve Contractor from its obligation to timely make such filing with the appropriate Governmental Authorities in accordance with such Contractor Permit, a copy of which shall be simultaneously sent to Owner.

5.4. Environmental Requirements.

(a) Compliance. Contractor shall, and shall ensure that all Subcontractors strictly observe and comply with, Environmental Law and with the Work Protocols with respect to the Environment. Prior to beginning any Work at the Site, Contractor shall identify to the Owner's Representative any and all chemical products that will be used in performing the Work, and Contractor shall ensure that any and all chemical products intended for use in association with the Work have been pre-approved in writing by the Owner's Representative. Such requests for pre-approval must contain the following information: (i) Material Safety Data Sheet (MSDS) for each such chemical product; (ii) specific use, including storage, and location of each such chemical product; (iii) the anticipated schedule for use of each such chemical product; (iv) quantity of each such chemical product to be brought on the Site; and (v) such other information required to prepare reports required under any Permit and/or Law. Pre-approval will be based on Owner's assessment of the following: (1) health and safety hazards; (2) potential for such chemicals to degrade plant systems or components; (3) the potential for creating Hazardous Materials; (4) availability of suitable alternatives; (5) environmental hazards; and (6) fire hazards. No chemical product may be delivered to the Site without such written pre-approval by the Owner's Representative. Once Contractor has identified a chemical product and received the necessary pre-approval, prior to its use, any such product shall be delivered to Contractor's storage facility for proper labeling and storage. A substitute product may only be used following receipt of express written permission by the Owner's Representative. Contractor shall be solely responsible for any costs or expenses incurred by Owner as a result of Contractor's use of such a product.

(b) Descriptions. Contractor shall provide to the Owner's Representative a written description of and justification for the use of any product or process in the Work that may result in the generation of any Hazardous Materials. Such justification must identify, prior to the start of the Work and to the satisfaction of the Owner's Representative, the practices used to minimize such generation and demonstrate that Contractor has taken all possible steps to eliminate or reduce such generation to the maximum extent possible.

(c) Management. Without limiting Contractor's obligations under Sections 2.7 and 5.1, Contractor shall manage any Excess Material and/or Hazardous Materials that result from and/or are encountered during the Work in an environmentally responsible manner. In performing the Work (including precharacterization, storage and/or removal of Excess Material from the Site), Contractor shall comply fully with Law, including Environmental Law and the PCU Permit, and the Work Protocols pertaining to the management of such Excess Material and/or Hazardous Materials. Without limiting the generality of the foregoing:

(i) Contractor shall be solely responsible for the proper identification, documentation, handling, storage, minimization, processing, usage, recycling, re-use, and/or disposal of any and all Hazardous Materials, together with timely notice to such Governmental Authorities as required by Law (with a copy to Owner). Contractor shall be responsible

for manifesting soil and water as required by Law, and for transporting, removing from the Site, and re-using or disposing of any and all of such Hazardous Materials, all at Contractor's sole cost and expense. Contractor shall be identified as generator on all material bills of lading and manifests completed for the transportation of Excess Materials to off-Site disposal locations; and

- (ii) Contractor shall fully comply with Law and the Work Protocols with respect to any Pre-existing Hazardous Materials. Contractor shall be solely responsible for the proper identification, handling, storage, minimization (through re-use, or otherwise) and disposal of any such Pre-existing Hazardous Materials. If Contractor shall fail to timely perform such identification, documentation, handling, storage, minimization and/or disposal, Contractor shall be liable for any and all costs incurred by Owner, in Owner's sole and absolute discretion, for such performance. Contractor shall provide Owner with reasonable advance written notice of at least fifteen (15) Business Days of Contractor's intent to start such disposal activities and shall not conduct any disposal activities without the prior written approval of Owner, and the Parties shall otherwise reasonably coordinate in the disposal process. Contractor shall prepare any required manifests for Owner's review and signature by an appropriate Person.

Within a reasonable time after production or issuance (but no later than ten (10) days after such production or issuance), Contractor shall provide to the Owner's Representative copies of all documentation, including material bills of lading and manifests, relating to handling, storage, processing, transportation and/or disposal of Excess Materials and Hazardous Materials (including any Pre-existing Hazardous Materials).

(d) EPA Identification Number. In the event Hazardous Materials are encountered or generated at the Site, Contractor shall obtain its own EPA ID number for transporting such Hazardous Materials off-Site for management, storage, recycling, treatment and/or disposal.

(e) Notice. Contractor shall identify to the Owner's Representative all materials, wastes and debris, including Excess Material, that Contractor reasonably believes constitute Hazardous Materials. Final classification of such materials, wastes and debris shall be at the sole and absolute discretion of the Owner's Representative. Unless directed otherwise by Owner, and in addition to Contractor's obligations under the Work Protocols and other Contract Documents for Pre-existing Hazardous Materials, Contractor shall promptly remove from the Site and dispose of in accordance with the terms of the Contract Documents and Law (including the PCU Permit) any and all Hazardous Materials managed, used and/or generated by Contractor, any Subcontractor and/or any of their respective agents or employees in connection with the Work.

(f) Environmental Coordinator. Contractor shall appoint and maintain one or more Persons as an Environmental Coordinator who shall ensure that a qualified Person or Persons be present at all times during the performance of (i) any Excavation activities at the Site, including for compliance with the Site Restrictions, the Construction Equipment Plan, and the Excavation Plan, (ii) the Landfill Modifications; (iii) any repair, replacement and/or relocation of any Existing Facilities Damage; and (iv) any other Work at the Site that could reasonably be expected to adversely affect the Landfill Cap (including due to weight considerations) and/or is materially affected by Environmental Law and/or implicates the Site Restrictions. An Environmental Coordinator shall be (1) fully trained in environmental and related health and safety requirements (including OSHA 1910.120 (b) (forty (40) hour HAZWOPER)), all Permits and the other obligations of Contractor under the Contract Documents (including the Work Protocols); (2) authorized to implement Contractor's spill prevention plan; and (3) vested with the authority and discretion to stop any Work that could result in injury to any individual or

damage to the Environment. Contractor also shall appoint and maintain a Person with demonstrated expertise in the design, operation, and maintenance of landfills, including post-closure care ("*Landfill Expert*"), preferably a Person that also is or employs a LSP. Contractor's Environmental Coordinator will manage the Landfill Expert and coordinate with Owner with regard to matters relating to the Environment, including the provision of information to Owner that demonstrates compliance with the Site Restrictions and the PCU Permit. In addition, Contractor shall comply with the following requirements:

- (A) all Contractor and Subcontractor personnel (including supervisors) performing Work involving Excavation and Excess Material handling shall attend, at Contractor's sole cost and expense, a minimum of twenty-four (24) hours of OSHA training as outlined in 29 CFR Section 1910.120(e)(4); and
- (B) Contractor shall designate a person(s) as a Competent Person and will ensure that the designated Competent Person is present on-Site during the completion of all Work involving Excavation.

(g) Non-compliance. If Contractor shall fail to perform any obligation set forth in this Section 5.4, Contractor shall be liable for any and all fees, costs and expenses, including legal fees, incurred by Owner, in Owner's sole and absolute discretion, in performing such obligations, including the storage, handling, processing, removal and disposal of Hazardous Materials. Such expenses to be borne by Contractor include the costs of laboratory testing, storage fees, processing, treatment, recycling, transportation, and disposal. In such event, the manifesting, transportation, removal and disposal from the Site of any and all Hazardous Materials shall be effected by Owner in Contractor's name (other than Pre-existing Hazardous Materials), at Contractor's sole cost and expense.

5.5. Safety, Health and Accident Prevention. Schedule 5.5 sets forth Owner's requirements regarding safety, health and accident prevention.

5.6. Protection of the Public, Work and Property.

(a) Protection. Contractor shall continuously provide and maintain: (i) adequate protection of the Work, the property of Owner and its Affiliates, and the property of Third Parties (including adjacent private and public property) from damage, destruction, loss and injury directly or indirectly arising out of, resulting from, or in any way related to the performance of or failure to perform any of the Work; and (ii) all necessary precautions for the protection and safety of the public (including workers and other individuals at the Site). Contractor shall at all times exercise the utmost care with regard to all activities, Excavations, equipment, machinery, materials and supplies to prevent damage, loss, liability, or injury to persons and property, shall carry on all activities under the supervision of properly qualified personnel, and shall use such adequate protective devices, warning signs, dikes, crossover points and barriers as may reasonably be required under the circumstances.

(b) Damages. Contractor shall be solely responsible for all damages to public property and/or private property (including that of Owner) as a result of the Work, irrespective of whether Contractor instituted reasonable protective precautions. The Contractor's Representative shall immediately report to the Owner's Representative all damages, suspected or actual. In addition to its indemnity obligations under Article 15, Contractor shall keep Owner fully advised of the status of its investigation, settlement discussions or litigation arising from any claim of injury or damage to Third Parties alleged to be caused by Contractor or any Subcontractor.

- (c) Emergency. In the event of any emergency endangering persons, property or the

Environment, Contractor shall take such action as may be reasonable and necessary, at Contractor's sole cost and expense, to prevent, avoid, or minimize such danger. Contractor shall immediately report such incident to the Owner's Representative, and the Parties shall coordinate and cooperate in addressing the situation. Owner shall have the right to direct Contractor to take additional precautions at Contractor's sole cost and expense.

(d) Nonconformance. In the event that Owner personnel observe and/or determine that a portion of the Work has been performed in nonconformance with the Contract Documents and if the continued existence of that portion of the Work in its then current state endangers persons, property or the Environment, Owner shall have the right, at Owner's option, without prior notice to Contractor, to correct the nonconforming Work or place the nonconforming Work in a safe condition. Owner shall notify Contractor orally as soon as possible after discovering such nonconforming Work. Owner shall confirm the observation in writing within ten (10) Business Days.

5.7. Dig Safe ® ("Dig Safe ® "). By law, all Persons are required to call Dig Safe ® before doing certain work as follows:

(a) Under Massachusetts law (M.G.L. ch. 82 § 40, et seq.), any Person making an Excavation in any public or private way, any company right-of-way or easement or any public or privately owned land or ways is required to premark not more than 500 feet of the proposed Excavation and notify the Massachusetts underground plant damage prevention system (Dig Safe ®) at least seventy-two (72) hours (exclusive of Saturdays, Sundays and any legal holiday in the Commonwealth of Massachusetts) but not more than thirty (30) days before the proposed Excavation is to be made. Contractor shall obtain information regarding the existence of any underground facilities by calling **1-800-DIG-SAFE (344-7233)**, or any successor number. Contractor shall also, as necessary or required, contact MassDOT and/or the local municipal road agent or public works department to obtain information regarding the location of any underground state or municipal facilities before Excavation in any public highway or roadway right of way. Contractor shall provide the Owner's Representative with Dig Safe ® project reference number(s) prior to commencing any Excavation.

(b) Contractor shall promptly report all problems associated with the quality and timeliness of markouts ("locates") to the Owner's Representative. Contractor is responsible for locating any underground utilities before Excavation, and if any underground utilities are damaged or discovered during construction, all activities shall stop and the Owner's Representative shall be notified. Contractor shall be responsible for noncompliance with this Section 5.7 (including any delays in the Work Schedule) and/or addressing the effects of all utilities shown on the Contract Documents, irrespective of such markouts.

5.8. Small Disadvantaged Businesses ("SDB"); Women Owned Small Businesses ("WOSB"); Service-Disabled Veteran-Owned Small Businesses ("SDV"), Veteran-Owned Small Businesses ("VE") and Businesses Located in and Qualified as Historically Underutilized Business Zones ("HUBZone"); Subcontracting Plan.

(a) Compliance. Owner is a government contractor and fully supports the government's policies of ensuring that SDB, WOSB, SDV, VE and HUBZone have every opportunity to compete for government contracts and subcontracts. Owner has and will continue to commit to filing annual subcontracting plans regarding the utilization of SDB, WOSB, SDV, VE and HUBZone as contractors and subcontractors in accordance with Federal Acquisition Regulation (FAR) 52.219. Contractor will be required to submit data and/or subcontracting plans regarding Contractor's utilization and intended utilization of such SDB, WOSB, SDV, VE and HUBZone during the term of the Contract Documents, as more particularly set forth in Section 5.8(b).

(b) Subcontracting Plan. In compliance with Owner's obligations under FAR 52.219-9(d), Contractor shall supply Contractor's subcontracting plan to Owner within a reasonable time after the Effective Date (but in no event more than sixty (60) days after the Effective Date) and shall fully comply with such plan in performing the applicable Work. Contractor shall submit to the Owner's Representative information regarding Contractor's use of diverse suppliers in substantially the form of Schedule 5.8(b).

(c) Incorporation by Reference. This Section 5.8 incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, Owner shall make the full text available. Also, the text of FAR 52.219 may be accessed electronically at the following address: <https://www.acquisition.gov/far/>.

ARTICLE 6. PERIOD OF PERFORMANCE

6.1. Effectiveness. This Agreement shall be effective as of the Effective Date.

6.2. Commencement and Completion.

(a) Commencement. Contractor shall commence the Work immediately upon Owner's issuance of a Notice to Proceed, unless otherwise directed in the Notice to Proceed. Contractor shall not commence any Work prior to Owner's issuance of a Notice to Proceed applicable to such Work. Any Work performed by Contractor prior to Owner's issuance of a Notice to Proceed applicable to such Work will be performed at Contractor's sole risk of and expense.

(b) Notice to Proceed. By acceptance of any Notice to Proceed:

(i) Contractor accepts the obligation to complete the Work specified therein in accordance with all requirements of the Contract Documents within the time specified in the Work Schedule. Subject to Contractor's Change Order rights provided for in Sections 8.2, 8.4 and 8.5, Contractor shall not be entitled to, and hereby waives and releases, any relief in the form of a Change or otherwise resulting from, or relating to, the time for performance of the Work based in whole or in part on the date of the issuance of such Notice to Proceed, including (1) any Claim for delay or other grounds for extension or modification of the Work Schedule and/or the logic or sequence of any Critical Path Events; and (2) any costs, expenses or damages for delay and/or loss of productivity; and

(ii) As of the date of any Notice to Proceed, Contractor represents and warrants to Owner that (1) except for any pending Claims, Contractor is not aware of any unresolved objections, ambiguities or other complaints by Contractor with respect to Work authorized under any and all preceding Notices to Proceed; and (2) there is not existing either an Event of Default, or a state of facts which by the passage of time, giving of notice, or both, could constitute an Event of Default.

(c) Completion. Contractor shall perform and complete the Work in accordance with the Work Schedule and other requirements of the Contract Documents.

6.3. Prosecution of the Work.

(a) Diligence. Once commenced, Contractor shall ensure that it and any Subcontractor shall prosecute the Work continuously, diligently, and at such a rate and in such a manner as necessary for compliance with all requirements of the Contract Documents including the achievement of each and every Critical Path Event in accordance with the Contract Documents. If Contractor and/or any Subcontractor shall experience any delay not otherwise excused under Sections 6.5, 6.7(a), 8.4 or 8.5, Contractor shall, at no additional cost to Owner, add such personnel and/or crew(s), work such overtime and/or additional shifts, establish expedited, priority treatment for the acquisition, fabrication and delivery of the materials, equipment and supplies necessary to complete the Work (and/or acquire the same elsewhere), and perform such other act(s) as may be necessary to complete the Work in accordance with the Work Schedule. Without prejudice to Owner's rights under Article 13, Owner reserves the right to issue a Change Order to accelerate all or part of the Work in order to timely achieve Milestones not yet met, and Contractor shall not be entitled to any compensation of whatever nature (including overtime, additional labor and/or shifts, additional or different materials and/or equipment or other costs incurred to comply with such accelerated schedule); *provided*, that the foregoing Change Order and Contractor's compliance therewith shall not prejudice Contractor's right to Dispute a Directed Change Order pursuant to Section 8.8 based on Contractor's ability to meet all Milestones not yet met through the means then proposed by Contractor.

(b) Weekly Meetings. In addition to any other meetings required and/or appropriate under the Contract Documents, the Contractor's Representative, Contractor's Project Manager, Contractor's Site Construction Project Manager and the Owner's Representative shall meet on weekly basis to discuss the Project status and reports, and unless otherwise requested by the Owner's Representative, Contractor shall cause the project manager of each Subcontractor that is or will be working on the Site to attend such meeting. Unless otherwise agreed by the Contractor's Representative and the Owner's Representative, each such weekly meeting shall occur on Tuesday at a time to be determined by the Owner's Representative at the office of the Owner's Representative; *provided* that each weekly meeting that occurs after the commencement of Work at the Site shall be held at the Site unless the Owner's Representative directs otherwise. The Contractor's Representative shall conduct each such meeting and shall be prepared to present, among other things, the matters set forth in Section 6 of Appendix J-1.

(c) Notice. Each Party shall give the other prompt written notice of any circumstances that may delay performance of the Work. Contractor shall notify the Owner's Representative of any such circumstance orally as soon as possible after such circumstance occurs and in writing within one (1) Business Day after such circumstance occurs. Contractor shall record the cause of any resulting delay and the time lost in its reports and its time sheets and shall make such reports and time sheets available for audit by Owner.

(d) Compliance. Contractor specifically acknowledges that strict compliance with the Work Schedule is critical to Owner's timely completion of the Project.

6.4. Period of Performance.

(a) Time is of the Essence. Contractor and Owner recognize the importance to Owner of timely completion of the Work, and accordingly time is of the essence with respect to Contractor's performance of all of Contractor's obligations under the Contract Documents. Without limiting any other obligations of Contractor under the Contract Documents, Contractor shall immediately notify the Owner's Representative whenever it appears that it may not be possible for Contractor to meet any deadline specified in the Contract Documents.

(b) Corrective Measures. Without limiting any requirements specified in the Contract Documents, Contractor shall continuously monitor, report, forecast and control the progress of the Work in

accordance with the Work Schedule, as described in the Contract Documents. If the Work is not progressing as scheduled, Contractor shall take appropriate corrective measures. Unless waived by Owner (in writing), or otherwise specified in the Contract Documents, Contractor shall submit to Owner weekly progress reports concerning the Work.

6.5. Force Majeure.

(a) Notice. Whenever either Party has knowledge that any Force Majeure or other situation is delaying or threatens to delay the timely performance of the Work, such Party shall immediately give oral notice thereof, including all relevant information with respect thereto, to the other Party, which notice shall be confirmed in writing as soon as possible, but in no event more than two (2) Business Days after such Party's knowledge with respect to the occurrence of such Force Majeure or other situation. If a Claiming Party wishes to pursue a Claim for relief by reason of Force Majeure, it shall give (written) notice stating the date of commencement of such Force Majeure and the predicted extent, estimated consequences and the cause thereof to the other Party, including a reasonably detailed estimate by Contractor (whether or not Contractor is the Claiming Party) of the Critical Path impact of any such Force Majeure, as soon as reasonably possible after becoming aware of such event or circumstance, but in no event more than five (5) Business Days after the issuance or receipt, as the case may be, of the notice required by the immediately preceding sentence. The Claiming Party also shall keep the other Party fully informed of any developments with respect to the Force Majeure and shall give (written) notice to the other Party of the cessation of the relevant event or circumstance of Force Majeure as soon as practicable after becoming aware of such cessation.

(b) Requests. Neither Party shall be liable for delay and/or failure to perform if and to the extent such delay and/or failure is due to Force Majeure, *provided that*:

- (i) Any delay and/or failure to perform by a subcontractor (at any tier) of either Party shall not be excusable unless (1) such delay and/or failure to perform arises out of causes beyond the control and without the breach of the Contract Documents, fault, negligence or intentional act of the Claiming Party; (2) such delay results from an event or circumstance that would have constituted a Force Majeure hereunder if suffered with respect to a Party; and (3) the equipment, materials, supplies and/or services to be furnished by such subcontractor are not obtainable from other sources in sufficient time to permit its commitments to be met pursuant to the Contract Documents; and
- (ii) Each Claiming Party shall use, and shall cause its subcontractors to use, their respective best efforts to remove the cause of delay and/or failure to perform as quickly as practicable.

(c) Extension of Time. In the event of a Force Majeure, subject to Owner's acceleration rights pursuant to Section 8.5, Contractor shall be entitled to an extension of time as determined by Owner equal to the time lost by reason of the duration of the Force Majeure to the extent that such duration results in an actual, unavoidable and material Critical Path impact. For such purpose, Owner shall maintain a record of the number of days, or parts thereof, upon which, on account of delays caused by a Force Majeure, it is impossible to proceed with Work on the Critical Path. If only a portion of the Work is delayed on account of delays caused by a Force Majeure, the Critical Path impact on the portion of the Work affected shall be determined by Owner in Owner's sole and absolute discretion.

(d) Disputes. If either Party pursues a Claim for relief by reason of Force Majeure and the other Party Disputes the existence, nature, extent or condition of the event or circumstances giving rise to such Claim for relief, then such Dispute shall be resolved pursuant to Article 16.

(e) Non-compliance. If Contractor fails to comply with this Section 6.5, Contractor shall be deemed to have waived any Claim arising out of or resulting from any such delay, without relieving Contractor of its obligations under the Contract Documents.

6.6. Passage of Title; Risk of Loss; Liability; Equipment Delays.

(a) Title. Title to materials, equipment and/or supplies to be provided by Contractor as part of the Work shall pass from Contractor to Owner immediately upon payment from Owner to Contractor for Work that involves such materials, equipment and/or supplies, excluding payments associated with Substantial Completion or Final Acceptance. Such title shall pass without any further act or documentation. Contractor warrants as of the time of transfer of title pursuant to this Section 6.6(a), that Contractor has good and marketable title to all of such materials, equipment and/or supplies, free and clear of any Liens. Notwithstanding such transfer of title, risk of loss for such equipment, materials and/or supplies, as well as liability with respect thereto, shall be determined in accordance with Section 6.6(b).

(b) Risk of Loss; Liability. The care, custody and control, risk of damage to or loss of, and liability related to, materials, equipment and/or supplies, and liability therefor, whether stored on or off the Site, shall remain with Contractor until Substantial Completion.

(c) Delays. Owner may at any time request Contractor to delay fabrication and/or delivery of all or any portion of materials, equipment and/or supplies and/or the provision of services to be provided by Contractor under the Contract Documents. Contractor shall use its best efforts to accommodate such request by Owner to delay. However, if Contractor is unable to accommodate all or a portion of Owner's request, it shall notify Owner in sufficient time for Owner to take alternative measures, including directing Contractor to place the affected equipment in storage at a site authorized by Owner. Risk of loss and liability for equipment, materials and/or supplies placed in storage shall remain with Contractor until transferred to Owner in accordance with Section 10.2. Contractor also shall immediately notify Owner in writing if such request for delay could adversely affect the Work Schedule, and if so, reasonably detail the expected consequences.

6.7. Damages for Delays.

(a) Owner's Delay. If (i) Contractor has notified Owner, specifically referencing this Section 6.7(a), of a failure by Owner to meet an obligation specifically set forth in the Contract Documents as an Owner obligation, and Owner shall have failed to meet such obligation within a reasonable period (of not less than five (5) Business Days) after receipt of such notice, and (ii) Contractor experiences a material and adverse delay in a Critical Path Event solely and exclusively as the result of such failure, then Owner shall issue a Change Order pursuant to Section 8.4(a) adjusting the Work Schedule or compensating Contractor in accordance with Section 8.4(a). Contractor shall use its best efforts to minimize (1) the costs it incurs for each delay by rescheduling its activities, redeploying its forces, or by other appropriate action; and (2) the duration of the delay. Contractor shall notify the Owner's Representative of any delay subject to this Section 6.7(a) orally immediately after such delay occurs and in writing within one (1) Business Day after such delay occurs. In such event, and in accordance with Section 8.4(a), Contractor shall submit a proposal with respect to such potential Change, specifically identifying, among other things, the direct and continuing impact or effect of Owner's failure to perform, within five (5) Business Days after the expiration of the cure period referenced in this Section 6.7(a). Without relieving Contractor of its obligations under the Contract Documents, any and all Claims by Contractor resulting from any such delay caused by Owner shall be irrevocably waived and released unless Contractor provides such immediate oral notice and one (1)

Business Day written notice to Owner and thereafter submits such detailed statement for the Claim to Owner within such five (5) Business Day period.

(b) Concurrent Delay. In no event shall Contractor be entitled to any compensation or to any adjustment to the Work Schedule for any delay caused by Owner's failure to meet any obligation under the Contract Documents if there is a simultaneous or concurrent delay to the Work caused by, or attributable to (by assumption of risk or otherwise), Contractor.

(c) Float. The float in the Work Schedule shall be available to both Parties on a good faith, non-discriminatory basis. Notwithstanding anything in the Contract Documents to the contrary, Contractor shall not be entitled to any extensions or compensation resulting from any delays unless and until the delay exceeds the total available float for a particular Critical Path Event.

6.8. Liquidated Damages for Unexcused Delays. The Parties recognize that (a) any delay that is not a delay arising from Owner's breach of any of its obligations under the Contract Documents, and that is not excused under Article 8 is unexcused; and (b) Contractor's failure to complete the Work in a timely manner in accordance with the Work Schedule will result in considerable inconvenience and expense to Owner, the full nature and extent of which cannot be reasonably ascertained at this time, but which are acknowledged by both Parties to be significant. Based upon the foregoing, in the event that Contractor fails, for reasons that are (i) not attributable to Owner's breach of any of its obligations under the Contract Documents, and (ii) not excused under Article 8, to achieve Substantial Completion on or before the Substantial Completion Deadline, and without limitation of any and all other rights and/or remedies available to Owner under the Contract Documents, including Owner's withholding of payment rights under Section 7.3(b) and Owner's set-off rights under Section 7.3(c), then Contractor shall pay to Owner the following sums (on a cumulative basis) as liquidated damages, and not as a penalty:

- (1) Fifty Thousand Dollars (\$50,000); and
- (2) an additional Five Thousand Dollars (\$5,000) per day for each day (or portion thereof) after the fourteenth (14th) day after the Substantial Completion Deadline until Contractor achieves Substantial Completion;

up to a maximum of ten percent (10%) of the Fixed Contract Price.

6.9. Scheduling. Contractor shall utilize Critical Path scheduling to help plan and monitor the progress of Contractor's performance of the Work in accordance with the Work Schedule, as more particularly described on Appendix J-1 to Exhibit J. Accordingly, Contractor shall furnish its Work Schedule and other schedule(s), task and activity logic diagram(s), and such other data as may be reasonably required by Owner to monitor and oversee Contractor's performance, and Contractor shall furnish updates in accordance with Appendix J-1 to Exhibit J no less frequently than once each week as a portion of the Weekly Report for review during the Weekly Schedule Update Meeting. Contractor shall not engage in preferential logic, float sequestering, or other scheduling techniques that enable Contractor to use available float without the prior approval of Owner. Owner shall have the right pursuant to Appendix J-1 to Exhibit J to correct and/or request correction to the Work Schedule to account for poor scheduling practices (including nontraditional logic and excessive Work activity durations).

6.10. Reports. Within thirty (30) days after the Effective Date, Contractor shall submit to the Owner's Representative a baseline estimate of monthly actual expenditures for the Work from the Effective Date through Final Acceptance, in a form reasonably acceptable to Owner. Such baseline estimate of monthly expenditures shall align with the Payment Schedule and the Work Schedule.

ARTICLE 7. COMPENSATION AND PAYMENT

7.1. Fixed Contract Price.

(a) Payment. For timely and proper performance of the Work in compliance with all requirements, terms, conditions, and provisions of the Contract Documents, Owner shall pay to Contractor the Fixed Contract Price in accordance with the Payment Schedule, subject to the effects of any Change Orders in accordance with Section 7.2, as applicable.

(b) Total Consideration. Owner shall compensate Contractor for all Work pursuant to the terms and conditions of the Contract Documents. The Fixed Contract Price (or so much of it as is actually paid pursuant to the Contract Documents for Contractor's timely, correct, and proper performance of such Work) shall represent all of the compensation that Contractor is entitled to receive from Owner under the Contract Documents, including compensation adjustments, if any, based on Contractor's performance (including liquidated damage provisions). Owner shall pay Contractor the charges indicated in properly itemized and supported invoices for Work performed by or on behalf of Contractor in accordance with the terms and conditions of the Contract Documents, less adjustments for prepayment, for withholding of payment for matters set forth in Section 7.3(b), for Owner's assertion of set-off rights under Section 7.3(c) and/or for Disputed items.

7.2. Pricing of Changes. Changes in the Work shall be governed by Article 8. With respect to the pricing terms of any Change:

(a) Pricing. Except for Change Orders having no price impact, that portion of the Work affected by one or more Changes shall be priced in accordance with the applicable provisions of this Section 7.2. At Owner's option, any Change Order may provide for Work to be performed by Contractor on a time and equipment/materials basis (with a not-to-exceed cap), on a firm fixed price basis, or on a cost-plus basis (with a not-to-exceed cap), as more fully described in the Pricing Schedule. Except for Change Orders having no cost impact, the manner and method of any payment by, or credit to, Owner for each Agreed Change Order shall be addressed in the provisions of each such Change Order. Unless otherwise directed by the Owner's Representative, Contractor shall separately invoice any additional compensation due under each Change Order in accordance with Section 7.3.

(i) Agreed Change Orders. Except for Agreed Change Orders having no cost impact, for performance by or on behalf of Contractor with respect to added or altered Work associated with an Agreed Change Order in a manner fully compliant with all of the terms and conditions of the Contract Documents, Owner shall pay to Contractor the sum(s) from the Pricing Schedule (as applicable) enumerated in or, if and as applicable, calculated in accordance with the applicable Agreed Change Order.

(ii) Reduced Work. For non-performance by or on behalf of Contractor with respect to reduced or withdrawn Work associated with an Agreed Change Order having cost impact, Contractor shall credit, refund, and/or reimburse Owner the sum(s) enumerated in, or calculated in accordance with, the applicable Agreed Change Order.

(iii) Directed Change Orders. Except for Directed Change Orders having no cost impact, for performance by or on behalf of Contractor under a Directed Change Order in a manner fully compliant with all of the terms and conditions of the Contract Documents, subject to resolution of any associated Dispute referenced in Section 8.8, Owner shall pay to Contractor at Final Acceptance (or such earlier time as Owner may determine in its sole and absolute discretion or as may be directed in the resolution of such Dispute) the sum(s) enumerated in, and calculated in accordance with, the applicable

Directed Change Order.

(iv) Credit. For non-performance by or on behalf of Contractor with respect to reduced or withdrawn Work associated with a Directed Change Order having cost impact, subject to resolution of any associated Dispute referenced in Section 8.8, Contractor shall credit, refund, and/or reimburse Owner the sum(s) enumerated in, or calculated in accordance with, the applicable Directed Change Order.

(v) PV Module Adjustment. The Fixed Contract Price shall be adjusted in accordance with Schedule 7.2(a)(v) if the number of PV Modules in the as-built Project varies from the Base Design.

(b) Work Schedule. The Work Schedule shall be changed in accordance with the revised Work Schedule (including affected Milestones) attached to any Change Order. The absence of any attachment shall mean that the Work Schedule shall not be affected by such Change Order.

(c) Full Compensation. To the extent that any Change Order increases the Fixed Contract Price and/or extends the Work Schedule, such price increase and/or time extension set forth in such Change Order shall be full compensation to Contractor for all costs and delays, direct and indirect, incurred by Contractor in connection with the conditions giving rise to such Change Order, the Work specified therein, and any resulting costs, delays or effects on unchanged Work resulting therefrom. Contractor, on behalf of its Subcontractors and any Third Parties who may have a claim by or through Contractor (including any surety and/or issuer of any letter of credit and/or other performance assurance), in consideration for the receipt of the amounts and/or time extensions set forth in such Change Order, agrees that such Change Order is a full accord and satisfaction as to any amounts and time extensions in any way related to the period or causes of delay which are included as or related in any way to the subject or scope of such Change Order, and Contractor irrevocably waives, discharges and releases Owner, its Affiliates, and their respective successors and assigns, from any and all claims, liabilities, demands, entitlements, and damages whatsoever, known or unknown, in connection with or in any way related to such Change Order, its subject matter, or causes of delay relating thereto, including any further time extensions, any costs, expenses or damages for delay, overhead, profit, mark-up of any kind or loss of productivity.

7.3. Invoicing and Payment.

(a) Invoicing; Unvouchered Liabilities.

(i) Timing. Except for direct payments to the manufacturers and suppliers of the PV Modules, inverter units, and the racking and ballast units (which shall be made in accordance with Section I of the Payment Schedule), Contractor shall prepare and submit a monthly invoice to Owner (in accordance with the notice instructions set forth in Section 20.2 and the requirements of Law, including M.G.L. c. 149, §29E) for any payments that accrued under the Contract Documents during the immediately preceding month. Each such monthly invoice shall:

- (1) be certified in writing as correct by the Contractor's Representative;
- (2) be itemized (with reasonable detail) to fully describe each element of charges to Owner;
- (3) to the extent based upon the percentage completed of certain Milestone(s), be accompanied by the Owner's Representative's written concurrence with respect to the

percentage completed of such Milestone (for time and equipment/materials Work, Contractor shall bill in accordance with Owner's billing instructions);

- (4) contain a certification, in form and substance acceptable to Owner, to the effect that there are no mechanics Liens, suits or claims against Contractor for non-payment; and
- (5) be accompanied (except as set forth in clause (aa) below) by:
 - (A) copies of invoices received from Subcontractors that have been paid by Contractor and not submitted to Owner as support for any previously submitted invoice under this Section 7.3(a)(i); and
 - (B) for each Subcontractor invoice submitted under clause (A) above, (x) a partial or final Lien waiver, as applicable, from such Subcontractor (in substantially the applicable form attached to Appendix C-2 to Exhibit C) pertaining to such invoice; and (y) a certificate from such Subcontractor in the form of Schedule 7.3(a) confirming Contractor's payment and satisfaction in full of such Subcontractor's invoice.

For each monthly invoice (excluding the portion thereof covered by clause (aa) below), the only amount eligible to be paid by Owner hereunder shall be the total amount of paid Subcontractor invoices submitted by Contractor under clause (5) above with such invoice, but in any event, such Owner payment shall not exceed the amount of such monthly invoice. To the extent that the total amount of such paid Subcontractor invoices submitted under clause (5) above with a monthly invoice:

- (I) exceeds the amount of such invoice, Contractor shall be entitled to use such excess ("*Excess Back-up*") to support the payment of the next monthly invoice submitted pursuant to this Section 7.3(a)(i); or
- (II) is less than the amount of such invoice (after accounting for any Excess Back-up from the preceding month), Owner shall withhold, without interest and/or other compensation of whatever nature to Contractor, that portion of the payment otherwise due under the Contract Documents that exceeds such paid Subcontractor invoices, in which case such Contractor shall be entitled to invoice for the payment of such withheld amount in the next monthly invoice submitted pursuant to this Section 7.3(a)(i) (the payment of which shall be subject to compliance with the Contract Documents).

For purposes of the invoicing protocol set forth in this Section 7.3(a)(i):

- (aa) For that portion of any monthly invoice submitted by Contractor that relates to that amounts due under the Payment Schedule for the delivery of the Letter of Credit (or mutually agreed alternative) and the acceptance of the Final Design by Owner, respectively, Contractor shall not be required to submit the paid Subcontractor invoices and associated documentation contemplated under clause (5) above for the invoiced amount associated with such Milestones;
- (bb) As a condition to payment of that portion of the Fixed Contract Price due upon achievement of Final Acceptance under the Payment Schedule, Contractor shall submit with its invoice for such amount, the following documents from each

Subcontractor for which Contractor has not previously submitted a final Lien waiver under clause (5) above:

- (XX) a final Lien waiver; and
- (YY) a certificate in the form of Schedule 7.3(a) confirming payment and satisfaction in full of the outstanding amount set forth in such final Lien waiver.

It is the intent of the Parties that such submission (along with all prior submissions in compliance with this invoicing protocol) will evidence Contractor's payment in full of all amounts due to each Subcontractor with respect to all equipment, materials and services supplied in connection with the Project. Accordingly, upon submission of such documentation (and the satisfaction of any other conditions (including a final Lien waiver from Contractor) to, and/or subject to off-sets of, payment under the Contract Documents), Owner shall pay the invoiced amount associated with the achievement of Final Acceptance even if such payment exceeds the aggregate amounts previously paid by Contractor to all Subcontractors; and

- (cc) All invoices related to the PV Modules, inverter units and the racking and ballast units shall be excluded from such invoicing protocol and shall be directly paid to the manufacturers or suppliers of such equipment as contemplated in Section I of the Payment Schedule.

Owner reserves the right to maintain a notional account for purposes of tracking the invoicing protocol under this Section 7.3(a)(i) which may include the following:

- (AA) the amounts invoiced to date by Contractor to Owner under the Contract Documents;
- (BB) paid Subcontractor invoices submitted by Contractor to Owner (to the extent supported by partial and/or final Lien waivers and certificates under clause (5) above);
- (CC) the amounts paid to Contractor by Owner under the Contract Documents; and
- (DD) the notional balance of any Excess Back-Up, or that portion of any payment due under the Contract Documents but not yet paid by Owner pursuant to clause (II) above pending Contractor's next invoice.

To the extent that Owner maintains such notional account and submits it to Contractor from time to time, the Parties shall review and, if necessary, adjust such notional account activity (including relevant balances) at the Weekly Schedule Update Meeting following each such submission.

In addition to Contractor's compliance with the requirements of this Section 7.3(a)(i), payment of each Contractor invoice shall be conditioned on the Owner's Representative certifying to Owner that all Work described therein has been correctly and properly performed and otherwise is in compliance with the terms and conditions of the Contract Documents. Owner also may condition payment to Contractor upon the receipt of partial and final Lien waivers and releases and other documents from Contractor, in substantially the forms attached to Appendix C-2 to Exhibit C, as applicable. Each invoice issued by Contractor shall reference Owner's purchase order number, which the Owner's Representative shall furnish to Contractor within fifteen (15) days after the Effective Date.

- (ii) Unvouchered Liabilities. Subject to Section 7.3(a)(i), Contractor shall be responsible for submitting unvouchered liabilities ("UVLs") to Owner via fax (Fax # (413) 787-1022) or

electronic mail (william.blanchard@nu.com) on the twenty-fourth (24th) day of each month after Work commences in the format set forth in Appendix C-3 to Exhibit C. The UVLs shall include the following:

- (1) All invoices submitted to Owner during the current month and all unpaid invoices from previous months.
- (2) An estimate of all Work performed but not invoiced for that month or previous months.
- (3) The Project number and accounting information for services and estimates.

(b) Withholding of Payment. Owner, in its discretion, may withhold payment of all or any part of any invoice to such extent as may be necessary to protect itself from loss caused by or in connection with:

- (i) Work performed that is not in accordance with the terms and conditions of the Contract Documents and not remedied in accordance with applicable terms and conditions of the Contract Documents;
- (ii) claims filed or reasonable evidence indicating probable filing of claims by Third Parties or Affiliates of Contractor against Contractor and/or Owner in connection with the Work;
- (iii) failure of Contractor to make payments to Subcontractors for material, labor, services or equipment supplied in connection with Work as required under each subcontract;
- (iv) Owner's reasonable doubt that all or any portion of the Work can be completed for the then unpaid balance of the Fixed Contract Price;
- (v) reasonable indication that all or any portion of the Work will not be completed in full compliance with the Work Schedule;
- (vi) prosecution of the Work by Contractor in a manner that is unsatisfactory to Owner in Owner's sole and absolute discretion;
- (vii) failure of Contractor to perform any of its obligations under the Contract Documents, whether or not any applicable cure period has expired;
- (viii) failure of Contractor to pay any amounts due Owner; and/or
- (ix) any Event of Default not specifically listed above in this Section 7.3(b).

Owner shall notify Contractor of such withholding and the grounds therefor, and when Owner has been satisfied or Contractor provides financial security or other assurance reasonably satisfactory in form, substance and amount to Owner, payment will be made of the amounts withheld. When deemed reasonable by Owner, Owner may use such funds to rectify the situation giving rise to the withholding of funds.

All Claims and Disputes arising from withholding pursuant to this Section 7.3(b) shall be resolved before Final Payment shall be due or payable to Contractor.

(c) Set-Off. Owner shall have the right to set-off against any sums due Contractor under the Contract Documents, any Claims Owner may have against Contractor under the Contract Documents or other claims Owner may have against Contractor under any other contract between Owner and Contractor or that Owner may otherwise have against Contractor.

(d) Payment. Subject to Sections 7.3(a), (b) and (c), Owner shall pay each correct invoice or provide written objections to all or any portion of each invoice within thirty (30) days after receipt by Owner. Owner's written objection to all or any portion of an invoice shall include a brief explanation of the factual and contractual basis for rejecting such invoice, or such portion thereof (if applicable), and shall be certified as made in good faith. If Owner rejects a portion of an invoice, Contractor shall submit a revised

invoice for the portion not rejected, and Owner shall pay such portion not Disputed within thirty (30) days after Owner's receipt thereof. Any Dispute regarding Owner's rejection of all or any portion of an invoice shall be subject to the Dispute Resolution provisions of Article 16.

(e) Invoices to Contractor. Without limiting Contractor's payment and reimbursement obligations to Owner under the Contract Documents and without limiting Owner's set-off rights, Owner may invoice Contractor for any or all sums payable by Contractor to Owner under the Contract Documents. With respect to each invoice issued by Owner pursuant hereto, and without prejudice to Owner's rights and remedies under the Contract Documents (including set-off rights), at law and/or in equity, Contractor shall pay to Owner the full amount of such invoice within thirty (30) days after the issue date of such invoice. Payment shall be made in U.S. Dollars by wire transfer to an account from time to time designated by Owner in each invoice, or by other method(s) specified in such invoice.

(f) Right to Audit. Owner shall have the right to inspect and audit all of Contractor's and any and all Subcontractor's books, records, correspondence, receipts, vouchers and memoranda relating to or affecting the Contract Documents. Contractor and all Subcontractors shall preserve all such records in accordance with the provisions of Schedule 7.3(f).

7.4. Taxes.

(a) Massachusetts Sales Taxes. Owner has advised Contractor that based on the Base Design and the Project's use as a facility for generating electricity for resale, Contractor's purchase of PV Modules and other related materials, supplies and equipment physically incorporated into the Project is exempt from Massachusetts sales and use tax; accordingly, the Fixed Contract Price excludes such Massachusetts sales and use taxes. If requested by Contractor, Owner shall supply Contractor with an exemption use certificate (Form ST-12 of the Massachusetts Department of Revenue) for such purpose, and solely for purposes of the Massachusetts sales and use tax, Contractor shall be acting as Owner's agent in the purchase of PV Modules and other related materials, supplies and equipment physically incorporated into the Project. If the Massachusetts Department of Revenue attempts to impose any sales or use tax on Contractor with respect to all or any portion of the Project, Contractor shall advise Owner for such imposition, and Owner either shall pay such tax to the Massachusetts Department of Revenue, or make alternate provisions acceptable to the Massachusetts Department of Revenue for such payment after the final disposition of any appeal. Owner reserves the right, in its sole and absolute discretion, to require Contractor to appeal or otherwise contest and prosecute any available exemption, in which case (i) the Parties shall coordinate and cooperate in such proceeding; (ii) Owner shall be solely entitled to any refund, credit or other compensation resulting from such appeal; and (iii) Owner shall pay any interest or penalty due in the event of an adverse determination. Owner's obligation under this Section 7.4(a) shall be limited to any sales and use tax assessed on Contractor's procurement by the Massachusetts Department of Revenue on account of the Project, and Contractor shall not invoice or be entitled to reimbursement for any other sales, use and/or other tax.

(b) Income and Payroll Taxes. Notwithstanding any other applicable provisions of the Contract Documents, Owner shall not be required to pay or reimburse Contractor for any taxes levied against Contractor's income or payroll.

(c) Non-Resident Tax Bonds. If required by Law, Contractor shall provide to Owner a certificate of compliance with the non-resident contractor bonding provisions applicable to all or any portion of the Work for Contractor and each Subcontractor. Contractor shall furnish such certificate to Owner in the case of (i) Contractor, no later than the earlier to occur of thirty (30) days after the Effective Date, or the date of commencement of the Work; and (ii) each Subcontractor, within the earlier to occur of thirty (30) days after Contractor's retention thereof, or the date of commencement of the Work

under the applicable subcontract. To the extent of absence of such certificates, Owner shall be entitled to withhold amounts otherwise due to Contractor under the Contract Documents in accordance with Law.

(d) Other Taxes. Except for Massachusetts sales and use taxes addressed in Section 7.4(a), the Fixed Contract Price includes and accounts for all taxes of whatever nature (including any federal, state, local, or foreign income, gross receipts, employment, excise, customs duties, withholding, sales and use (outside of Massachusetts), transfer, conveyance, registration, value added, alternative or add-on minimum, or other fees and charges of any Governmental Authority). Contractor shall be solely responsible for, and hereby assumes all risks associated with, all such taxes associated with the Work and/or the Contract Documents, including all present or future tariffs imposed on the importation of PV Modules and/or any other equipment required for the Project. Except as set forth in Section 7.4(a), Contractor shall not be entitled to any relief whatsoever in the form of a Change or otherwise as a result of taxes and/or other governmental charges imposed on the Work and/or any portion thereof, including due to any change in Law after the Effective Date.

ARTICLE 8. CHANGES IN THE WORK

8.1. Changes.

(a) Change Order Requests. Either Party may submit a Change Order Request to the other Party. Changes requested by Contractor shall not, however, be implemented until embodied in an Agreed Change Order.

(b) Owner's Rights. Owner shall have the right to require Contractor to delete from, change, add to and/or otherwise alter the Work, in each case to the extent that any such deletions, changes, additions or other alterations are of the character described in the scope of Work (as set forth in the Contract Documents), and to the extent such deletions, changes, additions and/or other alterations are within the general expertise of Contractor's or Subcontractors' personnel performing such Work.

(c) Notice. The Party submitting a Change Order Request will set forth in such Change Order Request the requested change to the Work, the Fixed Contract Price, the Work Schedule and/or any other terms and/or conditions of the Contract Documents. Any Change Order Request that affects the Fixed Contract Price shall include a revised Payment Schedule that gives effect to such Change. Unless otherwise mutually agreed by the Parties, such Change Order Request (and any resulting Change) shall maintain the percentage allocation associated with each Milestone in the Payment Schedule, *except* that for any Milestone(s) that has already occurred as of the date of such Change Order Request (and any resulting Change), the change in the Fixed Contract Price for the percentage(s) associated with such past Milestone(s) shall be allocated to each of the remaining Milestones in a manner proportional to the percentage allocation associated with each such remaining Milestone.

(d) Change Orders. If the Parties agree to an Agreed Change Order (or if Contractor automatically accepts Owner's Change Order Request under the provisions of Section 8.8), or Owner issues a Directed Change Order pursuant to this Article 8, the Work performed or to be performed shall be deemed to include or reflect such Changes reflected in the applicable Change Order. Upon receipt of an Agreed Change Order or a Directed Change Order, Contractor shall forthwith proceed to perform the Work, as changed, in accordance with the Agreed Change Order or Directed Change Order, as applicable, and all other terms and conditions of the Contract Documents for the Work, as changed by such Change Order.

(e) Evaluation. Contractor's entitlement to schedule relief, if any, under Change Orders issued by Owner pursuant to this Article 8 shall be evaluated based on those Critical Path activity(ies) materially affected by such Change using the CPM Schedule.

(f) Limitation. Notwithstanding anything in this Article 8 or elsewhere in the Contract Documents, Contractor shall not be entitled to issue, make a Claim for and/or receive any Change for whatever reason, except under the facts and circumstances set forth in Sections 8.2, 8.4 and 8.5.

8.2. Owner Changes Increasing the Work. Owner reserves the right, in its sole and absolute discretion, to issue Change Orders that increase or similarly alter the scope of the Work. To the extent such increase or similar alteration to the scope of Work has material Critical Path impact, the Work Schedule shall be equitably adjusted. Other terms and conditions of the Contract Documents also are subject to modification pursuant to a Change Order increasing or similarly altering the scope of Work. If Owner, in its sole and absolute discretion, issues any Change Order that increases or similarly alters the scope of the Work, the Work, as changed, shall be performed on the basis of an Agreed Change Order, subject to the provisions of Section 8.8.

8.3. Owner Changes Decreasing the Work.

(a) Owner's Rights. Owner reserves the right, in its sole and absolute discretion and without prejudice to Owner's rights under Article 13, to issue Change Orders that decrease or similarly alter the scope of the Work. If Owner, in its sole and absolute discretion, issues any Change Order that decreases or similarly alters the scope of the Work, and/or deletes or otherwise dispenses with any portion of the Work, the Work, as changed, shall be performed on the basis of an Agreed Change Order, subject to the provisions of Section 8.8. In any such case, Owner shall be entitled to receive a suitable and equitable credit against the Fixed Contract Price and an appropriate adjustment with respect to such credit shall be made to reflect any overpayment(s) that may have been made by Owner to Contractor; *provided* that (i) no Claim for compensation shall be made by Contractor for any loss of anticipated overhead or profit with respect thereto; and (ii) for any Work being performed on a firm fixed price basis that includes allocated elements, the amount of such credit shall reflect such allocation to the fullest extent possible. In any such event, Owner shall be entitled to make a suitable and equitable adjustment in the Work Schedule (to the extent of material Critical Path impact) and to other terms and conditions of the Contract Documents, if and as applicable.

(b) Effect. In the event that Owner elects to delete a portion of the Work, Contractor shall, subject to the provisions of Article 13, have no further responsibility with respect thereto, *except* that:

- (i) if Owner elects to complete such deleted portion of the Work, Contractor shall cooperate with Owner and with Owner's other contractors and suppliers to facilitate completion of such deleted portion of the Work;
- (ii) Contractor's warranty obligations shall apply to any deleted portion of the Work to the extent that Contractor was responsible for performing such Work prior to its deletion and to the extent that Contractor actually performed or invoiced for such Work;
- (iii) Contractor's indemnity obligations shall apply to any deleted portion of the Work to the extent that Contractor was responsible for performing such Work prior to its deletion and to the extent that Contractor actually performed or invoiced for such Work; and
- (iv) such deletion shall not affect or impair in any manner whatsoever Contractor's obligations with respect to the remaining portion of the Work.

8.4. Changes due to Critical Path Delay Caused by Owner.

(a) Delay. If, notwithstanding Contractor's mitigation efforts, Contractor experiences a material delay in a Critical Path Event as a direct result of Owner's failure to perform its obligation under the Contract Documents after notice and cure pursuant to Section 6.7(a), then Owner shall issue a Change Order based on the Work affected by such delay and the duration of the delay to the Critical Path adjusting the Work Schedule associated with the affected Work to offset the actual, demonstrable effect of such delay in the Critical Path; *provided*, that in Owner's sole and absolute discretion and in lieu of schedule relief, Owner may accelerate and/or maintain the Critical Path and adjust the Fixed Contract Price in accordance with the Pricing Schedule to reflect the actual, demonstrable effect of additional Work necessary to accelerate and/or maintain the Critical Path. Such Change Order shall be issued by Owner after receipt of Contractor's written proposal under Section 8.6 in compliance with the time requirements of Section 6.7(a). Any Dispute with respect to the foregoing shall be resolved pursuant to Section 8.8.

(b) Suspension. If, notwithstanding Contractor's mitigation efforts, Contractor experiences a material delay in a Critical Path Event as a direct result of Owner exercising its right to temporarily suspend the Work in accordance with Section 13.1, then Owner shall issue a Change Order adjusting the Work Schedule to offset the actual, demonstrable effect of such material delay in the Critical Path, with any Dispute resolved pursuant to Section 8.8; *provided*, that in lieu of schedule relief, Owner, in Owner's sole and absolute discretion, may adjust the Fixed Contract Price in accordance with the Pricing Schedule to reflect the actual, demonstrable effect of additional Work necessary to accelerate and/or maintain the Critical Path. Such Change Order shall be issued by Owner after receipt of Contractor's written proposal under Section 8.6 in compliance with the time requirements of Section 13.1. Any Dispute with respect to the foregoing shall be resolved pursuant to Section 8.8.

8.5. Changes Caused by Force Majeure. In the event and to the extent, notwithstanding the Claiming Party's mitigation efforts, a Force Majeure results in an actual, unavoidable and material delay in a Critical Path Event, the Claiming Party shall give the other Party written notice thereof promptly after the Claiming Party learns of the effects of the Force Majeure in accordance with Section 6.5. The Claiming Party shall propose such Changes to the scope of Work and to the Work Schedule, as appropriate, to address the effects of such Force Majeure as soon as possible, but not later than ten (10) Business Days after the cessation of the Force Majeure. Notwithstanding anything to the contrary in the foregoing or elsewhere in the Contract Documents, Contractor shall not be entitled to any adjustment to the Fixed Contract Price or any other financial compensation of whatever nature as a result of the occurrence of a Force Majeure; *provided* that in lieu of schedule relief, Owner may accelerate and/or maintain the Work Schedule and adjust the Fixed Contract Price in accordance with the Pricing Schedule to reflect the actual, demonstrable effect of additional Work necessary to accelerate and/or maintain the Work Schedule. Any Dispute with respect to the foregoing shall be resolved pursuant to Section 8.8.

