

CITY OF NORTH ADAMS
City Clerk's Office
October 9, 2014

I hereby notify that at twelve noon today the following items of business have been filed with this office and will be acted upon at the meeting in the City Council Chambers at City Hall, Tuesday evening October 14, 2014 at seven-thirty o'clock according to Section 8, Rules and Orders of the City Council.

Marilyn Gomeau
City Clerk

REGULAR MEETING OF THE CITY COUNCIL
October 14, 2014

Roll Call
Moment of silent prayer
The Pledge
Approval of the minutes of September 23rd.

- 11,382** Communication submitted by Councilor Buddington regarding farming, which was postponed at the meeting of September 10th.
- 11,382-1** An Ordinance amending Chapter 2 of the Revised Ordinances of the City of North Adams entitled "Administration" by adding a new section Article XXXV entitled Right to Farm.
- 11,404** A Resolution supporting the ban of Fracked Gas pipeline and supporting sustainable energy in the Commonwealth of Massachusetts, which was referred to the Public Safety Committee and postponed at the meeting of August 26th.
- 11,212-1a** Mayor's communication #45A regarding the lease for the former landfill, for the Solar Project.
- 11,212-1a** An Order authorizing the Mayor to enter into a lease agreement with Borrego Solar Systems, Inc. at the former landfill.
- 11,409** Mayor's communication #50 regarding two sewer connections in Clarksburg.
- 11,409** An Order granting permission to Ronald Krutiak, 677 North Houghton Street to make connection to the North Adams sewer system.
- 11,410** An Order granting permission to Jamie and Dale Ott, 640 Walker Street to make connection to the North Adams sewer system.
- 11,411** Mayor's communication #51 regarding the Hadley Overpass.
- 11,412** Mayor's communication #52 regarding a report on Heritage State Park (Greylock Market).
- 11,413** Mayor's communication #53 regarding the re-appointment of Paul Senecal to the Mobile Home Rent Control Board, for a term to expire October 14, 2018.

(over)

- 11,414** Mayor's communication #54 recommending the re-appointment of Wayne Wilkinson to the Mobile Home Rent Control Board for a term to expire October 14, 2019.
- 11,415** Mayor's communication #55 recommending the re-appointment of James Morocco to the Mobile Home Rent Control Board for a term to expire October 14, 2017.
- 11,416** Communication submitted by Councilor Lamb regarding a Resolution for the former North Adams Regional Hospital.
- 11,416** A Resolution submitted by Councilor Lamb supporting the reopening of the former North Adams Regional Hospital.
- 11,417** Communication submitted by Councilor Bullett regarding junk motor vehicles in residential areas.
- 11,418** An Order setting the State Election for November 4, 2014 from 7:00am to 8:00pm.
- 11,386-1** Liaison reports for the 3rd quarter of 2014.

**CORRESPONDENCE
LICENSE**

An application submitted by Justin Filiault, 706 Daniels Road, Clarksburg to drive taxi for City Cab, Michael McMillian.

**OPEN FORUM
COUNCILLOR'S & MAYOR'S CONCERNS**



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

45-A

To: North Adams City Council
Re: Lease of the former Landfill for the Solar Project

Dear Honorable Councilors:

As you will recall from our last meeting, our solar project is ready to go with all permits in place.

That said and as discussed I need Council approval to lease the site to the developer per the attached order. For your information and as part of the order, the Lease and Power Purchase Agreement will be sent to you via email due to the length of the document. Should you require a printed copy, please call Rosemari in my office.

I respectfully request approval of the order as presented.

Sincerely,

Richard J. Alcombright
Mayor



City of North Adams

In City Council

October 14, 2014.....

Ordered:

Whereas, the City of North Adams, acting by and through its Mayor, has determined that the installation of a solar energy system (the Solar Project) at the North Adams Municipal Landfill (the "Landfill"), under certain terms and conditions, will result in an economic benefit to the City; and

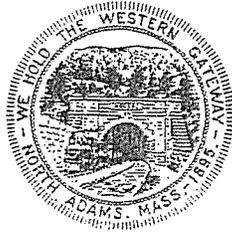
Whereas, in furtherance of the Solar Project, the Mayor has negotiated a Lease Agreement and Power Purchase Agreement with Borrego Solar Systems, Inc for the installation of the Solar Project at the Landfill (the Lease Agreement and the Power Purchase Agreement being attached to this Order and made a part here of); and

Whereas, the City Council has determined that execution of the Lease Agreement and the Power Purchase Agreement is in the best interests of the City.

Now Therefore it is ORDERED

That the City of North Adams enter into the Power Purchase Agreement that is attached to this Order; and that the Mayor be and is hereby authorized to execute and deliver on behalf of the City of North Adams the Power Purchase Agreement in substantially the same form as the Power Purchase Agreement attached hereto; and

Further, that the City of North Adams be and is hereby authorized to lease to Borrego Solar Systems, Inc, in furtherance of the Solar Project, a portion of the land comprising the North Adams Municipal Landfill, as described in the Lease Agreement that is attached to this Order; and that the Mayor be and is hereby authorized to execute and deliver on behalf of the City of North Adams the Lease Agreement in substantially the same form as the Lease Agreement attached hereto.



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

#50

The Honorable City Council
North Adams, Massachusetts

Re: Sewer Connections - Clarksburg

Honorable Members:

A request has been made by Jamie and Dale Ott of 640 Walker Street, Clarksburg, seeking permission to hook into the North Adams sewer system.

A request has been made by Ronald Krutiak of 677 North Houghton Street, Clarksburg, seeking permission to hook into the North Adams sewer system.

All the appropriate safeguards and prerequisites are encompassed in the accompanying orders including language that absolves the City from any ongoing maintenance responsibilities. It should be noted that the Hoosac Water Quality District must give final approval.

I respectfully recommend adoption of the accompanying order.

Respectfully submitted,

Richard J. Alcombright
Mayor



City of North Adams

In City Council

October 14, 2014

.....

Ordered:

That permission is hereby granted Ronald Krutiak of 677 North Houghton Street, Clarksburg, Massachusetts, to make connection to the North Adams sewer system.

AND IT IS FURTHER ORDERED: That the installation is subject to approval by the City of North Adams and that the installation shall not be completed until approval is given by the Superintendent of Public Services.

AND IT IS FURTHER ORDERED: That this permission is granted with the express understanding that the City of North Adams will not be responsible for any inconvenience caused by low water pressure, stoppage of water supply or any other blockage or any other reason and that the service shall be in conformity with the amended agreement for sewer and water installations on file in the Office of the City Clerk of the City of North Adams.

AND IT IS FURTHER ORDERED: That the said Ronald Krutiak shall assume the expense of this installation and shall be responsible for all maintenance thereon and damage therefrom.



City of North Adams

In City Council

October 14, 2014

Ordered:

That permission is hereby granted to Jamie and Dale Ott of 640 Walker Street, Clarksburg, Massachusetts, to make connection to the North Adams sewer system.

AND IT IS FURTHER ORDERED: That the installation is subject to approval by the City of North Adams and that the installation shall not be completed until approval is given by the Superintendent of Public Services.

AND IT IS FURTHER ORDERED: That this permission is granted with the express understanding that the City of North Adams will not be responsible for any inconvenience caused by low water pressure, stoppage of water supply or any other blockage or any other reason and that the service shall be in conformity with the amended agreement for sewer and water installations on file in the Office of the City Clerk of the City of North Adams.

AND IT IS FURTHER ORDERED: That the said Jamie and Dale Ott shall assume the expense of this installation and shall be responsible for all maintenance thereon and damage therefrom.



Town of
CLARKSBURG

111 RIVER ROAD CLARKSBURG, MA 01247

October 1st, 2014

TOWN OFFICES (413) 663-7940

Honorable Mayor Richard Alcombright
City of North Adams
10 Main Street
North Adams, MA 01247

Subject: Sewer Connection – Jamie and Dale Ott 640 Walker St Clarksburg, MA 01247

Mayor Alcombright:

I am writing to request that the City of North Adams allow an additional sewer hookup for Dale and Jamie Ott, for property located at 640 Walker St

A recent Title V inspection by the A1 Septic Service and an engineer hired by Mr. Ott revealed a failed septic system. His property can be found on Clarksburg Town Map 208 Lot 61. Mr. Ott's septic location is upslope from three identified wetlands.

The Town of Clarksburg is in agreement that this would be the best possible solution and would be in compliance with the sewer regulations of the Town.

If there are any questions, concerns or any other information is needed please do not hesitate to contact me at 663-8250. No permits will be issued nor work will be started until we receive notice from the City of North Adams that the connections are approved and all connection fees have been paid in full.

Sincerely,

Carl W. McKinney
Clarksburg Town Administrator

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Town of
CLARKSBURG

111 RIVER ROAD CLARKSBURG, MA 01247

October 1st, 2014

TOWN OFFICES (413) 663-7940

Honorable Mayor Richard Alcombright
City of North Adams
10 Main Street
North Adams, MA 01247

Subject: Sewer Connection – Ronald Krutiak 667 North Houghton St Clarksburg, MA 01247

Mayor Alcombright:

I am writing to request that the City of North Adams allow an additional sewer hookup for Ronald Krutiak, for property located at 667 North Houghton St.

A recent Title V inspection by the A1 Septic Service and an engineer hired by Mr. Krutiak revealed a failed septic system. Additionally, both the Wheeler and Hunterfield streams bisect his property. His property can be found on Clarksburg Town Map 210 Lot 4.

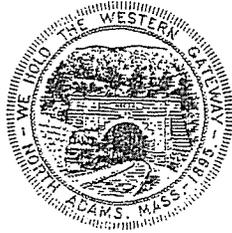
The Town of Clarksburg is in agreement that this would be the best possible solution and would be in compliance with the sewer regulations of the Town.

If there are any questions, concerns or any other information is needed please do not hesitate to contact me at 663-8250. No permits will be issued nor work will be started until we receive notice from the City of North Adams that the connections are approved and all connection fees have been paid in full.

Sincerely,


Carl W. McKinney
Clarksburg Town Administrator

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CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

#51

To: North Adams City Council
Re: Hadley Overpass

Dear Honorable Councilors:

Over the past several months, Councilors and residents have asked me many questions regarding the Hadley overpass.

As we know, this bridge project has been a source of frustration for those travelling north and south along Route 8 in and out of the City. As this project comes to completion, I have reached out to MADOT with the most commonly asked questions and they have provided answers. I am providing the attached Q&A for your information with hopes that these answers will help you and residents understand some of the issues that have delayed the completion.

At the end of the day and hopefully very soon, the bridge will be "completed" and we will have a structure that we can all be proud of. One that offers a better surface, aesthetically pleasing railings and lighting, will last our lifetimes and provide better views into the City.

Once again, this is strictly a communicative tool and I trust it answers most of the frequently asked questions.

Sincerely,

Richard J. Alcombright
Mayor

Answers to the City of North Adams Concerns on the Hadley Bridge 9/29/14

1. *Sometime ago (around 2003 or so), the City took land on the south side of the bridge, received a presentation from MADOT on a "new" bridge at a City Council meeting with plans for a temporary bridge via the Sons of Italy site. The takings and the Son's site would allow traffic flow while an entirely new bridge was being built. At some point there was a decision that the bridge be repaired and not replaced....why? Most folks look at the work that was done and ask this question often.*

The New Bridge option was not buildable due to the inability to gain access across the railroad for the needed temporary traffic management. An 8A detour was assessed and eliminated due to low bridge clearance that would restrict truck traffic into the City.

2. *Why so long? – We understand that there was much more structurally needed than was anticipated.*

The majority of the delay was due to the extra work to repair, replace, and / or rehabilitate the steel truss span over the river. The Contract only identified approximately \$500,000 in steel repairs. The final additional cost for truss steel repairs is approximately \$7,000,000.

Given the accelerated design it was always known that a thorough inspection of the truss steel was necessary during construction. The steel was cleaned sand blasted and primed to allow for the inspection. Bridge experts from MassDOT in Boston and the project designer analyzed each section of the truss and identified all components that needed replacement or repairs. The difficulty was to coordinate the repairs in a manner that was safe for the traveling public in the various stages of construction. Due to live traffic overhead, repairs were very slow because of the load restrictions. Each time an existing piece was to be removed, temporary supports needed to be installed so the truss remained structurally sound.

Also, the stage construction of the superstructure (deck & reinforcement) was delayed due to repairs / replacement of the top steel that could not be identified until the existing deck for that particular stage was removed. Once the deck was removed, deteriorated steel could be identified, and then shop drawings and fabrication began which can take several months in each phase.

Steel repairs began in November 2008 and last piece of steel was replaced in May 2014.

Also, the other item that added substantial time to the project was the repair of the existing piers. Most had been covered with shielding and plastic for years. When this was removed more repairs were necessary than planned for. These added support systems to hold the existing bridge while the existing concrete was removed and live traffic moved overhead.

3. *If true, why didn't the structural assessment at the beginning identify the issues?*

In early 2008, while the various design options were being considered, there was political pressure from the community and at the state level to advertise the project. The project designer used existing inspection reports of the truss to estimate quantities for repairs. There was not sufficient time to gain adequate access or remove the existing paint system for a thorough inspection. The design did add contingency funds to the estimate; however, there was no way of knowing the actual condition of the steel without a thorough inspection which included removal of the existing paint coating.

4. *At each end of the bridge the year "2012" appears....has it really run over by almost 3 years?*

When it was time to construct the end posts, MassDOT personnel grossly underestimated the length of time to address the steel repairs. At the time, project personnel were considering alternatives to perform repairs at a much greater rate, but structural experts did not allow any changes to the support sequencing.

5. *Can you explain all the hairline cracks on the deck, walks and curbs?*

Cracks are expected in a stage construction rehabilitation project. Concrete is poured and takes 28 days to fully cure. To lessen inconvenience, traffic is allowed to travel next to the freshly poured concrete. However, essentially all parts of the bridge are connected thus causing vibrations and live loads during the curing process. Ultimately, the concrete will crack due to the loads and vibrations. All Contracts similar to this construction experience this and MassDOT includes provisions for the Contractor to seal each crack. This sealant is a structural bond that prevents infiltration of moisture.

In addition, an exposed deck surface, like the Hadley has a safety factor built into the design of the bridge deck thickness and essentially the top 2 inches of concrete is a wearing surface and not figured into the structural capacity.

6. *When the painting is complete....are we done?*

No. We still have the issue with the 4 decorative pylons (see #10).

7. *What was the original price tag on the bridge and what is the overrun?*

Original project encumbrance was \$28,144,844.

Projected total cost is \$34,940,052.

8. *How does funding play into this....especially when the project goes over budget and well beyond its initial completion date?*

The District submits Extra Orders or fund requests for project overruns to the Federal Highway Administration (FHWA) and the MassDOT Board with justification for additional work and pricing analysis. The MassDOT Board and FHWA have the final approval on additional work. Funding for this project is 80% Federal Aid and 20% State Funds. Encumbering the additional funds had no impact on the length of time of construction.

- 9. It is understood that the large concrete abutments have not passed testing.....can you confirm or deny and if so....what are the next steps, when will they be taken, what will be the process and how much additional inconvenience will this cause?**

There are no issues with the abutments. The existing abutments remained in place and only minor repairs were performed. There are issues with the 4 decorative pylons (two at each approach) on either end of the truss abutments. The 4 pylons were added to match the existing pylons on the bridge. They sit on the existing truss abutments approaching the river span.

In December 2013, the Resident Engineer noted unusual distress in the pylon concrete. The District asked the project designer to review and repairs were recommended. The District then asked MassDOT's Bridge Section for an independent analysis. After assessing all the data, MassDOT's Bridge Section has recommended the Contractor replace the 4 pylons.

The Contractor is now performing their own analysis in response to MassDOT's direction.

Repairs and / replacement will cause minimal inconvenience to through traffic.

- 10. Does MADOT or the contractor still have the original plaques that were on the bridge and will they be put back up?**

Yes they have been refurbished and will be installed.

- 11. Fully understanding that the MADOT has to "accept" the bridge when complete. Knowing the issues....will the bridge be accepted "with conditions"?**

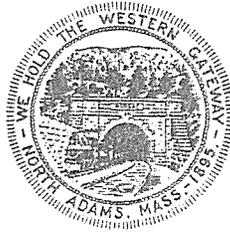
MassDOT has a final inspection with the Contractor and produces a "punch list", which is a list of items that the Contractor must complete before final acceptance. Once the punch list is complete, the project is accepted without conditions. MassDOT will not accept the structure until it meets all contract requirements.

- 12. Can you explain the mayor's role over the last several years regarding the bridge project?**

For the Mayor's entire administrative terms, he has been actively involved in the project schedule, changes that affect the community and changes that may affect the Cities infrastructure and / or interests. Mayor Alcombright has constantly communicated the Cities concerns with the District Highway Director, District Construction Engineer, District Area Engineers and the Resident Engineer. MassDOT and the project has benefited from ideas and suggestions given by the Mayor.

- 13. Will you please let us know the "process" for accepting the bridge? Perception is that the mayor has a role in accepting the bridge.**

The Mayor of North Adams has no role in the final acceptance of the project. The Bridge is owned by MassDOT and MassDOT has full responsibility for the acceptance, construction and future maintenance of the bridge.



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

#52

To: North Adams City Council
Re: Heritage State Park (HSP)

Dear Honorable Councilors:

Shortly after coming into office, I recognized the physical deterioration, cash flow and capital needs at HSP. Deterioration was significant, cash flow was poor and capital needs were many....into the millions. As you will all recall, some 30 years ago, HSP was developed as a partnership between the private and public sector to be owned and managed by the private sector. That model failed and the City took over the operations of HSP.

As I looked at HSP in my first few months, it was not hard to see that there were many issues. The major tenant, Freight Yard Pub was disputing their most current lease which in part, led to a lawsuit against the Redevelopment Authority that is still not settled. Many thousands of square feet were being given away to community efforts, and while the Department of Conservation and Recreation's Hoosac Tunnel Museum and the Historical Society's Museum of Local History were valuable assets to the park, they provided no revenue stream and there were few other rent paying tenants. All buildings and much of the infrastructure were suffering from years of deferred maintenance and the Redevelopment Authority or the City did not have the financial or human capital to bring the park back.

With that and in 2010, I began to take action and at the request of Councilor Wilkinson, the following is a bulleted accounting of our quest to privatize the HSP.

- Did an internal assessment of the Park which determined the need for minimally \$400,000 just to "facelift" the park
- Began discussions internally and with stakeholders for the privatization of the park to get it out of the City's hands

- Developed an RFP looking to lease the park to the private sector and provide for a solid plan for re-vitalization, re-habilitation, restoration, re-branding, re-marketing and management of the Park
- Received a response to the RFP from the North Adams Development Trust
- Response to the RFP continues to be negotiated (through its successor Greylock Market, LLC) who raised some \$1.6 million in private capital to “seed” a much more aggressive financing package
- Met on several occasions with North Adams Redevelopment Authority to discuss both the RFP and response
- Began conversations with Department of Conservation and Recreation (DCR), Department of Transportation (DOT) and Department of Housing and Economic Development (DHED) to gain support for privatization for long term leasing of its operation and maintenance
- Based on response to RFP, we have met several times with DCR, a major stakeholder in the future success as to their connectivity to the Park via the Hoosac Tunnel Museum and the Mt. Greylock Visitors Center
- Received a MassWorks Infrastructure grant for the Park and for \$880,000 which will primarily address the internal circulation system, public gathering spaces, landscaping and amenities. Design is complete and this project should be going out to bid within days. Work with this grant-funded project will be completed by June 30, 2015.
- Worked with MADOT Rail on the acquisition of the rail spur from HSP to the Adams Visitors Center -- Secured \$1,000,000 for the acquisition and that number has grown
- Worked with the Town of Adams, DCR, DOT and Berkshire Scenic Rail (BSR) on a seasonal scenic rail experience from North Adams to Adams Visitors Center – connecting our downtowns.
- Worked with DCR, the Town of Adams and Berkshire Bike Path on the continuation of the bike/recreational trail from Lime Street in Adams to Hodges Cross Rd in North Adams fully setting up the last leg from there to HSP
- Have announced a joint “fully funded” project with the Town of Adams, DCR, DOT and BSR for the acquisition of the North Adams to Adams spur to create a seasonal scenic rail experience
- Have received a letter of commitment from MADOT for a pedestrian tunnel from the rail spur to the Sons of Italy site
- Continue to negotiate with the Greylock Market on lease terms and we are almost there. This has been a long and slow process due to the nature of and complexities of the project and anticipated result, dealing with DCR and their commitment to the existing lease, settlement of the still pending Freight Yard Pub lawsuit and relocation efforts for our North Adams Museum of History.
- Some of Berkshire Scenic Rail’s equipment is currently “moving” and there is a possibility of “holiday” themed rides
- Finally, until the City can “unload” HSP given its current revenue stream and based on the most recent pro-forma, the park is projected to be operating under a large deficit.

I can envision that in three years with this public/private partnership, we will have:

- A fully refurbished park (Greylock Market) with new management, marketing and branding component
- Mt. Greylock pushing upwards of 50,000 people a year past the Greylock Market
- The West Main Street gateway and footbridge being of great appeal to MoCA visitors
- The Ashuwillticook bike path extensions on the way into HSP.....then on to MoCA
- Weekend and seasonal scenic rail experience operating between North Adams and Adams
- An eclectic array of retail, eateries and housing that will appeal to tourists and residents alike p
- Jobs and tax revenue for the City

VISION 2030, the City's master planning process fully identifies and supports this project as one of the key components for the success of our downtown and core. While VISION 2030 and the North Adams Partnership's initiatives will undoubtedly provide for significant opportunities, HSP has been that low-hanging fruit that is being picked right now.

Combining this exciting development with the project you saw at the last meeting regarding the former Brien Center site, the renovation of the Mulcare Building (Mohawk Bar), private investment that is working to clean up some of the River Street corridor, a huge solar project and our Colegrove Park Elementary School, there is a lot going on.

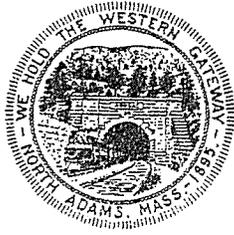
Negotiations are ongoing with the Greylock Market and DCR and I "anticipate" that a lease with Greylock Market will be forthcoming to the Redevelopment Authority within the next 30-60 days. That said and if approved, Greylock Market will then have to secure their financing package and when complete, construction will begin.

I will be happy to answer any questions at the meeting.

Sincerely,



Richard J. Alcombright
Mayor



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

#53

To: North Adams City Council
Re: Appointment to the Mobile Home Rent Control Board

Dear Honorable Councilors:

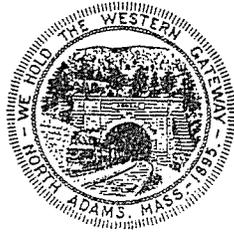
It is with great confidence that I recommend the re-appointment of Paul Senecal to the Rent Control Board for a term to expire October 14, 2018.

