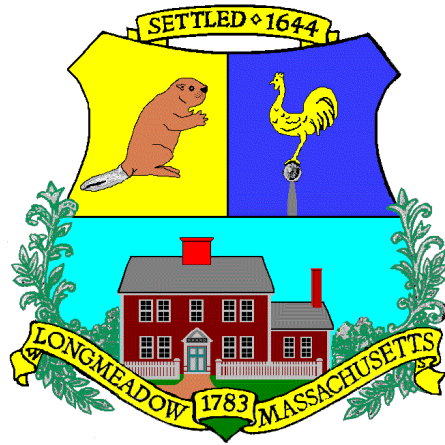


REQUEST FOR PROPOSAL

PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING PROPOSAL



**TOWN OF LONGMEADOW
MASSACHUSETTS**

DECEMBER 13, 2010.

LEGAL NOTICE:

The Town of Longmeadow, acting by and through its Select Board is soliciting proposals under M.G.L. 30B. Proposals will be accepted from qualified parties to lease land and offer other financial benefits resulting from the construction and operation of a photovoltaic power generation facility on land owned by the Town of Longmeadow. The facility is expected to generate up to 2 megawatts of electricity on a portion of a 16.8 acre tract of the closed town landfill owned and controlled by the Town of Longmeadow. The Town is seeking proposals that maximize the financial return to the town, which in addition to a lease agreement may include but not be limited to a Power Purchase Agreement (PPA) and/or sharing the value of solar energy generated and the generation of Massachusetts Solar – Renewable Energy Credits (S-RECs).

Proposal documents may be examined and/or obtained from the Town of Longmeadow, Attn: Chad Thompson-Procurement Manager, 735 Longmeadow Street, Suite 101, Longmeadow, MA 01106 (phone: 413-565-4136) during regular business hours (Monday-Thursday: 8:00A.M.-4:30P.M. Friday: 8:00A.M.–12:00 Noon). Documents may also be downloaded online at the Purchasing Department page found on the Longmeadow website: www.longmeadow.org.

Proposals will be received at the office of the Longmeadow Procurement Manager until 12:00 PM Noon on February 17, 2011. Late proposals will be rejected. Proposal submissions shall be submitted in an envelope labeled ‘PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING PROPOSAL’. The proposal submission shall consist of three (3) copies of a sealed Technical Proposal labeled ‘PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING TECHNICAL PROPOSAL’ and three (3) copies of a sealed Financial Proposal labeled “PHOTOVOLTAIC POWER GENERATION FACILITY LAND USE AND OPERATING PRICE PROPOSAL”. One copy of each of the submitted documents shall also be submitted in electronic format (e.g. CD-ROM). There will be a public logging of proposals received immediately following the proposal deadline in the Auditorium located in the same building. The content of all proposals will be considered confidential until the contract has been awarded.

An optional pre-proposal conference is scheduled for Tuesday, January 18, 2011 at 3:00 p.m. in the Select Board’s meeting room at the Community meeting room at the Police Station at 34 Williams Street, Longmeadow, MA 01106. Vendors interested in presenting a proposal should consider attending the pre-proposal conference.

A \$5,000 Bid Deposit should be included in the Technical Proposal in the form of a bid bond, certified check, treasurer’s check or cashiers check payable to the Town of Longmeadow.

The Town of Longmeadow acting through the Town Manager, the Awarding Authority, reserves the right to reject any or all proposals, waive minor informalities, and to award the contract to a selected vendor in the best interest of the Town.

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**REQUEST FOR PROPOSAL
PHOTOVOLTAIC POWER GENERATION FACILITY
LAND LEASE AND OPERATING PROPOSAL**

December 13, 2010

Town of Longmeadow, Massachusetts

A. GENERAL:

The Town of Longmeadow, acting by and through its Select Board is soliciting proposals under M.G.L. 30B. Proposals will be accepted from qualified parties to lease land and offer other financial benefits resulting from the construction and operation of a photovoltaic power generation facility on land owned by the Town of Longmeadow. The facility is expected to generate up to 2 megawatts of electricity on a portion of a 16.8 acre tract of the closed town landfill owned and controlled by the Town of Longmeadow. The Town is seeking proposals that maximize the financial return to the town, which in addition to a lease agreement may include but not be limited to a Power Purchase Agreement (PPA) and/or sharing the value of solar energy generated and the generation of Massachusetts Solar – Renewable Energy Credits (S-RECs).

Proposals will be received at the office of the Longmeadow Procurement Manager until 12:00 PM Noon on February 16, 2011. Late proposals will be rejected. Proposal submissions shall be submitted in an envelope labeled ‘PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING PROPOSAL’. The proposal submission shall consist of three (3) copies of a sealed Technical Proposal labeled ‘PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING TECHNICAL PROPOSAL’ and three (3) copies of a sealed Financial Proposal labeled “PHOTOVOLTAIC POWER GENERATION FACILITY AND OPERATING PRICE PROPOSAL”. One copy of each of the submitted documents shall also be submitted in electronic format (e.g. CD-ROM). There will be a public logging of proposals received immediately following the proposal deadline in the auditorium located in the same building. The content of all proposals will be considered confidential until the contract has been awarded.

If at any time the Town fails to appropriate sufficient funds for performance of the Town's obligations under the contract, the obligations of the parties under the contract shall terminate as to any period of time for which sufficient funds have not been appropriated.

The Town of Longmeadow acting through its Awarding Authority, reserve the right to reject any or all proposals, waive minor informalities, and to award the contracts to one or more vendors in the best interest of the Town.

An optional pre-proposal conference is scheduled for Tuesday, January 18, 2011 at 3:00 p.m. in the Select Board’s meeting room at the Community meeting room at the Police Station at 34 Williams Street, Longmeadow, MA 01106. Vendors interested in presenting a proposal should consider attending the pre-proposal conference.

B. PROCEDURE FOR SUBMISSION OF PROPOSAL

Receipt of Proposal Documents:

Proposal documents may be examined and/or obtained from the Town of Longmeadow, Attn: Chad Thompson-Procurement Manager, 735 Longmeadow Street, Suite 101, Longmeadow, MA 01106 (phone: 413-565-4136) during regular business hours (Monday-Thursday: 8:00A.M-4:30P.M. Friday: 8:00A.M–12:00 Noon). Documents may also be downloaded online at the Purchasing Department page found on the Longmeadow website: www.longmeadow.org.

Proposal Submission:

Proposals will be received at the office of the Longmeadow Procurement Manager until 12:00 PM Noon on February 16, 2011. Late proposals will be rejected. Proposal submissions shall be submitted in an envelope labeled 'PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING PROPOSAL'. The proposal submission shall consist of three (3) copies of a sealed Technical Proposal labeled 'PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING TECHNICAL PROPOSAL' and three (3) copies of a sealed Financial Proposal labeled "PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING PRICE PROPOSAL". One copy of each of the submitted documents shall also be submitted in electronic format (e.g. CD-ROM). There will be a public logging of proposals received immediately following the proposal deadline in the auditorium located in the same building. The content of all proposals will be considered confidential until the contract has been awarded.

Questions:

All questions or comments regarding this Request for Proposal must be submitted in writing to Chad Thompson, the Longmeadow Procurement Manager by email: cthompson@longmeadow.org or by fax 413-565-4372. Questions must be received no later than 4:30 P.M. on February 7, 2011. Questions received after the deadline for questions will not be answered. All addenda responses to questions shall be issued no later than two days before the proposal submission deadline. Failure of any contractor to receive any such addendum or interpretation shall not relieve such contractor from any obligation under its proposal as submitted. Any binding response that alters the content of this Request for Proposal will be in the form of an addendum issued by the Town of Longmeadow. All addenda issued shall become a part of the contract documents.

Proposal Content:

The Proposal must contain the following:

Technical Proposal- Must contain three (3) printed copies plus one electronic copy which shall be provided in a sealed envelope labeled: 'PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING TECHNICAL PROPOSAL'. The Technical Proposal shall contain:

1. A Bid Deposit in the amount of \$5,000.
2. The completed Technical Proposal Submission Forms (Appendix II)
3. Contractor Qualification and Program Description Questionnaire (Appendix III)
4. Disclosure of Beneficial Interest in Real Property Transaction (Appendix V)
5. Technical proposal details for the construction of the photovoltaic power generation facility not included in the answer to question C8 of Appendix III
7. Evidence of Insurance

Failure to complete the Non-Collusion Certificate portion of Appendix II will result in rejection of the bid.

The Bid Deposit should be in the form of a bid bond, certified checks, treasurer's checks or cashiers checks. Proposals received without a bid deposits will be rejected. All proposals must be valid for a period of 120 days from the submittal deadline.

Price Proposal- The envelope containing the price proposal for the lease and other financial considerations for the facility is to be labeled 'PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE AND OPERATING PRICE PROPOSAL'. The Price Proposal sealed envelope shall contain:

1. Three (3) signed copies of the Land Lease Price Proposal Forms (see Appendix IV)
3. Evidence of ability to obtain a 100% Performance Bond
4. Bank Reference
5. Financial statements for prior 2 years

Nothing in this RFP shall require that the Town take the most favorable price proposal. Instead, the Town reserves the right to base its decision on the entirety of the information provided, the evaluation of criteria requested, and their sole judgment as to the best overall value offered to the town.

Proposals shall be submitted on the forms provided or copies thereof and must be signed by the Contractor or his/her authorized representative. The person signing the proposal shall initial any corrections to entries made on proposal forms.

A proposal is to be made for the following services: The lease of the Town of Longmeadow's closed landfill and other payments or financial incentives to the town for the rights of constructing, owning and operating a photovoltaic solar energy generating facility.

C. EVALUATION PROCESS:

Both the technical and price proposals will be evaluated and scored. See Section 11 of Specifications of this document for details of the evaluation criteria. Following the completion of the Technical Proposal scoring, Price Proposals will be separately evaluated and scored. Price proposals that include sharing upside profit potential with the Town of Longmeadow will be more favorably evaluated than fixed rate land lease proposals. The Town of Longmeadow desires the highest financial return to the town consistent with good plant design and construction that is fully compliant with federal, state and local laws, rules and regulations.

Consideration and acceptance of all proposals shall be based on the ability of the contractor to meet the specifications set forth in the terms, conditions, and specifications of this RFP and contract documents.

The Town of Longmeadow shall have the right to reject any and all proposals, or parts thereof, or items therein, and to waive any defect or irregularities as to form, therein. **Nothing in this RFP shall require that the Town accept the most financially advantageous price proposal.** Instead, the Town reserves the right to base its decision on the entirety of the information provided and its sole judgment as to the best service offered. The town anticipates using the criteria in Section 11

No proposals shall be withdrawn within ninety (90) days after the opening thereof. The Town shall have the time as indicated in which to investigate and evaluate the proposals. The proposals will be ranked according to the criteria specified in Section 11 of Specifications of this document. The Town may enter into negotiations for the plan of service with the highest ranked proposer. In the event that there is a price discrepancy in the price proposal, the written words shall prevail.

D. CONTRACT AWARD

Contract:

There will be a single contracts awarded as a result of this RFP for the lease of land for the purpose of building and operating a Solar PV plant. The town will negotiate a contract with the most qualified proposer at compensation which the town determines is fair, competitive, and reasonable. The successful proposer will be required to complete a Town Contract prior to the contract being awarded. Refer to Appendix VII which contains a sample property lease contract containing standard terms and conditions for the Town of Longmeadow. The standard specifications of this standard contract should be reviewed and taken into consideration when preparing the Technical Proposal and Price Proposal.

Currently the Town is only able to enter into a contract term not to exceed three years. The Annual Town Meeting is tentatively schedule for May 10, 2011. At that meeting a warrant article will be presented that requests authorization to extend the lease term up to a maximum of twenty five years for the lease of land at the closed landfill site for the purposes of installing a Photovoltaic Power Generation Facility. The Technical and Price Proposal content received from proposers shall be valid through May 17, 2011. Pending Town Meeting approval of this warrant article, the Town may proceed with a contract for the extended lease term of up to twenty five years.

Prevailing Wage:

Construction work done for a private contractor leasing land from the Town of Longmeadow is NOT subject to the minimum wage rates as determined by the Commissioner of Department of Workforce Development under the provisions of the Massachusetts General Laws, Chapter 149, Sections 26 to 27F, as amended.

Construction Performance Bond:

Upon initiation of construction of this PV facility (as defined by the issuance of a notice to proceed by Town of Longmeadow Department of Public Works) the lessee shall file with the Project Coordinator a Performance Bond in an amount equal to the full estimated cost of construction and start-up of the PV facility, but not less than \$8,000,000. Failure of the lessee to deliver a Bond within ten days shall constitute grounds for the Town to declare the Bid Deposit forfeited, and the contract void, but the Town may, in its sole discretion, extend such time period. The construction Performance Bond shall be returned to the lessee within 10 days of successful start-up that demonstrates electrical generation at 75% of nameplate capacity of the plant.