8.6. Change Proposals. As part of each Change Order Request made by Contractor under this Article 8, Contractor shall submit a written proposal, at no additional cost to Owner, providing, at a minimum: a summary of the change(s) proposed; for time and equipment/materials Work, person-hours by labor category to be added or deducted by reason of the proposed change(s) and rates (to the extent not set forth in the Pricing Schedule); and the proposed impacts (if any) on (a) the Fixed Contract Price, (b) the Work Schedule and/or (c) any other terms and/or conditions set forth in the Contract Documents. For any Change Order Requests made by Contractor in accordance with Sections 8.2, 8.4 and/or 8.5, such written proposal shall be submitted to Owner within the time periods prescribed by such sections and, for any other Change Order Requests by Contractor, such written proposal shall be submitted to Owner together with Contractor's Change Order Request. Upon Owner's request, Contractor shall supply any or all information referenced above in this Section 8.6 to Owner to support any Change Order

Request of Owner within five (5) Business Days after Owner requests such information. If any such information is requested, the Change Order Request shall not be considered complete until Owner receives such information. Contractor and Owner shall use the form included in Appendix C-1 to Exhibit C for Change Order Requests and for Change Orders. Owner shall approve or provide written objection to all or any portion of each Change Order Request made by Contractor within thirty (30) days after receipt by Owner of the complete Change Order Request; *provided* that an objection by Owner in whole or in part to any Change Order Request shall be effective if given before the date that payment is due. Owner's written objection to all or any portion of Change Order Request shall include a brief explanation of the factual and contractual basis for rejecting such Change Order Request, or such portion thereof (if applicable), and shall be certified as made in good faith. Contractor shall, at the request of Owner, solicit proposals for the performance of the Work under any Change Order from any qualified Subcontractors identified by Owner. Such proposals shall be provided to Owner, and Owner may, at its option, direct Contractor to engage any such Subcontractor to perform the subject Work; *provided* that any such direction shall not diminish or otherwise impair Contractor's obligations with respect to such Work.

8.7. Work by Others; Subcontractors. Owner may at its option contract with one or more Third Parties for the performance of work that would otherwise result in a Change Order hereunder. Contractor shall have no warranty responsibility for such work performed by others. Contractor shall reasonably cooperate with such Third Parties, and Owner shall ensure that such Third Party work will be performed so as to not unreasonably interfere with Contractor's activities or achievement of Milestone Deadlines.

8.8. Claims/Disputes Involving Changes. Within five (5) Business Days after receipt of any Change Order Request from Owner, Contractor shall notify Owner of any Claim with respect to all or any portion of Owner's Change Order Request. Failure of Contractor to notify Owner of any such Claim within such five (5) Business Day period shall automatically constitute acceptance by Contractor of such Change Order Request thereby resulting in an Agreed Change Order. Acceptance by Contractor of such Change Order Request (in writing or through Contractor's failure to assert a Claim with respect to such Change Order Request within such five (5) Business Day period) shall be a final and binding settlement and release between the Parties with respect to the matters set forth in such accepted Change Order Request. If Contractor provides Owner timely notice of any Claim with respect to any portion of Owner's Change Order Request, and the Parties are unable to agree upon an Agreed Change Order pursuant to Owner's Change Order Request, or if Owner believes that Owner's proposed changes must be implemented without the delay reasonably necessary to permit the Parties to establish an Agreed Change Order, Owner may (at any time) issue a Directed Change Order. Contractor shall fully comply with each Directed Change Order without delay and without any other impact to Contractor's performance of Contractor's obligations under the Contract Documents, subject to subsequent Dispute resolution. Claims and Disputes pursuant to Section 8.6 or this Section 8.8 shall be subject to the Dispute Resolution provisions of Article 16.

ARTICLE 9. REQUIREMENTS FOR ACCEPTANCE OF THE WORK

9.1. Factory Tests. Contractor shall conduct (and/or cause the applicable Subcontractors to conduct) all routine, sample, and other factory tests in accordance with, and subject to the notice and other provisions of, the Technical Specifications and/or as required in connection with Acceptance Testing.

9.2. Readiness for Testing; Acceptance Testing.

(a) Methodology; Plan. Within fifteen (15) days after Owner's acceptance in accordance with the Contract Documents of the Final Design for that portion of the Project relating to the installation of the

PV Modules and related equipment and materials, Contractor shall prepare and submit to Owner testing methodologies and calculations for Acceptance Testing for Owner's review and approval. Such methodologies and calculations shall be consistent with and complete the test procedures described in Exhibit D and shall set forth in reasonable detail the procedures to be used including the specific measurements to be made, calculations and computations (including the use of data measured and recorded during testing and any manufacturer's correction curves), sample reports, proposed instrumentation (including calibration standards), and the duration of Acceptance Testing (consistent with the CPM Schedule). Within twenty (20) days before Contractor anticipates achieving Readiness for Testing, Contractor shall prepare and submit to Owner a test plan for Acceptance Testing for Owner's review and approval. Such test plan shall (i) implement and be consistent with (but not modify) the methodologies and calculations for Acceptance Testing previously submitted to, and approved by, Owner; (ii) complete the field aspects of the test procedures described in Exhibit D; and (iii) set forth in reasonable detail the organization and application of the Acceptance Testing, including the sequence for testing the components of the Project (including a detailed schedule consistent with the CPM Schedule), a detailed staffing and monitoring plan (including any Work to be performed by Subcontractors), the specific permanent and temporary instrumentation to be used, and the schedule and format for delivering reports and other results.

(b) Notice. When Contractor believes that the Work has nearly achieved Readiness for Testing, it shall deliver to Owner a Notice of Readiness for Testing (in the form of Schedule 9.2(b)) at least ten (10) days prior to the date that Contractor anticipates achieving Readiness for Testing. Within five (5) Business Days after receipt of such notice, Owner shall review and inspect the Work, and either (i) deliver to Contractor a written acknowledgment (by countersigning such notice) that Readiness for Testing has occurred to Owner's satisfaction, or (ii) withhold Readiness for Testing in writing with a reasonably detailed explanation of the reasons for such withholding. In the event Owner withholds Readiness for Testing, Contractor shall promptly take such corrective action as will cause Readiness for Testing to occur and shall issue to Owner another Notice of Readiness for Testing. Such procedure shall be repeated as necessary until Owner issues such written acknowledgment. Completion of Readiness for Testing shall be deemed to have been achieved as of the date upon which Owner executes the Notice of Readiness for Testing.

(c) Acceptance Testing. Contractor or its testing Subcontractor shall conduct all Acceptance Testing for the Work. The Contractor's Representative shall provide Owner with at least five (5) Business Days prior written notice of the commencement of each Acceptance Test to be conducted by or on behalf of Contractor. Owner may elect whether to have a representative and/or other employee of Owner observe any or all such Acceptance Tests; *provided* that Owner's (or its representative and/or other employee) observation of any such Acceptance Tests shall not diminish or affect in any manner Contractor's responsibility for, and any and all costs and expenses in connection with, any and all corrective action necessary to eliminate or remedy conditions deemed to have caused the Work to fail any such Acceptance Tests.

9.3. Substantial Completion. When Contractor believes that the Work is ready for Substantial Completion, it shall deliver to Owner a Certificate of Substantial Completion in substantially the form of Schedule 9.3. Within five (5) Business Days after receipt of such certificate, Owner shall review and inspect the Work, and either (a) deliver to Contractor a written acknowledgment (by countersigning such certificate) that Substantial Completion has occurred to Owner's satisfaction, or (b) withhold Substantial Completion in writing with a reasonably detailed explanation of the reasons for such withholding. In the event Owner withholds Substantial Completion, Contractor shall promptly take such corrective action as will cause Substantial Completion to occur and shall issue to Owner another Certificate of Substantial Completion. Such procedure shall be repeated as necessary until Owner issues such written acknowledgment. Substantial Completion shall be deemed to have been achieved as of the

date upon which Owner executes the Certificate of Substantial Completion.

9.4. Punch List Items. Substantial Completion shall not be delayed due to minor deficiencies in the Project as a whole or due to items or Work remaining to be performed or corrected that are not reasonably expected to affect the efficient, safe and normal operation of the Project in accordance with Prudent Industry Practices and Law. At least ten (10) days before Contractor expects Substantial Completion to occur, Contractor shall provide to Owner a list of any such items for Work remaining to be performed or corrected ("*Punch List Items*"). Owner shall be entitled to verify such list of Punch List Items, and to modify such list of Punch List Items to the extent necessary to allow for Final Acceptance, within such ten (10) day period; *provided*, that such verification shall not limit, impair or otherwise affect Contractor's obligation to fully and completely perform all of the Work (even if omitted from the Punch List Items). Notwithstanding the occurrence of Substantial Completion, Contractor shall remain obligated to complete the Punch List Items in accordance with the Contract Documents. If Contractor fails to complete the Punch List Items within ninety (90) days after Substantial Completion (or such longer period as agreed by the Parties in connection with the creation of the list of Punch List Items), Owner may notify Contractor of its intent to complete outstanding Punch List Items, and if Contractor fails to provide reasonable assurance to Owner's satisfaction with respect to the completion of outstanding Punch List Items within five (5) Business Days after receipt of Owner's notice, Owner shall have the right, at Contractor's sole cost and expense, to effect completion. Final Acceptance shall not occur until the full and final completion of all Punch List Items to the satisfaction of Owner.

9.5. Releases and Waivers. In addition to the conditional Lien waivers that Contractor shall provide with each invoice in accordance with Section 7.3(a), Contractor shall deliver as a condition of Final Acceptance: (a) an affidavit of Contractor providing that releases or waivers of all Liens in connection with the Work (including releases or waivers for all labor, services, materials and equipment for which a Lien could be filed) have been obtained and/or that such costs have been paid or otherwise satisfied; and (b) original, fully executed Lien waivers and releases from Contractor, all Subcontractors and all other Persons possessing Lien rights related to the Work.

9.6. Notice of Final Acceptance. When Contractor believes that the Work is ready for Final Acceptance, it shall deliver to Owner a Certificate of Completion and Request for Final Acceptance (Schedule 9.6). Within ten (10) Business Days after receipt of such certificate, Owner shall review and inspect the Work, and either (a) deliver to Contractor a written acknowledgment (by countersigning such certificate) that Final Acceptance has occurred to Owner's satisfaction, or (b) withhold Final Acceptance in writing with a reasonably detailed explanation of the reasons for such withholding. In the event Owner withholds Final Acceptance, Contractor shall promptly take such corrective action as will cause Final Acceptance to occur. Such procedure shall be repeated as necessary until Owner issues such written acknowledgment. Final Acceptance shall be deemed to have been achieved as of the date upon which Owner executes the Certificate of Completion and Request for Final Acceptance.

9.7. Nature of Approval. Neither Owner's acknowledgment of Completion of Readiness for Testing, Substantial Completion and/or Final Acceptance, nor its failure to grant the same, nor its other acceptance, approval, and/or acquiescence, nor its failure to grant the same in connection with any act, omission, performance, or conduct by Contractor, or by any Subcontractor, shall relieve or be deemed to relieve Contractor of any warranty, requirement, standard, or other duty of any kind or nature to which Contractor is otherwise obligated pursuant to any terms or conditions of the Contract Documents and/or pursuant to Law.

9.8. Record Document Submittals. Schedule 9.8 sets forth the requirements regarding Record Document submittals. Not less than ten (10) days prior to Contractor's anticipated date for Substantial Completion, Contractor shall deliver to Owner the training, operations and maintenance

manuals required under Appendix A-2 of the Technical Specifications (collectively, the "*Manuals*"). Contractor shall obtain all instruction manuals and special directions required for this purpose from manufacturers of equipment, materials and supplies, and shall itself provide any such written instructions that are not available from such manufacturers. The Manuals shall be based on Prudent Industry Practices.

ARTICLE 10. PASSAGE OF TITLE; RISK OF LOSS; LIABILITY FOR EQUIPMENT, MATERIALS AND SUPPLIES; TRANSFER OF CUSTODY AND CONTROL OF THE WORK; OWNER EQUIPMENT, MATERIALS AND SUPPLIES

10.1. Title. Title to all equipment, materials and/or supplies furnished as part of the Work shall automatically and without further action by the Parties transfer to, and be held by, Owner upon the occurrence of Substantial Completion, in the event that title has not already passed to Owner under Section 6.6(a). Such title shall pass without any further act or documentation. Contractor warrants as of the time of transfer of title pursuant to this Section 10.1, that Contractor has good and marketable title to all of such equipment, materials and/or supplies, free and clear of any Liens. Notwithstanding such transfer of title, risk of loss and liability for such equipment, materials and/or supplies, as well as liability with respect thereto, shall be determined in accordance with Section 10.2.

10.2. Risk of Loss; Liability. The care, custody and control, risk of damage to or loss of, and liability related to, equipment, materials and/or supplies furnished as part of the Work (including spare parts, if any, supplied pursuant to Section 2.11), whether stored on or off the Site, shall remain with Contractor until Substantial Completion, at which time care, custody and control and risk of damage to or loss of, and liability related to, such equipment, materials and/or supplies shall reside with Owner.

10.3. Transfer of Custody and Control of the Work to Owner. Upon Substantial Completion, Owner shall take custody and control of the Work. Following transfer of custody and control of the Work to Owner and prior to Final Acceptance, Contractor will have reasonable access to the Work and the Site so as to complete any applicable requirements of the Contract Documents.

10.4. Owner Equipment, Materials and Supplies.

(a) No Obligation. Owner shall have no obligation to furnish any equipment, materials, and supplies in aid of the Work except as specified in Appendix A-1 to Exhibit A. Circumstances may arise where Contractor will request that Owner make available to Contractor certain equipment or facilities and operators for the performance of Work. If Owner agrees to such request, in Owner's sole and absolute discretion, such equipment or facilities will be for Contractor's account at rates specified by Owner and subject to such terms and conditions (which may be in addition to those set forth in the Contract Documents) as Owner may require. Contractor shall bear full responsibility for the care, custody, and control of all equipment, materials, and supplies furnished to or for the benefit of Contractor by Owner pursuant to the provisions of this Section 10.4.

(b) Contractor Responsibility. Contractor shall assure itself of the condition of such Owner equipment and facilities before use and hereby assumes all risks and responsibilities in the use of such facilities and equipment. Contractor agrees to indemnify, defend and hold Owner harmless against any obligations, liabilities, damages or claims that may arise from such use in accordance with Article 15. Before returning such equipment and facilities to Owner, Contractor shall verify that no part of such equipment or facilities loaned to Contractor has been over-stressed or damaged in any way as a result of its use.

(c) Operators. In the event such Owner equipment is furnished with an operator, such operator will perform his services under the complete direction and control of Contractor and shall be considered Contractor's employee for all purposes other than the payment of wages, worker's compensation or other benefits paid directly to him by Owner.

ARTICLE 11. WARRANTIES

11.1. Work Warranty. Contractor unconditionally warrants that all Work shall fully conform to all requirements of the Contract Documents and shall be free from any defect or error whatsoever. Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period Owner determines that all or any portion of the Work fails to comply with the Contract Documents and/or there is a defect or error in all or any portion of the Work, including any error or defect in any equipment, materials and/or supplies, in any design, plan, drawing, specification, data, equipment precursor or Information supplied with or as part of the Work, and/or in any construction, assembly, installation (including landscaping), repair and/or modification services, Contractor shall, at its sole cost and expense and at Owner's option, (a) correctly re-perform such Work including, as applicable, correcting any defect or error in equipment, materials and/or supplies, in the design, plan, drawing, specification, data, equipment precursor or Information, and/or in such construction, assembly, installation, repair or modification services within five (5) Business Days (or such shorter period as may be appropriate under exigent circumstances) after receipt of Owner's notice; or (b) fully reimburse Owner for all costs incurred by Owner to effect such corrective action. If Owner directs Contractor to re-perform or correct any Work determined by Owner to be non-compliant with applicable requirements of the Contract Documents and/or determined by Owner to be erroneous or defective in any respect, and Contractor fails to re-perform or correct such Work as instructed by Owner within the designated time period, Owner may perform or correct the same at Contractor's sole cost and expense.

11.2. Project Warranty.

(a) Contractor unconditionally warrants that the Project will (i) conform to and be designed, engineered and constructed in accordance with the Contract Drawings, the Technical Specifications, Law (including all Permits), Prudent Industry Practices and other requirements of the Contract Documents; (ii) conform with, and be designed and engineered according to, professional standards and skill, expertise and diligence of design professionals regularly involved in utility scale solar power projects similar to the Project; and (iii) contain the equipment, supplies and materials described in the Technical Specifications. Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period Owner determines that all or any portion of the foregoing warranties are breached, Contractor shall at its sole cost and expense and at Owner's option, (1) correctly re-perform or correct the non-conforming Work within five (5) Business Days (or such shorter period as may be appropriate under exigent circumstances) after receipt of Owner's notice; or (2) fully reimburse Owner for all costs incurred by Owner to effect such corrective action. If Owner directs Contractor to re-perform or correct any of such Work, and Contractor fails to do so within the designated time period, Owner may correct the same at Contractor's sole cost and expense.

(b) Contractor unconditionally warrants that the Project shall be designed and installed to avoid the death or functional destruction of existing and/or reestablished vegetation and/or the occurrence of any erosion of whatever nature, in each case at the drip edge of each installed PV Module. Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period Owner determines that all or any portion of the foregoing warranty is breached,

Contractor shall at its sole cost and expense and at Owner's option, (i) repair and restore the affected portion(s) of the Site and correctly re-perform or correct the non-conforming Work within fifteen (15) Business Days after receipt of Owner's notice; or (ii) fully reimburse Owner for all costs incurred by Owner to effect such restoration and corrective action. To the extent required by MassDEP (including pursuant to Condition #16 of the PCU Permit), such repair and correction shall include the installation of splash pads and/or other corrective measures approved by MassDEP to prevent further erosion. If Owner elects to have Contractor perform such Work, and such restoration and correction cannot be effected within fifteen (15) Business Days after such notice, Contractor shall provide to Owner, for Owner's review and approval, a detailed written plan for performance of such Work (including the basis for the delay, the plan for obtaining any required approvals pursuant to the PCU Permit, and proposed milestones) before the expiration of such fifteen (15) Business Day period. If Contractor fails to restore and correct within such fifteen (15) Business Day period, or timely submit and strictly comply with such restoration and correction plan, then Owner may restore the Site and correct the Work at Contractor's sole cost and expense. For purposes of this Section 11.2(b), if Contractor has breached the foregoing warranty with respect to at least fifty percent (50%) of the installed PV Modules, then Contractor shall be deemed to have breached such warranty for all of the remaining installed PV Modules and shall correct such non-conforming Work for the entire Project.

11.3. Equipment Warranties.

(a) PV Modules. Contractor unconditionally warrants that each PV Module installed in the Project:

- (i) shall be new, free from defects in materials and workmanship under normal application, installation, use and service conditions;
- (ii) shall comply with and conform to all terms and conditions of the Contract Documents, including the Technical Specifications and be fit for the purpose intended under the Contract Documents; and
- (iii) shall have the capability to produce at least ninety percent (90%) of the minimum power rating established by the manufacturer, as determined by Owner in accordance with industry standards (including reasonable adjustments for test conditions).

Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period Owner determines that any of the foregoing warranties are breached, Contractor shall, at Owner's sole option and Contractor's sole cost and expense, either repair or replace all and/or the relevant portion of the affected PV Module(s). Contractor shall effect such repair or replacement within a reasonable time after (written) notice from Owner; *provided* that if such repair or replacement cannot be effected within fifteen (15) days after such notice, Contractor shall provide to Owner, for Owner's review and approval, a detailed written plan for performance of such Work (including the basis for the delay and proposed milestones) before the expiration of such fifteen (15) day period. If Contractor fails to so repair or replace within such reasonable time (or in strict compliance with such timely submitted plan), Owner may notify Contractor of its intent to complete such Work, and if Contractor fails to provide reasonable assurance to Owner's satisfaction with respect to the immediate completion of such Work within five (5) Business Days (or such shorter period as may be appropriate under exigent circumstances) after receipt of Owner's notice, Owner may correct the same at Contractor's sole cost and expense. The foregoing warranty does not warrant a specific capacity, which shall be exclusively governed by the Capacity Guarantee.

(b) Inverters. Contractor unconditionally warrants that the inverters installed in the Project in accordance with the Technical Specifications shall be new, free from defects in materials and/or workmanship under normal application, installation, use and service conditions and shall comply with

and conform to all terms and conditions of the Contract Documents, including the Technical Specifications, and otherwise shall be fit for the purpose intended under the Contract Documents. Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period Owner determines that any of the foregoing warranties are breached, Contractor shall, at Owner's sole option and Contractor's sole cost and expense, either repair or replace all and/or the relevant portion of the affected inverter(s). Contractor shall effect such repair or replacement within a reasonable time after (written) notice from Owner; *provided* that if such repair or replacement cannot be effected within fifteen (15) days after such notice, Contractor shall provide to Owner, for Owner's review and approval, a detailed written plan for performance of such Work (including the basis for the delay and proposed milestones) before the expiration of such fifteen (15) day period. If Contractor fails to so repair or replace within such reasonable time (or in strict compliance with such timely submitted plan), Owner may notify Contractor of its intent to complete such Work, and if Contractor fails to provide reasonable assurance to Owner's satisfaction with respect to the immediate completion of such Work within five (5) Business Days (or such shorter period as may be appropriate under exigent circumstances) after receipt of Owner's notice, Owner may correct the same at Contractor's sole cost and expense.

(c) Balance of Plant. Contractor unconditionally warrants that all equipment, materials and/or supplies (other than that covered under Section 11.3(a) or 11.3(b)) furnished by, through or on behalf of Contractor as part of the Work or for use or consumption in the course of, in aid of or for incorporation into the Work (including warranty repairs and replacements) shall (i) be free from defects in design, material and/or workmanship; (ii) comply with and conform to all terms and conditions of the Contract Documents, including the Technical Specifications, and be fit for the purpose intended under the Contract Documents; (iii) notwithstanding anything to the contrary in the Contract Documents, if specified in the Technical Specifications or other Contract Documents, equal or exceed the type, grade, quality and condition so specified or, if not specified in the Technical Specifications or other Contract Documents, be new, fit for the purpose intended under such Contract Documents, of first quality and of a type, grade, quality and condition comporting with Prudent Industry Practices; and (iv) be furnished by a fully qualified and experienced source whose facilities are employed by qualified personnel who are educated, trained and experienced in the procurement of raw materials, components and/or assemblies; production process(es) and actual production; inspection, testing and quality assurance; and logistics, all as applicable to the equipment, materials and/or supplies being furnished as part of the Work or for use or consumption in the course of, in aid of or for incorporation into the Work (including warranty repairs and replacements). Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period Owner determines that any of the foregoing warranties are breached, Contractor shall, at Owner's sole option and Contractor's sole cost and expense, either repair or replace the affected equipment, materials and/or supplies. Contractor shall effect such repair or replacement within a reasonable time after (written) notice from Owner; *provided* that if such condition materially and adversely affects the performance of the Facility and/or otherwise results in exigent circumstances, Contractor shall effect such repair or replacement within five (5) Business Days after such notice. If Contractor fails to so repair or replace within such reasonable time (or such five (5) Business Days), Owner may notify Contractor of its intent to complete such Work, and if Contractor fails to provide reasonable assurance to Owner's satisfaction with respect to the immediate completion of such Work within five (5) Business Days (or such shorter period as may be appropriate under exigent circumstances) after receipt of Owner's notice, Owner may correct the same at Contractor's sole cost and expense.

11.4. Non-Infringement Warranty. Contractor warrants that:

(a) Contractor shall convey to Owner unrestricted and exclusive right, title, and interest in and to (i) all of the Work; (ii) all materials, equipment and/or supplies; and (iii) all Information (other

than Contractor's Intellectual Property), in whatever form, applicable thereto including the unrestricted and exclusive right to use such Information for whatever purpose Owner may wish (except to the extent limited by Section 2.3(e));

(b) neither Contractor nor any Subcontractor, nor any other Third Party shall have any right, title, or interest in or to the Work, or any portion thereof including any patent, copyright, trademark, or data rights affecting the Work that is or would be under certain circumstances inconsistent with Owner's right, title, and interest therein;

(c) Contractor has, and/or when licensed to Owner in accordance with this Agreement will have, good title to and owns all Intellectual Property;

(d) all such Intellectual Property is, and/or when so licensed will be, the original development of Contractor and does not infringe upon intellectual property or other rights of others (including any patent, copyright, trade secret or other proprietary rights);

(e) Contractor has full power and authority to grant the rights with respect to Intellectual Property granted within this Agreement to Owner; and

(f) Contractor has not previously conveyed or otherwise granted (and will not grant) any other rights in the Intellectual Property to any Person that conflict with, or could otherwise impair, the rights granted to Owner pursuant hereto.

Without limitation of any other rights and/or remedies that Owner may have under the Contract Documents (including under the other provisions of this Article and including indemnification rights), or otherwise at law and/or in equity, if during the Warranty Period, Owner determines that any of the warranties set forth above are breached, then Contractor shall indemnify each Indemnified Person pursuant to Section 15.3 with respect to any Infringement Losses.

11.5. Conditions of Warranties. The warranties provided for in this Article 11 are subject to the following conditions:

- (a) Any and all repairs, replacement or corrections made to the Work by Persons other than Contractor, any Subcontractor or any other Person at the direction of Contractor, shall be performed in accordance with Prudent Industry Practices;
- (b) Owner shall notify Contractor (in writing) of any breach of warranty;
- (c) For Work altered, adjusted, redesigned, repaired, replaced and/or re-performed after Final Acceptance, the Warranty Period for such Work shall equal a period equal to the greater of (i) the remainder of the original Warranty Period applicable thereto; or (ii) three (3) years from and after such alteration, adjustment, redesign, repair, replacement and/or re-performance, *provided* that if the original Warranty Period for such Work was less than three (3) years, the period established under this clause (ii) shall be one (1) year from such warranty Work;
- (d) The warranties provided for in this Article 11 shall apply regardless of where the Work is performed; and
- (e) Owner's rights under this Article 11 are cumulative. If any matter is determined by Owner to be covered by more than one warranty under this Article 11, it shall be Owner's choice

exercised in Owner's sole and exclusive discretion, concerning the warrant(y)(ies) that will apply.

11.6. Subcontractor Warranties.

(a) Terms. Contractor shall obtain usual and customary warranties from Subcontractors (including vendors of services, materials, equipment and/or supplies); *provided* that such warranties shall be on terms no less favorable than the warranties set forth in this Article 11. Contractor shall (i) ensure that the benefit(s) of any warranty(ies) offered by any Subcontractor are passed through to Owner; (ii) provide a copy of the terms of any such Subcontractor warranty(ies) to Owner; and (iii) identify relevant Subcontractor contract(s) and otherwise actively assist Owner, as required or desired by Owner and without additional charge, in enforcing any such warranty(ies) in the event such enforcement should become necessary. Without limiting the generality of the foregoing, Contractor shall so obtain from the manufacturer of the PV Modules a warranty described in Schedule 11.6(a).

(b) Contractor's Obligations. The existence, absence and/or terms and conditions of any Subcontractor warranties, including compliance or non-compliance therewith, shall not affect or impair in any manner whatsoever any of Contractor's obligations to Owner under the Contract Documents, including indemnification and warranty obligations.

(c) Summary. At least ten (10) days before Contractor expects Substantial Completion to occur, Contractor shall submit to Owner a binder containing a summary of all warranties supplied by Subcontractor in the form of Schedule 11.6(c), together with all documentation relating to such warranties.

11.7. Repairs and Replacements.

(a) Damages. Contractor shall be responsible for all physical damages to the Facility and/or Owner's system resulting from any breach of Contractor's warranties hereunder as determined by Owner. If such damage relates to portions of such system outside of the Project, Owner shall be entitled to effect repairs and/or replacements at Contractor's sole cost and expense. Owner shall provide notice to Contractor of any such damages outside of the Project after becoming aware of the relationship to the Project; *provided* that Owner's failure to provide such notice shall not relieve Contractor of any of its obligations under the Contract Documents, or otherwise prejudice or impair Owner's rights and remedies against Contractor with respect to such damage.

(b) Repair. Contractor shall consult with Owner and use its best efforts to perform remedial actions in a manner and at a time so as to minimize the disruption of the normal operations of Owner's system, and Contractor shall coordinate all repair, replacement and other warranty activities with Owner.

(c) Removal. If it is necessary to remove any equipment and/or materials from the Site in order for Contractor to repair, modify or replace the same, Contractor shall provide the personnel and equipment necessary for such removal and reinstallation at its own expense, and to the extent permitted under Law, Contractor shall furnish temporary and/or permanent replacements for such equipment and/or materials to ensure uninterrupted operation of the Facility. Owner shall provide reasonable access to the Site and the Facility for such services.

(d) Costs. Any cost of shipment of repaired, modified or replacement equipment and/or materials to or from Contractor's plant or any other off-Site facility shall be borne by Contractor. Owner shall retain title to such equipment and/or materials, but Contractor shall bear the risk of loss and liability with respect to such equipment and/or materials after removal from the Site; *provided* that if Contractor,

or Owner acting at Contractor's request, removes any equipment and/or materials from the Site and installs a permanent replacement, title to and risk of loss of, and liability for, (i) such replacement shall pass to Owner upon installation, free and clear of any Liens; and (ii) title to and risk of loss of, and liability for, such replaced equipment and/or materials shall pass to Contractor at the time of removal from the Site, subject to any rights retained by Owner for insurance purposes and/or the settlement of any other claims and/or issues.

11.8. Non-exclusivity of Warranties. Owner's rights under this Article 11 are in addition to, and not in limitation of, any and all other rights and/or remedies under the Contract Documents (including indemnification rights), or otherwise at law and/or in equity related to any and all matters giving rise to Owner's rights (or Owner's assertion of rights) under this Article 11.

ARTICLE 12. INSURANCE; PERFORMANCE ASSURANCE

12.1. Insurance. As of the Effective Date, or as of such other date specified in Schedule 12.1, Contractor, at Contractor's sole cost and expense, shall obtain and maintain in effect the insurance coverages (with deductibles) set forth in Schedule 12.1.

12.2. Performance Assurance. Contractor shall provide performance assurance in favor of Owner with respect to all or any portion of the Work in an amount and form and from an issuer satisfactory to Owner, and otherwise in accordance with the requirements set forth in Schedule 12.2. Unless otherwise specified by Owner or specifically indicated in Schedule 12.2, such performance assurance shall remain in effect until the expiration of the Warranty Period. The Fixed Contract Price shall include Contractor's cost of procuring such performance assurance set forth in Schedule 12.2. In no event shall the Fixed Contract Price include any cost for Contractor's extension of any performance assurance due to the failure of Contractor to complete Work in accordance with the Work Schedule.

**ARTICLE 13. SUSPENSION; TERMINATION; SHUTDOWN;
WITHDRAWAL; SUPPLEMENTATION**

13.1. Owner's Right to Temporarily Suspend. Owner may suspend the Work at any time by instructing Contractor to stop all or any portion of the Work and to continue at a later date at Owner's convenience. If such suspension could have a material adverse effect on any Critical Path Events, then Contractor shall notify Owner or the Owner's Representative of any such circumstances orally as soon as possible after the issuance of the suspension notice and in writing within one (1) Business Day after such issuance. Thereafter, in accordance with Article 8 (except for time periods specified in Article 8), Contractor shall submit to Owner a Change Order Request with respect to such potential change in the Work Schedule, specifically identifying, among other things, the continuing material Critical Path impact or effect of the suspension, within three (3) Business Days after the date of such suspension notice. Any Claims by Contractor for an extension of the Work Schedule shall be irrevocably waived and released unless Contractor provides such immediate oral notice and one (1) Business Day written notice and thereafter submits such Change Order Request to Owner within such three (3) Business Day period. Subject to the provisions of Section 8.8, Owner may approve an appropriate Change Order Request with respect to material Critical Path impact in connection with the termination of such suspension and/or reimburse Contractor for its Direct Incremental Costs incurred solely as a result of the material Critical Path impact of such suspension under this Article 13. Contractor shall use all reasonable efforts to mitigate the financial and/or scheduling impact on Owner of any such suspension. If the Work or any portion thereof is stopped by notice as aforesaid, Contractor shall resume such Work (or applicable portion thereof) within five (5) Business Days after the date fixed in the written notice from Owner to Contractor to do so.

13.2. Termination for Convenience. Owner shall have the right to terminate and/or cancel all or any portion of the Contract Documents and/or all or any portion of the Work for any reason or for no reason, for Owner's convenience, and at its sole and absolute discretion, upon at least one (1) day prior (written) notice to Contractor specifying when such termination becomes effective.

(a) Winding Up. In such event, Contractor shall immediately proceed, unless otherwise directed by Owner (in writing), to take any and all actions necessary to cease and wind up the affected Work, demobilize any affected personnel, and cooperate with and follow any and all written instructions issued by Owner in connection therewith including any Owner instructions for (i) bringing the affected Work to an orderly halt; (ii) canceling or assigning to Owner subcontracts and/or purchase orders; (iii) turning over all completed and in-process documentation and other completed and in-process deliverable work product; (iv) documenting the status of completed, in-process and planned Work; (v) promptly removing from the Site all equipment, materials and/or supplies for the affected Work, as well as equipment, materials and/or supplies of Contractor and/or Subcontractor(s) specified by Owner; and (vi) otherwise assisting Owner in bringing the affected Work to an orderly, safe and controlled conclusion or transition, as directed by Owner. If and to the extent requested by Owner (in writing), and to the extent that title has not transferred earlier pursuant to Article 10, Contractor shall promptly transfer title and deliver to Owner such completed or partially completed Work (including drawings, designs and other work product related to such Work), as well as any and all contract rights of Contractor relating to such Work. Contractor shall promptly settle the liabilities and claims arising out of the termination of subcontracts and orders. If and as Owner so authorizes or permits (in writing), Contractor shall sell at a price approved by Owner, or Contractor may retain at a price mutually agreed, equipment, materials and/or supplies used in such Work. The proceeds of any such sale or the price agreed upon between Contractor and Owner, as applicable, shall be paid by, or credited to, Owner in such manner as Owner may direct for Owner's purposes.

(b) Information. Upon receipt of any notice of termination as described in this Section 13.2, Contractor shall provide a written, detailed inventory of all equipment, materials and/or supplies for the affected Work in storage at the Site, in route to the Site, in storage or manufactured away from the Site, and/or on order from its suppliers and Subcontractors for such Work.

(c) Compensation. Subject to Sections 7.3(a), (b) and (c), as full and final compensation for the Work performed through the effective date of termination of such Work for convenience, Owner shall pay to Contractor, upon Contractor's satisfaction of all applicable terms and conditions of the Contract Documents, including the terms and conditions of this Section 13.2:

- (i) a percentage of the Fixed Contract Price equivalent to the percentage of the affected Work completed in compliance with the Contract Documents and based on the Work Schedule through the effective date of termination, *less* that portion of the Fixed Contract Price for the affected Work previously paid to Contractor; plus
- (ii) Contractor's Direct Incremental Costs for demobilization (excluding (1) retention bonuses, severance compensation and similar compensation arrangements that impose premiums and/or are not based on hours worked; and (2) cancellation, breakage and similar fees based on early termination under agreements (including leases)); plus
- (iii) reimbursement of liabilities and claims arising out of accrued charges under subcontracts and orders with Third Parties not assigned to Owner pursuant to Section 13.2(a)(ii), excluding, however, cancellation, breakage and similar fees based on early termination under agreements (including leases);

provided, that the payment due Contractor under this Section 13.2(c), when aggregated with all other previous or pending payments to Contractor under the Contract Documents, shall not exceed the Fixed Contract Price otherwise payable to Contractor with respect to the affected Work. Contractor shall promptly settle, on commercially reasonable terms, the liabilities and claims arising out of the cancellation of subcontracts and orders with Third Parties not assigned to Owner pursuant to Section 13.2(a)(ii). Contractor shall use its best efforts to minimize all such costs of termination. As a condition to Owner's obligation to reimburse Contractor for such costs, Contractor shall provide Owner with an itemized accounting of all termination costs.

(d) Effect. Notwithstanding any provision of the Contract Documents to the contrary, as of the effective date of termination of all or any portion of the Contract Documents and/or the Work pursuant to this Section 13.2, Owner shall have no further obligation to Contractor with respect to the affected Work except for payment of such sum(s) as may become due and payable pursuant to Section 13.2(c). As of the effective date of termination of all or any portion of the Contract Documents and/or Work pursuant to this Section 13.2, Contractor shall (i) cooperate with Owner to the fullest extent for the purpose of allowing Owner or its designee to perform fully all functions previously performed by Contractor under the Contract Documents with respect to the affected Work; and (ii) have no other obligation to Owner concerning the affected Work, *except* for complying with all terms and conditions of this Section 13.2 and such other obligations that Contractor has under the Contract Documents as by their terms, expressed or implied, are to continue after completion of the affected Work, including Contractor's warranty and indemnity obligations. Termination of any portion of the Contract Documents and/or the Work pursuant to this Section 13.2 shall not affect any other portion of the Contract Documents, the Project and/or the Work.

13.3. Termination Due to Force Majeure. If either (a) a suspension of performance by Contractor as a result of a Force Majeure exceeds thirty (30) days, or (b) the total number of days in which a suspension of performance by Contractor as a result of all Force Majeures in the aggregate exceeds thirty (30) days, Owner may terminate all or any portion of the Contract Documents and/or all or any portion of the Work without any liability being owed thereby by Owner to Contractor (other than as set forth in Section 13.2(c)); *provided*, that Owner gives Contractor written notice of its intent to terminate not less than five (5) Business Days prior to the designated termination date and Contractor fails or is otherwise unable to resume performance before such designated date. Such termination shall be deemed to be a termination for convenience by Owner under Section 13.2.

13.4. Events of Default.

(a) Events of Default. Upon the occurrence of any of the following (each an "*Event of Default*"):

- (i) any representation or warranty made by Contractor shall be false or misleading in any material respect;
- (ii) Contractor refuses, neglects or fails in any respect to prosecute the Work (or any portion thereof) in full compliance with the Work Schedule;
- (iii) Contractor refuses or fails to supply enough properly trained and skilled workers or proper equipment, materials, or supplies;
- (iv) Contractor fails without reasonable grounds to make timely and proper payment(s) to any Subcontractor;

- (v) Contractor consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and/or sells, assigns or otherwise transfers the Contract Documents, in each case without Owner's consent in breach of Section 20.1;
- (vi) Contractor refuses, neglects or fails in any respect to fully and strictly comply with the Site Restrictions;
- (vii) Contractor fails to perform any obligation set forth in the Contract Documents or any other agreement between Contractor and Owner (other than the events that are otherwise specifically covered as a separate Event of Default), and Contractor fails to cure such breach within five (5) days after receipt of notice of such failure; *provided*, that if such failure is capable of cure and Contractor shall be pursuing such cure with due diligence, but such cure cannot be effected within such five (5) days with the exercise of reasonable diligence, and such failure does not materially and adversely affect the Work Schedule, then such cure period may be extended for an additional five (5) days with Owner's prior written consent, in Owner's sole and absolute discretion; *provided*, that any and all such cures shall be at Contractor's sole cost and expense; *provided, further*, that if any such breach occurs more than once, then any cure right under this Section 13.4(a)(vii) with respect to any such subsequent failure to perform shall be at the sole and absolute discretion of Owner;
- (viii) Contractor or any of its Affiliates becomes Bankrupt;
- (ix) Commencement of any legal proceeding against Contractor that may interfere with Contractor's ability to perform in accordance with the Contract Documents;
- (x) Contractor acts in bad faith; or
- (xi) Contractor unreasonably delays the Work or any part thereof,

then Owner, without prejudice to any other right or remedy Owner may have under the Contract Documents, at law and/or in equity, and without notice to any surety and/or issuer of any letter of credit and/or other performance assurance, may terminate all or any portion of the Contract Documents and/or all or any portion of the Work without any liability being owed thereby by Owner to Contractor by giving written notice of such termination to Contractor and noting therein the effective date of termination.

(b) Right to Cover; Costs of Cover.

(i) Right to Cover. If, pursuant to an Event of Default, Owner terminates all or any portion of any of the Contract Documents and/or all or any portion of the Work, without limiting any other rights or remedies available to Owner under the Contract Documents, at law and/or in equity, Owner may obtain all or any portion of the Work terminated thereby from another contractor with any and all cost to Owner in excess of what Owner would have been liable to pay Contractor therefor being chargeable to Contractor.

(ii) Costs of Cover. Owner's cost of cover pursuant to Section 13.4(b)(i) shall include Owner overhead and supervision expenses, attorneys' fees and other costs and expenses of whatsoever kind or nature incurred by Owner in connection with the exercise of Owner's rights under Section 13.4(b)(i).

(c) Winding Up. Upon receipt of any notice of termination as described in Section 13.4(a), Contractor, at Contractor's sole cost and expense, shall immediately proceed unless otherwise directed by Owner (in writing), to take any and all actions necessary to cease and wind up the affected Work, demobilize any affected personnel and cooperate with and follow any and all written instructions issued by Owner in connection therewith, including any Owner instructions for (i) bringing the affected Work to an orderly halt; (ii) canceling or assigning subcontracts and/or purchase orders; (iii) turning over all completed and in process documentation and other completed and in-process deliverable work product; (iv) documenting the status of completed, in-process and planned Work affected by such termination; (v) promptly removing from the Site all equipment, materials and/or supplies for the affected Work, as well as equipment, materials and/or supplies of Contractor and/or Subcontractor(s) specified by Owner; and (vi) otherwise assisting Owner in bringing the affected Work to an orderly, safe and controlled conclusion or transition, all as directed by Owner. If and to the extent requested by Owner in writing, and to the extent that title has not transferred earlier pursuant to Article 10, Contractor, at Contractor's sole cost and expense, shall promptly transfer title and deliver to Owner such completed or partially completed Work (including drawings, designs and other work product related to such Work), as well as any and all contract rights of Contractor relating to such Work. Contractor, at Contractor's sole cost and expense, shall promptly settle the liabilities and claims arising out of the termination of subcontracts and orders. If authorized by Owner in writing, Contractor, at Contractor's sole cost and expense, shall sell at a price approved by Owner, or retain at a mutually agreed upon price, equipment, materials and/or supplies used in such Work. The proceeds of any such sale or the price agreed upon between Contractor and Owner, as applicable, shall be paid to, or credited to, Owner in such manner as Owner may direct for Owner's purposes.

(d) Information. Upon receipt of any notice of termination as described in Section 13.4(a), Contractor, at Contractor's sole cost and expense, shall provide a written, detailed inventory of all equipment, materials and/or supplies for the affected Work in storage at the Site, in route to the Site, in storage or manufactured away from the Site, and/or on order from its suppliers and Subcontractors for such Work.

(e) Effect. As of the effective date of termination of all or any portion of the Contract Documents and/or the Work pursuant to this Section 13.4, Owner shall have no further obligation or liability to Contractor whatsoever for such terminated portion of the Contract Documents and/or the Work. As of the effective date of termination of all or any portion of the Contract Documents and/or the Work pursuant to this Section 13.4, and without limiting Contractor's liability to Owner under the Contract Documents, at law and/or in equity, Contractor, at Contractor's sole cost and expense, shall cooperate with Owner to the fullest extent for the purpose of allowing Owner or its designee to perform fully all functions previously performed or required to be performed by Contractor under the Contract Documents. Termination of any portion of the Contract Documents and/or the Work pursuant to this Section 13.4 shall not affect any other portion of the Contract Documents and/or the Work.

13.5. Right to Shut Down. Without prejudice to any other rights that Owner may have under the Contract Documents, at law and/or in equity, if:

- (a) Contractor fails to comply with any requirement(s) or provision(s) of the Technical Specifications, any Law and/or the Site Restrictions; and/or
- (b) any acts or omissions of Contractor in the opinion of Owner result in or are reasonably likely to result in (i) a disruption of the operation of Owner's electric system or of service to Owner's customers; and/or (ii) a condition that endangers or is reasonably likely to endanger life or property;

then Owner shall have the right, at its sole and absolute discretion, to immediately and temporarily shut down Contractor's operation(s) affected thereby unless and until Owner is assured to its reasonable satisfaction that subsequent operations will strictly comply with such requirements, terms, conditions, and provisions, and Owner shall not be liable by reason thereof for any Claim, Dispute, extra compensation or time extension or payment reimbursement resulting therefrom or otherwise. The provisions of this Section 13.5 are in addition to any rights that Owner may otherwise have under the Contract Documents (including as a result of any associated Event of Default), at law and/or in equity.

13.6. Right to Withdraw. Without prejudice to any other rights that Owner may have under the Contract Documents, at law, and/or in equity, if, in the opinion of Owner, Contractor shall fail at any time to prosecute the Work with promptness and diligence according to the requirements of the Contract Documents, including the provisions of the Technical Specifications, the Work Schedule, and Article 2, or if Contractor, in the opinion of Owner, shall refuse or fail at any time to supply personnel, supervision, or equipment, materials, or supplies of the proper quantity or quality, then Owner, after giving notice thereof to Contractor, may withdraw any portion of the Work designated by Owner that, in Owner's sole opinion, Contractor will be unable to complete by the date fixed for such completion, due consideration having been given to the progress of the Work at the date such notice is given, and may complete the Work on such withdrawn portion by itself or through any other contractor(s), subcontractor(s), or supplier(s) of Owner. In such event:

(a) Cooperation. Contractor shall fully cooperate with Owner and with any other contractor(s), subcontractor(s), and supplier(s), as applicable, and carefully fit and coordinate its own Work with the Work of Owner and any other contractor(s), subcontractor(s), and supplier(s).

(b) Compensation. Contractor shall not be entitled to receive compensation for any portion of the Work withdrawn pursuant to the provisions of this Section 13.6. If Contractor, prior to the effective date of a portion of the Work being withdrawn, has completed a part thereof in accordance with the Contract Documents, Contractor shall be entitled to receive compensation for such completed part of the Work. If the cost to Owner of completing the withdrawn portion of the Work (including any and all amounts previously paid to Contractor), Claims, losses, damages, Owner overhead and supervision expenses, reasonable attorneys' fees and expenses of litigation and other Dispute resolution proceedings, if any, and other costs and expenses of whatsoever kind or nature incurred by Owner is more than the earned value of the Work properly performed by Contractor in compliance with all applicable requirements of the Contract Documents prior to the effective date of withdrawal, then Contractor shall pay such excess to Owner together with the amount(s) of all other damage(s) suffered by Owner as a result of Contractor's failure to perform. Contractor shall not be entitled to receive, and hereby irrevocably waives and releases, any further payment(s) on account of such withdrawn Work, even if the costs of completion and other amounts incurred by Owner are less than, in the aggregate, that portion of the Fixed Contract Price reasonably allocated by Owner thereto.

(c) Effects. As of the effective date of withdrawal, Owner shall have no further obligation to Contractor with respect to the withdrawn portion of the Work. As of such effective date, Contractor shall (i) cooperate with Owner to the fullest extent for the purpose of allowing Owner or its designee to fully perform such withdrawn Work; and (ii) have no other obligation to Owner with respect to the withdrawn portion of the Work *except* for satisfying any and all obligations directly or indirectly arising out of, resulting from, or related to Contractor's default(s) and/or breach(es) and/or violation(s), complying with all requirements, terms, conditions, and provisions of this Section 13.6 and such other obligations that Contractor has under the Contract Documents as by their terms, expressed or implied, are to continue after completion of the Work and/or termination of the Contract Documents, including Contractor's warranty and indemnity obligations, which obligations shall not be reduced by reason of Owner's withdrawal of Work. The provisions of this Section 13.6 are in addition to any rights that

Owner may otherwise have under the Contract Documents (including as a result of any associated Event of Default), at law and/or in equity with respect to the facts and circumstances that give rise to withdrawal of the Work or any portion thereof.

13.7. Right to Supplement. Without prejudice to any other rights that Owner may have under the Contract Documents, at law and/or in equity, if, in the opinion of Owner, Contractor shall fail at any time to prosecute the Work with promptness and diligence according to the requirements of the Contract Documents, including the provisions of the Technical Specifications, the Work Schedule, and Article 2, or if Contractor, in the opinion of Owner, shall refuse or fail at any time to supply personnel, supervision, or equipment, materials, or supplies of the proper quantity or quality, then Owner, after giving written notice thereof to Contractor, may supplement the Work by providing such additional labor and/or equipment, materials, and/or supplies (directly or through any other contractor(s), subcontractor(s), or supplier(s)) as it deems necessary to rectify Contractor's default or to complete the Work by the date fixed for its completion. With respect to any Work supplemented by Owner:

(a) Cooperation. Contractor shall fully cooperate with Owner and with any other contractor(s), subcontractor(s), and supplier(s), as applicable, and carefully fit and coordinate its own Work with the Work of Owner and any other contractor(s), subcontractor(s), and supplier(s).

(b) Compensation. Contractor shall be liable to Owner for any and all costs and expenses of Owner for supplementing any and all Work (including overhead and supervision expenses, reasonable attorneys' fees and expenses of litigation and other Dispute resolution proceedings, if any, and other costs and expenses of whatsoever kind or nature incurred by Owner). Owner shall have no obligation to Contractor by reason of such supplementation or otherwise, including any warranty obligation. Notwithstanding such supplemental work, Contractor shall continue to have all obligations (including warranty obligations) to Owner under the Contract Documents, at law and/or in equity as if no supplementation had occurred, and Contractor shall comply with the provisions of this Section 13.7 applicable to supplementation. The provisions of this Section 13.7 are in addition to any rights that Owner may otherwise have under the Contract Documents (including as a result of any associated Event of Default), at law and/or in equity with respect to the facts and circumstances that give rise to supplementing of the Work or any portion thereof.

13.8. Remedies Cumulative. Any and all right(s) and remedy(ies) of Owner as set forth in any provision of the Contract Documents is/are cumulative and is/are in addition to any other right(s) and remedy(ies) of Owner under any other provision of the Contract Documents, and otherwise at law and/or in equity, except to the extent that any of such rights are contrary to any specific provision(s) of the Contract Documents; provided that if (a) any right and/or remedy of Owner has been expressly limited pursuant to the terms of the Contract Documents, and any such right and/or remedy is ruled invalid or unenforceable, and/or (b) the Contract Documents do not specifically provide for a right and/or remedy in a particular circumstance, nor specifically preclude a right or remedy in that circumstance, then Owner may pursue all rights and/or remedies available at law and/or in equity. Failure of Owner to exercise any of its rights under this Article 13 will not excuse Contractor from compliance with the provisions of the Contract Documents, nor constitute a waiver of, or otherwise prejudice any rights and remedies of Owner.

ARTICLE 14. LIMITATIONS ON LIABILITY

14.1. Maximum Liability. Except as set forth in Section 14.3, Contractor shall not be liable to Owner in an amount greater than the Fixed Contract Price for any cause arising out of or relating to the Contract Documents or the Work. Owner's aggregate liability to Contractor shall not exceed, under any circumstance whatsoever, that portion of the Fixed Contract Price that has not yet been paid by Owner

under Article 7 for which compensation under the Contract Documents is due and owing from Owner to Contractor.

14.2. Consequential Damage(s). Except as set forth in Section 14.3, neither Party shall be liable to the other Party for any indirect, incidental or consequential damages. Without limiting the generality of the foregoing, Contractor waives and releases all Claims against Owner for any liability or loss in connection with: (a) payment of any and all federal, state, commonwealth and local taxes or contributions imposed or required under unemployment insurance, social security and income tax law; (b) any and all losses in connection with any claims for lost wages, severance pay, pensions or other benefits with respect to any and all Work; and (c) all claims for liability for damage to Contractor's personal property or injury to Contractor or its personnel in connection with any and all Work.