Paul has served on the Board for many years and brings significant historical expertise that is so important, as this Board meets infrequently.

I respectfully request confirmation.

Sincerely,

Richard J. Alcombright
Mayor



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

#54

To: North Adams City Council
Re: Appointment to the Mobile Home Rent Control Board

Dear Honorable Councilors:

It is with great confidence that I recommend the re-appointment of Wayne Wilkinson to the Rent Control Board for a term to expire October 14, 2019.

Wayne has served on the Board for many years and brings significant historical expertise that is so important, as this Board meets infrequently.

I respectfully request confirmation.

Sincerely,

Richard J. Alcombright
Mayor



CITY OF NORTH ADAMS, MASSACHUSETTS

Office of the Mayor
Richard J. Alcombright

October 14, 2014

#55

To: North Adams City Council
Re: Appointment to the Mobile Home Rent Control Board

Dear Honorable Councilors:

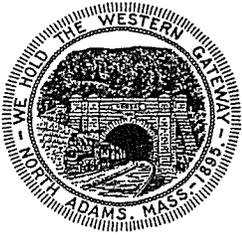
It is with great confidence that I recommend the re-appointment of James Morocco to the Rent Control Board for a term to expire October 14, 2017.

James has served on the Board for many years and brings significant historical expertise that is so important, as this Board meets infrequently.

I respectfully request confirmation.

Sincerely,

Richard J. Alcombright
Mayor



Office of the City Council

City of North Adams

10 Main Street Room 109
North Adams, Massachusetts 01247
(413) 662-3015

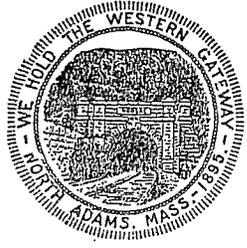
October 14, 2014

Dear Fellow Councilors,

On behalf of the group of concerned citizens that meets weekly on Tuesdays to discuss the current state of affairs around the North Adams Regional Hospital closing, I would like to present the attached resolution. This was presented to me following their meeting on Tuesday October 7th, 2014 to bring to council.

Thank you for your consideration and time

**Sincerely,
Councilor Lamb**



City of North Adams In City Council

October 14, 2014

Whereas:

The sudden and unlawful closure of North Adams Regional Hospital (NARH) on March 28th, 2014 eliminated the only acute inpatient facility and full service Emergency Department serving the 37,000 residents of Northern Berkshire County; and

WHEREAS: the absence of NARH has left most northern Berkshire County residents without access to inpatient services for over 25 miles, ambulance travel of over 45 minutes in case of emergency, and will cost lives and harmfully impact the health and well-being of thousands of Western Massachusetts residents; and

WHEREAS: the Massachusetts Department of Health and Human Service-commissioned Stroudwater Report has confirmed that the health care needs of Northern Berkshire County residents are the greatest in the Commonwealth and has confirmed the need for 18 – 21 acute inpatient beds to meet the needs of northern Berkshire County residents;

THEREFORE BE IT RESOLVED; That the North Adams City Council supports the reopening of the former North Adams Regional Hospital as a full service hospital regardless of whether or not Critical Access Hospital designation is achieved.

AND BE IT FURTHERED RESOLVED; that this Resolution be forwarded to,

Governor Patrick
Senator Downing
State Representative Cariddi
Department of Public Health
Berkshire Health System



City of North Adams

In City Council

October 14, 2014

BE IT ORDAINED by the City Council of the City of North Adams as follows:

That Chapter 2 of the Revised Ordinances of the City of North Adams entitled "Administration" be and is hereby amended by adding the following new section;

Article XXXV. RIGHT TO FARM

2-180. Legislative purpose and intent.

The intent of this article is to encourage the pursuit of agriculture, promote agriculture-based economic opportunities, and protect farmlands within the City by allowing agricultural uses and related activities to function with minimal conflict with abutters and City agencies. This ordinance shall apply to all jurisdictional areas within the City.

2-181. Definitions.

1. "Farming" and "agriculture" shall be defined as in MGL Chapter 128, Section 1A.
2. "Farming" shall encompass activities including, but not limited to, the following:
 - (a) Operation and transportation of slow-moving farm equipment over roads within the City;
 - (b) Control of pests, including, but not limited to, insects, weeds, predators and disease organisms of plants and animals;
 - (c) Application of manure, fertilizers and pesticides;
 - (d) Conducting agriculture-related educational and farm-based recreational activities, including agri-tourism, provided that the activities are related to marketing the agricultural output or services of the farm;
 - (e) Processing and packaging of the agricultural output of the farm and the operation of a farmers' market or farm stand, including signage thereto;
 - (f) Maintenance, repair, or storage of seasonal equipment, or apparatus owned or leased by the farm owner or manager used expressly for the purpose of propagation, processing, management, or sale of the agricultural products; and
 - (g) On-farm relocation of earth and the clearing of ground for farming operations.

2-182. Right to farm declaration.

The right to farm is hereby recognized to exist within the City of North Adams. The above-described agricultural activities may occur on holidays, weekdays, and weekends by night or day and shall include the attendant incidental noise, odors, dust, and fumes associated with normally accepted agricultural practices. It is hereby determined that whatever impact may be caused to others through the normal practice of agriculture is more than offset by the benefits of farming to the neighborhood, community, and society in general. The benefits and protections of this ordinance are intended to apply exclusively to those commercial agricultural and farming operations and activities conducted in accordance with generally accepted agricultural practices. Moreover, nothing in this Right to Farm Ordinance shall be deemed as acquiring any interest in land, or as imposing any land use regulation, which is properly the subject of state statute, regulation, or local zoning law.

2-183. Disclosure notification.

In order to allow prospective purchasers to make informed decisions prior to a real estate transaction and to promote harmony between farmers and their new neighbors after a transaction, the selling landholder shall provide the following written notice to prospective purchasers:

It is the policy of the City of North Adams to conserve, protect and encourage the maintenance and improvement of agricultural land for the production of food, and other agricultural products, and for the keeping of horses as a commercial enterprise and keeping of other animals for food and other agricultural purposes, including bees and fur-bearing animals, and also for its natural and ecological value. This disclosure notification is to inform buyers that the property they are about to acquire lies within a City where farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust and odors. Purchasing, and henceforth occupying, land within North Adams means that one should expect and accept such conditions as a norm and necessary aspect of living in North Adams.

2-184. Severability clause.

If any part of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remainder of this ordinance. The City of North Adams hereby declares the provisions of this ordinance to be severable.



Office of the City Council

City of North Adams

10 Main Street Room 109
North Adams, Massachusetts 01247
(413) 662-3015

Dear Fellow Councilor;

October 14, 2014

It has come to my attention a problem exists in several areas in the City where unregistered or "junk" motor vehicles are being housed in residential areas for prolonged periods of time. I have reviewed the Ordinance referenced above and ask Councilors to do the same to provide input at our next meeting to consider updating/modifying the Ordinance through the General Government Committee.

Respectfully,

Councilor Bullett



City of North Adams

In City Council

October 14, 2014

Ordered:

That the City Clerk is hereby directed to cause to be published and posted as provided in Section 63 of Chapter 54 of the General Laws, the following notice of election:

STATE ELECTION

November 4, 2014

City of North Adams, Massachusetts

In accordance with the provisions of Chapter 54 of the General Laws, notice is hereby given that meetings of the citizens of North Adams, qualified to vote, will be held on Tuesday, ninth day of September, 2014 in the following places, namely:

- Ward 1. Saint Elizabeth's Parish Center, St. Anthony Drive
- Ward 2. Saint Elizabeth's Parish Center, St. Anthony Drive
- Ward 3. Saint Elizabeth's Parish Center, St. Anthony Drive
- Ward 4. Greylock School, Upper Phelps Avenue Entrance
- Ward 5. Saint Elizabeth's Parish Center, St. Anthony Drive

The polls will be opened at 7:00 o'clock in the forenoon, and closed at 8:00 o'clock in the afternoon; and all voters will, in the several wards in which they are entitled to vote, between said hours, give in their votes for:

SENATOR IN CONGRESS

GOVERNOR

LIEUTENANT GOVERNOR

ATTORNEY GENERAL

SECRETARY OF STATE

TREASURER

AUDITOR

REPRESENTATIVE IN CONGRESS

COUNCILOR

SENATOR IN GENERAL COURT

REPRESENTATIVE IN GENERAL COURT

DISTRICT ATTORNEY

REGISTER OF PROBATE

COVER SHEET

LEASE AGREEMENT

(North Adams E-Street Landfill)

Effective Date	October 4, 2013	
Lease Commencement Date	The Effective Date.	
Lessor	Town of North Adams, Massachusetts, a Massachusetts municipal corporation acting by and through its Mayor and City Council	
Lessee	Borrego Solar Systems, Inc., a California Corporation	
Property address	151 E Street in North Adams, Berkshire County, MA.	
Premises	See Section 2(a) of this Lease and Exhibit A.	
Rent	Twelve Thousand Dollars and No Cents (\$12,000.00) per year for the Lease Term.	
Lease Term	The Lease Term, or "Term," is as defined in the Power Purchase Agreement ("PPA").	
Expiration Date	Twenty (20) years from the Commercial Operation Date, unless earlier terminated in accordance with the terms of the Lease, or extended by mutual agreement of the Parties.	
Extension Exercise Notice Deadline	None.	
Addresses for Notices	<p>Lessee: Borrego Solar Systems, Inc. 205 Industrial Avenue East Lowell, MA 01852 Attn:</p> <p>With a copy to</p> <p>Borrego Solar Systems, Inc. 360 22nd St, Suite 600, Oakland, CA 94612 Attn: General Counsel</p>	<p>Lessor: City of North Adams City Hall 10 Main Street North Adams, MA 01247 Attn: Mayor</p> <p>With a copy to</p> <p>North Adams City Solicitor City Hall 10 Main Street North Adams, MA 01247</p>

LEASE AGREEMENT

This Lease Agreement ("**Lease**") is dated as of the date listed on the Cover Sheet, above (the "**Effective Date**"), and is entered into by and between Lessor and Lessee (each a "**Party**" and together, the "**Parties**").

A. The real property owned by Lessor that is the subject of this Lease including any access rights and Easements (such real property, access rights and Easements, the "**Premises**") and the property on which the Premises is located, if larger (the Premises and the larger property of which it is a part, the "**Property**"), is more particularly described in the attached **Exhibit A**, which Property is all or part of the former North Adams E-Street municipal landfill;

B. Lessee desires to obtain the exclusive right to occupy the Premises and to enjoy all the rights necessary for Lessee to occupy the Premises and to develop, design, engineer, access, construct, monitor, install, own, maintain and operate the System to be located upon, on and within the Premises, as well as all the rights necessary or desirable for Lessee to sell the energy generated by such System and any and all other credits, solar renewable energy credits, and any other environmental financial attributes created as a result of such energy generation;

C. Simultaneously with the execution of this Lease, Lessor and Lessee have executed a Power Purchase Agreement (the "**PPA**"), pursuant to which Lessee receives 100 percent of the output of the System.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the receipt and sufficiency of which are acknowledged, and intending to be legally bound hereby, Lessee and Lessor hereby agree to the foregoing recitals and as follows:

1. **Definitions.** Capitalized terms not otherwise defined in this Lease or on the Cover Sheet have the meanings assigned to them in Exhibit C, or if not defined in Exhibit C, as defined in the PPA.

2. **Premises and Related Rights.**

a) Lessee must, on the Construction Commencement Date, deliver to Lessor a Payment Bond and a Completion Bond. Subject to receipt of the first Rent payment and said bonds and the terms of this Lease, Lessor hereby agrees to lease the Premises to Lessee to occupy, develop, design, engineer, construct, access, monitor, install, own, operate and maintain the System for the generation and distribution of electrical power (the "**Permitted Use**"), and for no other purpose. Lessor hereby also agrees, subject to City Council approval, to grant to Lessee and the applicable utility company for a period co-terminus with the Lease, a non-exclusive easement, which is irrevocable during the Lease Term and shall terminate upon the expiration or earlier termination of the Lease, for access, ingress, egress, and utilities to the Premises to the extent necessary to install, interconnect, operate or gain access to the System or the Premises (the "**Easements**"). Lessor shall not exercise its retained rights in the Easements in a manner that will unreasonably interfere with Lessee's use of the Easements for the purposes for which they were granted. The anticipated Easement areas are generally depicted on **Exhibit A** attached hereto and incorporated herein. In the event that Lessee or the utility company desires to make such Easements a public record, Lessor shall execute a commercially reasonable recordable document prepared by Lessee at Lessee's cost to memorialize the Easement, which Lessee may record in the registry where real estate records are customarily filed in the jurisdiction of the Premises. The Parties agree that the exact location of the Premises and Easement areas shall be as mutually agreed to by the Parties and shown on a formal plan, stamped by a registered engineer, to be produced by Lessee at its sole expense upon receipt of all Governmental Approvals necessary for construction of the System, but in all events before construction of the System commences. Such plan shall be consistent with Exhibit A attached to this Lease as of the Effective Date. The Parties agree to amend this Lease to incorporate said plan into **Exhibit A**.

b) Subject to City Council approval, Applicable Laws and Governmental Approvals and the terms of this Lease, Lessee shall have the right, at Lessee's expense, to install utilities at locations reasonably approved by Lessor and to improve the present utilities on the Property if such installation or improvement is necessary for the Permitted Use (including, but not limited to, the installation of emergency power generators).

c) Lessee acknowledges that the Premises consist of, all or in part, a capped landfill, and that Lessee must obtain at its sole cost and expense, among other Governmental Approvals, a Post-Closure Use Permit (the "DEP Permit") from the Massachusetts Department of Environmental Protection ("DEP") to allow Lessee to use the Premises for the Permitted Use. Lessee also acknowledges and agrees that the DEP Permit may impose certain conditions and requirements which are related to the Lessee's use of the Premises and/or the installation, construction and/or operation of the System and which would not have been imposed on Lessor were it not for this Lease, and that Lessee shall be responsible for those conditions and requirements, as well as for the routine mowing of the landfill and control of vegetation within the Premises in order to comply with any DEP requirements (hereinafter collectively referred to as "Lessee's Landfill Obligations"). Lessee agrees that, notwithstanding anything to the contrary in this Lease it (a) shall not conduct any activities on the Premises that will, or are reasonably likely to, penetrate the landfill capping material or otherwise threaten the integrity of the landfill cap or cause the landfill to be out of compliance with any Governmental Approval or Applicable Laws; (b) shall not violate Applicable Laws, including but not limited to the DEP Permit and any laws, regulations, codes, and agreements with respect to the landfill, (c) shall comply with Lessee's Landfill Obligations, at Lessee's sole cost and expense, and (d) shall not interfere with or disrupt (i) Lessor's Activities or (ii) access to said transfer station, or (iii) with Lessor's performance of any duties required of Lessor under Applicable Laws, including but not limited to any laws, regulations, codes, and agreements with respect to the landfill. To the extent that the DEP Permit requires Lessor to satisfy any of the Lessee's Landfill Obligations, Lessee shall pay Lessor for the cost thereof in advance, failing which Lessor may use to pay for such costs such amounts as may otherwise be due Lessee under the PPA, notwithstanding anything to the contrary in the PPA or this Lease.

3. **Rents.** Lessee shall pay annual rent payments to Lessor for rental of the Premises ("**Rent**") which shall be due annually in advance beginning on the Construction Commencement Date and on every one (1) year anniversary thereof during the Lease Term. In the event this Lease is terminated by Lessee in accordance with this Lease prior to the Expiration Date, Lessor shall, subject to the terms of this Lease, refund to Lessee the pre-paid but unearned annual Rent (pro-rated on a daily basis) within ninety (90) days after Lessee removes the System pursuant to the terms of Section 5. Lessor shall submit to Lessee an IRS Form W-9.

All payments becoming due under this Lease and not paid when due shall bear interest at the Stated Rate from the applicable due date until received by Lessor.

4. **Term and Termination; Holdover.**

a) The Lease Term shall commence on the Effective Date and terminate on the Expiration Date, unless earlier terminated in accordance with the provisions of this Lease.

b) Notwithstanding anything to the contrary herein, Lessee may terminate this Lease for the same reasons for which the PPA may be terminated by the Seller in Section 2.3 of the PPA, and Lessor may terminate this Lease for the same reasons for which the PPA may be terminated by the Buyer in Section 2.4 of the PPA.

c) If this Lease is terminated, Lessee shall, at its sole cost and expense, remove the System and restore the Premises in accordance with Section 5. In connection with such removal and restoration, Lessee and its Affiliates and subcontractors shall have a license to access the Premises for the purpose of completing the removal and restoration. For the avoidance of doubt, the Parties understand and acknowledge

that in the event the PPA and Lease are terminated for a Lessor Default, and Lessor is required to pay the Terminal Value to Lessee, such Terminal Value includes the cost of removal and restoration.

d) **Holdover.** If Lessee or any party claiming by, through or under Lessee, retains possession of the Premises or any part thereof after the expiration or termination of this Lease, then Lessor may, at its option, serve written notice upon Lessee that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or, except during any removal of the System pursuant to Section 5 below, (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Lessee hereby agrees that the provisions of this Section shall not constitute a waiver by Lessor of any right of re-entry as set forth in this Lease or as allowed by law; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Lessor's right to terminate this Lease for Lessee's breach of the Lease. This Section 4(d) is in addition to and not a limitation of any other rights and remedies available to Lessor under this Lease, at law or in equity.

5. **Removal of System at Expiration; System Survey.** Upon the expiration or earlier termination of the Lease, Lessee shall, at its sole cost, remove the System and restore the Premises to their original condition by the Removal and Restoration Date. In the event Lessee fails to complete the removal of the System and restoration of the Premises by the Removal and Restoration Date, Lessor shall have the right (but not the obligation), at its option, in its sole discretion, to cause the removal of the System by a qualified contractor who possesses any required licenses and complete restoration of the Premises by drawing on Lessee's Decommissioning Bond to be posted in year eighteen (18) of the Lease Term. Within sixty (60) days after the Commercial Operation Date, Lessee, at Lessee's expense, shall commission a survey of the System by an independent, certified professional engineer to confirm that the System has been constructed in accordance with the terms of this Lease and PPA. Lessee shall furnish a copy of the System survey to Lessor promptly upon its completion.

6. **System Construction; Lessor Acknowledgment.** Prior and as a condition precedent to commencement of construction of the System by Lessee, Lessee shall obtain and pay for all necessary Governmental Approvals and provide all notices to any Governmental Authority required by Applicable Law to be provided as a condition of construction. No later than thirty (30) days before commencement of construction of the System, Lessee shall provide to Lessor for Lessor's review and approval, which shall not be unreasonably withheld or conditioned, copies of all design plans and specifications for the work. If Lessor fails to approve or object to the plans and specifications within ten (10) Business Days, the plans and specifications shall be deemed approved. This review and approval process is in addition to and not a limitation of any other processes required by a Governmental Authority or as a condition of obtaining a Governmental Approval. Lessee shall, with the reasonable cooperation of Lessor, schedule and coordinate all work so as to minimize interference with Lessor's activities on the Property, and shall conduct a pre-construction meeting with Lessor at least fourteen (14) days before commencement of construction. Lessee shall, at its sole cost and expense, cause the System to be designed, engineered, permitted, installed, constructed and removed, and shall perform any other work at the Premises expressly permitted by the terms of this Lease, including but not limited to repairs or modifications to the System, in accordance with Applicable Laws, Governmental Approvals, Good Industry Practice, the requirements of any Governmental Authority and Local Electric Utility, and any applicable manufacturer's warranties and recommendations. Lessee shall be responsible for the security of all materials and equipment and safety of all persons at the Premises during construction of the System, and shall remove all debris at the end of each day during construction. During design and construction of the System, Lessee shall keep Lessor informed on a weekly basis regarding the progress, scheduling and coordination of the work, and shall conduct weekly progress meetings with representatives of Lessor.

Throughout the Lease Term, subject to the terms of this Lease and the PPA and at its sole cost and expense, Lessee shall have the right to clean, repair, replace and dispose of part or all of the System as Lessee in its discretion determines to be necessary. Lessor acknowledges and understands that the System shall consist of

a solar photovoltaic electric generating system, designed to produce electricity and deliver such electricity to the electric interconnection point, including without limitation all of the following: installation equipment; generation facilities, including inverters, fuses, transformers, wiring and output breakers; facilities necessary to connect to the electric interconnection point; and protective and associated equipment; and other equipment reasonably necessary for the operation, monitoring and maintenance of the system.

7. Access to Premises.

a) Commencing on the Effective Date and throughout the Lease Term, Lessee shall have the exclusive right to enter upon the Premises to perform, subject to the terms of this Lease, including without limitation Section 2(c), and excluding subsurface or destructive testing, all effort and labor necessary to carry out tests, inspections, surveys and investigations reasonably necessary for construction of the System (“*Tests*”) subject to advance approval of Lessor, which shall not be unreasonably withheld, conditioned or delayed, provided that Lessee shall indemnify, hold harmless and defend Lessor from and against any and all claims, losses, liabilities, costs and expenses, including reasonable attorneys’ fees, arising out of the Tests, and provided further that Lessee shall reasonably restore the areas of the Tests to their original condition; and to design, engineer, construct, install, inspect, test, operate, upgrade, repair and maintain the System on the Premises. Lessee shall take all due and proper precautions against any injury to the Property and adjacent property and structures. Lessor shall provide and designate space on the Property for the temporary construction lay-down, storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and temporary facilities reasonably necessary during the furnishing, installation, interconnection, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System, provided that Lessee shall, on a daily basis, remove trash and debris from the space so designated, and shall restore the space to its original condition promptly after such temporary use. Lessor and its authorized representatives shall at all times have access to and the right to observe the installation of the System from a location on the Premises reasonably designated by Lessee’s construction manager, subject to compliance with Lessee’s reasonable safety rules and Applicable Laws, provided, however, that Lessor shall not at any time interfere with the installation of the System or enter onto, move, adjust, alter, tamper with or otherwise handle any Lessee equipment or any component of the System.

b) Lessee and Lessee Parties shall at all times exercise reasonable care and conduct themselves in accordance with Applicable Laws and in a professional manner when at the Premises, and shall observe the reasonable requests of Lessor, including, but not limited to, when entering and exiting the Premises, and in its storage of equipment and materials at the Premises. Lessee and Lessee Parties shall not obstruct access to the Property, and shall not interfere with or disrupt Lessor’s use of the Property as a capped municipal landfill, and Lessor’s (or any existing tenants’) use of the portions of the Property that are beyond and not included in the boundaries of the Premises (the “Reserved Property”), or with operations therein. In addition and subject to the right of observation of the installation work provided in the immediately preceding Section and the right of access provided to the Board of Health and DEP under Section 14 of this Lease, Lessor shall from time to time, upon two (2) Business Days’ notice, have access to inspect the Premises during the Lease Term, and shall also be provided access to the books, records, and compilations of data, which pertain to the performance of the obligations, provisions and requirements of this Lease and the PPA, which records shall be accurately kept, including, as to accounting and similar books and records, on a generally recognized accounting basis, and all calculations shall be kept on file in legible form; provided that (i) Lessor shall comply with Lessee’s site safety requirements during any visit to the Premises and (ii) if an inspection of the Premises by Lessor is to proposed to occur during construction of the System, Lessee may reschedule the inspection if conducting an inspection on the proposed date would materially delay Lessee’s construction schedule, or in Lessee’s reasonable opinion, would be unsafe, provided that in the event of an emergency, Lessor may enter the Premises without the need to provide a two-Business-Day notice, but Lessor shall in such event provide notice to Lessee as soon as practicable.