E. INSURANCE REQUIREMENTS:

1. Construction Phase Insurance:

The successful bidder shall be required to maintain the following minimum level of insurance throughout the construction phase of this project. The Town in no way warrants that the minimum limits contained herein are sufficient to protect the Selected Vendor from liabilities that might arise out of the performance of the work under the Property Lease Agreement by the Selected Vendor, its agents, representatives, employees, or subcontractors. The Selected Vendor is free to purchase such additional insurance as may be determined necessary.

The successful bidder shall be responsible to the Town or any third party for any property damage or bodily injury caused by it, any of its pre-approved subcontractors, employees or agents in the performance of, or as a result of, the work performed under this Agreement. The successful bidder hereby certifies it is insured for workers compensation, property damage, and personal and product liability. The successful bidder and any subcontractor it uses shall purchase, furnish copies of, and maintain in full force and effect insurance policies in the amounts here indicated.

The successful contractor shall provide coverage with limits of liability not less than those stated below:

-Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate \$3,000,000

Products – Completed Operations

Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

-Automobile Liability

Bodily injury and property damage for any owned, hired, leased, borrowed, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

-Workers' Compensation and Employer's Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

-Excess Umbrella Liability

Annual Aggregate \$5,000,000

-Contractor's Pollution Liability

For losses caused by pollution conditions that arise from the operations of the Tenant. The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from general contracting activities for which the Tenant is legally liable. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims. If the project requires the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

Per Occurrence \$1,000,000

General Aggregate \$2,000,000

-Builders' Risk Insurance or Installation Floater

The selected contractor shall carry Builders' Risk Insurance in an amount equal to the initial cost for the construction of the facility. The Town, the Tenant and subcontractors, shall be insured on the policy. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy. Policy must provide coverage from the time any covered property becomes the responsibility of the Tenant, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

-Insurance Requirements - Operation Phase

The selected contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Tenant, his agents, representatives, employees, or subcontractors.

The insurance requirements herein are minimum requirements for this RFP Agreement and in no way limit the indemnity covenants contained in this Agreement. The Town in no way warrants that the minimum limits contained herein are sufficient to protect the Tenant from liabilities that might arise out of the performance of the work under this Agreement by the Tenant, his agents, representatives, employees, or subcontractors.

-Additional Insurance for Operation Phase

All of the insurance listed above shall remain in effect and full force for the term of the lease. In addition, the Tenant shall procure and maintain the following insurance:

-Property Insurance

Property insurance shall be written on an all risk and replacement cost coverage.

The Town shall be named as a Loss Payee.

Policy shall be in force at the time of substantial completion of the Electric Generating Facility's construction and continue until the termination of the property lease.

-Business Interruption Insurance

The selected contractor shall acquire Business Interruption Insurance providing funds to cover all of the Tenant's costs to the extent that they would not be eliminated or reduced by the failure of the Electric Generating Facility to operate, (including but not limited to rent or mortgage payments, interest and principal payments on loans or bonds and salaries and wages) for a period of at least six (6) months after a deductible period not to exceed three (3) months.

-Insurance Requirements

All insurance policies shall include, or be endorsed to include, the following provisions:

- a) The policy of the selected contractor shall be endorsed to include the following additional insured language: "The Town of Longmeadow shall be named as an additional insured with respect to liability arising out of the activities performed by or on behalf of the Tenant". The town shall be an additional insured to the full limits of liability purchased by the Tenant even if those limits of liability are in excess of those required by this Agreement.
- b) The selected contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- c) The Tenant is responsible for the payment of all policy deductibles.

**SPECIFICATIONS FOR
PHOTOVOLTAIC POWER GENERATION FACILITY
LAND LEASE AND OPERATING PROPOSAL
LONGMEADOW, MASSACHUSETTS**

1. GENERAL INFORMATION:

The Town of Longmeadow, acting by and through its Select Board is requesting proposals for the lease of land and other financial benefits related to the construction and operation of a photovoltaic power generating facility on Town owned land. The Town is seeking proposals that maximize the financial return to the town, which may include but not be limited to a Power Purchase Agreement (PPA), payments in lieu of taxes (PILOT) and / or sharing the value of solar energy generated and the generation of Massachusetts Solar – Renewable Energy Credits (S-RECs).

1.1 Bidders on this contract shall provide the town with specification of the facility to be designed and installed as well as power purchase costs.

2. DEFINITIONS

The following definitions shall apply to terms found within this document:

AWARDING AUTHORITY: The awarding authority for the Town of Longmeadow is the Town Manager or designee.

BID: “*Bid*” shall mean proposal, quotation, bid, offer, qualification/experience statement, and services. “*Bidders*” shall also mean vendors, offerors, bidders, or any person or firm responding to this RFP.

CONTRACTOR: The company or corporation receiving the land lease contract from the Town of Longmeadow for construction and operation of a photovoltaic plant on the Longmeadow town landfill.

FORCE MAJEURE: French for "superior force", a description of extraordinary circumstances beyond the control of the parties, such as a war, riot, or act of God that would prevent either or both parties from fulfilling their liability or obligation under a contract. See Section 13.1 for the definition applicable to this contract.

ISSUER: The issuer is the Town of Longmeadow, as represented by the Select Board.

LESSEE: The company or corporation receiving the land lease contract from the Town of Longmeadow for construction and operation of a photovoltaic plant on the Longmeadow town landfill.

PILOT (Payment in Lieu of Taxes): Monetary payments to the Town of Longmeadow supplemental to the payments for lease of land.

PROPONENT: The company or corporation receiving the land lease contract from the Town of Longmeadow for construction and operation of a photovoltaic plant on the Longmeadow town landfill.

PV: (Photovoltaic): The process by which sunlight is converted to electricity

PROJECT COORDINATOR: The Project Coordinator for the Town of Longmeadow shall be the Director of the Department of Public Works (DPW) or his designee.

SREC (Solar Renewable Energy Credit): Solar Renewable Energy Credits as defined and issued by the Massachusetts Department of Energy Resources (DOER).

SUCCESSFUL BIDDER: The company or corporation chosen to negotiate the land lease contract from the Town of Longmeadow for construction and operation of a photovoltaic plant on the Longmeadow town landfill.

TOWN: Where not otherwise specified, the word Town will refer to The Town of Longmeadow, MA.

TOWN ADMINISTRATOR: The Longmeadow Town Manager or her designee.

3. SITE INFORMATION

3.1 General Site Information:

The proposed site for this facility is a portion of the 16.8 acre (729,300 square feet) property west of Interstate Highway Route 91 on Birnie Lane that was the former municipal solid waste (MSW) disposal area for the Town of Longmeadow, MA. This former MSW disposal area is situated on a parcel of land (parcel No. 67, Town identification number OE 108-192) owned by the Town of Longmeadow in the “Meadows” area of Longmeadow. The parcel is primarily surrounded by town owned property and is located south of Birnie Road, has an Amtrak rail line to the east, and Longmeadow Brook to the south. The MSW disposal area is adjacent to the Town’s former wood waste landfill (MassDEP File No. 159-001) and leaf dump site (MassDEP File No. 159-014). The MSW disposal area, which was municipally owned and operated, was used for disposal of municipal waste generated in the Town of Longmeadow from 1958 to 1979. This site is known as the “Old Dump” in MassDEP files.

The MSW disposal area is a large mounded landform about 30-40 feet in elevation above surrounding grade. The MSW disposal area abuts wetland areas to the south and west at the landfill toe of slope along Longmeadow Brook. Side slopes are steepest on the east alongside the Amtrak railroad lines. Side slopes are gradual on the northern slope and portions of the southern and western side slopes. The central area of the landfill mound is relatively flat and slightly crowned. A topographical map of the site is included as Figure 1 of Appendix I.

The Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) for the town of Longmeadow shows that the vast majority of the “Meadows” of Longmeadow is within the 100-year flood plain of the Connecticut River. The map shows the MSW disposal area as an “island” in the 100-year flood plain. The entire landfill is mapped by the Natural Heritage & Endangered Species Program (NHESP) as an estimated Habitat of State Protected Rare Species. According to the NHESP Atlas, the 2008 Estimated Habitat of Rare Wildlife is designated as WH 228 and 2008 Priority Habitat for State-Protected Species is designated PH 1337.

A study by Tighe and Bond Consulting Engineers completed in October, 2010 evaluated the site and determined that 4.9 acres of the 16.8 acre site can be made suitable for construction of a PV energy facility. Alternately, a 5.5 acre parcel may be available with additional grading and cut and fill of the site. The study also concluded that no protected or endangered species are located on the MSW site that is proposed for this project. The details of this 4.9 acre area and an alternative 5.5 acre grading scheme are shown in the post-closure topographical maps that are Appendix VI of this document.

In the future, additional Town-owned land adjoining this capped landfill site may be available for future site expansion. These additional lands are currently used for commercial farming, or are Town owned land with multiple purposes such as the DPW and conservation. This proposal calls for the development of ONLY the 4.9 acres portion of the closed town landfill.

Before submitting a proposal, each bidder will be responsible for obtaining, either from the Town or from independent sources, such additional studies and data concerning conditions (surface, subsurface and underground facilities) at the site or access to the site, which may affect the bidder's ability to comply with obligations under the terms of contracts arising from this RFP or which the bidder otherwise reasonably deems necessary in order to develop a proposal to undertake the Project in accordance with the terms and conditions of this RFP.

3.2 Site preparation:

3.2.1 Site Status for construction: The proposed construction site ceased being used as a landfill in 1979. Although closed as a landfill, it has not been maintained in accordance with Mass DEP requirements and as such, brush and scrub trees have grown on the site. Comprehensive Site Assessments (CSAs) were previously conducted concurrently at this MSW disposal area and adjoining wood waste landfill and leaf dump sites. Because the sites are located within 1,000 feet of each other, environmental monitoring stations used to evaluate each site are complimentary. The CSA findings were that the majority of the MSW disposal area has adequate cover material. Adequate cover material is considered to be at least 2 feet of soil above the refuse. However, test holes installed in the northwestern side of the MWS Disposal Area contained soil cover less than 12 inches deep. Although this cover is not adequate for this area of the site at this time, it is the intent of the Town to meet all Mass DEP requirements for closure of this landfill prior to turning the site over to the successful bidder for construction (see section 3.2.2). It will be the bidder's responsibility to prepare post closure use permit and receive approval for use of the site consistent with the intended PV facility.

3.2.2 Landfill capping: The Town of Longmeadow retained Tighe & Bond to complete a Correction Action Design (CAD) study in support of this project. This study has identified requirements necessary for construction of a solar photovoltaic facility on at least 4.9 acres of the site. Tighe and Bond will, as part of this work, prepare and submit a BWP SW 25 Corrective Action Design Permit application to the MASS DEP. Because of the cost of completing the capping of the landfill, it is the Town's plan to begin the final clearing and capping after a contract is awarded for the construction of a PV energy facility on this site. The Town will clear, de-grub, level (or pitch) and complete the capping of 4.9 acres of the landfill in accordance with this plan within five months of the award of this land lease contract.

3.2.3 Wetlands, NHESP and other Permitting: The Town of Longmeadow has completed a study that delineates bordering wetland resource areas as well as mapping in accordance with the Massachusetts Natural Heritage and Endangered Species Program (NHESP) and will obtain DEP closure approval and related permit requirements for the closure of the site and will work with the successful bidder to submit and receive approval of the post closure use permit for the construction of a renewable energy facility on this closed landfill. The successful bidder will be responsible for all costs associated with the post closure use permitting process. The successful applicant will be responsible for obtaining all construction and other non-DEP permits associated with the construction of this facility. The Town will cooperate in their obtaining of these permits to the extent that is reasonable and allowed by law.

3.2.4 Methane extraction: There are no facilities at the site for methane extraction. The age of the landfill and recent history indicates that there is no need to account for methane extraction from the site.

3.3 Treatment of adjoining conservation land and wetlands

The proposed construction site is directly accessible from a (dirt) town road which is paved for most of the frontage of the site. To the extent that construction area requirements extend beyond the boundaries of the landfill, it should be noted that adjoining land may be both conservation land and wetland and therefore may restrict the movement and storage of construction equipment.

3.4. Electrical Connectivity: Interconnectivity to the Western Massachusetts Electric Company (WMECO) power grid can be made at either town owned or private locations near the proposed site. These interconnectivity locations are indicated in Figure 2 of Appendix I.

3.5 Site maintenance post installation

The construction plan should include provisions for providing security to the facility post construction. It is anticipated that such post construction security would include an isolation fence.

The successful bidder will be responsible for maintaining the leased land in accordance with Mass DEP regulations. This is anticipated to include, but not be limited to, the maintenance of the physical integrity of the landfill cap, including drainage and mowing, within 100 feet of the photovoltaic panels or ancillary equipment as required by regulations and site permits.

The lessee shall not be responsible for testing related to the prior landfill operations of the site. Post installation, the lessee of the land shall permit access to authorized agents of the Town upon adequate notice to conduct inspections and/or landfill testing. The town will continue to maintain sections of the landfill not under lease.

4. POWER PURCHASE AGREEMENT

As part of the agreement between the Town of Longmeadow and the successful bidder, the successful bidder and the Town may execute a Power Purchase Agreement (PPA) for the purchase of electricity generated by this facility. Any proposal for a PPA between the Town and the successful bidder should be submitted as part of the bid price proposal package.