14.3. Exceptions to Limitations on Contractor's Liability. Nothing contained in this Article 14 shall limit, alter, or modify the rights or remedies of Owner or the liability of Contractor for (a) any intentional acts of Contractor, any Subcontractor, their respective Affiliates or the respective directors, officers, employees or agents of Contractor, any Subcontractor or their respective Affiliates; (b) Contractor's and its Affiliates' internal costs related to meeting warranty obligations; (c) indemnities; (d) liquidated damages; (e) losses or damages covered by insurance proceeds (including those that would have been available under any of the insurance policies required to be obtained and maintained by Contractor and all Subcontractors under this Agreement, but for the fact that Contractor or any Subcontractor failed to obtain or maintain any such policy in accordance with the terms and conditions of this Agreement); and/or (f) compliance with Law. All specific rights and remedies of Owner set forth in this Section 14.3 shall be fully enforceable in each case, irrespective of whether Contractor's obligations with respect thereto may be construed as special, indirect, incidental, consequential or penal damages or whether Contractor has assumed or may incur liability of any nature whatsoever to anyone not a Party to the Contract Documents.

14.4. Effect of Insurance. The Parties understand and agree that the liability of Contractor to Owner under the Contract Documents, at law and/or in equity shall not be limited by the amount of insurance coverage required or made available pursuant to the provisions of Section 12.1 and Schedule 12.1.

ARTICLE 15. INDEMNIFICATION

15.1. General Indemnification. Subject to the provisions of Sections 15.6 and 15.8, Contractor shall be responsible for and shall indemnify, and shall defend and save Owner, its Affiliates and their respective employees, trustees, shareholders, officers, and directors, as well as their respective agents and consultants (each, an "*Indemnified Person*") harmless from and against any and all costs and expenses (including all costs and expenses of litigation, as well as related attorneys' fees), losses, liabilities, fines, penalties, damages, claims, demands, judgments, awards, obligations, actions, or proceedings whatsoever related to the Work or Contractor's obligations under the Contract Documents.

15.2 Environmental Indemnification. Subject to the provisions of Sections 15.6 and 15.8, Contractor agrees to indemnify each Indemnified Person against, and defend and hold each of them harmless from any liability, claim, complaint, demand, action, cause of action, audit, investigation, proceeding, obligation, loss, cost, damage, judgment, adjudication, arbitration decision, penalty (including fees and fines), or expense (including court costs, attorneys' fees and/or enhanced oversight expenses) (collectively, the "*Indemnified Environmental Obligations*") suffered or incurred by any of them as a result of, arising out, and/or relating to (a) any acts or omissions of Contractor, any Subcontractors, agents, or employees related to or involving Hazardous Materials discovered, encountered, used, generated, stored, handled, processed, released, removed and/or disposed of by any of

such Persons during the course of the Project and/or any of the Work, including any such Indemnified Environmental Obligation alleged, asserted, initiated or otherwise existing in respect of injury to persons, including death, and damage to property and/or natural resources suffered by any Person (including employees or agents of Contractor and any Subcontractor), other than arising from Pre-existing Hazardous Materials; and (b) any acts or omissions of Contractor, any Subcontractors, or their respective agents or employees related to or involving the release of Pre-existing Hazardous Materials, but only to the extent that such acts or omissions involve any breach of Contractor's obligations under of any of the Contract Documents and/or negligence or willful misconduct. The foregoing indemnification shall include any Indemnified Environmental Obligation related to the storage, handling, processing, release, or removal on or from the Site of any such Hazardous Materials by Contractor, any Subcontractors, transporters, recyclers, or any treatment, storage or disposal facility or location used by Contractor or such other Persons, whether or not based upon any act or omission on or off the Site. Further, such indemnification shall include Indemnified Environmental Obligations suffered, incurred or imposed as a result of actions pursued by any Governmental Authority related, in any way whatsoever, to any Hazardous Materials.

15.3. Infringement Indemnification.

(a) Indemnification. Subject to the provisions of Sections 15.6 and 15.8, Contractor agrees to indemnify each Indemnified Person against, and defend and hold each of them harmless from any liability, obligation, loss, cost, damage, judgment, adjudication, arbitration decision, penalty (including fees and fines) and expense (including court costs and attorneys' fees) (collectively, the "*Infringement Losses*") suffered or incurred by any of them as a result of, arising out of, and/or relating to (i) the infringement or alleged infringement of any patent, copyright, trademark, service mark and/or other proprietary interest and/or data right relating to the use or design of any equipment, materials, supplies, computer software program or application, or document furnished or used in the performance of Work or to any process(es) or action(s) employed by or on behalf of Contractor or any Subcontractor or supplier (at any tier) to Contractor, in connection with the performance of Work under the Contract Documents, and whether or not based upon any act or omission on or off the Site; and/or (ii) any allegation that Contractor has made use of Information (including Intellectual Property licensed hereunder) in which any other Person claims a proprietary interest.

(b) Additional Undertakings. In addition to the indemnification set forth in Section 15.3(a), if an Indemnified Person provides Contractor notice of a claim of infringement and/or the use of all or any portion of any equipment, materials or Information (including Intellectual Property licensed under this Agreement) is enjoined due to such claim of infringement, Contractor shall promptly and at its sole cost and expense either (i) procure for Owner the right to continue using the affected property; (ii) replace the affected property with non-infringing and functionally equivalent property; (iii) modify the affected property so that it becomes non-infringing and functionally equivalent; or (iv) take such other action as is necessary to ensure the Indemnified Person's uninterrupted use of the affected property.

15.4. Indemnification Notice. Whenever a Claim for indemnification shall arise under Sections 15.1, 15.2 and/or 15.3, the affected Indemnified Person(s) shall give notice to Contractor of the Claim, including reasonable detail about the facts and circumstances thereof. Such notice shall be given as soon as reasonably practical following the time that such Indemnified Person realized its entitlement to indemnification under such Section(s). Notwithstanding the foregoing, the failure to provide such notice shall not prejudice, impair or otherwise adversely affect in any manner whatsoever the rights of the Indemnified Persons and the obligations of Contractor, and such Indemnified Person(s) shall have no liability to Contractor as a result of the failure to provide such notice and such Indemnified Person(s) shall have all of the rights and benefits provided for in the Contract Documents, notwithstanding failure to provide such notice.

15.5. Indemnification Procedure.

(a) Assumption of Defense. If Contractor has acknowledged, by notice given to the affected Indemnified Person(s) within a reasonable period after receiving the notice from such Indemnified Person(s) (based on the circumstances, but no more than five (5) Business Days after receipt of such notice), its indemnification obligation with respect to a particular Claim in accordance with the terms of Sections 15.1, 15.2 and/or 15.3, Contractor, upon giving such notice to such Indemnified Person(s), may assume, at its sole cost and expense, the defense of any third party claim. Counsel selected for such defense of any third party claim shall be reasonably acceptable to such Indemnified Person(s), and such Indemnified Person(s) shall be entitled to participate in (but not control) such defense through its/their own counsel and at its own expense; *provided* that if the counsel selected by Contractor advises that, due to actual or potential conflicts, separate counsel should represent such Indemnified Person(s), the expense of such separate counsel shall be an indemnified expense in accordance with the terms and conditions hereof, the full cost of which shall be borne by Contractor. Such Indemnified Person(s) shall reasonably cooperate with Contractor in connection with the defense of such third party claim. Notwithstanding anything to the contrary in the Contract Documents, each Indemnified Person shall have the right to retain separate counsel to represent such Indemnified Person, at the sole cost and expense of such Indemnified Person concerning such third party claim, except to the extent such cost and expense are subsequently determined to be an indemnified expense.

(b) Indemnified Persons' Rights. If Contractor does not acknowledge its indemnification obligation for a particular third party claim, or does not timely assume the defense thereof, such Indemnified Person may defend such claim in such manner as it may deem appropriate. Contractor shall bear all of the costs and expenses, including attorneys' fees, incurred by each Indemnified Person in connection with such defense all of which shall be paid from time to time thirty (30) days after Contractor receives a written request from any Indemnified Person for reimbursement (including reasonably detailed documentation in support of any such request), and Contractor shall be entitled to participate (but not control) such defense through its own counsel and at its own expense. Contractor shall reasonably cooperate with each Indemnified Person in connection with the defense of such third party claim.

(c) Contractor Obligations. Notwithstanding its control of a defense of any third party claim, Contractor shall not (i) make any admission or take any other action that is binding on, or otherwise attributable to any Indemnified Person; and/or (ii) consent to any settlement, entry of judgment or other disposition, in any or all instances without the prior written consent of the affected Indemnified Person(s).

15.6. Limits on Recoveries. Notwithstanding the potential applicability of more than one indemnity provision in the Contract Documents, an Indemnified Person shall not, for each loss or liability, be entitled to recover more than once for each item of damage, cost or expense associated therewith. Indemnification shall apply irrespective of the date of the assertion of any claim against an Indemnified Person and/or whether the Indemnified Person suffers or incurs any loss or liability before or after the expiration or earlier termination of this Agreement.

15.7. Insurance. Contractor shall obtain, and maintain at its sole cost and expense, such insurance as will insure its obligations under the provisions of Sections 15.1, 15.2 and 15.3, and all other indemnity obligations in the Contract Documents; *provided* that the amount of available insurance shall not limit or otherwise restrict Contractor's indemnity obligations under such Contract Documents. Nothing in Sections 15.1, 15.2 and/or 15.3 shall derogate or reduce Contractor's obligations under Article 11, and the provisions of this Article 15 shall not prejudice or otherwise impair the rights of

Owner with respect to insurance coverage.

15.8. Indemnification Limitation. Any indemnification or similar hold harmless obligation(s) under the Contract Documents shall not be enforceable to the extent that a court of competent jurisdiction conclusively determines that such obligation(s) is/are prohibited by Law.

ARTICLE 16. DISPUTE RESOLUTION

Contractor and Owner shall attempt in good faith to resolve any Dispute promptly by negotiation between executives with authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of the Contract Documents and may consider mediation under the then current CPR Mediation Procedure, using a mediator selected from the CPR Panels of Distinguished Neutrals. All negotiations pursuant to this Article 16.1 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable law and rules of evidence. Except as otherwise may be agreed to by the Parties, any Dispute arising out of or relating to the Contract Documents that has not been resolved by a non-binding procedure as provided herein within thirty (30) days of the initiation of such procedure, shall be finally resolved by arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration by a sole arbitrator, for Disputes involving amounts in the aggregate under Three Million Dollars (\$3,000,000), or three arbitrators, for Disputes involving amounts in the aggregate equal to or greater than Three Million Dollars (\$3,000,000), of whom each Party shall designate one in accordance with the "screened" appointment procedure provided in CPR Rule 5.4. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be Hartford, Connecticut. Any award or determination made by a mediator or arbitrator shall be subject to the limitations of liability set forth in the Contract Documents. Each Party shall be responsible for its own expenses, including attorney's fees. Unless otherwise directed by Owner, Contractor shall continue performance of the Work in compliance with the Contract Documents notwithstanding the existence of any claim, Dispute and/or proceeding between Contractor and Owner.

ARTICLE 17. REPRESENTATIONS OF CONTRACTOR

Contractor represents and warrants to Owner as of the Effective Date that:

- (a) Contractor is duly organized, validly existing and in good standing under the laws of New Jersey, is duly qualified to transact business in the state or commonwealth in which the Work will be performed, and has the power and authority to enter into and perform its obligations under the Contract Documents;
- (b) Contractor possesses all Permits necessary for it to legally perform the Work and its other obligations under the Contract Documents, other than those contemplated in Schedule 5.3(a) to be issued between the Effective Date and the achievement of Ready for Construction;
- (c) the execution, delivery, and performance of Contractor's obligations under the Contract Documents are within Contractor's powers, have been duly authorized by all necessary action, and do not violate any of the terms and conditions in its governing documents;
- (d) Contractor has duly executed and delivered the Contract Documents, and, assuming the due authorization, execution, and delivery thereof by Owner, the Contract Documents constitute a valid and binding obligation of Contractor enforceable against it in

accordance with its terms and conditions, *except* as (i) such enforceability may be limited by laws and regulations affecting creditors' rights generally, and (ii) the application of general equitable principles may limit the availability of certain remedies;

- (e) Contractor's entry into the Contract Documents and performance of its obligations thereunder does not conflict with the terms of any law, regulation or judgment applicable to it and does not and will not contravene or result in any default under any agreement or instrument to which it is a party or by which any of its properties may be bound;
- (f) there is no suit, action, proceeding, or investigation pending or, to Contractor's knowledge, threatened against or affecting Contractor before any Governmental Authority that is reasonably likely to result, either in any case or in the aggregate, in any material adverse change in the business prospects, condition (financial or otherwise), or operations of Contractor or its ability to perform all of its obligations under the Contract Documents;
- (g) neither Contractor, nor any of its Affiliates is Bankrupt, or has incurred any obligations or liabilities, contingent or otherwise, that would cause it to become Bankrupt. Contractor is not aware of any facts, events, and/or circumstances that may question and/or otherwise undermine the financial condition of Contractor;
- (h) Contractor is knowledgeable, capable, and technically, commercially, and financially ready, willing, and able to perform the Work in accordance with all terms and conditions of the Contract Documents. Contractor has allocated adequate resources to perform all of its obligations under the Contract Documents;
- (i) neither Contractor nor any of its Affiliates has, directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of the RFP or other bidding process for award of the Work;
- (j) neither Contractor nor any of its Affiliates that will perform any of the Work has been suspended, excluded from, or otherwise declared (or accepted being) ineligible with respect to, the performance of any work for any Governmental Authority, the Commonwealth of Massachusetts and/or the United States of America federal government or any of their respective agencies, and there is no suit, action, proceeding, or investigation pending or, to Contractor's knowledge, threatened against or affecting Contractor that is reasonably likely to result in such suspension, exclusion, or ineligibility; and
- (k) the information and certifications provided in Contractor's response to the RFP remain complete and accurate in all material respects. Without limiting the generality of the foregoing, all technical information submitted to Owner by Contractor as part of the RFP process is true and accurate in every material respect. Neither Contractor nor any of its Affiliates is aware of any information (through experience, testing, performance or otherwise) that contradicts or otherwise is inconsistent with the content and/or conclusions of any of such information, or that could otherwise render all or portions of any of such information misleading.

ARTICLE 18. RIGHTS OF PRINCIPALS

All benefits, protections, indemnifications and other rights in favor of Owner under the Contract Documents shall also benefit, protect and indemnify the directors, officers, employees and agents of Owner (including the Owner's Representative).

ARTICLE 19. APPLICABLE LAW

19.1. Governing Law. The Contract Documents and the rights and duties of the Parties thereunder shall be governed by and construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflict of laws principles thereof, except to the extent that the laws of another jurisdiction must govern certain aspects of the enforcement of the rights and remedies of the Parties (including legal process and procedure).

19.2. Specific Performance. Contractor acknowledges and agrees that Owner would be damaged irreparably in the event any of the provisions of the Contract Documents are not performed in accordance with their specific terms and conditions or otherwise are breached. Accordingly, Contractor agrees that Owner shall be entitled to an injunction or injunctions to prevent breaches of the provisions of the Contract Documents and to enforce specifically such Contract Documents and the terms and conditions thereof in any action instituted in connection therewith in addition to any other remedy to which it may be entitled thereunder at law and/or in equity.

19.3. Jurisdiction. The Parties hereby consent to the exclusive personal and subject matter jurisdiction of the courts of the Commonwealth of Massachusetts for enforcement of the outcome of any and all arbitration proceedings pursuant to Article 16 and any other legal or equitable proceedings arising out of or relating to the Contract Documents and the transactions contemplated thereby. Each Party hereby irrevocably waives and releases, to the fullest extent permitted by applicable laws and regulations, (a) any objection to the venue of any such proceeding brought in such a court; and (b) any Claim that any such proceeding brought in such court has been brought in an inconvenient forum.

19.4. Service of Process. If Contractor does not maintain a registered agent in the Commonwealth of Massachusetts, then in addition to any method of service allowed under Law (including service of process on the state secretary of the Commonwealth of Massachusetts), Owner may serve Contractor by registered or certified mail, return receipt requested, addressed to the company secretary of Contractor at the address (substituting such secretary for the individual listed in the "Attention" line) referenced in Section 20.2, which service shall be accepted by Contractor and shall constitute proper and valid service of process on Contractor for all purposes.

19.5. Waiver of Jury Trial. Contractor hereby expressly, irrevocably, fully and forever, releases, waives and relinquishes any and all right to trial by jury with respect to any action by or against Owner arising under the Contract Documents.

19.6. No Third Party Beneficiaries. Nothing in the Contract Documents, express or implied, is intended to confer any rights or remedies under or by reason of the Contract Documents on any Person other than the Parties to it and their respective successors and permitted assigns.

ARTICLE 20. MISCELLANEOUS PROVISIONS

20.1. Binding Effect; Assignment. The Contract Documents shall be binding upon the Parties and their respective successors and permitted assigns. Contractor is not authorized to and shall not directly or indirectly (through an equity sale, merger or other transaction) sell, assign or otherwise transfer its interest in the Contract Documents, in whole or in part, or any of the Work to be performed thereunder, without the prior written consent of Owner; *provided* that the foregoing shall not preclude Contractor from engaging Subcontractors in compliance with the applicable terms and conditions of the Contract Documents. Any purported direct or indirect sale, assignment or other transfer of Contractor's interest in the Contract Documents, in whole or in part, or of any or all of the Work without such prior written consent of Owner shall be null, void and of no force or effect and shall be, at the sole election of Owner, cause for immediate termination of the Contract Documents, in whole or in part, and the exercise of any and all of Owner's other rights pursuant to Section 13.4.

20.2. Notices; Demands. All notices, demands, directions, approvals, requests and/or other communications required or permitted to be given under the Contract Documents shall be in writing, sent to the recipient's address set forth below and shall be effective: (a) when personally delivered to the recipient; (b) upon receipt by recipient or first attempted delivery by the United States Postal Service, postage prepaid, by registered or certified mail, return receipt requested; (c) one (1) Business Day after deposit with a recognized overnight courier or delivery service for delivery on the next Business Day; or (d) upon confirmation of facsimile (*provided* that a copy of such facsimile and confirmation shall be immediately sent by mail or courier as provided for in this Section 20.2).

The addresses for notice are:

Contractor:

American Capital Energy, Inc.
Attn: Thomas Hunton
1001 Pawtucket Blvd. Suite 278
Lowell Massachusetts 01853
Facsimile: (603) 795-4586

with a copy to:

American Capital Energy, Inc.
Attn: Robert Dowd
1001 Pawtucket Blvd. Suite 278
Lowell Massachusetts 01853
Facsimile: (978) 455-7326

Owner:

Building 111-4A
One Federal Street
Springfield, Massachusetts 01105
Facsimile: 413.787.1022
Attention: Director – Business Development

With copies to:

Northeast Utilities Service Company
P.O. Box 270
Hartford, Connecticut 06141
Facsimile: 860.665.5504
Attention: General Counsel

Address for couriers:

56 Prospect Street
Hartford, Connecticut 06103-2818

provided that all requests for payment to Owner shall be submitted as set forth below, with copies of such requests for payment to the Owner's Representative, as follows:

Western Massachusetts Electric Company
P.O. Box 5017
Hartford, Connecticut 06102-5017
Attention: Accounts Payable – WMECO Solar

and, provided, further, that engineering data submitted by Contractor to Owner pursuant to the Technical Specifications shall be submitted to the Owner's Representative.

Contractor shall not send notices and/or such other communications to any other Persons within Owner's organization, including any of Owner's Affiliates, other than the Owner's Representative. Either Party may send any such notice or other communication using any other means (including expedited courier, messenger service, ordinary mail, facsimile (other than as provided above) or electronic mail), but no such notice or other communication using such other means shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Either Party may change the address to which notices and other communications under the Contract Documents are to be delivered by giving the other Party notice at the address and in the manner set forth in this Section 20.2.

20.3. Waivers. Any and all waivers by either Party of any breach of, and/or other non-compliance with, any term and/or condition of the Contract Documents must be in writing, delivered to the other Party in accordance with Section 20.2. The waiver by either Party of any breach of, and/or other non-compliance with, any term and/or condition of the Contract Documents shall not operate or be construed as a waiver of any subsequent breach or non-compliance (except to the extent expressly so stated in the applicable written waiver).

20.4. Modification; Severability. If any provision of this Agreement or of any of the other Contract Documents is adjudged by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws or regulations for any reason, the same shall, if possible, be modified to the extent necessary to make it legal, valid and enforceable, or, if not possible, such provision shall be deleted. The remaining provisions of this Agreement or the other Contract Documents (as appropriate) shall remain enforceable notwithstanding the illegality, invalidity or unenforceability of any individual provision.

20.5. Survival. All agreements, representations, warranties and covenants made by each Party in the Contract Documents and in the certificates or other documents delivered by each Party pursuant to such Contract Documents shall be considered to have been relied upon by the other Party and shall

survive expiration or earlier termination of this Agreement for so long as is necessary to fulfill the intent thereof. All requirements, terms, conditions and provisions that by their nature are incapable of being fully performed within the term of this Agreement, including each Party's non-disclosure obligations, and Contractor's warranties and indemnities for the benefit of Owner, shall survive cancellation, termination or expiration of this Agreement for so long as is necessary to fulfill the intent thereof.

20.6. Proprietary Information. Schedule 20.6 sets forth requirements regarding proprietary or confidential information.

20.7. Publicity. Except as required by applicable laws or regulations, Contractor shall not publicize (including through any press release, advertising or other promotional or publicity activity) the relationship between the Parties, the Project, the Facility, the Work, the Contract Documents, or the transactions contemplated thereunder without the prior written consent of Owner (which consent may be granted or withheld in Owner's sole and absolute discretion) whether prior to or after expiration or earlier termination of this Agreement.

20.8. Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary in making proof of this Agreement or the terms hereof to produce or account for more than one of such counterparts; *provided* that the counterpart produced bears the signature of the Party sought to be bound. Signatures delivered by facsimile, "portable document format" (PDF) or other means of electronic transmission copies of signatures shall be deemed to have the same legal effect as original signatures.

20.9. Further Assurances. Following the execution and delivery of the Contract Documents, Owner and Contractor shall, and shall cause each of their Affiliates to, from time to time, execute and deliver such additional instruments, documents, conveyances or assurances and take such other actions as shall be necessary, or otherwise reasonably requested by the other Party, to clarify, confirm and assure the rights and obligations provided for in such Contract Documents.

[Signature page follows]

Owner and Contractor are each executing this Agreement as of the Effective Date.

**NORTHEAST UTILITIES SERVICE
COMPANY, as agent for WESTERN
MASSACHUSETTS ELECTRIC
COMPANY, Owner**

By: _____
Name:
Title:
Duly authorized

**AMERICAN CAPITAL ENERGY,
INC., Contractor**

By _____
Name:
Title:
Duly authorized

Exhibit A
Technical Specifications

Appendix A-1	Scope of Work; Technical Requirements
Appendix A-2	Required Contract Drawings
Appendix A-3	Contract Drawings

Appendix A-1
Scope of Work; Technical Requirements

**Appendix A-2
Required Contract Drawings**

Without limiting the generality of Contractor's design obligations under the Contract Documents, Contractor shall prepare and deliver the following Contract Documents to Owner in accordance with the following delivery schedule:

	Submission Date for Preliminary	Submission Date for Final	Submission Date for As-Built
Civil Records			
Site Plan and/or PV system layout	Effective Date	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Site Plan and/or PV system detail	Effective Date	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Plan re: On-Site Reuse of BUD Excess Materials	With Excavation Plan	Seven (7) days after completion of Excavation activities on the Landfill Cap	30 days after Substantial Completion, but no later than Final Acceptance
Electrical Records			
Electrical layout	First day of design meetings	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
One line	First day of design meetings	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Three line	First day of design meetings	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Wiring diagram	First day of design meetings	One (1) day after receipt of stamped	30 days after Substantial

	Submission Date for Preliminary	Submission Date for Final	Submission Date for As- Built
		drawings	Completion, but no later than Final Acceptance
Grounding layout	First day of design meetings	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Grounding detail	First day of design meetings	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Electrical detail	First day of design meetings	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Structural Records			
Structural layout	Effective Date	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Structural detail	Effective Date	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Mounting detail	Effective Date	One (1) day after receipt of stamped drawings	30 days after Substantial Completion, but no later than Final Acceptance
Miscellaneous Records			
Training manuals	Effective Date	15 days after acceptance of Final Design (see Section 4.6(b))	30 days before scheduled training date

	Submission Date for Preliminary	Submission Date for Final	Submission Date for As- Built
Operation & Maintenance manuals	Effective Date	Date of 50% completion of installation	At least 10 days before achieving Substantial Completion (see Section 9.8)
OEM specifications (including cut sheets and manuals)	Effective Date	Prior to date of purchase of equipment to be installed	Before achieving Readiness for Testing
Acceptance Testing documents	Effective Date	15 days after acceptance of Final Design for methodologies and calculations (see Section 9.2(a))	20 days before achieving Readiness for Testing for test plan (see Section 9.2(a)); 5 Business Days after Acceptance Tests are completed for results
List of spare parts	Effective Date	Prior to date of purchase of equipment to be installed	Before achieving Readiness for Testing (see Section 2.11)
Baseline Production (<u>Attachment 3</u> in <u>Appendix A-1</u> to <u>Exhibit A</u>)	Effective Date	With Final Design submission	Before achieving Substantial Completion
Project plan	Effective Date	Final Design acceptance	30 days after Substantial Completion, but no later than Final Acceptance

**Appendix A-3
Contract Drawings**

The following Contract Drawings are attached to this Appendix A-3:

1. WMECO Cottage Street
Springfield, Massachusetts
Cottage Street Landfill Solar Project
Site Plan
Prepared by Weston & Sampson
Dated September 9, 2013

Consisting of:

- (a) Cover
- (b) G-1 Abbreviations, Notes and Legend
- (c) C-1 Existing Conditions
- (d) C-2 Erosion and Sedimentation Control Plan
- (e) C-3 Demolition Plan
- (f) C-4 Fencing Plan
- (g) C-5 Gas Well and Collection Valve Protection
- (h) C-6 Gas Well Decommissioning and Contingency Piping Plan
- (i) C-7 Stormwater System Improvements and Grading Plan
- (j) C-8 Access Roads and Parking Spaces
- (k) C-9 Site Construction Plan
- (l) C-10 PV System Area
- (m) C-11 Erosion and Sedimentation Control Details
- (n) C-12 Details
- (o) C-13 Details
- (p) C-14 Details
- (q) C-15 Details

2. Western Massachusetts Electric Company (WMECo)
Cottage Street Solar Facility
Cottage Street
Springfield, MA
Prepared by American Capital Energy
Dated September 2013

Consisting of:

- (a) Cover
- (b) C-1 Conceptual Array Layout
- (c) E-1 Conceptual Conduit & Wire Plan
- (d) E-2 Conceptual 500kW DC Single Line Diagram
- (e) E-3 Conceptual 500kW With RPT DC Single Line Diagram

- (f) E-4 Conceptual 250kW DC Single Line Diagram
- (g) E-5 Conceptual AC Single Line Diagram
- (h) D-1 Conceptual Equipment Details
- (i) D-2 Conceptual Inverter Pad Details

The foregoing Contract Drawings shall be modified by Contractor to the extent necessary to be consistent with the terms, requirements and conditions of the Site Plan.

Exhibit B Site Restrictions

The following Site Restrictions shall not relieve Contractor in any manner from its obligation to comply with all Law (including Permits) and the Contract Documents, including terms, conditions and requirements that may be more stringent than these Site Restrictions.

I. Design/Excavation Restrictions.

1. Excavation. As a capped landfill regulated by MassDEP, Excavation activities in that portion of the Site covered by the Landfill Cap are restricted by Law (including Permits) and the Contract Documents in addition to these Site Restrictions.

1.1 Sand Drainage Layer. Other than the Landfill Gas System Modifications and the Landfill Stormwater System Improvements, Contractor shall not Excavate under any circumstances below the Vegetative Support Layer or otherwise perform any Work in the Sand Drainage Layer; *however*, if any Work results in any disturbance to the Sand Drainage Layer, then Contractor shall promptly repair and return the Sand Drainage Layer to its original condition.

1.2 Vegetative Support Layer. Contractor may only Excavate in the Vegetative Support Layer as necessary for the performance of the Landfill Modifications and the Work for inverter and transformer pads described in Paragraph 2.5(2) of the technical requirements within the Technical Specifications.

1.3 Other Excavation. Other than the Work referenced in Paragraphs I.1.1 and I.1.2 of these Site Restrictions, Contractor shall not Excavate for any other purpose on the Landfill Cap. Contractor shall not penetrate, or allow the penetration of, the Landfill Liner for any reason whatsoever.

1.4 Methods. Excavation on the Landfill Cap shall be conducted by hand and/or using a small smooth bladed bucket. A spotter shall be present to identify the depth of the Sand Drainage Layer (and the Landfill Liner) and to ensure that the Sand Drainage Layer and the Landfill Liner are not damaged beyond that absolutely necessary to perform the Work in the Sand Drainage Layer referenced in Paragraph I.1.1 of these Site Restrictions and the repair of the Landfill Liner as part of the Landfill Gas System Modifications. Also, all Excavation activities shall be observed by the PCU On-Site Engineer and otherwise in compliance with the PCU Permit. The Excavation Plan shall include specific details regarding precautions and protections to be instituted by Contractor during Excavation to ensure there is no breach of the Sand Drainage Layer (other than for Work referenced in Paragraph I.1.1 of these Site Restrictions) and/or the Landfill Liner. Contractor may Excavate in other areas on the Site outside the Landfill Cap (as shown on the Site Plan) in compliance with the Excavation Plan approved by Owner. Contractor shall complete all stakeouts, surveys and other activities required for construction of the Project as shown on the Site Plan and the other Contract Documents.

Contractor shall not allow any deep stake penetrations on the Landfill Cap (penetrations shall not exceed more than nine inches (9") below grade).

2. Allowable Bearing Pressure. Contractor shall not place, install and/or otherwise locate any equipment, materials, supplies, ballasts and racking, foundations and other supports, and/or other elements on the Landfill Cap that exceed a contact pressure on the soil of two hundred (200) pounds per square foot. The foregoing restriction applies only to permanent dead loads. The Final Design shall include calculations demonstrating compliance of each applicable Project element with such restriction.

3. Maximum Loading Requirement. Low ground pressure equipment shall be used for any Work on the Landfill Cap outside of access roads. Any construction vehicles (including payload) operating on the Landfill Cap shall comply with a five (5) PSI (pounds per square inch) maximum bearing pressure on the Landfill Liner and all other requirements of the PCU Permit. In the Construction Equipment Plan, Contractor shall provide Owner with construction equipment specifications and other appropriate information and associated calculations to demonstrate full compliance with the maximum 5 PSI loading requirement. At a minimum, the Construction Equipment Plan shall contain all the information necessary for the Owner to calculate the maximum PSI of all equipment (with payload). If Contractor proposes, in compliance with Section 2.5(b) of this Agreement, to modify any equipment in the Construction Equipment Plan approved by Owner, Contractor shall provide to Owner all necessary information to ensure the new equipment practices comply with the maximum 5 PSI loading requirement before the equipment is allowed on the Site. Contractor's on-Site implementation of any such change in practices (after Owner's approval of the modified Construction Equipment Plan) shall be a Hold Point. The Final Design shall include calculations demonstrating compliance with such maximum bearing pressure.

4. Gas Wells. After taking into account Contractor's performance of the Landfill Gas System Modifications, approximately six (6) gas monitoring wells will remain on top of the Landfill in the portion of the Site on which Contractor will install the Project. The Site Plan contains the number and location of those remaining gas wells (designated as "GW" on the Site Plan) and other equipment related to the gas management system, including collection valves, vaults and horizontal gas collection trenches (designated as "HGCT" on the Site Plan). Contractor shall take the location of those remaining wells and any other gas management system equipment on the Site into consideration during the design and construction of the Project, and such design shall allow for a five foot (5') radius of protection around each remaining gas well and/or all other above-ground gas management system equipment and for all other protections contemplated under the PCU Permit. Contractor shall perform the Work in such a manner as to avoid contact with or damage to the gas wells (including gas wells to be decommissioned) and all other gas management system equipment (including the gas monitoring well installed in connection with the Landfill Modifications). Without limiting the generality of the foregoing, Contractor shall install at least two (2) construction barricades with a minimum five foot (5') radius around all wells and other above-ground gas management system equipment (including stick-ups installed as part of the Landfill Gas System Modifications) in

accordance with the Site Plan and the other Contract Documents, including all such wells and other equipment located within ten (10) feet of the access roads on the Landfill Cap (including the HGCT located on the slope between the north and the south "Area Available for Photovoltaic Modules" depicted in Contract Drawing C-10 of the Site Plan); *provided* that Contractor may remove such barricades protecting gas wells to be decommissioned after Contractor has completed such decommissioning Work in accordance with the Contract Documents. Contractor shall implement additional construction safety measures to ensure gas wells and other gas management system equipment are not damaged by the crews and/or equipment of Contractor and/or any Subcontractor. Contractor shall immediately report any damage to such equipment to the Owner's Representative, and Contractor shall repair such damage consistent with Section 2.7(g) of this Agreement. Contractor shall not be entitled to any relief (schedule, economic or otherwise) in any manner whatsoever resulting from, or relating to, the existence, operation, maintenance, replacement or removal of or damage to any of such wells and other equipment.

5. Gas Header Rows. Gas header rows are located throughout the Landfill Cap in the Sand Drainage Layer. Certain gas header rows must be maintained free and clear of any permanently installed equipment, and Contractor shall take such restriction into account in connection with design and construction activities. The "Area Available for Photovoltaic Modules" depicted in Contract Drawing C-10 of the Site Plan accounts for the location of such header rows; accordingly, that area does not contain any header rows that cannot be constructed over after taking into account the Landfill Modifications. Contractor's design of the PV system within the Project shall not exceed such "Area Available for Photovoltaic Modules" in order to allow continual access to the header rows for continued operation, gas monitoring, repair and maintenance consistent with industry practices without having to remove, alter and/or otherwise disturb that portion of the Project. Since the gas header rows are located below the Vegetative Support Layer, Contractor shall not Excavate and/or perform any other construction activities (other than in connection with the Landfill Gas System Modifications) that will interfere with and/or otherwise disturb any gas header rows located throughout the Site. Contractor shall immediately notify Owner if Contractor encounters any gas header rows in connection with the Work (other than in connection with performance of the Landfill Gas System Modifications).

6. Stormwater Management System. The Sand Drainage Layer contains equipment associated with the stormwater management system (including equipment installed as part of the Landfill Modifications) as shown on the Site Plan. Other than in connection with performance of the Landfill Stormwater System Improvements, Contractor shall not conduct any Excavation activities in such locations. Contractor shall immediately notify Owner if Contractor encounters any equipment associated with the stormwater management system in connection with the Work (other than in connection with performance of the Landfill Stormwater System Improvements). **Other than Site grading in accordance with the Technical Specifications, the Work shall not alter existing drainage patterns associated with the Site.**

7. Stockpiling; Storage. Any temporary stockpiling of materials (including Excess Material) and/or storage of apparatus, supplies, or equipment on the Landfill Cap shall comply with these Site Restrictions including the allowable bearing pressure in Paragraph 2 above and the maximum loading requirement in Paragraph 3 above. In the Excavation Plan, Contractor shall provide Owner with stockpiling and storage plans that demonstrate (including through calculations) full compliance with such requirements. At a minimum, the Excavation Plan shall contain all the information necessary for the Owner to independently calculate the maximum PSI and bearing pressure of all stockpiling and storage activities. If Contractor proposes, in compliance with Section 2.7(a) of this Agreement, to modify any stockpiling and/or storage activities in the Excavation Plan approved by Owner, Contractor shall provide to Owner all necessary information to ensure the new stockpiling/storage practices comply with these Site Restrictions before any of such activities are modified. Contractor's on-Site implementation of any such change in practices (after Owner's approval of the modified Excavation Plan) shall be a Hold Point. Contractor shall not stockpile and/or store any apparatus, materials, supplies, or equipment on or near gas wells or header piping, drainage structures and/or features, or within one hundred (100) feet of wetlands or twenty-five (25) feet of riverfront. Contractor shall arrange, at Contractor's sole cost, for any necessary alternate locations for stockpiling and/or storage (including any Equipment Storage Area outside of the Site).

8. Parking. Contractor may only park at the Site in the areas outside of the Landfill Cap as identified as the "Limit of Construction Staging Area" in the Site Plan as the parking area for vehicles and equipment. Contractor shall not park idle vehicles or construction equipment on top of the Landfill Cap. Contractor shall arrange for alternate parking locations for Contractor's employees and Subcontractors.

9. Excess Materials. Contractor shall use all reasonable efforts to minimize the generation of Excess Material, and Contractor shall reuse any Excess Material consisting of soil generated from the Vegetative Support Layer on the Site within the limit of construction depicted on the Site Plan, but not in any wetland resource areas (including wetland and/or wetland buffer areas) or within twenty-five (25) feet of riverfront. Notwithstanding anything in the Contract Documents, Contractor shall not remove from the Site:

- (a) any Excess Material that constitutes BUD. The portions of the Landfill Cap that include BUD are generally depicted as Phase 3 Area 1, Phase 3 Area 2, and Phase 3 Area 3 on the site plan attached hereto as Appendix B-4 (the "*BUD Area*"). Accordingly, all BUD shall be reused on the Site (and tracked in accordance with the Excavation Plan). Contractor shall verify the exact location of the BUD Area with the Site Owner and the Landfill Operator prior to the commencement of Work on the Landfill Modifications; and
- (b) all other Excess Material, including any Pre-existing Hazardous Materials, except after prior written notice to, and written authorization from, Owner.

10. Preservation of Ground Cover. Disturbance to the ground cover shall be kept to a minimum and shall only be associated with the Work.

11. Wet Conditions; Rutting. No Work requiring heavy equipment shall take place on the Landfill Cap after any rainfall event of 0.5" or greater (or equivalent snowfall), or when saturated ground conditions exist, in each case until approved by the Owner's Representative. Contractor shall minimize rutting or similar damage at the Site. If rutting and/or similar damage occurs, Contractor shall take action to avoid additional rutting and/or damage during that work day and repair all rutting and other damage before the end of such work day. Contractor shall develop and submit a plan to prevent future rutting and/or damage in the affected area (including through the use of matting or similar means in compliance with applicable Law, these Site Restrictions and other requirements of the Contract Documents) and shall not enter the affected area until the Owner's Representative has approved such plan.

12. Erosion and Sedimentation Controls. No erosion and sedimentation control measures which penetrate the ground surface shall be installed on the Landfill Cap. Wood chip berm(s) (installed in accordance with the Site Plan) is the only such measure which is allowed for use on the Landfill Cap.

13. Additional Soil/Clean Fill. If Contractor requires additional soil and/or other clean fill from outside of the Site in connection with such Site preparation or otherwise in connection with the Work, Contractor shall comply with Section 2.6(a) of this Agreement and all other applicable provisions of the Contract Documents.

14. Limit of Construction. Contractor shall not perform any Work at the Site beyond the "Limit of Construction" depicted on the Site Plan without the prior written approval of the Owner's Representative.

II. Permitting Restrictions.

1. Closure Certification. Because the Site is a closed landfill, the Site is under the jurisdiction of MassDEP and the Solid Waste Regulations, 310 CMR 19.000. On February 28, 2011, MassDEP issued an approval of Site Owner's closure certification to the Site Owner and Landfill Operator. Contractor shall perform the Work in compliance with the requirements in such approval, a copy of which has been provided to Contractor. Contractor also shall perform the Work so as to not interfere with the March 2009 Post Closure Operation and Maintenance Plan and March 2009 Standard Operating and Maintenance Procedures Cottage Street Landfill Gas Collection And Control System, copies of which are attached as Appendices B-1 and B-2.

2. PCU Permit. MassDEP requires that a post-closure use permit application be submitted to conduct work on a closed landfill site. The permit application required for the Project is BWP SW 36 Post-Closure Use – Major. The Post-Closure Use Permit application provides MassDEP with information used to determine whether the proposed activity can be safely installed and operated on the closed landfill without impairing the

integrity of the landfill's final cover/cap system, or otherwise result in adverse impacts to public health, safety, welfare or the Environment. Contractor shall fully and strictly comply, at Contractor's sole cost and expense, with all of the terms and conditions in the PCU Permit, a copy of which is attached as Appendix B-3.

3. Conservation Restrictions. There are regulated wetland areas on the Site and recorded conservation restrictions relating to such wetlands. Although wetlands are not within the portion of the Site on which Contractor will install the Project, wetland buffer areas will be affected by Site access during construction activities. Owner has prepared and submitted a Request for Determination (RDA) for the Facility. On January 13, 2011, Owner received confirmation from the Springfield Conservation Commission (a copy of which has been provided to Contractor) that no wetland Permits are necessary for the proposed construction activities. Owner shall provide Contractor with a copy of any further correspondence to Owner from the Springfield Conservation Commission associated with working in the wetland buffer. Contractor shall fully and strictly comply, at Contractor's sole cost and expense, with all requirements of the Springfield Conservation Commission.

4. EPA General Stormwater Permit. Owner will prepare and submit an EPA General Stormwater Permit for Construction Activities for the Facility. Owner shall provide Contractor with a copy of any Permits associated with stormwater. Contractor shall fully and strictly comply, at Contractor's sole cost and expense, with all terms and conditions of such Permits. Contractor shall be responsible, at Contractor's sole cost and expense, for maintaining any stormwater management and/or erosion controls in full and strict compliance with the EPA General Stormwater Permit for Construction Activities and any associated Permits.

REDACTED

Appendix B-1
March 2009 Post Closure Operation and Maintenance Plan

Appendix B-2
March 2009 Standard Operating and Maintenance Procedures Cottage Street
Landfill Gas Collection And Control System

Appendix B-3
PCU Permit

Copies of the PCU Permit issued by MassDEP on March 15, 2013 and the clarification letter issued by MassDEP on August 16, 2013 are attached to this Appendix B-3. The PCU Permit also includes all applications (including those received by MassDEP on November 10, 2010 and January 2, 2013), plans, drawings, letters, documents, information (including that provided to MassDEP on January 28, 2011) and other filings submitted to MassDEP in connection with the PCU Permit, whether or not specifically referenced in the PCU Permit, copies of which are on file with the MassDEP.

Appendix B-4
BUD Area of Landfill Cap

The site plan dated April, 2009, prepared by Stantech Consulting Services, Inc. is attached to this Appendix B-4.

Exhibit C
Project Forms

Appendix C-1	Form of Change Order
Appendix C-2	Form of Lien Waivers and Releases
Attachment C-2.1	Partial Waiver and Subordination of Lien
Attachment C-2.2	Final Waiver of Lien (Subcontractors)
Appendix C-3	Unvouchered Liabilities (UVL)

**Appendix C-1
Form of Change Order
(Cottage Street Project)**

Change Order No.

Contractor Name: American Capital Energy, Inc. Date: _____, 201_

Contract Date: September 16, 2013

The Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013 ("*Agreement*") between Northeast Utilities Service Company as agent for Western Massachusetts Electric Company and the above-referenced Contractor is hereby changed as follows:

[Describe Change]

The original Fixed Contract Price was	\$
Net change by previous Change Orders	\$
The adjusted Fixed Contract Price prior to this Change Order was	\$
The Fixed Contract Price will be increased/decreased/unchanged by this Change Order in the amount of	\$
The new adjusted Fixed Contract Price including this Change Order will be	\$

The Work Schedule shall be (increased) (decreased) (unchanged) in accordance with the revised Work Schedule (including any affected Milestones) attached to this Change Order. The absence of any attachment shall mean that the Work Schedule is not affected by this Change Order.

Initially capitalized terms used herein shall have the meanings ascribed to them in the Agreement. This Change Order is issued pursuant to Section [] of the Agreement.

**NORTHEAST UTILITIES SERVICE
COMPANY, as agent for
WESTERN MASSACHUSETTS ELECTRIC
COMPANY, Owner**

By: _____

Name: _____

Title: _____

[Countersigned by Contractor if Agreed Change Order]

ACCEPTED AND AGREED
as of the date first set forth above.

**AMERICAN CAPITAL ENERGY, INC.,
Contractor**

By: _____

Name: _____

Title: _____

**Appendix C-2
Form of Lien Waivers and Releases**

[see attached]

**Attachment C-2.1
Lien Waiver and Release**

**PARTIAL WAIVER AND SUBORDINATION OF LIEN
(M.G.L. c. 254 § 32)**

COMMONWEALTH OF MASSACHUSETTS: _____ Date: _____
_____ COUNTY Application for Payment No.: _____
OWNER: WESTERN MASSACHUSETTS ELECTRIC COMPANY
CONTRACTOR: _____
LENDER/MORTGAGEE: _____

- 1. Original Contract Amount: \$ _____
- 2. Approved Change Orders: \$ _____
- 3. Adjusted Gross Contract Amount: \$ _____
(line 1 plus 2)
- 4. Completed to Date: \$ _____
- 5. Less Retainage: \$ _____
- 6. Total Payable to Date: \$ _____
(line 4 less line 5)
- 7. Less Previous Payments: \$ _____
- 8. Current Amount Due: \$ _____
(line 6 less line 7)
- 9. Pending Change Orders: \$ _____
- 10. Disputed Claims: \$ _____

The undersigned who has a contract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as _____ located at _____ in the City of _____, _____ County, Commonwealth of Massachusetts and owned by _____, upon receipt of _____ (\$ _____) in payment of an invoice/requisition/application for payment dated _____ does hereby:

- (A) waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date: _____ (payment period), except for retainage, unpaid agreed or pending change orders, and disputed claims as stated above; and
- (B) subordinate any and all liens and right of lien to secure payment for such unpaid, agreed or pending change orders and disputed claims, and such further labor or materials, or both labor and materials, or rental equipment, appliances or tools, except for retainage, performed or furnished at any time through the twenty-fifth day after the end of the above payment period, to the extent of the amount actually advanced by the above lender/mortgagee through such twenty-fifth day.

Signed under the penalties of perjury this _____ day of _____, _____.

By: _____

COMMONWEALTH OF MASSACHUSETTS

_____, SS.

Then personally appeared the above named _____, 20__

and acknowledged the foregoing instrument to be _____ free act and deed, before me,

Notary Public

My Commission Expires: _____

**Attachment C-2.2
Lien Waiver and Release**

**FINAL WAIVER OF LIEN (Subcontractors)
(M.G.L. c. 254 § 32)**

COMMONWEALTH OF MASSACHUSETTS:
_____ COUNTY

Date: _____, 20__

OWNER: WESTERN MASSACHUSETTS ELECTRIC COMPANY

CONTRACTOR: _____

SUBCONTRACTOR: _____

SUB-SUBCONTRACTOR: _____

The undersigned, which has a contract/subcontract with _____ for furnishing labor or materials or both labor and materials or rental equipment, appliances or tools for the erection, alteration, repair or removal of a building or structure or other improvement of real property known and identified as _____, located at _____ in the City of _____, _____ County, Commonwealth of Massachusetts, and owned by _____, upon receipt of _____ Dollars (\$ _____) in payment of an invoice/requisition/application for payment dated _____, does hereby waive any and all liens and right of lien on such real property for labor or materials, or both labor and materials, or rental equipment, appliances or tools, performed or furnished through the following date: _____, 20__.

Appendix C-3 Unvouchered Liabilities (UVL)

UVL must be submitted each month to the Owner's Representative. You should also submit a copy to the appropriate Project Manager and/or Project Lead.

Please use the attached form for all UVLs.

UVL must include the following:

- Project and/or work order number
- A description of the project that includes location and name
- Purchase Order number and Release. It is critical that vendors with multiple releases from a Blanket Purchase Order provide the correct release number.
- Invoice numbers

Costs should also be broken down as follows:

- Labor
- Materials
- Equipment

•**Section 1: Contractor Information:** Provide name, address, current e-mail address and phone number of person responsible for providing UVLs. If more than one person responsible, provide additional information. Fill in month of report.

•**Section 2: Current Month's Invoices:** Provide all invoices dated for current month regardless when mailed.

•**Section 3: Unbilled Information:** Provide information for uninvoiced work performed, including work through the end of month.

•**Section 4: Outstanding Invoice Information – Keep in mind that the report is cumulative.** List all unpaid invoices not included in sections above. For instance, if last month included an unpaid invoice and it remains unpaid, please include in this section along with the first time invoices not paid.

Exhibit D
Acceptance Testing

I. General.

(a) *Purpose.* This Exhibit D provides an outline of the procedures for Acceptance Testing to be incorporated in the test plan to be developed by Contractor pursuant and subject to Article 9 of this Agreement.

(b) *Test Plan.* The test plan shall be consistent with this Agreement and Prudent Industry Practices, shall be separately developed for each Acceptance Test, and shall include at a minimum for each Acceptance Test: the detailed test protocols to be used; safety practices employed during testing; a listing of the parameters to be measured; the method of measurement and recording of the data; the frequency with which data will be recorded; the meters and other instrumentation to be used and the physical location of such meters and instruments; sample data sheets and/or computer outputs as applicable; the details of corrections to be performed; copies of any manufacturers correction curves that will be used to perform such corrections; sample calculations; and a detailed test schedule. Contractor shall conduct all of the Acceptance Tests in compliance with the test plan approved by Owner pursuant to Section 9.2(a) of this Agreement.

(c) *Instrumentation.* Necessary instrumentation employed during Acceptance Testing shall consist primarily of permanent instrumentation in the case of factory (including routine and sample) and laboratory tests, or temporary instrumentation in the case of field tests, in all cases supplemented, if necessary, by portable and/or other required devices, all procured at Contractor's sole cost and expense. Metering and test equipment used for the performance of Acceptance Testing shall have been calibrated within one (1) year of use. The calibration shall be performed by a laboratory following N.I.S.T (National Institute of Standards and Technology) traceable standards. The standard shall provide the required documentation showing it compares correctly to a chain of standards going back to a master standard maintained by N.I.S.T. As part of the Notice of Readiness for Testing and prior to use of test equipment by Contractor or any Subcontractor, Contractor shall furnish to Owner copies of all relevant calibration certifications.

(d) *Sampling; Analysis.* All construction sampling and analysis shall be performed by an independent Subcontractor which is qualified in such matters and acceptable to Owner in Owner's discretion.

(e) *Data.* Copies of all data recorded during each Acceptance Test shall be delivered by Contractor to Owner and the Owner's Representative as soon as practical, but in no event later than five (5) Business Days after the performance of the test (unless the Contract Documents specify an earlier date).

II. Readiness for Testing.

In addition to all of other conditions precedent to and requirements of Readiness for Testing, Contractor shall fully and completely perform and satisfy, at Contractor's sole cost and expense, all of the Acceptance Tests required pursuant to the Technical Specifications and the other Contract Documents (together with additional tests developed in accordance with this Agreement (including Section 9.2(a)), manufacturer's recommendations, and Prudent Industry Practices), before issuing the Notice of Readiness for Testing.

III. Substantial Completion.

The Substantial Completion test plan shall relate to final testing and commissioning of the Project, including the interconnection of the Project with Owner's system, and shall include all of the Acceptance Tests required pursuant to the Technical Specifications and the other Contract Documents. Acceptance Testing with respect to Substantial Completion shall not commence unless (a) the test plan developed in accordance with Article 9 of this Agreement for the Acceptance Tests for Substantial Completion has been approved by Owner; (b) Contractor has achieved Readiness for Testing; and (c) Contractor has provided Owner with the prior notice required pursuant to Section 9.3 of this Agreement. Contractor, at Contractor's sole expense, shall support, assist and otherwise participate in such Acceptance Testing with respect to Substantial Completion conducted by Owner (including in connection with interconnection). The successful completion of Acceptance Testing with respect to Substantial Completion shall not affect or otherwise impair Contractor's obligation to fully and completely perform and satisfy all other conditions precedent to the occurrence of Substantial Completion.

IV. Acceptance Test Reports.

After the successful completion of all required Acceptance Testing for Readiness for Testing or Substantial Completion, respectively, and at least three (3) Business Days prior to Contractor's delivery to Owner of the Notice of Readiness for Testing or the Certificate of Substantial Completion, as the case may be, Contractor shall submit to Owner a written Acceptance Test report. The test plan shall specify the contents of such report, which shall include, in addition to any other requirements of Owner, the following:

- (a) a certification from Contractor that all Acceptance Tests for the Milestone to which such report relates were successfully conducted in accordance with the approved test plan;
- (b) a certification from Contractor of the results of the Acceptance Tests confirming that such results fully comply with the applicable Contract Documents;
- (c) data measured and recorded during the Acceptance Tests;
- (d) calculations and computations;
- (e) the results of all laboratory or other independent analyses;

- (f) any other data or analysis requested by Owner to be included in such report;
- (g) a statement from Contractor verifying that it has no reason to believe that any results of, and/or reports concerning, previous Acceptance Testing were inaccurate, misleading, or otherwise in need of clarification and/or correction; and
- (h) a statement as to whether Contractor intends to conduct additional Acceptance Tests and an estimated schedule of such testing.