8. **Statutory and Regulatory Compliance.**

Lessee, Lessee Parties, Lessor and the Lessor Parties shall each comply with all applicable provisions of all Applicable Laws of the locality in which the Property is located. Lessee shall not, in its exercise of its rights and obligations under this Lease, act in a manner which interferes with Lessor's performance of its duties under Applicable Law.

9. **Lessee's Ownership of System.** The System is personal property, and shall not attach to or be deemed a part of, or a fixture to, the Premises or Property. Lessee shall be the legal and beneficial owner of the System at all times and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or Property. Lessor acknowledges and agrees that Lessee is the exclusive owner of all Environmental Financial Attributes attributable to the System. Lessor shall, within 30 days of the Effective Date, issue a written memorandum to all department heads requesting that they not make or publish any public statement claiming ownership by Lessor of any Environmental Financial Attribute. The Parties acknowledge and agree that the System shall not be considered an electric public utility, an investor owned utility, a municipal utility, or a merchant power plant otherwise known as an exempt wholesale generator.

10. **Representation and Warranties of the Parties as to Authorization and Enforceability**

Each Party represents and warrants that the execution and delivery by such Party of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other Person other than the Governmental Approvals required to be obtained under the PPA and Lease, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on such Party or any valid order of any court, or regulatory agency or other body having authority to which such Party is subject. This Lease constitutes a legal and valid obligation of such Party, enforceable against it in accordance with its terms, except as may be limited by bankruptcy laws, a Bankruptcy Event, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

11. **Representations, Warranties and Covenants of the Lessor and Lessee**

a) **Lessor's Title to Premises.** Lessor represents, warrants and covenants that Lessor has a lawful fee simple interest in title to the Property, including the Premises. Subject to the use of the Property as a capped municipal landfill and transfer station, and the obligations of Lessor and Lessor Parties under Applicable Laws and Permits in connection with the maintenance, repair, monitoring and testing of the landfill cap and area, and the operation, maintenance, use and repair of the transfer station (collectively, "***Lessor Activities***"), and the terms of the Lease and PPA, and so long as Lessee is not in default of the Lease, Lessor also covenants that Lessee shall have quiet and peaceful possession of the Premises without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof by Lessor, throughout the Lease Term. Lessor's exercise of its rights under the Lease and PPA shall not be considered a breach of the covenant of quiet enjoyment notwithstanding anything to the contrary in the Lease. Lessor may sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property, in whole or in part, without any approval of Lessee necessary, upon thirty (30) days' prior notice thereof to Lessee, which notice shall identify the transferee if known, the area of the Property to be so transferred and the proposed date of transfer, if known. Lessor agrees that this Lease and the Easements shall run with the Premises and survive any transfer of all or any portion of the Premises. In furtherance of the foregoing, Lessor shall cause any such purchaser, lessee, assignee, mortgagee, pledge, secured party or party to whom a lien on the Premises or Property has been granted by Lessor to execute and deliver to Lessee a commercially reasonable document pursuant to which such party acknowledges and consents to the Lessee's rights in the Premises as set forth herein including, without

limitation, an acknowledgement by the transferee that it has no interest in the System, or any work related to such System, and shall not gain any interest in the System by virtue of the Lessor's transfer.

b) No Interference With and Protection of System. Excluding the Lessor Activities, Lessor will not conduct activities on, in or about the Property or Premises that have a reasonable likelihood of causing material damage or material impairment or of materially and adversely affecting the System or operation thereof. The System shall be operated, maintained and repaired by Lessee at its sole cost and expense; provided, that any repair or maintenance costs incurred by Lessee as a result of Lessor's gross negligence or willful misconduct or breach of this Section 11(b) shall be promptly reimbursed to Lessee by Lessor.

c) Non-Disturbance Agreements. Lessor shall obtain a non-disturbance agreement ("*NDA*") in favor of Lessee from any third party who in the future obtains, with Lessor's permission, an interest in the Property or Premises, including, without limitation, any lenders to Lessor, which NDA shall: (i) acknowledge and consent to the Lessee's rights to the Premises and the System under this Lease; (ii) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease; (iii) acknowledge that the third party's interest in the Premises (if any) is subject to Lessee's interest under this Lease; (iv) waives any lien the third party may have in and to the System; and (v) agrees not to disturb Lessee's possession of the Premises.

d) Insolation. Lessor acknowledges and agrees that access to sunlight ("*insolation*") is essential to the value to Lessee of the leasehold interest granted hereunder and that, although Lessor makes no representations and warranties whatsoever regarding the levels of insolation available at the Premises, such access is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not cause any material interference with insolation on and at the Premises. Without limiting the foregoing, except as otherwise required by Applicable Law, and excluding Lessee's Landfill Obligations, Lessor shall not construct or permit to be constructed any new structure on the Premises or on any adjacent property owned by Lessor that could materially and adversely affect insolation levels at the Premises, permit the growth of foliage that could materially and adversely affect insolation levels at the Premises, or directly emit or permit on the Property the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments, other than as may be created by aircraft, that could materially and adversely affect insolation levels at the Premises. In the event any such obstruction occurs and is not promptly removed, Lessee shall have the right to terminate this Lease without penalty upon thirty (30) days written notice to Lessor. Notwithstanding any other provision of this Lease, the Parties agree that (i) Lessee may be irreparably harmed by a breach of the provisions of this Section 11(d), (ii) an award of damages might be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to seek equitable relief.

e) Liens. Lessor shall not create any mortgage, lien (including mechanics', labor or materialman's lien), security interest, or similar encumbrance on or with respect to the System or any interest therein. Lessor further agrees to discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the System.

f) Representations Regarding Security Interest in System. Lessor has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected personal property security interest under the Uniform Commercial Code (the "*Security Interest*") in the System to one or more Financing Parties and Lessor hereby consents to such Security Interest. Lessee acknowledges and agrees that, notwithstanding anything to the contrary in this Lease, the Security Interest and Lessee's leasehold estate shall be subordinate to the interest of the Lessor in the Premises and subject to the terms of this Lease.

g) Utilities. Lessee shall be responsible for obtaining and paying for any electric current and water to the Premises; separate meters for such utilities shall be installed and maintained at Lessee's sole cost and expense, and Lessee shall be responsible for all utility and other related expenses.

12. **Representations, Warranties and Covenants of Lessee.**

a) **Regulatory Status.** Lessee represents and warrants that it is not an electric public utility, investor owned utility, a municipal utility, a merchant power plant or electrical corporation as defined under the laws of the Commonwealth of Massachusetts.

b) **Liens.** Except for the Financing Party's Security Interest or ownership of Lessee's interest in this Lease, Lessee's personal property or the System, Lessee shall not directly or indirectly cause, create, incur, assume or, if arising out of Lessee's activities or omissions at the Premises or pursuant to this Lease, suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Property or Premises and agrees to discharge or bond, at its sole expense, any such encumbrance or interest that attaches to the Property or Premises. Lessee shall save, hold harmless, and indemnify Lessor from and against any and all damages, claims, liabilities, losses, costs and expenses, including attorneys' fees, arising out of any such liens etc. and any failure of Lessee to comply with this Section.

c) **Drawings.** Contractor shall deliver to Lessor as-built drawings for the System no later than thirty (30) days after the Commercial Operation Date.

d) **Discrimination.** Lessee shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Lease, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin, or ancestry.

e) **Subcontractors.** Lessee shall be fully responsible to Lessor for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by the Lessee performing obligations under this Lease, as it is for the acts and omissions of persons directly employed by Lessee. Nothing contained in this Lease shall create any contractual relation between any subcontractor and the Lessor.

f) **Statutory Filings.** Lessee shall file a "Disclosure Statement" listing all its public contractors; a "Truth in Negotiations Certificate" as described in M.G.L. Chapter 7, section 30I; a "Financial Interest Statement" as described in M.G.L. 7, section 14A; and a "Tax Certificate" as described in M.G.L. Chapter 62C, section 49A.

g) **Notice of Damage or Emergency.** Lessee shall immediately notify Lessor if Lessee becomes aware, through discovery or receipt of notice or otherwise, (i) of any damage to or loss of the use of the System or Premises; (ii) of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises; or (iii) of any interruption or material alteration of the energy supply to or from the Premises or the System.

h) **Condition of Premises.** Except as otherwise expressly provided in the last sentence of Section 15 of this Lease, Lessee accepts the Premises "as is" and "with all defects," without benefit of any services, facilities, improvements or modifications to be made by Lessor, without any representation or warranty of any kind by Lessor, and without any recourse against Lessor as to the title to and the nature, condition or usability of the Premises, or as to the use(s) to which the Property and Premises or any part thereof have been put, including, without limitation, the Lessor Activities and the uses described in Section 2(c) of this Lease.

13. **Hazardous Substances.** Lessee shall not introduce, use or exacerbate, or cause to be introduced, used or exacerbated, any Hazardous Substances on, in or under the Premises or Property. If Lessee

becomes aware of any such Hazardous Substances, it shall promptly notify the Lessor of the type and location of such Hazardous Substances in writing. Lessee agrees to indemnify, defend and hold harmless Lessor from and against any and all Environmental Claims, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that Lessor may suffer or incur due to Lessee's failure to comply with this Section 11 or with Environmental Laws. This indemnification obligation specifically includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any governmental authority, and is in addition to, and not a limitation of, any other rights and remedies available to Lessor.

14. **Maintenance.** The System shall be operated and maintained and, as necessary, repaired by Lessee at its sole cost and expense in accordance with the terms of this Lease, Applicable Law, Good Industry Practice, Governmental Approvals and the requirements of any Governmental Authority and the Local Electric Utility, and any applicable manufacturer's warranties and recommendations. Throughout the Lease Term and (for removal of the System only) through the Removal and Restoration Date, Lessee shall have the right, subject to the terms of this Lease and PPA: (i) to add to, remove or modify the System or any part thereof, and (ii) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Lease, including, but not limited to, the right to clean, repair, replace and dispose of all or a part of the System as Lessee in its sole, reasonable discretion determines to be necessary, without prior notice to or consent of Lessor, and all at the sole cost and expense of Lessee, provided that before Lessee performs any material or substantial modifications to the System other than the like-kind replacement of equipment, it shall provide Lessor with plans and specifications for such modifications for Lessor's approval in the same manner as was required for the initial installation of the System under Section 6 of this Lease. Lessee, at its expense, shall install, implement and maintain all security measures required by Applicable Laws, and may, in addition to those measures, use any and all appropriate means of restricting third-party access to the System and Premises, including without limitation, the construction of a fence. Keys to any locks shall be provided to the North Adams Board of Health, which together with its Health Agent(s) and consultants and representatives of the DEP, shall have unrestricted "24/7" access to the Premises for health-and-safety and landfill-related purposes notwithstanding anything to the contrary in this Lease, including, without limitation, Section 7(b) of this Lease; provided that, other than permitting and not interfering with such access and reasonably cooperating with Lessor in connection therewith, Lessee shall not be required to provide assistance for such "24/7" access. Lessee shall coordinate its maintenance, repair and removal activities with Lessor's activities at the Property, and shall, at all times, comply with Applicable Laws and not interfere with Lessor Activities.

In addition, Lessee shall, at its sole cost and expense, comply with Lessee's Landfill Obligations, and keep the Premises in clean, good and safe order and condition, including, but not limited to, by removing all Lessee's trash and waste from the Premises and Property and, where necessary to comply with its responsibilities under the PPA and Lease, including but not limited to this Section, remove any snow and ice from the Premises, and Lessee shall not commit, or permit its agents, employees, representatives or invitees to commit waste to the Premises, provided that construction and maintenance of the System performed in accordance with the terms of the Lease shall not be deemed "waste." If Lessee or Lessee Parties damage the Premises or Property (including, but not limited to, the landfill or landfill cap), or any other property of Lessor or property of any other Lessee at the Property, Lessee shall promptly repair and restore the damaged areas or property at its sole cost and expense without any notice from Lessor. In the event Lessee fails to perform such repair or restoration, Lessor shall have right (but not the obligation), following thirty (30) days notice to Lessee, to cause such repairs or restorations to be made, without any responsibility or liability to Lessee or any other party for any damages to Lessee's or Lessee Parties' property occurring as a result thereof, and Lessee shall forthwith upon demand pay over to Lessor all of the costs and expenses, including attorneys' fees, incurred by Lessor in connection therewith, failing which Lessor may withhold the value of the same from amounts otherwise due Lessee under the PPA or Lease. If and as required by Applicable Laws and/or the DEP, Lessee shall maintain a vegetative cover over the Premises pursuant to Applicable Laws. Lessor shall have no obligation to maintain or repair the Premises or the System, or any security measures implemented by Lessee in connection therewith, notwithstanding anything to the contrary in this Lease.

Lessee and Lessor understands and agree that, notwithstanding anything to the contrary in this Lease, neither Lessee nor Lessor shall not be responsible (i) for the subsidence of all or any part of the landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying or beneath the cap, including, but not limited to, as may result from the decay of waste buried beneath the cap, or (ii) for the effects of such subsidence on the System. For avoidance of doubt, the foregoing shall not relieve Lessee of responsibility for subsidence, if any, caused or materially exacerbated by the System, or for its obligations to operate and maintain the System in accordance with the terms of this Lease.

15. **Temporary Removal of System.** In the event that the landfill cap requires repair or replacement during the term of the Lease through no fault of Lessee, the Lessee shall, at Lessor's sole cost and expense, remove portions of the System as necessary for the repair or replacement work to be performed. Lessor shall provide Lessee with at least ninety (90) days advance written notice of any such repair or replacement work, except in the event of an emergency or order of any court or Governmental Authority. During the period of such removal, those portions of the System that are removed from their original location may be temporarily stored off-site, or the Lessor may designate a location for the temporary storage on other Lessor property, if available. Such storage shall be at Lessor's sole cost and expense and shall conform with industry and manufacturer's requirements for the proper storage of any such equipment. During such temporary storage, the Lessee shall, at Lessor's sole expense, be responsible for the security of the System, and, if the System or any part thereof is temporarily stored on Lessor property, the Lessee shall store it in a manner that prevents the public from gaining access to the System. To the extent that damage to the landfill cap or other areas of the Premises is the result of the acts or omissions of a Party, the other Party shall be entitled to pursue all rights and remedies available to it, including, but not limited to, all administrative penalties or fines imposed on it, and all costs incurred in the restoration of the cap in compliance with the requirements of the DEP and any other Governmental Authority. Unless prohibited by Applicable Laws, the Term of the Lease and PPA shall be extended one day for each day all or part of the System has been removed. Lessee's rent shall be reduced proportionally for the area of the Premises and days from and during which any portion of the System has been removed until such portion of the System is fully restored and operational. Other than as expressly set forth in this Section 15, Lessor shall not be responsible for payment of any other claims or damages as a result of any such removal, including, without limitation, any claims of Lessee's lost profits or lost Environmental Financial Attributes. For the purpose of this Section 15 only, Customer represents that, as of the Effective Date, the North Adams Department of Health is not aware of the need for any significant repairs to the landfill cap that would require removal of any portion of the System.

16. **Insurance.**

(a) **Generally.** Lessee shall maintain the insurance coverages set forth in Exhibit D in full force and effect throughout the Lease Term. Upon execution of this Lease, Lessee shall provide copies of all insurance policies to Lessor, and shall, on each anniversary of the Effective Date, furnish current certificates evidencing that the coverage required is being maintained. Lessor shall maintain the insurance it currently carries for the Property, as shown in Exhibit D(1).

(b) **Waiver of Subrogation.** Lessee hereby waives any right of recovery against Lessor for injury or loss to personal property due to hazards covered by insurance obtained with respect to the Property or Premises, including the improvements and installations thereon.

(c) **System Loss.** In the event of any harm to the System that was not caused in whole or in part by Lessee and, in the reasonable judgment of Lessee, results in total damage, destruction or loss of the System ("***System Loss***"), Lessee shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Lessor in writing whether Lessee is willing, notwithstanding such System Loss, to repair or replace the System and to continue the Lease. In the event that Lessee notifies Lessor that Lessee is not willing to repair or replace the System, the Lease will terminate effective upon the date of Lessor's receipt of such

notification, and Lessee shall, subject to deduction for the repair of any damage to the Property or Premises, be entitled to all proceeds of its insurance policies with respect to the System Loss and Lessor shall, subject to Applicable Laws, promptly return to Lessee any prepaid but unearned rent, provided that Lessee shall have, within sixty (60) days of termination of the Lease, removed the remains of the System and restored the Premises to its original condition.

17. **Liability and Indemnity.**

(a) Lessee shall indemnify, defend, and hold harmless Lessor and Lessor Parties against and from any and all losses, liabilities, damages, claims, costs, charges, demands, and expenses (including reasonable attorneys' fees) for injury or death to Persons, including employees of either Party, and physical damage to property arising out of or in connection with the activities of Lessee and Lessee Parties at the Property, except to the extent caused by the negligent acts or omissions or willful misconduct of the indemnified party. This indemnification obligation is in addition to and not a limitation of any other rights and remedies of Lessor under this Lease, at law or in equity.

(b) Lessee shall not be responsible to Lessor or any third party for any claims, costs or damages, including fines or penalties, not caused, directly or indirectly, in whole or in part, by Lessee or the Lessee Parties.

18. **Casualty.** In the event the Premises or all reasonable access thereto shall be, through no fault of Lessee, so damaged or destroyed by fire or other casualty so as to make the use of the Premises demonstrably unsuitable for the operation and maintenance of the System, as reasonably determined by Lessee, then Lessee may elect to terminate this Lease without penalty upon thirty (30) days written notice to Lessor. In the event of such termination, Lessee shall remove the System and restore the Premises to its original condition in accordance with Section 5. If Lessee does not elect to terminate this Lease in the event of such a casualty, it shall provide written notice to Lessor of that election, and the Rent shall be abated beginning on the date of Lessor's receipt of such notice until such time as the use of the Premises is restored, provided Lessee commences such restoration promptly upon such election and diligently performs the restoration to completion. Lessee shall have the sole responsibility for restoration of the System.

19. **Condemnation.** In the event the Premises or Property are transferred to a condemning authority pursuant to a taking of all or a portion of the Property sufficient in Lessee's reasonable determination to render the Premises demonstrably unsuitable for Lessee's use, Lessee shall have the right to terminate this Lease immediately upon written notice to Lessor. Sale to a purchaser with the power of eminent domain in the face of the exercise of the power shall be treated as a taking by condemnation. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated.

20. **Assignment.**

(a) **Assignment by Lessee.** Lessee shall not sell, transfer or assign (collectively, an "**Assignment**") Lessee's rights or obligations under the Lease or any interest therein, without the prior written consent of Lessor, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Lessor, Lessee may (i) assign the Lease to an Affiliate of Lessee; (ii) assign the Lease in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Lessee and (iii) assign the Lease to one or more Financing Parties as collateral security, or otherwise, in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction). Other than a collateral assignee, any permitted assignee shall agree in writing to comply with all obligations as Lessee under the Lease; and, except for a collateral assignment, Lessee, by making such assignment, shall be deemed to have represented and warranted to Lessor that the assignee shall have, whether itself or directly through contractual arrangements with another entity, the financial ability and

experience to perform the obligations as Lessee under the Lease and as assignee under the assignment agreement between Lessee and assignee. Any assignment that requires Lessor's prior written consent that is made by Lessee without such consent of Lessor shall not release Lessee of its obligations hereunder and shall be void and of no legal effect. Any Financing Party shall be an intended third-party beneficiary of this Section. An assignment by either Party in accordance with this Section 20(a) shall relieve the assignor of its obligations hereunder, except with respect to liabilities arising before the effective date of the assignment, unless such liabilities are assumed by assignee in a written agreement to the reasonable satisfaction of Lessor. Notwithstanding anything to the contrary in this Lease, including this Section 20(a), excluding collateral assignments, this Lease shall not be partially assigned, and shall not be assigned to any person or entity who has not also taken assignment of the PPA.

(b) Acknowledgment of Collateral Assignment. In the event that Lessee identifies a Financing Party in Exhibit E, then Lessor hereby:

(i) acknowledges the collateral assignment by Lessee to the Financing Party of Lessee's right, title and interest in, to and under the Lease, as consented to under Section 20(a);

(ii) acknowledges that the Financing Party as such collateral assignee, or otherwise, shall be entitled to exercise any and all rights of lenders generally with respect to Lessee's interests in the Lease, subject to the terms of this Lease;

(iii) agrees to execute a consent and assignment in favor of such Financing Party in substantially the form attached hereto as Exhibit F; and

(iv) acknowledges that it has been advised that Lessee has granted a Security Interest in the System to a Financing Party and that such Financing Party has relied upon the characterization of the System as personal property, as agreed in the Lease, in accepting such Security Interest as collateral for its financing of the System. Any Financing Party shall be an intended third party beneficiary of this Section.

(c) Assignment by Lessor. Except as otherwise provided herein, Lessor shall not assign the Lease or any interest therein without Lessee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, provided that any permitted assignee shall assume in writing the obligations of Lessor hereunder. It shall not be unreasonable to assign this Lease to any person or entity to whom the fee interest in the Property or Premises is sold or transferred. Any assignment by Lessor without the prior written consent of Lessee shall not release Lessor of its obligations hereunder. Any Financing Party shall be an intended third party beneficiary of this Section.

21. Defaults and Remedies.

A. Events of Default: The following shall constitute an "*Event of Default*" under this Lease:

a) Either Party breaches any material covenant or other material term of the Lease and such breach is not cured within thirty (30) days after the breaching Party's receipt of written notice of default from the non-breaching Party unless such a cure cannot reasonably be cured within thirty (30) days, in which event such breach must be cured within sixty (60) days, failing which the breach shall constitute an Event of Default.

b) Either Party becomes the subject of a Bankruptcy Event.

c) Lessee fails to pay Lessor any amount owed under the Lease or the PILOT within thirty (30) days after receipt of notice from Lessor of such past due amount.

d) Lessee commits a "Seller Default" (defined in the PPA) or Lessor commits a "Buyer Default" (defined in the PPA) under the PPA.