4.1 Existing PPA: The Town of Longmeadow is currently under contract to purchase electricity for municipal (non-school) buildings from Constellation NE through 12/31/2013. The Longmeadow School Department is under contract to purchase electricity from Constellation NE through 1/31/2011 and thereafter from Genex Energy from 2/1/2011 through 12/30/2012.

4.2 Power Usage: The Town of Longmeadow used 5,728 Mwh of electricity during 2009 and 6,242 Mwh of electricity in 2010. This electrical usage is the sum of usage at 62 separate metering sites and includes usage for both buildings and traffic signals. A monthly detail of power usage shows the following:

Town of Longmeadow Electrical Usage (MWh)						
Fiscal Year	JULY	AUG	SEPT	OCT	NOV	DEC
2009	397.4	388.7	413.6	494.2	452.9	600.5
2010	530.4	498.0	540.2	503.0	518.6	590.9
Average	463.9	443.3	476.9	498.6	485.7	595.7

Fiscal Year	JAN	FEB	MAR	APR	MAY	JUNE
2009	499.3	546.2	472.4	513.9	447.9	500.9
2010	517.5	573.7	424.3	511.6	434.3	600.0
Average	508.4	560.0	448.3	512.7	441.1	550.5

Town of Longmeadow Electrical Usage (MWh)	
Fiscal Year	TOTAL
2009	5,727.9
2010	6,242.4
Average	5,985.1

5. ENVIRONMENTAL CONCERNS

5.1 Permitting: The town will be required to have a post closure permit from the Mass DEP in order that the site be deemed eligible for construction of a PV energy facility but this will be prepared and all costs paid for by the successful bidder. The Town shall agree to fully cooperate with the contractor in pursuit of these post-closure permits on behalf of the town.

The successful bidder will be responsible for preparing and submitting (including payments of fees if necessary) interconnectivity or other impact studies required by WMECo.

5.2 Landfill Cap: The PV panel arrays are to be ground mounted and installed in such manner as to not penetrate the landfill capping material. The contractor is responsible to assure that any disruptions to the landfill cap that may occur during the construction phase of the project or during the routine operation of the facility are fully remediated.

6. FACILITY SIZE:

It is the desire of the town to construct a PV generation facility that maximizes the use of the town landfill in accordance with MASS DEP allowances for this post-closure use. It is anticipated that a facility up to 2.0 MW of generating capacity will be constructed. The contractor should propose for the location the maximum power generation plant consistent with the available acreage and appropriate financial return to the Town. Should it be beneficial for the bidder to consider secondary sites to allow for construction of up to 2 MW total power supply, the Town is willing to consider making available up to 5.5 acres at this site or one or more roof tops of municipal buildings for supplementing this facility. Bidders seeking siting area greater than 4.9 acres should indicate that requirement in their bid package.

7. PROJECT ECONOMICS

7.1 Economic Forecast: A component of the technical proposal shall be a twenty-five (25) year financial projection for the project. This projection shall include all currently available state and federal incentives and shall be based upon a 3% annual escalation of energy costs.

7.2 Town Resident Participation: Project proposals that include opportunities for residents of the Town of Longmeadow to participate in the project will be favored. Such participation could take the form of financial contributions toward construction costs and the benefit of Neighborhood Net Metering. Such neighborhood participation should be through either supplemental construction or partial wattage set-aside.

8. GENERAL PROVISIONS

8.1 Panel design and components: All technical proposals must include information on the type and size of solar panels to be used and the expected kW or MW production of the proposed solar energy system. Technical Proposals must also include specific information about wiring, conduits, and base material to be used under the PV panels. A conceptual design for the landfill property shall also be submitted. The design shall show the placement of all equipment and account for existing landfill obstructions. There are no restrictions on proposing the use of flat, tilted, or tracking solar photovoltaic panel installations. The technical proposal shall describe the bidder's rationale for using a particular type of equipment and array system. **All proposed systems must be mounted in a manner not to penetrate the landfill cap.**

Equipment information is to include:

A. Panels

- Manufacturer
- Model number
- Module wattage
- Panel count
- Array tilt
- Warranty information

B. Inverters

- Manufacturer
- Model number
- Number and size to be installed
- String size and quantity
- Warranty information

C. Array Mounting System

- System of array anchoring/ballasting
- Type of material to be used under mounting system

D. Conduit

- Type of conduit to be used

It is the desire of the Town of Longmeadow to eliminate heavy metal PV risks in systems installed on Town property, including CdTe photovoltaic cells and lead acid storage batteries. Effective encapsulation approaches must be shown for any hazardous materials proposed. The town favors construction proposals that will utilize crystalline or amorphous silica based PV panels.

8.2 Interconnection and Metering: The bidder must be familiar with interconnection rules and regulations. All Technical Proposals must include a description of the electrical interconnection strategy. This description shall include a layout of the electric path from the Landfill Property to a delivery point at the WMECo system. Include single line electrical drawing(s) showing PV system output (Voltage, Phase and Current) and schematic representation of interconnection with grid tied electrical distribution system. Interconnection equipment shall meet all Massachusetts utility regulations for metered interconnection and safe and reliable parallel operations with the utility grid. The selected vendor will be responsible for obtaining an interconnection agreement as needed.

The contact at WMECo regarding interconnection is:

Cindy Janke
Senior Engineer

WMECo
Phone: 413-585-1750
Email: jankecj@nu.com

Costs to construct the new interconnection may be lowest along the Amtrak right of way, which will minimize tree clearing and maintenance costs. Amtrak's utility right-of-way contact is Mr. Al Warner (warnera@amtrak.com)

8.3 Real Time Monitoring: It is expected that web-based monitoring will be developed and maintained to display the benefits of the PV installation to be available as a public education tool. The town will look more favorably upon proposals that include a web site that shows real-time system performance and can be available for public access through the Town's website: www.longmeadow.org. The monitoring should include instantaneous kW; daily kWh generation; kW and kWh output on a monthly basis; and actual year to date and lifetime kWh.

8.4 Design Review: The selected bidder will be responsible for providing preliminary and final technical design plans to the Town for review. Such plans shall including detail sheets showing the general placement of PV panels and inverters.

8.5 Subcontractors: The Town of Longmeadow shall be notified of, and reserves the right to disqualify upon demonstration of cause, any subcontractors that successful bidders shall use to fulfill obligations under a contract issued as a result of this RFP. Any such sub-contractor disqualification shall be communicated in writing to the successful bidder with a statement of support for such disqualification.

9. PROJECT PROPOSAL DETAILS

The Town of Longmeadow, Massachusetts is interested in promoting the beneficial use of otherwise dormant land for renewable energy production. Under this proposal, the Town will enter into a long-term property lease of twenty-five (25) years for the use of landfill property for the generation of solar electricity. Lease extensions may be considered during contract negotiations. The contract will take the form of Appendix VII, pursuant to which the selected bidder will obtain from the Town of Longmeadow the right to plan, design, engineer, permit, construct, interconnect, commission, operate, maintain, monitor, and decommission a PV solar energy electrical generation facility on land leased from the Town of Longmeadow.

9.1 Overview: The successful bidder for the Town site will provide financing for and complete the design, permitting and construction of the Solar Energy Project at the landfill site. The bidder will provide quarterly reports to the Town which include among other items, the kilowatt hours (kWh) generated.

9.2 System ownership: The selected bidder shall own the system and all equipment related to the system.

9.3 System operation and maintenance: The selected bidder shall provide all labor and all materials to successfully operate the Solar Energy System in accordance with all applicable Federal, State, and local laws and regulations, for the full lease term. The operator shall also provide all maintenance, labor, and materials associated with typical wear for the Solar Energy Project for the full lease term at no additional cost to the Town. This is to include repair or replacement of electrical components, equipment, and solar PV panels as needed. The successful bidder shall also maintain the physical integrity of the landfill cap, including drainage and mowing, within 100 feet of the photovoltaic panels or ancillary equipment as required by regulations and site permits.

9.4 Town Permits: The selected bidder will be responsible for obtaining all necessary permits and approvals (e.g., planning department, building permits, etc.).

9.5 System Financing: The selected bidder will be responsible for financing the system. The town shall have no liability related to the construction cost of the system.

9.6 Power disposition: The successful bidder will own the rights to the power generated by the system. The successful bidder may choose to include a Power Purchase Agreement (PPA) with the Town a part of the overall financial proposal for this agreement.

9.7 Land Lease: Currently the Town is only able to enter into a contract term of three years. Town Meeting vote will be required to authorize a lease for a term not to exceed twenty five years. There is a Town Meeting warrant article that will be presented at the Spring 2011 Annual Town Meeting that is tentatively scheduled for May 10, 2011. The warrant article will request authorization to extend the lease term up to twenty five years for the lease of land at the closed landfill site for the use purposes of installing a Photovoltaic Power Generation Facility.

9.8 Easement: Terms and duration of any easement for use of the property are to be set forth in the proposal.

9.9 Obligations of the successful bidder: The land lease executed as a result of this contract shall absolve the town of any responsibility or liability related to the land or facilities to be installed on the land. The lease shall require the successful bidders to fully maintain the site, including any necessary maintenance, care of land (unless otherwise negotiated with the town) and site security. The town of Longmeadow shall have no responsibility for the equipment or operation of the facility or liability due to acts of nature acting upon the facility.

9.10 Disposition of Solar Renewable Energy Credits (S-RECs): The selected Proponent will retain title to all solar renewable energy credits (S-RECs) generated by the System.

9.11 Prevailing wage rates: Because no public funds will be expended on construction of the facility, prevailing wage rates do not apply to this work.

9.12 Financial Benefits to the Town: Financial benefits to the Town are expected to take two or more forms: Land Lease, A Power Purchase Agreement, and potential payment in lieu of property taxes or sharing of S-REC income.

9.12.1: Land Lease: The Town will execute a property lease with a term not to exceed twenty-five (25) years with the successful bidder. Payment shall commence at signing of contract.

9.12.2 Power Purchase Agreement (PPA): Supplementary to the land lease agreement, the Town and the successful bidder may enter into an agreement for purchase of a fixed amount of power at an agreed upon price (with adjustments if agreed upon) for a given duration of time. If the Town and Proponent desire a longer contract the Town will investigate seeking a Special Act of the State Legislature to allow for a 30 year term.

9.12.3 Payment in Lieu of Taxes (PILOT): Massachusetts General Law MGL Chapter 59, Section 5, Clause 45 exempts from property taxes "...any solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter." The successful bidder may consider, as part of their Price Proposal, making an annual payment in lieu of taxes (PILOT) for the term of the Property Lease in addition to the annual lease payment. The amount of the annual PILOT shall be submitted by the bidder in its financial benefits proposal in Appendix IV, part III.

9.12.4 Other Payments to the Town: The Town will look favorably upon lease proposals that include sharing with the Town the potential financial benefits of the sale of S-RECs by the facility owner. These added payments to the town should be considered as part of the overall financial offer by the bidder to the Town. The amount of S-REC value to be shared with the town shall be submitted as part of the Price Proposal in Appendix IV, part IV.

9.12.5 Payment Schedule: Because the town of Longmeadow will be expending funds for clearing and capping the landfill in order to make it available for construction, the Town is requesting bidders to consider

“front end loading” payments to the town to assist in the town’s repayment of bonds necessary to prepare the landfill for construction.

9.13 Options: Proponents may offer, at 5 year intervals, the opportunity for price true-up or for the town to purchase the facility for an amount based on the resale value of the equipment.

9.13.1 End of Life Provisions: No sooner than six years prior to the expiration of this lease and no later than five years prior to the expiration of this lease the Town and lessee shall sign a binding agreement regarding the disposition of the facility at the end of the lease. This agreement may include an extension of the lease. Should the parties be unable to agree upon a disposition, or if no agreement is signed by the end of this period, the lessee shall be required within 15 days to post a bond in the amount of \$5,000,000 to ensure that the facility is dismantled and removed at termination of the lease. Such bond shall be returned to the lessee upon dismantle and removal of the facility.

9.13.2 Price Proposal Expectation: Bidders submitting proposals for this project shall submit three (3) signed copies of the Price Proposal Forms (see Appendix IV). This bid proposal shall include the offered annual lease price for the land area that will be occupied by the facility. Submitters of bids are encouraged to also offer the town a Solar Power Purchase Agreement (SPPA) as well as payments in lieu of taxes (PILOT) and / or S-REC value sharing. Where offered, the Town will require that successful contractors sign a SPPA that will include but not be limited to:

- electricity price (\$/kWh),
- annual electricity price increase factor,
- maximum electricity price,
- Length of Term
- Billing Terms (Billing Cycle)
- Annual System Degradation Factor
- liquidated damages provisions

A sample SPPA is available as a supplement to this Request for Proposal.

9.13.3 Other Benefits for the Town of Longmeadow: In addition to the benefits directly to the Town of Longmeadow, project proposals that include opportunities for residents of the Town of Longmeadow to participate in the project will be favored. Such participation may take the form of private financial contributions toward construction costs with the accompanying benefit of Neighborhood Net Metering.