To the extent that any of the Contract Documents require a separate report for a particular test and/or inclusion of test results in the Manuals, Contractor shall furnish such report and/or include such results as required, and Contractor shall integrate such information into the report referenced above.

V. Inspection.

Upon completion of any Acceptance Test, Owner and/or the Owner's Representative shall have the right, but not the obligation, to inspect any portion of the Project in their discretion, including verification of the conduct and results of such Acceptance Testing. Any inspection shall not (a) constitute the endorsement or acceptance by Owner (and/or the Owner's Representative) of the Acceptance Testing conducted by Contractor, including the results thereof; (b) relieve, release or otherwise diminish the obligations of Contractor pursuant to the Contract Documents; and/or (c) prejudice or otherwise waive any right or remedy of Owner under this Agreement, at Law, and/or in equity.

Exhibit E
Payment Schedule; Milestone Schedule

Appendix E-1 Payment Schedule

Appendix E-2 Milestone Schedule

Appendix E-1 Payment Schedule

The Fixed Contract Price shall be paid through the following two mechanisms: (a) the direct payment of the costs invoiced to Contractor by the manufacturers or suppliers of the PV Modules, the inverter units, and the racking and ballast units, respectively, and (b) the payment to Contractor of the remaining balance based on Contractor's successful achievement of certain Milestones.

I. Direct Payment to Manufacturers/Suppliers.

1. PV Modules.

(a) **Subcontract; Payment Terms.** The payment arrangement for the PV Module manufacturer under the subcontract for procurement of the PV Modules shall require payment by Contractor thirty (30) days after receipt of each shipment the PV Modules clears U.S. Customs at a port in the United States. In furtherance of Section 4.4(c), Contractor shall submit to Owner such subcontract within five (5) days after the execution thereof. Contractor shall not amend the price and/or payment provisions of such subcontract without prior written approval of Owner; Contractor shall provide a copy of any amendment to such subcontract within five (5) days after the execution thereof; and unless authorized by Owner in such approval, Contractor shall not be required to make a payment under such amendment any earlier than thirty (30) days after Owner receives a copy of such amendment. Before executing any amendment that changes amounts due under such subcontract, the Parties shall amend the payment terms set forth in Section II of this Appendix E-1 to account for such change regarding the PV Modules, without affecting the Fixed Contract Price and/or the then percentage allocations associated with the Milestones set forth in that portion of this Payment Schedule.

(b) **Direct Payment Mechanism.** Contractor shall immediately notify the Owner's Representative of Contractor's receipt of an invoice from the manufacturer of the PV Modules. No later than twenty (20) days after the receipt of any invoice properly due and payable under such subcontract for procurement of the PV Modules, Contractor shall submit a copy of such invoice to Owner (with a copy to the Owner's Representative), along with (i) Contractor's written request for Owner to directly pay to the manufacturer of the PV Modules the full amount invoiced; and (ii) a written certification from Contractor, in form and substance reasonably acceptable to Owner, to the effect that the manufacturer of the PV Modules has fully performed all of its obligations under the subcontract through the date of submission and the invoiced amount is properly due and payable. Contractor shall not submit to Owner any invoice for the PV Modules to the extent that Contractor disputes and/or otherwise objects to the payment in full thereof; instead, Contractor shall resolve any and all issues with the manufacturer of the PV Modules before directing Owner to make any payment on account of the PV Modules. Subject to Owner's rights and remedies under the Contract Documents, including Owner's withholding of payment rights under Section 7.3(b) of this Agreement and Owner's set-off rights under Section 7.3(c) of this Agreement, if (1) the applicable shipment of the PV Modules has arrived at the Equipment Storage Area and (2) Contractor has completed in accordance with the Contract Documents the twenty percent (20%) verification of PV Module

serial numbers after such delivery, then Owner shall pay to the PV Module manufacturer the amount indicated as currently due and owing in such certified invoice within ten (10) days after Contractor's correct submission thereof, or if later, on or before the due date specified in such invoice.

2. Racking and Ballast Units.

(a) Subcontract; Payment Terms. The payment arrangement for the racking and ballast units supplier under the subcontract for procurement of the racking and ballast units shall require payment by Contractor thirty (30) days after receipt of the racking and ballast units at the Equipment Storage Area. In furtherance of Section 4.4(c), Contractor shall submit to Owner such subcontract within five (5) days after the execution thereof. Contractor shall not amend the price and/or payment provisions of such subcontract without prior written approval of Owner; Contractor shall provide a copy of any amendment to such subcontract within five (5) days after the execution thereof; and unless authorized by Owner in such approval, Contractor shall not be required to make a payment under such amendment any earlier than thirty (30) days after Owner receives a copy of such amendment. Before executing any amendment that changes amounts due under such subcontract, the Parties shall amend the payment terms set forth in Section II of this Appendix E-1 to account for such change regarding the racking units, without affecting the Fixed Contract Price and/or the then percentage allocations associated with the Milestones set forth in that portion of this Payment Schedule.

(b) Direct Payment Mechanism. Contractor shall immediately notify the Owner's Representative of Contractor's receipt of an invoice from the supplier of the racking and ballast units. No later than twenty (20) days after the receipt of any invoice properly due and payable under such subcontract for procurement of the racking and ballast units, Contractor shall submit a copy of such invoice to Owner (with a copy to the Owner's Representative), along with (i) Contractor's written request for Owner to directly pay to the supplier of the racking units the full amount invoiced; and (ii) a written certification from Contractor, in form and substance reasonably acceptable to Owner, to the effect that the supplier of the racking and ballast units has fully performed all of its obligations under the subcontract through the date of submission and the invoiced amount is properly due and payable. Contractor shall not submit to Owner any invoice for the racking and ballast units to the extent that Contractor disputes and/or otherwise objects to the payment in full thereof; instead, Contractor shall resolve any and all issues with the supplier of the racking and ballast units before directing Owner to make any payment on account of the racking units. Subject to Owner's rights and remedies under the Contract Documents, including Owner's withholding of payment rights under Section 7.3(b) of this Agreement and Owner's set-off rights under Section 7.3(c) of this Agreement, if the racking units have arrived at the Equipment Storage Area, then Owner shall pay to the racking units supplier the amount indicated as currently due and owing in such certified invoice within ten (10) days after Contractor's correct submission thereof, or if later, on or before the due date specified in such invoice.

3. Inverter Units.

(a) Subcontract; Payment Terms. The payment arrangement for the inverter units manufacturer under the subcontract for procurement of the inverter units shall require payment by Contractor thirty (30) days after receipt of the inverter units at the Equipment Storage Area. In furtherance of Section 4.4(c), Contractor shall submit to Owner such subcontract within five (5) days after the execution thereof. Contractor shall not amend the price and/or payment provisions of such subcontract without prior written approval of Owner; Contractor shall provide a copy of any amendment to such subcontract within five (5) days after the execution thereof; and unless authorized by Owner in such approval, Contractor shall not be required to make a payment under such amendment any earlier than thirty (30) days after Owner receives a copy of such amendment. Before executing any amendment that changes amounts due under such subcontract, the Parties shall amend the payment terms set forth in Section II of this Appendix E-1 to account for such change regarding the inverter units, without affecting the Fixed Contract Price and/or the then percentage allocations associated with the Milestones set forth in that portion of this Payment Schedule.

(b) Direct Payment Mechanism. Contractor shall immediately notify the Owner's Representative of Contractor's receipt of an invoice from the manufacturer of the inverter units. No later than twenty (20) days after the receipt of any invoice properly due and payable under such subcontract for procurement of the inverter units, Contractor shall submit a copy of such invoice to Owner (with a copy to the Owner's Representative), along with (i) Contractor's written request for Owner to directly pay to the manufacturer of the inverter units the full amount invoiced; and (ii) a written certification from Contractor, in form and substance reasonably acceptable to Owner, to the effect that the manufacturer of the inverter units has fully performed all of its obligations under the subcontract through the date of submission and the invoiced amount is properly due and payable. Contractor shall not submit to Owner any invoice for the inverter units to the extent that Contractor disputes and/or otherwise objects to the payment in full thereof; instead, Contractor shall resolve any and all issues with the manufacturer of the inverter units before directing Owner to make any payment on account of the inverter units. Subject to Owner's rights and remedies under the Contract Documents, including Owner's withholding of payment rights under Section 7.3(b) of this Agreement and Owner's set-off rights under Section 7.3(c) of this Agreement, if the inverter units have arrived at the Equipment Storage Area, then Owner shall pay to the inverter units manufacturer the amount indicated as currently due and owing in such certified invoice within ten (10) days after Contractor's correct submission thereof, or if later, on or before the due date specified in such invoice.

4. No Late Charges. Notwithstanding anything to the contrary in the foregoing or elsewhere in the Contract Documents, Contractor shall not submit for payment, and Owner shall have no obligation to pay any Subcontractors for, any late charges, interest and/or other amounts that relate to Contractor's failure to comply with the subcontract, and Contractor shall retain sole responsibility to directly pay any of such amounts to Subcontractors.

5. No Owner Liability. Owner shall have no obligation to verify, confirm and/or otherwise substantiate any invoice submitted pursuant to this Section I for direct payments to manufacturers. Notwithstanding any payment made directly by Owner to each such Subcontractor, Owner shall have no responsibility and/or liability of whatever nature (a) to each

such Subcontractor for Contractor's obligations under the subcontract relating to the PV Modules, inverter units, and the racking and ballast units, respectively; and (b) for the performance, quality and/or any other aspect of the PV Modules, the inverter units, the racking units and/or each such Subcontractor, including the fulfillment of warranty obligations. Contractor specifically acknowledges that Owner's direct payment of invoices submitted by Contractor to Owner as contemplated herein is merely a financial accommodation and not the assumption and/or other allocation of Contractor's obligations and other liabilities under the Contract Documents. Without limitation of the foregoing, Owner's payment of such invoices shall not constitute acceptance of the PV Modules, the inverter units, the racking and ballast units and/or any other Work, and shall not relieve Contractor of its obligation to fully comply with the terms and conditions of the Contract Documents. Owner reserves the right to require that each Subcontractor furnish partial and final Lien waivers and releases as contemplated in Section 7.3(a)(i) of this Agreement as a condition of payment.

6. Subcontract. Contractor shall incorporate into its subcontract for the PV Module, the inverter units, and the racking and ballast units, respectively, provisions to the effect that (a) the direct payment by Owner shall not create a contractual relationship between Owner and such Subcontractor, and (b) Owner shall have no obligation and/or liability of whatever nature to such Subcontractor on account of such subcontract.

II. Milestone Payments.

Subject to Owner's rights and remedies under the Contract Documents, including Owner's withholding of payment rights under Section 7.3(b) of this Agreement and Owner's set-off rights under Section 7.3(c) of this Agreement, Owner shall pay the balance of the Fixed Contract Price (after taking into account the payments on account of the PV Modules, inverter units, and racking and ballast units under Section I of this Appendix E-1) in accordance with Contractor's successful achievement of the Milestones as set forth in Attachment E-1.1.

The Milestone in the Payment Schedule with respect to the completion of the Landfill Modifications shall be paid on the completion of the following elements of the Landfill Modifications such that 20% of such remaining balance of the Fixed Contract Price shall be paid in increments based on full completion of the following Work:

Work	% of Payment	Amount of Payment
Primary & Secondary Access Roads	30%	\$ [REDACTED]
Landfill Gas System Modifications	10%	[REDACTED]
Landfill Stormwater System Improvements	5%	[REDACTED]
All remaining Landfill Modifications	55%	[REDACTED]
	100%	[REDACTED]

The Milestone in the Payment Schedule with respect to 50% completion of installation shall require that the complete installation of one-half (1/2) of the PV Modules (determined using the Final Design), such that such PV Modules are ready, in Contractor's reasonable opinion, for

commencement of Acceptance Testing (pending final interconnection of such PV Modules to the remaining portion of the Project).

**Attachment E-1.1
Milestone Payments**

<u>Milestone</u>	<u>% of Fixed Contract Price</u>	<u>Milestone Payment (\$)¹</u>	<u>Cumulative %</u>
Delivery of Letter of Credit (see Schedule 12.2)	1%	[REDACTED]	1%
Final Design accepted by Owner	5%	[REDACTED]	6%
Completion of Landfill Modifications (see sub- milestones below)	20%	[REDACTED]	26%
50% Completion of Installation	24%	[REDACTED]	50%
Substantial Completion	25%	[REDACTED]	75%
Final Acceptance	25%	[REDACTED]	100%

¹ The amount of each payment will be based on the Fixed Contract Price as of the Effective Date assuming a purchase price of [REDACTED] for the PV Modules, [REDACTED] for the inverter units, and [REDACTED] for the racking and ballast units.

**Appendix E-2
Milestone Schedule**

Contractor shall complete the Work in accordance with the following Milestone Schedule, which shall only be modified pursuant to a Change Order:

<u>Milestone</u>	<u>Milestone Deadline</u>
Receipt of insurance and performance assurance	Insurance: Before commencing Work (see <u>Schedule 12.1</u>) Performance Assurance: 10 Business Days after the Effective Date (see <u>Schedule 12.2</u>)
Preliminary Design submitted	No later than 5 Business Days after the Effective Date
Initial CPM Schedule (including agreed WBS) submitted	No later than 5 Business Days after the Effective Date
Preliminary Development Achieved	No later than 30 Business Days after the Effective Date
Ready for Landfill Construction	No later than 12 Business Days after the Effective Date
Final Design submitted (PV System)	No later than 22 Business Days after the Effective Date
Complete and Fully Loaded CPM Schedule submitted	No later than 10 Business Days before Ready for PV Construction
Landfill Stormwater Systems Improvements Complete	No later than 25 Business Days after Ready for Landfill Construction
Landfill Gas Systems Modifications Complete	No later than 47 Business Days after Ready for Landfill Construction
Ready for PV Construction	No later than 36 Business Days after the Effective Date
Landfill Modifications Complete	No later than 43 Business Days after Ready for Landfill Construction
50% completion of installation	No later than 50 Business Days after Ready for PV Construction
75% completion of installation	No later than 74 Business Days after Ready for PV Construction
100% completion of installation	No later than 99 Business Days after Ready for PV Construction
Readiness for Testing	No later than 61 Business Days after the Effective Date
Completion of Project Acceptance Testing	No later than 77 Business Days after Ready for Testing
Interconnection Acceptance Testing	No later than 28 days before Substantial Completion
Substantial Completion Deadline*	No later than 140 Business Days after the Effective Date
Final Submission of all As-Built Drawings	No later than 16 days after Substantial

	Completion
Final Acceptance	No later than 23 days after Substantial Completion

* See Section 6.8 of this Agreement regarding liquidated damages.

Exhibit F
Witness Points and Hold Points

I. Hold Point.

Without limiting the requirements of any provision of the Agreement, including the obligation to obtain Owner's approval of any proposed action or submission and the requirement under the PCU Permit or otherwise that certain activities must be performed in the presence of the PCU On-Site Engineer, Contractor shall, and shall cause any Subcontractor to, observe the following Hold Points:

1. Implementation of revisions to the approved Excavation Plan, including changes to the use of approved vehicles/equipment or stockpiling on Site and/or the Landfill Cap;
2. Implementation of revisions to the approved Construction Equipment Plan, including changes to the use of approved vehicles/equipment on the Landfill Cap;
3. Initial Excavation in the portion of the Site covered by the Landfill Cap;
4. Approval by the Owner's Representative of a sample weld for any welding Work involving the Landfill Liner;
5. Non-destructive testing of all seams in the repair of the Landfill Liner;
6. Commencement of installation of temporary access roads;
7. Commencement of underground conduit installation;
8. Commencement of installation of inverters and transformer/switch pads on the Landfill Cap;
9. Initial inverter connections via the distribution circuit; and
10. Approval of the lawn seed blend and readiness for seeding by the Owner's Representative.

II. Witness Points.

Without limiting the requirements of any provision of the Agreement, including the obligation to obtain Owner's approval of any proposed action or submission and the requirement under the PCU Permit or otherwise that certain activities must be performed in the presence of the PCU On-Site Engineer, Contractor shall, and shall cause any Subcontractor to, coordinate the following Witness Points with Owner to facilitate Owner's exercise of rights in connection therewith:

1. Initial use on the Site and/or the Landfill Cap of any vehicle and mobile equipment permitted under the Site Restrictions and identified in the approved Construction Equipment Plan (and the approved Excavation Plan, if applicable);
2. Excavation activities that are not Hold Points or specifically identified as Witness Points;
3. The commencement of each new stockpiling/storage activity on the Landfill Cap (if approved under the Site Restrictions);
4. The test pitting of the existing access road at the Site pursuant to Paragraph 2.4(1)(a) of the technical requirements within the Technical Specifications;

5. Any welding Work involving the Landfill Liner that is not a Hold Point;
6. Commencement of installation of permanent access roads;
7. On-Site performance of any Work relating to Landfill Modifications that are not Hold Points or specifically identified as Witness Points;
8. Twenty percent (20%) verification of PV Module serial numbers to flash test results (conducted in accordance with the Technical Specifications after delivery of PV Modules to the Equipment Storage Area); and
9. Acceptance Testing.

**Exhibit G
Pricing Schedule**

The provisions of this Pricing Schedule shall control in the event of a conflict with any pricing provisions of any other Contract Documents; *provided*, that the pricing and/or methodologies set forth in this Pricing Schedule shall not modify, reduce or otherwise affect in any manner whatsoever Contractor's obligation to perform the Work for the Fixed Contract Price.

I. CHANGES.

This Section I of this Pricing Schedule shall govern the pricing of all proposals for Changes whether submitted by Owner, Contractor and/or any Subcontractor (including any and all lower tier Subcontractors). For each Change made or permitted under Article 8 of this Agreement, Owner shall have the right to select the method of pricing to be used by Contractor in accordance with this Section I of this Pricing Schedule. The options will be (a) time and equipment/materials basis (with a not-to-exceed cap), (b) firm fixed price basis (unit price or lump sum price), or (c) cost-plus basis (with a not-to-exceed cap). This Pricing Schedule shall apply to (i) all types of contracts and/or subcontracts including time and equipment/materials contracts, lump sum (or fixed price) contracts (unit price or lump sum price), and/or cost-plus contracts (with or without a guaranteed maximum price); and (ii) all methods of Change pricing including time and equipment/materials Change proposals, fixed price Change proposals (unit price or lump sum price), and cost-plus Change proposals.

1. Time and Equipment/Materials Pricing. Pursuant to Section 7.2(a) of this Agreement, Owner, in its sole and absolute discretion, may elect to have any Work that is the subject of a Change, in whole in part, performed by or on behalf of Contractor on a time and equipment/materials basis. The time and equipment/materials prices set forth in Section I, Paragraph 1 of this Pricing Schedule cover all direct and indirect costs of furnishing the Work including:

(a) all overhead, profit and other markup (including, for Work performed by Subcontractors, any handling or other administrative charge or mark-up of Contractor);

(b) home office costs including Contractor's business system, engineering, construction and purchasing functions, Intellectual Property rights, and interest on account of capital or borrowed money, the attention and services of executive officers, project and/or department managers, engineers and other employees in their home offices during the term of this Agreement (including travel and living expenses while traveling in the direct or indirect interest of the Work), and home office overhead expenses, including payroll, secretarial, administrative, clerical and accounting services, office supplies, rent, stationery, postage and communication service;

(c) field supervisory, safety administration, administrative and clerical personnel, including personnel with the following job titles: Project Manager, Assistant Project Manager, Superintendent, Chief Engineer, Office Manager and all other non-manual hourly and salaried employees classified as executive, administrative or professional, and any other non-technical

personnel, as well as relocation, travel (including time and the use of vehicular and other equipment) and other expenses for such non-manual personnel;

(d) costs to schedule the appropriate manpower and equipment to address planned or emergency work lay out jobs, coordinate joint trenching activities, arrange for traffic control, obtain Permits, pre-mark for Dig Safe® and otherwise perform preconstruction activities;

(e) all job-Site Contractor communication costs, including cell phone, text messaging, pager, radio, and facsimile;

(f) any special equipment or rigging required for erecting equipment;

(g) insurance costs for coverage of construction equipment, vehicles, tools and construction supplies furnished by Contractor and all other insurance coverages set forth in the Contract Documents;

(h) Contractor's and/or any Subcontractor's temporary construction office, field office, and warehouse expenses (material only), including office supplies, heat, light, sanitation facilities, storage of tools and equipment;

(i) construction management, including administration of Contractor's subcontracts and other contracts of Contractor;

(j) equipment and/or materials required for the performance of the Work, including temporary electrical power, water lines, air lines, oxygen-acetylene systems, shelters and storage;

(k) construction expendables, consumable construction material and other Performance Consumables, including scaffolding, cribbing, barricading, safety railings, bracing, safety lights, ladders, traffic cones, personal protective equipment, warning signs, red flags, fencing for work area protection, drop cords, drop cloths, welding rod, oxygen, acetylene, and all materials for cleaning (including solvents, chemicals, swabs, cloths and brushes);

(l) whatever small tools and expendable supplies required to complete the Work in an orderly and timely manner;

(m) labor, vehicle and other costs associated with obtaining bonds and Permits from Governmental Authorities; and

(n) all maintenance, fuel, delivery and other charges associated with equipment.

Contractor shall not charge an extra or otherwise impose any premium for shift or night work with respect to any prices. Prices shall be the same for added quantities and deductive quantities. Any Change Order proposal submitted pursuant to Article 8 of this Agreement and based on time and equipment/materials pricing shall itemize the quantities of each item of Work for which there is an applicable price set forth below, and such quantities shall be itemized in

relation to each related Contract Drawing. Prices will be applied to net differences of quantities of the same item.

1.1. *Labor.* For Work using time and equipment/materials prices, in whole or in part, the hourly labor rates set forth in Appendix G-1 attached to this Pricing Schedule shall be used for pricing labor. Labor charges shall commence at the designated time for departure from, or commencement of Work at, the show-up site (which may be the Site); *provided* that if any applicable worker arrives late to the show-up site, such charges shall commence at the time that such worker is prepared to leave the show-up site and/or commence the Work. Rate classifications are as follows:

(a) "*Straight Time*" is defined as the first forty (40) hours of Work in a work week beginning on Monday and ending on Saturday of each week (up to 10 hours per day, between the hours of 6am - 6pm), as determined by the Owner's Representative.

(b) "*Overtime*" (time-and-one-half) is defined as time worked, scheduled or unscheduled, outside of the Straight Time hours, when such Work is requested by the Owner's Representative as provided below.

(c) "*Double Time*" applies to Sundays and holidays (any day Monday through Saturday when the following are celebrated: New Year's Day; Presidents' Day; Patriots' Day; Memorial Day; Independence Day; Labor Day; Columbus Day; Veterans Day; Thanksgiving Day; day after Thanksgiving; and Christmas Day) when Work is requested by the Owner's Representative as provided below.

Notwithstanding anything to the contrary in the Contract Documents, Contractor shall perform Work using Overtime and/or Double Time rates only after written authorization by the Owner's Representative, which may be granted or withheld in the Owner's Representative's sole and absolute discretion, or as required by Law, and in such authorized cases, applicable Overtime and Double Time rates shall be used for Contractor's non-exempt personnel. All labor rates shall be hourly and Contractor shall only be paid for hours actually worked by Contractor's personnel. No payment will be made for holidays not worked. Owner shall not be charged for Contractor's holidays. Contractor shall not be entitled to Overtime or Double Time quoted, estimated and/or otherwise anticipated and approved by the Owner's Representative, but not actually worked. Daily time sheets with names of all Contractor's employees working on the Project and the paid hours worked by Contractor's employees will be required to be submitted to Owner for both labor and equipment used by Contractor for the relevant time periods.

The labor prices contained in Appendix G-1 have been calculated consistent with the methodologies set forth in cost-plus pricing methodologies in Section I, Paragraph 3 of this Pricing Schedule, and any labor rates not identified in Appendix G-1 shall be established consistent with such methodology.

1.2. *Equipment.* The equipment rates set forth in Appendix G-1 attached to this Pricing Schedule shall be used for pricing equipment. Hourly equipment rental rates shall be the applicable weekly rate divided by 40. Equipment rates shall be used only if Contractor

mobilizes equipment to the Site, and such equipment is maintained in operating condition. Costs for labor associated with the operation of such equipment are not included in such equipment rates, and shall be determined in accordance with Section I, Paragraph 1.1 of this Pricing Schedule. Equipment prices will apply without increase or other modification for use with Overtime and/or Double Time labor. The aggregate equipment charges for any single piece of equipment owned by Contractor or any of its Affiliates and used in all Work shall be limited to the fair market value of the piece of equipment when the first Work is priced involving usage of such piece of equipment.

The equipment prices contained in Appendix G-1 have been calculated consistent with the methodologies set forth in cost-plus pricing methodologies in Section I, Paragraph 3 of this Pricing Schedule, and any equipment rates not identified in Appendix G-1 (including rental equipment) shall be established consistent with such methodology; *provided* that fuel, insurance, depreciation, overhead, profit and all costs associated with the operation and maintenance of that equipment in good working order on the job have been (and will be) included in the equipment rates.

1.3. *Materials.* Unless otherwise agreed by the Parties in advance in writing, time and equipment/materials prices for any materials supplied by Contractor shall be based on the cost of such materials (determined in accordance with Section I, Paragraph 3.3 below), plus the Mark-Up Percentage Fee for materials (as set forth in Section I, Paragraph 3.7 of this Pricing Schedule).

1.4. *Not-to-Exceed.* As specified in the applicable Change Order, Contractor's charges for all or a portion of Work using time and equipment/materials pricing shall not exceed a maximum amount established by the Parties, and Owner shall not be liable for any charge in excess of such maximum.

2. Firm Fixed Pricing. Pursuant to Section 7.2(a) of this Agreement, Owner, in its sole and absolute discretion, may elect to have any Work that is the subject of a Change, in whole or in part, performed on a firm fixed price basis (unit price or lump sum). Contractor will submit a properly itemized fixed price Change proposal (unit price or lump sum, as specified by Owner) covering the applicable Work in accordance with Section 8.6 of this Agreement. Such proposal will be itemized for the various components of Work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner (including line item estimates showing detailed materials quantity take-offs, material prices by item, and related labor hour pricing information and extensions (by line item or by drawing as applicable)).

3. Cost-Plus Pricing. Owner, in its sole and absolute discretion, may elect to have any Work that is the subject of a Change, in whole or in part, performed on a cost plus the applicable Markup Percentage Fee (as defined in Section I, Paragraph 3.7.1 of this Pricing Schedule) basis, as calculated in accordance with this Section I, Paragraph 3. Contractor shall perform such authorized Work for the sum of actual cost for direct labor; actual cost of labor burden; actual cost of material used to perform such Work; actual cost of major equipment (specified in Section I, Paragraph 3.4, below) (without any charge for administration, warranty expense, clerical expense, general supervision or superintendent of any nature whatsoever,

including general foremen and foreman, or the cost or rental of small tools, minor equipment, or plant); *plus* the Markup Percentage Fee applicable to such Work. Each Change Order proposal using such methodology shall include a guaranteed maximum or "not to exceed" price or its equivalent.

3.1. *Direct Labor.* Labor costs included for Contractor's self-performed Work shall be based on the actual cost (excluding bonuses or other discretionary compensation) per hour paid by Contractor for those workers or crews of workers actually performing Work priced on a cost-plus basis. Labor hours shall include hours only for those workmen and working foremen performing Work on such basis. Contractor shall not charge an extra or otherwise impose any premium for shift or night work or holidays (as defined in Section I, Paragraph 1.1(c) above, *except* to the extent that such premium reflects actual overtime costs paid to workers (using the Overtime and Double Time calculations set forth in Section I, Paragraph 1.1 above) and approved in advance and in writing by the Owner's Representative and subject to the other provisions of Section I, Paragraph 1.1 above regarding labor rates.

3.2. *Labor Burden.* Allowable labor burden shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits (excluding bonuses or other discretionary compensation) if the employees are not union employees); and net actual cost to employer for workers' compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs and net cost reductions due to policies with deductibles for self-insured losses and assigned risk rebates. Contractor shall reduce its standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes.

3.3. *Material.* Material costs (excluding all material supplied by Owner) shall reflect Contractor's net actual cost for the purchase of such material. Material costs shall reflect cost reductions available to Contractor due to "non-cash" discounts, trade discounts, free material credits, and/or volume rebates. Cash and/or prompt payment discounts available on material purchased for such Work shall be credited to Owner if Owner provides Contractor with funds in time for Contractor to take advantage of any such discounts, and the Parties shall reasonably cooperate to maximize such discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail. Contractor's invoicing for materials shall be supported by copies of each vendor's invoice to Contractor.

3.4. *Equipment.* Allowable costs may include appropriate amounts for major equipment (tools and equipment with an individual purchase cost of more than \$1,500.00) specifically needed and used for Work performed on a cost-plus basis. For Contractor-owned major equipment, allowable "bare" equipment rates shall be the monthly rate for Massachusetts listed in the most current publication of The Primedia Blue Book divided by 176 to arrive at a maximum allowable hourly rate to be applied to the actual hours of equipment usage. Notwithstanding anything to the contrary in this Pricing Schedule, for major equipment owned by Contractor or any of its Affiliates, the aggregate equipment charges for any single piece of equipment used for Work (however priced) shall be limited to the fair market value of the piece

of major equipment. If Contractor desires to rent major equipment, Contractor shall obtain the prior approval of the Owner's Representative before renting such major equipment, and the allowable costs for such rented equipment shall not exceed the applicable Commonwealth of Massachusetts rates listed in the most current publication of The Primedia Blue Book. Standby charges for major equipment shall be included in actual costs only if Contractor mobilizes such equipment to the Site consistent with the Work Schedule, such equipment is maintained in operating condition, and the Owner's Representative directs Contractor in writing not to use such major equipment.

3.5. *Liability Insurance; Subcontractors.*

3.5.1. For each Change Order priced on a cost-plus basis, costs shall account for Contractor's net increase or decrease, if any, in insurance costs as a result of such Change Order. Any increases or decreases in such insurance costs shall not be subject to any Markup Percentage Fee.

3.5.2. Subcontractor costs (excluding all contractors directly engaged by Owner and/or its representatives) shall reflect Contractor's net actual cost paid by Contractor to Subcontractors necessary for proper performance of Work and substantiated by paid invoices. Such costs shall reflect discounts, rebates, insurance proceeds, or other payments or credits of any kind received by Contractor from each Subcontractor. Unless expressly waived by Owner in writing, all Subcontractors will be selected by Contractor based on a competitive sourcing process demonstrating best value, and subject to the terms of Section 4.4 of this Agreement. Any Subcontractor compensation based, in whole or in part, on a cost-plus methodology shall be calculated using the methodology set forth in this Pricing Schedule, unless a different cost-plus methodology will result in more favorable pricing to Owner.

3.6. *Contingency.* In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in cost methodology.

3.7. *Markup Percentage Fee.*

3.7.1. Unless the Parties establish a lower markup in a Change Order, the following mark-ups (each a "*Markup Percentage Fee*") shall apply to cost-plus compensation. To the extent that any charges by any Subcontractor(s) (including any Work performed by lower tier contractors) include any cost-based pricing, the aggregate markup charged to, and paid by, Owner shall be the Markup Percentage Fee set forth below as applied to the original cost; accordingly, such Subcontractor(s) shall not markup such costs, and Contractor and such Subcontractor(s) shall address the sharing of that single, combined fee in the applicable subcontract(s).

(a) For Work performed directly by Contractor, the maximum Markup Percentage Fee shall be a single markup percentage of nine percent (9%) of the net direct cost (excluding taxes and reimbursable costs) with respect to such Work of (i) direct labor and allowable labor burden costs, and (ii) the net actual cost of material and installed equipment; *provided*, that neither Contractor, nor any Subcontractor (at any

tier) shall be entitled to receive any Markup Percentage Fee with respect to equipment (whether owned or rented) and fuel costs related to equipment (rental or otherwise); and/or

(b) For Work performed by Subcontractors, the maximum additional Markup Percentage Fee allowable to Contractor shall be five percent (5%) of the net price (excluding taxes and reimbursable costs) of all approved such Work performed by all Subcontractors at any tier combined.

Notwithstanding anything to the contrary in this Pricing Schedule, Contractor shall not include or otherwise impose on Owner any handling charge and/or Markup Percentage Fee for the premium portion of any service, procurement or other Work. The foregoing pricing limitations shall apply equally to any and all subcontracting undertaken, at any tier, by, and/or on behalf of, any Subcontractor.

3.7.2. The Markup Percentage Fee calculated pursuant to Section I, Paragraph 3.7.1 of this Pricing Schedule shall be considered to be allocated two-thirds (2/3) to cover applicable overhead costs directly attributable to the field overhead costs related to processing, supervising and performing the relevant Work, and the remaining one-third (1/3) to cover home office overhead costs and profit. Without limiting the generality of the foregoing, the agreed upon Markup Percentage Fee is intended to cover Contractor's profit and all indirect costs associated with such Work. Items intended to be covered by the Markup Percentage Fee include: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; Permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The Markup Percentage Fee also covers the cost for the use of small tools (tools and equipment (power or non-power) with an individual purchase cost of \$1,500.00 or less).

3.8 *Not-to-Exceed.* Contractor's charges for all or a portion of Work using cost-plus pricing shall not exceed a maximum amount established by the Parties in the applicable Change Order, and Owner shall not be liable for any charge in excess of such maximum.

II. NON-REIMBURSABLE COSTS.

Notwithstanding anything to the contrary in this Pricing Schedule and the other Contract Documents, Contractor shall bear sole responsibility for, and the Fixed Contract Price shall include, the following costs:

- (a) general performance bonds (including any tax bond furnished to any Governmental Authority), town/municipality-required licenses, and any other Permits that are not job-specific;
- (b) costs for adjustment and corrective work that is due to Contractor's failure to perform the Work in accordance with the Contract Documents and costs relating to

willful misconduct and/or the negligent performance of Work by or on behalf of Contractor;

- (c) costs for warranty and corrective work (including factory service engineer), as required, that must be performed by Contractor to correct faulty service, equipment and/or materials furnished by Contractor;
- (d) costs relating to the exercise of remedies by Owner as a result of Contractor's failure to perform the Work in accordance with, and/or other breach of, the Contract Documents, including those resulting from terminating, shutting down, withdrawing, and/or supplementing Work by Contractor (including any Dispute resolution proceeding arising therefrom);
- (e) costs incurred by Contractor in connection with its performance of indemnification and similar obligations under the Contract Documents;
- (f) any rate for labor other than Straight Time *unless* an Overtime or Double Time rate has been authorized in writing by the Owner's Representative;
- (g) any extra/out of scope work not supported by a Change Order signed by Owner;
- (h) any cost for labor or equipment assigned to the Work without the approval of the Owner's Representative;
- (i) Subcontractor charges not authorized by the Owner's Representative for reimbursement prior to the start of such Subcontractor's work;
- (j) mobilization or demobilization charges not authorized for reimbursement under this Agreement;
- (k) taking an inventory of equipment and/or materials;
- (l) construction time restrictions due to compliance with requirements of Governmental Authorities;
- (m) removal of "stuck" vehicles from show-up sites;
- (n) cleaning up the show-up site or trailers; and
- (o) travel time and expenses to locate and secure parking, show-up, laydown and/or storage area(s) (including the Equipment Storage Area).

III. SUSPENSION/TERMINATION FOR CONVENIENCE.

1. Cost Methodologies. Suspension and termination for convenience costs and expenses under this Agreement shall be calculated in accordance with the applicable terms of Sections 13.1 and 13.2(c), respectively, this Agreement.
2. No Additional Liability. There shall be no overhead, profit, or mark-up of any kind on costs of Contractor or Subcontractors referenced in Section III, Paragraph 1 of this Pricing Schedule.

IV. ACCURATE PRICING.

1. Accurate Invoicing. Contractor shall submit, and shall cause each Subcontractor at any tier to submit, invoicing with cost and pricing data that is accurate, current and complete, and otherwise in accordance with the terms of this Agreement. If Contractor and/or any Subcontractor submits any cost and pricing data (whether approved or not) that was inaccurate, incomplete, not current, or not in compliance with the terms of this Agreement at the time of such submittal, Owner shall appropriately adjust such pricing. Such post-approval price adjustments will apply to Contractor and all levels of Subcontractors.
2. Labor Detail. In furtherance of Section I, Paragraph 3.1 of this Pricing Schedule, for any charges using the cost-based methodology, Contractor shall provide, and shall cause each Subcontractor at any tier to provide, certified payroll and a breakdown of allowable labor and labor burden cost in accordance with Section I, Paragraphs 3.1 and 3.2 of this Pricing Schedule. Such information shall represent an accurate estimate of Contractor's actual labor and labor burden cost components.
3. Discounts. All net earnings from rebates, refunds or discounts shall be accounted for by Contractor and applied in a reduction of the cost of the Work. All bills to be paid by Contractor on account of the Work shall be so paid as to take advantage of any and all trade, time or other discounts.

V. AUDIT RIGHTS.

In addition to the general audit rights of Owner under Article 7 of this Agreement, Owner shall have the right, directly and/or through its designated representatives, to examine, copy, and/or scan the records of Contractor and/or any Subcontractor at any tier (during the term of this Agreement and for a period of six (6) years after Final Acceptance) to verify the accuracy and appropriateness of the pricing data used in accordance with this Pricing Schedule. Such records shall include any and all information, materials and data of every kind and character, including records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers, and memoranda, and any and all other agreements, sources of information and matters that in Owner's judgment may have any bearing on or pertain to any matters, rights, duties, or obligations under or covered by pricing under this Pricing Schedule. Such records in whatever form (hard and electronic (if available) copies) shall include written

policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, and bid recaps); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger; records detailing cash and trade discounts earned, insurance rebates and dividends; and any other records that may have a bearing on matters of interest to Owner in connection with dealings with Owner to the extent necessary to adequately permit evaluation and verification of any or all charges. Contractor shall furnish, without charge, adequate and appropriate work space to Owner for the conduct of such audit.

VI. SUBCONTRACTORS.

Contractor shall incorporate and require the incorporation of the provisions of this Pricing Schedule into all agreements with Subcontractors at any tier. Such requirements shall specifically include flow-down right of audit provisions. Contractor will cooperate fully, and will cause all Subcontractors to cooperate fully, in furnishing and/or in making readily available to Owner from time to time whenever requested, in an expeditious manner, any and all information, materials, and data required under this Agreement.

**Appendix G-1
Labor and Equipment Rates**

American Capital Energy, Inc. Non Craft & Supervision Billing Rates

	<u>Straight Time</u>	<u>Overtime</u>	<u>Double Time</u>	<u>ACE's Classification</u>
Sr. Project Engineer				SPE
Project Manager				PM
Project Engineer				PE
Field Project Manager				FPM
Engineer				EN
Environmental Coordinator				EC
Safety Manager				SM
Clerk				SC

E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

CRAFT LABOR RATES

ELECTRICIAN

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 7/1/2013 TO 12/30/2013

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

JOURNEYMAN

FOREMAN

GEN. FOREMAN

LINE	DESCRIPTION	JOURNEYMAN		FOREMAN		GEN. FOREMAN		
		AMT OR PCT.	REG. TIME	P.T.@1.5	P.T.@2.0	REG. TIME	P.T.@1.5	P.T.@2.0
1	Base Rate							
2	Vacation							
3	TOTAL RATE							
FRINGES								
4	Health & Welfare							
5	Pension							
6	Apprentice Fund							
7	NLMCC							
8	ANNUITY							
9	NEBF							
10	NEIF/SC							
11	LMCC							
11a	HRA							
12	Sub-Total Fringes							
PAYROLL TAXES AND INSURANCE								
13	Fed. Unemp.							
14	MA State Unemp.							
15	FICA							
16	Medicare							
17	MA Workers Comp.							
18	Liability Ins.							
19	Subtotal, PT&I							
20	Subtotal, Lines 3, 11 & 18							
21	Small Tools							
22	Consumables							
23	Subtotal Lines 19, 20, & 21							
24	Overhead							
	Profit							
25	TOTAL BILLING RATE							

E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

CRAFT LABOR RATES

ELECTRICIAN

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 7/1/2013 TO 12/30/2013

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

75% APPRENTICE

70% APPRENTICE

65% APPRENTICE

LINE	DESCRIPTION	AMT OR	REG	75% APPRENTICE		70% APPRENTICE		65% APPRENTICE				
		PCT.	TIME	P.T.@1.5	P.T.@2.0	REG	P.T.@1.5	P.T.@2.0	REG	P.T.@1.5	P.T.@2.0	
1	Base Rate											
2	Vacation											
3	TOTAL RATE											
FRINGES												
4	Health & Welfare											
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22	Consumables											
23	Subtotal Lines 19, 20, & 21											
24	Overhead											
	Profit											
25	TOTAL BILLING RATE											

E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

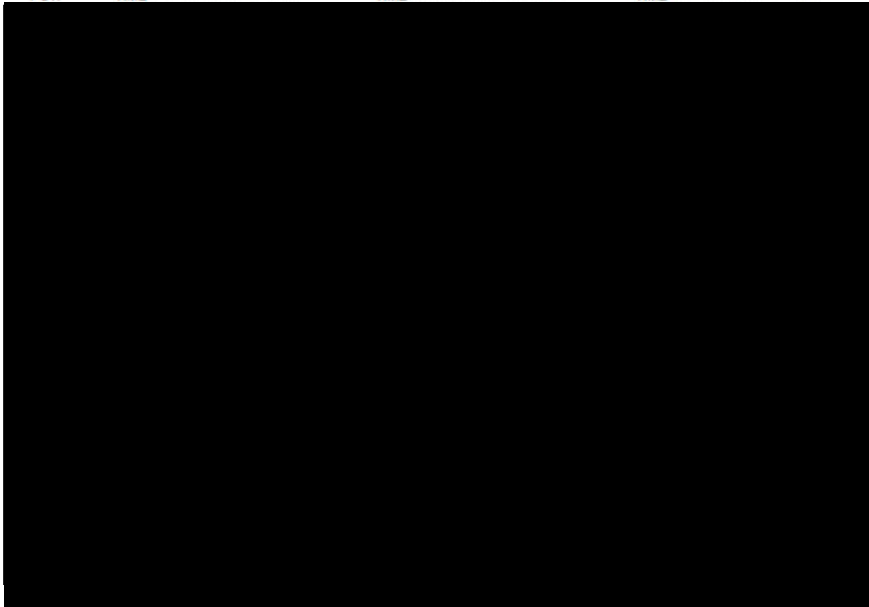
CRAFT LABOR RATES

ELECTRICIAN

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 7/1/2013 TO 12/30/2013

ALL OVER TIME IN GENERATION FACILITIES IS DOUBLE TIME RATE
60% APPRENTICE
55% APPRENTICE
50% APPRENTICE

LINE	DESCRIPTION	AMT OR	REG	60% APPRENTICE		REG	55% APPRENTICE		REG	50% APPRENTICE	
		PCT.	TIME	P.T.@1.5	P.T.@2.0	TIME	P.T.@1.5	P.T.@2.0	TIME	P.T.@1.5	P.T.@2.0
1	Base Rate										
2	Vacation										
3	TOTAL RATE										
FRINGES											
4	Health & Welfare										
5	Pension										
6	Apprentice Fund										
7	NLMCC										
8	ANNUITY										
9	NEEF										
10	NEIF/SC										
11	LMCC										
11a	HRA										
12	Sub-Total Fringes										
PAYROLL TAXES AND INSURANCE											
13	Fed. Unemp.										
14	MA State Unemp.										
15	FICA										
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17	MA Workers Comp.										
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19	Subtotal, PT&I										
20	Subtotal, Lines 3, 11 & 18										
21	Small Tools										
22	Consumables										
23	Subtotal Lines 19, 20, & 21										
24	Overhead Profit										
25	TOTAL BILLING RATE										



E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 7/1/2013 TO 12/30/2013

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

LINE	DESCRIPTION	AMT OR PCT.
1	Base Rate	
2	Vacation	
3	TOTAL RATE	
FRINGES		
4	Health & Welfare	
5	Pension	
6	Apprentice Fund	
7	NLMCC	
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9	NEBF	
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11	LMCC	
11a	HRA	
12	Sub-Total Fringes	
PAYROLL TAXES AND INSURANCE		
13	Fed. Unemp.	
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16	Medicare	
17	MA Workers Comp.	
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19	Subtotal, PT&I	
20	Subtotal, Lines 3, 11 & 18	
21	Small Tools	
22	Consumables	
23	Subtotal Lines 19, 20, & 21	
24	Overhead Profit	
25	TOTAL BILLING RATE	

E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

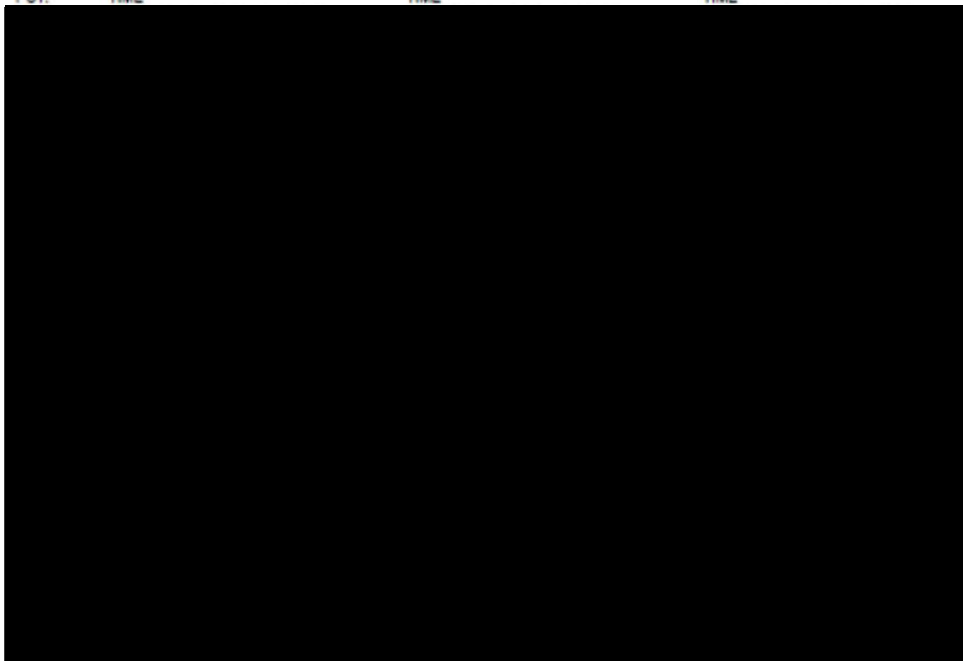
CRAFT LABOR RATES

ELECTRICIAN

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 12/30/2013 TO 6/30/2014

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

LINE	DESCRIPTION	JOURNEYMAN				FOREMAN		GEN. FOREMAN			
		AMT OR PCT.	REG. TIME	P.T.@1.5	P.T.@2.0	REG. TIME	P.T.@1.5	P.T.@2.0	REG. TIME	P.T.@1.5	P.T.@2.0
1	Base Rate										
2	Vacation										
3	TOTAL RATE										
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E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

CRAFT LABOR RATES

ELECTRICIAN

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 12/30/2013 TO 6/30/2014

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

75% APPRENTICE

70% APRENTICE

65% APPRENTICE

LINE	DESCRIPTION	AMT OR	REG	75% APPRENTICE		REG	70% APRENTICE		REG	65% APPRENTICE	
		PCT.	TIME	P.T.@1.5	P.T.@2.0	TIME	P.T.@1.5	P.T.@2.0	TIME	P.T.@1.5	P.T.@2.0
1	Base Rate										
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23	Subtotal Lines 19, 20, & 21										
24	Overhead Profit										
25	TOTAL BILLING RATE										

E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

CRAFT LABOR RATES

ELECTRICIAN

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 12/30/2013 TO 6/30/2014

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

60% APPRENTICE

55% APPRENTICE

50% APPRENTICE

LINE	DESCRIPTION	60% APPRENTICE		55% APPRENTICE		50% APPRENTICE		
		AMT OR PCT.	REG TIME	P.T.@1.5	P.T.@2.0	REG TIME	P.T.@1.5	P.T.@2.0
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21	Small Tools							
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23	Subtotal Lines 19, 20, & 21							
24	Overhead Profit							
25	TOTAL BILLING RATE							

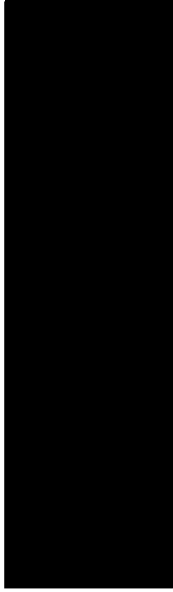


E.S. BOULOS COMPANY LABOR RATES FOR LOCAL UNION #7 SPRINGFIELD, MA

LOCAL #7 SPRINGFIELD, MA
CONTRACTOR: E.S. BOULOS COMPANY
EFFECTIVE 12/30/2013 TO 6/30/2014

ALL OVER TIME IN GENERATION FACILITIES IS
DOUBLE TIME RATE

LINE	DESCRIPTION	AMT OR PCT.
1	Base Rate	
2	Vacation	
3	TOTAL RATE	
FRINGES		
4	Health & Welfare	
5	Pension	
6	Apprentice Fund	
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8	ANNUITY	
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16	Medicare	
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22	Consumables	
23	Subtotal Lines 19, 20, & 21	
24	Overhead Profit	
25	TOTAL BILLING RATE	



WMECO

GAGLIARDUCCI CONSTRUCTION, INC.
295 PASCO ROAD
INDIAN ORCHARD, MA 01151

PROJECT: COTTAGE ST LANDFILL

DATE:
GAG PCO #:

DESCRIPTION	QTY/HOURS	RATE	15% OH&P	SUB TOTAL
I. LABOR			(INCL'D)	
SUPERINTENDENT HRS				\$0.00
LABORER HRS				\$0.00
OPERATOR HRS				\$0.00
DRIVER HRS				\$0.00
II. EQUIPMENT (w/OPERATOR)			(INCL'D)	
EXCAVATOR HRS				\$0.00
TRI-AXLE HRS				\$0.00
LOADER HRS				\$0.00
SKID STEER HRS				\$0.00
BULLDOZER HRS				\$0.00
LOADER-BACKHOE HRS				\$0.00
ROLLER HRS				\$0.00
GRADER HRS				\$0.00
MINI-EXCAVATOR HRS				\$0.00
ROCK TRUCK HRS				\$0.00

Exhibit H

Site Description

The Facility will be located on a portion of a former landfill site at 399 Cottage Street in Springfield, Massachusetts. The Site is comprised of several parcels, totaling approximately 63.76 acres and has primary access from Cottage Street and secondary access from Memorial Drive. The Site is bordered to the east and west by industrial/commercial properties and the south by the Boston and Albany Railroad.

The Site is more specifically described in (a) a Warranty Deed from Cottage Street Realty, Inc. to the Site Owner dated 02/19/2002 and recorded on 04/05/2002 as document number 143891, Ctf. number 30461 of the Hampden County Registry of Deeds, Land Court Division and as Lot Number 14 in Land Court Plan 31465-G, (b) a Quit Claim deed from Cottage West Realty, Inc. to the Site Owner dated 08/30/2002 and recorded 08/30/2002 in document number 30683 of the Hampden County Registry of Deeds, Land Court Division and as Lots 16 & 17 shown on a plan filed with Ctf. number 3389C, (c) a Warranty Deed from GABEL Development Corp. to the Site Owner dated 07/29/2002 and recorded 07/31/2002 in document number 145527 of the Hampden County Registry of Deeds, Land Court Division; and (d) a Quitclaim Deed from Edward L. Young to the Site Owner dated 04/20/11 and recorded on 06/10/11 as document number 188,247 on Ctf. number # 34796 of the Hampden County Registry of Deeds, Land Court Division and as Lot 19 shown on a subdivision plan numbered 31465-I, the same being compiled from a plan drawn by Cullinan Engineering dated July 25, 2008, as modified and approved by the Court and filed in the Land Registration Office, a copy of a portion of which is filed with Ctf. number # 34796. The boundary of the Site is depicted in a plan entitled "Boundary Line Survey" dated September 11, 2012, prepared by Weston & Sampson, a copy of which has been furnished to Contractor.

The Site Plan contains additional details regarding the Site, including the portion thereof that will be affected by the Facility.

**Exhibit I
Work Protocols**

1. Contractor Facilities.

(a) Contractor shall provide all necessary ancillary facilities, such as potable water, sanitary and storage facilities, heat and ventilation, telephone service, high-speed internet connectivity, offices, warehouses and other ancillary supplies, materials and equipment necessary or appropriate for the conduct of the Work. Contractor shall secure and pay for temporary power and other utilities for Contractor's facilities.