B. **Remedies.** If the Event of Default has occurred and, where a cure period is provided in Section 20A, is not cured within the cure period provided for in that Section, the non-defaulting Party shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including damages, specific performance and/or the right to terminate the Lease upon notice to the defaulting party without penalty, all of which remedies shall be cumulative, except that in the event of Lessee termination for a Lessor Event of Default where Lessee requires Lessor to pay to Lessee the Terminal Value corresponding to the year of termination pursuant to Section 10.4 of the PPA, such payment shall be Lessee's sole and exclusive remedy notwithstanding anything to the contrary in the Lease or PPA.

22. **Notices.** All Notices under this Lease shall be made in writing to the Addresses and Persons specified on the Cover Sheet. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, return receipt requested or email. Email notices shall require confirmation of receipt. Notices shall be deemed to have been received when delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. Rejection or refusal to accept delivery of any notice shall be deemed to be the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 22. Failure to comply strictly with the terms of this provision shall not be held against the Party claiming to have given notice so long as such Party substantially complied with this provision, the receiving Party received the notice in question, and such failure has not materially prejudiced the receiving Party.

23. **Waiver.** The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

24. **Remedies Cumulative.** No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law or in equity or by statute provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute, except that payment of a Terminal Value by Lessor under the Lease or PPA shall constitute Lessee's sole and exclusive remedy notwithstanding anything to the contrary in the Lease or PPA.

25. **Headings.** The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

26. **Survival.** The obligations under Sections 3, 4(c), 4(d), 5, 11, 14, 18, 19, 37, 41, and the indemnification obligations under Sections 7, 12(b), 13 and 17, shall survive the expiration or termination of this Lease for any reason. For the avoidance of doubt, the expiration or earlier termination of this Lease shall not relieve the Parties of duties or liabilities that by their nature should survive such expiration or termination, prior to the term of the applicable statute of limitations.

26. **Governing Law.** This Lease is made and entered into and shall be interpreted in accordance with the applicable laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth sitting in Berkshire County or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. Lessee agrees to accept service of process by mail in accordance with Section 13 of the PPA.

27. **Severability.** If any term, covenant or condition in this Lease shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Lease shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate and negotiated in good faith by the Parties, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

28. **Binding Effect.** This Lease and its rights, privileges, duties and obligations shall bind and inure to the benefit of and be binding upon each of the Parties hereto, together with their respective heirs, personal representatives, successors and permitted assigns.

29. **Counterparts.** This Lease may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

30. **Facsimile Delivery.** This Lease may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

31. **Entire Lease.** This Lease, including the Cover Sheet and all Exhibits, represents the full and complete agreement between the Parties hereto with respect to the lease of the Premises and supersede all prior written or oral negotiations, representations, communications and agreements between said parties with respect to said subject matter. This Lease may be amended only in writing signed by both Lessee and Lessor or their respective successors in interest. Lessor and Lessee each acknowledge that in executing this Lease that party has not relied on any verbal or written understanding, promise, or representation which does not appear in this document.

32. **Further Assurances.** Upon the receipt of a reasonable request from the other Party, subject to Applicable Laws and the terms of this Lease, the receiving Party shall, at the expense of the requesting Party, execute such commercially reasonable additional documents, instruments and assurances and take such reasonable actions as are reasonably necessary to carry out the terms of the Lease, including entering into any reasonable consents, assignments, affidavits, estoppels and other reasonable documents as may be reasonably required by such Party's lender to create, perfect or preserve its collateral interest in such Party's property or such party's rights and obligations under this Lease. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

33. **Dispute Resolution.**

Any dispute under this lease shall be subject to the Dispute Resolution provisions set forth in the PPA.

34. **Force Majeure.**

(a) **Definition.** "**Force Majeure Event**" means any act or event that prevents the affected Party from performing its obligations in accordance with the Lease, but only if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "**Force Majeure Event**" shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused by employees of the affected Party or as a result of such Party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority, including a moratorium on any activities related to the Lease,

provided that such Governmental action/inaction is not the result of the fault or negligence of the affected Party; (vi) the inability of one of the Parties to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Lease, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised reasonable, diligent efforts to obtain such Governmental Approval, and (vi) inability of the System "EPC" contractor to obtain the make and model of the photovoltaic modules or other equipment or materials included in its scope of work, to the extent such inability results from an event that falls within the definition of Force Majeure Event. A Force Majeure Event shall not be based on the economic hardship of either Party or the ability or inability of a Party to obtain financing on acceptable terms and conditions, nor on the ordinary or foreseeable fluctuations or intermittency of insolation.

(b) Excused Performance. Except as otherwise specifically provided in the Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the Lease, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable, diligent efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; and provided, however, that Lessor shall not be excused from making any payments and paying any unpaid amounts due in respect of Electricity if, and only if, such Electricity is delivered to Lessor under the terms of the PPA.

(c) Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has prevented either Party from performing all of its material obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the other Party shall be entitled to terminate the Lease upon ten (10) days' prior written notice. If at the end of such ten (10) day period such Force Majeure Event shall still continue, the Lease shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than liabilities that have accrued or arose prior to such termination).

35. Notice of Lease. Lessor agrees, subject to Applicable Laws and the terms of this Lease, to reasonably cooperate with Lessee in executing any documents necessary to protect Lessee's rights in or use of the Premises. A Notice of Lease in substantially the form attached hereto as Exhibit F may be recorded in place of this Lease by Lessee.

36. No Brokers. Lessor and Lessee hereby represent and warrant to the other that no real estate broker or agent is entitled to a commission in connection with this Lease. In the event any broker or other party claims a commission, the party responsible for the contact with that claimant shall indemnify, defend and hold the other party harmless from that claim, including, without limitation, the payment of any attorneys' fees and costs incurred.

37. No Partnership. This Lease is not intended and shall not be construed to create any partnership or joint venture or any other relationship other than one of 'lessor' and 'lessee', and neither Party shall be deemed the agent of the other Party nor have the authority to act as agent for the other Party.

38. Purchase Option. Lessee hereby grants to Lessor an option to purchase the System for fair market value as determined by an independent appraiser reasonably acceptable to both Lessor and Lessee any time during the six (6) month period immediately prior to the end of the Lease Term. If the Parties cannot reach agreement on an appraiser then each party shall select an appraiser. The two appraisers shall agree on a third appraiser whose determination of the purchase price shall be final.

39. **No Third Party Beneficiary.** Except as otherwise expressly provided in Section 19 (Assignment) of this Lease, this Lease is solely for the benefit of the Parties and no right or cause of action shall accrue to any other party not a signatory to this Lease.

40. **Subordination to Existing Leases, Easements and Rights of Way.** Lessee acknowledges and understands that this Lease and all rights of Lessee hereunder are subject and subordinate to all easements, rights of way, declarations, restrictions and other matters of record. Lessor reserves the right to grant additional leases, easements, leases or rights of way, whether recorded or unrecorded, as may be necessary, subject to Lessee's right of quiet enjoyment under Section 11(a), provided, however, that Lessor may do all such things as may be required by Applicable Laws and any Governmental Authority, including without limitation the DEP, notwithstanding anything to the contrary in this Lease and the PPA.

41. **Additional Terms Regarding Lessor's Obligations.** Notwithstanding anything to the contrary in this Lease:

(a) Subject to Lessor's agreement to execute a consent and assignment agreement in favor of a Financing Party in substantially the form attached hereto as Exhibit E, Lessor shall not be required to execute documents or instruments subsequent to the execution of this Lease that will materially or unreasonably increase Lessor's risk or obligations under this Lease, or result in the waiver of any of Lessor's rights or remedies under this Lease or at law or in equity, or require Lessor to give an opinion or make a statement of fact of which Lessor does not have actual knowledge.

(b) Any requirement that Lessor cooperate with or assist Lessee or take any action shall not require Lessor to improperly interfere with or improperly influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Lessor.

(c) This Lease shall be subject to Applicable Laws.

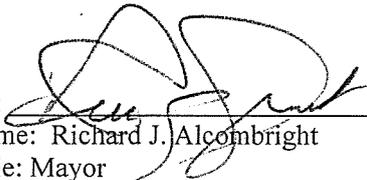
(d) Lessor does not waive any of the rights, remedies, defenses and immunities afforded Lessor, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Lessor hereby reserves.

(e) Nothing in this Lease shall interfere with the North Adams' Assessor in the evaluation, calculation, assessment and collection of taxes in accordance with applicable laws and regulations.

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IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year of the last party to sign below (the "*Effective Date*").

LESSOR:
City of North Adams
By its Mayor

By: 
Name: Richard J. Alcombright
Title: Mayor

LESSEE:
Borrego Solar Systems, Inc.
By:

By: 
Name: William Bush
Title: CFO-

EXHIBIT A
DESCRIPTION OF PROPERTY AND PREMISES

Legal description of the Property and Premises
including a parcel map and/or an abstract of survey, if available.

“Property” means the real property of Lessor located at:

Address: North Adams Landfill, 151 E Street, North Adams, MA 01247 - Map 15 Lot 41

Legal Description: The North Adams Landfill (NAL) property is located at 151 E Street in North Adams, Berkshire County, Massachusetts. The property occupies approximately 260 acres, of which 28.5 acres were used for land-filling. The property is owned by the City of North Adams and ceased operations in 1991. The property is bordered to the north by residential homes, to the south by Bowerman Creek, to the east by an unnamed stream, and to the west by Drury High School.



“Premises” means the approximately 12.7 acres of the Property within the fenceline constructed by Lessee, as generally depicted below, but subject to Section 2(a) of this Lease.

EXHIBIT B SYSTEM SPECIFICATIONS AND SITE PLAN

System Size: Approximately 3,015.3 kW-DC STC

Modules: Yingli (240-300 Watt Solar Modules)

Inverters: SMA, Advanced Energy, PV Powered, or equivalent

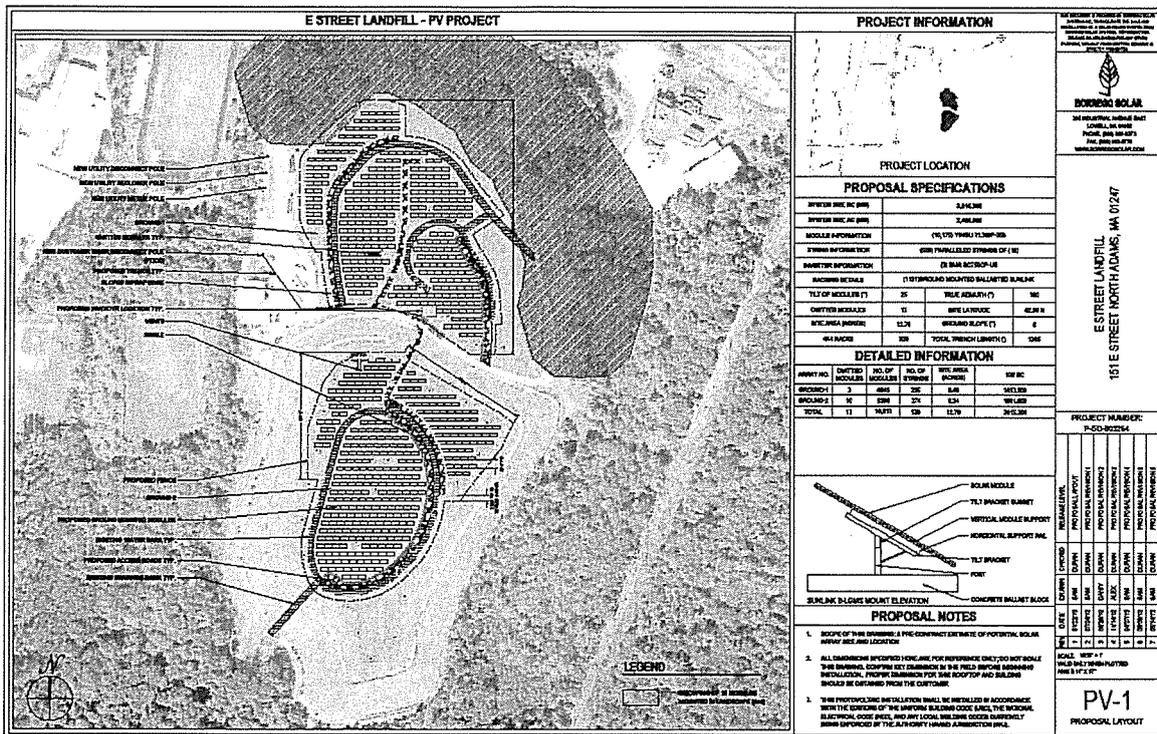


EXHIBIT C
DEFINITIONS

“*Affiliate*” has the meaning set forth in the PPA.

“*Applicable Law*” has the meaning set forth in the PPA.

“*Bankruptcy Event*” has the meaning set forth in the PPA.

“*Business Day*” has the meaning set forth in the PPA.

“*Commercial Operation Date*” has the meaning set forth in the PPA.

“*Completion Bond*” means a performance bond in an amount equal to 100% of the cost of construction of the system from a surety company licensed to do business in the Commonwealth of Massachusetts and whose name appears on U.S. Treasury Dept. Circular 570, expiring no earlier than the Commercial Operation Date.

“*Construction Commencement Date*” means the earlier of the date (i) of commencement of the Tests (as defined in Section 7(a)), (ii) when all Permits necessary for construction of the System have been obtained, (iii) on which System equipment or materials are delivered to the Premises, (iv) on which Lessee signs an Interconnection Services Agreement with the Local Electric Utility, or (v) on which actual construction activities commence at the Premises.

“*CPI*” means the “Consumer Price Index for All Urban Consumers (CPI-U): Electricity in Boston-Brockton-Nashua, MA-NH-ME-CT” as reported by the U.S. Bureau of Labor Statistics.

“*Decommissioning Bond*” means a bond in the amount of \$69,200.00 issued by a surety licensed to do business in Massachusetts and whose name appears on U.S. Treasury Dept. Circular 570 for the decommissioning and removal of the System and return of the land to its original state.

“*Environmental Financial Attributes*” has the meaning set forth in the PPA.

“*Environmental Claims*” means any and all administrative and judicial actions and rulings, claims, causes of action, demands and liability, including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees that any Party may suffer or incur due to the existence of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment, that relate to or arise from such Party’s activities on the Property.

“*Environmental Law*” means and includes, without limitation, any present or future federal, state or local law, whether under common law, statute, rule, regulation or otherwise, requirements under Permits or other authorizations issued with respect thereto, and other orders, decrees, judgments, directive or other requirements of any Governmental Authority relating to or imposing liability or standards of conduct, disclosure or notification with regard to the protection of human health, the environment, ecological conditions, Hazardous Substances or any activity involving Hazardous Substances.

“*Expiration Date*” has the meaning set forth on the Cover Sheet, as such date may be extended by mutual agreement of the Parties.

“*Financing Party*” has the meaning set forth in the PPA.

“*Force Majeure Event*” has the meaning set forth in the PPA.

“*Good Industry Practice*” has the meaning set forth in the PPA.

“*Governmental Approval*” has the meaning set forth in the PPA.

“*Governmental Authority*” has the meaning set forth in the PPA.

“*Hazardous Substances*” means and includes, without limitation, any substance, chemical, material, pollutant, or waste: (i) the presence of which causes a nuisance or trespass of any kind under any applicable Environmental Law; (ii) which is regulated by any Governmental Authority; (iii) is likely to create liability under any Environmental Law because of its toxic, flammable, corrosive, reactive, carcinogenic, mutagenic, infectious, radioactive, or other hazardous property or because of its effect on the environment, natural resources or human health and safety, including but not limited to, flammables and explosives, gasoline, petroleum and petroleum products, asbestos containing materials, polychlorinated biphenyls, lead and lead-based paint, radon, radioactive materials, microbial matter, biological toxins, mycotoxins, mold or mold spores or any hazardous or toxic material, substance or waste which is defined by those or similar terms or is regulated as such by any Governmental Authority; or (iv) which is designated, classified, or regulated as being a hazardous or toxic substance, material, pollutant, waste (or a similar such designation) under any federal, state or local law, regulation or ordinance, including under any Environmental Law.

“*Lease Term*” means the term of years that commences on the Effective Date and expires at 11:59 p.m. on the Expiration Date, unless earlier terminated.

“*Lessee Party*” or “*Lessee Parties*” means, individually or collectively, Lessee, its Affiliates and any of their authorized representatives, agents, employees, managers, contractors, architects and engineers, and each of their respective officers, directors, partners, members, managers, agents, employees, representatives and invitees.

“*Lessor Parties*” means, individually or collectively, Lessor, its Affiliates and any of their authorized representatives, agents, employees, managers and each of their respective officers, directors, partners, members, managers, agents, employees, and representatives.

“*Local Electric Utility*” has the meaning set forth in the PPA.

“*Payment Bond*” means a bond in the amount of \$250,000 from a surety company licensed to do business in the Commonwealth of Massachusetts and whose name appears on U.S. Treasury Dept. Circular 570 securing Lessee’s obligations for payment of laborers, suppliers, and all subcontractors, expiring no earlier than the Commercial Operation Date.

“*Permits*” has the meaning set forth in the PPA.

“*Person*” has the meaning set forth in the PPA.

“*Removal and Restoration Date*” means the date not be later than one hundred-eighty (180) days after either the Expiration Date or the date of earlier termination of this Lease, if applicable, when Lessee shall complete the removal from the Premises of all of Lessee’s property, including, but not limited to, the equipment comprising the System and restore the Premises to its original condition, except for reasonable wear and tear and any subsidence of all or any part of the landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying or beneath the cap, including, but not limited to, as may result from the decay of waste buried beneath the cap, provided that such subsidence was not

caused or exacerbated by Lessee or the System. For avoidance of doubt, “wear and tear” shall not be reasonable if it causes all or any part of the Premises to be out of compliance with any Governmental Approvals or Applicable Law.

“*System*” has the meaning set forth in the PPA.

“*Terminal Value*” has the meaning set forth in the PPA.

EXHIBIT D
LESSEE INSURANCE

The Lessee shall maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies, or acceptable self-insured programs:

- (i) Workers' Compensation at statutory limits and Employer's Liability Coverage in accordance with the Worker's Compensation Act of the Commonwealth of Massachusetts, which policy shall adequately protect all labor employed by the Lessee during the life of this Lease and, if required, Lessee shall provide written evidence to the Awarding Authority that such insurance is in fact in force. Such insurance shall be of at least \$1,000,000.00 per occurrence.
- (ii) Commercial General Liability Coverage (Occurrence Form) with limits of not less than \$2,000,000.00 general annual aggregate, \$1,000,000.00 per occurrence, on which policy the City of North Adams shall be added as an additional insured, and
- (iii) Automobile Liability Coverage of at least \$1,000,000.00 per occurrence for bodily injury and property damage combined single limit, \$100,000 personal with a \$300,000 aggregate, on which policy the City of North Adams shall be added as an additional insured. For any claims resulting from the operation, maintenance and repair of the System, Lessee's insurance coverage shall be primary. Any insurance or self-insurance maintained by Lessor shall be in excess of Lessee's insurance and shall not contribute with it.
- (iv) Professional Liability Insurance in the amount of one million dollars (\$1,000,000) each occurrence, \$2,000,000 annual aggregate limit.
- (v) Property Coverage for materials and supplies being transported by the contractor, as the City's Property Contract provides for coverage only for personal property within 1,000 feet of the premises.
- (vi) Umbrella Liability of at least \$4,000,000/occurrence, on which policy the City of North Adams shall be added as an additional insured.

**EXHIBIT D-1
LESSOR INSURANCE**

The Lessor shall maintain the following automobile and general liability insurance coverages in full force and effect throughout the Term either through insurance policies or self-insured programs:

Automobile liability: \$1,000,000 combined single limit
General liability: \$1,000,000 per occurrence/\$3,000,000 aggregate

EXHIBIT E
FORM OF CONSENT AND ASSIGNMENT

CONSENT AND ASSIGNMENT AGREEMENT

CONSENT AND ASSIGNMENT AGREEMENT dated as of _____, 20___, by and among [], a municipal corporation organized and existing under the laws of [] (together with its successors, designees and assigns, "Contract Party"), [], a [] [company] (together with its successors, designees and assigns, the "Bank"), [], a [] [company] (together with its successors, designees and assigns, the "Investor" and together with the Bank, the "Financing Parties") and [], a limited liability company organized and existing under the laws of Delaware ("Borrower").

WHEREAS, the Contract Party and Borrower have entered into the [] Agreement dated as of [] (as amended, modified and supplemented and in effect from time to time, the "Assigned Agreement");

WHEREAS, Borrower has entered into the Loan Agreement dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, the "Loan Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement) among Borrower and the Bank; and

WHEREAS, as security for the Obligations, Borrower has entered into (i) the [Collateral Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, the "Collateral Agreement") and the (ii) [Security Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, and, together with the Collateral Agreement, the "Security Agreements"), pursuant to which Borrower will assign all of its right, title and interest in, to and under the Assigned Agreement to the Bank (the "Security Interest");

[WHEREAS, Investor has agreed to provide equity financing relating to the Assigned Agreement pursuant to the terms and conditions of the Operating Agreement of [], a [] limited liability company, the sole member of Borrower, dated as of [], 20[], by and between Investor and [], a [] limited liability company (the "Borrower Operating Agreement" and together with the Security Agreements and the Loan Agreement, the "Financing Agreements").]

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. CONSENT TO ASSIGNMENT, ETC.

(a) ***[Financing Parties. Contract Party acknowledges that each of Bank and Investor is a "Financing Party" as defined in the Assigned Agreement and entitled to the benefits thereof in favor of Financing Parties, and that this Consent and Assignment serves as the timely notice identifying Bank and Investor as such pursuant to Exhibit [] of the Assigned Agreement, provided, however, that the Bank shall have exclusive rights as a Financing Party with respect to the***

¹ Note – include if there is a separate equity investor party.

Security Interest in the Assigned Agreement and any related assets.]²

(b) Consent to Assignment. The Contract Party (a) consents in all respects to the collateral assignment of all of Borrower's right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Borrower's rights to receive and obligations to make payments under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the "Assigned Interests"), and (b) acknowledges the right of the Financing Parties or their designee(s) or assignee(s), in the exercise such Financing Party's rights and remedies under the Financing Agreements, to make all demands, give all notices, take all actions and exercise all rights of Borrower under the Assigned Agreement.

(c) Successor or Substitute Owner. The Contract Party and Borrower agree that if a Financing Party notifies the Contract Party (irrespective of any notice to the contrary received by the Contract Party from the Borrower) that an Event of Default has occurred and is continuing under the Financing Agreements, and that the Financing Parties or their designee(s) or assignee(s) has elected to exercise the rights and remedies set forth in the Financing Agreements, then the successor to Borrower and/or purchaser of the System, which shall be a single entity, (such successor or purchaser, the "Substitute Owner") shall be substituted for Borrower under the Assigned Agreement; provided that as a condition to such substitution, on or prior to the date of such substitution, Contract Party shall have been paid any damages due to Contract Party under the Assigned Agreement as of the date of such substitution; and provided further that such Substitute Owner shall be financially and technically qualified to operate the Project and perform its obligations under the Assigned Agreement. Upon such substitution, the Contract Party will recognize the Substitute Owner as counterparty to the Assigned Agreement and will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the original terms thereof. Borrower and Financing Party agree (A) that Contract Party shall be under no obligation to make any inquiry or investigation to verify or confirm the veracity or merits of (i) any notification received by Contract Party from any Financing Party pursuant to this Section 1.3 or (ii) any facts underlying any Event of Default under the Financing Agreements; and (B) that Contract Party's efforts to comply with this Section 1.3 shall not constitute an Event of Default under the Assigned Agreement, and Borrower and Financing Party agree to release, and hereby do release, Contract Party from and forever waive any claims to the contrary.