10. PROJECT SCHEDULE

Upon execution of the contract between the Town and the successful bidder, the following project schedule for key milestones for the Project will be completed to the agreement of both parties.

Milestone	Milestone Date
Secure System Equipment and Assets	TBD
Completion of Balance of System Design	TBD
Mechanical Completion	TBD

Milestone	Milestone Date
Substantial Completion	TBD
Commercial Operation Date	TBD
Final Completion	TBD

11. EVALUATION CRITERIA

11.1 **Minimum Criteria:** In order to be considered for evaluation for award, all bidders shall submit proposals that meet the following criteria:

- (a) Submission of proposal shall be timely.
- (b) Proposals correctly follow the terms and conditions of this RFP. Any exceptions to recommended contract language in the RFP must be addressed in this section. Non-competitive or otherwise material exceptions may cause a proposal to be deemed non-responsive.
- (c) Include a Letter of Transmittal signed by the individual authorized to negotiate for and to submit a proposal, and any related votes of the corporation or Board of Directors as necessary as proof of authorization.
- (d) Completed disclosure of beneficial interest in real property transaction as required
- (e) Fully executed forms as provided in this RFP
- (f) Include a copy of any appropriate licenses and/or approvals required for ownership and operation by Federal, State, and/or local authorities.
- (g) Include a statement that the bidder is not debarred, suspended or otherwise prohibited from construction or operation of these facilities by any Federal, State, or local agency.

11.2 Other Evaluation Criteria: Proposals will be evaluated by the Issuer, using comparative criteria set forth as follows:

11.2.1 Technical Proposal (**Non-Price Proposal**): The Technical proposal will be evaluated based on the following five criteria:

11.2.1.1 **Bidder Qualifications and Experience**. About 35% of the technical evaluation credit will be given based the experience of the organizations bidding. Bidders may form joint ventures or hire subcontractors as necessary to provide proper qualifications. Thus, an experienced project developer may hire an experienced solar development project manager; a financially strong sponsor may joint venture with an experienced solar construction contractor, and so forth. Credit may be given to prior experience of the project team on other relevant projects. The Issuer may evaluate the bidder’s ability to form successful working relationships and communications with the Issuer.

At least one organization must be named as the performance guarantor for each of the development, construction and operations phases. For each guarantor or equity participant, proposals should include relevant experience lists in similar energy projects, lists of offices and manufacturing facilities which may be used for the proposed project, and a current credit rating. Additional information to be supplied by these participants includes a succinct list of relevant events in the organizations during the last five years, including changes in ratings, events of default or bankruptcy filings, as well as changes in control, reincorporations, initial incorporations, lawsuits, and projects completed more than 10% later than the contract completion date.

Evaluations will be judged, for example, as follows:

<u>Unacceptable:</u>	No qualifications or experience	0 Points
<u>Not Advantageous:</u>	Non-Advantageous qualifications	3 Points
<u>Advantageous:</u>	Advantageous qualifications	6 Points
<u>Highly Advantageous:</u>	Exceptionally advantageous qualifications	10 Points

11.2.1.2 Quality and Reliability of System Proposed: About 25% of the technical evaluation credit will be given to bidders who describe their proposed design clearly and give effective consideration to productivity in a variety of seasonal and weather conditions, resistance to degradation, reliability, durability, maintainability, upgradability, and other equipment features. Requirements listed in Section 8 of this RFP will be evaluated under this section. Evaluations will be judged as:

<u>Unacceptable:</u>	No quality and reliability	0 Points
<u>Not Advantageous:</u>	Non-advantageous quality and reliability	3 Points
<u>Advantageous:</u>	Advantageous quality and reliability	6 Points
<u>Highly Advantageous:</u>	Exceptional quality and reliability	10 Points

11.2.1.3 Thoroughness and Clarity of Proposal About 20 % of the technical evaluation credit will be given for thoroughness, clarity and organization of the proposal. The amount of information requested in this proposal is substantial, and preference will be given to concise and productive responses. Bidders will be evaluated on their depth of understanding of project development and power market issues, ability to explain technical concepts succinctly, and willingness to define the most advantageous project. Exceptions to project terms requested in the RFP will be evaluated under this section if they are judged to meet the minimum criteria.

Evaluations will be judged as:

<u>Unacceptable:</u>	No proposal thoroughness of proposal	0 Points
<u>Not Advantageous:</u>	Non-advantageous proposal thoroughness	3 Points
<u>Advantageous:</u>	Advantageous thoroughness of proposal	6 Points
<u>Highly Advantageous:</u>	Exceptionally advantageous thoroughness	10 Points

11.2.1.4 Approach and Schedule. About 10% of the technical evaluation credit will be given for the proponents' project approach and schedule. Specialized experience is required in a series of work areas, and provisions must be made for seamless integration. Proposed terms must demonstrate clear knowledge of the state of the art, understanding, and experience in the methods, techniques and guidelines required for the performance of the required work.

The proposal shall include an explanation of how the bidder will organize the various tasks, including scheduling, methods and sources. The detail should cover all phases of the project: development, construction, and operations. Organizations who will handle project tasks with integrated in-house capabilities in relevant support skill should note that as well. Non-financial components of Section 9 of this RFP will be evaluated under this section. Capacity and capability of the bidder to perform the work on schedule and be responsive to the Issuer's concerns should be clear. Evaluations will be judged, for example, as follows:

<u>Unacceptable:</u>	No proposal approach or schedule.	0 Points.
<u>Not Advantageous:</u>	Non-Advantageous proposal approach & schedule.	3 Points
<u>Advantageous:</u>	Advantageous proposal approach and schedule.	6 Points
<u>Highly Advantageous:</u>	Exceptionally advantageous approach and schedule	10 Points

11.2.1.5 Key Personnel and Commitment. About 10% of the technical evaluation will be given based on qualifications including resumes and availability of the lead financial negotiator, the preconstruction developer, the system engineer, the construction project manager, other key technical consultants, and any key personnel likely to demonstrate that the bidder's team is advantageous. Provide examples of individuals' results on previous project when possible. These should tie into the previous section to demonstrate full knowledge, understanding, and experience in the methods, techniques and guidelines required for the performance of the required work. Bidders should discuss the availability of key personnel and the degree of their involvement in key tasks. Capacity and capability of the bidder to perform the work on schedule and be responsive to the Issuer's concerns should be clear. Evaluations will be judged, for example, as follows:

<u>Unacceptable:</u>	No key personnel or commitment.	0 Points.
<u>Not Advantageous:</u>	Non-Advantageous personnel or commitment.	3 Points
<u>Advantageous:</u>	Advantageous personnel and commitment.	6 Points
<u>Highly Advantageous:</u>	Exceptionally advantageous personnel and commitment	10 Points

11.2.2 Price Proposal. To be submitted in a separate envelope as instructed in the Legal Notice. The bidder's Price Proposal must include:

- (a) Lease price (\$/year) to be paid to the Town for the land
- (b) Where a PPA is proposed:
 - (b1) electricity price (\$/kWh),
 - (b2) annual electricity price increase factor,
 - (b3) maximum electricity price,
- (c) Payment in lieu of Taxes
- (d) Other payment incentives such as revenue sharing schedule from sale of S-RECs
- (e) Liquidated damages provisions, and
- (f) Any other required financial information

The price proposal will be evaluated based on the following five criteria:

- 1.) 50% will be based on the Net Present Value of the project to the Town, as compared to the 20 year 3% base case, including all costs and incentives to the Town.
- 2.) 25% will be based on the value of up-front incentives, net of costs to the Town
- 3.) 10% will be based on a low initial annual cost of delivered power net of revenues from the project such as rents, PILOT and other predictable cash flows.
- 4.) 10% will be based on any additional quantifiable financial incentives such as expansion and continuation options
- 5.) 5% will be based on the submitted approach to price escalation and other quantifiable risk management alternatives.

Each of the above five price proposal criteria will be scored as follows:

<u>Low or minimal value:</u>	0 Points.
<u>Moderate value:</u>	3 Points
<u>High value:</u>	6 Points
<u>Exceptional value:</u>	10 Points

Following the scoring of the Technical Proposal, the Price Proposal will be opened and evaluated. The contract will be awarded to the proposer that the evaluation committee determines will best assist the Town to reach its goal of receiving the highest quality service at the greatest value and highest incentives for the Town. The successful proposal may or may not be the highest value proposal.

12. PAYMENT SCHEDULE

Payments shall be made by the successful bidder to the town no less than four times per year for the land lease. Supplemental payments such as Payments in Lieu of Taxes or S-REC revenue sharing shall be made to the town in accordance with the agreement between the town and the successful bidder. If a power purchase agreement is executed as part of this project proposal, the Town shall make payments to the facility owner for electrical use as established in the Power Purchase Agreement.

13. QUALITY OF WORK

All work shall be done to the satisfaction of the Town's building department inspectors and DPW. The Town may withhold operating permits to the extent as may be necessary to protect itself from loss on account of;

(a) defective service; or

(b) claims filed in reasonable evidence indicating public filing of claims by other parties against the

Contractor: or

(c) failure of the Contractor to make payments for equipment or labor; or

(d) personal injury or property damage to public or private property; or

(e) termination of any performance or other bonds.

Failure of the contractor to comply with any of the specifications or provisions of the contract shall be deemed sufficient cause of the immediate termination of the contract by the Select Board and full or partial forfeiture of the construction performance bond to the extent necessary to remediate the identified shortcoming.

14. PROTECTION OF THE TOWN

14.1 Indemnification and Hold Harmless: To the fullest extent permitted by Applicable Law, the Contractor shall protect, defend, indemnify and save the Town and its agents, officials, employees, servants and consultants, including contractors or subcontractors with whom the Town may have contracted, harmless from and against any and all claims, demands, fines, loss or destruction of property, liabilities, damages, environmental pollution, judgment losses, costs, expenses, suits, actions, and causes of action of every kind and character, for claims based on the negligent acts or omissions or willful misconduct by the Contractor which may arise in favor of any third party on account of illness, disease, loss of property, services, wages, death or personal injuries resulting from the Contractor's performance or non-performance of its obligations or operations under this Agreement, except to the extent any such damages arise out of injuries or property claims of the third parties caused by the negligence or willful misconduct of the Town, or its officials, directors, employees or agents. The Contractor further agrees to indemnify the Town for all reasonable expenses, court costs and reasonable attorney's fees including those incident to appeals incurred by or imposed upon the Town in connection therewith for any loss, damage, injury or other casualty. The Contractor additionally agrees that the Contractor may, subject to the approval of the Town, designate an attorney of the Contractor's selection to appear and defend any such action, on behalf of the Town, at the expense of the Contractor. The Contractor further agrees to pay all reasonable expenses and reasonable attorney's fees incurred by the Town in establishing the right to indemnity hereunder.

15. FORCE MAJEURE AND CHANGES IN LAW

15.1 Force Majeure. Each party shall be excused, subject to this Section, for failure or delay in performing its obligations under this Agreement if such failure or delay is caused solely by a Force Majeure event.