(b) As soon as practical before erecting or otherwise installing Contractor's facilities and ancillary facilities, Contractor will furnish Owner drawings and other information concerning such facilities.

(c) Owner reserves the right, through the Owner's Representative or any other designated person, to inspect any show-up/laydown site for compliance with this Agreement, including the conduct of before and after audits. Any such inspection, audit, and/or other right exercised by Owner with respect to any show-up/laydown site shall not relieve or other diminish Contractor's obligations with respect thereto.

2. Excavation; Site Conditions.

(a) In addition to compliance with the Dig Safe ® procedures required under Section 5.7 of this Agreement, Contractor's Trenching and Excavating Program shall comply with all aspects of 520 CMR 1400 and OSHA regulations (29 CFR 1926), and shall include designation of a Competent Person in accordance with Section 5.4(f) of this Agreement, personnel protection (shoring shielding), ingress and egress, exposure to vehicles, barricading, confined space and water accumulation. Contractor shall submit to owner in writing any changes to the list of Competent Person(s) within five (5) Business Days after additions or deletions.

(b) Surplus earth and materials including Excess Material not suitable for the Work shall be transported, at Contractor's sole cost and expense, to an off-Site location(s) selected by Contractor and approved by Owner, in a manner that complies with the terms and conditions of the Contract Documents and Law (including the PCU Permit). Excess Materials may be temporarily stored off the Landfill Cap in the designated construction staging area at the Site to facilitate off-Site transportation of the materials. See Appendix A-3. Contractor shall proactively manage such temporary storage of Excess Materials in the designated construction staging area to prevent any runoff, erosion or sedimentation.

(c) Contractor shall not deposit mud or debris on public streets or adjacent property. Contractor shall immediately remove any such material that is deposited on public streets and/or such adjacent property in violation of the foregoing.

(d) Contractor shall constantly monitor the Work to avoid the creation of conditions that could lead to excessive runoff of storm water, erosion of soils, and other negative impacts on

adjoining property and/or the Environment and shall perform control work as specified in Law (including applicable Permits) and the Contract Documents. Without limiting the generality of the foregoing, at all times from the Effective Date through Final Acceptance, Contractor shall be responsible for installing, maintaining and replacing, at Contractor's sole cost and expense, drainage, sedimentation and erosion control measures in accordance with Law (including applicable Permits) and the Contract Documents (including the Site Plan).

(e) Contractor shall not use sodium chloride for dust control. A topping of processed stone or use of calcium chloride will be the only methods approved for use for areas where dust control is necessary.

(f) At all times from the Effective Date through Final Acceptance of such Project, Contractor shall be responsible for HAZWOPER (see OSHA 1910.120) training, at Contractor's sole cost and expense, for employees and Subcontractors that will or could have contact with any soil and HAZWOPER clean-up.

(g) Contractor shall request approval from Owner for any modifications of existing access facilities, including location of an access way in a regulated wetland and/or buffer area. Contractor shall not proceed with such aspect of the Work until the Parties have fully assessed such circumstance and established a course of action. Contractor shall make such request sufficiently in advance of the need for alternate access to allow for such assessment and action plan (including any required Permit(s)), or to implement an alternate route if Owner shall not approve such request. Contractor shall not be entitled to any relief (schedule, economic or otherwise) in the form of a Change Order or otherwise resulting from, or relating to, such assessment, the resulting decision, and any related delays.

3. Vehicles and Equipment.

(a) Contractor shall limit parking or operation of equipment, including vehicles, near streams and wetlands as much as possible, and all of such activities shall be in strict conformance with Law. The Site Restrictions contain additional limitations regarding parking.

(b) If performance of the Work requires access to a substation, Contractor shall (i) request access to such substation from the Owner's Representative, (ii) not access any substation without receipt of such permission, and (iii) comply with any conditions related to such permission. For access to substations during off hours, Contractor shall park all vehicles and equipment outside of the substation gates.

(c) To minimize noise on and adjacent to the Site, trucks and other motorized equipment shall be equipped with noise control devices and shall be maintained to meet the applicable noise emission standards set forth by EPA (40 CFR Parts 204 and 206).

(d) Trucks and other vehicles shall be maintained in a manner such that the exhaust emission from the vehicles meets EPA emission limitations applicable to motor vehicles and motor vehicle engines (40 CFR Parts 204 and 206) and all other Laws.

(e) All vehicles shall be equipped with a complement of tools to meet daily needs for the construction activities.

(f) Contractor shall not operate any vehicles and/or other mobile equipment in wetlands. The Site Restrictions contain additional limitations regarding on-Site activities (including restrictions on storage near wetlands).

(g) All of the Contractor's vehicles shall meet American National Standards Institute's Standards.

(h) Contractor shall be solely responsible for all costs and expenses associated with standby time resulting from Permit stipulations and/or parking restrictions limiting Contractor's work hours within a working day or night, and Owner shall have no liability (reimbursement or otherwise) with respect to such costs and expenses. Contractor will schedule its work forces to comply with traffic stipulations.

(i) Contractor shall perform all Work in accordance with the MassDOT Highway Division, Standard Specifications for Highways and Bridges as amended.

4. Spills; Releases.

(a) Contractor shall prepare a Spill Response Plan and provide a copy to Owner for its approval at least ten (10) Business Days prior to the commencement of Work on Site.

(b) Fuel, oil, hydraulic fluids and dust control substances shall not be stored on Site. Contractor shall not perform oil changes or maintenance on vehicles or equipment at the Site, show up sites and/or laydown areas. Refueling of over the road vehicles shall not occur on Site. Heavy construction equipment may be refueled on Site, however in strict compliance with the applicable Permits and not within one hundred (100) feet of any wetlands or buffer area.

(c) Contractor shall provide initial response to any spill or release of liquids other than water (including fuel, hydraulic fluid, antifreeze, and gaseous or solid substances), in all instances in compliance with Law. The four steps of initial response by Contractor are:

- (i) Provision for the safety and health of Contractor employees and the general public (including preventing individuals from contacting potentially contaminated substances);
- (ii) immediate containment of spilled material and restricting access by the public (including barricading spill area, and protecting storm drains and waterways with spill control materials);
- (iii) immediate spill notification to the Owner's Representative and to the required Governmental Authority in accordance with Law; and
- (iv) clean-up and remediation of the Site, at Contractor's sole cost and expense, as determined and/or required by the Owner's Representative and any Governmental Authority.

(d) All Contractor vehicles, except cars, shall be equipped with spill containment kits that include the following items or Owner-approved equivalents:

- 25 Grade 200 oil pads
- 3 Containment oil mini booms (3" x 4' each)
- 1 Pair nitrile gloves
- 1 Disposal bag with cable tie
- 2 2 x FR rated disposable suits
- 2 2 x pair of disposable booties

(e) Without limiting Contractor's indemnity under Article 15, Contractor shall reimburse Owner for all of Owner's or any property owner's (public or private) costs associated with the cleanup of leaks and spills from Contractor's equipment and/or operations.

(f) Contractor shall employ extreme caution in handling hazardous, toxic or deleterious materials resulting from the Work to prevent their introduction into the Environment which could result in harm to people, wildlife or the natural growth of the area. Contractor shall take appropriate precautions relative to the Site conditions. Contractor employees shall be made aware of these requirements.

5. Safety and Health.

(a) All Persons employed by Contractor, its Subcontractors, agents, or those under its or their control who carry out Work in the vicinity of energized conductors and equipment shall be instructed by Contractor in approved methods of artificial resuscitation before beginning Work.

(b) Contractor's equipment shall meet all applicable Federal, State and local environmental, health and safety standards. All cranes, backhoes and any other similar equipment shall be equipped with grounding lugs and solidly grounded when working within the area of overhead conductors or in substations. The grounding connection shall be made as required by Owner to a properly driven ground rod (subject to the Site Restrictions). Contractor shall furnish the grounding material.

(c) Workers reporting to work under the influence of alcohol or drugs or in possession of alcohol or drugs will not be permitted on the Site. Use or possession of alcoholic beverages or drugs at the Site at any time, including designated employee parking areas, is prohibited and cause for permanent exclusion from the Site.

(d) Contractor shall, at no additional cost to Owner, conduct and document (i) daily (or more frequent) tailboard meetings with all workers who will be involved in the Work, at the start of a Project, after any change in the Work scope, and before any new Work assignments begin; and (ii) all other safety-related meetings, programs and other activities. At a minimum, such discussions shall include actual and potential hazards of such Work and other precautions to prevent injury or damage, and such written documentation shall include who, what, where and when details. This documentation must be maintained at the Site and available for Owner's

review at any time. Each tailboard meeting also shall address the Site Restrictions applicable to the Work that will be performed after such meeting.

(e) ANSI/SEA 107 Compliant Traffic Safety Vests shall be worn and properly equipped first aid kits shall be available at all times

(f) Contractor shall maintain an emergency contact list for all workers working on the Site.

(g) Contractor shall be responsible to provide all items required in the performance of the Contract Documents that are required by OSHA, Federal, State, or Owner safety and health regulations. Such items may include:

- Personal protection equipment
- Enclosed Space and/or Confined Space Entry Equipment
- Traffic control devices
- Public safety protection

(h) Contractor shall post a copy of OSHA regulations at the Site.

(i) Contractor shall perform the Work in full compliance with existing OSHA Safety and Health Standards. No Work shall be performed in any enclosed space until tests have been made to show the presence of a sufficiency of air and the absence of combustible gas.

(j) No smoking shall be permitted anywhere on the Site.

(k) Contractor shall take all necessary and legal precautions for the protection of Work and the safety of the public and maintain compliance with the Federal Highway Administration's Manual of Uniform Traffic Control Devices (MUTCD), which is incorporated by reference by OSHA. Contractor shall furnish, erect, maintain and remove all approved barricades, traffic cones, suitable and sufficient lights, approved reflectors, danger signals, warning and closure signs, fencing, directional detour signs, red flags, hard-hats and devices that may be required for adequate protection of job site, employees and control of traffic or as may be required by the Owner's Representative or applicable Governmental Authorities. All barricades, danger signals, fencing, warning signs and obstructions shall be adequately illuminated at night. All lights shall be kept operational from sunset until sunrise. Contractor shall provide such watch personnel as may be required on Site at night to properly guard and protect trenches, openings, materials, and other potential hazards, and ensure lighting and barricades are in proper working order. Contractor shall provide the Owner's Representative with name and telephone number of a representative who will be available during the night for such contact as may be necessary under the foregoing requirements.

(l) Barricades shall be placed and supported by two "A" frames and must be marked with Contractor's name.

(m) Trench protection shall conform to requirements of OSHA, Owner and any other state/commonwealth agencies, as necessary.

6. Contractor Safety & Hazard Assessment Plan. The Contractor's Safety Program developed pursuant to Schedule 5.5 of this Agreement will complement existing Contractor safety and health programs by providing a Site specific and documented job planning safety and health review of the Work, and must include, at a minimum, the following:

(a) *Documentation of the Job Sequence*: Break the Project into job segments and list the major steps and sequence of events for the Project. This should be scaled to the complexity of the job.

(b) *Documentation of Major Hazards*: List the major high risk hazards, such as electrical (contact, flash), gravity (fall, falling objects), kinetic (vehicle and equipment operation) and mechanical (rigging, tools and equipment) associated with the Project.

(c) *Documentation of Barriers*: List the barriers and controls that will be utilized to manage the major hazards identified. Examples of control and safety barriers:

- Eliminate the hazard
- Install physical barriers
- Install warning devices
- Use written procedures
- Provide supervision
- Minimize energy to safe levels
- Wear protective equipment
- Minimize error potential
- Provide training
- Identify hazards only

(d) *Communication and Monitoring of the Job Plan*: Provide the elements of daily job plan/tailboard conference. Explain how safety performance will be monitored.

(e) *Environmental Concerns*: Identify any environmental concerns that may be encountered. Explain how environmental concerns are communicated to Contractor employees and Subcontractors.

Contractor shall report to the Owner's Representative all workplace hazards, unsafe conditions and safety, health and environmental concerns, regardless of cause. Contractor shall immediately inform the Owner's Representative and investigate all occupational injuries, illnesses and safety-related incidents (including near-misses, fires, and spills), and identify causes and actions taken to prevent recurrence in a written report to Owner.

7. Work Related Injury.

(a) Contractor shall immediately (but in no event later than twenty-four (24) hours) report each work-related injury to the Owner's Representative. For any work-related injury, Contractor shall make its records concerning the event available to Owner, and provide to the Owner's Representative a detailed written report of the facts concerning such event within forty-eight (48) hours of the event. This report shall include all items required under the Contractor Work Rules (Appendix I-2), including the following items:

- Date and time of incident.
- Weather conditions at time of incident.
- Location of incident.
- Detailed description of incident.
- Immediate action(s) already taken.
- Action(s) to prevent recurrence (recommendations).
- Additional information (including crew types and sizes, vehicle types, job titles, medical treatment, and nature of injury).
- Report prepared by: (Name and Contractor Company).

(b) If a more detailed report is requested by Owner, Contractor, at no cost to Owner, shall conduct an investigation of the incident and within ten (10) Business Days after such request (or such longer period authorized by the Owner's Representative), prepare and issue a report that shall include at least the following root cause analysis:

- (i) *Immediate cause.* (That single and very specific thing that occurred "at" the site of the incident that made the situation turn into an incident.)
- (ii) *Contributing cause(s).* (All other things that led up to the incident. There can be many contributing causes.)
- (iii) *Underlying (root) cause(s).* (That single cause that, if corrected, would have prevented the incident even if most of the immediate and contributing causes still existed.)

8. General.

(a) For any Work which takes place at secure Owner facilities, Contractor shall comply with Owner's security requirements currently in effect, copies of which are available upon request.

(b) Contractor shall perform Work in a manner that will not interfere with access to fire hydrants, fire houses, bus stops, manholes, transformer vaults, valve boxes, or any other emergency facility. Owner approval shall not relieve Contractor of responsibility for such compliance.

(c) These Work Protocols set forth Owner's minimum requirements. Nothing in these Work Protocols shall relieve Contractor from adhering to Law, the requirements of

Governmental Authorities, and/or more stringent directions and/or protections required by Owner for the Project.

9. Incorporated Rules and Procedures.

The following Appendices are incorporated herein by reference and except as specifically indicated herein, shall apply to the Work irrespective of whether any of such Appendices have limited application to certain divisions within Owner:

Appendix I-1	Material Handling Guideline
Appendix I-2	Contractor Work Rules
Appendix I-3	Owner's Environmental Policy

Appendix I-1 Material Handling Guideline

Introduction

Work may result in Contractor and/or any Subcontractor encountering liquid Excess Material and/or generating solid Excess Material (in each instance, including Hazardous Materials (including Pre-existing Hazardous Material)). Such Excess Material shall be managed in accordance with this Material Handling Guideline (this "*Guideline*"). Words capitalized herein where rules of grammar would not otherwise require shall have the meaning given to them in Article 1 of this Agreement. In any case of inconsistency, conflict, or ambiguity between this Guideline and the other Work Protocols, the terms of this Guideline shall govern.

Special Conditions and Notice

The identification, handling, storage, testing, and disposal of Excess Material shall be conducted in accordance with this Guideline, this Agreement, and Law (including all applicable Permits, and local, state, and federal safety and environmental regulations, requirements, and guidelines, including the MassDEP Massachusetts Contingency Plan (*MCP*) 310 CMR Section 40.0000, "Interim Remediation Waste Management Policy for Petroleum Contaminated Soils #WSC-94-400" and Draft Guidance for "Construction Activities in Contaminated Areas" (available at <http://www.mass.gov/dep/cleanup/>)), as the same may be amended from time to time. In complying with this Guideline, Contractor shall use its best efforts to protect workers and the public and avoid schedule delays.

Contractor shall immediately (but in no event less than twenty-four (24) hours after the occurrence) notify Owner of any discrepancy, inconsistency, conflict, or ambiguity with respect to all or any portion of this Guideline or between this Guideline and any other Contract Document.

If field screening or laboratory analysis of Excess Material is required or necessary, Contractor shall, within ten (10) days after completing and receiving the results of such field screening or laboratory analysis, submit to Owner such results.

Note: The results may identify a condition that requires reporting to MassDEP by 120-days, 72-hours or 2 hours. If the 72-hour or 2-hour thresholds are tripped, all Work must stop, MassDEP must be notified and an Immediate Response Action ("IRA") must be initiated. The 72-hour and 2-hour notifications will require oversight by a Massachusetts licensed site professional ("LSP"). If the 120-day reporting threshold is met, Work may continue after MassDEP is notified under a Utility Release Abatement Measure ("URAM"). The URAM will require LSP oversight. See 310 CMR Section 40.0460 for additional details and reporting timelines.

Where Law or rules require submittal of data to state/commonwealth agencies in less than ten (10) days following receipt of such data, Contractor shall provide such data to Owner at least three (3) Business Days before the submission date so that Owner may submit data to the requisite agency in accordance with the applicable rule and/or Law.

Health and Safety, Training, and Other Requirements

Without limiting Contractor's obligations under those safety rules and regulations applicable to the Work being performed, including under Appendix I-2 to Exhibit I (Contractor Work Rules), safety rules, guidance, and standard procedures incorporated in the applicable Work Protocols, at the request of the Owner's Representative, Contractor shall submit a detailed safety and hazard assessment job plan (the "*Job Plan*") that complies with Schedule 5.5 of this Agreement. In addition to the requirements set forth in Schedule 5.5 of this Agreement, the Job Plan shall be completed in accordance with 29 CFR Section 1910.120(b) and shall include detailed hazard analyses for each major Work item and provisions to address any and all impacted Excess Material, including management of gases and vapors. Contractor shall be responsible for the health and safety of its own employees.

All process material, equipment, and personal protective equipment required for working with Hazardous Material that is determined to be Level C-Modified hazardous substance (29 CFR Section 1910.120) will be listed in the Job Plan, and will be provided by Contractor.

Contractor shall provide a LSP that will oversee the collection, preparation, packaging, labeling, transportation, analysis, and reporting of any samples required by this Guideline. The LSP must hold a valid license issued by the Board of Registration of Hazardous Waste Site Cleanup Professionals pursuant to M.G.L. c. 21A, paragraphs 19 through 191. Contractor shall provide the name and license number of the LSP to Owner prior to commencing any Work. In addition, the LSP shall sign or otherwise execute all transportation manifests or bills of lading associated with Excess Material prior to the transportation of such Excess Material off-Site. Manifests and bills of lading shall identify the location from which Excess Material has been generated. Contractor shall obtain a signatory authorization from Owner prior to signing or otherwise executing any transportation manifest or bill of lading.

The handling and transport of Hazardous Materials may present issues in regards to safety, transportation, and environmental compliance. These issues fall under the purview of OSHA, the United States Department of Transportation ("*USDOT*") and the EPA, respectively. Contractor must also abide by laws and regulations that have been enacted on the state level by the Massachusetts Department of Labor, MassDOT and MassDEP.

Regulatory agencies require adequate levels of training for employees coming in contact with Hazardous Materials. At a minimum, Contractor is required to provide Hazard Communications (HAZCOM) training to all employees working on a Site where Hazardous Materials may be present. Hazardous Materials at the Site may include Polychlorinated Biphenyls (*PCBs*), lead, mercury, arsenic, lithium batteries, aerosol cans, compressed gases and asbestos. Requirements for HAZCOM training can be found in 29 CFR Section 1910.1200.

Contractor is also required to provide adequate training to employees if they come in contact with hazardous waste wastes streams may include contaminated soil and contaminated liquid Excess Material, lead, mercury, lithium, and aerosol cans. Any Contractor coming in contact with hazardous waste, at concentrations above regulatory limits, would be required to provide

adequate hazardous waste handling training to its employees. The requirements for such training can be found in 29 CFR Section 1910.120 and specifically for contractors 29 CFR Section 1926.65. Without limiting the generality of the foregoing, all Contractor and Subcontractor personnel (including supervisors) involved in Excess Material handling activities shall attend a minimum of twenty-four (24) hours of OSHA training as outlined in 29 CFR Section 1910.120(e)(4). Any Environmental Coordinator appointed pursuant to Section 5.4(f) of this Agreement shall be trained and certified in accordance with the OSHA 40-hour HAZWOPER program (29 CFR Section 1910.120(b)).

Any Contractor whose Work has the potential to come in contact with asbestos must provide its employees with proper training. Training requirements for encountering, removing and disposing of asbestos can be found at 29 CFR Section 1910.1001. The Massachusetts Department of Labor and MassDEP also have asbestos regulations. These can be found at 453 CMR Section 6.00.

Any Contractor who transports Hazardous Materials over the road is required to provide appropriate USDOT training for its employees. USDOT training can be found at 49 CFR Section 172 Subchapter C. Contractor may avail itself of the Material of Trade (MOT) exception, *provided* that it has trained its employees in the use of the exception. As a general rule, full loads that weigh less than 440 pounds, including the weight of the packaging, may be transported under MOT. Compressed gas cylinders must be marked, restrained with bottle ties or chains (no ropes), and must not contain more than 220 pounds, including the weight of the cylinder.

This Guideline is split into two sections. The first is an index of both Hazardous Materials and hazardous waste categories. Under each category is a listing of raw materials or waste materials that may be generated or encountered. Each category is followed by a reference document number. This number corresponds with material guidance sheets that are contained within the second section of this Guideline.

This Guideline should not be considered all encompassing for every type of Hazardous Material that may be generated or encountered. If Contractor has any questions, it shall contact the Owner's Representative.

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Guidance Number 1 - Contaminated Soil & Excavation Debris

Management of Solid Excess Material

Spills or releases due to Contractor activities may result in the generation of solid Excess Material. Spills or releases also may occur due to the release of Pre-existing Hazardous Material resulting from the Work. In both such cases, Contractor shall pay, without right to seek reimbursement, for the full cost and expense of removal and disposal of such Excess Material at an Owner-approved disposal facility. Contractor shall comply with Law and shall solely bear all liability for such storage, removal, transportation, and disposal of such Excess Material brought onto, or encountered at the Site by Contractor.

Solid Excess Material Containing Oil, Waste Oil or Other Hazardous Materials Below Reportable Concentrations

Contractor, in consultation with Owner, may elect to reuse solid Excess Material by returning it to the Excavation or off-Site, without the need for any further testing. Guidance is provided in 310 CMR Section 40.0032 (3). Solid Excess Material shall not be disposed of or reused at locations where the concentrations of oil or other Hazardous Materials in such solid Excess Material would be in excess of a release notification threshold at the receiving site, as delineated in 310 CMR Sections 40.0300 and 40.1600; and solid Excess Material shall not be disposed of or reused at locations where existing concentrations of oil and/or other Hazardous Material at the receiving site are significantly lower than the levels of those oil and/or other Hazardous Material present in the soil being disposed of or reused. Contractor must be familiar with all local ordinances and regulations before reusing solid Excess Material in an Excavation.

Solid Excess Material Containing Oil, Waste Oil or Other Hazardous Materials Equal to or Above Reportable Concentrations

Solid Excess Material containing oil, waste oil or other Hazardous Material equal to or above reportable concentrations will fall into one of three notification categories: 2-hour, 72-hour or 120-day notification requirements. The regulation reference is 310 CMR Section 40.0300.

Solid Excess Material containing concentrations at the 2-hour or 72-hour notification thresholds will require Contractor to stop Work immediately and confer with the LSP, the Owner's Representative and, if applicable, the owner of the affected property. An IRA will be required with oversight by the LSP. The regulation reference is 310 CMR Sections 40.0410 to 40.0429.

Solid Excess Material containing concentrations at the 120-day notification thresholds will require Contractor to perform a URAM under the oversight of the LSP. Contractor shall also immediately notify the Owner's Representative and, if applicable, the owner of the affected property. The regulatory reference is 310 CMR Sections 40.0460 to 40.0467.

Solid Excess Material generated by activities during any such IRA shall be managed by Contractor as required by the regulations from 310 CMR Sections 40.0030 to 40.0036.

Work off of Owner Property

Contractor, with the prior written permission of Owner, may stage solid Excess Material Excavated at the Site of Excavation or at a suitable Interim Storage Area ("ISA"). Contractor also has the option of containerizing Excavated solid Excess Material in roll-offs and transporting such Excess Material to an Owner-approved landfill or disposal facility.

Contractor, with permission of Owner, may also stage solid Excess Material off-Site from the point of Excavation at a suitable ISA. Contractor must provide an approved temporary staging facility for solid Excess Material and may establish and then shall maintain one or more qualified and suitable ISAs for staging and transfer of all solid Excess Material pending transportation to an off-Site disposal facility. Contractor shall identify any proposed ISAs, if any, for Owner's review and approval. Contractor shall not place solid Excess Material at an ISA until after Contractor has obtained such approval from Owner.

Contractor may devise alternate means of handling and disposal if the Site location and/or use precludes the possibility of contamination, provided the conditions in 310 CMR Section 40.0032 (3) are followed. Contractor must obtain Owner's prior approval with respect to such alternate means.

Material Segregation

Contractor shall remove, cut and not mill asphalt from all solid Excess Material. Contractor shall prevent such asphalt from mixing with the underlying Excess Material. Contractor shall remove, load, transport, and dispose/recycle the segregated asphalt material. Contractor shall ensure that all asphalt removal is conducted in a manner that is consistent with MassDOT requirements, if and where applicable.

Where Excess Material has been classified as containing oil, waste oil and/or other Hazardous Material equal to or above reportable concentrations, Contractor will be required to segregate potentially non-impacted overburden, to the extent possible.

If suspected asbestos containing materials ("ACM") are encountered, the material must be sampled by a properly licensed contractor and analyzed for friable asbestos by a state/commonwealth certified laboratory. ACM removal will follow the requirements in 453 CMR Section 6.00 and may only be performed by a licensed contractor after all applicable notifications are given. Any ACM left in place will be managed in accordance with 310 CMR Section 40.0000 and 453 CMR Section 6.00.1. ACM shall be managed in accordance with the immediately foregoing requirements and Law.

Stockpile Management

Solid Excess Material that is staged or stockpiled on unpaved surfaces will be placed on a surface sufficiently impermeable (minimum 6-mil plastic sheeting) to prevent or minimize the transfer of constituents from the stockpile to the ground. Stockpiles will be covered and secured with a minimum 6-mil plastic sheeting when not in use and at the end of each work day.

Furthermore, the stockpile will be surrounded with a berm constructed with clean soil, straw bales, or silt fence to reduce runoff. While remaining on-Site, the stockpiles will be checked daily by Contractor to verify that they are adequately covered. Contractor shall repair and/or replace covers as needed and as directed by Owner. Other requirements included in 310 CMR Section 40.0036 will be adhered to as appropriate.

Disposal

Contractor shall coordinate with Owner to obtain letters of acceptance from disposal facilities prior to transportation of solid Excess Material off-Site. Final approval of disposal facilities must be obtained from Owner prior to disposal. Owner reserves the right to approve or reject any and all disposal facilities proposed by Contractor, in Owner's sole and absolute discretion. Contractor shall be designated as the generator of any form of solid Excess Material that is transferred offsite to a storage, reuse or disposal facility. Contractor shall obtain temporary generator identification number and shall be designated as the generator of the subject solid Excess Material and shall be solely responsible for, and Owner shall have no obligation to reimburse, all cost, expense and liability associated with the management, storage, transportation and disposal of such solid Excess Material. Contractor shall obtain a written statement from the treatment, recycling, reuse, storage, and/or disposal facility acknowledging acceptance of such Excess Material and the testing associated therewith. Contractor shall deliver each such original, executed statement to Owner. Contractor, with Owner's cooperation, shall prepare and process, and will provide Owner with copies of all filings and other documentation required in connection with the disposal of such Excess Material.

If supplemental testing is required and the supplemental analytical data indicates that certain Excess Material is classified as soils containing oil, waste oil and/or other Hazardous Materials below reportable concentrations, Contractor may reuse such Excess Material at Contractor's sole liability, expense, and risk, or dispose of such material in accordance with the requirements contained herein. For any solid Excess Material classified as soils containing oil, waste oil and/or other Hazardous Materials equal to or above reportable concentrations, Contractor must obtain and furnish to Owner all necessary documentation to dispose of such Excess Material. Owner reserves the right in its absolute discretion to reject any proposed re-use scenario.

Transportation

General Requirements

Transportation of solid Excess Material, if necessary, will be completed using properly licensed drivers and trucks. All trucks will have proper placards and meet all applicable state, commonwealth and federal Department of Transportation (including MassDOT and USDOT) requirements. All truck loads will be inspected and tires will be cleaned by Contractor prior to leaving the Site. If hazardous wastes are transported, Contractor shall use a licensed hazardous waste transporter. The necessary documents, including the uniform hazardous waste manifests, will be completed by Contractor and will accompany each truck driver to the disposal facility. Each driver will also carry a material safety data sheet that describes the nature and concentrations of the wastes. These documents will be immediately accessible in case of an

emergency. Trucks carrying material other than hazardous waste shall also carry proper documentation, including bills of lading or manifests.

Emergency Response Coordination

Prior to commencement of transportation of any such solid Excess Material, Contractor shall designate an emergency response coordinator ("*ERC*"). In the event of a spill, accident, or breakdown, the driver will stay with the truck until law enforcement or other assistance arrives. The driver will contact the dispatcher who will in turn contact the ERC. The driver will also place traffic cones or other warning devices around the spill and keep onlookers away from the area. The driver will not attempt to clean up the spilled material. The ERC will be responsible for contacting the Owner's Representative and all appropriate outside agencies based on knowledge of existing conditions.

Transportation Routes

Contractor shall coordinate planned transportation routes with local, state, commonwealth and federal Governmental Authorities, as applicable. Where required, Contractor shall also notify the local emergency planning commissions or other similarly authorized Governmental Authorities prior to commencement of any transportation involving hazardous wastes.

Guidance Number 2 – Liquid Excess Material

Management of Liquid Excess Material

Prior to the commencement of Work, Contractor shall prepare a dewatering plan (the "Dewatering Plan") for liquid Excess Material and submit it for review by Owner. The Dewatering Plan shall describe the necessary state/commonwealth and local municipal approvals, Permits and notifications as well as screening tests, treatment, and water storage and/or discharge practices that will apply and/or be implemented within the municipality in which Work is conducted. Contractor will be responsible for the management of all forms of liquid Excess Material, including the following:

- Ensuring the safety and health of all workers and the public;
- Estimating groundwater yield;
- Preparing and implementing the Dewatering Plan;
- Obtaining any necessary federal, state, commonwealth and/or local Permits (not designated to be provided by Owner) for any storage, treatment, discharge, and/or disposal;
- Sizing, providing, operating, and decommissioning required water handling and treatment equipment;
- Arranging for and causing the storage of the subject liquid forms of Excess Material;
- Coordinating, collecting, and analyzing water samples in accordance with applicable discharge Permits;
- Collecting influent/effluent samples and reporting results, as required by Governmental Authorities; and
- Arranging for and causing the discharge of the collected liquid Excess Material in accordance with this Guideline, this Agreement, and Law (including the Permits).

Discharges Containing Non-Reportable Concentrations of Oil and/or Hazardous Material

Discharges containing non-reportable concentrations of oil and/or other Hazardous Material shall follow the requirements in 310 CMR Section 40.0045 (6).

Discharges Containing Reportable Concentrations of Oil and/or other Hazardous Material

Discharges containing reportable concentrations of oil and/or Hazardous Material shall follow the requirements for IRAs at disposal sites as given in 310 CMR Sections 40.0040 to 40.0047.

Contractor shall not discharge, transport, or dispose of liquid Excess Material until Owner has reviewed and approved the receiving facility and the incremental treatment/disposal costs, if any, associated therewith.

Contractor shall be designated as the generator of any form of liquid Excess Material transferred to a disposal facility, and shall be responsible for all cost, expense, and liability associated with the storage, treatment, and/or disposal of such liquid Excess Material. Contractor shall obtain a written statement from the treatment and/or disposal facility acknowledging acceptance of such liquid Excess Material and the testing associated therewith. Contractor shall deliver each such original executed statement to Owner. Contractor, with Owner's cooperation, shall prepare and process and will provide Owner with copies of all filings and other documentation required in connection with the treatment and/or disposal of impacted liquid Excess Material.

Transportation

General Requirements

Transportation of liquid Excess Material, if necessary, will be completed using properly licensed drivers and trucks. All trucks will have proper placards and meet all applicable state, commonwealth and federal Department of Transportation (including MassDOT and USDOT) requirements. All truck loads will be inspected and tires will be cleaned by Contractor prior to leaving the Site. If hazardous wastes are transported, Contractor shall use a licensed hazardous waste transporter. The necessary documents, including the uniform hazardous waste manifests, will be completed by Contractor and will accompany each truck driver to the disposal facility. Each driver will also carry a material safety data sheet that describes the nature and concentrations of the wastes. These documents will be immediately accessible in case of an emergency. Trucks carrying material other than hazardous wastes shall also carry proper documentation, including bills of lading or manifests.

Emergency Response Coordination

Prior to commencement of transportation of any liquid Excess Material, Contractor shall designate an ERC. In the event of a spill, accident, or breakdown, the driver will stay with the truck until law enforcement or other assistance arrives. The driver will contact the dispatcher who will in turn contact the ERC. The driver will also place traffic cones or other warning devices around the spill and keep onlookers away from the area. The driver will not attempt to clean up the spilled material. The ERC will be responsible for contacting the Owner's Representative and all appropriate outside agencies based on knowledge of existing conditions.

Transportation Routes

Contractor shall coordinate planned transportation routes with local, state, commonwealth and federal Governmental Authorities, as applicable. Where required, Contractor shall also notify

the local emergency planning commissions or other similarly authorized Governmental Authorities prior to commencement of any transportation involving hazardous wastes.

Liability and Cost

Contractor shall arrange and pay for transportation of all such liquid Excess Material and such cost shall be included in the Fixed Contract Price without markup or profit of any nature whatsoever.

Guidance Number 3 - Construction and Impact Mitigation Measures

Avoidance of Negative Impacts

Contractor shall avoid the creation of conditions on land that could lead to excessive runoff of rainwater, erosion of soils, and other negative impacts on adjoining property and/or the Environment and shall perform control work as specified by Law.

Contractor shall not deposit mud or debris on public streets or adjacent property. Contractor shall immediately remove any such material that is deposited on public streets and/or such adjacent property in violation of the foregoing.

Dust Control

Contractor shall develop and implement a dust control plan. Construction activities will be completed so as to minimize the creation and dispersion of dust, including the following measures:

- Apply water while Excavating, loading, and backfilling as needed;
- Limit vehicle speeds on unpaved or debris covered portions of the Site and roads leading to the Site;
- Minimize drop heights while Excavating or loading; and
- Stockpile best management practices previously described.

Contractor shall not use sodium chloride for dust control. A topping of processed stone or use of calcium chloride will be the only methods approved for use for areas where dust control is necessary.

Equipment Decontamination

If Contractor vehicles and construction equipment contact materials containing oil and/or Hazardous Material equal to or above reportable concentrations then Contractor shall clean the equipment prior to leaving the Site. Decontamination may be achieved with dry methods such as brushing, scraping, or vacuuming. If the dry methods are not effective, wet methods such as steam cleaning or pressure washing may be employed. If such options are used, Contractor shall be required to collect and appropriately manage the wash water generated during the decontamination activities. Wash water management methods may include on-Site treatment and discharge or hauled away for off-Site disposal. Waste materials generated during decontamination will be stored within the temporary construction right-of-way in appropriate containers or as stockpiles managed as previously described. As part of the Fixed Contract Price, and without markup or profit of any nature whatsoever, Contractor shall collect samples of these waste materials and analyze such samples prior to discharge or transportation off-Site to confirm the acceptance criteria, if any, of the receiving facilities are met.

Guidance Number 4 – Dielectric Fluid

General Requirements

Waste oil within the Commonwealth of Massachusetts is considered a state/commonwealth hazardous waste with a waste code of MA01. As such, Contractor must manage and dispose of oil and oil contaminated debris (i.e.- soil, speedi-dri, absorbents, PPE) with Owner-approved vendors.

Transport Back to Area Work Centers

Contractor must place all oil-filled equipment into plastic containment overpack bags before transport back to Owner's Area Work Centers. All bags shall be labeled with yellow 'to be inspected' tags, and the tags shall be completely filled out. Upon arrival at an Area Work Center, Contractor shall contact the storeroom for instructions on where to drop off the bagged component. The Distribution Supervisor Substation Equipment ("*DSSE*") shall be contacted if the piece of equipment is leaking.

Oil Spills

Contractor may contain releases of spilled material, if properly trained to do so. Contractor shall contact the Owner's Representative, who will in turn contact Systems Operations Center ("*SOC*"). Either Owner employees, or Owner's designated spill clean-up contractor, will be responsible for cleaning up all dielectric fluid spills. In Massachusetts, an oil release that is found, and contained, in a manhole/vault is not considered to be a spill and therefore should not be reported to the SOC or MassDEP.

Referencing Transmission & Distribution Procedures ("*TD*") and Northeast Utilities Environmental Requirements ("*ER*")

Before handling dielectric fluids, Contractor shall familiarize itself with "*TD 222 – Spill Identification and Reporting*", "*TD 406 – Cleanup of Oil Contaminated Material and Equipment including PCBs*", and "*ER 5.1 – Owner System Environmental Requirements for Reporting Releases of Hazardous Substances and Oil*." Contractor shall request copies of such documents from the Owner's Representative.

Guidance Number 5 – PCB Containing Materials

Electrical equipment that contains fluid based insulators could be PCB-contaminated if manufactured before 1979. Therefore, all pieces of equipment in which manufacturing dates and manufacturing PCB concentrations are unknown must be assumed to be PCB contaminated at a level of between 50-500 ppm.

General Requirements

Substation relays and substation transformer wiring harnesses are both known to contain high levels of PCBs. Contractor shall collect these components in containers and properly label them with the PCB mark and a yellow 'to be inspected' tag. Full personal protective equipment is required whenever PCB levels are above 2 ppm. All contaminated personal protective equipment shall be properly disposed of. All waste will automatically be assumed to be between 50-500 ppm, unless a sample of the PCB material has been collected and analyzed. Containers for disposal must be identified with the PCB mark, along with an Owner 'to be inspected' tag. Massachusetts considers oil and/or equipment with ≥ 50 ppm PCBs to be a state/commonwealth hazardous waste (MA02) and therefore must be managed appropriately.

Transport Back to Area Work Center

PCBs shall be transported back to Owner's Area Work Center in secure containers that have been properly labeled as in the paragraph above. Upon arrival at an Area Work Center, Contractor shall contact the storeroom for instructions on where to drop off the bagged component. Contractor shall contact the DSSE if the piece of equipment is leaking.

A PCB ML mark is required if transporting greater than 45 kg (99.4 lbs) of liquid PCBs with a concentration greater than 50 ppm, or if transporting a PCB transformer containing greater than 500 ppm of PCBs. Also, if a vehicle is carrying more than one pound of PCBs, the vehicle will need to be placarded on all four sides with the PCB mark. At 499 ppm, there must be greater than 270 gallons of oil, to require placarding.

PCB Spills

Contractor may contain releases of spilled material, if properly trained to do so. Spills that contain PCBs need immediate attention. Contractor shall advise the Owner's Representative as soon as possible after a spill occurs. Either Owner employees, or Owner's designated spill clean-up contractor, will be responsible for cleaning up all PCB spills.

Referencing TDs and ERs

Before handling PCBs, Contractors should familiarize themselves with "TD 214 – PCB PPE and PCB Contaminated Clothing", "TD 213 – PCB Contaminated Electromechanical Relays and Wiring", TD 221- Continued Use of PCB Electrical Equipment", ER 8.1 – Owner System Environmental Requirements Handling of Polychlorinated Biphenyls." Contractor shall request copies of such documents from the Owner's Representative.

Guidance Number 6 – Mercury Containing Devices

Owner has mercury in switches, meters, thermostats, and some light bulbs at the Site. In some components, the mercury is contained within fragile glass ampoules that may be easily broken.

General Requirements

Contractor shall use utmost care when removing mercury containing devices. Mercury containing devices shall be carefully placed in metal storage drums. Mercury-containing thermostats, lamps and devices are all considered to be Universal Waste in Massachusetts.

Mercury Spills

Mercury spills shall immediately be reported to the Owner's Representative. Only qualified emergency responders may clean-up a spill of mercury.

Referencing TDs and ERs

Before handling mercury containing devices, Contractor shall familiarize itself with "TD 223 – Regulated Waste Storage," and "ER 7.1 – Owner System Environmental Requirements Managing Hazardous Waste, Used Oil and Universal Waste."

Guidance Number 7 - Asbestos

General Requirements

Removing Asbestos

Contractor must have the appropriate training (and Contractor shall ensure that its employees and Subcontractors have appropriate training) if it is to work around or remove asbestos:

Awareness Level – In order for Contractor to enter an area where there is asbestos present, Contractor must first have Awareness Level Training. This training is designed to make Contractor cognizant of the hazard while instructing that Contractor should not do anything that will turn the asbestos into an airborne hazard.

Overhaul & Maintenance Level – Sixteen (16) hour initial training and a four (4) hour annual refresher allows Contractor to remove up to three (3) linear or square feet of asbestos, as long as the asbestos removal is ancillary to completing another task (i.e., – accessing an underground pipe in order to repair it).

Full Abatement Level – Thirty-two (32) hours of initial training and an eight (8) hour annual refresher allows Contractor to do abatement work beyond three (3) linear or square feet. In addition, the following shall apply:

1. Contractor and/or Subcontractor doing the abatement shall have asbestos abatement contractor's license.
2. Abatement Work being supervised shall be done so by licensed asbestos abatement supervisors.
3. Abatement Work being done shall be done by trained and licensed asbestos abatement workers or asbestos supervisors.
4. Upon completion of abatement Work, abated Work shall be visually approved by a licensed asbestos project monitor.
5. If the abatement Work is greater than three (3) linear feet or three (3) square feet, an abatement notification shall be made to MassDEP, EPA and, if required, the applicable municipality in which the applicable Work is performed, in each case, prior to ten (10) days from start of abatement or within one (1) Business Day of start of such Work if it is emergency abatement. (See 453 CMR Section 6.00 for notification requirements.)

Full abatement workers would require an additional forty (40) hours of training to move to supervisory level. Contractor may choose to train all of its personnel to forty (40) hour supervisory level and forego the thirty-two (32) hours of training.

Transport Back to Area Work Center

Cut segments of cable or splices shall be double bagged and taped shut. These bags shall be transported to the nearest Owner Area Work Center and placed in a designated storage area. Pulled lengths of cable shall be sleeved and reeled. Reels shall be transported to the nearest Owner Area Work Center. Contractor shall notify the Owner's Representative prior to transport so the Owner's Representative can notify the appropriate Environmental Coordinator.

Referencing TDs and ERs

Before handling asbestos, Contractor shall familiarize itself with "ER 4.1 – Owner System Occupational Safety & Health Policy for the Handling, Removal and Reporting of Asbestos-Containing Material."

Guidance Number 8 – Leaded Metals and Lead Paint Removal

Lead can be found in lead-head pins, ridge pins and certain paint. Lead can also be found in batteries, glass, ceramics, and alloys such as pewter and solder.

General Requirements

Contractor shall ensure that its employees and Subcontractors working at the Site have completed lead awareness training prior to working in areas with lead paint. Contractor must ensure that such employees and/or Subcontractors are licensed to remove lead paint if required to do so by this Agreement. Solid lead material, most commonly ridge pins and lead-head pins, is not a hazardous or regulated waste material and shall be recycled in the scrap metal dumpster at Owner's Area Work Centers.

Guidance Number 9 – Lead Acid Batteries

Large arrays of lead-acid cells are used as standby power sources for substations.

General Requirements**Battery Disposal**

In Massachusetts, a waste ban is in place on the disposal and transfer for disposal of lead-acid batteries at landfills and combustion facilities. Contractor must recycle lead acid batteries from battery substations. Batteries that are taken out-of-service shall be left at the substations, unless leaking. If a battery is found to be leaking it must be handled as a hazardous waste. Contractor shall contact the Owner's Representative if it encounters a leaking substation battery. The Owner's Representative will contact the appropriate Environmental Coordinator to coordinate disposal.

Guidance Number 10 - Rechargeable Batteries

Nickel-cadmium, lithium, and lithium-ion batteries are found in line fault indicators, cell phones, laptop computers, and other electronic devices.

General Requirements**Battery Disposal**

Contractor must manage and recycle nickel-cadmium, lithium, and lithium-ion batteries as Universal Waste. All Owner Area Work Centers have established containers for the disposal and recycling of Universal Waste.

Contractor shall bring batteries, or battery containing devices, back to the Area Work Centers and dispose of them in containers labeled "Universal Waste Batteries." These containers can be found in the Satellite Storage Areas. For guidance, Contractor shall contact the Owner's Representative who will contact the appropriate Environmental Coordinator.

Guidance Number 11 – Treated Wood

General Requirements

Pole Disposal

Owner Area Work Centers have wood dumpsters for the disposal of broken poles, pole butts, cross arms, and other related wood materials.

Reels & Pallets

Empty reels and pallets shall be returned to Owner's Area Work Centers for recycling. For guidance, Contractor shall contact the Owner's Representative who will contact the appropriate Environmental Coordinator to coordinate disposal.

Referencing TDs and ERs

Before handling treated wood, Contractor shall familiarize itself with "TD 234 – Transferring Ownership for Re-Use of Treated Wood," a copy of which is available from the Owner's Representative upon request.

Guidance Number 12 – Aerosol Cans

Contractor shall manage all aerosol cans as Hazardous Materials. Some cans may be hazardous for ignitability and some may be reactive. Some cans may also be hazardous for both characteristics of ignitability and toxicity.

General Requirements

Spray Can Disposal

Spray cans must be disposed of in 55 gallon, H-series, open-top metal drums. Every Owner Area Work Center has at least one Satellite Storage Area and/or a Container Storage Area with a 55 gallon metal drum that is used for aerosol can disposal. These drums come equipped with a prefabricated locking lid. This lid must be closed and locked, except when adding aerosols. Owner policy forbids the disposal of aerosols in the trash.

For guidance, Contractor shall contact the Owner's Representative who will contact the appropriate Environmental Coordinator to coordinate disposal.

Transport Issues

Aerosol cans may present an explosive hazard. Aerosols shall be transported in accordance with all MassDOT and USDOT regulations. Dependent on the aggregate weight of all Hazardous Materials being transported, aerosols may be transported as a MOT. MOT limits total Hazardous Material on a vehicle to 440 pounds, including the weight of the packaging.

Guidance Number 13 – Compressed Gases

General Requirements

Transport of Gases

Compressed gases shall be transported in accordance with all MassDOT and USDOT regulations. Compressed gas bottles must be capped, restrained with bottle stays or chains, and display the proper labeling to satisfy MassDOT, USDOT and OSHA. If being transported under the MOT exception, no single compressed bottle may weigh more than 220 pounds.

Guidance Number 14 – Manhole Sludge/Manhole Pump Out Water

Contractor shall manage all manhole sludge (unless it has been pre-characterized) as hazardous for lead content and that sludge must be removed by a licensed Hazardous Materials contractor. If Contractor is working in a manhole and needs sludge removed, it shall contact the Owner's Representative.

General Requirements

Manhole Pumpout Water- If waste water does not have an oily sheen, unusual color and/or turbidity, it may be pumped to the street/catch basin to approximately six (6) inches above sludge/sediment line (ensure no sediment is removed). If there is an oily sheen, unusual color and/or turbidity, contact the Owner's Representative for direction (see Owner's Manhole Work Instruction: Owner Manhole Water and Sludge Handling).

Guidance Number 15 – Used Electronics

General Requirements

Circuit boards that do not contain mercury switches shall be disposed of in the scrap metal dumpster at the Owner Area Work Center. This would include photo-sensor cells from the top of street lamps. Circuit boards that contain mercury switches shall be called "Universal Waste-Mercury Containing Devices" and be recycled. Mercury Switch containing circuit boards are most common in house electrical meters.

For guidance, Contractor shall contact the Owner's Representative who will contact the appropriate Environmental Coordinator to coordinate disposal.

**Appendix I-2
Contractor Work Rules**

For purposes of consistency herewith, any reference in the Contractor Work Rules (Revision 11/1/2010) attached to this Appendix I-2 to:

- (a) NU or Northeast Utilities shall be deemed to be Owner;
- (b) subcontractors shall be deemed to be Subcontractors;
- (c) work or job shall be deemed to be Work;
- (d) facilities, properties or work sites shall be deemed to be the Site or Facility as the context may require;
- (e) state shall be deemed to be state/commonwealth;
- (f) environment shall be deemed to be Environment;
- (g) a liaison, representative, supervisor or other contact point with Contractor shall be deemed to be the Owner's Representative;
- (h) hazardous materials shall be deemed to be Hazardous Materials;
- (i) any contract or agreement shall be deemed to be this Agreement;
- (j) Work rules shall be deemed to be the Contractor Work Rules attached to this Appendix I-2; and
- (k) Dig Safe shall be deemed to be Dig Safe®.

All provisions of the Contractor Work Rules shall be construed in a manner consistent with the roles and responsibilities of the Parties hereunder.

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**Appendix I-3
Owner's Environmental Policy**

**Exhibit J
Work Schedule**

See the attached Work Schedule.

Appendix J-1 Construction Progress Schedule

The Work Schedule to be prepared and maintained by Contractor shall consist of a Critical Path method ("*CPM*") schedule as described below (the "*Construction Progress Schedule*" or the "*CPM Schedule*"). The CPM Schedule shall follow the logic, plan, and activities of, and otherwise be consistent and integrate with, the Work Schedule. Contractor and Owner shall establish the Work Breakdown Structure (WBS) prior to the preparation of the first CPM Schedule. Contractor shall provide Owner with a proposed CPM Schedule, for Owner's approval in its discretion, in accordance with Section 4(a) of this [Appendix J-1](#). The proposed baseline CPM Schedule shall show progress and completion of the Work in accordance with the Work Schedule.

1. The development and updating of the Construction Progress Schedule shall be by CPM and shall be computer generated using MicroSoft Project or another project management software tool approved by Owner.
2. The CPM Schedule shall consist of the time scaled logic diagrams, and other data specified herein. The diagrams shall show activities of the Work in detail and be organized in a manner to show the entire Work in summary, in all cases consistent with the Work Schedule.
 - (a) Diagrams shall show the order and interdependence of activities and the sequence in which the Work is to be accomplished as planned by Contractor. The basic concept of a CPM Schedule will be followed to show how the start of a given Critical Path activity is dependent on the completion of preceding activities and its completion restricts the start of following activities. All Critical Path activities except for the Work start and Work completion Milestones shall have at least one predecessor and one successor activity.
 - (b) The CPM Schedule shall include, in addition to construction activities and required Milestones, the procurement of critical materials and equipment and their installation and testing and any required Construction Documents, Permits, outages, overtime, the training of personnel, Substantial Completion, final inspections and testing, and Final Acceptance. The detail of information shall be such that original duration for each activity will range from one (1) to ten (10) days with no activities exceeding those limits. The selection and number of activities shall be subject to Owner's approval and shall include Milestone constraints. Contractor shall be responsible for determining the sequence and time estimates of the construction activities; *however*, Owner reserves the right to require Contractor to modify any portion of the CPM Schedule that Owner determines to be impractical, unfeasible, or unreasonable, and as required to coordinate Contractor's activities with those of other contractors for the Project and to ensure the progress and completion of the Work by the scheduled date and otherwise in accordance with the Work Schedule. Contractor shall not be entitled to extra compensation for complying with these requirements. Activity description and the activity duration, early start and early finish date, shall be shown on the diagrams for each activity. The Critical Path shall be determined and shall be clearly indicated on all the diagrams. The CPM

Schedule shall be resource loaded with man-hours and the total number of people required to perform the tasks for each craft discipline in a resource histogram chart. Contractor shall anticipate and incorporate all non-Work periods such as weather delays consistent with the type of work and this region, weekends, holidays, and other appropriate variables into the CPM Schedule.

(c) A summary bar chart schedule of the entire Work shall be provided indicating all major activities by a given Milestone or phase of the Work. Owner shall define the parameters of this summary schedule. Weekends and holidays shall be indicated. Where float exists, the activities shall be shown at the time when they are scheduled to be accomplished. Contractor shall update this bar chart schedule as part of the Weekly Report and will include a comparison between actual progress and scheduled progress from the baseline schedule.

(d) Owner reserves the right to reject any schedule submittal in which Contractor has sequestered float.

(e) If a schedule update reveals that through no fault of Owner, the Work is behind schedule and is likely to be completed later than the current adjusted Substantial Completion Deadline, Contractor shall establish a plan for making up the lost time and submit such plan to Owner and the Owner's Representative for review within two (2) Business Days after the schedule update. Contractor shall take into account any comments by Owner on the plan prior to implementation of any such plan. All actions necessary to complete the Work within the time authorized in this Agreement for the Work shall be at Contractor's expense.