(d) Right to Cure. The Contract Party, at Financing Parties' expense, shall deliver to the collateral agent or administrative agent or similar person representing the Financing Parties pursuant to the Financing Agreements, concurrently with the delivery thereof to Borrower, a copy of any notice of termination or default given by the Contract Party to Borrower under the Assigned Agreement by delivering a copy of such notice to the address provided in Exhibit B attached to this Consent and Assignment. Notwithstanding the foregoing or the content of Exhibit B or the number of Financing Parties of which the Contract Party receives notice, the Contract Party shall not be required to deliver a copy of such notice to more than one address at any given time. Any Financing Party shall have the right, but not the obligation, to cure any default in the Assigned Agreement within time provided for such cure in the Assigned Agreement. In the event that Borrower has failed to cure any such default within the time provided for a cure in the Assigned Agreement, Contract Party agrees that the Financing Parties may elect to extend such time for up to an additional maximum period of sixty (60) days, provided that Contract Party shall have been paid, as part of any cure by Financing Party, any damages arising from Borrower's default and due to Contract Party

² Note - include if Assigned Agreement provides for a "Financing Party." Language may be adjusted based on inclusion of an investor financing party.

under the terms of the Assigned Agreement.

(e) No Amendments. The Contract Party agrees that it will not, without the prior written consent of the Financing Parties, enter into any material amendment or other material modification of the Assigned Agreement. Borrower and Financing Party agree that Contract Party's efforts to comply with this Section 1.4 shall not constitute an Event of Default under the Assigned Agreement.

(f) No Liability. The Contract Party acknowledges and agrees that neither the Financing Parties nor any of their designee(s) or assignee(s) shall have any liability or obligation under the Assigned Agreement as a result of this Consent and Assignment, nor shall the Financing Parties or any of their designee(s) or assignee(s) be obligated or required to (a) perform any of Borrower's obligations under the Assigned Agreement, except, however, liabilities or obligations arising during any period in which a Financing Party (or its designee(s) or assignee(s)) is a Substitute Owner pursuant to Section 1.3 hereof, in which case the liabilities and obligations of such Substitute Owner shall equal but be no more than that of Borrower under the Assigned Agreement at the time such Substitute Owner became a Substitute Owner.

(g) Performance under Assigned Agreement. The Contract Party shall comply with all material terms and provisions of the Assigned Agreement.

(h) Transfer. The Financing Parties shall have the right to assign all interest in the Assigned Agreement to a person to whom the Project is transferred, provided that such transferee (i) assumes in writing the obligations of Borrower or the Financing Party, as applicable, under the Assigned Agreement and (ii) satisfies the requirements of a Substitute Owner set forth in Section 1.3 hereof. Upon such assignment, the Borrower or the Financing Party, as the case may be, shall be released from any further liability under the Assigned Agreement, except for liabilities arising before the date of such assignment that have not been fulfilled as of the date of the assignment.

2. PAYMENTS UNDER THE ASSIGNED AGREEMENT

(a) Payments. The Contract Party will pay all amounts payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly to the appropriate account specified on Exhibit A hereto or by mail to the person listed in Section 4.1 for the receipt of notices, or to such other person or account as shall be specified from time to time by the Financing Parties to the Contract Party in writing.

(b) No Offset, Etc. All payments required to be made by the Contract Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, except as otherwise expressly allowed by the terms of the Assigned Agreement.

3. REPRESENTATIONS AND WARRANTIES OF THE CONTRACT PARTY

The Contract Party hereby makes the following representations and warranties in favor of the Financing Parties.

(a) Organization. The Contract Party is a municipal corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization,

and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

(b) Authorization. The execution, delivery and performance by the Contract Party of this Consent and Assignment and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of the Contract Party and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Contract Party or (b) any other person, except approvals or consents which have previously been obtained and which are in full force and effect.

(c) Execution and Delivery; Binding Agreements. Each of this Consent and Assignment and the Assigned Agreement are in full force and effect, have been duly executed and delivered on behalf of the Contract Party by the appropriate officers of the Contract Party, constitute the legal, valid and binding obligation of the Contract Party, enforceable against the Contract Party in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

(d) Litigation. There is no litigation, action, suit or proceeding pending against the Contract Party before any court, administrative agency, arbitrator or governmental authority, body or agency having jurisdiction which, if adversely determined, individually or in the aggregate, (a) could materially and adversely affect the performance by the Contract Party of its obligations hereunder or under the Assigned Agreement, (b) could have a material and adverse effect on the financial condition of the Contract Party or (c) seeks a permanent declaration as to the validity, binding effect or enforceability of this Consent and Assignment or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

(e) No Default or Amendment. Neither the Contract Party nor, to the Contract Party's actual knowledge, without inquiry, any other party to the Assigned Agreement is in default of any of its obligations under the Assigned Agreement. The Assigned Agreement has not been materially amended or modified as of the date of this Assigned Agreement.

(f) No Previous Assignments. Except as provided in the Assigned Agreement, the Contract Party has not consented to any previous assignment by Borrower of all or any part of its rights under the Assigned Agreement.

4. MISCELLANEOUS

(a) Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the relevant Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by an internationally recognized courier service, and shall be directed (a) if to the Contract Party or if to Borrower, in accordance with the terms of the Assigned Agreement, and (b) if to the Financing Parties, to the address set forth on Exhibit B hereto.

(b) Governing Law; Submission to Jurisdiction; etc.

(a) THIS CONSENT AND ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF MASSACHUSETTS.

(b) Any legal action or proceeding with respect to this Consent and Assignment and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of Massachusetts, and by execution and delivery of this Consent and Assignment, Borrower, Financing Party and Contract Party each hereby accepts for itself the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof.

(c) Counterparts. *This Consent and Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.*

(d) Headings Descriptive. *The headings of the several sections and subsections of this Consent and Assignment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Assignment.*

(e) Severability. *In case any provision in or obligation under this Consent and Assignment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.*

(f) Amendment, Waiver. *Neither this Consent and Assignment nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Contract Party, the Borrower and the Financing Parties.*

(g) Successors and Assigns. *This Consent and Assignment shall not be assigned by either Party without the written consent of the other Party not to be unreasonably delayed or withheld, provided that it shall not be unreasonable to withhold consent to a partial assignment of this Consent and Assignment. It shall be binding upon the Contract Party and its permitted successors and assigns and shall inure to the benefit of each Financing Party, its designee(s) and assignee(s) and its successors and assigns.*

(h) Further Assurances. *Subject to the last sentence of this Section 4.8, the Contract Party hereby agrees, at Financing Party's expense, to execute and deliver all such reasonable instruments and reasonably cooperate with Financing Party as may be reasonably required to effectuate fully the purposes of this Consent and Assignment. Notwithstanding the foregoing, the Contract Party shall not be required to (i) execute documents or instruments subsequent to the execution of this Consent and Assignment that will materially or unreasonably increase Contract Party's risk or obligations under the Consent and Assignment or the Assigned Agreement, or result in the waiver of any of Contract Party's rights or remedies under the Consent and Assignment or the Assigned Agreement or at law or in equity, or require Contract Party to give an opinion or make a statement of fact of which Contract Party does not have actual knowledge, or (ii) improperly interfere with or improperly influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of the Contract Party.*

(i) Entire Agreement. *This Consent and Assignment and any agreement, document or instrument attached hereto integrate all the terms and conditions mentioned herein or*

incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. The foregoing notwithstanding, this Consent and Assignment does not supersede the Assigned Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Assignment to be duly executed and delivered by their duly authorized officers as of the date first above written.

[CONTRACT PARTY]

By: _____
Name:
Title:

Accepted and Agreed:

[_____] ,
as Bank

By: _____
Name:
Title:

[_____] ,
as Investor

By: _____
Name:
Title:

[_____] ,
as Borrower

By: _____
Name:
Title:

Exhibit A to
Consent and Assignment

[INSERT PAYMENT INSTRUCTIONS]

Exhibit B to
Consent and Assignment

Notices

[]

[]

[]

Fax: []

Email: []

Attention: []

**EXHIBIT F
NOTICE OF LEASE**

In accordance with the provisions of Massachusetts General Laws, Chapter 183, Section 4, notice is hereby given of the Option and Lease Agreement (the "*Lease*") dated of even date herewith.

LESSOR: _____, a _____

LESSEE: Borrego Solar Systems, Inc., a California corporation

DESCRIPTION OF PREMISES: The Premises consists of approximately _____ acres located at the Property owned by Lessor and commonly known as _____, MA. The Property is more particularly described in Exhibit A attached hereto.

For Lessor's title to the Property, reference is herein made to Deed dated _____ and recorded at the _____ County Registry of Deeds at Book _____, Page _____.

OPTION COMMENCEMENT DATE: The date the Lease is fully executed. (_____, 20__)

LEASE COMMENCEMENT DATE: The Effective Date.

TERM OF LEASE: Approximately twenty (20) years with an additional period to remove the System and restore the Premises, as provided in the Lease.

NO FIXTURE: The System, as defined in the Lease, installed and operated by Lessee at the Premises shall not be deemed a fixture. The System is Lessee's personal property and Lessor has no right, title or interest in the System. Further, Lessor has waived all right of levy for rent, all claims and demands against the System and all rights it may have to place a lien on the System.

LESSEE:
BORREGO SOLAR SYSTEMS, INC.

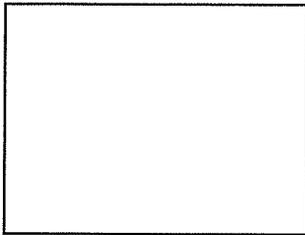
LESSOR:

By: _____
Name: _____
Title: _____
Duly Authorized
Date: _____

By: _____
Name: _____
Title: _____
Duly Authorized
Date: _____

COMMONWEALTH OF MASSACHUSETTS)
) ss.
COUNTY OF _____)

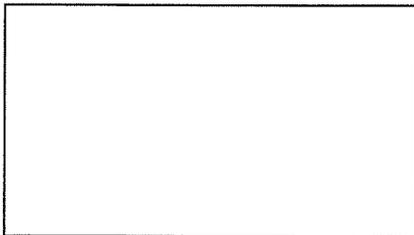
On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (*name of document signer*), proved **to me through satisfactory evidence of identification, which were** _____ (*source of identification*) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public
Print Name _____
My commission expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (*name of document signer*), proved **to me through satisfactory evidence of identification, which were** _____ (*source of identification*) to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.



Notary Public
Print Name _____
My commission expires _____

(Use this space for notary stamp/seal)

**Memorandum of Lease Exhibit A
Legal Description**

The Property is legally described as follows:

The North Adams Landfill (NAL) property is located at 151 E Street in North Adams, Berkshire County, Massachusetts. The property occupies approximately 260 acres, of which 28.5 acres were used for land-filling. The property is owned by the City of North Adams and ceased operations in 1991. The property is bordered to the north by residential homes, to the south by Bowerman Creek, to the east by an unnamed stream, and to the west by Drury High School.

COVER SHEET

POWER PURCHASE AGREEMENT

(North Adams E-Street Landfill)

Effective Date	October 4, 2013	
kWh Rate	\$0.0787 per kilowatt hour	
Rate Escalator	2.0%	
Buyer	City of North Adams	
Seller	Borrego Solar Systems Inc.	
Facility address	See Exhibit E	
Facility size	See Exhibit E	
Commercial Operation Date	No later than 365 Days from Effective Date	
Commercial Operation Deadline	No later than 365 Days from Effective Date	
Initial Term	20 years from Commercial Operation Date	
Extension Exercise Notice Deadline	None	
Addresses for Notices	<p>Seller: Borrego Solar Systems, Inc. 205 Industrial Avenue East Lowell, MA 01852</p> <p>With a copy to:</p> <p>Attn: General Counsel With a copy to: Borrego Solar Systems, Inc. 360 22nd St, Suite 600, Oakland, CA 94612 Attn: General Counsel</p>	<p>Buyer: City of North Adams City Hall 10 Main Street North Adams, MA 01247 Attn: Mayor</p> <p>With a copy to</p> <p>North Adams City Solicitor City Hall 10 Main Street North Adams, MA 01247</p>

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2.	TERM AND SELLER CONDITIONS.....	2

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EXHIBITS

<u>EXHIBIT A</u>	DEFINITIONS
<u>EXHIBIT B</u>	KWH RATE AND TERMINAL VALUES
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<u>EXHIBIT E</u>	SYSTEM SPECIFICATIONS
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<u>EXHIBIT H</u>	PRICE ADJUSTMENT FOR CERTAIN GOVERNMENTAL CHARGE

POWER PURCHASE AGREEMENT

This Power Purchase Agreement is made and entered into as of date listed on the Cover Sheet, above ("Effective Date"), by Borrego Solar Systems, Inc., a California corporation ("Seller") and City of North Adams, Massachusetts, a municipal corporation and political subdivision of Massachusetts ("Buyer"). Seller and Buyer may be referred to herein collectively as the "*Parties*," and individually as a "*Party*."

Recitals

A. In July 2012, Buyer published a Request for Proposals ("RFP") for the leasing of land for the installation of third-party financed, owned and operated solar PV systems, from which systems Buyer would receive 100 percent of the electricity output and purchase net metering credits generated thereby pursuant to a power purchase agreement;

B. Seller submitted a proposal in response to the RFP, and Buyer selected Seller as the successful proposer, and therefore, Seller plans to construct a solar PV system, as more fully described in Exhibit E ("System") at the site located at the E-Street Landfill site, North Adams, Massachusetts, as more particularly described in Exhibit D ("Premises").

C. It is an essential purpose of this Agreement, and the Parties therefore intend, that pursuant to the Net Metering Rules, the System shall qualify for a Public Cap Allocation and constitute a single Net Metering Facility of a Municipality or Other Governmental Entity having a single utility meter and interconnected at a single interconnection point, and will generate Net Metering Credits.

D. Subject to the terms and conditions of this Agreement, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the electricity generated by the System during the Term, so that Buyer, as Host Customer, is awarded all Net Metering Credits generated by the System and is able to allocate all such Net Metering Credits for use in offsetting the utility bills associated with other Buyer utility accounts.

E. Pursuant to the Lease executed simultaneously herewith, Buyer desires to Lease to Seller, and Seller desires to Lease from Buyer, the "Premises" for installation of the System.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and other good and valuable consideration the sufficiency and receipt of which are acknowledged by the Parties, and intending to be legally bound hereby, each Party hereby agrees as follows:

1. DEFINITIONS; INTERPRETATION.

1.1 Definitions. Except as otherwise defined on the Cover Sheet or elsewhere in the Agreement, capitalized words and phrases shall be defined as set forth on Exhibit A.

1.2 Interpretation. The captions or headings in the Agreement are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include," "includes," and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof," "herein," and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement.

Except as the context otherwise indicates, all references to “Articles” and “Sections” in this Agreement refer to the Articles and Sections of this Agreement.

2. TERM AND SELLER CONDITIONS.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for twenty (20) years from the Commercial Operation Date (“Initial Term”), unless terminated earlier in accordance with the terms of this Agreement, or upon the termination of the Lease, in which event this Agreement shall terminate simultaneously therewith. After the Initial Term, the Agreement may be renewed for up to two (2) additional five (5) year terms provided that the Parties mutually agree in writing to an amendment to this Agreement and the Lease for any such renewal term (each a “Renewal Term”) pursuant to the following schedule: If written notice of renewal is given by either Party to the other Party at least two hundred and ten (210) days prior to the expiration of the Initial Term then the other Party may provide its written consent to renew the Agreement within sixty (60) days of the request to renew. If such consent is not provided within such sixty (60) day period, the Agreement shall expire as of the last day of the Initial Term. The Initial Term and the subsequent Renewal Terms, if any, are referred to collectively as the “Term”. The kWh Rate, Terminal Values, and Estimated Annual Production values for any Renewal Term shall be mutually agreed to by the Parties on or before the first day of any such Renewal Term.

2.2 Breach; Termination. In the event that the Agreement is terminated by Seller as a result of an uncured Buyer breach, Buyer shall pay damages to the Seller in accordance with Section 10 hereof. In the event that the Agreement is terminated by Buyer as a result of an uncured Seller breach, Seller shall pay damages to the Buyer in accordance with Section 10 hereof.

2.3 Seller Conditions of the Agreement. In the event that any of the following events or circumstances occurs prior to the Commercial Operation Date through no fault of its own, Seller may (at its sole discretion) terminate the Agreement, with thirty (30) days’ written notice to Buyer, in which case neither Party shall have any liability to the other Party:

(a) Seller determines, based solely on information acquired after the Effective Date, that the Premises, as is, are materially insufficient to accommodate the System, or would materially increase the cost of Installation Work, or would materially and adversely affect the Electricity production from the System and Seller has made commercially reasonable and diligent efforts to locate and secure alternative site(s) at commercially reasonable costs but has not been able to do so.

(b) There is a material, adverse change in the Environmental Financial Attributes of the System or the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that materially and adversely affects the economics of the installation for Seller or its investors, including any Financing Party.

(c) Seller is unable to obtain financing for the System on terms and conditions reasonably satisfactory to it, and Seller has made commercially reasonable and diligent efforts to obtain such financing but has not been able to do so.

(d) There has been a material, adverse change in the rights of Buyer to occupy the Premises.

(e) Seller has not, despite Seller’s commercially reasonable and diligent efforts to apply for and obtain approval of interconnection services, received evidence reasonably expected and reasonably satisfactory to it that interconnection services will be available with respect to the System.

(f) Seller has not received all required approvals or Permits from applicable Governmental Authorities in a manner timely enough to allow Seller to begin construction and satisfy the Commercial Operation Deadline and Seller has made commercially reasonable and diligent efforts to obtain such required environmental approvals or Permits in a timely manner.

(g) Seller has been unable, reasonably and in good faith, to agree to a payment in lieu of tax agreement with Buyer on terms reasonably acceptable to Seller, and Seller has made commercially reasonable and diligent efforts to enter into such an agreement.

2.4 Buyer Conditions of the Agreement. In the event that the following has occurred, through no fault of Buyer, Buyer may (at its sole discretion, and no later than the Commercial Operation Date) terminate the Agreement, on thirty (30) days' notice to Seller, in which case neither Party shall have any liability to the other:

(a) The Commercial Operation Date has not occurred on or before the Commercial Operation Deadline as that term is defined in Exhibit A; provided, that Buyer shall not have such right to terminate if, within such thirty (30) day notice period, Seller elects in writing to Buyer to pay Buyer, on a monthly basis, a payment (the "Elective Delay Payment") equal to \$3,000 per month. In the event Seller so elects, it shall make the first Elective Delay Payment within such 30-day notice period, which shall represent payment for said 30-day period. Seller shall make each future Elective Delay Payment in advance by the fifth day of each calendar month. Seller's option to make such payments, if exercised, shall continue until the Commercial Operation Date has occurred unless terminated earlier in accordance with the provisions of this Agreement, including without limitation a termination of this Agreement without penalty by Buyer under this Section 2.4(a) upon ten (10) days' notice to Seller in the event of Seller's failure to timely make monthly Elective Delay Payments in accordance with this Section. The Elective Delay Payment shall be pro-rated for any partial month. The foregoing notwithstanding, and regardless of Seller's election to make Elective Delay Payments, if the Commercial Operations Date has not occurred within 180 calendar days from the Commercial Operation Deadline, Buyer may elect, in its sole discretion, to terminate this Agreement without penalty upon ten (10) days' notice to Seller, and such 180-day period shall not be extended for any Force Majeure Event notwithstanding anything to the contrary in this Agreement.

(b) The System has not been qualified as a Net Metering Facility of a Municipality or Other Governmental Entity, and Seller has not certified in writing to Buyer, before the Commercial Operations Date, that such qualification has been obtained.

(c) A Cap Allocation for the System under the Public Cap pursuant to the DPU's System of Assurance of Net Metering Eligibility has not been applied for within ten (10) business days of Seller's receipt of (i) an Interconnection Service Agreement from the LEU and (ii) all necessary governmental permits and approvals to construct the System as required for a Cap Allocation by the DPU under the System of Assurance of Net Metering Eligibility.

2.5 Environmental Compliance. Seller shall comply with the applicable requirements of any environmental laws and regulations.

3. SYSTEM OPERATIONS.

3.1 Seller as Owner and Operator. Seller shall be the legal and beneficial owner of the System at all times. The System shall be operated and maintained and, as necessary, repaired by Seller at its sole cost and expense in accordance with the terms of this Agreement and the Lease, Applicable Law, Good Industry Practice, Governmental Approvals, and any applicable manufacturer's warranties and

recommendations. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code and shall not attach to or be deemed a part of, or fixture to, the Premises. Seller shall construct, operate and maintain the System in accordance with the terms of this Agreement and the Lease, Applicable Law, Good Industry Practice, and applicable manufacturers' warranties and recommendations, if any.

3.2 Metering. Seller, as Interconnection Customer and at Seller's cost, shall have the LEU install and maintain the LEU Meter for the measurement of electricity generated by the System and delivered to the LEU's electric grid. The LEU Meter (and any other meters installed by Seller) shall be installed, operated and maintained by Seller in compliance with all requirements of the applicable LEU and the ISO, the terms of this Agreement and the Lease, Applicable Law, Good Industry Practice, and applicable manufacturers' warranties and recommendations, if any.

(a) Meter Reading. Readings of the LEU Meter shall be conclusive as to the amount of Electricity generated by the System; provided that if the LEU Meter is out of service, is discovered to be inaccurate pursuant to Section 3.2(c)(iv), or registers inaccurately, the amount of Electricity generated by the System shall be determined in accordance with the LEU's applicable standards. If there are no such standards and the LEU approves, if such approval is required, the amount of Electricity shall be determined by estimating by reference to quantities measured during periods of similar conditions when the LEU Meter was registering accurately. Seller shall read the LEU Meter at the end of each calendar month, and shall record the amount of Electricity generated by the System and credited to Buyer. The LEU Meter shall be used as the basis for calculating the Electricity Payments due under the Agreement.

(b) Regularly Scheduled Testing. Seller shall, at its own expense, have the LEU Meter tested in accordance with the LEU's applicable standards for meter testing, but no less than every two (2) years, by an independent third party with expertise in such testing. Seller shall notify Buyer within ten (10) Business Days in advance of each test, and Buyer shall have the right to attend any test provided that Buyer or Buyer's agent complies with all reasonable safety rules and requests of the independent third party performing such testing. Seller shall provide copies of the results of the LEU Meter test to Buyer in a timely manner. In addition, as set forth in Section 3.2(c), either Party, at its own expense, shall have the right to have the LEU Meter tested at any time throughout the Term.