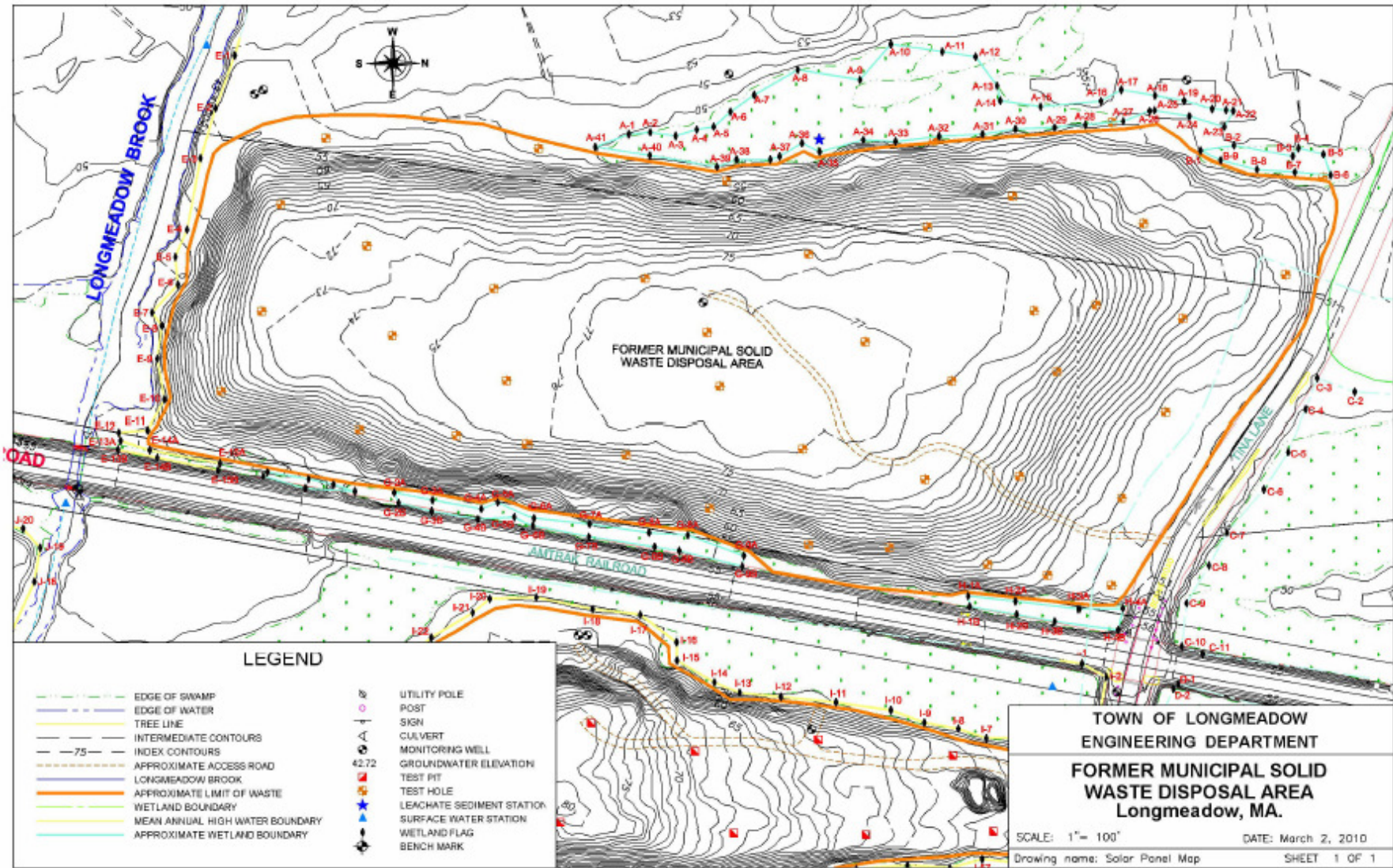
If either Party shall rely on a Force Majeure event as the basis for not performing its obligations under this Agreement, then the Party relying on such act, event or condition shall (i) provide prompt notice to the other Party of the occurrence of the act, event or condition, which shall include an estimation of its expected duration and the probable impact on the performance of its obligations hereunder, (ii) exercise all reasonable efforts to continue to perform its obligations hereunder to the maximum extent possible, (iii) in accordance with this Agreement, expeditiously take action to correct or cure the act, event or condition preventing such performance, (iv) exercise best efforts to mitigate or limit damages to the other Party, and (v) provide prompt notice to the other Party of the cessation of the Force Majeure event.

For purposes of this Agreement, the term *force majeure* shall mean any supervening cause beyond the reasonable control of the affected party, including, but not limited to, requirement of statute or regulation not in effect on the date of this Agreement; action of any court, regulatory authority or other public authority having jurisdiction except for such action resulting from the breach of this Agreement by the Contractor; storm, flood, fire, earthquake, explosion, civil disturbance, or act of God or the public enemy.

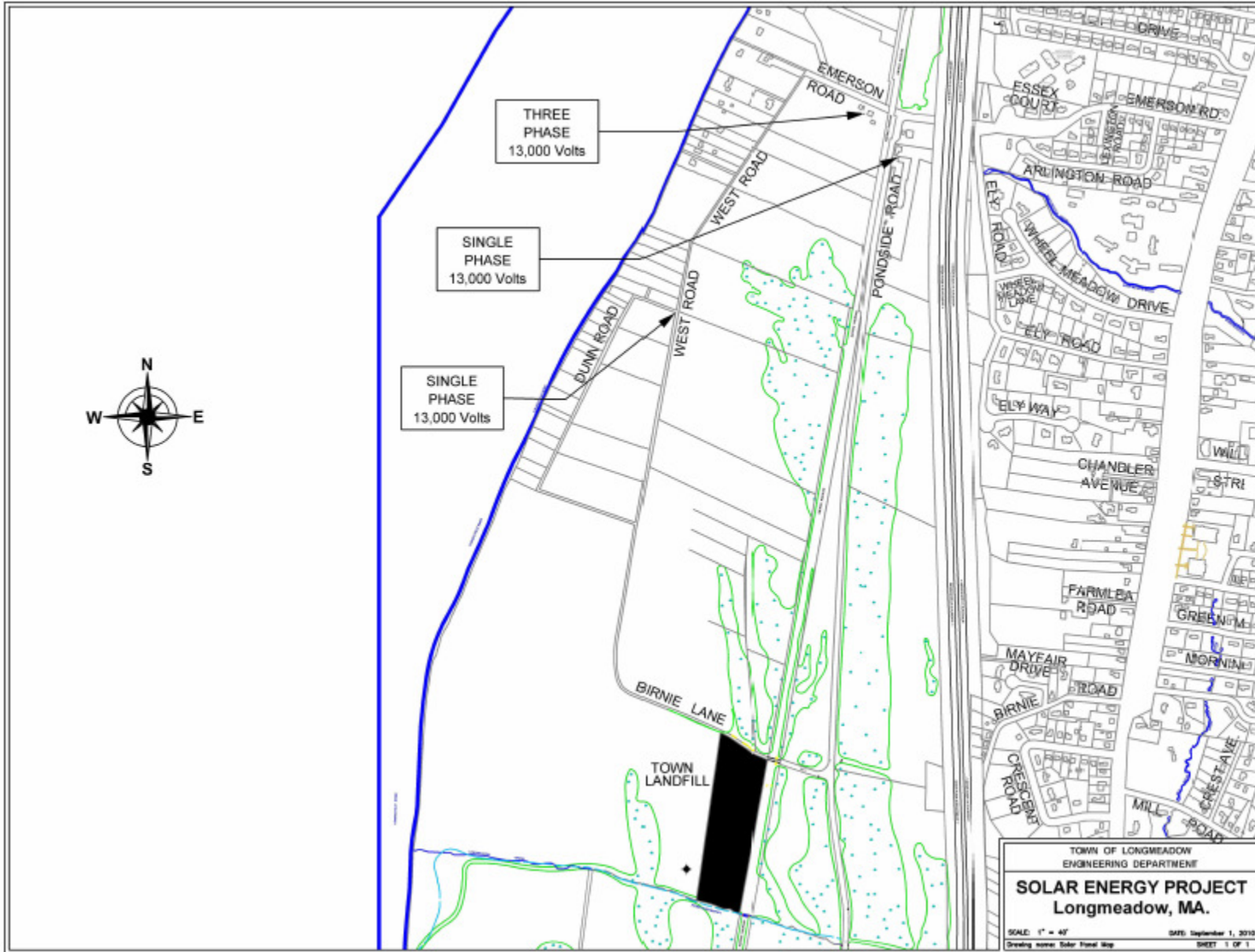
15.2 Changes In Law. The successful bidder shall keep fully informed of, and comply with, all Federal, State and municipal government laws, rules, regulations, policies, requirements and ordinances which pertain to the construction and operation of a photovoltaic power generation facility. A change in law, if any, during the term of this agreement shall be subject to thorough cost analysis relative to the impact on additive or deductive changes to the original agreed upon PPA or S-REC sharing fee, and to that end, the parties agree to enter into reasonable, good faith negotiations. Changes in law shall not effect the amount or timing of lease payments due the Town or PPA rates charged to the Town.

APPENDIX I

Topographical Map of Landfill Area



Electrical Connection Sites for Landfill Area



APPENDIX II
TECHNICAL PROPOSAL SUBMISSION FORMS
PHOTOVOLTAIC POWER GENERATION FACILITY
LAND LEASE AND OPERATING PROPOSAL

TOWN OF LONGMEADOW, MASSACHUSETTS

TECHNICAL PROPOSAL CONTENT:

Have you provided the Technical Proposal information as requested? **YES**_____, **NO**_____

Technical Proposal content: Three (3) paper copies and one electronic copy shall be provided in a sealed envelope labeled ‘**PHOTOVOLTAIC POWER GENERATION FACILITY LAND LEASE TECHNICAL PROPOSAL**’

1. A Bid Deposit in the amount of \$5,000.
2. The completed Technical Proposal Submission Forms (This three page document)
3. Contractor Qualification and Program Description Questionnaire (Appendix III)
4. Disclosure of Beneficial Interest in Real Property Transaction (Appendix V)
5. Technical proposal details for the construction of the photovoltaic power generation facility not included in the answer to question C8 of Appendix III.
7. Evidence of Insurance

ACKNOWLEDGEMENT OF ADDENDA:

The Bidder acknowledges the receipt of the following addenda (if any):

_____, _____, _____, _____, _____,

OTHER BIDDER INFORMATION REQUIREMENTS:

Company Name:
Name of Proposer:
Address:
Town, State / Zip:
Telephone / Fax:
Email:
Signature:
Print Name and Title:
Date:

CERTIFICATE OF NON-COLLUSION: MANDATORY FORM

The undersigned certifies under the penalties of perjury that this bid or bid has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of person submitting proposal/contract

Date

Name of Business

CERTIFICATE OF TAX COMPLIANCE

Pursuant to M.G.L. c. 62C, §49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Social Security Number or

Federal Identification Number

Signature of Individual or

Corporate Name

Corporate Officer
(if applicable)

APPENDIX III
 (To be submitted with the Technical Proposal)
**CONTRACTOR QUALIFICATION AND
 PROGRAM DESCRIPTION QUESTIONNAIRE**

CONTRACTOR: _____

ADDRESS: _____

TELEPHONE CONTACT: _____ FAX No: _____

E-MAIL CONTACT: _____ WEB SITE: _____

Please complete all questions below. Expand the space provided for answers as necessary. If separate pages are attached, please indicate the question number prior to the information.

A. COMPANY INFORMATION

A1. Where is your company headquartered (City and State)? _____

A2. Please list the officers and principles of your company

Name	Title	Principle State of Residence

A3. Have any of the principles of your company held positions at any other energy service companies within the past five years? _____

If so, who, for what company, and what position? _____

A4. What is the experience of the key individuals in your organization that will be doing the design and construction of this facility?

NAME	POSITION or OFFICE	YEARS' EXPERIENCE

A5. In what other lines of business do you have a financial interest? _____

B. WORK HISTORY

B1. How many years experience in renewable energy power generation has your organization had?

- a. As a General Contractor _____
- b. As a Sub-Contractor _____

B2. List any photovoltaic generating facility design or construction contracts your organization has in effect as of this date.

Client	Contact (Name and Phone No.)	Location	Size of Facility (KW Generated)	Percent Complete	Contract Amount

B3. List any photovoltaic generating facility design or construction contracts your organization has completed in the past three years.

Client	Location	Size of Facility (KW Generated)	When Completed	Contract Amount

B4. With reference to questions B2 and B3 above, have you ever failed to complete any work awarded to you?

If the answer to question B4 was yes, state location and reason for failure to complete. _____

B5. Has any officer or partner of your organization ever been an officer or partner of some other organization that failed to complete a renewable energy facility construction project?

If so, state name of individual, other organization, and reason: _____

B6. Has any officer or partner of your organization ever failed to complete a renewable energy facility construction project handled in his/her own name? _____

If so, state name of individual, name of owner, and reason: _____

C. CONTRACT INFORMATION AND FACILITY DESCRIPTION

(Use additional pages or submittals where necessary)

C1. In what manner have you inspected the proposed site of this facility at the Town of Longmeadow?

C2. What equipment do you plan on installing as part of this photovoltaic array?

Manufacturer	PV Panel Model	Number of Panels	Description, Size, Capacity of each panel	Support Equipment Information	Own? Rent/Lease ?

Please attach additional information (drawings, photos, etc.) as needed to assist in completion of the above information.

C3. What will be the operating output of the facility? _____

C4. What performance operational guarantees are supplied by either you or the equipment manufacturers? Include warrantee information on all equipment. _____

C5. What portions of the project design and construction will you subcontract?

C6. If you intend to subcontract any portion of this contract, from which subcontractors do you expect to require a bond?

C7. Please list the name and experience of the individual who will be the Contract Manager.

C8. Please attach details of the photovoltaic power generating facility you plan on constructing, including the amount of land you will utilize for this facility.

I certify that the above information is complete and truthful.

Signed: _____
Name

Date: _____

Title

Appendix IV

**PHOTOVOLTAIC POWER GENERATION FACILITY
LAND LEASE AND OPERATING
PRICE PROPOSAL SUBMISSION FORMS**

TOWN OF LONGMEADOW, MASSACHUSETTS

THIS COMPLETED DOCUMENT MUST BE PLACED IN THE PRICE PROPOSAL ENVELOPE.

The following prices shall include all costs, use of equipment, labor, all indirect and direct expenses associated with the construction and operation of a photovoltaic power generation facility as detailed in the attached specification.

COMPANY NAME: _____

PROPOSAL PRICING: Construction, ownership and operation of a photovoltaic power generation facility on land leased from the Town of Longmeadow, MA.