3. The CPM Schedule shall be developed by Owner and Contractor to indicate work that will be performed by Owner or its representatives. Progress of these activities will be conveyed by the Owner to Contractor for Contractor to update the CPM schedule prior to each Weekly Schedule Update Meeting.

4. Submission and approval of the CPM Schedule shall be as follows:

(a) The complete CPM Schedule system consisting of the time-scaled logic diagrams and scheduled reports shall be submitted within five (5) Business Days after the Effective Date. The initial submission shall also include a manpower allocation summary report. This report shall include the number of workers by trade for a given week and shall be computed to a total number of man-days required by the schedule per week. Owner shall integrate the approved CPM Schedule into the overall schedule for construction of the Project. Contractor shall submit two (2) hard copies and a CD containing the exported CPM Schedule in .mpp format or a format applicable to the Owner-approved CPM tool.

(b) Contractor shall participate in a continuous review and CPM Schedule evaluation by Owner, including as part of the Weekly Schedule Update Meeting. Any revisions necessary as a result of this review shall be resubmitted for approval of Owner within two (2) Business Days. The CPM Schedule will then again be reviewed as a completely new

submission or a new baseline plan and necessary revisions again made within two (2) Business Days. The approved CPM Schedule shall then be the schedule to be used by Contractor for planning, organizing, and directing the Work and for reporting progress. If Contractor thereafter desires to make changes in the method of operating and scheduling, Contractor shall notify Owner in writing stating the reasons for the change. If Owner considers these changes to be of a major nature, it may require Contractor to revise and submit for approval, without additional cost to Owner, all of the affected portions of the CPM Schedule to show the effect on the Work and the Project. A change may be considered of a major nature if the time estimated to be required or actually used for an activity or the logic of sequence of activities is varied from the original plan to a degree that there is reasonable doubt as to the effect on Milestones. Changes that affect activities with adequate float shall be considered as minor changes, except that an accumulation of minor changes may be considered as a major change when their cumulative effect might affect the Milestones. Adjustment of the Milestones will only be permitted through a Change Order. Any time extension or acceleration shall be calculated using the baseline schedule Milestone dates or the latest revised baseline schedule approved by Owner.

(c) The original or new baseline schedules submittal and weekly schedule updates shall be submitted in two (2) hard copies with a CD containing the exported schedule in .mpp format or format applicable to the Owner approved CPM tool. The weekly schedule update shall be resource loaded. No schedule submitted shall contain negative float, out of sequence activities, logic loops, open-ended activities, relationships with negative lag, or be progressed beyond the data date. No payment will be made until the schedule is approved by Owner.

(d) An "as built" schedule complete with actual sequence and start and finish dates for activities shall be provided by Contractor, complete with baseline, with the Certificate of Completion and Request for Final Acceptance.

Owner's review and approval of the CPM Schedule shall in no way (i) amend, modify, or otherwise change the Work Schedule, (ii) release, discharge, or otherwise relieve Contractor of any of its obligations to meet performance and other requirements of the Contract Documents, (iii) substitute Owner's judgment for that of Contractor concerning the means and method for timely and fully satisfying the Work Schedule, or (iv) constitute a waiver of any right(s) and/or remedy(ies) under the Contract Documents, at law, and/or in equity to which Owner is or may be entitled in connection with Contractor's failure to fully comply with the Work Schedule (including any liquidated damages resulting under Section 6.8 of this Agreement). Owner in no way assumes any part of Contractor's responsibility for the satisfactory performance of Work in accordance with the Work Schedule.

5. Twenty four (24) hours prior to each Weekly Schedule Update Meeting, Contractor shall provide to the Owner's Representative the Weekly Report as a narrative, metrics, and the updated resource loaded CPM Schedule. (See Appendix J-2)

6. Contractor shall coordinate through the Owner's Representative the various contractors involved with the construction of the Project to integrate the schedule of construction activities. The schedule shall recognize, plan for, and accommodate the various interfaces that interconnect the Work, other work on the Facility that could affect the Work and/or other Facility components constructed or to be constructed as a condition of, simultaneously with, and/or dependent upon Contractor's performance of the Work.

Appendix J-2 Form of Weekly Report

At a minimum, the following matters shall be addressed in a report submitted in accordance with Appendix J-1, Section 5 for discussion at each Weekly Schedule Update Meeting. The report shall contain current and comprehensive information as of the time of submission and shall be accompanied by such further documentation to reasonably facilitate the discussion of such report at the Weekly Schedule Update Meeting. To the extent that a Weekly Report includes information provided by Subcontractors and/or any Subcontractors will participate in the Weekly Schedule Update Meeting, the applicable Weekly Report also shall include reasonable evidence of such Subcontractor's concurrence with the portion of the Weekly Report pertaining to Work that has been, is, or will be performed by or at the direction of such Subcontractor.

- (a) Identification of accidents that occurred during the Reporting Period and what actions have been taken to prevent them from reoccurring;
- (b) Current projected completion date for the Project;
- (c) Milestones achieved during Reporting Period;
- (d) Any Project concerns and Contractor recommended remediation;
- (e) Action plan to resolve late tasks;
- (f) Emerging Work next Reporting Period;
- (g) Emerging Work second Reporting Period;
- (h) An updated Coordination Schedule highlighting Work interfaces with other contractors on a rolling thirty (30) day basis;
- (i) Milestone chart containing updated:
 - a. contract dates;
 - b. baseline dates;
 - c. last Reporting Period dates; and
 - d. this Reporting Period dates;
- (j) Project metrics.

The Project metrics shall utilize a weekly measure, reporting baseline versus actual progress and be represented graphically. At a minimum, the report will include the following metrics:

- (a) Existing access road test pitted;
- (b) Landfill Stormwater System Improvements started/finished;
- (c) Landfill Gas System Modifications started/finished;
- (d) Permanent access road construction started/finished;
- (e) Receipt of PV Modules;
- (f) Receipt of racking hardware;
- (g) Receipt of inverters;
- (h) Receipt of switches;
- (i) Ballast placed (for racking and conduits);
- (j) Rows that have drip lines installed;
- (k) Racking installed;
- (l) PV Modules installed;
- (m) Strings wired to combo boxes;

- (n) Combo boxes wired to DC disconnects;
- (o) DC disconnects wired to inverters; and
- (p) Inverters wired to switches.

At a minimum, the resource loaded CPM Schedule shall be presented in the following reporting formats, showing Start and Finish (Baseline, Projected and Actual) dates and duration where applicable:

- (a) Entire Project in Gantt format;
- (b) Critical Path in Gantt format;
- (c) Late tasks in report format;
- (d) Completed tasks in report format; and
- (e) Uncompleted tasks (from Project start plus two (2) weeks beyond current report period) in Gantt format.

Owner reserves the right to request the inclusion of additional information in the report (or any interim report) at any time.

**Schedule 2.3(c)
Minimum Drawing Requirements**

These document requirements are not guidelines, but requirements. These requirements apply to all work in progress and future work with Owner. As-Built Drawings for all current and future projects must comply with these requirements.

1.0 DESIGN DRAWING REQUIREMENTS

- 1.1 When As-Built Drawings are complete and approved by Owner, Contractor shall provide Project documents in compliance with the requirements of Schedule 9.8 (including paragraph (d) thereof). The Project documents shall contain all information pertinent to the electronic development of accompanying certified As-Built Drawing(s). Drawings, calculations, sketches, and studies issued for the Project become the property of Owner.

- 1.2 Design deviations from Owner standards must be approved in writing by Owner prior to use in the design of the Project. If Contractor's drawings, sketches, calculations, and studies contain deviations that were not approved, Contractor's drawings shall be corrected and resubmitted at no cost to Owner. No fieldwork which requires Contractor's drawings shall be performed until such Contractor's drawings have been reviewed and approved by Owner.

- 1.3 Owner review shall be only for conformance with the general concept of the Project and with the information given in this Agreement, and shall not relieve Contractor from responsibility for any deviation from the requirements of this Agreement, unless Contractor has, in writing, called Owner's attention to the deviation and Owner has given written consent to the specific deviation. This review shall not relieve Contractor from responsibilities for errors or omissions in Contractor's drawings, specifications, manuals, or other Contract Documents.

- 1.4 Only the following software may be used for working with electronic drawings. AutoCAD drawings must be provided in AutoCAD version 2010. Editing of raster files must use AutoCAD Raster Edit or GTX – Raster Edit. Any use of other software is not permitted.

- 1.5 CAD Drawings shall use the following pen assignments for presentation purposes where appropriate for scale and level of detail. Note also that plot color is black for all except the Red #240.
 - Cyan (0.0280) - heavy line for change circles
 - "Regular" Red (0.02) - boxes and borders
 - Black (0.014) - general
 - Red #240 (0.0140) - "CAD generated dwg - make no manual changes"
 - Yellow (0.01) - thin line for detailed application such as equipment outlines
 - Blue (0.0075) - very thin line for special applications as necessary

1.6 Contractor will provide changes to existing one- lines, three -lines, schematics, connection and wiring diagrams, physical drawings and other design documentation to allow for the complete construction of the Project. “Before” and “After” change drawings are required. “Before Drawings” shall use back circles & Revision Letter to show portions of drawings to be changed. “After Drawings” shall use back circles and Revision Letters to show the actual changes.

1.7 All drawings that are revised shall use the following Revision Letters to identify “Before & After” changes:

_____ Project Rev. Letter “__”

1.8 The electronic file format must be exactly as follows:

Example: sssss-ddddd**p**nnna.dwg 10405-32402p001a.dwg

Example: sssss-ddddd**p**nnna.tif 10405-32402p001a.tif

Example: sssss-ddddd**p**nnna.cg4 10405-32402p001a.cg4

The “Before” Drawings file format should be as follows:

Example: sssss-ddddd**p**nnna.before.tif 10405-32402p001a.before.tif

Where: sssss = Project number
 ddddd = Drawing number
 p is constant
 nnn = Sheet Number
 a = Sheet Letter suffix

1.9 All new drawings or revised drawings must be provided in AUTOCAD version 2010 using an unmodified Owner provided title block/border/format. Owner will provide the title blocks/border/format on a CD for Contractor to use for design. The A size title block must be used for A size drawings, B size title blocks for B size drawings, etc. All control schematics will be “C” size. Other drawings generally are “D” or ”E” size, The exceptions are cable and conduit schedules or construction details, which may be Size A and the Civil discipline will be size “F”. The justification and format of title blocks shall not be changed. All drawings will be drawn in model space, in black, on one layer, without attributes, and using Owner symbols. All scale (plans, sections, arrangement etc.) AUTOCAD drawings are drawn 1:1 and scaled down to plot. The lower left hand corner of the border shall be coordinate (0, 0). The documentation shall include complete bill of material and drawing lists provided on letter size paper. Drawings must plot to the normal C, D, E, & F size without modification.

1.10 Contractor shall prepare its plot files with all CAD and Hybrid drawings such that Contractor's drawings and its border will print on the following size papers:

- "A" size, 8½ in. by 11 in.
- "B" size, 11 in. by 17 in.
- "C" size, 17 in. by 22 in.

- "D" size, 22 in. by 34 in.
 - "E" size, 34 in. by 44 in.
 - "F" size, 23 in. by 40 in.
- 1.11 Existing manual drawings or TIFF file drawings that have more than a 50% revision must be redrawn in AUTOCAD Version 2010 (As a 100% complete .dwg, No Hybrids, No Overlay). If details on TIFF Drawings are modified, the entire detail must be redrawn in AutoCAD. No Hybrid details, for example, of rebar in a Foundation, Conduit, Steel, etc.
- 1.12 Scanned \ CAD Drawings – For drawings furnished by Owner pursuant to Section 2.3 of this Agreement, Owner will provide Contractor with a scanned file (TIFF) with a resolution of 400 DPI, an AutoCAD, or Hybrid TIFF / AutoCAD File of all the required drawings. Scanned drawings (TIFF files) shall be revised using the AutoCAD overlay file technique. When a TIFF file is edited for the 1st time, Contractor shall replace the Border and Title Block with the Owner CAD template to establish the AutoCAD overlay file, thus creating a Hybrid TIFF / AutoCAD file. The revision title block shall begin with the “LAST NUMERICAL” revision. During the AS-BUILT process Contractor shall remove his “ballooned” Revision Letters and add his next numerical revision level to the title block. The Revision description shall only include the WO # and the Work Order Title. Under no circumstances shall embedded files (for example Bitmaps in AutoCAD files) be used for revising Hybrid Drawings.
- 1.13 Hybrid Drawings shall have the following file structure. They shall consist of two file types. The AutoCAD portion shall have a .DWG extension and the Scanned image linked to the AutoCAD drawing to form the ‘hybrid file’ shall have a .CG4 extension. When drawings are saved by Contractor he shall preserve the 400 DPI resolution of the TIFF file. If a TIFF- Group IV rendering of the Hybrid file is produced (such as “Before” drawings) it shall be a minimum of 400 DPI and have a .TIF file extension.
- 1.14 When editing the raster drawings, Contractor shall not employ drawing clean-up methods that damage other portions of the drawing permanently. For example, despeckling drawings such that other drawing lines become thin or damage, periods and comma’s lost, or text is damaged. Raster editing techniques shall use cropping to minimize the file size.
- 1.15 Contractor shall establish an FTP Site for the electronic exchange of Project documentation, specifications, and drawings. Two Folders “Drawings Issued to Owner” and “Drawings Returned with Owner Comments” shall be set up. Below those folders sub folders shall be created for “Before” and “After” drawings. An email will be sent to the Owner's Representative and any other Persons designated from time to time in writing by the Owner's Representative. The FTP site shall be specific to the Project and be pass word protected. The length of time the drawings are posted to the FTP shall be determined later. For each FTP Posting a drawing transmittal will accompany all items posted and be attached to the Email Notification.

- 1.16 Contractor shall establish and maintain a Project drawing list that includes existing Owner, Manufacturer's, Contractor's drawings used or generated on the Project.
- 1.17 Drawings shall be numbered in accordance with the Owner Drawing Number systems. Owner will provide a block of numbers within each drawing category for use by Contractor. Each new drawing created by Contractor shall use the next sequential number within each drawing category. Each new drawing shall be identified on the Drawing Transmittal as a "new drawing".
- 1.18 Contractor shall prepare a bill of material for Project materials shown on their drawings for Owner to purchase. The format for the Bill of Material call out is the "Rev. Letter – XXX". A block of numbers from "Rev. Letter – "1 thru 499" has been allocated for use by Owner and Contractor shall use "Rev. Letter – "500 thru 999".

Schedule 2.7
Excavation Plan – Minimum Requirements

1. Compliance with Contract Documents.

The Excavation Plan shall provide a detailed plan on how Contractor will comply with all pertinent provisions of the Permits (including the PCU Permit) and the Contract Documents (including Sections 2.6, 2.7 and 5.4 of this Agreement, Contractor's Safety Plan, Site Restrictions, Work Protocols and the Site Plan), including requirements for all access roads (including test pitting of the existing access road on the Site), restrictions on storage and disposal of Excess Materials, and limitations on parking and storage areas on the Site. In addition to the information contained herein, the Excavation Plan also shall include an execution plan for the Landfill Gas System Modifications. Such execution plan shall detail the sequence of such Work with specific information regarding the scheduled down time for each gas collection line. Prior to submission of the Excavation Plan, Contractor shall review such execution plan with the Landfill Operator, include the recommendations of the Landfill Operator, and specifically identify any area(s) of concern and/or other disagreement(s) with the Landfill Operator. Such execution plan shall demonstrate compliance with means and methods described in the Contract Documents for the Landfill Gas System Modifications.

2. Required Personnel and Roles.

The Excavation Plan shall include the names, specific role, contact information and qualifications of the personnel to be assigned to the Work involving Excavation (including planning and on-Site activities). At a minimum, the Excavation Plan shall contain such information for the following Persons:

- Contractor's Representative
- Environmental Coordinator
- Safety and Health Representative
- LSP
- Spotter
- Competent Person
- Landfill Expert
- Subcontractors (including each Subcontractor performing any portion of the Landfill Modifications and any other Work in the Vegetative Support Layer)
- Any other Key Personnel involved in Excavation activities

3. Excavation Techniques.

The Excavation Plan shall provide a detailed description of how Excavation activities will be conducted on the Site, precautions used to assure the integrity of the Sand Drainage Layer and the Landfill Liner (including in connection with performance of the Landfill Modifications), and methodology for equipment usage on the Site, including:

- list of equipment/vehicles that will be used for Excavation activities (including Landfill Modifications), including function and any special requirements, consistent with the Construction Equipment Plan (including details on the equipment to be used)

- demonstrating compliance with the low ground pressure requirements) and the Site Restrictions;
- the process for certifying the cleanliness of materials used from off-Site sources;
 - the plan to maximize the reuse of Excess Material generated from the Vegetative Support Layer on the Site;
 - the methodology for the construction of temporary access roads, including sequencing;
 - the methodology for performing the Landfill Modifications, including sequencing;
 - sequencing of Excavation and installation activities (including elements of the Landfill Modifications, conduit under the access road, creation of inverter pads, and placement of ballasts for racking and conduit);
 - the methodology for removing and installing settlement monitoring platforms; and
 - the methodology for the installation of the Landfill Stormwater System Improvements and any underground conduit; and
 - where vehicles will be parked and equipment and materials will be stockpiled/stored.

Contractor shall include a Construction Equipment Plan as part of the Excavation Plan, including shop drawings. Such plan shall include all vehicles and equipment to be used to perform Work on, and to deliver materials to, the Site, including the anticipated loading. The maximum loading must also consider the anticipated loads the vehicle may carry in the calculations.

4. Location of Excavation Activities; Permit Compliance.

The Excavation Plan shall provide details and plans as to where Excavation will occur, how underground conduits, fence foundations, and inverter pads will be constructed, and where equipment and materials will be stockpiled. The Excavation Plan also shall provide all technical details and calculations necessary to demonstrate compliance with the PCU Permit requirements and address coordination with the PCU On-Site Engineer.

5. Schedule.

The Excavation Plan shall include a detailed schedule of Excavation-related activities to occur on Site including a description of all Excavation-related Hold Points and Witness Points. Without limiting the generality of the foregoing, the Excavation Plan also shall include the sequencing of both daily activities and Excavation Activities in relation to the Milestone Schedule. The Excavation Plan shall specifically identify all areas of potential interface with other work being conducted by and/or on behalf of Owner (including in connection with interconnection activities), the Site Owner and/or the Landfill Operator, and areas of Excavation that require coordination pursuant to the Coordination Schedule.

6. Precharacterization, Storage, Transportation and Disposal.

The Excavation Plan shall include a detailed plan with respect to:

- means and methods for precharacterization of any Excess Material to be handled, stored and disposed of from the Site;
- locations and methods for storage and stockpiling of equipment, materials and Excess Material;

- the process to estimate and verify quantities of Excess Materials from the BUD Area, the handling of Excess Materials from the BUD Area (including protection against comingling Excess Materials from different areas), and tracking and mapping the on-Site re-use of Excess Materials from the BUD Area (which re-use shall be specifically depicted on the Plan re: On-Site Reuse of BUD Excess Materials delivered in accordance with the delivery schedule on Appendix A-2);
- sequencing consistent with the daily stockpile restrictions under the Contract Documents regarding the Landfill Cap;
- estimates of quantities of Excess Material (with BUD separately estimated) to be Excavated, stockpiled, reused and, in the case of Excess Materials outside of the BUD Area, removed from Site;
- the handling, storage, reuse or disposal of Excess Material (with BUD separately addressed) and the locations for such handling, segregation, storage, reuse or, in the case of Excess Materials outside of the BUD Area, disposal;
- the handling and disposal of Excess Materials outside of the BUD Area from the Site (for Owner authorization in accordance with the Site Restrictions);
- types of material shipping records and logs to be used when transporting and disposing of Excess Materials;
- the process to ensure compliance with the PCU Permit; and
- Permits and documentation that will be necessary in support of Excavation activities.

7. Documentation.

The Excavation Plan shall describe the records and other documentation that will maintained by Contractor (including any Subcontractor) in connection with Excavation, handling, storage, reuse and disposal activities and the procedure for providing copies of such documentation to the Owner's Representative on a regular basis. Without limiting the generality of the foregoing, the Excavation Plan also shall detail the process to verify and document that the Landfill System Modifications will be and have been performed in full compliance with the PCU Permit, the Site Plan and the other Contract Documents.

8. Emergency Procedures.

The Excavation Plan shall describe the emergency procedures and contingencies to be employed in the event of (a) damage to any portion of the landfill, including the occurrence of any Existing Facilities Damage, during any Excavation activities and/or construction (including compliance with Section 2.7(g) of this Agreement); and/or (b) any unforeseen conditions encountered during Site preparation. Contractor shall include contact information for liner repair companies and for the Landfill Operator to be used in the event of an emergency. The applicable provisions of such procedures also shall be included in the Contractor's Safety Program.

Schedule 2.11
List of Initial Spare Parts

- 5 - GFCI fuses for inverters
- 21 - PV Modules
- 5 - MC-4 replacement connectors
- 3 - MC-4 connector tools
- 3 - Combiner box with internal disconnect switch
- 10 - Series String Fuses
- 2- DC circuit Fused Disconnect Switches
- 3 – 200a disconnect switch fuses
- 2- DAS Current Transformers
- 3 – Security tools (for removing/replacing PV Modules secured to the racking system)
- 500 – Replacement screws for securing PV Modules to the racking system

**Schedule 3.1
Interconnection**

The Project will be interconnected to Owner's power delivery system using an overhead riser pole interconnection system. Pursuant to the Technical Specifications, Contractor shall be responsible for the design, procurement (to the extent not supplied by Owner pursuant to this Schedule 3.1) and installation of all interconnection facilities to a riser pole supplied by Owner. Owner shall be responsible for connecting the Project to Owner's power delivery system from the point where the underground interconnection facilities surface at the riser pole. Contractor shall install the wire to the primary metering current and potential transformer (CT & PT) cabinet and to the riser pole and leave an ample amount of wire to reach the pole top for final connections. Contractor shall make all primary wire terminations in the CT & PT cabinet. The final connection of the cables at the riser pole completed by Owner is the point of interconnection (POI) between the respective scopes of interconnection work between the Parties.

Interconnection scope includes the following:

- The Facility will connect to the distribution circuit via a pole top recloser and switches (supplied and installed by Owner).
- The recloser control cabinet (supplied and installed by Owner) will have over/under voltage, over/under frequency and ground fault programmable system protection capabilities.
- The Facility will be primary metered at 13,800 volts via a pad mounted CT & PT cabinet and a pad mounted revenue grade meter located on the Site. Owner will supply the CT & PT base and cabinet, metering cabinet, revenue grade meter and meter cabinet for installation by Contractor.

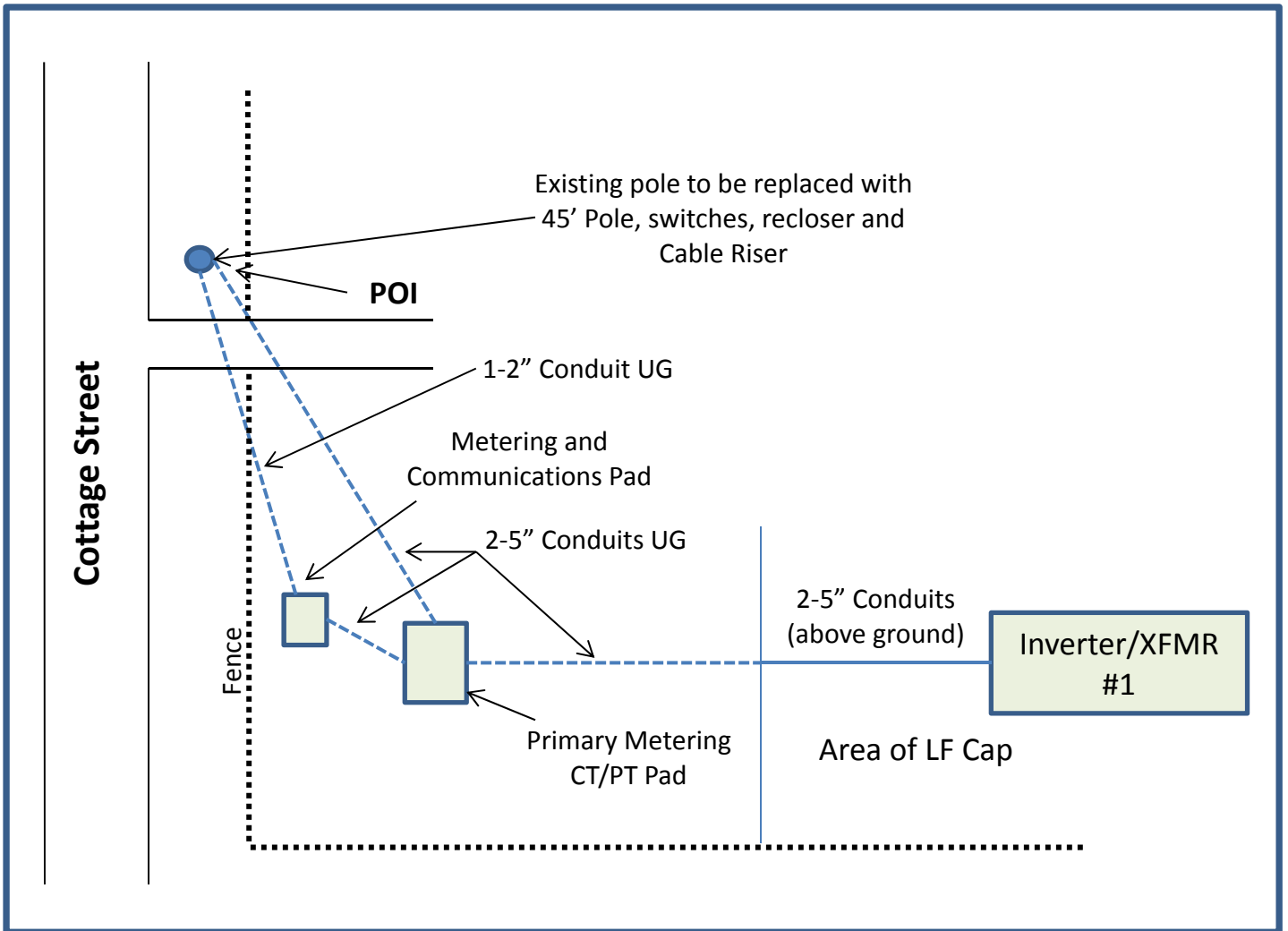
The Data Acquisition System (DAS) for the Facility (supplied by Contractor) will obtain its information from the revenue grade meter with all necessary wiring and connection completed by Contractor.

Contractor shall fully and strictly comply with the provisions of the PCU Permit applicable to interconnection facilities.

Schedule 3.1-1 attached to this Schedule 3.1 depicts the interconnection configuration.

Contractor shall coordinate with Owner in support of Owner's interconnection efforts, as described in Section 4.7 of this Agreement (including Schedule 4.7(c) and the Coordination Schedule).

**Schedule 3.1-1
Interconnection Diagram**



Schedule 4.2(a)
Contractor's Representative Appointment Form

Contractor Name: American Capital Energy, Inc.

Contract Date: September 16, 2013

Pursuant to Section 4.2(a) of the Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013 ("*Agreement*"), between Northeast Utilities Service Company, as agent for Western Massachusetts Electric Company ("*Owner*") and American Capital Energy, Inc. ("*Contractor*"), Contractor hereby appoints the following Person as the Contractor's Representative for the Project (as defined in the Agreement):

Name: _____

Business Address: _____

Business Telephone: _____

Business Facsimile: _____

Business E-Mail: _____

Cell Phone: _____

Contractor hereby appoints the following Person as the alternate Contractor's Representative for the Project to act with the full power and authority of the above-appointed Contractor's Representative in the event that such Contractor's Representative is unavailable, incapacitated or otherwise unable to immediately carry out the duties of the Contractor's Representative as required under the Agreement and the other Contract Documents:

Name: _____

Business Address: _____

Business Telephone: _____

Business Facsimile: _____

Business E-Mail: _____

Cell Phone: _____

Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

AMERICAN CAPITAL ENERGY, INC.

By: _____

Name: _____

Title: _____

Date: _____

Acknowledgment of receipt as of the Effective Date:

Western Massachusetts Electric Company

By: _____

Name: _____

Title: _____

**Schedule 4.2(b)
Owner's Representative Appointment Form**

Contractor Name: American Capital Energy, Inc.

Contract Date: September 16, 2013

Pursuant to Section 4.2(b) of Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013 ("*Agreement*"), between Northeast Utilities Service Company, as agent for Western Massachusetts Electric Company ("*Owner*") and American Capital Energy, Inc. ("*Contractor*"), Owner hereby appoints the following Person as the Owner's Representative for the Project (as defined in the Agreement):

Name: William T. Blanchard
Business Address: PO Box 2010
West Springfield, MA 01090-2010
Business Telephone: 413-757-1029
Business Facsimile: 413-787-1035
Business E-Mail: william.blanchard@nu.com
Cell Phone: 860-481-9777

Owner hereby appoints the following Person as the alternate Owner's Representative for the Project to act with the full power and authority of the above-appointed Owner's Representative in the event that such Owner's Representative is unavailable, incapacitated or otherwise unable to immediately carry out the duties of the Owner's Representative as required under the Agreement and the other Contract Documents:

Name: Carl Frattini
Business Telephone: 860-665-2376
Business E-Mail: carl.frattini@nu.com

Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

Western Massachusetts Electric Company

By: _____

Name: _____

Title: _____

Date: _____

Acknowledgment of receipt as of the Effective Date:

AMERICAN CAPITAL ENERGY, INC.

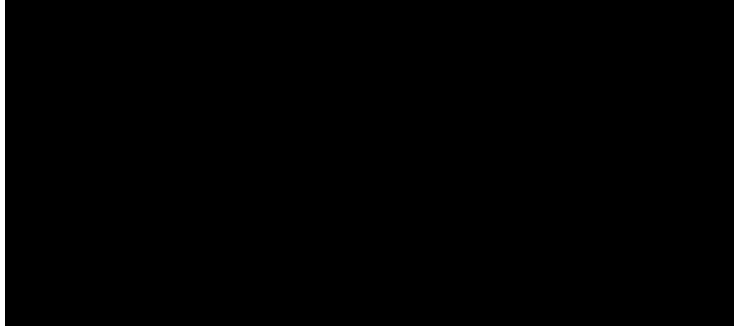
By: _____

Name: _____

Title: _____

**Schedule 4.3(d)
Key Personnel**

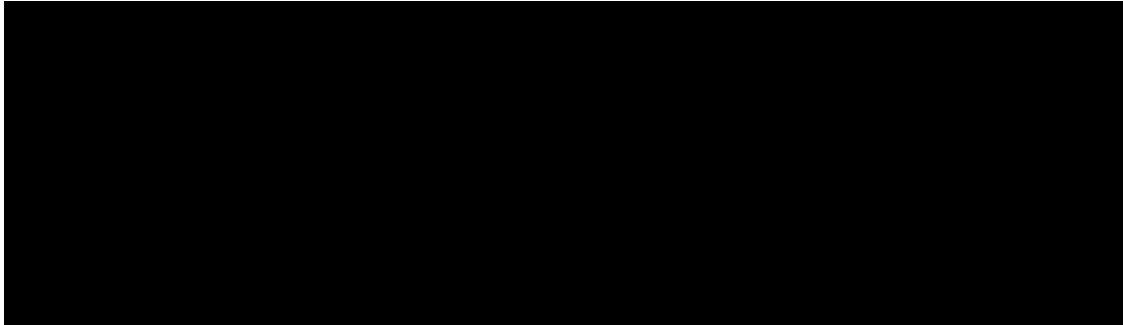
1. Key Personnel – Contractor.



* The Contractor's Representative shall designate a qualified substitute to function as the Environmental Coordinator whenever the designated Environmental Coordinator is unavailable while Contractor is performing Work at the Site.

* The Contractor's Representative shall designate a qualified substitute to function as the Safety and Health Representative whenever the designated Safety and Health Representative is unavailable while Contractor is performing Work at the Site.

2. Key Personnel – Subcontractors.



**Schedule 4.5
Form of Outage Report**

CONTRACTOR SIGNIFICANT INTERRUPTION & INCIDENT REPORT

This form is required to be completed and submitted by the Contractor by the next working day after the incident. Original must be given to the Owner's Representative and faxed to the Western MA System Operations Center at (413) 732-3146.

Type of Report (check all applicable)

- Electrical contact or accident by Contractor employee or public
- Critical customer(s) interrupted
- Significant oil spill or other significant environmental incident
- Contractor error
- Other

Outage Information

Owner's Representative: _____

Circuit Number(s): _____

Work Order Number: _____

Pole(s) at Fault (Number): _____

Isolating Device: _____

Interruption Duration: _____

Incident Date: _____

From: _____ To: _____

Incident Time: _____

From: _____ To: _____

Cause: _____

Location (Street): _____

Town: _____

State: _____

Weather: _____

Operating Voltage: _____

Incident Description:

Actions Taken to Prevent Recurrence:

Reported By: _____

Signature: _____

Date: _____

Company: _____

Phone Number: _____

Pursuant to Section 4.5 of this Agreement, Contractor will be required, at no additional cost to Owner, to participate in and/or perform a root cause investigation at the request of Owner.

**Schedule 4.6(b)
Training**

Contractor shall train personnel designated by Owner on proper user level operations of the Project. Contractor will ensure the staff feels at ease with the operational, troubleshooting, maintenance and monitoring procedures for all parts of the Project. Such training shall provide a solid and comprehensive understanding of the Project, including the monitoring of Project performance.

Contractor training includes:

- Manuals (8 Hardcopy and 8 Electronic Copies – CDs) (see Section 9.8)
- Detailed training on operation and maintenance procedures
- Detailed training on troubleshooting and monitoring
- System diagrams and schematics
- Spare parts list (see Section 2.11)
- On-Site training session for up to 8 participants, in conjunction with the system commissioning.

At a minimum, Contractor's training of designated Owner personnel shall focus on identifying any potential safety issues and performing monthly, quarterly and annual maintenance inspections. The following set forth the minimum areas of training for the designated personnel:

PV Production Theory

- High level overview of PV cell electric production concepts

System Configuration

- Overview of the series and parallel PV Module connections
- Overview of wiring connections
- System operation configuration

Inverter

- Theory of operation
- Proper procedure to power-cycle the inverter

AC Utility Disconnects

- Operating procedures
- Disconnecting the inverter from the utility grid

DC Disconnects

- Operating procedures
- Disconnecting the inverter from the array

Array

- Safely replace combiner box fuses
- Remove and replace PV Modules
- Proper maintenance of PV Modules

Data Acquisition System

- Identify Data Acquisition System equipment
- Login to Data Acquisition System website
- Familiarize operator on how to use the Data Acquisition System

Safety

- Proper PPEs
- Safe AC and DC switch operations
- Safely replace combiner box fuses
- Remove and replace PV Modules
- Proper maintenance of PV Modules

Troubleshooting

- Problem identification and cause
- Remediation

Contractor shall provide, at no additional cost, additional training to Owner as required.

Schedule 4.7(c) Coordination Schedule

Contractor shall schedule, manage, and perform the Work in a manner that recognizes, plans for, and accommodates the various interfaces that interconnect with the Work scope, other work that could affect the Work, and/or other facilities constructed or to be constructed as a condition of, simultaneously with, and/or dependent upon Contractor's performance of the Work. The initial plan for such coordination (the "*Coordination Schedule*") shall include the following items set forth below, and shall be incorporated into, and identified in, the CPM Schedule. In accordance with Appendix J-1 to Exhibit J, the Owner's Representative and the Contractor's Representative shall meet to further identify, refine, and coordinate the Coordination Schedule. The Parties shall continuously review, evaluate, and update the Coordination Schedule on at least a weekly basis as part of the Weekly Schedule Update Meeting and in connection with Owner's retention of the site preparation contractor(s) for such related work. Contractor shall submit for approval by Owner a revised Coordination Schedule within two (2) Business Days after each such meeting that results in any refinement thereof. The approved Coordination Schedule shall then be the schedule to be used by Contractor for planning, organizing, and accommodating such other Facility work thereafter until Owner's acceptance of further revisions.

Final Design – Contractor, Owner and if Owner does not self-perform such work, the contractor retained by Owner to perform interconnection work pursuant to Section 3.1 of this Agreement shall coordinate the location and interconnection in the design and design acceptance. The Final Design shall include sufficient detail regarding the interface of interconnection facilities, including specific identification of Work performed by Contractor and interconnection work. The respective designs of Contractor for the Project and such interconnection facilities shall result in a fully functional Facility after completion of the respective scope of work of Contractor and such interconnection contractor (or Owner).

Site Turn-over – Contractor shall be responsible for all Site control (including security), erosion control, safety and coordination activities from and after the Effective Date; *provided, however*, that Contractor shall not commence construction activities at the Site until Contractor has satisfied the prerequisites to the performance of such Work set forth in the Contract Documents.

Interconnection Equipment – The Parties shall coordinate the delivery of the interconnection and metering equipment to be supplied by Owner to Contractor pursuant to Section 3.1. The Coordination Schedule will reflect such delivery consistent with the schedule for the performance of such Work and allow for sufficient float to avoid any adverse impacts of delay on the Work Schedule. If such equipment is available in advance of the date that Contractor requires such equipment at the Site, the Parties shall consider delivering such equipment (or any portion thereof) to the Equipment Storage Area.

Interconnection Testing – Contractor acknowledges that certain Acceptance Testing will be performed in conjunction with and/or after Owner's completion of the interconnection work pursuant to Section 3.1 of this Agreement. The Coordination Schedule will reflect the Work that will be coordinated in connection with the occurrence of substantial completion of the construction of such interconnection facilities, including Contractor's participation in the acceptance testing required for substantial completion of such interconnection facilities and the Acceptance Testing that must be successfully completed by Contractor as a condition to the commencement of certain acceptance testing for the interconnection facilities. The Parties (and if Owner does not self-perform such work,

the contractor retained by Owner to perform interconnection work pursuant to Section 3.1 of this Agreement) shall coordinate all dependent and/or otherwise related testing activities.

Work at Site – To the extent that Owner will perform any work at the Site (including Owner's portion of the interconnection scope and any Work withdrawn from Contractor), the Parties shall coordinate Site control (including security), safety and activities at the Site to ensure the performance of all Site work in an efficient manner without priority or other preference granted to any work (except that required to be performed on a certain schedule by Law (including the Permits)). The Parties shall coordinate such work through the Coordination Schedule and otherwise.

Landfill Work – In addition to the coordination required under the Contract Documents, to the extent that the Site Owner and/or the Landfill Operator will perform any work at the Site, Contractor shall coordinate Site control (including security), safety and activities at the Site to ensure the performance of all Site work in an efficient manner without priority or other preference granted to any work (except that required to be performed on a certain schedule by Law (including the Permits)). Contractor acknowledges that the Site Owner and/or the Landfill Operator may be required to perform work on an expedited and/or emergency basis to protect the Environment and/or the integrity of the landfill.

**Schedule 5.3(a)
Contractor Permits***

Contractor shall secure and maintain, at Contractor's sole cost and expense (including costs of preparation, any filing fees and/or charges, and any bonds or other performance assurance), all Permits (other than Owner Permits) for the Work, including the following Permits:

Name of Permit	Issuing Governmental Authority	Anticipated Schedule for Procurement
Trenching Permit	Springfield Department of Public Works	See Work Schedule
Street Opening Permit	Springfield Department of Public Works	See Work Schedule
Electrical Permit (other than for array and interconnection construction)	Springfield Department of Inspectional Services (Building Division)	If required per code for service, including for office trailer
Building Permit	Springfield Planning & Zoning Dept/Code Enforcement	See Work Schedule

Contractor is responsible for verifying that all Permits, whether provided by Contractor or Owner, have been issued and are in force prior to initiation of any Work covered by such Permits.

*Upon any request by Owner and to the extent allowed under any of the terms and conditions of any Contractor Permit, Contractor shall assign to Owner any Contractor Permit held in the name of Contractor.

**Schedule 5.3(b)
Owner Permits***

Name of Permit	Issuing Governmental Authority	Date of Issuance / Registration	Comments/ Conditions
Federal			
General Stormwater Permit for Construction Activities	EPA		Application filed ~1 week prior to start of Site construction
State			
Post-Closure Use – Major (BWP SW 36)	Massachusetts Department of Environmental Protection	Issued March 15, 2013; clarified August 16, 2013	
Local			
Site Plan and Drainage Review	Springfield Department of Public Works	No formal approval issued	Completed before Effective Date
Conservation Commission – Request for Determination of Applicability (RDA)	Springfield Conservation Commission	Approved at January 11, 2011 meeting (confirmed on January 13, 2011)	
Sign Permit	Springfield Department of Inspectional Services (Building Division)		To be coordinated with Work Schedule

Contractor acknowledges receipt of complete copies (including drawings, regulations and other documents referenced therein) of all of the Permits indicated as obtained, registered or otherwise completed as of the Effective Date pursuant to the foregoing table.

This Schedule 5.3(b) may not include all Permits required for Owner to complete the Facility (including interconnection activities to be performed by Owner). To the extent any of those additional Permits contain any provisions that could reasonably be expected to affect the Work, Owner shall provide copies of such Permits to Contractor, and Contractor shall perform the Work in full compliance with such Permits.

*Contractor acknowledges and agrees that Owner may assign any and all Owner Permits to any Affiliate or to any Third Party to the extent allowed under the terms and conditions of any such Owner Permit.

Schedule 5.5 Safety, Health and Accident Prevention Requirements

(a) Compliance. Contractor shall: (i) take necessary safety and health precautions with respect to performance of the Work, including compliance with the health and safety plan submitted to MassDEP in accordance with the PCU Permit; (ii) comply with safety measures initiated by Contractor, and Owner's operations and safety procedures, including those set forth in the Work Protocols; and (iii) submit information to the Owner's Representative that fulfills the requirements set forth in the Work Protocols and/or demonstrates full compliance with the PCU Permit. Contractor shall continuously inspect all Work, materials, and equipment and/or conduct health surveys of all areas of the Site to discover and determine any unsafe condition and shall be solely and exclusively responsible for the discovery, determination, and correction of any such condition. That requirement will apply during all hours throughout the period of construction and until Contractor achieves Substantial Completion. Without limiting any other rights or remedies available to Owner under the Contract Documents, at law and/or in equity, if Contractor fails to comply with the health and safety plan submitted to MassDEP and/or the safety provisions required by Law or set forth in the Work Protocols, Contractor shall reimburse Owner for any costs and expenses (including attorneys' fees) incurred by Owner to bring the Work into compliance with such plan, Law and/or the Work Protocols and/or to stop Work (without any relief to Contractor). In addition, Owner may withhold payments that are otherwise due for payment to Contractor until Contractor corrects or abates such safety violations or inadequacies.

(b) Owner's Safety and Health Program. Owner reserves the right to implement and coordinate a safety and health program applicable to all other contractors at the Site and will resolve conflicts regarding safety and health measures and practices. Contractor shall comply with such plan and/or resolution at Contractor's sole cost and expense.

(c) Contractor's Safety Program. Without limiting Contractor's obligations under Owner's health and safety program pursuant to subsection (b) of this Schedule 5.5, Contractor shall prepare (through the work of an industrial hygienist), implement and maintain its own written safety, health and accident prevention program specifically applicable to the Work at the Site ("*Contractor's Safety Program*"). Contractor's Safety Program shall meet OSHA requirements, shall be completed in accordance with 29 CFR Section 1910.120(b) and the PCU Permit, and shall include detailed hazard analyses for each major Work item (including the Landfill Modifications), inspections, and provisions to ensure compliance with all Permits (including the PCU Permit and all other post-closure use permit(s) applicable to the Facility) and to address any and all impacted Excess Material, including management of soil gases and vapors, air monitoring and evacuation plans. Contractor shall be responsible for the health and safety of its own employees and those of Subcontractors and shall be required to maintain and implement Contractor's Safety Program at the Site. All process material, equipment and personal protective equipment required for working with material that is determined to be Level C-Modified hazardous substance (29 CFR Section 1910.120) will be listed in Contractor's Safety Program, and will be provided by Contractor, at Contractor's sole cost and expense. Contractor shall provide a copy of Contractor's Safety Plan to Owner for its review and comment. Owner shall review and provide any comments on Contractor's Safety Plan within fifteen (15) days after Contractor's submission thereof to Owner. After making revisions to address Owner's comments in a manner satisfactory to Owner, Contractor shall file Contractor's Safety Plan with MassDEP in accordance with the PCU Permit. Any such submission to Owner for review and comment shall not relieve Contractor of its obligation to timely file Contractor's Safety Plan with MassDEP in accordance with the PCU Permit. Contractor shall furnish to Owner copies of such filing with MassDEP.

(d) Unsafe Conditions. Contractor shall modify any portion of Contractor's Safety Program that does not conform to the Work Protocols and/or the PCU Permit. Also, Contractor shall immediately correct any unsafe conditions identified by Owner. In the event that Contractor fails to immediately correct any such unsafe condition, Owner may: (i) have the unsafe condition corrected at Contractor's sole cost and expense; (ii) direct that the Work be stopped in the area of the unsafe condition until the unsafe condition is corrected; and/or (iii) withhold payment to Contractor until the unsafe condition is corrected.

(e) Safety and Health Representative. For Work being performed at the Site, Contractor shall appoint a qualified and experienced on-Site Safety and Health Representative. The Safety and Health Representative can change from time to time so long as the designated Person possesses the appropriate qualifications and experience. The Safety and Health Representative (i) shall be present at all times during any Excavation activities (including the Landfill Modifications, the installation of conduit under access roads and the handling and disposal of Hazardous Materials) at the Site and/or the performance of any other Work at the Site that could reasonably be expected to involve safety considerations (including any Work that involves air monitoring), (ii) shall attend all Project safety and health meetings required under the Contract Documents, and (iii) shall participate fully in all activities outlined in the Work Protocols. The Safety and Health Representative shall be (1) fully trained in safety requirements, the Permits, the Site Restrictions and the other obligations of Contractor under the Contract Documents; (2) authorized to have unsafe conditions corrected; and (3) vested with power to direct that the Work be stopped in the area of the unsafe condition if deemed necessary. At a minimum, the Site Safety and Health Representative shall monitor methane, hydrogen sulfide, oxygen and carbon dioxide at the Site before the commencement of any Work on each day during which Work will be performed on the Site.

(f) Reports. Contractor shall maintain accurate accident and injury reports and furnish to the Owner's Representative a monthly summary of injuries and man-hours lost due to injuries. Contractor accident rates will be calculated monthly in accordance with the Bureau of Labor Statistics incident rate, DART rate and lost workday case rate methods.

(g) Shut Down. Without limiting any other rights or remedies available to Owner under the Contract Documents, at law and/or in equity, in the event that all or any portion of the Work at the Site is stopped or shut down by Contractor, any Governmental Authority, or Owner, caused in whole or in part by any act, error and/or omission of Contractor or any Subcontractor, including those activities related to safety or health, then Contractor shall pay all costs incurred and damages suffered by Owner due to such delay or disruption and Contractor shall not be entitled to receive any adjustment to the Fixed Contract Price, the Work Schedule or other relief.

(h) Meetings. Contractor shall hold regular, scheduled meetings to instruct its personnel and the personnel of all Subcontractors in safety and health practices and the requirements of the Work Protocols. Contractor shall also furnish safety and health equipment and enforce the use of such equipment by its employees and the employees of all Subcontractors.

(i) Certification. Within fifteen (15) days after the Effective Date and thereafter within fifteen (15) days as requested by Owner, Contractor shall (and/or cause a Subcontractor to) execute and submit to the requesting Owner's Representative a certification of responsibilities for safety and environmental compliance in the form of Schedule 5.5-1.

(j) Waiver. Contractor waives the right to bring any Claim for damages against Owner or the Owner's Representative or any of their respective employees or agents, for any cause whatsoever relating to any action taken or not taken, including the correction of unsafe conditions or Work stoppages in connection with the Work Protocols, the PCU Permit, Contractor's Safety Program, or similar program of another contractor.

**Schedule 5.5-1
Certification of Safety and Environmental Compliance**

As an authorized representative of American Capital Energy, Inc. ("Contractor"), I hereby certify that:

1. I am aware of and have reviewed all safety and environmental practices, programs or specifications which Contractor has agreed to use and abide by, including without limitation, the following:
 - All safety or environmental practices and programs identified in the Contract Documents;
 - All safety and/or environmental special conditions or other specifications (including those contained in the PCU Permit);
 - NU Contractor Work Rules and addenda;
 - Other (specify) _____.
2. Any questions I had pertaining to these specifications have been answered by the Owner's Representative.
3. I hereby certify that all Contractor employees and subcontractors have been or will be made aware of all such specifications before starting Work.
4. I hereby certify that all Contractor employees and subcontractors will utilize and abide by these specifications.
5. I hereby acknowledge that it is Contractor's responsibility to take all safety or environmental precautions which may be necessary or appropriate under any given circumstances, regardless of whether any of the foregoing specifications require such action or inaction.

(Contract Company or Organization Represented)

(Print Name)

(Sign Name)

(Date)

(NU assigned Liaison/Representative)

(Date)

Schedule 5.8(b)
Owner (WMECO) Second Tier Procurement Program; Direct Expenditures/Small & Diverse Supplier Monthly Reporting

Attached are forms that can be used to document Contractor's subcontracting activity with small business and diverse suppliers (i.e., ethnic minorities, women, veterans, disabled veterans or HUB Zone business enterprises). Small business and diverse suppliers are coded and further defined as follows:

- OW: a Woman-Owned Business Enterprise that is at least 51% owned by one or more women of any race and whose management and daily business operations is controlled by one or more women of any race.

- MO: a Minority (i.e., African American, Asian American, Pacific Islander, Native Indian, Hispanic American) Business Enterprise that is at least 51% owned by a minority individual or group or in the case of a publicly owned business, at least 51% of the stock of which is owned by one or more minority groups and whose management and daily business operations is controlled by one or more minorities.

- VE: a Veteran Owned Business Enterprise is at least 51% owned and daily managed by one or more U.S. veterans.

- DV: a Service Disabled Veteran Business Enterprise is at least 51% owned by a veteran who has a service related disability and whose daily business operations are controlled by one or more disabled U.S. veterans.

- HZ: a business with their principle office or manufacturing facility located in a designated HUBZone. 35% of their employees must reside in a HUBZone and the owners must be American Citizens.

- SB: small business, non-diverse supplier pursuant to the U.S. Small Business Administration small business size standards matched to industries described in the North American Industry Classification System. (See 13 CFR §121).

- CONTROL: Exercising the power to make policy decisions.

- OPERATE: Being actively involved in the day to day management and not merely acting as officers or directors.

Contractor is not required to use these forms. However, please be sure that all of the information that Owner requests is submitted to the extent applicable, for each diverse and/or small business category. For direct and indirect expenditures, please provide the names of the diverse/small business vendor companies, their addresses, diversity classification and dollar amounts.

There are two reporting categories:

Direct expenditures are those materials and services provided by diverse or small vendors directly for contract or purchase order with Owner and its Affiliates (e.g., a subcontractor or a supplier of materials delivered to Owner as part of the PO).

Indirect expenditures are those material and service acquisitions from diverse or small suppliers that cannot be identified with or apportioned directly to Owner or any specific customer (e.g., overhead items (paper, computing expenses, office maintenance), materials and services purchased from diverse suppliers that are used in the direct production of Contractor's product or service).

Contractor's Name: _____ Report Date: _____
Address: _____ Purchase Order #: _____
Contractor's Job #: _____
Telephone: _____ % Work Complete: _____

Second Tier Direct Expenditure Report

(1)	(2)	(3)	(4)	(5)
WORK DESCRIPTION	SUBCONTRACTING SUPPLIER CONTACT & TELEPHONE #	TAX ID NUMBER	OW/MO/VE/HZ/DV or SB CODE (see page 1)	PROPOSED VS ACTUAL PAYMENT

Guidelines for Second Tier Direct Expenditure Reporting

Special Note to Prime Suppliers: To comply with provisions outlined in contract proposals awarded by Owner, please complete columns 1 through 5 for each diverse subcontractor. It will be necessary to submit this report or the equivalent quarterly. At a minimum, the prime supplier should provide the following second tier information when submitting a quarterly report:

1. Work Description – a brief statement of the goods and/or services provided by the diverse or small business Subcontractor.
2. Subcontractor/Sub supplier Name, Contact Person, & Telephone Number – the name of the contact within the diverse or small business enterprise who can verify expenditures made by the supplier.
3. Tax ID Number – the tax identification number assigned to the diverse or small supplier

4. Applicable Diverse or Small Business Supplier Code - see page 1.
5. Original Proposed Expenditures – initial estimate of anticipated expenditures with diverse/small business suppliers.
6. Actual Payment – total of payments made to the diverse/small business suppliers through the current reporting period.