(c) Testing and Correction. Testing and correction of the LEU Meter shall be done in accordance with the LEU's applicable standards for meter testing. If there are no such standards and the LEU approves, if such approval is necessary, the following steps shall be taken to resolve any disputes regarding the accuracy of the LEU Meter:

(i) If either Party disputes the accuracy or condition of the LEU Meter, such Party shall so advise the other Party in writing.

(ii) The non-disputing Party shall, within fifteen (15) Business Days after receiving such notice from the disputing Party, advise the non-disputing Party in writing as to the disputing position concerning the accuracy of the LEU Meter and the non-disputing Party's reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an independent third party to test the LEU Meter.

(iv) If the LEU Meter is found to be inaccurate by not more than 2%, any previous recordings of the LEU Meter shall be deemed accurate, and the Party disputing the accuracy or condition of the LEU Meter shall bear the cost of inspection and testing of the LEU Meter. If the LEU

Meter is found to be inaccurate by more than 2% or if such LEU Meter is for any reason out of service or fails to register, then (x) Seller shall promptly cause any such LEU Meter found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, or replace the LEU Meter if correction is not practicable, (y) the Parties shall estimate the correct amounts of Electricity delivered for a period including the month in which the test occurs and all months extending back to and including the month including the mid-point of the period between the current meter test and the last test date on which the LEU Meter was found to be accurate within the allowed range and Seller shall either invoice or credit Buyer for the difference between the amounts previously paid and the amounts that would have been paid based on the correct amounts of Electricity delivered, and (z) Seller shall bear the cost of inspecting and correcting the LEU Meter.

(d) Seller will employ System monitoring systems, utilizing instantaneous and historic performance data, via a web-based portal to which the Buyer and its personnel shall have 24/7 access. The monitoring systems will post production data offline in fifteen (15) minute intervals and offer custom reporting that can calculate average, accumulated and total output over a designated period of time. The monitoring systems will also measure environmental factors including ambient temperature and solar irradiation, detailing current weather conditions so as to allow determination of whether weather patterns are affecting generation. Additionally, each inverter will be equipped with production alarms that are triggered in the event of a System failure, such that Seller will be notified immediately via email sent from the inverter if there is ever a problem with the System's production, so that output issues are identified and addressed by Seller promptly. Provider shall also provide Buyer, at no cost, with a data-monitoring LED display to be installed at a location of Customer's choosing. Such display shall be web-enabled to demonstrate near real-time performance.

4. DELIVERY OF POWER SERVICES.

4.1 Purchase Requirement. Seller shall deliver all Electricity generated by the System to Buyer at the Point of Delivery free and clear of any liens, claims, security interests and encumbrances of any kind, and Buyer shall accept and purchase such Electricity from Seller, beginning on the Commercial Operation Date until the end of the Term in accordance with the terms of this Agreement. Title and risk of loss to the Electricity shall pass from Seller to Buyer at the Point of Delivery. Buyer agrees to purchase one hundred percent (100%) of the Electricity generated during the Term, subject to the terms of this Agreement.

4.2 Estimated Annual Production. The Estimated Annual Production for each year of the Initial Term is set as forth in Exhibit C. Buyer acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of output from the System is guaranteed in amount or time of delivery except as provided for herein. Nevertheless, beginning on the Commercial Operation Date, the System shall produce not less than ninety percent (90%) of the applicable Estimated Annual Production (the "Minimum Output Requirement") during the Initial Term, measured on a rolling, three-year, cumulative basis, unless, and then only to the extent that, the failure to satisfy the Minimum Output Requirement is due to a Force Majeure Event or the removal or all or any part of the System pursuant to Section 15 (Temporary Removal of the System) of the Lease. Subject to that proviso, if as of any anniversary of the Commercial Operation Date beginning on the third anniversary of such date, the actual output of the System for the prior three (3) years (the "Actual System Output") does not equal or exceed the Minimum Output Requirement for such three-year period, in its next invoice Seller shall credit Buyer an amount equal to the following: the product of (A) the positive difference, if any, of the average value of a Net Metering Credit during each three-year period minus the applicable kWh Rate hereunder, multiplied by (B) the difference between the Minimum Output Requirement for each such three-year period and the Actual System Output for each such three-year period.

4.3 Environmental Financial Attributes and Renewable Energy Credits. Buyer's purchase of Electricity does not include Environmental Financial Attributes or Renewable Energy Credits, ownership of which shall be retained by Seller to be marketed or disposed of at Seller's sole discretion. Buyer disclaims any right to Environmental Financial Attributes or Renewable Energy Credits based upon the installation or operation of the System at the Premises, and shall reasonably cooperate with Seller as reasonably necessary to fulfill the requirements of this Section.

4.4 Net Metering Credits. All interest in and title to any and all Net Metering Credits generated or created during the Term in connection with the operation of the System and the delivery of Electricity to Buyer, together with the right to allocate such Net Metering Credits or receive cash payments in connection with the surrender or transfer of such Net Metering Credits, shall rest solely with Buyer.

4.5 Title to System. Throughout the duration of the Agreement, Seller or Seller's Financing Parties shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of the Seller or Seller's Financing Party and shall not attach to, or be deemed a part of, or a fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.

5 PRICE AND PAYMENT.

5.1 Consideration. Commencing on the Commercial Operation Date, Buyer shall pay to Seller (i) a monthly payment (the "Electricity Payment") for the Electricity generated by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate and (ii) any Property Tax Surcharge payable in accordance with Exhibit H.

5.2 Invoice. Seller shall invoice Buyer on or about the first day of each month (each, an "Invoice Date") for the Electricity Payment for Electricity that is delivered to the Point of Delivery in the immediately preceding month and any Property Tax Surcharge that may be payable in accordance with Exhibit H, commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the email account and to the address provided by Buyer by regular first class mail postage prepaid.

5.3 Time of Payment. Except to the extent permitted by Section 5.5, Buyer shall pay all amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

5.4 Method of Payment. Buyer shall make all payments under the Agreement by mail or by electronic funds transfer in immediately available funds to the account designated by Seller from time to time. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All undisputed payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and except as specifically set forth herein, not subject to reduction, withholding, set-off, or adjustment of any kind.

5.5 Disputed Payments. If a *bona fide* dispute arises with respect to any invoice, the Party disputing such invoice shall not be deemed in default under the Agreement due to nonpayment of invoice amounts disputed in good faith, and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. To resolve any dispute regarding invoices the Parties shall use the procedures set forth in Section 14(c). If an amount disputed by either Party is deemed to have been due pursuant to the applicable invoice, interest shall accrue from the original due date at the Stated Rate.

5.6 Cost Reimbursement. Seller shall make the following payments to Buyer as stated below.

5.6.1 **\$10,000 Payment**: Seller will pay to Buyer \$3,333.33 within forty-five (45) days following the Parties' execution of this Agreement.

5.6.2 **\$50,000 Payment**: Seller will pay to Buyer \$16,666.67 within forty-five (45) days following the closing of project financing for the System. Seller shall notify Buyer of the closing in writing within ten calendar days following the closing.

5.6.3 **\$50,000 Fee Reimbursement**: Within forty-five (45) days following the later of (i) the Commercial Operation Date or (ii) Seller's receipt of itemized invoices setting forth the professional fees (including but not limited to legal, engineering and project advisory services) incurred by Buyer in negotiating this Agreement and/or any Additional PPA(s), Seller shall reimburse Buyer for up to \$50,000.00 of such costs.

6 GENERAL COVENANTS.

6.1 Mutual Covenants Relating to Net Metering.

a. Subject to the provisions of this Agreement, each of Buyer and Seller agree to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all approvals necessary for the System to be eligible for and participate in Net Metering.

b. So long as any such amendment will materially benefit a Party without material detriment to the other Party, the Parties commit to negotiate in good faith to amend this Agreement if necessary to conform to any rule(s) or regulation(s) regarding Net Metering and ensure that the System is eligible for Net Metering.

6.2 Seller's Covenants. In addition to Seller's other obligations set forth in this Agreement and the Lease, Seller covenants and agrees to the following:

6.2.1 System Condition. Seller shall exercise Commercially Reasonable and diligent efforts to ensure that the System is capable of generating Electricity and is maintained in good order and repair consistent with Good Industry Practice.

6.2.2 Governmental Approvals. Seller shall, at its sole expense, obtain, maintain, secure and comply with all Governmental Approvals required to be obtained and maintained and secured for the System, the Premises and the sale of Electricity, and as otherwise required to enable Seller to perform its obligations under this Agreement and the Lease.

6.2.3 Health and Safety/Security. Seller shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Electricity and System Operations. Seller shall be responsible for ensuring the security of the System throughout the Term.

6.2.4 Applicable Law. Seller shall comply with any and all applicable provisions of Applicable Law, including any applicable environmental laws and regulations.

6.2.5 Interconnection Agreement. Seller, as Interconnection Customer at its cost and expense, shall comply with the terms and conditions of any and all interconnection agreements or any other agreements which are entered into by and between Seller and the LEU.

6.3 Covenants. The Parties covenant and agree to the following:

6.3.2 Authorizations. To the extent that only Buyer is authorized to request or obtain any necessary approvals, Permits, rebates or other financial incentives, Buyer shall, at Seller's expense, reasonably cooperate with Seller to obtain such approvals, Permits, rebates or other financial incentives.

6.3.3 Notice of Damage, Emergency or Reduction in Power. Either Party shall promptly notify the other if it becomes aware of any material damage to or loss of the use of the System.

6.3.4 Net Metering.

6.3.4.1 Host Customer. At Seller's request, Buyer shall promptly take any action and execute any documents reasonably necessary to designate Buyer as the LEU customer of record for the LEU Meter serving the System and to otherwise establish Buyer as the Host Customer for the System for purposes of the Net Metering Rules. Such designation shall in no manner whatsoever relieve the Seller of its obligations under this Agreement, including without limitation Seller's obligations with respect to interconnection of the System. Seller shall prepare any such documents, including the LEU's net metering service application (the "Schedule Z"), and Buyer shall reasonably cooperate with Seller's preparation of such documents. Further, Seller shall prepare an application with appropriate supporting documents for a Public Cap Allocation for the System, and Buyer shall reasonably cooperate with Seller's preparation of such documents. Notwithstanding anything to the contrary in this Agreement, Buyer shall not be responsible for any costs, expenses, and charges imposed by the LEU upon Buyer in its capacity as Host Customer for the System at any time during the term of this Agreement, all of which shall be paid by Seller. In the event any such costs, expenses or charges are included in any invoice or request for payment received from the LEU by Buyer as Host Customer for the System, Seller shall include a credit equal to such costs, expenses or charges on Buyer's next invoice for Electricity purchased hereunder.

6.3.4.2 Allocation of Net Metering Credits. At Seller's request, Buyer shall promptly take any action and execute any documents reasonably necessary so that the Net Metering Credits accruing to Buyer as Host Customer of the System are allocated to the Target Buyer Accounts. Buyer acknowledges and agrees that it shall not allocate or permit to be allocated any Net Metering Credits generated by any other source to the Target Buyer Accounts if such allocation would materially affect Buyer's ability to comply with its obligations under this Agreement.

6.3.4.3 Net Metering Facility of a Governmental Entity. Buyer and Seller acknowledge that the System will be comprised solely of one Net Metering Facility of a Municipality or Other Governmental Entity, and agree not to take any action inconsistent with such regulatory status of the System (including, without limitation, terminating the Schedule Z or amending the Schedule Z in a manner inconsistent with such status) except insofar as such action is expressly authorized hereunder. For avoidance of doubt, the Parties acknowledge that, pursuant to the current Net Metering Rules, in order to obtain and preserve such status, no Schedule Z for a Net Metering Facility of a Municipality or Other Governmental Entity may allocate Net Metering Credits to the account of any individual or of any entity that is not a city, town, federal agency or department, state agency or department, or any entity that is not approved by DPU as an "Other Governmental Entity."

6.3.4.4 Net Metering Limit. Buyer acknowledges that, pursuant to the Net Metering Rules, the maximum amount of generating capacity eligible for net metering by a Municipality or Other Governmental Entity is the Public Entity Net Metering Limit. Accordingly, Buyer covenants that it shall not serve as the Host Customer of Net Metering Facilities (inclusive of the System) with an aggregate capacity more than the Public Entity Net Metering Limit.

6.3.4.5 Cooperation on Assurance of Net Metering Eligibility. Buyer agrees to promptly provide such information and, at Seller's cost, assistance to Seller as may be reasonably necessary to allow Seller to avail itself of any system established by DPU and/or the LEU to provide certain assurances that a facility will be an eligible Net Metering Facility once the facility commences operation.

6.3.4.6 Consolidated Billing of Electricity Charges. Buyer acknowledges that, in order to ensure Buyer's ability to maximize savings resulting from allocation of Net Metering Credits to the Target Buyer Accounts, Buyer may desire to arrange for the charges for its electricity purchases from competitive electricity suppliers (if any) to be billed through its LEU invoices.

6.3.5 Customer Interconnection Acknowledgement. In order to fulfill the LEU's requirements for interconnecting to the LEU distribution grid an electricity generating facility that is owned by one party but is located behind the LEU utility meter of another party, Seller shall be party to the interconnection service agreement and Buyer agrees, within a reasonable time following Seller's request, to enter into the customer interconnection acknowledgement agreement with the LEU in a form substantially similar to the form of customer interconnection acknowledgement agreement attached to the LEU's interconnection tariff, as may be required by the LEU.

6.3.6 Data Access. Buyer shall take such action and execute such documents as reasonably required to designate (and, as necessary, re-designate) Seller to LEU as an authorized recipient of the electricity billing and usage data with respect to the LEU utility meter serving the System.

6.3.7 Uniform Procurement Act Exemption Filings. Buyer shall comply with the provisions of G.L. c. 30B, § 1(b)(33), if applicable. Buyer shall, upon request, deliver to Seller a complete copy of such filings.

6.3.8 No Resale of Electricity. The Electricity purchased by Buyer from Seller under this Agreement shall not be resold to any other Person, nor shall such Electricity be assigned or otherwise transferred to any other Person (other than to the LEU pursuant to the Net Metering Rules), without prior approval of Seller, which approval shall not be unreasonably withheld, conditioned or delayed. For avoidance of doubt, this paragraph shall not prohibit Buyer, without any approval of Seller, from exercising its rights as Host Customer under the Net Metering Rules to allocate Net Metering Credits to other parties, subject to Buyer's payment to Seller for such credits before such credits are allocated to other parties.

6.3.9 No Assertion that Seller is a Utility. Buyer and Seller agree that it is their understanding that Seller is not, and that it is their intent that Seller not be deemed, an electric utility or public service company or similar entity that has a duty to provide service.

7 REPRESENTATIONS & WARRANTIES.

7.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

7.1.1 it is duly organized and validly existing and in good standing in the jurisdiction of its organization and is qualified to do business and in good standing in Massachusetts;

7.1.2 it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and has the requisite power to own and operate assets and carry on its as it is now being conducted; it has all the rights required to enter into the Agreement and perform its obligations hereunder;

7.1.3 it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;

7.1.4 no consent of any third party, except for such third party consents that have already been obtained and that are in full force and effect, are required to approve the execution, delivery, and performance of the Agreement;

7.1.5 the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

7.1.6 there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be expected to materially and adversely affect its ability to carry out the transactions contemplated herein;

7.1.7 its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a violation, breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws; and (iii) other than the Governmental Approvals required under this Agreement and the Lease, no declaration, filing or registration with, or notice to, or approval of any Governmental Authority is necessary for the consummation by such Party of the transactions contemplated hereby which has not already been obtained.

7.1.8 it is an entity with the legal capacity to sue and to be sued.

7.2 Representations Regarding Security Interest. Buyer has been advised that part of the collateral securing the financial arrangements for the System may be the assignment of its rights to and in this Agreement to one or more Financing Parties. In connection therewith, Buyer represents and warrants as follows:

(a) There exists, as of the Effective Date, no event or condition which constitutes a default under the Agreement. Any Financing Party shall be an intended third party beneficiary of this Section.

7.3 Other Representations and Warranties of Buyer. In addition to any other representations and warranties contained in the Agreement, Buyer represents and warrants to Seller that Buyer is not the Host Customer of Net Metering Facilities with an aggregate capacity (inclusive of the planned System capacity) of more than the Public Entity Net Metering Limit.

8 TAXES AND GOVERNMENTAL CHARGES.

8.1 Seller Obligations. Seller shall be responsible for timely paying all Governmental Charges, subject to Exhibit H.

8.2 Minimization of Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize governmental charges. In the event any of the sales of Electricity hereunder are to be exempted from or not subject to one or more governmental charges, either Party shall, within a reasonable time following the other Party's request therefore, provide the requesting Party with all available documentation to evidence such exemption or exclusion.

9 FORCE MAJEURE.

9.1 Definition. "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, but only if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing conditions, "Force Majeure Event" shall include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning, volcanic eruptions and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes (except strikes or labor disputes caused by employees of the affected Party or as a result of such Party's failure to comply with a collective bargaining agreement); (v) action or inaction by a Governmental Authority, including a moratorium on any activities related to the Agreement, provided that such Governmental action/inaction is not the result of the fault or negligence of the affected Party; (vi) the inability of one of the Parties to obtain, in a timely manner, any Governmental Approval necessary to enable the affected Party to fulfill its obligations in accordance with the Agreement, provided that the delay or non-obtaining of such Governmental Approval is not attributable to the Party in question and that such Party has exercised reasonable, diligent efforts to obtain such Governmental Approval, and (vi) inability of the System "EPC" contractor to obtain the make and model of the photovoltaic modules or other equipment or materials included in its scope of work, to the extent such inability results from an event that falls within the definition of Force Majeure Event. A Force Majeure Event shall not be based on the economic hardship of either Party or the ability or inability of a Party to obtain financing on acceptable terms and conditions, nor on the ordinary or foreseeable fluctuations or intermittency of insolation/sunlight.

9.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 9 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event, (ii) exercise all reasonable, diligent efforts necessary to minimize delay caused by such Force Majeure Event, (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter; and provided, however, that Buyer shall not be excused from making any payments and paying any unpaid amounts due in respect of Electricity if, and only if, such Electricity is delivered to Buyer under the terms of this Agreement.

9.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has prevented either Party from performing all of its material obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the other Party shall be

entitled to terminate the Agreement upon ten (10) days' prior written notice. If at the end of such ten (10) day period such Force Majeure Event shall still continue, the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than liabilities that have accrued or arose prior to such termination).

10 DEFAULT.

10.1 Seller Defaults and Buyer Remedies.

10.1.1 Seller Defaults. The following events shall be defaults with respect to Seller (each, a "Seller Default"):

10.1.1.1 A Bankruptcy Event shall have occurred with respect to Seller;

10.1.1.2 Except to the extent payment is disputed in good faith, Seller fails to pay Buyer any amount owed under the Agreement within thirty (30) days after receipt of notice from Buyer of such past due amount; and

10.1.1.3 Seller breaches any material covenant or other material term of the Agreement and (A) if such breach can be cured within thirty (30) days after Buyer's written notice of such breach and Seller fails to so cure, or (B) Seller fails to promptly commence and diligently pursue a cure within such thirty (30) day period if a longer cure period is needed, subject to a maximum aggregate cure period of 60 days.

10.1.1.4 If the representations and warranties and other statements made by Seller hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material, adverse effect and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Buyer and (b) the discovery or determination by Seller of the misrepresentation; provided, that if Seller promptly commences and diligently pursues an action to cure such misrepresentation within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days.

10.1.1.5 An Event of Default (as defined in the Lease) of Lessee (as defined in the Lease) occurs.

10.1.2 Buyer's Remedies. If a Seller Default described in Section 10 has occurred and is continuing, in addition to all rights and remedies expressly provided herein and available at law or in equity, and subject to Section 12, Buyer may terminate the Agreement and exercise any other remedy it may have at law or equity or under the Agreement, and/or may, at its sole election, purchase the System if an option to purchase is provided in the Lease; provided that no such termination or exercise of remedies may occur unless and until written notice of Seller Default has been delivered by Buyer to Seller.

10.2 Buyer Defaults and Seller's Remedies.

10.2.1 Buyer Default. The following events shall be defaults with respect to Buyer (each, a "Buyer Default"):

10.2.1.1 A Bankruptcy Event shall have occurred with respect to Buyer;

10.2.1.2 Buyer fails to pay Seller any undisputed amount owed under the Agreement within thirty (30) days after receipt of notice from Seller of such past due amount; and

10.2.1.3 Buyer breaches any material covenant or other material term of the Agreement and if (A) such breach can be cured within thirty (30) days after Seller's notice of such breach and Buyer fails to so cure, or (B) Buyer fails to commence and pursue said cure within such thirty (30) day period if a longer cure period is needed, subject to a maximum aggregate cure period of 60 days.

10.2.1.4 If the representations and warranties and other statements made by Buyer hereunder misrepresent a material fact as of the Effective Date, and such misrepresentation has a material, adverse effect on Buyer and such effect is not cured within thirty (30) days from the earlier of (a) notice from the Seller and (b) the discovery or determination by Buyer of the misrepresentation; provided, that if Buyer commences an action to cure such misrepresentation within such thirty (30) day period, and thereafter proceeds with all due diligence to cure such failure, the cure period shall extend for an additional thirty (30) days.

10.2.1.5 An Event of Default (as defined in the Lease) of Lessor (as defined in the Lease) occurs under the Lease.

10.3 Breach; Termination. If a Buyer Default described in Section 10 has occurred and is continuing, Seller may, as its sole and exclusive remedy, terminate this Agreement effective 60 days from Buyer's receipt of written notice of termination from Seller, and upon such termination, Buyer shall pay to Seller, as liquidated damages, the applicable Terminal Value as set forth in Exhibit B within ninety (90) days of such termination. Seller acknowledges and agrees that the remedy described in this Section is available only to the extent Seller, after making (and reasonably demonstrating to Buyer that it has made) commercially reasonable and diligent efforts to mitigate damages caused by a Buyer Default, including but not limited to efforts to sell the Electricity, capacity or other products of the System to other buyers, has not been able to mitigate such damages. For avoidance of doubt, if, within said 60-day notice period, through Seller's exercise of commercially reasonable and diligent efforts to mitigate Seller's damages resulting from an uncured Buyer breach, Seller is able to secure a binding agreement with an alternate buyer for purchase and sale of any or all of the Electricity, capacity or other products available from the System for all or any portion of the remaining Term (the "Replacement Agreement"), the net present value of the Replacement Agreement, as reasonably calculated and negotiated by Seller and Buyer, shall be applied against the Terminal Value payable by Buyer, provided that if the net present value of the Replacement Agreement is greater than the Terminal Value any credit/refund shall not exceed the Terminal Value.