Part I - Land Lease Agreement Component: The bidder hereby agrees to pay the Town of Longmeadow the following amounts to lease up to 5.5 acres of the closed town landfill for the construction and operation of a photovoltaic power generating facility:

Fiscal Year	Start Date	End Date	Lease Payment amount	
			Figures	Words
2012	7/1/2011	6/30/2012	\$_____.	
2013	7/1/2012	6/30/2013	\$_____.	
2014	7/1/2013	6/30/2014	\$_____.	
2015	7/1/2014	6/30/2015	\$_____.	
2016	7/1/2015	6/30/2016	\$_____.	
2017	7/1/2016	6/30/2017	\$_____.	
2018	7/1/2017	6/30/2018	\$_____.	
2019	7/1/2018	6/30/2019	\$_____.	
2020	7/1/2019	6/30/2020	\$_____.	
2021	7/1/2020	6/30/2021	\$_____.	
2022	7/1/2021	6/30/2022	\$_____.	
2023	7/1/2022	6/30/2023	\$_____.	
2024	7/1/2023	6/30/2024	\$_____.	
2025	7/1/2024	6/30/2025	\$_____.	
2026	7/1/2025	6/30/2026	\$_____.	
2027	7/1/2026	6/30/2027	\$_____.	
2028	7/1/2027	6/30/2028	\$_____.	
2029	7/1/2028	6/30/2029	\$_____.	
2030	7/1/2029	6/30/2030	\$_____.	
2031	7/1/2030	6/30/2031	\$_____.	
2032	7/1/2031	6/30/2032	\$_____.	

2033	7/1/2032	6/30/2033	\$_____.	
2034	7/1/2033	6/30/2034	\$_____.	
2035	7/1/2034	6/30/2035	\$_____.	
2036	7/1/2035	6/30/2036	\$_____.	

TOTAL AMOUNT FOR TWENTY-FIVE YEARS: \$ _____

PROPOSAL PRICING: Construction, ownership and operation of a photovoltaic power generation facility on land leased from the Town of Longmeadow, MA.

Part II - Solar Power Purchase Agreement Component:

The bidder hereby offers to sell to the Town of Longmeadow electricity generated from the Photovoltaic Generation facility as follows:

Fiscal Year	Start Date	End Date	Amount of Electricity (kilo-watt hours)		Price per kilo-watt hour	
			Numbers	Words	Numbers	Words
2013	7/1/2012	6/30/2013			\$____._____	
2014	7/1/2013	6/30/2014			\$____._____	
2015	7/1/2014	6/30/2015			\$____._____	
2016	7/1/2015	6/30/2016			\$____._____	
2017	7/1/2016	6/30/2017			\$____._____	
2018	7/1/2017	6/30/2018			\$____._____	
2019	7/1/2018	6/30/2019			\$____._____	
2020	7/1/2019	6/30/2020			\$____._____	
2021	7/1/2020	6/30/2021			\$____._____	
2022	7/1/2021	6/30/2022			\$____._____	
2023	7/1/2022	6/30/2023			\$____._____	
2024	7/1/2023	6/30/2024			\$____._____	
2025	7/1/2024	6/30/2025			\$____._____	
2026	7/1/2025	6/30/2026			\$____._____	
2027	7/1/2026	6/30/2027			\$____._____	
2028	7/1/2027	6/30/2028			\$____._____	
2029	7/1/2028	6/30/2029			\$____._____	
2030	7/1/2029	6/30/2030			\$____._____	
2031	7/1/2030	6/30/2031			\$____._____	
2032	7/1/2031	6/30/2032			\$____._____	
2033	7/1/2032	6/30/2033			\$____._____	

2034	7/1/2033	6/30/2034			\$____.____	
2035	7/1/2034	6/30/2035			\$____.____	
2036	7/1/2035	6/30/2036			\$____.____	

PROPOSAL PRICING: Construction, ownership and operation of a photovoltaic power generation facility on land leased from the Town of Longmeadow, MA.

Part III - Payment in Lieu of Taxes (PILOT) Component: In addition to lease payments for use of the land, the bidder hereby agrees to pay the town of Longmeadow the following payments in lieu of taxes (PILOT):

Fiscal Year	Start Date	End Date	Payment amount	
			Figures	Words
2012	7/1/2011	6/30/2012	\$_____.	
2013	7/1/2012	6/30/2013	\$_____.	
2014	7/1/2013	6/30/2014	\$_____.	
2015	7/1/2014	6/30/2015	\$_____.	
2016	7/1/2015	6/30/2016	\$_____.	
2017	7/1/2016	6/30/2017	\$_____.	
2018	7/1/2017	6/30/2018	\$_____.	
2019	7/1/2018	6/30/2019	\$_____.	
2020	7/1/2019	6/30/2020	\$_____.	
2021	7/1/2020	6/30/2021	\$_____.	
2022	7/1/2021	6/30/2022	\$_____.	
2023	7/1/2022	6/30/2023	\$_____.	
2024	7/1/2023	6/30/2024	\$_____.	
2025	7/1/2024	6/30/2025	\$_____.	
2026	7/1/2025	6/30/2026	\$_____.	
2027	7/1/2026	6/30/2027	\$_____.	
2028	7/1/2027	6/30/2028	\$_____.	
2029	7/1/2028	6/30/2029	\$_____.	
2030	7/1/2029	6/30/2030	\$_____.	
2031	7/1/2030	6/30/2031	\$_____.	
2032	7/1/2031	6/30/2032	\$_____.	
2033	7/1/2032	6/30/2033	\$_____.	

2034	7/1/2033	6/30/2034	\$_____.	
2035	7/1/2034	6/30/2035	\$_____.	
2036	7/1/2035	6/30/2036	\$_____.	

PROPOSAL PRICING: Construction, ownership and operation of a photovoltaic power generation facility on land leased from the Town of Longmeadow, MA.

Part IV - Sharing of Solar Renewable Energy Credits (S-RECs) or other payments:

In addition to lease payments for use of the land, the bidder hereby agrees to pay the town of Longmeadow these additional incentive payments according to the following schedule:

PRICE PROPOSAL SUBMISSION INFORMATION:

This Bid will be considered subject to appropriations. The right is reserved to reject any and all bids. Unit prices to remain firm throughout the contract term.

Company Name:
Name of Proposer:
Address:
Town, State / Zip:
Telephone / Fax:
Email:
Signature:
Print Name and Title:
Date:

PRICE PROPOSAL CONTENT:

Have you provided the Price Proposal information as requested? **YES**____, **NO**_____

Price Proposal Content:

Three (3) copies shall be provided in a sealed envelope labeled “PHOTOVOLTAIC POWER GENERATION FACILITY LAND USE AND OPERATION PRICE PROPOSAL

Each envelope shall contain:

1. Evidence of ability to obtain a 100% performance bond.
2. Bank Reference
3. Financial Statements
4. Completed and signed Price Proposal Submission Forms

APPENDIX V

(To be submitted with the Technical Proposal)

COMPLETED DISCLOSURE OF BENEFICIAL INTEREST IN REAL ESTATE TRANSACTION

I, _____ under the pains and penalties of perjury hereby swear that I own, have owned or have a current interest in the following:

List all property you presently own or have owned in the past in the Town of Longmeadow, MA. For currently owned property indicate with a “C”, and for previously owned indicate with a “P”. Provide a complete property address. List all property that is now owned or was owned in the Town of Longmeadow by any corporation, trust, partnership, or joint venture, in which you have an interest or are associated with. Provide the entity’s complete name and complete property address.

The above information is true and correct to the best of my knowledge.

Signed and subscribed to under pains and penalties of perjury:

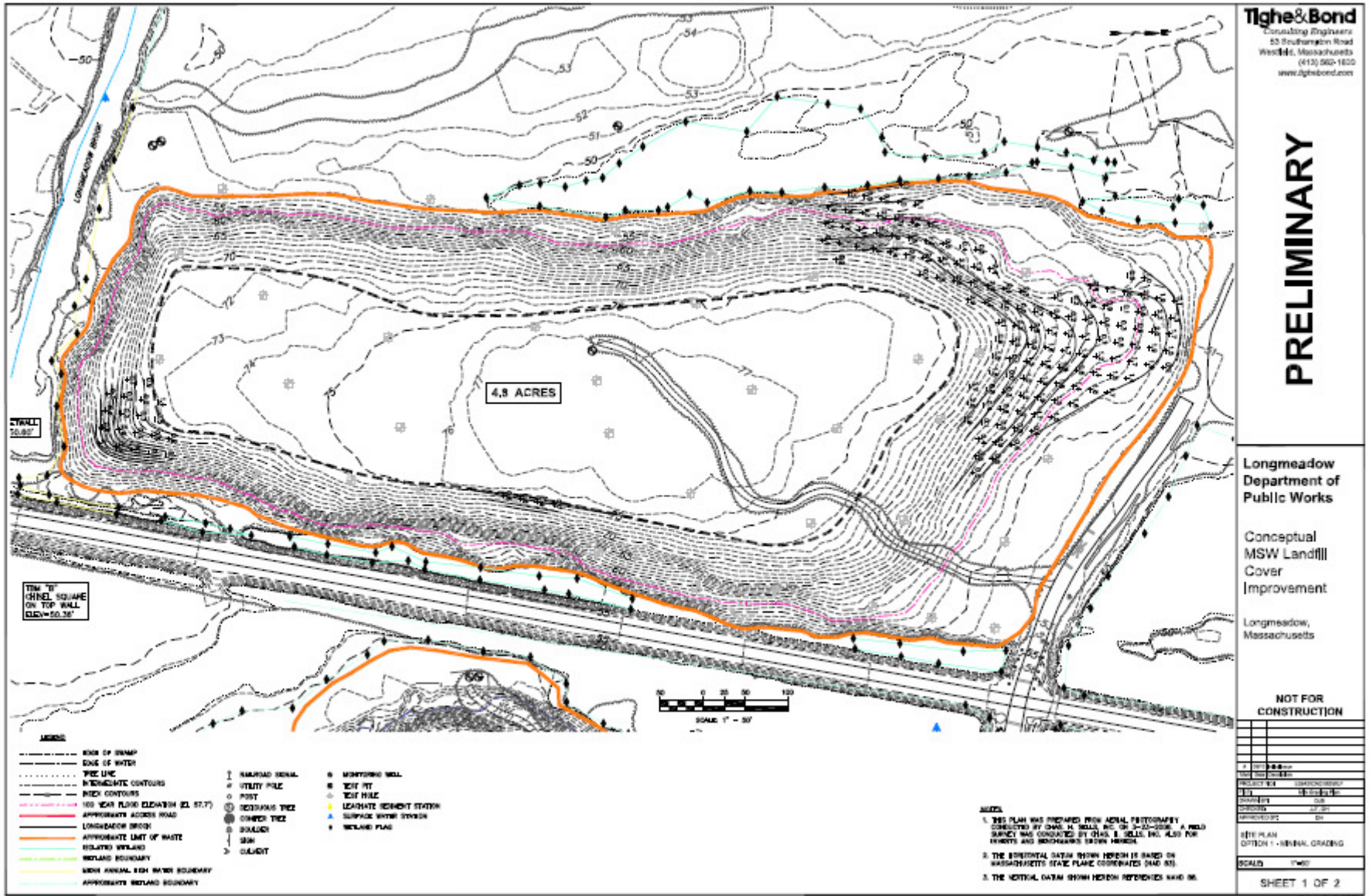
Signature: _____

Print Name: _____

Address: _____

APPENDIX VI

Tighe and Bond Post-Closure Topographical Maps



Tighe & Bond
 Consulting Engineers
 55 Southamton Road
 Westfield, Massachusetts
 (413) 562-1822
 www.tgbond.com