Submitted By

Title

Date

Contractor's Name: _____

Report Date: _____

Address: _____

Purchase Order #: _____

Contractor's Job #: _____

Telephone: _____

% Work Complete: _____

Indirect Expenditure Allocation:				
(a)	(b)	(c)	(d)	(e)
Expenditures by Diverse or Small Business Supplier Type	YTD Sales to NU	Total YTD Contractor Sales	Factor (b ÷ c)	NU Indirect Diverse/Small Vendor Allocation (d x a)
Minority Business Enterprises (MO)				
Woman-Owned Business Enterprises (OW)				
Veteran-Owned Business Enterprises (VE)				
Service Disabled Veteran-Owned Business Enterprises (DV)				
HUBZone Business Enterprises (HZ)				
Non-diverse Small Business (SB)				

Indirect expenditures should be proportionately allocated and reported to Owner as outlined in the example below:

$$\text{Diverse Vendor "indirect allocation"} = \frac{\text{Your YTD Sales to Owner}}{\text{Total YTD Sales}} \times \text{Allocation Factor}$$

(Total YTD diverse vendor (by category) indirect expenditures X Allocation Factor = Owner's Diverse/Small Business Vendor Allocation)

To further illustrate: If Contractor's total sales are \$50 million; total sales to Owner are \$3 million and total diverse vendor expenditures are \$5 million:

$$\frac{\$3,000,000}{\$50,000,000} = 0.06$$

\$5,000,000 X 0.06 = \$300,000 or Owner's diverse/small business vendor allocation

Submitted By

Title

Date

**Schedule 6.2(a)
Form of Notice to Proceed**

Cottage Street Solar Project

NTP No. ____

Contractor Name: American Capital Energy, Inc. Date: _____, 201[__]

Pursuant to Section 6.2 of the Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013("Agreement"), between Northeast Utilities Service Company, as agent for Western Massachusetts Electric Company ("Owner") and the above-referenced Contractor, Owner hereby provides to Contractor the contractual Notice to Proceed with respect to the following portion of the Work:

[Insert description]

This Notice to Proceed shall be effective simultaneously with Contractor's acceptance hereof and hereby directs Contractor to start performance of the foregoing Work upon such acceptance. By such acceptance, Contractor acknowledges that this Notice to Proceed is complete, accurate and sufficiently clear to permit the commencement and completion of such Work. Contractor shall not accept this Notice to Proceed if perceived errors, omissions, ambiguities, inconsistencies or defects may exist. In such case, Contractor shall immediately notify Owner in writing specifying such perceived shortcomings and request a corrected Notice to Proceed.

This Notice to Proceed shall apply solely to the Work specified herein. Any Work performed by Contractor that has not been specified in this Notice to Proceed (or in any other preceding written Notice to Proceed issued by Owner and accepted by Contractor) shall be performed at the sole risk and expense of Contractor.

OWNER APPROVAL

Western Massachusetts Electric Company

By: (signed) _____

Title: _____

(Print Name) _____

Date: _____, 201[__]

CONTRACTOR ACKNOWLEDGEMENT

American Capital Energy, Inc.

By: (signed) _____

Title: _____

(Print Name) _____ Date: _____, 201[]

Contractor Acknowledgement needs to be signed and faxed back to Owner (fax: 413.787.1022)

**Schedule 7.2(a)(v)
PV Module Adjustment**

The Technical Specifications and the Fixed Contract Price contemplate that twelve thousand nine hundred eighty (12,980) PV Modules will be installed in the Project (the "*Base Design*"). If the actual number of PV Modules varies from the Base Design, the Fixed Contract Price shall be reduced if there are fewer PV Modules, or increased if there are more PV Modules. The amount of such increase or reduction shall be equal to the PV Module Adjustment *times* the variance in the number of PV Modules.

The "*PV Module Adjustment*" shall mean (a) (i) for any increase, or (ii) if the total reduction in PV Modules is less than two and one-half percent (2.5%) of the total number of PV Modules in the Base Design, an amount equal [REDACTED]; or (b) if the total reduction in PV Modules exceeds two and one-half percent (2.5%) of the total number of PV Modules in the Base Design, an amount equal [REDACTED].

The following calculations illustrate the operation of the adjustment under this Schedule 7.2(a)(v):

		Scenario A	Scenario B	Scenario C
{A}	Number of PV Modules in Base Design	12,980	12,980	12,980
{B}	Number of PV Modules in As-Built Design	13,080	12,780	12,580
{C}	Variance (As-Built v. Base Design)	100	(200)	(400)
{D}	Percent Change relative to Base Design	0.077%	-1.54%	-3.08%
{E}	PV Module Adjustment	[REDACTED]		
{F}	Total Adjustment to Fixed Contract Price {Line C x Line E}			

Owner shall issue, and Contractor shall countersign, an Agreed Change Order in accordance with the methodology set forth in this Schedule 7.2(a)(v) reflecting any adjustment to the Fixed Contract Price. Such Agreed Change Order shall not affect the Work Schedule, but the Payment Schedule shall be adjusted therein, on a prospective basis only, to reflect such change in the Fixed Contract Price for the payment due at Substantial Completion. Such Agreed Change Order shall be effected as a condition to Substantial Completion.

Any adjustment resulting from the variance in the actual number of PV Modules in the installed Project as compared to the Base Design pursuant to this Schedule 7.2(a)(v) shall not affect the calculation of the Capacity Guarantee; *however*, the number of installed PV Modules shall be consistent in both cases.

Nothing in this Schedule 7.2(a)(v) shall allow and/or otherwise be construed to permit Contractor to vary, modify and/or otherwise change the Final Design other than in accordance with the Contract Documents.

**Schedule 7.3(a)
Form of Subcontractor Payment Certificate**

CERTIFICATION AND CONFIRMATION OF PAYMENT

The undersigned hereby certifies and confirms to Western Massachusetts Electric Company ("*Owner*") that the undersigned has received from American Capital Energy, Inc. ("*Contractor*") a payment in the amount of \$ _____ on account of an invoice dated _____, 201[___] as referenced in the **[Partial Waiver and Subordination of Lien]** **[Final Waiver of Lien]** dated _____, 201__, a copy of which is attached hereto; accordingly, such invoice has been paid in full, and all conditions to the effectiveness such waiver have been completely satisfied.

The undersigned acknowledges that Owner will rely on this Certification and Confirmation of Payment in making a payment to Contractor.

Signed under the penalties of perjury this _____ day of _____, 201[___].

[Subcontractor/Supplier]

By: _____
Name:
Title:

COMMONWEALTH OF MASSACHUSETTS
_____, SS.
_____, 201__

Then personally appeared the above named _____ and acknowledged the foregoing instrument to be _____ free act and deed, before me.

Notary Public
My Commission Expires: _____

[Attach relevant Partial/Final Waiver]

Schedule 7.3(f)
Record Retention Requirements

Contractor shall, and shall ensure that each Subcontractor shall, (a) preserve Information in its and/or in any Subcontractor's care, custody or control during all Work and for a period of six (6) years following Final Acceptance of all Work ("*Document Retention Period*"), in accordance with this Schedule 7.3(f) and the other terms and conditions of the other Contract Documents, or (b) return such Information to Owner in a form acceptable to Owner. Contractor shall not destroy any Information prior to the expiration of the Document Retention Period without Owner's prior written consent. Subsequent to the expiration of the Document Retention Period, if Contractor and/or any Subcontractor wishes to dispose of any or all of such Information, then Contractor shall first provide to Owner ninety (90) days' prior written notice and Owner shall have the right, at its option and expense, upon prior written notice within such ninety-day (90) period, to take possession of such Information within one hundred eighty (180) days after the date of Owner's notice to Contractor under this Schedule 7.3(f). Written notice of intent to dispose of such Information shall include a description of such Information in detail sufficient to allow Owner to reasonably assess its potential need to retain any or all of such Information. Except as set forth in Section 2.3(e)(i) of this Agreement, and below in this Schedule 7.3(f), all Information shall remain the exclusive property of Owner, regardless of where it is stored. Owner may access any such Information at any time while such Information is in the possession of Contractor and/or each Subcontractor (and Contractor shall ensure such access rights in any and all subcontracts), and any such Information shall be provided to Owner on a timely basis whenever requested, regardless of whether such requests are related to audits, regulatory proceedings or legal proceedings such as lawsuits or arbitrations. Any Information in Contractor's possession shall be disclosed to other Persons only in accordance with Section 20.6 of this Agreement. Contractor agrees for itself, and on behalf of each Subcontractor, to (i) access Information in its, or in any Subcontractor's, possession only for the purpose of performing Work related thereto, and (ii) operate, maintain and/or take appropriate and Owner-approved measures and precautions to protect its information systems against unauthorized access or disclosure of Information. Contractor shall be responsible for ensuring that Information is protected from damage and/or loss while in the care, custody or control of Contractor and/or each Subcontractor, including making backups of Information and using disaster recovery best practices for any computer systems used to store Information. Owner reserves the right to audit Contractor in accordance with Section 7.3(f) to ensure that Information is managed in accordance with this Schedule 7.3(f) and/or the other terms and conditions of the other Contract Documents. The requirements of this Schedule 7.3(f) shall not apply to any Information that is the Proprietary Information of Contractor and/or any Subcontractor.

**Schedule 9.2(b)
Notice of Readiness for Testing
(Cottage Street Project)**

Title:	Purchase Order #:
Date Submitted:	Contractor Name: American Capital Energy, Inc.

American Capital Energy, Inc. ("*Contractor*") hereby certifies to Western Massachusetts Electric Company ("*Owner*") that the Project has achieved Readiness for Testing pursuant to, and in full satisfaction of the terms and conditions of the Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013 ("*Agreement*"), between Owner and Contractor. Without limiting the generality of the foregoing or the requirements of Readiness for Testing, Contractor certifies to Owner that:

- (a) All Work required to be completed prior to commencing Acceptance Testing associated with Substantial Completion has been successfully performed and completed to Owner's sole satisfaction; and
- (b) Contractor has deliver to Owner a recommended list of spare parts in accordance with Section 2.11.

List of Attachments and References:

The information provided above concerns Work results that are in accordance with the Work requirements outlined in all applicable design drawings, Technical Specifications and scope of Work. The Owner's Representative has been advised of, and concurred with, any and all field changes.

Contractor Construction Manager Signature	Date		
Owner's Representative Review and Acceptance	Date		

**Schedule 9.3(b)
Certificate of Substantial Completion
(Cottage Street Project)**

Contractor Name: American Capital Energy, Inc.

Issuance Date: [_____], 2014

Contract Date: September 16, 2013

American Capital Energy, Inc. ("*Contractor*") hereby certifies to Western Massachusetts Electric Company ("*Owner*") that Substantial Completion has been achieved pursuant to, and in full satisfaction of the terms and conditions of the Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013 ("*Agreement*"), between Owner and Contractor. Without limiting the generality of the foregoing or the requirements of Substantial Completion, Contractor certifies to Owner that:

- (a) all Site preparation Work has been fully completed in accordance with the Technical Specifications (including the Site Plan) and the other Contract Documents;
- (b) the Project has achieved Readiness for Testing (countersigned notice attached as Attachment A);
- (c) the Project has successfully completed, to Owner's satisfaction, all Acceptance Tests required for the Project to be placed in full commercial operation in compliance with all Permits and to be permanently interconnected with Owner's system, based on the Acceptance Tests performed by Contractor and otherwise in accordance with Article 9 of the Agreement;
- (d) Contractor has installed all equipment (including the required PV Modules) in accordance with the provisions of the Agreement and completed all of the other Work necessary for the Project to be placed in full commercial operation in compliance with all Permits and to perform in accordance with the requirements of the Technical Specifications, and Contractor has submitted to Owner the Punch List Items (a copy of which is attached as Attachment B), and Owner has verified the same;
- (e) any components of the Project damaged or broken by Contractor and/or any Subcontractor during delivery, storage, installation and/or functional testing have been fully repaired or replaced to Owner's satisfaction;
- (f) the red-line drawings have been submitted to Owner (for use in the development of As-Built Drawings);
- (g) Contractor has submitted the list of Punch List Items (Attachment C);
- (h) Contractor has submitted the summary of Subcontractor warranties in accordance with Section 11.6(c) of the Agreement;
- (i) all Manuals have been submitted and approved by Owner (Attachment D), and Contractor has completed all training required under the Contract Documents; and

(j) the portions of the Site affected by the Work have been fully restored as required under the Agreement, except for Punch List Items, and Contractor has disposed of, to Owner's satisfaction, all plant, ancillary facilities, buildings, rubbish waste, unused materials and other equipment and materials belonging to it or used in the performance of the Work, except for equipment required by Contractor for the completion of Punch List Items.

Contractor acknowledges that the achievement of Substantial Completion is dependent on Owner's full satisfaction with the occurrence of the conditions precedent thereto.

Contractor represents and warrants to Owner that as of the date hereof, there is not existing either an Event of Default, or a state of facts which by the passage of time, giving of notice, or both, could constitute an Event of Default.

Unless otherwise defined herein, initially capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

AMERICAN CAPITAL ENERGY, INC.

By: _____

Name: _____

Title: _____

Date: _____

In full reliance on the above, and subject to Section 9.7 of the Agreement, Owner hereby acknowledges that Contractor has achieved Substantial Completion.

WESTERN MASSACHUSETTS ELECTRIC
COMPANY

By: _____

Name: _____

Title: _____

Date: _____

**Schedule 9.6
Certificate of Completion and Request for Final Acceptance
(Cottage Street Project)**

Contractor Name: American Capital Energy, Inc.

Issuance Date: [_____], 2014

Contract Date: September 16, 2013

American Capital Energy, Inc. ("*Contractor*") hereby certifies to Western Massachusetts Electric Company ("*Owner*") that Final Acceptance has been achieved pursuant to, and in full satisfaction of the terms and conditions of the Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013 ("*Agreement*"), between Owner and Contractor. Without limiting the generality of the foregoing or the requirements of Final Acceptance, Contractor certifies to Owner that, subsequent to Substantial Completion, the Project has properly functioned in accordance with the Contract Documents and the Work has been completed:

- (a) in accordance with all physical and regulatory requirements of the Contract Documents, including, without limitation, the environmental and other requirements contained in the Work Protocols and the Permits; and
- (b) in accordance with all other requirements of the Contract Documents to the full satisfaction of Owner including, without limitation:
 - (i) delivery of all documentation required under the Contract Documents with respect to the Work, including, without limitation, the As-Built Drawings and Record Documents listed on Attachment A hereto, and/or requested in connection therewith (including all certificates, approvals, records or other documentation required under the Contract Documents with respect to the Work)
 - (ii) in accordance with Appendix J-1 to Exhibit J, the as-built schedule for the Work complete with baseline is attached to this certificate as Attachment B;
 - (iii) completion of the Work, including all Punch List Items (Attachment C); and
 - (iv) demobilization of the Site (Attachment D) including, without limitation:
 - removal, transportation, and disposal of any and all waste(s) and debris (including construction debris) relating to the Work;
 - removal of all Contractor-owned equipment;
 - removal of Contractor's trailer; and
 - completion of restoration of the Site in accordance with the Contract Documents. **[address any erosion and sedimentation control measures that remain pending stabilization (see Technical Specifications)]**

Contractor further certifies to Owner that (a) all Subcontractors have been paid in full, (b) all debts and claims relating to the Work have been fully satisfied; and (c) the Notice of Readiness for Testing and Certificate of Substantial Completion previously submitted by Contractor to, and accepted by, Owner remain true and accurate in all material respects.

Contractor has attached as Attachment F-1 and F-2, respectively, to this Certificate, copies of the following documents, which Contractor has previously delivered to Owner in accordance with Section 9.5 of the Agreement: (a) the affidavit of Contractor dated [_____], 2014,

providing that releases or waivers of all Liens in connection with the Work (including releases or waivers for all labor, services, material and equipment for which a Lien could be filed) have been obtained and/or that such costs have been paid or otherwise satisfied; and (b) original, fully executed Lien waivers and releases from Contractor, all Subcontractors and all other Persons possessing Lien rights related to the Work.

Contractor is not aware of any unresolved (i) pending or potential Claims of Contractor against Owner, (ii) pending or potential requests for Change(s) by Contractor, other than those indicated as still pending on the attached Change Order log (Attachment G), (iii) other pending or threatened disputes concerning the Work, and/or (iv) objections or other complaints with respect to the Work made by Owner. Other than pending Change Orders listed on such Change Order log, Contractor, for itself and its successors and assigns, does hereby remise, release and forever discharge Owner, its Affiliates, the Owner's Representative, the respective employees, trustees, shareholders, officers, and directors of each of them, as well as their respective agents, consultants and other representatives, and their respective successors, assigns, heirs, executors and administrators (collectively, "*Discharged Parties*"), of and from all, and all manner of actions and causes of actions, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, obligations, liabilities, claims and demands whatsoever, in law or in equity, that against the Discharged Parties Contractor ever had, now has or which it or its successors hereinafter can, shall or may have in connection with any and all claims of any nature whatsoever arising out of or relating to the Work and/or the Agreement. Contractor acknowledges that the achievement of Final Acceptance is dependent on Owner's full satisfaction with the Work.

Contractor represents and warrants to Owner that as of the date hereof, there is not existing either an Event of Default, or a state of facts which by the passage of time, giving of notice, or both, could constitute an Event of Default.

Unless otherwise defined herein, initially capitalized terms used herein shall have the meanings ascribed to them in the Agreement.

AMERICAN CAPITAL ENERGY, INC.

By: _____

Name: _____

Title: _____

Date: _____

In full reliance on the above, and subject to Section 9.7 of the Agreement, Owner hereby acknowledges that Contractor has achieved Final Acceptance.

WESTERN MASSACHUSETTS ELECTRIC
COMPANY

By: _____

Name: _____

Title: _____

Date: _____

**Schedule 9.8
Record Document Submittal Requirements**

- (a) Contractor's Obligations. Contractor shall:
- (i) protect Record Documents from deterioration and loss in a secure, fire-resistant location;
 - (ii) provide access to Record Documents for the Owner's Representative's reference during normal working hours of Contractor;
 - (iii) maintain a clean, undamaged set of blue line or black line white-prints of Contract Drawings;
 - (iv) mark the set of drawings to show the actual installation where the installation varies from the Work as originally shown;
 - (v) mark which drawing is most capable of showing conditions fully and accurately;
 - (vi) give particular attention to concealed elements that would be difficult to measure and record at a later date;
 - (vii) record information concurrently with construction progress;
 - (viii) mark record sets with red erasable pencil, use different colors to distinguish between variations in separate categories of the Work and mark each document "WORK RECORD" in neat, large, printed letters;
 - (ix) mark new information that should be important to Owner but was not shown on Contract Drawings;
 - (x) note related Change Order numbers where applicable;
 - (xi) organize record drawing sheets into manageable sets, bind sets with durable-paper cover sheets and print suitable titles, dates and other identification on the cover of each set;
 - (xii) upon completion of the Work, submit record drawings to the Owner's Representative for Owner's records; and
 - (xiii) include the following:
 - (1) where submittals are used for mark-up, recording of a cross-reference at corresponding location on drawings;
 - (2) field changes of dimension and detail;
 - (3) changes made by Change Order or other modifications; and
 - (4) details not on original Contract Drawings.
- (b) Copies at the Site. Contractor shall maintain at the Site one (1) complete copy of the Contract Documents, including all Change Orders and other amendments thereto. Contractor shall include with

the Contract Documents one (1) copy of each of the documents issued pursuant to the Contract Documents, including Change Orders issued in printed form during Work at the Site. Contractor shall:

- (i) mark these documents to show variations in actual Work performed in comparison with the text of the Technical Specifications and amendments thereto;
 - (ii) give particular attention to substitutions and selection of options and information on concealed construction that cannot otherwise be readily discerned later by direct observation;
 - (iii) note related record drawing information and product data;
 - (iv) upon completion of the Work, submit record Technical Specifications to the Owner's Representative for Owner's records; and
 - (v) include the following:
 - (1) manufacturer, trade name, catalog number serial numbers (where applicable) and supplier of each product and item of equipment actually installed, including optional and substitute items; and
 - (2) related submittals.
- (c) Product Data Submittals. Contractor shall maintain one (1) copy of each product data submittal and note related Change Orders and markup of record drawings and specifications. Contractor shall:
- (i) mark these documents to show variations in actual Work performed in comparison with information submitted, including variations in equipment, materials, supplies and products delivered to the Site, and from the manufacturer's installation instructions and recommendations; *provided*, that this provision shall not limit Owner's rights to approve variations and shall not grant Contractor any right to effect such variations; and
 - (ii) give particular attention to concealed products and portions of the Work that cannot otherwise be readily discerned later by direct observation.
- (d) Instructions. Immediately prior to Substantial Completion, Contractor shall meet with the Owner's Representative and Owner's personnel at the Site to determine which Construction Documents are to be transmitted to Owner for record purposes. Contractor shall comply with Owner's instructions regarding packaging, identification, and delivery of such Construction Documents to Owner.
- (e) Documentation of Insurance and Performance Assurance. Contractor shall maintain at least one (1) copy of documentation for insurance and performance assurance required to be supplied by Contractor in accordance with Article 12 of this Agreement.
- (f) Delivery. At least fourteen (14) days before submitting a Certificate of Substantial Completion, Contractor shall deliver to the Owner's Representative Record Documents to reflect all changes to the Work, together with a certification from Contractor to the effect that: (i) such revised Record Documents completely and accurately incorporate all field changes and other deviations from and/or corrections to prior versions of Record Documents made during construction and installation; (ii) the Owner's Representative has participated in, and concurred with, all of such changes (or specifically identifying any exceptions thereto and the reason therefor); and (iii) such other matters with respect to such revised Record Documents as Owner may require. Title to all such revised Record Documents shall pass to Owner at the time of such delivery. Contractor shall provide, at no cost or expense to Owner, any and all assistance required by the Owner's Representative in connection with the

preparation of the Record Documents from marked Contract Drawings or otherwise, and Contractor shall certify, in form and substance acceptable to Owner, the accuracy of the final Record Documents within ten (10) days after receipt of such documents (in whole or in part) by Contractor; provided, that if Contractor identifies any errors in such Record Documents, Contractor shall promptly assist and otherwise support the Owner's Representative's efforts to correct the same, after which Contractor shall issue such certification.

- (g) Non-compliance. If any of the Record Documents or other evidence indicates any non-compliance of the Work or any portion thereof with Law (including any Permit), then Contractor, at Contractor's sole cost and expense, shall promptly take such corrective action as will cause the Work to fully and completely comply with Law to the satisfaction of Owner, in Owner's sole and absolute discretion. Within ten (10) days after completing such corrective action, Contractor shall deliver to Owner updated versions of the Record Documents and the accompanying certificate in accordance with the requirements set forth in this Schedule 9.8.

Schedule 11.6(a)
PV Module Manufacturer's Warranty

The limited warranty for crystalline PV modules (Model CHSM6612P 300 Watt) provided by Astronergy/Chint Solar is attached to this Schedule 11.6(a). Contractor confirms that there are no contractual and/or other terms with the manufacturer of the PV Modules that relate to, and/or could affect such warranties (other than the terms and conditions of the attached warranty).

Schedule 11.6(c)
Summary of Subcontractor Warranties

Manufacturer (Name/Address)	Service/ Equipment	Duration of Subcontractor Warranty	Notes/Exclusions
	PV Modules		
	Inverter(s)		
	Ballast		
	Racking		
	Electrical Installation		
	Inverter Transformers		
	Combiner boxes		
	Disconnect switches		
	DAS system components		

All relevant documentation relating to Subcontractor warranties shall be attached to the foregoing summary.

**Schedule 12.1
Insurance Requirements**

Unless otherwise provided herein, section references are to Sections of this Schedule 12.1.

1. Builder's Risk – All-Risk Insurance.

(a) Contractor shall provide, at no additional cost to Owner beyond the Fixed Contract Price, Builder's Risk – "All Risks" covering risks of physical loss or damage to the Work (including buildings, temporary structures, materials, supplies and equipment to be incorporated into the Work, whether placed at the Site, at Contractor's laydown facility (including the Equipment Storage Area), or at any other location in the vicinity of the Site pending installation) from perils, including, fire, collapse, flood, earth movement, comprehensive boiler and machinery (including electrical malfunction and mechanical breakdown), lightning, the perils included in the standard extended coverage endorsement, coverage for inland transit, off-Site storage, lifting, collapse, testing, debris removal, a 50/50 clause and all other perils not specifically excluded under a standard "all risk" builder's risk form, in an amount of not less than Ten Million Dollars (\$10,000,000.00), with a deductible for the sole account of Contractor of no greater than One Hundred Thousand Dollars (\$100,000.00) per occurrence, in form and substance satisfactory to Owner (including a waiver of any rights of subrogation against Owner and/or any of its Affiliates). Such insurance shall cover all property during construction and testing as well as any and all materials, equipment and machinery intended for the Work during off-Site storage and inland transit. Without limiting the generality of the foregoing, such insurance shall cover Contractor's and all Subcontractors' tools, construction equipment, mobile equipment, protective fencing, scaffolding, temporary structures, property of employees and any other similar property, as well as all process fluid and chemical charges. Coverage shall also be afforded to the property of others to be incorporated in the Work should it be necessary. The Builder's Risk – All Risk insurance policy shall be written on a replacement cost basis. Contractor shall acquire and maintain such insurance coverages, from insurers with an A.M. Best rating of A- or better, during all Work until Final Acceptance.

(b) At least ten (10) days before Contractor expects to achieve Substantial Completion, Contractor shall notify Owner at the address specified below, in the method and manner prescribed in Section 20.2 of this Agreement so that Owner may arrange for appropriate property insurance coverage for the Project.

Address for Notice to Owner:

Western Massachusetts Electric Company
c/o Northeast Utilities Service Company
56 Prospect Street
Hartford, Connecticut 060103-2818
Facsimile: 860.728.4597
Attention: Director – Claims and Insurance

2. Additional Insurance.

(a) Contractor shall acquire and maintain at its own expense the following insurance coverages (or equivalent), from insurers with an A.M. Best rating of A- or better, in form and

substance satisfactory to Owner, with the indicated amounts, which shall be in force during all Work and for two (2) years after Final Acceptance for all coverages (*except* for Pollution Liability Coverage which shall remain in effect for five (5) years after Final Acceptance and Errors and Omissions coverage which shall remain in effect for seven (7) years after Final Acceptance):

- (i) Workers' Compensation - Statutory coverage and Employers Liability Insurance with limits of One Million Dollars (\$1,000,000.00).
- (ii) Comprehensive or Commercial General Liability Coverage on standard bureau form excluding Professional Liability but including Operations, Products and Completed Operations, Contractual Liability and Broad Form Property Damage Liability written in one or more layers with a combined single limit for Bodily Injury and Property Damage of Five Million Dollars (\$5,000,000.00) per occurrence and annual aggregate.
- (iii) Comprehensive Automobile Liability Coverage, including all owned, non-owned, and hired vehicles, with a combined single limit for Bodily Injury and Property Damage of Two Million Dollars (\$2,000,000.00) per accident.
- (iv) Commercial Umbrella Liability Coverage over both (ii) and (iii) above following the form of the underlying of Ten Million Dollars (\$10,000,000.00) per occurrence.
- (v) Errors and Omissions coverage for professional services and products provided by Contractor with not less than an aggregate limit of Five Million Dollars (\$5,000,000.00).
- (vi) Pollution Liability Coverage – covering pollution liability associated with the Work and the Project with an aggregate limit of not less than Five Million Dollars (\$5,000,000.00).

3. Additional Requirements.

(a) All of Contractor's insurance policies contemplated in this Schedule 12.1, other than Workers' Compensation insurance, and insurance required by Section 2(a)(v) above, shall be endorsed to include Owner, its Affiliates and their respective directors, officers, employees and agents (including the Owner's Representative) and employees of such agents, as additional insureds as respects any and all third party bodily injury and/or property damage claims. All policies provided for in this Schedule 12.1 shall require thirty (30) days prior written notice to be given to Owner of cancellation and/or material change in any policy. Contractor's insurance policies providing the coverages required in Section 2(a)(ii) and (iii) of this Schedule 12.1 also shall be endorsed to include the Site Owner, its Affiliates and their respective directors, officers, members, partners, employees and agents and employees of such agents, as additional insureds as respects any and all third party bodily injury and/or property damage claims.

(b) Contractor shall require each such Subcontractor performing Landfill Modifications and any other Subcontractor (to the extent not covered under Contractor's insurance policies) to maintain the same insurance coverage on the same terms as required for Contractor under this Schedule 12.1, with the following exceptions: (i) each such Subcontractor shall maintain a minimum of Five Million Dollars (\$5,000,000.00) per occurrence and in the aggregate through commercial

general liability or a combination of commercial general liability and umbrella liability coverages, and (ii) errors and omissions coverage will not be required unless such Subcontractor is performing a professional service; *provided* that all Subcontractors shall provide Owner with evidence of Workers' Compensation coverage (unless exempted by Law). All policies so maintained by each such Subcontractor, other than Workers' Compensation, shall be endorsed to include Owner, its Affiliates and their respective directors, officers, employees and agents, (including the Owner's Representative) as additional insureds as respects any and all third party bodily injury and/or property damage claims required to be insured hereby. All such policies shall require thirty (30) days prior written notice to be given to Owner of cancellation and/or material change in any policy. Each Subcontractor's insurance policies providing the coverages required in Section 2(a)(ii) and (iii) of this Schedule 12.1 also shall be endorsed to include the Site Owner, its Affiliates and their respective directors, officers, members, partners, employees and agents and employees of such agents, as additional insureds as respects any and all third party bodily injury and/or property damage claims.

(c) Certificates to evidence such policies of such insurance required by this Schedule 12.1, including copies of the policies and endorsements required hereby, shall be provided to (i) Owner prior to commencement of any Work, or in the case of Subcontractors, Contractor's retention thereof; and (ii) the Site Owner upon request.

(d) The insurance coverage required by this Schedule 12.1 shall be primary to any other coverage available to Owner, the Site Owner and/or their respective Affiliates, and shall not be deemed to limit Contractor's liability under this Agreement. Contractor shall fully comply with the insurance requirements of the Consent and Release in connection with the performance of Landfill Modifications.

(e) All insurance policies shall include a waiver of any right of subrogation of the insurers thereunder against the additional insureds thereunder, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such Person insured under such policy.

(f) For any Work performed in connection with Contractor's warranty obligations under this Agreement, Contractor and, if applicable, any Subcontractors, shall have and maintain in effect the insurances required by Section 2 of this Schedule 12.1 that are relevant to such Work, in the amounts and on the terms provided in Section 2. Notwithstanding anything to the contrary in this Schedule 12.1, Contractor and any Subcontractor whose scope of work may include professional services shall procure tail coverage through the applicable Warranty Period on each errors and omissions policy maintained in accordance herewith upon the expiration and/or non-renewal thereof, unless Contractor's (or the applicable Subcontractor's) replacement errors and omissions policy provides continuing coverage for the Work through the applicable Warranty Period.

(g) Contractor and, as applicable, Subcontractors shall be solely responsible for payment of any and all deductible amounts relating to any and all of the policies of insurance required by this Schedule 12.1.

4. Endorsements Eliminating Exclusions.

If any policies referenced in this Schedule 12.1 exclude coverage of hazards described in Manufacturer's and Contractor's Liability Manual issued by the National Bureau of Casualty & Surety's Underwriters under the following symbols:

- x. Damage caused by blasting and explosion;
- c. Collapse or structural injury due to excavation, tunneling, demolition, etc.;
- and
- u. Damage to underground property arising out of excavating or drilling in streets or highways with mechanical equipment,

and Contractor is to perform any of the operations referred to under said symbols, then the exclusion or exclusions relating to such operations shall be eliminated by endorsement to said policies prior to the performance of any Work.

5. Acknowledgment and Certification.

Within fifteen (15) Business Days after the Effective Date, Contractor shall execute and deliver to the Owner's Representative an acknowledgment and certification in the form of Schedule 12.1-1 attached to this Schedule 12.1.

**Schedule 12.1-1
Contractor Acknowledgment and Certification**

I hereby acknowledge that it is Contractor's responsibility to ensure that each of the Subcontractors that Contractor has engaged to provide Work under that certain Fixed Price Engineering, Procurement and Construction Agreement dated September 16, 2013, between Northeast Utilities Service Company, as agent for Western Massachusetts Electric Company and American Capital Energy, Inc. (the "Agreement") maintains the requisite insurance coverages, *except* to the extent that Contractor maintains insurance that includes requisite coverages for such Subcontractors. I certify that Contractor has obtained the required certificates of insurance from each of these Subcontractors (and Contractor will obtain such certificates from any Subcontractor that Contractor engages in the future to provide Work in performance of the Agreement). I acknowledge that it is Contractor's obligation to produce copies of such certificates of insurance upon request of Owner. Contractor has required (and will require) that each of these Subcontractors direct their respective insurers to send copies of any notices of cancellation, termination, or material modification of Subcontractors' insurance to Contractor and Contractor has monitored (and will continue to monitor) all such notices to ensure that each of these Subcontractors maintains the insurance coverages that are required under the Agreement and not otherwise maintained by Contractor. Words capitalized herein where rules of grammar would not otherwise require shall have the meaning given to them in Article 1 of the Agreement.

American Capital Energy, Inc.
(Contractor)

(Print Name)

(Sign Name)

(Date)

**Schedule 12.2
Performance Assurance**

1. No later than ten (10) Business Days after the Effective Date, Contractor shall deliver to Owner a letter of credit (the "*Letter of Credit*") in the form of Schedule 12.2-1 attached hereto and otherwise acceptable to Owner in its sole and absolute discretion, issued to Owner [REDACTED] (the "*LOC Issuer*") and confirmed by [REDACTED] (the "*Confirming Bank*") in an amount equal to:

(a) [REDACTED] for the period commencing on the Effective Date and ending with Final Acceptance (subject to extension until the resolution of any then pending Claim against Contractor); and

(b) [REDACTED] for the period commencing on the expiration of the period set forth in the immediately preceding clause (a) and ending on the expiration of the Warranty Period, subject to extension until the resolution of any then Claim pending against Contractor; *provided* that Contractor shall be entitled to reduce the amount of the Letter of Credit to [REDACTED] if (i) there is no Claim then pending against Contractor, and (ii) an annual production report submitted by Contractor at least one (1) year after Final Acceptance pursuant to Attachment 3 of the technical requirements within the Technical Specifications demonstrates, to Owner's reasonable satisfaction, that the Facility is operating in a manner consistent with the Capacity Guarantee, in which case such reduced Letter of Credit shall remain in effect for period established in accordance with this clause (b).

If Contractor cannot procure the Letter of Credit for such full term on commercially reasonable terms, then Contractor may provide such a Letter of Credit having:

- (1) a term of not less than one (1) year; and/or
- (2) an evergreen clause acceptable to Owner in its sole and absolute discretion;

in which case Owner shall be entitled to draw on the Letter of Credit (or any replacement or other successor thereto) if Contractor or the LOC Issuer, as the case may be, fails to extend the effectiveness of the Letter of Credit (or replace the Letter of Credit with another Letter of Credit that complies with this Schedule 12.2) within thirty (30) days before its then stated expiration date; and

2. If at any time prior to the full and final satisfaction of all of the obligations of Contractor under the Contract Documents, the Confirming Bank fails to maintain the Required Credit Rating, then Contractor shall deliver to Owner a replacement Letter of Credit from another institution that satisfies the Required Credit Rating and is acceptable to Owner in its sole and absolute discretion within fifteen (15) days after such issuer's failure to maintain the Required Credit Rating. "*Required Credit Rating*" shall mean (i) the Confirming Bank has assets totaling not less than Ten Billion Dollars (\$10,000,000,000), (ii) with respect to a Credit Rating assigned by Standard & Poor's Rating Group (or its successors), a Credit Rating equal to or better than A (outlook stable), (iii) with respect to a Credit Rating assigned by Moody's Investors Service (or its successor), a Credit Rating equal to or better than A2 (outlook stable), and (iv) with respect to a Credit Rating by a Nationally Recognized Statistical Rating Organization (NRSRO) registered with the Securities and Exchange Commission a Credit Rating that is equivalent to the Credit Ratings set forth in (ii) and (ii) of this

subsection (a). "*Credit Rating*" shall mean the rating then assigned to such issuer's senior unsecured, unsubordinated long-term debt obligations (not supported by third party credit enhancements) or, if such issuer does not have a rating for its senior unsecured, unsubordinated long-term obligations, then the rating one notch below the rating then assigned to such issuer as a corporate or long-term issuer rating. In the event of a split rating, the lowest of the applicable Credit Ratings shall apply.



3. The Parties specifically recognize that the use of performance assurance pursuant to this Agreement shall not limit any legal or equitable right, action, or remedy that would have otherwise been available to Owner.

Schedule 12.2-1
Form of Letter of Credit



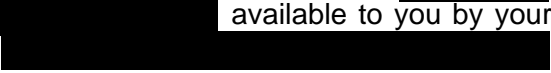

COMMERCIAL LENDING DEPARTMENT



IRREVOCABLE STANDBY LETTER OF CREDIT _____

CONFIRMING BANK: 	ISSUE DATE: <hr/>
BENEFICIARY NAME AND ADDRESS: Western Massachusetts Electric Company c/o Northeast Utilities Service Company 56 Prospect Street Hartford, CT 06103-2818	AMOUNT: 
ACCOUNT PARTY NAME AND ADDRESS: American Capital Energy, Inc. 1001 Pawtucket Blvd Suite 278 Lowell, MA 01854	EXPIRATION DATE: (One year from issue date)

RE: Fixed Price Engineering, Procurement and Construction Agreement Cottage Street Solar Facility by and between Applicant and Beneficiary.

 ("Issuing Bank") hereby issues this Irrevocable Standby Letter of Credit No. _____ in favor of Western Massachusetts Electric Company (the "Beneficiary") for the account of American Capital Energy, Inc. ("Account Party") for an aggregate amount not exceeding  available to you by your sight draft(s) drawn on the Confirming Bank located at  .

This Letter of Credit is effective immediately and shall expire on (one year from issue date) at the counters of the Confirming Bank, however this Letter of Credit shall be deemed to be automatically extended without amendment for one (1) year from the expiration date hereof, or any future expiration date, unless at least sixty (60) days prior to the expiration date we notify you in writing by certified mail or overnight mail courier, that we elect not to consider this Letter of Credit extended for any such additional period.

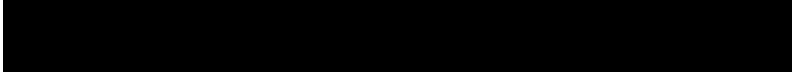
This Letter of Credit is presentable and payable at the counters of the Confirming Bank and we hereby engage with you that drafts drawn under and in compliance with the terms and conditions of this Letter of Credit will be honored on presentation if accompanied by the required documents pursuant to the terms and conditions of this Letter of Credit.

The below mentioned document(s) must be presented on or before the expiration date of the Letter of Credit in accordance with the terms and conditions of this Letter of Credit.

1. Your signed and dated statement in the form of Exhibit A attached hereto; and


2. The original Letter of Credit and any amendment(s).

COMMERCIAL LENDING DEPARTMENT





Page 2 of 4

Letter of Credit No. _____

Presentation of any drawing may be made by express courier or certified mail to the Confirming Bank at the following address: 

This Letter of Credit may be terminated upon Issuer's receipt of a written signed release from the Beneficiary, releasing the Issuer of its' obligations under this Letter of Credit, accompanied by the original standby Letter of Credit and all amendments.

Except as expressly stated herein, this undertaking is not subject to any agreement, condition or qualification. The obligation of  and the Confirming Bank under this Letter of Credit is the individual obligation of  and the Confirming Bank and is no way contingent upon reimbursement with respect thereto.

Additional Conditions:

1. All commissions and other banking charges of the issuing bank and confirming bank are for the account of the Applicant.
2. This Letter of Credit may not be transferred or the proceeds under this Letter of Credit may not be assigned.
3. This Letter of Credit is Irrevocable.
4. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid hereunder at the counters of the Confirming Bank.
5. Partial and Multiple draws are permitted.
6. Notwithstanding any provisions of this Letter of Credit to the contrary, should this Letter of Credit expire or terminate, except being terminated by Beneficiary's signed statement as specified above, on a date that the Confirming Bank's location is closed due to an interruption of the Confirming Bank's business caused by an Act of God, weather-related event, riot, civil commotion, insurrection, act of terrorism, war, declared or undeclared, or any case beyond the Confirming Bank's control, then the terms of this Letter of Credit will automatically be extended for an additional period equal to the length of the interruption of the Issuer's business, which additional period shall not be less than ten (10) business days or in any event longer than thirty (30) calendar days, following the day on which the Confirming Bank resumes business after the cause of such interruption has been removed or eliminated, and, as a result, any drawing on this Letter of Credit which could properly have been made, but for such interruption, shall be permitted during such extended period.
7. This Letter of Credit is subject to the International Standby Practices (1998) of the International Chamber of Commerce Publication No. 590. As to matters not governed by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the Laws of the State of New York, including, to the extent not inconsistent with the ISP98, the uniform Commercial Code as in effect in the State of New York. This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary and the Issuer.

COMMERCIAL LENDING DEPARTMENT



Page 3 of 4
Letter of Credit No. _____

INSTRUCTIONS TO THE CONFIRMING BANK:

1. Please add your confirmation to this Letter of Credit.
2. Upon presentation of draft and documents in proper order, please send us an authenticated swift message advising us of the draft amount and stating that the documents comply to terms and conditions of the Letter of Credit. Upon receipt of swift message, we will promptly provide reimbursement as per your instructions.

Sincerely,



By: _____
(Authorized Signer)
Commercial Loan Administration

COMMERCIAL LENDING DEPARTMENT



Page 4 of 4

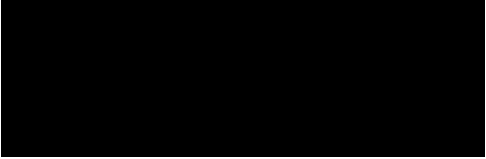
Letter of Credit No. _____

[The certificate is to be on the letterhead of the Beneficiary]

**EXHIBIT A
CERTIFICATE FOR DRAW**

[Insert date on or prior to Expiration Date]

To: Confirming Bank



Attention: Standby Letters of Credit

RE: [Redacted] **Irrevocable Standby Letter of Credit No.** _____
[Redacted], **Letter of Credit Confirmation No. SLC** _____

Ladies and Gentlemen:

The undersigned hereby draws on this Letter of Credit because of one or more of the following reasons:

The amount for this drawing USD[Insert Amount], being made under the [Redacted] Letter of Credit no. _____ and [Redacted], Letter of Credit Confirmation No. _____, represents an amount due and payable to Western Massachusetts Electric Company ("Beneficiary") from American Capital Energy, Inc. ("Applicant") under and/or in connection with the Fixed Price Engineering, Procurement and Construction Agreement dated _____, 2013, by and between Applicant and Beneficiary.

IN WITNESS WHEREOF, this certificate has been executed and delivered by a duly authorized officer of the undersigned on the date first above written.

WESTERN MASSACHUSETTS ELECTRIC
COMPANY

By: _____
Name: _____
Title: _____



ADVICE OF CONFIRMATION

OUR REFERENCE NUMBER:

BENEFICIARY: WESTERN MASSACHUSETTS ELECTRIC COMPANY
C/O NORTHEAST UTILITIES SERVICE COMPANY
56 PROSPECT STREET
HARTFORD, CT 06103-2818

ISSUING BANK: [REDACTED]

ISSUING BANK LETTER OF CREDIT NUMBER:

APPLICANT: AMERICAN CAPITAL ENERGY, INC.
1001 PAWTUCKET BLVD, SUITE 278
LOWELL, MA 01854

AMOUNT: [REDACTED]

CONFIRMATION INITIAL EXPIRY DATE: [ONE YEAR FROM ISSUANCE]

At the request of the above stated Issuing Bank ("Issuing Bank") and on behalf of the above stated Applicant ("Applicant"), we have been instructed to advise you that the enclosed letter of credit ("Letter of Credit") dated [] has been established in your favor.

We hereby confirm the Letter of Credit and undertake to honor all demands for payment made that strictly comply with the terms of the Letter of Credit. This confirmation is an integral part of the Letter of Credit and is to be attached thereto. Notwithstanding the foregoing, our confirmation is contingent upon all such drawings being restricted to our counters located at [REDACTED] In the event documents are not negotiated at our counters as specified herein, our engagement and confirmation shall be immediately null and void.

Our confirmation shall be automatically extended, without amendment, for an additional one year period from the above stated confirmation expiry date or any automatically extended expiry date; unless:

- (a) At least 60 prior to any such confirmation expiry date we notify you at the above stated address by courier that we elect not to extend our confirmation; or
- (b) The Issuing Bank shall have exercised its right to notify you, the Applicant, and ourselves that it has elected not to extend the expiration date of the Letter of Credit.

Documents must strictly comply with the terms of the Letter of Credit. If you are unable to comply with such terms, please communicate directly with the Applicant in order to have the Issuing Bank amend the relevant provisions of the Letter of Credit. This should eliminate difficulties and delays in payment in the event the Letter of Credit documents are presented for negotiation.

The original Letter of Credit, original amendment(s), (if any), and all original advice letters must accompany your drafts and/or documents when presented for negotiation. All drafts must be drawn on

This confirmation is subject to the International Standby Practices (1998) of the International Chamber of Commerce Publication No. 590. As to matters not governed by the ISP98, this Letter of Credit shall be governed by and construed in accordance with the Laws of the State of New York, including, to the extent not inconsistent with the ISP98, the uniform Commercial Code as in effect in the State of New York.

Pursuant to U.S. law, we are required to obtain, verify and record information that identifies parties to the transaction and we are prohibited from issuing, transferring, accepting, or effecting payment to any party or entity identified by the U.S. Department of Treasury including any office and bureau thereof or subject to the denial of export privileges by the U.S. Department of Commerce.

Very Truly Yours,

[Redacted signature block]

**Schedule 20.6
Proprietary Information Requirements**

(a) Restrictions on Disclosure. Each Party acknowledges that it may be necessary to disclose its Proprietary Information to the other Party. The Parties intend that the designation of Contractor's Information as Proprietary Information shall be limited to Information that has unique commercial value and was developed independently from the Work. Except to the extent described in (b), below, or as otherwise agreed to in writing by the Parties, each Party agrees not to disclose or to publish any Proprietary Information of the other Party that is disclosed, reduced to writing and conspicuously marked as "Confidential" or "Proprietary Information." However, if Owner, within one hundred eighty (180) days after receipt of information from Contractor that Contractor Claims to be Contractor's Proprietary Information, Disputes (by (written) notice to Contractor) that such Information is Proprietary Information, the Parties shall resolve such Dispute in accordance with Article 16 of this Agreement. Each Party shall advise its employees, consultants, agents and those Persons under its control of these requirements for confidentiality with regard to Proprietary Information.

(b) Permitted Disclosure. Owner shall have the right, without Contractor's approval, to disclose Contractor's Proprietary Information to the limited extent required for financing, acquisition or conveyance of ownership share, licensing, construction, start up, commissioning, operation, maintenance or repair of the Work. Either Party shall have the right, without the other Party's approval, to disclose the other Party's Proprietary Information to the limited extent required to comply with any request or order of a Governmental Authority (including any court) having proper jurisdiction. If either Party intends to disclose the other Party's Proprietary Information to any Governmental Authority (including any court) having proper jurisdiction, the Party intending to make such disclosure shall, to the extent it does not violate or fail to comply with any such request or order, advise the other Party prior to disclosure and, at the other Party's sole cost and expense, cooperate in any effort by the other Party to minimize the amount of Proprietary Information disclosed, secure confidential treatment of such Proprietary Information, and/or seek permission from such Governmental Authority (including any court) having proper jurisdiction to revise the Proprietary Information in a manner consistent with the other Party's interests, the interests of the Party intending to make such disclosure, and in a manner that meets the requirements of the Governmental Authority (including any court) having proper jurisdiction.

(c) Other Rights. The provisions of this Schedule 20.6 shall also apply to information that a Party identifies and establishes in writing to the other Party as having been obtained from any other Person(s) under agreements for confidentiality.

(d) Survival. The provisions of this Schedule 20.6 shall survive the expiration or earlier termination of this Agreement and shall bind the Parties and their successors and assigns for a period of five (5) years after Final Acceptance.

(e) Use by Contractor. In the event any Proprietary Information of Owner is disclosed to Contractor by Owner under this Schedule 20.6, Contractor shall not make use of such Proprietary Information, other than for Owner's sole benefit and for the sole purpose related to the Work for which the Proprietary Information has been disclosed.

(f) Compliance with CEII and CIP. In addition to the obligations set forth above in this Schedule 20.6, to the extent that Contractor obtains any critical energy infrastructure information ("CEII"), as defined by the Federal Energy Regulatory Commission ("FERC") pursuant to 18 C.F.R. § 388.13, in its performance of the Work, or in the performance of its other obligations or exercise of its rights under the Contract Documents, Contractor shall keep confidential any and all CEII applicable to Owner and/or the Work. To the extent any Work involves critical assets and critical cyber assets, Contractor agrees to be bound by and comply with the North American Electric Reliability Council ("NERC") Critical Infrastructure Protection ("CIP") standards (CIP-002 through CIP-009). In addition, upon request by Owner, Contractor shall execute an agreement confirming full compliance with the foregoing obligations.

Appendix A-1

Scope of Work; Technical Requirements

1. Scope of Work

1.1 Contractor

1.1.1 Project Summary

Contractor shall be responsible for design, procurement, installation and commissioning of a PV system rated at 3.9 MW (DC). The system shall be comprised of no less than 12,980 Watt PV Modules manufactured by Astronergy (with any variance in such number of PV Modules resulting an adjustment pursuant to Schedule 7.2(a)(v) of this Agreement) mounted on a ground mount ballasted system, properly wired to six (6) 500 kW and one (1) 250 kW inverters manufactured by Advanced Energy] mounted on concrete pads. The entire system shall be monitored by a Draker revenue grade DAS System. All requested documentation and records will be maintained and available for review during the performance of the Work. Such documents and records will be provided to Owner in an as-built format as required under the Contract Documents. Contractor will also provide a maintenance program manual and will provide on-Site, hands-on training in the maintenance and operation of the Project for Owner's personnel.

1.1.2 EPC Basis

As more particularly set forth in the Contract Documents, Contractor shall design and install the Project on an EPC basis. The scope of Work shall include project and construction management, Site preparation, procurement of all PV system equipment, design and engineering, system installation, commissioning, Acceptance Testing and Owner training. Contractor is responsible for all engineering and design pertaining to Contractor's scope of Work. Contractor shall provide the manpower, equipment, and material necessary to complete the construction of temporary access roads, Site preparation, fencing, and the installation and maintenance of erosion and sediment control measures related to the Project. Contractor shall procure (directly or through Subcontractors) all materials required to build and commission the Project according to the Contract Documents, including the Final Design accepted by Owner. Contractor shall develop, construct and commission the Project such that it passes all Acceptance Testing criteria, fully satisfies all requirements contained in, and/or developed pursuant to, these Technical Requirements and the Site Plan, and otherwise complies with the terms and conditions of the Contract Documents.

1.1.3 Project Management & Construction Management

Contractor shall have project management and construction management responsibilities through Final Acceptance, including the scheduling and reporting activities as required in Exhibit J of this Agreement. In addition to the Contractor's Representative required under Section 4.2(a) of this Agreement, Contractor shall appoint a full-time single representative as its on-Site construction manager who, among other things, will manage an on-Site construction management team charged with efficiently managing construction and ensuring quality Work. Contractor shall be responsible for all Site control, erosion control, safety, security and coordination activities during the Work.

1.1.4 Engineering & Design

Contractor shall design and bear sole responsibility for all civil, electrical and structural aspects of the Project. Contractor shall develop a comprehensive design that complies with the requirements of these Technical Requirements and the terms and conditions of the other Contract Documents. Contractor shall submit to Owner design drawings, data and documents for review as required by these Technical Requirements and the terms and conditions of the other Contract Documents. Contractor shall submit and maintain a copy of all pertinent drawings and records as required by the Contract Documents.