10.4 Cumulative Remedies. Any right or remedy of Buyer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

10.5 Liquidated Damages Not Penalty. Buyer acknowledges that any applicable Terminal Value constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of the Agreement. Buyer further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Buyer's rights and obligations under the Agreement, the applicable Terminal Value constitutes fair and reasonable damages to be borne by Buyer in lieu of Seller's actual damages.

11 LIMITATION OF LIABILITY.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AFFILIATES AND REPRESENTATIVES FOR ANY SPECIAL, PUNITIVE, EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT, EXCEPT THAT THIS LIMITATION SHALL NOT APPLY TO PERSONAL INJURY OR DAMAGE TO REAL PROPERTY, OR ANY CLAIMS OF INDEMNIFICATION FOR CLAIMS OF THIRD PARTIES. FOR

AVOIDANCE OF DOUBT, FINES, PENALTIES OR CHARGES ASSESSED BY A GOVERNMENTAL AUTHORITY SHALL NOT CONSTITUTE A SPECIAL, PUNITIVE OR EXEMPLARY DAMAGE UNDER THIS SECTION 11.

12. ASSIGNMENT.

12.1 Assignment by Seller. Seller shall not sell, transfer or assign (collectively, an “Assignment”) Seller’s rights or obligations under the Agreement or any interest therein, without the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed; provided, however, that, without the prior consent of Buyer, Seller may (i) assign the Agreement to an Affiliate of Seller; (ii) assign the Agreement in connection with any merger, consolidation or sale of all or substantially all of the assets or equity interests of Seller and (iii) assign the Agreement to one or more Financing Parties as collateral security, or otherwise, in connection with any financing of the System (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction). Other than a collateral assignee, any permitted assignee shall agree in writing to comply with all obligations as Seller under the Agreement; and, except for a collateral assignment, Seller, by making such assignment, shall be deemed to have represented and warranted to Buyer that the assignee shall have, whether itself or directly through contractual arrangements with another entity, the financial ability and experience to perform the obligations as Seller under the Agreement and as assignee under the assignment agreement between Seller and assignee. Any assignment that requires Buyer’s prior written consent that is made by Seller without such consent of Buyer shall not release Seller of its obligations hereunder and shall be void and of no legal effect. Any Financing Party shall be an intended third-party beneficiary of this Section. An assignment by either Party in accordance with this Section 12.1 shall relieve the assignor of its obligations hereunder, except with respect to liabilities arising before the effective date of the assignment, unless such liabilities are assumed by assignee in a written agreement to the reasonable satisfaction of Buyer. Notwithstanding anything to the contrary in this Agreement, including this Section 12.1, excluding collateral assignments, this Agreement shall not be partially assigned, and shall not be assigned to any person or entity who has not also taken assignment of the Lease.

12.2 Acknowledgment of Collateral Assignment. In the event that Seller identifies a Financing Party in Exhibit E, then Buyer hereby:

(a) acknowledges the collateral assignment by Seller to the Financing Party of Seller’s right, title and interest in, to and under the Agreement, as consented to under Section 12.1 of the Agreement;

(b) acknowledges that the Financing Party as such collateral assignee, or otherwise, shall be entitled to exercise any and all rights of lenders generally with respect to Seller’s interests in the Agreement, subject to the terms of this Agreement;

(c) agrees to execute a consent and assignment in favor of such Financing Party in substantially the form attached hereto as Exhibit F; and

(d) acknowledges that it has been advised that Seller has granted a Security Interest in the System to a Financing Party and that such Financing Party has relied upon the characterization of the System as personal property, as agreed in the Agreement, in accepting such Security Interest as collateral for its financing of the System. Any Financing Party shall be an intended third party beneficiary of this Section.

12.3 Assignment by Buyer. Except as otherwise provided herein, Buyer shall not assign the Agreement or any interest therein without Seller’s prior written consent, which consent shall not be unreasonably

withheld, conditioned or delayed, provided that any permitted assignee shall assume in writing the obligations of Buyer hereunder. Any assignment by Buyer without the prior written consent of Seller shall not release Buyer of its obligations hereunder. Any Financing Party shall be an intended third party beneficiary of this Section.

13 NOTICES.

All Notices under this Agreement shall be made in writing to the Addresses and Persons specified on the Cover Sheet. Notices shall be delivered by hand delivery, regular overnight delivery service, sent by registered or certified mail, return receipt requested. Notices shall be deemed to have been received when delivered as shown on the records or manifest of such courier, delivery service or the U.S. Postal Service. Rejection or refusal to accept delivery of any notice shall be deemed to be the equivalent of receipt of any notice given hereunder. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 13. Failure to comply strictly with the terms of this provision shall not be held against the Party claiming to have given notice so long as such Party substantially complied with this provision, the receiving Party has received the notice in question, and such failure has not materially prejudiced the receiving Party.

14 MISCELLANEOUS.

a. Integration; Exhibits. The Agreement and Lease, together with the Exhibits, Schedules, and Appendices attached thereto, constitute the entire agreement and understanding between Seller and Buyer with respect to the subject matter thereof and supersedes all prior agreements relating to the subject matter thereof, which are of no further force or effect. The Exhibits, Schedules, and Appendices attached thereto are integral parts of the Agreement and Lease, as the case may be, by reference. For the avoidance of doubt, the Agreement and Lease do not supersede the similar agreements and leases between the Parties for the Harriman West Airport and Wastewater Treatment Plant in North Adams.

b. Amendments. The Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer.

c. Dispute Resolution. The Parties agree to use their respective good faith efforts to resolve any dispute(s) that may arise regarding this Agreement.

(i) Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be thirty (30) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

(ii) In the event that the Parties cannot timely resolve a dispute by formal negotiations, either Party may bring a suit seeking legal or equitable relief in any federal or state court in Massachusetts.

(iii) Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to the dispute resolution under this Section 14(c) to prevent perceived irreparable harm.

d. Limited Effect of Waiver. The failure of Seller or Buyer to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

e. Survival. The obligations under Sections 2.2 (Breach; Termination), Section 6.3.4.1 (Host Customer), Section 8 (Taxes and Governmental Charges), Section 11 (Limitation of Liability), Section 12 (Assignment), and this Section 14 (Miscellaneous) shall survive the expiration or termination of the Agreement for any reason. For the avoidance of doubt, the expiration or earlier termination of this Agreement shall not relieve the Parties of duties or liabilities that by their nature should survive such expiration or termination, prior to the term of the applicable statute of limitations, including warranties, remedies, or indemnities which obligations shall survive for the period of the applicable statute(s) of limitation.

f. Governing Law. The Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth sitting in Berkshire County or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof. Seller agrees to accept service of process by mail in accordance with Section 13.

g. Severability. If any term, covenant or condition in the Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of the Agreement shall not be affected thereby, and each term, covenant or condition of the Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law and, if appropriate and negotiated in good faith by the Parties, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

h. Relation of the Parties. The relationship between Seller and Buyer shall not be that of partners, agents, or joint ventures for one another, and nothing contained in the Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Seller and Buyer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

i. Successors and Assigns. The Agreement and the rights and obligations under the Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer and their respective successors and permitted assigns.

j. Counterparts. The Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.

k. Facsimile Delivery. The Agreement may be duly executed and delivered by a Party by execution and facsimile or electronic, "pdf" delivery of the signature page of a counterpart to the other Party.

l. Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are intended to be a "forward contract" within the meaning of the United States Bankruptcy Code.

m. Obligation to Modify Agreement upon Change in Legal Requirement. Upon any Change in Applicable Legal Requirements which materially restricts the ability of Seller to deliver electricity

generated by the System to Buyer, or the ability of Buyer to deliver electricity generated by the System to the LEU, or the ability of Buyer to receive, and allocate to its LEU accounts, Net Metering Credits, or results in the disqualification of the System as a Net Metering Facility of a Municipality or Other Governmental Entity, the Parties shall, subject to Applicable Law, negotiate in good faith and in a timely manner to amend or restate this agreement to conform to such Change in Applicable Legal Requirements to the extent such amendment or restatement is commercially reasonable. In the event that, despite the exercise of such efforts for a period of thirty (30) days, during which period Buyer shall not be required to make any payments for any Electricity for which Buyer does not receive Net Metering Credits from the LEU, the Parties cannot come to an agreement concerning conforming to such Change in Applicable Legal Requirements, then either Party shall have the right to terminate this Agreement upon seven (7) days' notice to the other Party. Upon termination of this Agreement pursuant to this Section, (i) such termination shall not constitute an Event of Default, and subject to the terms of the Lease and Applicable Law, (ii) Seller shall be permitted to sell, free and clear of any claim by Buyer, any electricity and/or Net Metering Credits produced by the System to any third party.

n. Additional Terms Regarding Buyer's Obligations. Notwithstanding anything to the contrary in this Agreement:

- (1) Subject to Buyer's agreement in Section 12.2(c) to execute a consent and assignment agreement in favor of a Financing Party in substantially the form attached hereto as Exhibit F, Buyer shall not be required to execute documents or instruments subsequent to the execution of the Agreement that will materially or unreasonably increase Buyer's risk or obligations under the Agreement, or result in the waiver of any of Buyer's rights or remedies under the Agreement or at law or in equity, or require Buyer to give an opinion or make a statement of fact of which Buyer does not have actual knowledge.
- (2) Any requirement that Buyer cooperate with or assist Seller or take any action shall not require Buyer to improperly interfere with or improperly influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of Buyer.
- (3) The Agreement shall be subject to Applicable Law.
- (4) Buyer does not waive any of the rights, remedies, defenses and immunities afforded Buyer, as a municipality, under G.L. c. 258, all of which rights, remedies, defenses and immunities Buyer hereby reserves.
- (5) Noting in this Agreement shall interfere with the North Adams' Assessor in the evaluation, calculation, assessment and collection of taxes in accordance with applicable laws and regulations.
- (6) Seller shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of age, sex, race, color, religion, national origin, or ancestry.

o. G.L. c. 62C, § 49A Certification. Seller hereby certifies under penalties of perjury that, to the extent G.L. c. 62C, § 49A, is applicable to this Agreement, it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

[Remainder of page left blank]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement under seal as of the Effective Date.

SELLER: BORREGO SOLAR SYSTEMS INC.

By: William Bush

Name: William Bush

Title: CFO.

BUYER: CITY OF NORTH ADAMS

By: Richard J. Alcombright

Name: Richard J. Alcombright

Title: Mayor

EXHIBIT A

DEFINITIONS

“Actual Monthly Production” means the amount of Electricity recorded by the LEU Meter during each calendar month of the Term.

“Additional PPA” has the meaning set forth in Section 5.6.

“Assignment” has the meaning set forth in Section 12.

“Affiliate” means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person. The term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the right, power and authority to direct or cause the direction of the management or policies of a person or entity, whether through ownership interest, by contract, or otherwise.

“Agreement” means this Power Purchase Agreement and all exhibits, schedules and appendices (each an “Exhibit”, “Schedule”, or “Appendix”, as applicable) attached hereto and thereto.

“Applicable Law” or “Applicable Legal Requirements” means any applicable constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, Permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority, including, but not limited to, “Environmental Laws,” as defined in the Lease.

“Bankruptcy Event” means with respect to a Party, that either: (1) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (F) taken any corporate or other action for the purpose of effecting any of the foregoing; or (2) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in Massachusetts are required or authorized by Applicable Law to be closed for business.

“Buyer” has the meaning set forth in the Preamble.

“Buyer Default” has the meaning set forth in Section 10.2(a).

“Change in Applicable Legal Requirements” means a change in the Net Metering Rules, or the administration or interpretation thereof by the Massachusetts Department of Public Utilities or the LEU,

or a court having jurisdiction, whether by court order, statute, regulation or other binding determination or decision.

“Commercial Operation Date” is the date on which the System has been fully constructed and interconnected with the LEU electric distribution system in accordance with Applicable Law and all necessary Governmental Approvals; is ready and capable of producing Electricity at full or substantially full capacity; and is eligible to receive net metering services under the Net Metering Rules as a Net Metering Facility of a Municipality or Other Governmental Entity under the Public Cap of the Net Metering System of Assurance established by the DPU.

“Commercial Operation Deadline” means the date which is three hundred and sixty-five (365) days from the Effective Date; provided, however, that the Commercial Operation Deadline shall be extended on a day-for-day basis for any Force Majeure Event, breach of the Agreement by Buyer, or other action or inaction on the part of Buyer or any other third party occurring after the Effective Date and prior to the Commercial Operation Date.

“Contract Year” means each consecutive 365-day period through the term of this Agreement, with the first Contract Year beginning on the day after the Commercial Operations Date.

“DPU” means the Massachusetts Department of Public Utilities or its successors.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” or “Electricity” means electric energy generated by the System.

“Electricity Payment” has the meaning set forth in Section 5.1.

“Environmental Financial Attributes” shall mean each of the following financial rebates and financial incentives created under any present or future local state, local, federal or international law or voluntary program that is in effect as of the Effective Date or may come into effect in the future: (i) solar renewable energy certificates (SRECs); (ii) other state, regional, or federal renewable energy certificates (RECs) however so named or referred to (including, but not limited to Renewable Portfolio Standard (RPS) Class I RECs); (iii) incentive tax credits or other tax benefits, and accelerated depreciation (collectively, “allowances”), howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Electricity generated by the System; (iv) any other emissions, air quality or other environmental attribute, aspect, characteristic, claim, credit, benefit, reduction, offset or allowance, howsoever entitled or designated, resulting from, attributable to or associated with the generation of electricity by a solar renewable energy facility; and (v) all reporting rights with respect to such allowances. Environmental Financial Attributes shall not include Net Metering Credits.

“Estimated Annual Production” means the Estimated Annual Production for the applicable year of the Term as set forth in Exhibit C.

“Financing Party” means, as applicable (i) any Person (or its agent) from whom Seller (or an Affiliate of Seller) leases the System or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provide capital to Seller (or an Affiliate of Seller) with respect to the System.

“Force Majeure Event” has the meaning set forth in Section 9.1.

“Good Industry Practice” means the practices, methods, acts, and standards of care, skill, safety and diligence commonly employed or engaged in by experienced, qualified and prudent professionals, acting with reasonable care, in the solar PV electric generation industry in the financing, permitting, design, construction, operation and maintenance of electric generating equipment similar in size and technology to the System, and that are compliant with Applicable Legal Requirements.

“Governmental Approval” means any approval, consent, franchise, Permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority, including, without limitation, authorization to interconnect issued by the Local Electric Utility.

“Governmental Authority” means the LEU, ISO, any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau or other administrative, regulatory or judicial body of any such government, including but not limited to the U.S. Environmental Protection Agency and the Massachusetts Department of Environmental Protection.

“Governmental Charges” means all applicable federal, state and local taxes (including real estate, personal property, sales, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, Permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), and all charges and costs incurred by, or imposed by the LEU on, Buyer in its capacity as Host Customer, and all charges and costs incurred by, or imposed by the LEU on, Seller for or in connection with the System and Energy; provided that Governmental Charges shall exclude the Property Tax Surcharge, as defined in Exhibit H.

“Host Customer” shall have the meaning given this term in the Net Metering Rules.

“Initial Term” has the meaning set forth in Section 2.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Invoice Date” has the meaning set forth in Section 5.2.

“ISO” means the local independent system operator.

“kWh Rate” has the meaning set forth in Exhibit B.

“Lease” means the Lease Agreement by and between Seller and Lessor pursuant to which Lessor leases to Seller the Premises.

“Lessee” is the Seller hereunder.

“Lessor” is the Buyer hereunder.

“LEU Meter” means, with respect to the System, the utility grade, kilowatt-hour meter furnished and installed by the LEU and used by the LEU for the purpose of measuring the electricity delivered by the LEU to the Host Customer and the electricity delivered by the Host Customer to the LEU.

“Local Electric Utility” or “LEU” means the local electric distribution owner and operator providing electric distribution services to Buyer and also providing electric distribution and interconnection services to Seller for Seller’s System located on the Premises.

“Minimum Output Requirement” has the meaning set forth in Section 4.2.

“Municipality or Other Governmental Entity” shall have the meaning set forth in the Net Metering Rules.

“Net Metering” shall have the meaning set forth in the Net Metering Rules.

“Net Metering Credit” means the applicable monetary value of an excess kilowatt-hour of electricity, determined in accordance with the Net Metering Rules, generated by a Solar Net Metering Facility, as defined in accordance with the Net Metering Rules.

“Net Metering Facility” shall have the meaning set forth in the Net Metering Rules.

“Net Metering Facility of a Municipality or Other Governmental Entity” shall have the meaning set forth in the Net Metering Rules.

“Net Metering Rules” means, collectively and as amended from time to time, the Massachusetts net metering statute, MGL c. 164, §§ 138 – 140, the Massachusetts net metering regulations, 220 CMR 18, orders issued by DPU relating to Net Metering (including, without limitation, DPU 11-10-A (May 7, 2012) and the appendices thereto) and the associated net metering tariff of the LEU.

“Party” or “Parties” has the meaning set forth in the introductory paragraph above.

“Permits” means all applications, approvals, authorizations, consents, filings, licenses, orders, permits or other requirements imposed by any Governmental Authority, or the Independent System Operators-New England (ISO-NE), which are required in order to develop, construct, operate, maintain, improve, refurbish and retire the System or to schedule and deliver the electric energy produced by the System to the Local Electric Utility, including an authorization to construct or a conditional use permit.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

“Point of Delivery” means the LEU Meter.

“Premises” has the meaning set forth in the Lease.

“Proposal” means the Proposal submitted by Borrego Solar Systems, Inc. to Buyer in response to the RFP.

“Public Cap Allocation” means an assurance that a Host Customer will receive Net Metering Services (as defined in the Net Metering Rules) within the Public Cap (as defined in the Net Metering Rules) upon the Host Customer’s receipt of notice of authorization to interconnect from the LEU.

“Public Entity Net Metering Limit” means ten (10) megawatts (AC).

“Request for Proposals” or “RFP” means the Request for Proposals for Solar Photovoltaic Projects published by the City of North Adams in or about July 2012, in response to which Borrego Solar Systems Inc. submitted a Proposal.

“Renewable Energy Credits” means all certificates (including Tradable Renewable Certificates), green-e tags, solar renewable energy credits or other transferable indicia denoting carbon offset credits or indicating generation of a particular quantity of Electricity from a renewable energy source by a

renewable energy facility attributed to the output during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date, are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3, administered by the Center for Resource Solutions) or for which a market may exist at a future time. Renewable Energy Credits shall not include Net Metering Credits.

“Renewal Term” has the meaning set forth in Section 2.1.

“Schedule Z” shall have the meaning set forth in Section 6.3.4.1 of this Agreement.

“Seller” has the meaning set forth in the Preamble above.

“Seller Default” has the meaning set forth in Section 10.2.2.

“Solar Net Metering Facility” shall have the meaning set forth in the Net Metering Rules.

“Stated Rate” means a rate per annum equal to the lesser of (a) the “prime rate” (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law but in no event shall the Stated Rate exceed 10%.

“System” means the integrated assembly of photovoltaic modules, mounting assemblies, inverters, conduit, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, owned by Seller and located on Lessor’s real property which is used to generate electricity delivered to Buyer pursuant to this Agreement, as more fully described in Exhibit E.

“System Operations” means Seller’s operation, maintenance and repair of the System.

“Target Buyer Accounts” are the accounts listed in Exhibit G to this Agreement.

“Tariff” means the National Grid tariffs M.D.P.U. No. 1176 and M.D.P.U. No. 1177 for interconnection for distributed generation and net metering services, as approved in DPU Docket 09-72, and any subsequent amendments and approvals thereto.

“Term” has the meaning set forth in Section 2.1.

“Terminal Value(s)” means the value or values, as applicable, set forth in Exhibit B.

EXHIBIT B

KWH RATE AND TERMINAL VALUES

The applicable kWh Rate and Terminal Value with respect to the System under the Agreement shall be as set forth below:

**PPA ("Onsite") Termination
Table**

<u>Year</u>	<u>PPA Rate</u>	<u>Production (kWh)</u>	<u>Lost PPA Revenue</u>	<u>Termination Values</u>
1	0.0787	3,727,656	\$293,366	\$11,089,874
2	0.0803	3,709,017	\$297,738	\$10,539,690
3	0.0819	3,690,472	\$302,174	\$9,714,977
4	0.0835	3,672,020	\$306,676	\$8,781,716
5	0.0852	3,653,660	\$311,246	\$7,767,731
6	0.0869	3,635,391	\$315,883	\$6,371,826
7	0.0886	3,617,214	\$320,590	\$5,814,848
8	0.0904	3,599,128	\$325,367	\$5,214,285
9	0.0922	3,581,133	\$330,215	\$4,566,619
10	0.0941	3,563,227	\$335,135	\$3,867,953
11	0.0959	3,545,411	\$340,129	\$3,468,974
12	0.0979	3,527,684	\$345,196	\$3,391,826
13	0.0998	3,510,045	\$350,340	\$3,305,653
14	0.1018	3,492,495	\$355,560	\$3,209,610
15	0.1038	3,475,033	\$360,858	\$3,102,970
16	0.1059	3,457,658	\$366,235	\$2,984,820
17	0.1080	3,440,369	\$371,691	\$2,854,206

**PPA ("Onsite") Termination
Table**

<u>Year</u>	<u>PPA Rate</u>	<u>Production (kWh)</u>	<u>Lost PPA Revenue</u>	<u>Termination Values</u>
18	0.1102	3,423,167	\$377,230	\$2,710,099
19	0.1124	3,406,052	\$382,850	\$2,576,386
20	0.1147	3,389,021	\$388,555	\$2,429,365

Note on calculations

The calculations of the foregoing amounts are composed of:

1. **Buyout Values:** compensates for the Fair Market Value (FMV) of lost cash flow to the project owner, calculated as Earnings Before Interest Taxes Depreciation and Amortization (EBITDA) for each year remaining under the PPA, plus 3 additional years to compensate for estimated residual value, discounted at 8.0% per annum.
2. **Tax Equity Termination Charges:** these are composed of: a) an ITC Recapture Fee which reimburses the tax equity investor for lost tax credits due to early termination; b) a Tax Equity Buyout Fee, which contractually must be paid to the tax equity investor(s) to buy them out of a partnership, including in the event of early termination, calculated as a percentage of equity invested; and c) Tax Equity Preferred Dividend, which is any unpaid preferred dividend contractually due the tax equity investor, calculated as a percentage of invested equity for each year remaining prior to the pre-agreed flip date.
3. **Loan Prepayment Fee:** charges required by the lender to the project in the case of early termination.
4. **Termination Transaction Fee:** covers the basic overhead cost to the system owner of managing the unwinding of the transaction, including all of the above.
5. **System Removal Fee:** estimates costs incurred in removing the system from the site, calculated at a per kW rate.