PRELIMINARY

Longmeadow
 Department of
 Public Works

Conceptual
 MSW Landfill
 Cover
 Improvement

Longmeadow,
 Massachusetts

NOT FOR
 CONSTRUCTION

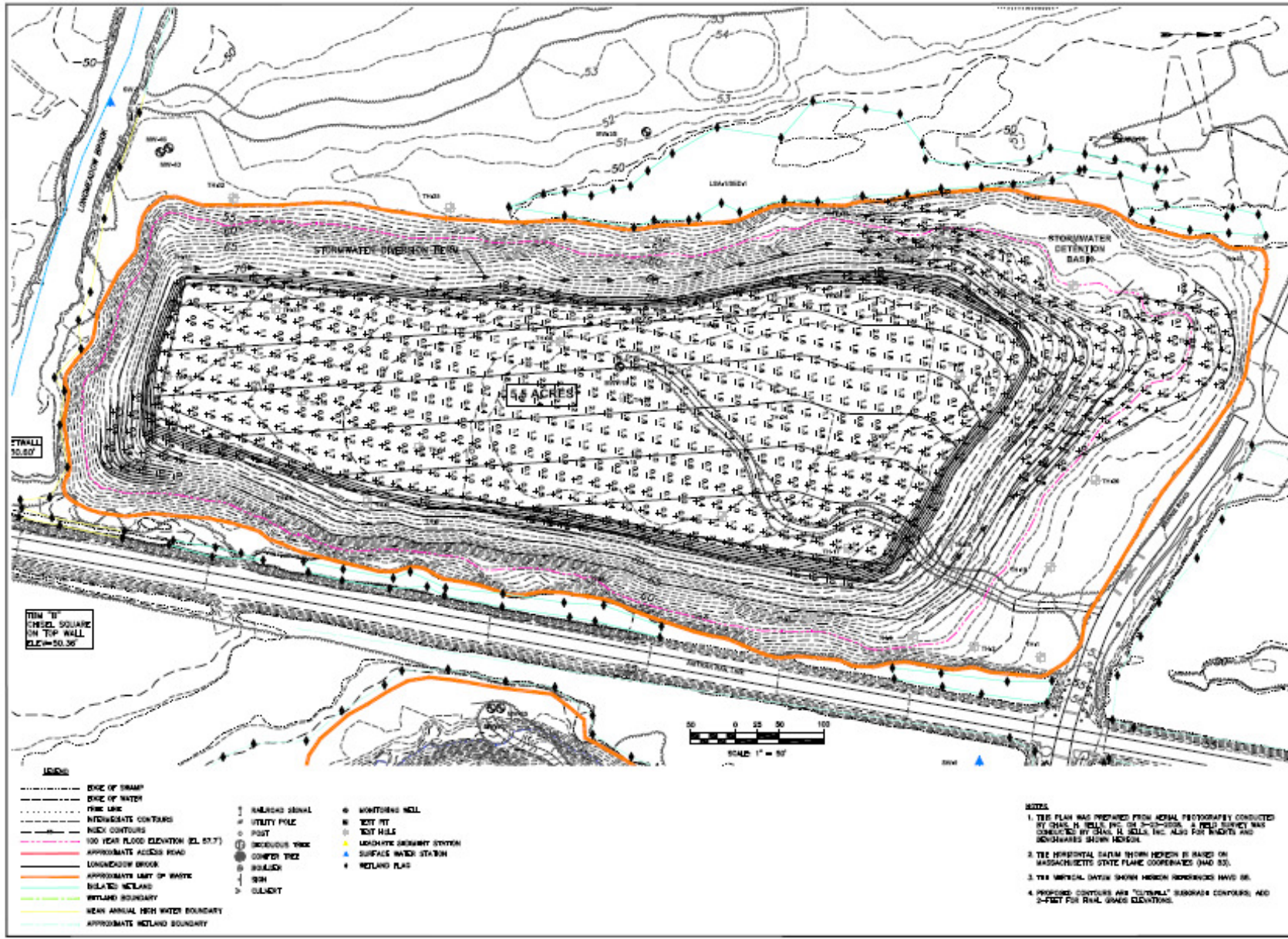
NOTES

1. THIS PLAN WAS PREPARED FROM AERIAL PHOTOGRAPHY CONDUCTED BY OASIS. A FIELD SURVEY WAS CONDUCTED BY OASIS, TIGHE & BOND, INC. ALSO FOR REVISIONS AND MODIFICATIONS TO THE ORIGINAL PLAN.
2. THE ELEVATIONAL DATA SHOWN HEREON IS BASED ON MASSACHUSETTS STATE PLANE COORDINATES SHAD 83.
3. THE VERTICAL DATA SHOWN HEREON REFERENCES NAVD 83.

SHEET 1 OF 2

CS:\Projects\111042\111042.dwg (11/11/2010 2:58:46 PM) 1:2

C:\projects\115542\landfill\CAD\MSW\Plan\Griding Plan 2.dwg, 10/5/2010 2:42:30 PM, 1:2



Tighe & Bond
 Consulting Engineers
 55 Southampton Road
 Westfield, Massachusetts
 (413) 862-1800
 www.tighebond.com

PRELIMINARY

Longmeadow
 Department of
 Public Works

 Conceptual
 MSW Landfill
 Cover
 Improvement

 Longmeadow,
 Massachusetts

NOT FOR
 CONSTRUCTION

DATE	
BY	
CHECKED BY	
APPROVED BY	
SCALE	1"=50'
SHEET 2 OF 2	

NOTES

1. THIS PLAN WAS PREPARED FROM AERIAL PHOTOGRAPHY CONDUCTED BY SHAW H. BELLS, INC. ON 3-23-2009. A FIELD SURVEY WAS CONDUCTED BY SHAW H. BELLS, INC. ALSO FOR MONITORING AND SIGNATURES SHOWN HEREON.
2. THE HORIZONTAL DATUM (EARTH HEIGHTS) IS BASED ON MASSACHUSETTS STATE PLANE COORDINATES (NAD 83).
3. THE VERTICAL DATUM (SHAW H. BELLS' ELEVATIONS) HAS NO RELATIONSHIP TO THE STATE PLANE DATUM.
4. PROPOSED CONTOURS ARE "VERTICALLY" BASED ON CONTOURS AND 2'-FEET FOR REAL GRADE ELEVATIONS.

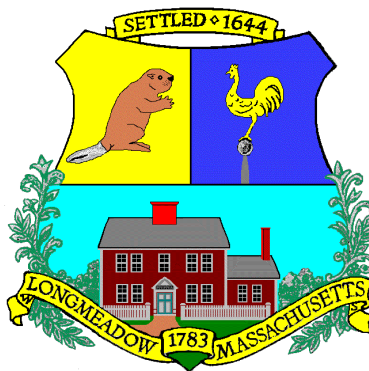
APPENDIX VII
SAMPLE STANDARD CONTRACTS

CONTRACT FOR THE LEASE OF PROPERTY

**PHOTOVOLTAIC POWER GENERATION FACILITY
LAND LEASE AND OPERATING PROPOSAL**

(VENDOR NAME)

(DATE)



**Town of Longmeadow
20 Williams Street**

Longmeadow, Massachusetts 01106

TOWN OF LONGMEADOW, MASSACHUSETTS
Contract Documents for the Procurement of Goods and Services

DRAFT PROPERTY LEASE AGREEMENT

This Property Lease Agreement (“Agreement”) is dated as of _____, 2011, by and between the Town of Longmeadow, a body politic of the State of Massachusetts (“Town”), and _____, (“Tenant”).

WHEREAS, the Town of Longmeadow has identified a Town owned surface area of land on which a solar array for the generation of electrical energy can be located, which surface area is not needed for other public purposes as of the date of this Agreement, and

WHEREAS, the Tenant desires to develop and operate a solar array on said surface area for the purposes of supplying an alternate form of energy and interconnecting to the electric grid,

NOW, THEREFORE, WITNESSETH in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Tenant agree as follows:

ARTICLE I - DEFINITIONS

1.1 The following words and terms, whenever and wherever used or appearing in this Agreement shall have the following meanings:

- a. “Annual Payment” shall mean the consideration paid under this Agreement by the Tenant to the Town as set forth in Article IV.
- b. “Electric Generating Facility” shall mean the equipment used to collect solar energy, convert it to usable electricity and deliver it to purchasers. It is anticipated that the Electric Generating Facility will include solar photovoltaic panels, inverter(s), cables, wires, utility lines, transmission lines, any communications facilities, and supporting equipment and structures thereto, installed and owned by the Tenant within the Leased Property or Landfill.
- c. “Force Majeure” shall mean unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. Without limiting the generality of the foregoing, Force Majeure shall include catastrophic failure of facilities, flood, earthquake, storm, lightning, fire, explosion, epidemic, war, riot, civil disturbance, labor trouble, labor strike, terrorism, sabotage, restraint by court or public authority which by exercise of due diligence and foresight either Party could not be expected to avoid and any change in any laws, orders, rules or regulations precluding operation of the facility.
- d. “Hazardous Substances” means any and all materials and substances that are defined as “hazardous waste”, “extremely hazardous waste”, “hazardous substances” or “hazardous material” pursuant to federal, state or local government law including, without limitation (1) any “hazardous waste” as defined by the Resource Conservation and Recovery Act of 1976 (“RCRA”) 42 U.S.C. 9601 et. seq. as amended from time to time, and regulations promulgated thereunder; (2) any “hazardous substance” as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq. (“CERCLA”), as amended from time to time and regulations promulgated thereunder; (3) any “hazardous material” as defined in the Massachusetts Hazardous Waste Regulations 310 CMR 30.00, as amended from time to time; (4) any oil, petroleum products,

and their by-products; and (5) any substance that is or becomes regulated by any federal, state or local government authority that may fall within any of the above-referenced categories.

e. “Landfill” shall mean the parcel of land owned by the Town upon which the Town manages a closed and capped solid waste landfill, the legal description of which is provided, attached hereto as Exhibit A.

f. “Leased Property” shall mean those certain premises owned by the Town consisting of approximately 16.8 acres of land more particularly depicted and described as parcel No. 67, Town identification number OE 108-192, which is attached hereto as Exhibit B and made a part hereof.

g. “Solar Energy Project” shall mean all activities that encompass the installation, operation, and maintenance of solar photovoltaic panels and all other activities proposed to be conducted by the Tenant under this Agreement and as described in the Tenant’s response to the Request for Proposals (RFP) dated December 13, 2010.

h. “Term” shall mean the Agreement term as set forth in Article IV of this Agreement.

ARTICLE II - LEASED PROPERTY

2.1 The Town owns a parcel of land located at Birnie Road, commonly known as Town of Longmeadow Landfill. The Landfill is more particularly described in Exhibit A attached hereto. The Town leases to Tenant and Tenant leases from the Town approximately _____ square feet of the surface of the Landfill (the “Leased Property”), as more particularly described and shown in Exhibit B attached hereto. The Town hereby leases to _____, the Tenant, the Leased Property and appurtenant access rights thereto in their now-existing condition.

2.2 Notwithstanding anything to the contrary contained herein, the Tenant shall not do any digging or soil borings on the Leased Property without the prior written consent of the Town, which consent will not be unreasonably withheld. The Tenant acknowledges that the Leased Property is on a landfill and that below the surface of the Leased Property there are capped soils possibly encapsulating methane gas, which cap must be safeguarded and cannot be punctured, degraded or compromised in any way.

2.3 The Tenant recognizes that the Town has certain obligations to maintain the Landfill and will not construct or operate the Solar Energy Project in a manner that will interfere with the proper maintenance of the Landfill by the Town. Furthermore, the Town retains the right to develop and/or use other portions of the Town property, which do not impact or interfere with the Solar Energy Project.

2.4 The Tenant has the right to construct, erect, install, maintain, test, replace, remove, operate and upgrade on the Leased Property a solar photovoltaic system, including without limitation photovoltaic panels, fencing, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, wiring, wire kits and data monitoring systems.

2.5 Upon the Town’s prior written consent, the Tenant, at its sole cost and expense, may take all approved actions to prevent flora on the Leased Property or the landfill from overshadowing or otherwise blocking access of sunlight to the Solar Energy Project.

2.6 Tenant shall use the Leased Property only for the activities of the Solar Energy Project and shall maintain the Leased Property consistent with federal, state, regional, & local regulations. Tenant shall have the right to erect structures upon the Leased Property incidental to and necessary for the normal operation of the Solar Energy Project on the Leased Property, subject, however, to the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed, and subject further to Tenant obtaining all necessary permits for such construction and operation. Tenant shall not commit waste on the Leased Property and shall maintain the Leased Property in accordance with accepted professional standards applicable to similar electric generating facilities.

Notwithstanding the foregoing, the Town acknowledges that it has provided consent to the Solar Energy Project described in the Project Description attached hereto.

2.7 The Town acknowledges and agrees that Tenant shall have full control and responsibility for all aspects of Tenant's operations upon the Leased Property, including, without limitation, the timing and extent of electric generation, the electric output resulting therefrom, all operation and maintenance activities relating to the Solar Energy Project, all uses of the Solar Energy Project for the purposes allowed under this Agreement, reporting and disclosure requirements to any and all regulatory agencies.

2.8 From the commencement of this Agreement, the Town acknowledges and agrees that all electric power generated at the Leased Property from the Solar Energy Project during the term of this Agreement shall be the property of the Tenant. From the commencement of this Agreement, the Tenant shall have all right, title and interest in tax credits and any other environmental attributes, including any and all financial and tax credits relating to the Solar Energy Project, including Solar Renewable Energy Certificates (S-RECs).

2.9 The Tenant shall not cause or permit any Hazardous Substances to be brought upon, kept, or used on or about the Leased Property by the Tenant, its agents, employees, contractors, subcontractors or invitees without first obtaining the Town's specific written consent.

2.9.1 Any Hazardous Substance permitted on the Leased Property as permitted in Section 2.9 of this Agreement, and all containers used therefore, shall be used, kept, stored, and disposed of in a manner that complies with all federal, state, and local laws or regulations applicable to such Hazardous Substance.

2.9.2 Except as explicitly permitted by applicable federal or state permits, the Tenant shall not discharge, leak or emit, or permit to be discharged, leaked, or emitted, any material, including without limitation, any Hazardous Substances, into the air, ground, sewer system, or any body of water, if that material (as is reasonably determined by the Town, or any governmental authority) does or may pollute or contaminate the same, or may adversely affect (a) the health, welfare, or safety of persons, whether located on the Leased Property or elsewhere, or (b) the condition, use, or enjoyment of any building or any other real or personal property. The Tenant will immediately notify the Town and will be solely responsible for cleanup of any Hazardous Substances discharged or released by the Tenant and indemnify the Town of any liability for clean up expenses caused by any intentional or negligent acts or omissions of the Tenant.