1.1.5 Construction & Installation

Contractor shall prepare the Site for construction and installation of the Project as shown on the Site Plan. Contractor shall install the Project within the area available for PV Modules on the Site as shown on the Site Plan. Contractor shall supply all labor, tools, machinery, equipment and equipment transportation. Contractor shall be responsible for storage and maintenance of all equipment and materials prior to Final Acceptance. Contractor shall perform continuous monitoring and maintenance of erosion control measures during all construction activities in accordance with the Permits, best management practices and the Contract Documents. Contractor shall not perform any Work on properties adjacent to the Site and shall use best efforts to minimize disruption to those adjacent properties (including sediment control, dust control, traffic control, trash control, and noise control).

Contractor shall commission the Project in accordance with these Technical Requirements and the terms and conditions of the other Contract Documents.

1.1.6 Permitting

Contractor shall comply with all Owner Permits. Contractor shall obtain permits in accordance with Section 5.3(a) of this Agreement.

1.1.7 Legal Compliance

As set forth in this Agreement, Contractor shall comply with all Laws, Permits and Site restrictions in these Technical Requirements and the other Contract Documents (including the Site Restrictions). Without limiting the generality of the foregoing, all electrical Work on the Project must be performed under the direction of a Massachusetts licensed electrician qualified for the voltage associated with the Work, and the design of the Project shall comply with all NEC and/or NESC guidelines.

1.1.8 Quality Assurance

Contractor is responsible for all QA/QC activities applicable to the Work.

1.2 Owner

Owner is responsible for certain Site permitting pursuant to Section 5.3(b) of this Agreement and a portion of the interconnection of the Project pursuant to Section 3.1 of this Agreement.

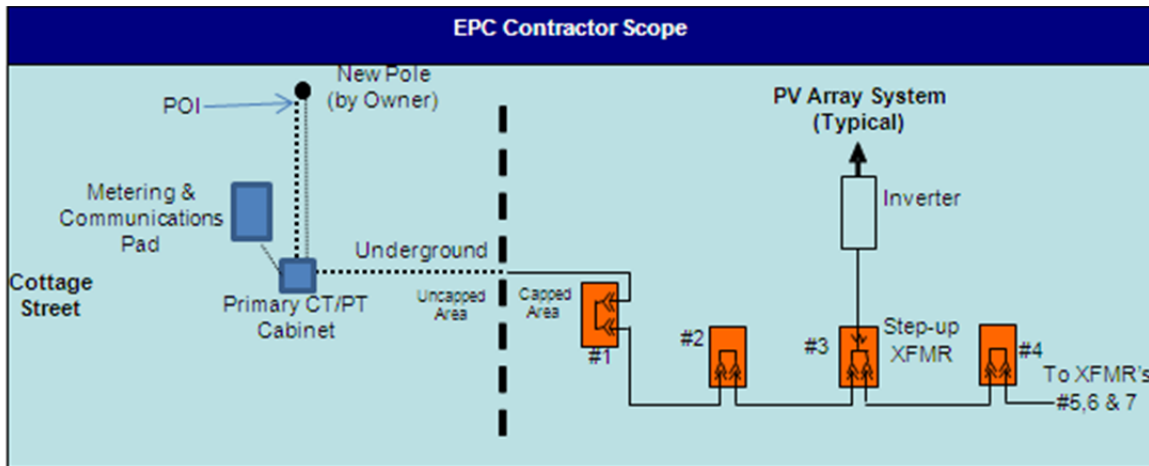
1.3 Shared

Contractor is responsible for coordinating with Owner in accordance with the Contract Documents including Section 4.7(c) of this Agreement. This includes permitting, interconnection, and Project turnover.

2. Design & Equipment Requirements

2.1 Electrical Configuration

1. PV system electrical configuration for the Project shall conform with the following depiction:



2.2 Site Layout; Methods

1. Project installation shall be limited to areas depicted on the Site Plan. All Work on the Landfill Cap shall be performed in accordance with the Site Plan (including the performance specifications and the material specifications on Contract Drawing G-1 of the Site Plan) and the other Contract Documents.
2. All Work shall comply with the Site Restrictions, including the prohibition on any penetration of the Landfill Liner.
3. In areas where Excavation is required, it shall be limited as set forth in the Excavation Plan and conducted subject to the Site Restrictions, including the requirement that a "spotter" (see [Exhibit B](#)) shall be present to ensure the protection of the Landfill Cap (including avoiding any contact with the Landfill Liner and/or the penetration of the Sand Drainage Layer except as contemplated in connection with the Landfill Gas System Modifications and the Landfill Stormwater System Improvements). The PCU On-Site Engineer also shall be present during all Excavation activities as required by the PCU Permit.
4. As part of the Excavation Plan developed and submitted for Owner's acceptance in accordance with Section 2.7(a) of this Agreement, Contractor shall include a plan for (a) the on-Site reuse of Excess Materials, including the on-Site source and subsequent on-Site placement of such Excess Materials reused from the BUD Area (including Contractor's plan to maintain source integrity and prevent co-mingling in the handling and storage process); and (b) any off-Site disposal of Excess Materials from outside the BUD Area, all in accordance with the Contract Documents (including the Site Restrictions) and applicable Law (including the PCU Permit).
5. Contractor shall mark and protect monitoring devices, the gas management system, and the storm water management system through appropriate means (including those set forth in the Site Plan and as required by the Site Restrictions and the PCU Permit), and shall not disturb and/or damage such facilities in connection with the Work.
6. Contractor shall complete all stakeouts, surveys, and other activities required for construction of the Project as shown on the Contract Documents (including the Site Plan). Stakes and similar devices shall be set at no more than nine inches (9") below grade when installed in locations where any portion of the Landfill Cap is present.

7. If any damage to the Landfill Liner, monitoring devices, gas management system, and storm water management system (excluding the Work required to perform the Landfill Gas System Modifications or the Landfill Stormwater System Improvements) shall be immediately reported to Owner and repaired at Contractor's expense in accordance with Section 2.7(g) of this Agreement.
8. Contractor shall only operate low ground pressure equipment on Landfill Cap outside of access roads in compliance with the Site Restrictions.
9. Contractor shall comply with the Site Restriction with respect to the storage of any equipment or material on any portion of the Landfill Cap.
10. Contractor shall not place, install and/or otherwise locate any equipment, materials, supplies, ballasts and racking, foundations and other supports, and/or other elements on the Landfill Cap that exceed a contact pressure on the soil of two hundred (200) pounds per square foot. The foregoing restriction applies only to permanent dead loads.
11. Unless otherwise approved in accordance with the Site Restrictions, Contractor may only park vehicles and/or store materials (including Excess Materials) and equipment at the Site in the Limit of Construction Staging Area outside of the Landfill Cap (as identified in the Site Plan).
12. Contractor shall conduct air monitoring in accordance with OSHA regulations and conduct flammable gas monitoring in accordance with Contractor's Safety Program.
13. Contractor shall perform all rough and fine grading associated with the Work depicted on the Site Plan (on and off of the Landfill Cap) including access roads, parking spaces, stormwater system improvement, gas system modifications and any other items requiring modification of the existing grades and the repair of disturbed area in the Landfill Cap as indicated on the Site Plan.
14. Erosion and Sedimentation (E&S) Control Measures
 - a. Contractor shall install, maintain and otherwise be responsible for all E&S control measures (including silt fence, haybales, wood chip berms, anti-tracking pad and temporary erosion control measures) as depicted on Site Plan (including Contract Drawings C-2 and C-11 of the Site Plan) and in compliance with the requirements of the Contract Documents, all Laws (including all Permits), and best management practices.
 - b. No E&S control measures which penetrate the ground surface shall be installed on the Landfill Cap. Wood chip berm(s) is the only measure which is allowed for use on the Landfill Cap.
 - c. Contractor shall install an anti-tracking pad at the entrance access road from Cottage Street.
 - d. No E&S measures shall be installed beyond the limit of construction as depicted on the Site Plan.
 - e. A rain gauge shall be installed on the Site to monitor rain depth and rate.
 - f. Contractor shall maintain and repair all E&S measures until each area of the Site affected by Work activities has been stabilized. If such stabilization does not occur in all areas before Contractor has satisfied all other conditions to Final Acceptance (including due to seasonal conditions), Contractor shall provide a plan (including appropriate performance assurances) to the Owner's Representative to remove such E&S measures after stabilization (and allowing Contractor to achieve Final Acceptance), for acceptance in the sole and absolute discretion by the Owner's Representative.
15. Disturbance to the existing ground cover shall be kept to a minimum and shall only be associated with the Work.
16. Contractor shall immediately repair and reseed and/or cover with temporary groundcover any erosion that occurs during construction of the Project.
17. After construction has been completed in a particular area, Contractor shall furnish and install loam (as needed) and reseed any and all areas disturbed by construction activities. The area depicted on the Site Plan as the "Area Available For Photovoltaic Modules" (shown on Contract Drawing C-10 of the Site Plan) shall be seeded with a shade tolerant seed mix in accordance with Contract Drawing C-11 of the Site Plan. All Work shall be performed in accordance with the

Contract Documents and typical details. See the Site Plan for additional specifications. Water service is not available at the Site. Contractor shall be responsible, at Contractor's sole expense, for obtaining water required to perform the Work.

2.3 General Design Features

1. The PV system within the Project shall be designed to accommodate up to 1000V at the DC input to the inverter; the Project shall be designed to maximize the rated DC power capacity to 3.9 MW (DC).
2. All aspects of Contractor's design shall consider the overall cost without neglecting design quality or schedule.
3. All aspects of Contractor's design shall minimize factors that adversely affect the lifetime cost of energy while maximizing energy production.
4. The PV system within the Project shall include appropriate surge arresters or other means to protect the PV system components from lightning and other surge events.
5. Contractor shall be responsible for design and construction of the PV system within the Project up the point of interconnection (POI) in accordance with Section 3.1 of this Agreement (and as indicated on the Site Plan).
6. As part of the Final Design, Contractor shall submit to the Owner's Representative all foundation calculations and plans stamped and signed by a Professional Engineer licensed by the Commonwealth of Massachusetts.
7. The impervious area proposed by Contractor shall not exceed 1.9 acres; otherwise, Contractor shall retain a Registered Professional Engineer to perform and submit to Owner a stormwater analysis to demonstrate that peak flows after Final Acceptance will not exceed that of pre-development for the 2, 5, 10, 25, 50 and 100-year storms. The submission of such stormwater analysis demonstrating compliance with peak flows shall be a condition to Contractor's achievement of Preliminary Development.
8. Contractor shall submit a detailed design for grounding of all equipment, including calculations of expected ground resistance of equipment bonds in accordance with Appendix A-2 of Exhibit A to this Agreement. Grounding for the complete system shall be demonstrated to have a ground resistance below 5.0 ohms. Ground bonding of all equipment on the Landfill Cap shall be above ground.
9. Upon execution of this Agreement and receipt of Notice to Proceed for such Work, Contractor will begin to develop the Final Design. This will include documents required in Appendix A-2 of Exhibit A to this Agreement to sufficiently convey Project design. At a point where Contractor determines the Project documents are ready for Preliminary Design review the Contractor shall provide the Project documents to Owner for review and comments. Once the documents have been prepared and finalized, Contractor shall submit the Project documents to Owner for Final Design review. Changes that Owner identifies will be conveyed to Contractor for redesign and resubmission. Upon Owner approval of Project documents, Contractor will have Project documents stamped by a Licensed Commonwealth of Massachusetts Professional Engineer. A copy of these Project documents will be submitted to Owner for acceptance. Upon acceptance of Project documents and the reissuance of revised Permits (as necessary), Owner will notify Contractor of Final Design acceptance.

2.4 Landfill Modifications

1. Contractor shall construct two (2) parking spaces and the permanent primary and secondary access roads in the locations depicted on the Site Plan (see Contract Drawing C-8 of the Site Plan), including the details regarding such permanent access roads (see Contract Drawing C-12 of the Site Plan). Contractor shall perform such Work, including the Excavation and disposal of the Vegetative Support Layer material and the placing, grading and compacting of a dense

graded crushed stone surface, in compliance with applicable Laws and the Contract Documents (including the Site Plan and Site Restrictions). The PCU On-Site Engineer and a spotter shall be present and observing at all time while such Work is being performed.

- a. Before commencing any work on the Site, Contractor shall perform hand dug test pitting along the center line of the existing access road starting near the Cottage Street entrance and continuing up to the South Area depicted on the Site Plan (see Contract Drawing C-1 of the Site Plan). Each test pit shall be spaced at 200 foot intervals to determine the depth of the existing processed gravel. If the depth of the existing roadway does not conform to the standards of the June 2007 Phase 3 Landfill Closure Plans (a copy of which has been provided to Contractor), then Contractor, at its sole cost and expense, shall immediately perform all Work necessary to conform the existing access road to such closure plans; *provided* that for any areas of road deficiency located in wetland buffer areas, Contractor shall use timber matting during the performance of Work in those areas until Contractor obtains all Permits required to perform such corrective Work in wetland buffer areas. Unless Contractor has obtained the required Permits and performed the corrective Work in wetland buffer areas before Substantial Completion, Contractor shall remove all timber mats and complete such corrective Work in those areas within thirty (30) days after Substantial Completion and no later than Final Acceptance.
- b. To the extent that Contractor shall install subgrade conduit across any permanent road on the Landfill Cap, Contractor shall install such conduit in accordance with the Site Plan (see Contract Drawing C-13 of the Site Plan) and all other Contract Documents and Permits in connection with the construction of the permanent access roads. All subgrade conduit shall be marked through the installation of reflective traffic delineators. All underground conduit (other than underground conduit installed outside of the Landfill Cap as part of the interconnection facilities pursuant to Section 3.1 of this Agreement) be air tight using explosion proof fittings to prevent gas migration.
2. Contractor shall install the stormwater system improvement components as shown on the Site Plan (see Contract Drawings C-7, C-12 and C-13 of the Site Plan) which include a new 12" ductile iron (D.I.) culvert, new yard drains with trash racks and associated piping, and new drainage layer underdrains connected to the existing underdrain system. Contractor shall coordinate the Landfill Stormwater System Improvements with the Landfill Operator.
3. The Work under this Paragraph 2.4(3) shall be referred to in the Contract Documents as the "*Landfill Gas System Modifications.*" Contractor shall overdrill (which includes the use of a small smooth bladed excavator) and abandon a total of thirteen (13) gas wells as indicated on the Site Plan (see Contract Drawings C-6 and C-15 of the Site Plan) and in accordance with the associated detail. Contractor also shall install approximately 1,500 linear feet (LF) of 6" HDPE pipe and approximately 140 LF of 10" HDPE pipe for replacement gas system header and lateral piping, together with associated butterfly valves, as indicated on the Site Plan (see Contract Drawing C-6 of the Site Plan). Contractor shall complete the Landfill Gas System Modifications as expeditiously as possible to eliminate the chance for gas migration or gas releases. Contractor shall provide stick-ups (see Contract Drawing C-15 of the Site Plan) for direct connection to replacement header. Replacement gas piping shall be connected to the header. Contractor shall install HDPE valving on the new piping for the gas collection system in order to maintain the required vacuum for future work and maintenance. Header pipe shall be installed at a minimum slope of five percent (5%) unless otherwise authorized by the Owner's Representative in writing. Valves shall be installed in accordance with manufacturer's direction and where indicated on the Site Plan. The gas collection system shall be rebalanced by a Subcontractor approved by the Site Owner upon completion of the Work. Contractor shall arrange, at Contractor's sole cost and expense, for such re-balancing of the well field and the restarting of the flare, all in accordance with the current operational permit and the Operation and Maintenance manuals referenced in the Site Restrictions, and Contractor shall cause the performance of such Work as many times as are necessary to restore the gas system to compliance with such permits and manuals. Contractor shall coordinate the Landfill Gas System Modifications with the Site Owner and Landfill Operator and provide to such Persons and/or any

Governmental Authorities all required documentation regarding such re-balancing and/or flare restarting activities.

- a. Contractor, at Contractor's sole cost and expense, shall load Excess Materials from well decommissioning into roll-off containers for on-Site reuse and/or off-Site disposal and shall reuse and/or transport and dispose of such Excess Materials, all in accordance with the plan submitted and approved pursuant to Paragraph 2.2(4) of these Technical Requirements.
- b. Contractor shall repair and test the Landfill Liner in accordance with industry standards, and shall promptly re-install the Sand Drainage Layer and Vegetative Support Layer to originally required conditions (absent the gas-related equipment). All Work relating to the Landfill Liner shall be performed under the direct supervision of a Person(s) who is knowledgeable and experienced in the methods of flexible liner installation. Each technician repairing the Landfill Liner shall have completed an industry-recognized liner welding training program.
- c. The area to be welded shall be free of all dust, moisture and other contaminants prior to welding. The temperature of the welding machines shall be constantly monitored and controlled to ensure the integrity of the weld and quality of the seams. The welding equipment used shall be capable of continuously monitoring and controlling the temperatures in the zone of contact where the machine is actually fusing the lining material to ensure that changes in environmental conditions will not affect the integrity of the weld. All welding material shall be compatible with the Landfill Liner (which is manufactured by GSE) and shall be delivered in the original sealed containers - each with an indelible label bearing the brand name, manufacturer's mark number, and complete directions as to proper storage and shelf life.
- d. A sample weld shall be completed and tested twice each day before starting production Work to ensure proper temperature and weld quality. Such process is described below:
 - i. Three-foot-long test welds shall be completed for each welding machine twice during each eight-hour shift and during noticeable changes in temperature and humidity, under the same conditions as exist for the Landfill Liner welding. The test welds shall be marked with date, time, operator, and welding machine number. Samples of weld 1-inch wide shall be cut from the test weld and tested on Site in shear and peel in accordance with ASTM D4437. Seams shall not be weaker than the material. No welder may start work until the sample weld has been approved by the Owner's Representative.
 - ii. Shear testing shall be performed in accordance with ASTM D638. A strip 1-inch wide, with the weld centrally located, shall be tested by stressing the weld in a "shear" configuration; the top sheet shall be stressed in relation to the bottom sheet in a direction away from the weld. When the upper or lower sheet fails, the strip has passed the test. A fail result occurs when the weld fails.
 - iii. Peel testing shall be performed in accordance with ASTM D638. A strip approximately 1-inch wide, with the weld centrally located, shall be tested by stressing the top sheet in relation to the overlapped edge of the lower sheet in an effort to open the weld away. The strip passes the test when the sheeting fails, and fails when more than 10% of the weld peels.
 - iv. The following minimum values indicate a passing test on field tensiometer for preweld testing:

Test	Values
Extrusion Peel	52 lbs/in.
Extrusion Shear	84 lbs/in.

- e. All seams shall be non-destructively tested by Contractor, as described below, over their full length to verify their integrity. Such non-destructive testing shall be a Hold Point.

Contractor shall document all results of such non-destructive testing in a manner acceptable to the Owner's Representative. Non-destructive testing for extrusion welds shall be performed by means of a vacuum box test in accordance with the following:

- i. A leak indicator spray or other suitable solution shall be applied to the section of seam to be tested.
 - ii. The vacuum box shall be placed over the seam section and a vacuum suitable for detecting a leak shall be produced and sustained for a sufficient time to thoroughly inspect the Landfill Liner.
 - iii. Bubbling of the leak indicator solution indicates a leak that must be repaired and retested.
 - iv. The seam shall be approved only after the tests verify that the area is clear of all leaks.
- f. Contractor shall perform all Landfill Gas System Modifications in accordance with the Site Plan and the other Contract Documents. Contractor shall coordinate the Landfill Gas System Modifications with the Landfill Operator and Site Owner.
 - g. Within five (5) Business Days after the Effective Date, Contractor shall prepare and submit to Owner testing plans, protocols (including safety practices), methodologies and calculations for the Landfill Modifications, in reasonable detail, including associated certifications and reports including documentation in connection with, and resulting from, the re-balancing of the well field, for Owner's review and approval. Such testing plans, protocols, methodologies and calculations shall be consistent with these Technical Requirements and Prudent Industry Practices. The performance and satisfactory completion of such tests shall be a condition to the completion of the Landfill Modifications, including for purposes of the Payment Schedule.
4. Contractor shall remove and dispose of sixteen (16) existing landfill settlement monitoring platforms on the Site Plan (see Contract Drawings C-3 and C-11 of the Site Plan). Contractor shall perform such Excavation, removal and restoration by hand. Contractor shall replace in kind the Vegetative Support Layer and restore to original condition, if necessary, the Sand Drainage Layer. All restoration measures shall be promptly completed after the demolition of each platform.
 5. Contractor shall install new settlement platforms in accordance with the Contract Documents (including the Site Plan (see Contract Drawings C-10 and C-13 of the Site Plan)) and the Permits (including the PCU Permit).
 6. Contractor shall install an in kind new or relocate the existing fence along Cottage Street necessary to accommodate drainage improvements and install a in kind new or reutilize the existing gate (as shown on Contract Drawings C-4 and C-12 of the Site Plan).
 - a. Contractor shall complete the installation or relocation no later than the first arrival of any equipment and/or materials at the Site to ensure Site and equipment security.
 - b. Contractor shall attach signage (to be provided by Owner) to the existing fencing.
 7. No later than the first arrival of any equipment and/or materials at the Site, Contractor shall remove the existing fence and posts on Lot #17 and install a new in kind fence along the property line with Lot #17 and connect to the existing fence as indicated in the Site Plan (see Contract Drawings C-4 and C-12 of the Site Plan).

2.5 PV Site Work

1. The PV Module support system (including the racking system and conduit supports) shall not penetrate the ground in any manner whatsoever. Ballasts shall be installed as follows:
 - a. Ballasts shall be installed on the Vegetative Support Layer with separation base consisting of a woven filter fabric material and crushed stone.

- b. The woven filter fabric shall be covered by four (4) inches of one and one half (1.5) inch crushed stone (see Site Plan for specifications).
 - c. Ballast will be placed upon the crushed stone.
 - d. See Contract Drawing C-13 of the Site Plan.
2. Contractor shall locate and install all inverters and transformers on the Landfill Cap in compliance with the PCU Permit. All pads for inverters and transformers shall be installed in accordance with the Contract Documents (including the Site Plan (see Contract Drawing C-14 of the Site Plan)) and applicable Law (including the PCU Permit).
3. All above ground conduit will be a minimum of eight inches above ground level, the concrete ballasts for which shall be installed in compliance with the Site Plan and the PCU Permit (see Paragraph 2.5(1) of these Technical Requirements).
4. Contractor shall establish and maintain temporary roads as needed for construction (including for the use of heavy equipment) and as shown on the Final Design. Contractor shall use timber mats for that portion of each temporary access road located in a wetland buffer area. In all other instances, Contractor shall construct such temporary access roads in accordance with the specifications and typical details included in the Site Plan and otherwise in compliance with all other Contract Documents and Permits. Such construction includes the placement of filter fabric either over the permanent access roads or the Vegetative Support Layer of the Landfill Cap and the placing, grading and compacting of a dense graded crushed stone surface. See the detail for such temporary access roads in Contract Drawing C-12 of the Site Plan. Temporary roads shall not be constructed within thirty (30) feet from any side slope.
 - a. Contractor shall submit a plan for the location of temporary access roads as a shop drawing submittal. Contractor shall submit as part of the Final Design for acceptance by Owner the locations of temporary access roads prior to the commencement of any construction activities on the Site unrelated to the Landfill Modifications.
 - b. Upon completion of construction activities, unless otherwise directed by Owner, Contractor shall remove the overlying temporary access roads (including, where applicable, timber mats) such that the underlying permanent access road shall be left intact. Contractor shall remove such temporary roads within thirty (30) days after Substantial Completion and no later than Final Acceptance.
 - c. For areas where temporary access roads are installed directly on the Landfill Cap, Contractor shall promptly remove such temporary access roads after completion of the related Work and immediately reseed the area after such removal.
5. Contractor shall install a gas venting trench and monitoring well in the north end near the entrance way as shown on the Site Plan (see Contract Drawings C-6, C-10, C-14 and C-15 of the Site Plan) in compliance with the PCU Permit.

2.6 Photovoltaic Array

1. All design drawings of the PV system within the Project must be stamped by a Professional Engineer (PE) licensed in the Commonwealth of Massachusetts.
2. PV Module series string circuits shall be connected to achieve a maximum of 600 Volts DC.
3. Design and installation method shall minimize PV Module mismatch.
4. Contractor shall provide comprehensive system electrical schematic in accordance with Appendix A-2 of Exhibit A to this Agreement.
5. All equipment and cable terminations shall be permanently labeled per the applicable codes. All such labels shall be consistent with the system electrical schematic. All cables and terminations shall have an appropriate AC or DC rating, based on the voltage, installation type and other system characteristics.
6. All PV Module wiring, series string circuit wiring and connections shall be copper. All home runs from the combiner boxes to the inverters shall be copper cable and connections.

7. PV Modules shall be approved for use by selected racking system OEM and shall comply with racking system product specification. Two (2) Pin in Hex Security Screws shall be used to secure each PV Module to the racking structures (see drawing of screw in Attachment 2 to these Technical Requirements).
8. Structural system specifications shall meet or exceed thresholds set by supporting calculations pertaining to wind loading, snow loading, seismic and environmental conditions.
9. Components shall be manufactured from corrosion resistant materials.
10. Minimum height of lowest edge of PV Module shall be three (3) feet from surface of topsoil. The PV system within the Project shall not be constructed on slopes exceeding 12%. Contractor shall verify all grades.

2.7 Photovoltaic Modules

1. PV Modules shall be new 300 Watt PV Modules manufactured by Astronergy (Model CHSM6612P 300 Watt). The PV Modules shall be UV rated and non-reflective.
2. All PV Modules shall be UL 1703 listed.
3. All PV Modules shall be sorted into three categories based on flash test power values.
4. The PV Modules shall be designed for outdoor exposure to weather and UV radiation for a minimum of twenty-five (25) years, in a temperature range of -40 °F (-40 °C) to 185 °F (85 °C).
5. Within one week after the delivery of each PV Module shipment to the Equipment Storage Area, Contractor shall:
 - a. Obtain OEM certification report(s) on factory testing and/or QA/QC results on all PV Modules.
 - b. Validate no less than 20% of the physical PV Module serial numbers and update the report(s) to indicate that they were received.
 - c. Provide report(s) to Owner.

2.8 DC-AC Conversion

1. There will be six (6) 500 kW and one (1) 250 kW DC to AC inverters manufactured by Advanced Energy mounted on concrete pads.
2. Each inverter shall be new.
3. DC-AC conversion equipment shall be installed and set to achieve maximum efficiency/power.
4. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC/NEC/NESC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the Effective Date.
5. Inverter CEC weighted efficiency (including isolation transformer, if utilized) shall be greater than 95%.
6. Input voltage to inverter shall be up to a maximum of 1000V DC. Inverter output voltage shall be 277/480 V AC and shall correspond with the input voltage of the step-up transformer (connected to Owner's 13.8kV distribution system).
7. Each inverter shall have a means of disconnect from the transformer on the 277/480 V side.
8. Each inverter shall connect to a single 3 phase transformer. This transformer shall be located as close as possible to each inverter and its output voltage shall be 13.8kV.
9. The step-up transformers shall be appropriately sized with a secondary voltage to match that of the output of the inverters. The transformers shall be pad mounted with conduit entries on the sides of the primary and secondary compartments. Transformer specifications shall be finalized after the Preliminary Design is completed.

10. All Transformers shall have live front connections on the input side (low voltage) and dead front 200a load break elbow connections on the output (13.8kV) side.
11. All cable and connections shall be copper.
12. All conduit connections to inverters and/or transformers shall utilize air tight, explosion proof fittings.
13. All pads supporting transformers, inverters and any other equipment shall be concrete, properly dimensioned for the equipment and shall comply with the Site Restrictions (including compliance with the maximum contact pressure on the soil of two hundred (200) pounds per square foot and the five (5) PSI (pounds per square inch) maximum bearing pressure set forth in the Site Restrictions).
14. Contractor is responsible for obtaining OEM certification report(s) on factory testing and/or QA/QC results no later than equipment delivery to the Equipment Storage Area.
15. Each inverter shall include:
 - a. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
 - b. Ground fault protection.
 - c. NEMA 1R rating for any interior location (inverter/communications shelter) or NEMA 3R for any exterior location.

2.9 Balance of Plant

1. All balance of Plant equipment and materials shall be new and unused.
2. Electrical features of all equipment shall be sized to support safe and sustainable operation at rated power output.
3. The engineering and design shall include the appropriate sizing of all connectors and cabling that will connect the PV Modules, combiner boxes, disconnect switches, inverters and circuit breakers to the transformer.
4. Three-phase output power from inverters shall be routed through three-phase AC disconnect switches or circuit breakers. Contractor shall determine the interrupting rating through short-circuit calculations and include a 20% safety margin.
5. Contractor shall protect DC electrical collection system wire/cable from the elements.
6. Contractor shall route all electrical systems in a neat and orderly fashion to facilitate access, troubleshooting and maintenance (in accordance with all applicable codes). All conductors shall be labeled after installation in manner satisfactory to the Owner's Representative.
7. Combiner & Junction Boxes
 - a. Combiner boxes and junction boxes shall have the following characteristics: minimum NEMA 3R enclosure, a minimum voltage rating that appropriately conforms with the voltage rating of the PV system, and listed by a nationally recognized testing laboratory.
 - b. All PV system circuits shall be protected by lightning arrestors of the appropriate voltage rating.
 - c. Each combiner box shall have provision for a padlock and secured by Contractor with a "one-shot".
 - d. Each combiner box shall have a fused and non-fused a DC disconnect between it and the inverter.

8. DC Disconnect Switches

- a. The DC disconnect(s) shall have a minimum voltage rating that appropriately conforms with the voltage rating of the PV system; a heavy-duty safety switch and be listed by a nationally recognized testing laboratory.
- b. Disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.

9. Other, including Wiring/Cable, Conduit & Cable Trays

- a. The AC system will be connected radial utilizing multiple fault indicators, appropriately spaced, for promptly locating faulted cable sections.
- b. All primary AC conductors shall be 4/0 copper solid dielectric EPR type and rated for 15,000 volt operation.
- c. All conduit shall be PVC schedule 80 with liquid tight fittings, except for the instances described in subsection (f) below.
- d. All conduit shall be routed in a manner that minimizes the possibility of contact with vehicles, physical damage or obstruction.
- e. Except for locations in which conduit crosses the access road on the Landfill Cap (in which case Contractor shall comply with the requirements of the Site Plan), all conduit installed on the Landfill Cap shall be run above ground and be properly supported on concrete ballasts (see Contract Drawing C-13 of the Site Plan).
- f. Any conduit containing AC conductor that is located off of the Landfill Cap shall be galvanized rigid steel or Schedule 80 PVC, placed underground, encased in concrete and utilize a ninety degree galvanized rigid steel conduit sweep (for purposes of interconnection). Any such conduit shall use liquid tight fittings.
- g. All system wiring shall be of a NEC/MEC/NESC approved wiring methods. All conductors shall be rated 90 degrees C or lower.
- h. All conductors shall be sized appropriately to minimize line losses.
- i. All conductors shall be weather-proof and oil/gas resistant.
- j. Cable trays shall be constructed of non-corrosive material designed to survive environmental conditions at the Site.
- k. Exposed cables shall be listed as sunlight resistant.
- l. Wiring harnesses shall be constructed to UL and NEC requirements.
- m. All outdoor electrical enclosures shall be at least NEMA 3R and have watertight connections.
- n. Contractor shall submit detailed cable calculations to support the proposed cable sizes of their design with respect to ampacity and voltage drop.
- o. In the event that conduit is placed underground, Contractor shall provide one spare conduit to house any electric conductors and one spare conduit to house any communications cables. Each conduit end shall be sealed to prevent gas migration.

2.10 Protection, Switching & Control

- 1. All protection equipment throughout the Project shall be sized and specified to reduce damage on all components and the interconnection point in case of electrical failure.
- 2. AC cable shall be coordinated as necessary to optimize the Owner's interconnection design and eliminate potential damage and obstructions.

3. Design shall allow an external disconnecting means to isolate each inverter from combiner boxes. These disconnecting means shall be in addition to any internal disconnect switches or circuit breakers provided in the inverters.
4. Design shall use fused DC disconnects at each inverter (in lieu of circuit breakers).
5. Electrical design/configuration shall include the ability of the system operator to independently isolate each series string circuit in an efficient manner.
6. Electrical design/configuration shall include the ability of the system operator to independently isolate each combiner box from its respective inverter in an efficient manner.
7. Electrical design/configuration shall include the ability of the system operator to independently isolate the inverter from all combiner boxes at a single location in an efficient manner.
8. All disconnects or circuit breakers shall be rated to interrupt the necessary voltage and current for the application; be listed by a nationally recognized testing laboratory; and be NEMA 3R.

2.11 System Operations & Maintenance

1. Contractor shall design the Project to have a service life of no less than twenty-five (25) years at rated production capacity.
 - a. Shading between PV Modules shall not be allowed on December 21st between the hours of 9AM to 3PM, unless otherwise approved in writing by Owner prior to Final Design.
 - b. Contractor's design shall minimize shading from sources that are located outside of the Site. Contractor shall specifically identify the production impact of any shading caused by the existing off-Site conditions.
2. Facility design shall minimize total lifecycle operation and maintenance costs.
3. Design and installation shall not void conditions of OEM warranties.
4. Contractor shall submit a summary and maximum parasitic loads for the Project with electrical records.

2.12 Monitoring

1. The Data Acquisition System (DAS) within the Project shall be equipped to report to the Massachusetts Clean Energy Center (MCEC) Production Tracking System (PTS) and include an automated reporting system. At a minimum, the DAS shall meet the automated reporting requirements at <http://ar.masstech-pts.org/downloads/>
 - a. Users shall have the ability to download raw data into a spreadsheet format in an efficient manner.
 - b. Measurements and recording shall include at a minimum the following data:
 - i. AC voltage and power output from the inverter
 - ii. DC power into the inverter
 - iii. Ambient temperature and humidity at the array
 - iv. PV Module temperature
 - v. Global Horizontal and Plane of Array irradiance
 - vi. Wind speed and direction
 - vii. Current at the combiner boxes.
 - c. All measurements shall be recorded on a continuous interval basis.
2. Monitoring/DAS output communication shall be a hard wired communication connection and configured to contain multiple redundant ports. Contractor shall solely bear and be responsible for all monitoring, license and other fees (whether initial, annual or other assessment) associated with the DAS through the expiration of the Warranty Period.

3. Metering equipment shall be pad mounted. The current transformers, potential transformers and a 120VAC source should be housed on the pad. The 120V shall be derived from equipment on the same pad from the potential transformers.
4. A production metering cabinet supplied by Owner shall be mounted by Contractor on a concrete platform via an Owner approved (at Final Design) racking system supplied by Contractor.
 - a. All 13.8kV cable shall be installed and terminated inside of the CT & PT cabinet.
 - b. Install 1-3" PVC Schedule 40 conduit from the CT & PT cabinet to the meter enclosure.
 - c. Install 1-2" PVC Schedule 40 conduit from the telephone/cable company's designated location to the telephone/cable enclosure.
5. Contractor shall install a revenue grade production meter supplied by Owner. Contractor shall connect into that meter to supply production information.

2.13 Codes, Standards & Certifications

1. Contractor shall design the Project in accordance with all applicable federal, state, and local laws, codes, regulations, and standards. The codes and standards utilized shall be the latest editions in effect at the Effective Date.
2. Where these codes do not govern specific features of the equipment or system, Prudent Industry Practices and Original Equipment Manufacturer (OEM) specifications shall be applied.
3. Applicable codes and standards shall include the most recent versions of:
 - a. Uniform Construction Code
 - b. NEC (including Article 690 (PV Systems))
 - c. NESC National Electrical Safety Code
 - d. National Electrical Testing Association
 - e. Occupational Safety and Health Act (OSHA)
 - f. UL – Underwriters Laboratory
 - g. IEC – International Electrotechnical Commission
 - h. IEEE
 - i. ANSI
 - j. NFPA.
4. All design drawings of the Project must be stamped by a Professional Engineer (PE) licensed in the Commonwealth of Massachusetts.
5. The support system shall be electrically grounded in compliance with the applicable MEC, NEC and NESC codes; the PV Modules shall be electrically interconnected and grounded in compliance with the NEC/NESC and UL 1703.
6. The Project, including the PV Modules, shall be properly grounded in accordance with all applicable requirements of local electrical, MEC, NEC and NESC codes.
7. The Project, including the PV system, shall conform to Massachusetts State Building Code latest edition (780 CMR 16.00) and all other applicable standards.

3. Commissioning

3.1 Photovoltaic Acceptance Testing

1. Contractor shall provide Acceptance Testing in accordance with Section 9.2 of this Agreement.
2. The Acceptance Testing plan required under Section 9.2 of this Agreement shall be consistent with the requirements of the Contract Documents and, among other things, shall:
 - a. Describe the key areas of testing, the specific testing prescribed for each area and the acceptance criteria for each for each test.
 - b. Document the procedures for each test, including the steps necessary for obtaining actual measurements and verifying their conformance to the acceptance criteria.
 - c. Provide documentation that clearly depicts (for each test) the acceptance criteria, the actual results obtained from testing and the level of acceptable compliance.
 - d. Be designed and documented in a manner that enables periodic re-testing and the ability to compare the result of such tests to the result of prior tests.
3. The Acceptance Testing shall, at a minimum, include the following key areas:
 - a. Conformance to the Technical Specifications.
 - b. Conformance to the design approved as part of the Construction Documents.
 - c. Verification of proper polarity, wiring and connections.
 - d. Demonstration of proper grounding, isolation and protection functionality.
 - e. Demonstration of voltage levels (voltage open circuit Voc, voltage maximum power Vmp) that are consistent with the approved design, the applicable manufacturer ratings and safe operation.
 - f. Demonstration of installed capacity and AC/DC energy output levels that are consistent with the approved design and the applicable manufacturer ratings.
4. The Acceptance Testing shall include, at a minimum, the following specific tests:
 - a. Measuring short-circuit currents and open-circuit voltages on all source circuits while measuring irradiance and module temperature.
 - b. Measuring and recording of Imp (current maximum power) of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
 - c. Measuring the instantaneous DC input and AC output of the system to determine its efficiency.
 - d. Measuring inverter performance during startup conditions as specified by the inverter manufacturer in the inverter operation manual.
 - e. Performance of loss of grid testing and verification of the five minute delay of output restoration.
 - f. Verifying the functionality and accuracy of the DAS, including (i) comparisons of independent measurements to the DAS display/reports, and (ii) specifically verifying the accuracy of the measurements prescribed in monitoring section of these Technical Requirements.
 - g. Performance testing with respect to the Capacity Guarantee set forth in Attachment 1 to these Technical Requirements.
5. Contractor shall retain the services of an independent testing company to perform ground resistance measurements of the final installation and shall submit such measurements to Owner

for review. Ground resistance shall be less than 5 ohms, using the IEEE Std 81 test 3-point fall-of-potential tests or other test methods approved by Owner. Tests that reveal higher measurements shall be corrected in the field by installing additional ground rods (subject to the restrictions set forth in Paragraph 2.3(8) of these Technical Requirements), until all equipment ground resistance is below 5 ohms.

6. Contractor shall coordinate with, and participate in, Owner's acceptance testing of the power delivery interconnection as described in this Agreement, including Section 4.7.

3.2 Records, Drawings, Manuals & Certifications

1. Contractor shall provide all Construction Documents in accordance with the Contract Documents including Appendix A-2 to Exhibit A to this Agreement.

3.3 Training

Contractor shall furnish training in accordance with Section 4.6(b) of this Agreement.

4. Performance

4.1 Design, Installation & Equipment Warranties

Contractor shall guarantee the capacity of the Project in accordance with Attachment 1 to these Technical Requirements. In addition, Article 11 of this Agreement contains warranty provisions.

Attachment 1. Contractor’s Capacity Guarantee

1. Capacity Guarantee. Contractor guarantees that the as-built AC capacity of the Project shall equal or exceed the Capacity Guarantee, as demonstrated in accordance with this Attachment 1 during Acceptance Testing.
2. Calculation of Capacity Guarantee. The Capacity Guarantee shall be determined based on the calculation for AC generation capacity using the installed DC capacity, adjusted by a fixed Derate Factor as follows:

Capacity Guarantee = Installed DC Capacity x Derate Factor

Where:

- (a) *Installed DC Capacity* is the number of PV Modules installed in the Project times the full rated wattage of each PV Module; and
- (b) *Derate Factor* is 82%.

The Parties fixed the Derate Factor in the Capacity Guarantee after taking into account any and all losses attributable to factors such as inverters, transformers, PV Module mismatch, connections, wiring, soiling, availability, shading and age. The Derate Factor shall not be subject to any change, modification or other adjustment whatsoever.

3. Standard Test Conditions. The calculation of the Capacity Guarantee is based on system performance under standard test ("STC") conditions. The following are the key variables in the STC ("*Key Variables*"):

Key Variable	Value
Solar Irradiance	1000 watts/m ²
Ambient Temperature	25 Degrees C
Air Mass	1.5 AM
Wind Speed	1 meter/second

4. Verification of Capacity Guarantee.
 - (a) As part of the Acceptance Testing for Substantial Completion, Contractor shall conduct performance tests to verify whether the as-built AC capacity of the Project equals or exceeds the Capacity Guarantee. The performance tests shall be conducted during four (4) two hour test periods with solar irradiance greater than 800 W/m². Each two hour test period shall be from 12 pm to 2 pm. If Contractor reasonably believes that Site conditions (including cloud shading) during any test period materially and adversely affected results, Contractor may conduct additional tests using the same test period and duration on other days (up to a maximum of four (4) additional tests), in which case Contractor shall use the four (4) most representative tests for purposes of verifying the Capacity Guarantee. All values during such performance tests shall be measured at the

revenue metering point of the Project. Data also will be collected from the weather station with respect to the Key Variables. In addition to all other requirements of the Contract Documents relating to Acceptance Testing, the Owner's Representative and other personnel designated by Owner shall be present at all Acceptance Testing conducted with respect to the Capacity Guarantee.

(b) Contractor shall evaluate the differences between the Key Variables at STC versus actual field conditions. This evaluation shall identify the effect of such differences on the Key Variables as represented in the Acceptance Testing. Contractor then shall determine the as-built AC capacity of the Project based on the data from such Acceptance Test. That determination shall apply the differences, if any, in the Key Variables that are attributable to STC and actual Site conditions during Acceptance Testing. Contractor shall provide the methodology for making this determination as part of Final Design acceptance. This methodology shall be based on standard and accepted analysis provided by an independent source (such as Sandia National Labs, D. King et. al, "Photovoltaic Performance Model" publications). The following table illustrates, on a pro forma basis only, the effect of one Key Variable (solar irradiance) varying from STC while all other Key Variables remain constant:

Cottage Street Solar Project

Nominal DC rating: 3,894 kW
Derate Factor guaranty: 82 %

Capacity Guarantee Chart

	<u>Standard</u> <u>Test Conditions</u>	<u>Field</u> <u>Test Conditions</u>	<u>Field</u> <u>Test Conditions</u>
Irradiance (W/m ²)	1000	900	800
Wind Speed (meter/second)	1	1	1
Air Mass (A.M.)	1.5	1.5	1.5
Ambient Temperature (deg C)	25	25	25
Array Output kW DC	3894	3505	3115
Estimated AC Capacity (@ STC; 82% Derate Factor)	3193	2874	2555
Scaling Factor	100%	111%	125%

To the extent consistent with industry standards, the data regarding Key Variables obtained in the Acceptance Testing will be adjusted to account for instrument calibration and reproducibility consistent with the standard deviation within the testing equipment established by the manufacturer (within a range not to exceed +/-2%).

(c) The Acceptance Test calculations and methodology submitted by Contractor for Owner's review and approval pursuant to Section 9.2(a) shall include additional details with respect to the Acceptance Testing to be conducted in connection with the Capacity Guarantee (including the deviation analysis affecting Key Variables approved by Owner in connection with the Final Design acceptance) and associated formulas; *provided* that such details shall be consistent with the requirements of this Attachment 1, including that only deviations to the Key Variables will be applied. The derate components and all other variables shall remain constant with the model used for the Capacity Guarantee.

(d) As a condition of Substantial Completion and in any event within five (5) Business Days after conducting the Acceptance Testing, Contractor shall submit to Owner

a certified test report, in form and substance reasonably satisfactory to Owner, that complies with the requirement of the Acceptance Test plan approved by Owner and sets forth, in reasonable detail, a comparison of the as-built AC capacity of the Project to the Capacity Guarantee.

5. Remedies for Capacity Shortfall.

(a) If Acceptance Testing conducted pursuant to Paragraph 4 of this Attachment 1 verifies that the as-built AC capacity of the Project equals or exceeds the Capacity Guarantee, Contractor shall be deemed to have satisfied its obligations with respect to the Capacity Guarantee.

(b) If Acceptance Testing conducted pursuant to Paragraph 4 of this Attachment 1 demonstrates that the as-built AC capacity of the Project is less than the Capacity Guarantee, then Contractor shall elect within ten (10) days after the certified test report for such Acceptance Testing (and in any event as a condition of Substantial Completion) either to:

- (i) undertake all actions as may be necessary (at Contractor's sole expense) to cure such shortfall, in which case Contractor, within ten (10) Business Days after making such election, shall submit to Owner, for Owner's review and approval, in Owner's reasonable discretion, a comprehensive and complete plan (the "*Corrective Plan*") for addressing such shortfall, including a detailed schedule (including potential outages of the Facility) and the subsequent testing (as required in this Attachment 1) to verify that the as-built AC capacity of the Project after such corrective action equals or exceeds the Capacity Guarantee. Owner's review and approval of a Corrective Plan represents only the consent of Owner, and shall neither relieve Contractor of its obligation to fully comply with the terms of the Contract Documents, nor waive such shortfall in the Capacity Guarantee. If Owner approves the Corrective Plan, Contractor shall strictly and timely comply with the terms and conditions thereof. Without limiting the generality of the foregoing, the Work under such Corrective Plan shall comply with all of the terms and conditions of the Contract Documents (including all Permits and the Site Restrictions), including that Contractor shall be solely and fully responsible for all costs and expenses associated with any Excess Materials (including Pre-existing Hazardous Materials) resulting from Excavation activities conducted in connection with such Corrective Plan; or
- (ii) pay to Owner an amount equal to [REDACTED] per watt of variance below the Capacity Guarantee (the "*Buy Down Payment*"). Such payment shall be effected by set-off against the payment otherwise due to Contractor at Substantial Completion, with any shortfall being paid by Contractor to Owner in accordance with Section 7.3(e) of this Agreement.

(c) If Contractor shall have submitted a Corrective Plan acceptable to Owner, Contractor shall be able to achieve Substantial Completion (assuming that all other conditions thereto have been fully satisfied) notwithstanding the pending completion of such Corrective Plan, but Owner shall withhold from the payment otherwise due to

Contractor at Substantial Completion an amount equal to the Buy Down Payment. Completion of the Corrective Plan shall be a condition of Final Acceptance. If Contractor successfully completes the Corrective Plan and testing thereunder verifies that the as-built AC capacity of the Project after such corrective action:

- (i) equals or exceeds the Capacity Guarantee, Contractor shall be deemed to have satisfied its obligations with respect to the Capacity Guarantee, in which case Owner shall pay the previously withheld Buy Down Payment to Contractor in accordance with Section 7.3 of this Agreement after Contractor invoices Owner for such amount; or
- (ii) is less than the Capacity Guarantee, then Contractor shall pay to Owner an amount equal to [REDACTED] per watt of variance below the Capacity Guarantee as determined in accordance with such Corrective Plan. Such payment shall be accomplished by Owner setting off Contractor's obligation against the Buy Down Payment withheld from Contractor pursuant to this Paragraph 4(c), with any excess being refunded by Owner to Contractor in accordance with Section 7.3 of this Agreement after Contractor invoices Owner for such amount, or any shortfall being paid by Contractor to Owner in accordance with Section 7.3(e) of this Agreement.

(d) If Contractor fails to submit a Corrective Plan acceptable to Owner and/or Contractor fails to complete the Corrective Plan accepted by Owner within one hundred eighty (180) days after the achievement of Substantial Completion, then Owner shall retain the Buy Down Payment in satisfaction of Contractor's obligations with respect to the Capacity Guarantee. Such retention by Owner shall not affect in any manner whatsoever Contractor's obligation to complete the Work as a condition of Final Acceptance, including any Work required to address, to Owner's satisfaction, any incomplete or otherwise noncompliant activities undertaken in connection with the Corrective Plan.

(e) Contractor shall not be entitled to any adjustment or change to the Fixed Contract Price and/or other compensation of whatever nature if the as-built AC capacity of the Project exceeds the Capacity Guarantee.

6. Illustrative Calculations.

Illustrative Capacity Guarantee Calculation:

Number of installed PV Modules	12,980
Watts per PV Module	300
Installed DC Capacity (watts)	3,894,000
Installed DC Capacity (kilowatts)	3,894
Derate Factor	82 %
Capacity Guarantee (kilowatts AC @ STC)	3,193

Illustrative Capacity Guarantee & Buy Down Amount Calculation:

Cottage Street Solar Project

Nominal DC rating: 3,894 kW

Derate Factor guaranty: 82 %

Capacity Guarantee Chart

	<u>Standard</u> <u>Test Conditions</u>	<u>Field</u> <u>Test Conditions</u>	<u>Field</u> <u>Test Conditions</u>
Irradiance (W/m ²)	1000	900	800
Wind Speed (meter/second)	1	1	1
Air Mass (A.M.)	1.5	1.5	1.5
Ambient Temperature (deg C)	25	25	25
Array Output kW DC	3895	3505	3115
Estimated AC Capacity (@ STC; 82 % Derate Factor)	3193	2874	2555
Scaling Factor	100%	111%	125%
Actual AC Capacity (Field Tested)			2500
Shortfall (Estimated – Actual)			55
Shortfall (Adjusted to STC)			69
Buy Down Payment	[REDACTED]		[REDACTED]

Attachment 2. OEM Specifications

Attachment 3. Production Monitoring

Contractor shall provide a five (5) year baseline of the expected annual kilowatt-hour production of the Project (“*Baseline Production*”). This Baseline Production will be based on the first year expected energy production and calculated as described below:

- Using PV Watts Version 2 for Springfield, Massachusetts;
- Inputs for a 3,894 kW DC fixed tilt solar array, 82% Derate Factor (see Attachment 1 to these Technical Requirements), 20 degree tilt, and 180 degree azimuth;
- The total of these inputs shall equal a total installed DC capacity of the Project, which is 3,894 kW (based on 12,980 PV Modules at 300 watts/PV Module); and
- Years 2 through 5 shall be calculated by multiplying the first year expected energy production by a cumulative annual degradation factor that shall be equal to -0.5% per year.

The following table contains the Baseline Production based on the Base Design:

Year	Annual kWh
1	4,565,333
2	4,542,506
3	4,519,794
4	4,497,195
5	4,474,709

The above referenced kW inputs to PV Watts Version 2 shall be adjusted to account for any kW capacity shortfall as measured by the Capacity Guarantee test pursuant to Attachment 1 of these Technical Requirements.

Commencing at Final Acceptance and continuing for each of the first five (5) years thereafter, Contractor shall determine the Project’s actual annual kilowatt-hour production (“*Actual Production*”). Contractor shall conduct such calculation at the end of each production year using measurements provided by the revenue grade meters installed on the 480v AC side of the inverters (before the step up transformers). Contractor shall also compile the Site condition data as measured and recorded by the DAS.

- For each such year, the Contractor shall compare the Baseline Production to the Actual Production for that year. The results of this comparison shall be included in the annual report (“*Annual Production Report*”). The Annual Production Report shall describe the year’s performance, identifying any material differences, explaining the cause of such differences through a combination of quantitative and qualitative analyses. To the extent that the

Baseline Production relies on assumptions that may vary from actual on-Site conditions the Annual Performance Report shall describe the affect that these conditions contribute to the performance variances. This description shall be grouped by causal categories including, at a minimum:

- Weather (such as irradiance, shading, and temperature, etc.)
- Operations (such as maintenance, array damage, availability, etc.)
- Infrastructure (such as equipment and design, etc.).

For example, Baseline Production relies on Typical Meteorological Year weather assumptions (as part of the PV Watts Version 2 functionality); actual weather conditions throughout any given year are likely to be different. Such differences would be discussed as part of the weather-related causal category.

To the extent that any material variances in performance (a) cannot be reasonably explained, or (b) are determined by Contractor and Owner to be potentially indicative of a pervasive concern, Contractor shall conduct a root cause investigation to understand, explain, and to the extent practicable or as a result of a warranty condition, remedy such variance for future years of production.

With the submission of the Final Design, Contractor shall submit a pro-forma Baseline Production estimate and an example of the Annual Production Report, including descriptions of its key content, analyses and supporting information. At Substantial Completion, Contractor shall submit the Baseline Production estimate that will be used for the 5-year monitoring period, along with all of the associated supporting information.