EXHIBIT C

ESTIMATED ANNUAL PRODUCTION

Estimated Annual Production commencing on the Commercial Operation Date with respect to the applicable System under the Agreement shall be as follows:

<u>Year</u>	<u>Production (kWh)</u>
1	3,727,656
2	3,709,017
3	3,690,472
4	3,672,020
5	3,653,660
6	3,635,391
7	3,617,214
8	3,599,128
9	3,581,133
10	3,563,227
11	3,545,411
12	3,527,684
13	3,510,045
14	3,492,495
15	3,475,033
16	3,457,658
17	3,440,369
18	3,423,167
19	3,406,052
20	3,389,021

EXHIBIT D

DESCRIPTION OF THE PREMISES

The Premises shall be located at 151 E Street, North Adams, MA. See Lease Agreement for more detailed description.

EXHIBIT E
SYSTEM SPECIFICATIONS

System Size: Approximately 3,015 kW-DC STC

Modules: Yingli (240-300 Watt Solar Modules)

Inverters: SMA, Advanced Energy, PV Powered, or equivalent

EXHIBIT F

CONSENT AND ASSIGNMENT

CONSENT AND ASSIGNMENT AGREEMENT

CONSENT AND ASSIGNMENT AGREEMENT dated as of _____, 20__, by and among [], a municipal corporation organized and existing under the laws of [] (together with its successors, designees and assigns, "Contract Party"), [], a [] [company] (together with its successors, designees and assigns, the "Bank"), [], a [] [company] (together with its successors, designees and assigns, the "Investor") and together with the Bank, the "Financing Parties") and [], a limited liability company organized and existing under the laws of Delaware ("Borrower").

WHEREAS, the Contract Party and Borrower have entered into the [] Agreement dated as of [] (as amended, modified and supplemented and in effect from time to time, the "Assigned Agreement");

WHEREAS, Borrower has entered into the Loan Agreement dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, the "Loan Agreement"; capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Loan Agreement) among Borrower and the Bank; and

WHEREAS, as security for the Obligations, Borrower has entered into (i) the [Collateral Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, the "Collateral Agreement") and the (ii) [Security Agreement] dated as of [], 20[] (as amended, modified and supplemented and in effect from time to time, and, together with the Collateral Agreement, the "Security Agreements"), pursuant to which Borrower will assign all of its right, title and interest in, to and under the Assigned Agreement to the Bank (the "Security Interest");

[WHEREAS, Investor has agreed to provide equity financing relating to the Assigned Agreement pursuant to the terms and conditions of the Operating Agreement of [], a [] limited liability

company, the sole member of Borrower, dated as of [], 20[], by and between Investor and [], a [] limited liability company (the “Borrower Operating Agreement” and together with the Security Agreements and the Loan Agreement, the “Financing Agreements”).¹

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

CONSENT TO ASSIGNMENT, ETC.

[Financing Parties. Contract Party acknowledges that each of Bank and Investor is a “Financing Party” as defined in the Assigned Agreement and entitled to the benefits thereof in favor of Financing Parties, and that this Consent and Assignment serves as the timely notice identifying Bank and Investor as such pursuant to Exhibit [] of the Assigned Agreement, provided, however, that the Bank shall have exclusive rights as a Financing Party with respect to the Security Interest in the Assigned Agreement and any related assets.]²

Consent to Assignment. The Contract Party (a) consents in all respects to the collateral assignment of all of Borrower’s right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Borrower’s rights to receive and obligations to make payments under or with respect to the Assigned Agreement, whether as contractual obligations, damages, indemnity payments or otherwise (collectively, the “Assigned Interests”), and (b) acknowledges the right of the Financing Parties or their designee(s) or assignee(s), in the exercise such Financing Party’s rights and remedies under the Financing Agreements, to make all demands, give all notices, take all actions and exercise all rights of Borrower under the Assigned Agreement.

Successor or Substitute Owner. The Contract Party and Borrower agree that if a Financing Party notifies the Contract Party (irrespective of any notice to the contrary received by the Contract Party from the Borrower) that an Event of Default has occurred and is continuing under the Financing Agreements, and that the Financing Parties or their designee(s) or assignee(s) has elected to exercise the rights and remedies set forth in the Financing Agreements, then the successor to Borrower and/or purchaser of the System, which shall be a single entity, (such successor or purchaser, the “Substitute Owner”) shall be substituted for Borrower under the Assigned Agreement; provided that as a condition to such substitution, on or prior to the date of such substitution, Contract Party shall have been paid any damages due to Contract Party under the Assigned Agreement as of the date of such substitution; and provided further that such Substitute Owner shall be financially and technically qualified to operate the Project and perform its obligations under the Assigned Agreement.

¹ Note – include if there is a separate equity investor party.

² Note - include if Assigned Agreement provides for a “Financing Party.” Language may be adjusted based on inclusion of an investor financing party.

Upon such substitution, the Contract Party will recognize the Substitute Owner as counterparty to the Assigned Agreement and will continue to perform its obligations under the Assigned Agreement in favor of the Substitute Owner pursuant to the original terms thereof. Borrower and Financing Party agree (A) that Contract Party shall be under no obligation to make any inquiry or investigation to verify or confirm the veracity or merits of (i) any notification received by Contract Party from any Financing Party pursuant to this Section 1.3 or (ii) any facts underlying any Event of Default under the Financing Agreements; and (B) that Contract Party's efforts to comply with this Section 1.3 shall not constitute an Event of Default under the Assigned Agreement, and Borrower and Financing Party agree to release, and hereby do release, Contract Party from and forever waive any claims to the contrary.

Right to Cure. The Contract Party, at Financing Parties' expense, shall deliver to the collateral agent or administrative agent or similar person representing the Financing Parties pursuant to the Financing Agreements, concurrently with the delivery thereof to Borrower, a copy of any notice of termination or default given by the Contract Party to Borrower under the Assigned Agreement by delivering a copy of such notice to the address provided in Exhibit B attached to this Consent and Assignment. Notwithstanding the foregoing or the content of Exhibit B or the number of Financing Parties of which the Contract Party receives notice, the Contract Party shall not be required to deliver a copy of such notice to more than one address at any given time. Any Financing Party shall have the right, but not the obligation, to cure any default in the Assigned Agreement within time provided for such cure in the Assigned Agreement. In the event that Borrower has failed to cure any such default within the time provided for a cure in the Assigned Agreement, Contract Party agrees that the Financing Parties may elect to extend such time for up to an additional maximum period of sixty (60) days, provided that Contract Party shall have been paid, as part of any cure by Financing Party, any damages arising from Borrower's default and due to Contract Party under the terms of the Assigned Agreement.

No Amendments. The Contract Party agrees that it will not, without the prior written consent of the Financing Parties, enter into any material amendment or other material modification of the Assigned Agreement. Borrower and Financing Party agree that Contract Party's efforts to comply with this Section 1.4 shall not constitute an Event of Default under the Assigned Agreement.

No Liability. The Contract Party acknowledges and agrees that neither the Financing Parties nor any of their designee(s) or assignee(s) shall have any liability or obligation under the Assigned Agreement as a result of this Consent and Assignment, nor shall the Financing Parties or any of their designee(s) or assignee(s) be obligated or required to (a) perform any of Borrower's obligations under the Assigned Agreement, except, however, liabilities or obligations arising during any period in which a Financing Party (or its designee(s) or assignee(s)) is a Substitute Owner pursuant to Section 1.3 hereof, in which case the liabilities and obligations of such Substitute Owner shall equal but be no more than that of Borrower under the Assigned Agreement at the time such Substitute Owner became a Substitute Owner.

Performance under Assigned Agreement. The Contract Party shall comply with all material terms and provisions of the Assigned Agreement.

Transfer. The Financing Parties shall have the right to assign all interest in the Assigned Agreement to a person to whom the Project is transferred, provided that such transferee (i) assumes in writing the obligations of Borrower or the Financing Party, as applicable, under the Assigned Agreement and (ii) satisfies the requirements of a Substitute Owner set forth in Section 1.3

hereof. Upon such assignment, the Borrower or the Financing Party, as the case may be, shall be released from any further liability under the Assigned Agreement, except for liabilities arising before the date of such assignment that have not been fulfilled as of the date of the assignment.

PAYMENTS UNDER THE ASSIGNED AGREEMENT

Payments. The Contract Party will pay all amounts payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly to the appropriate account specified on Exhibit A hereto or by mail to the person listed in Section 4.1 for the receipt of notices, or to such other person or account as shall be specified from time to time by the Financing Parties to the Contract Party in writing.

No Offset, Etc. All payments required to be made by the Contract Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, except as otherwise expressly allowed by the terms of the Assigned Agreement.

REPRESENTATIONS AND WARRANTIES OF THE CONTRACT PARTY

The Contract Party hereby makes the following representations and warranties in favor of the Financing Parties.

Organization. The Contract Party is a municipal corporation duly organized, validly existing and in good standing under the laws of the state of its incorporation or organization, and has all requisite power and authority, corporate and otherwise, to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby.

Authorization. The execution, delivery and performance by the Contract Party of this Consent and Assignment and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of the Contract Party and do not require any approval or consent of any holder (or any trustee for any holder) of any indebtedness or other obligation of (a) the Contract Party or (b) any other person, except approvals or consents which have previously been obtained and which are in full force and effect.

Execution and Delivery; Binding Agreements. Each of this Consent and Assignment and the Assigned Agreement are in full force and effect, have been duly executed and delivered on behalf of the Contract Party by the appropriate officers of the Contract Party, constitute the legal, valid and binding obligation of the Contract Party, enforceable against the Contract Party in accordance with its terms, except as the enforceability thereof may be limited by (a) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (b) general equitable principles (whether considered in a proceeding in equity or at law).

Litigation. There is no litigation, action, suit or proceeding pending against the Contract Party before any court, administrative agency, arbitrator or governmental authority, body or agency having jurisdiction which, if adversely determined, individually or in the aggregate, (a) could materially and adversely affect the performance by the Contract Party of its obligations hereunder or under the Assigned Agreement, (b) could have a material and adverse effect on the financial condition of the Contract Party or (c) seeks a permanent declaration as to the validity, binding effect or

enforceability of this Consent and Assignment or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby.

No Default or Amendment. Neither the Contract Party nor, to the Contract Party's actual knowledge, without inquiry, any other party to the Assigned Agreement is in default of any of its obligations under the Assigned Agreement. The Assigned Agreement has not been materially amended or modified as of the date of this Assigned Agreement.

No Previous Assignments. Except as provided in the Assigned Agreement, the Contract Party has not consented to any previous assignment by Borrower of all or any part of its rights under the Assigned Agreement.

MISCELLANEOUS

Notices. All notices and other communications hereunder shall be in writing, shall be deemed given upon receipt thereof by the party or parties to whom such notice is addressed, shall refer on their face to the relevant Assigned Agreement (although failure to so refer shall not render any such notice of communication ineffective), shall be sent by first class mail, by personal delivery or by an internationally recognized courier service, and shall be directed (a) if to the Contract Party or if to Borrower, in accordance with the terms of the Assigned Agreement, and (b) if to the Financing Parties, to the address set forth on Exhibit B hereto.

Governing Law; Submission to Jurisdiction; etc.

(a) THIS CONSENT AND ASSIGNMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF MASSACHUSETTS.

(b) Any legal action or proceeding with respect to this Consent and Assignment and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of Massachusetts, and by execution and delivery of this Consent and Assignment, Borrower, Financing Party and Contract Party each hereby accepts for itself the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof.

Counterparts. This Consent and Assignment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument.

Headings Descriptive. The headings of the several sections and subsections of this Consent and Assignment are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent and Assignment.

Severability. In case any provision in or obligation under this Consent and Assignment shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Amendment, Waiver. Neither this Consent and Assignment nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the Contract Party, the Borrower and the Financing Parties.

Successors and Assigns. This Consent and Assignment shall not be assigned by either Party without the written consent of the other Party not to be unreasonably delayed or withheld, provided that it shall not be unreasonable to withhold consent to a partial assignment of this Consent and Assignment. It shall be binding upon the Contract Party and its permitted successors and assigns and shall inure to the benefit of each Financing Party, its designee(s) and assignee(s) and its successors and assigns.

Further Assurances. Subject to the last sentence of this Section 4.8, the Contract Party hereby agrees, at Financing Party's expense, to execute and deliver all such reasonable instruments and reasonably cooperate with Financing Party as may be reasonably required to effectuate fully the purposes of this Consent and Assignment. Notwithstanding the foregoing, the Contract Party shall not be required to (i) execute documents or instruments subsequent to the execution of this Consent and Assignment that will materially or unreasonably increase Contract Party's risk or obligations under the Consent and Assignment or the Assigned Agreement, or result in the waiver of any of Contract Party's rights or remedies under the Consent and Assignment or the Assigned Agreement or at law or in equity, or require Contract Party to give an opinion or make a statement of fact of which Contract Party does not have actual knowledge, or (ii) improperly interfere with or improperly influence the independent regulatory, licensing, taxing, permitting or judicial functions of any official, department, board, committee, body or commission of the Contract Party.

Entire Agreement. This Consent and Assignment and any agreement, document or instrument attached hereto integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. The foregoing notwithstanding, this Consent and Assignment does not supersede the Assigned Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Consent and Assignment to be duly executed and delivered by their duly authorized officers as of the date first above written.

[CONTRACT PARTY]

By: _____

Name:

Title:

Accepted and Agreed:

[_____],

as Bank

By: _____

Name:

Title:

[_____],

as Investor

By: _____

Name:

Title:

[_____],

as Borrower

By: _____

Name:

Title:

Exhibit A to
Consent and Assignment

[INSERT PAYMENT INSTRUCTIONS]

Exhibit B to
Consent and Assignment

Notices

[]

[]

[]

Fax: []

Email: []

Attention: []

EXHIBIT G

TARGET BUYER ACCOUNTS

To be identified

EXHIBIT H

PRICE ADJUSTMENT FOR CERTAIN GOVERNMENTAL CHARGE

All Governmental Charges shall be timely paid by Seller. Notwithstanding the foregoing, the Property Tax Surcharge, defined below, shall be paid by Buyer in the manner set forth below. To the extent applicable and as set for the below, the monthly Invoice for Electricity delivered by Seller to Buyer will include the Property Tax Surcharge.

1. Property Tax Surcharge

Seller and Buyer have agreed to endeavor to establish a payment-in-lieu-of-taxes agreement (“**PILOT Agreement**”) to establish the real and personal property tax obligations of the Premises and System over the term of the Power Purchase Agreement and Lease. In the event that a PILOT Agreement is not established, Buyer will assess real and personal property taxes with respect to the Premises and System on an annual basis, and Seller shall pay these taxes annually as assessed.

In either case, the Parties acknowledge that the real and personal property taxes assessable for the Premises and System were not fully known at the time Seller had proposed the kWh Rate, and that, had the taxes been known at that time, the kWh Rate, which is intended to account for all costs to Seller, would have been adjusted to account for such taxes; and the Parties further acknowledge that the Seller had proposed the kWh Price with the understanding that when such taxes become known and are assessed, a surcharge to the kWh Price would be applied to account for such taxes.

Accordingly, any real and/or personal property taxes assessed by Buyer with respect to the Premises and System in a Contract Year, either through a PILOT Agreement or regular annual or quarterly assessment, shall be timely paid by Seller, and recovered, without any markup whatsoever, by Seller through a monthly surcharge (the “**Property Tax Surcharge**”) with respect to Electricity delivered to the LEU Meter in the following Contract Year. In the event any penalties, costs, expenses, or additional charges are incurred by or imposed upon Seller as a result of Seller’s failure to timely pay all such taxes, such penalties, etc. shall be paid solely by Seller, and shall not be included in the Property Tax Surcharge.

The Property Tax Surcharge for the current Contract Year will be calculated as follows:

Property Tax Surcharge = Prior Year Tax divided by twelve (12), where:

- “Prior Year Tax” is the dollar amount of real and/or personal property taxes assessed by Buyer with respect to the Premises and System in the prior Contract Year and timely paid by Seller;

By way of example, if the Prior Year Tax is \$12,000, the Property Tax Surcharge for the current Contract Year would be calculated as follows:

$$\text{Property Tax Surcharge} = \$12,000 \text{ divided by } 12 = \$1,000/\text{month}$$

**FIRST AMENDMENT TO POWER PURCHASE AGREEMENT
(NORTH ADAMS E-STREET LANDFILL)**

This **FIRST AMENDMENT TO POWER PURCHASE AGREEMENT (NORTH ADAMS E-STREET LANDFILL)** ("Amendment"), is dated as of March __, 2014 and is by and between **Mohawk Trail Solar 2, LLC** (as successor in interest, "Seller") and **The Town Of North Adams** ("Buyer"). Seller and Buyer are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, Seller and Buyer entered into that certain **Power Purchase Agreement (North Adams E-Street Landfill)** dated as of the 4th day of October, 2013, (the "Agreement"); and

WHEREAS, the Parties wish to amend the Agreement as set forth herein.

AGREEMENT

In consideration of the mutual covenants and agreements in this Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Capitalized terms not otherwise defined in this Amendment have the meanings assigned to them in the Agreement.
2. The text "\$0.0787 per kilowatt hour" corresponding to "kWh Rate" on the Cover Sheet to the Agreement is deleted and replaced with the text "\$0.0925 per kilowatt hour".
3. The text "No later than 365 Days from Effective Date" corresponding to "Commercial Operation Date" on the Cover Sheet to the Agreement is deleted and replaced with the text "No later than 24 months from Effective Date".
4. The text "No later than 365 Days from Effective Date" corresponding to "Commercial Operation Deadline" on the Cover Sheet to the Agreement is deleted and replaced with the text "No later than 24 months from Effective Date".
5. The table in Exhibit B to the Agreement is deleted in its entirety and replaced with the table attached here as Attachment 1. For avoidance of doubt, the text below the existing table in Exhibit B, entitled "Note on Calculations," is not deleted by this Amendment.
6. The table in Exhibit C to the Agreement is deleted in its entirety and replaced with the table attached here as Attachment 2.
7. The text "System Size: Approximately 3,015 kW-DC STC" in Exhibit E is deleted in its entirety and replace with the text "System Size: Approximately 3,261,060W-DC STC
8. The text "Modules: Yingli (240-300 Watt Solar Modules)" in Exhibit E to the Agreement is deleted in its entirety and replaced with the text "Modules: LG270S1C-A3"
9. Seller agrees that, notwithstanding anything to the contrary in the Agreement or this Amendment, (i) the increase in the kWh Rate reflected in this Amendment is made in consideration of changes (both known and unknown) involved in the creation of the so-called Massachusetts SREC II program (for the purpose of this Section 9, referred to as the "SREC II Changes"); (ii) that Seller shall not be entitled to terminate the Agreement under Section 2.3 of the Agreement as a result of the SREC II Changes; and (iii) that

Seller shall not be eligible to request or receive any further increase in the kWh Rate throughout the Term as a result of the SREC II Changes. Except as stated in the preceding clauses of this Section 9, the Parties' rights under Section 14(m) of the Agreement are not limited by this Section.

10. Except as expressly provided herein, nothing in this Amendment shall be deemed to waive or modify any of the provisions of the Agreement, and the Parties hereby ratify and confirm the Agreement, as amended in Sections 2 through 5 above. In the event of any conflict between the Agreement and this Amendment, this Amendment shall prevail.
11. The Agreement is made and entered into and shall be interpreted in accordance with the applicable laws of the Commonwealth of Massachusetts. Any and all proceedings or actions relating to subject matter herein shall be brought and maintained in the courts of the Commonwealth sitting in Berkshire County or the federal district court sitting in the Commonwealth, which shall have exclusive jurisdiction thereof.
12. Any and all notices, requests, certificates and other documents or instruments executed and delivered after the execution and delivery of this Amendment may refer to the Agreement without making specific reference to this Amendment, but all such references shall be deemed to include this Amendment, unless the context shall otherwise require.

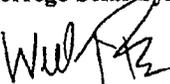
[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Parties have executed this Amendment on the day and year first above written.

Mohawk Trail Solar 2, LLC

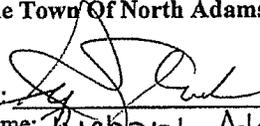
By: 1115 Solar Development, LLC, its sole member

By: Borrego Solar Systems, Inc., its sole member

By: 

Name: William Bush
Title: CTO -

The Town Of North Adams

By: 

Name: Richard Alcombright
Title: MAYOR

*First Amendment to Power Purchase Agreement (North Adams E-Street Landfill)
between Mohawk Solar Trail 2, LLC and The Town Of North Adams*

Attachment 1 (replaces Exhibit B in the Agreement)

The applicable kWh Rate and Terminal Value with respect to the System under the Agreement shall be as set forth below:

<u>Year</u>	<u>PPA Rate</u>	<u>Production (kWh)</u>	<u>Lost PPA Revenue</u>	<u>Termination Fee*</u>
1	\$0.0925	4,078,582	\$377,269	11,982,225
2	\$0.0944	4,058,189	\$382,890	11,322,961
3	\$0.0962	4,037,898	\$388,595	10,297,121
4	\$0.0982	4,017,708	\$394,385	9,236,149
5	\$0.1001	3,997,620	\$400,262	8,192,322
6	\$0.1021	3,977,632	\$406,226	6,818,342
7	\$0.1042	3,957,743	\$412,278	6,372,772
8	\$0.1063	3,937,955	\$418,421	5,953,514
9	\$0.1084	3,918,265	\$424,656	5,561,980
10	\$0.1105	3,898,674	\$430,983	5,199,652
11	\$0.1128	3,879,180	\$437,405	4,860,384
12	\$0.1150	3,859,784	\$443,922	4,537,629
13	\$0.1173	3,840,485	\$450,536	4,317,076
14	\$0.1197	3,821,283	\$457,249	4,182,924
15	\$0.1221	3,802,176	\$464,062	4,033,415
16	\$0.1245	3,783,166	\$470,977	3,867,263
17	\$0.1270	3,764,250	\$477,995	3,683,078
18	\$0.1295	3,745,429	\$485,117	3,479,357
19	\$0.1321	3,726,701	\$492,345	3,261,396
20	\$0.1348	3,708,068	\$499,681	3,021,215

**Includes estimates of lost PPA revenue, Tax Equity termination charges, loan prepayment fees, transaction termination fees, and system removal fees.*

Attachment 1 to First Amendment to Power Purchase Agreement (North Adams E-Street Landfill) between Mohawk Solar Trail 2, LLC and The Town Of North Adams

Attachment 2

Estimated Annual Production commencing on the Commercial Operation Date with respect to the applicable System under the Agreement shall be as follows:

<u>Year</u>	<u>Production (kWh)</u>
1	4,078,582
2	4,058,189
3	4,037,898
4	4,017,708
5	3,997,620
6	3,977,632
7	3,957,743
8	3,937,955
9	3,918,265
10	3,898,674
11	3,879,180
12	3,859,784
13	3,840,485
14	3,821,283
15	3,802,176
16	3,783,166
17	3,764,250
18	3,745,429
19	3,726,701
20	3,708,068

Attachment 2 to First Amendment to Power Purchase Agreement (North Adams E-Street Landfill) between Mohawk Solar Trail 2, LLC and The Town Of North Adams