2.9.3 The Tenant hereby covenants and agrees that it shall be fully liable for all cost and expenses related to the use, storage and disposal of Hazardous Substances kept on the Leased Property by the Tenant, and that the Tenant shall give immediate verbal and written notice to the Town of any violation or potential violation of the provisions of this Article.

2.10 The Tenant shall not mortgage, pledge, encumber or in any way allow a lien to be placed against its interest in the Leased Property or in any way transfer or convey its interest in the Leased Property. In the event that the Leased Property or any part thereof or interest therein shall be mortgaged, pledged, encumbered by any lien interest, lease assigned, or otherwise transferred, or the Tenant shall be divested of its interest therein in any manner or way, whether voluntarily or involuntarily, then the same shall constitute a default under this Agreement and the Town shall have the right, at its option, to (i) immediately terminate this Agreement, (ii) accelerate all payments due hereunder to become immediately due and payable, and/or (iii) exercise all rights and remedies available to it under this Agreement and at law and in equity.

2.11 Replacement Costs. The Tenant will secure in a separate financial account an amount equal to the cost to replace 2% of the solar panels in a given year and provide proof to the Town that said amount is being held. The amount to be deposited in this financial account shall also include an

annualized replacement cost for the inverter and any other equipment that will need to be replaced before the term expires.

2.12 Financial Assurance for System Removal. The Tenant will secure a separate financial account to be held by the Town, in an amount sufficient to return the landfill property to pre-project status. The amount required to be deposited in said account shall be determined from calculations based upon the all-inclusive costs of removal of the solar panels, removal of all electrical connections and equipment, and the legal proper disposal of all equipment and waste. The tenant will secure a 100% performance bond to the amount required to return the land to its original pre-solar installation condition. The calculation shall also include all costs for returning the landfill cap and property to pre-project conditions. The calculations shall include all professional costs, labor costs, trucking, hauling, and disposal costs, landscaping costs, and any other cost not mentioned but which is expected to be incurred. The calculations, financial instrument, and financial institution must be approved by the Town.

2.13 Payments made by Tenant to the Town for the Leased Property shall be included in the total consideration paid to the Town under Article V of this Agreement. In addition, Tenant shall pay all costs, charges and taxes (including taxes assessed against or attributed to the Solar Project), assessments, charges for public utilities, insurance premiums, and other charges and fees resulting from Tenant's activities at or upon the Leased Property.

2.14 Quiet Enjoyment. As long as the Tenant remits the annual payment(s) required under this Agreement and fulfills all of the obligations on its part to be performed hereunder, the Tenant shall peaceably hold and quietly enjoy the Leased Property without interruption by the Town. The Town, however, reserves the right to enter the Leased Property, to inspect the same and determine that the Tenant is, in fact, complying with the terms and conditions of this Agreement, provided, however, that such inspection shall be after reasonable notice, during normal business hours and conducted in the presence of an authorized Tenant employee.

2.15 Surrender of Premises. At the early termination of this Agreement, the Tenant shall surrender the Leased Property in as good condition as it was in at the beginning of said term, reasonable use and wear excepted. Upon surrender of the Leased Property the Town shall own any and all improvements made to the Leased Property. Upon expiration or early termination of this Agreement, including termination by eminent domain, the Town shall have the option of requiring the tenant to remove or not removing the Electric Generating Facility from the Leased Property. In the event the Tenant opts to remove the Electric Generating Equipment the Tenant shall do so without damage to the Leased Property. In the event Tenant elects to leave the Electric Generating Facility on the Leased Property, the Tenant shall convey to the Town title to same for a purchase price not to exceed its then-depreciated value, which depreciation shall be calculated over a twenty five (25) year period. An object assessment by a qualified third party will be utilized to determine the depreciated value purchase price. The Town shall accept the Electric Generating Facility, in "AS IS" condition. The Town shall have a right but not the obligation to offset any purchase price by any amounts then due and owing the Town hereunder.

2.16 Fire Casualty. If the whole or any part of the Electric Generating Facility and/or the Leased Property are damaged or destroyed by explosion, fire, the elements, or other insured cause so as to make the Electric Generating Facility unsuitable or uneconomical for Tenant's use, the Tenant may terminate this Agreement and all obligations of either Party hereto upon ninety (90) days written notice to the Town. If the Tenant does not elect to terminate this Agreement, the Tenant shall use its best efforts to restore the Electric Generating Facility to usable condition in a timely manner. In the case of such destruction, there shall be a just abatement or reduction of the Annual Payment, between

the date of destruction and the date of complete restoration, based on the extent to which the destruction causes the electric generating Solar Project to be unusable or inaccessible.

2.17 Eminent Domain. If there is a taking in whole or in part of the Leased Property by Eminent Domain or condemnation, that substantially affects operation, the affected party shall have the right to terminate this Agreement upon written notice to the town within thirty (30) days after a final order of condemnation is entered. If either party does not so elect to terminate, the Agreement shall continue in effect, and the town will use best efforts to agree to an adjustment in the Annual Payment payable by Tenant, which adjustment shall reflect the value of the portion taken, compared to the total value of the Leased Property immediately before the taking. Any award or compensation due or payable to the Town for the condemnation of any portion of the Leased Property shall be allocated between the Town and Tenant in amounts proportionate to the value of the condemned property (whether real or personal) owned or occupied by each. The value of the lease term remaining shall also be used to calculate the total amount to be allocated between the parties.

ARTICLE III - RIGHTS AND RESPONSIBILITIES

3.1 The Town represents and agrees to the following rights and responsibilities under this Agreement:

- a. that the Town has title to the Landfill and full power and authority to enter into this Agreement and the Town will keep the Landfill free from liens and encumbrances that would adversely affect the Solar Energy Project and Electric Generating Facility;
- b. to own and manage the Landfill in compliance with all Federal, State and local laws and regulations;
- c. to grant to the Tenant any necessary non-exclusive easements upon the Landfill for reasonable ingress and egress to the Solar Energy Project and Electric Generating Facility and for the taking of all actions to construct and operate the Solar Energy Project and Electric Generating Facility;
- d. to provide road access to the Solar Energy Project and Electric Generating Facility and snow plowing and customary access maintenance;
- e. to provide customary site and cap maintenance on the Landfill property that does not include the Leased Property; and
- f. to provide all reasonable assistance in the prosecution of permits for the Tenant's Project.

3.2 The Tenant represents, warrants, covenants and agrees to the following rights and responsibilities under this Agreement:

- a. to operate and maintain the Solar Energy Project and Electric Generating Facility during the Term of this Agreement and be solely responsible for the cost and work necessary to repair; improve or replace said Electric Generating Facility;
- b. to staff and manage the Solar Energy Project and Electric Generating Facility with qualified personnel;
- c. to provide the Town reasonable access to the Leased Property;
- d. to obtain diligently all necessary permits to operate the Solar Energy Project as proposed herein; and,
- e. to perform its duties and obligations according to all Federal, State and local laws and regulations.

3.3 The Tenant and the Town covenant and agree that each shall cooperate fully with each other, including providing data, information, documents and qualified personnel, so as to assist each other to obtain all contracts, permits, licenses, certificates, governmental approvals and financing as are or may become necessary for the execution of the acts contemplated hereunder. In the event that the Tenant is, despite its diligent efforts and in good faith efforts, unable to obtain the necessary permits to construct and operate the Electric Generating Facility, the Tenant may terminate this Agreement.

This provision shall not be deemed an affirmative obligation of the Town but a representation to assist and be cooperative in Tenant's efforts.

ARTICLE IV - TERM OF AGREEMENT

4.1 This Agreement shall remain in force for a term commencing on _____, 2011 and expiring on _____, 2036; provided, however, that the Parties shall have the right to terminate this Agreement, or any extension thereof, pursuant to Article X of this Agreement.

4.2 This Agreement may be extended for an additional term(s) under mutual agreement by both the Town and Tenant.

ARTICLE V - PAYMENT

5.1 The Tenant shall pay to the Town in quarterly payments for the entire term as indicated on the Tenant's Price Proposal Submission Forms (attached), except for the 1st year when said payment shall be due within 30 days of signing the Property Lease Agreement. Failure of the Tenant to render the Annual Payment may subject this Agreement to termination under Article X of this Agreement. The unpaid Annual Payment that is late will be subject to interest at a rate of 1.5 percent per month calculated on the average daily unpaid balance.

5.2 The Tenant will also pay to the Town on an annual basis due on July 1st of each year for the entire term a payment in lieu of taxes (PILOT) such amount as indicated on the Tenant's Financial Benefits Proposal (attached). The first PILOT payment will be due in the 2nd year of the term.

5.3 (Optional) The Tenant will pay the town a portion of the revenue generated from the sale of electricity from the Solar Energy Project and Electric Generating Facility. The payment shall be in such an amount as indicated on the Tenant's Financial Benefits Proposal (attached).

5.4 (Optional) The Tenant will pay the Town a portion of the revenue generated from the sale of solar renewable energy certificates (S-RECs) from the Solar Energy Project and Electric Generating Facility. The payment shall be in such an amount as indicated on the Tenant's Financial Benefits Proposal (attached).

ARTICLE VI - ASSIGNMENT

6.1 All of the rights and duties contained in this Agreement shall inure to and be binding upon the successors and assigns of the parties hereto. The Tenant may assign or otherwise transfer the Tenant's rights and obligations hereunder to any third party subject to the Town's prior written consent, which such consent may not be unreasonably withheld or delayed by the Town. The Tenant shall notify the Town a minimum of one-hundred twenty days (120) in advance of its intent to assign any or all parts of this agreement, project responsibilities or majority financial interests in the project. The Town has the right to review all available information concerning the proposed assignee and has the right to object to the assignment. The Town shall review and respond to any notice within 45 days from receipt thereof.

ARTICLE VII - CROSS-INDEMNIFICATION

7.1 General Indemnities. Subject to Sections 7.2 and 7.3, each Party shall defend, indemnify and hold the other Party, its successors and assigns, its directors, officers, employees, agents, representatives, co-ventures, tenants, contractors, or servants, harmless from and against any and all claims, penalties, demands, suits, actions, proceedings, liability, damages or losses of whatsoever nature including reasonable attorneys' fees for injury or death to person(s) or for damage or loss to or of property, to the extent arising out of or caused by a breach of this Agreement by the indemnifying Party or by the indemnifying Party's intentional or negligent acts or omissions, except to the extent of the

contributing or concurrent intentional or negligent acts or omission of the indemnified Party including breach of this Agreement by the indemnified Party.

7.2 Environmental Indemnities.

(a) *The Tenant.* The Tenant will not, and will not permit any of its agents, contractors, or employees to, store, use, release, discharge, or deposit on any portion of the Landfill any Hazardous Materials except in accordance with the Town's rules and regulations pertaining to the Landfill, and applicable laws. The Tenant shall defend, indemnify and hold harmless the Town, its officials, officers, members, employees, agents, and contractors from and against any claims, losses, liability, damages, penalties, fines, costs, and expenses based on any failure of the Tenant or its agents, contractors, or employees to adhere to the terms of this paragraph (a), and shall undertake all measures necessary and appropriate to remedy any such failure in accordance with all applicable laws.

(b) *The Town.* The Parties agree that solely by virtue of its entry upon the Leased Property and the taking of actions authorized by or consistent with this Agreement, neither the Tenant nor any of its agents, contractors, employees, directors, officers, sub lessees, or members shall have, or shall be deemed to have, in any way participated in the operation of the Landfill or assumed any liability or obligation associated with materials of any type or description (including Hazardous Materials) deposited, stored, or received on or within the Landfill by the Town or any predecessor owner or operator. The Tenant shall at no time have any control over or responsibility for the disposal of any wastes or materials at the Landfill. The Town will defend, indemnify, and hold harmless the Tenant and its officers, directors, employees, agents, sub lessees, and contractors from and against any claims, losses, liability, damages, penalties, fines, costs, and expenses to the extent based on (i) the presence of any Hazardous Materials in, on, or within the Landfill or the Leased Property except to the extent that the presence of such Hazardous Materials is attributable to the Tenant or their employees, officers, directors, agents, subcontractors, or contractors; (ii) the failure of the Landfill or Town to comply with any applicable laws regarding the regulation of the environment, disposition of materials, or operation and maintenance. The Town will not defend, indemnify, or hold harmless the Tenant or its officers, directors, employees, agents, or contractors for the failure of the Tenant to comply with any applicable laws regarding the regulation of the environment, disposition of materials, or operation and maintenance of the Electric Generating Facility.

7.3. *Survival.* The provisions of this Article 7 shall survive the termination, cancellation, or expiration of this Property Lease Agreement.

7.4 The parties agree that the risks described in Sections 7.1 and 7.2 must be covered under the existing insurance policies and proof of same shall be provided to the Town.

7.5 *Liability of Public Officials.* To the full extent permitted by law, no official, employee, agent, or representative of the Town or municipality participating in this Agreement shall be individually or personally liable on any obligation of the Town under this Agreement.

ARTICLE VIII - INSURANCE

The Tenant shall provide coverage with limits of liability not less than those stated below:

8.1 Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, and broad form contractual liability coverage.

General Aggregate \$3,000,000

Products – Completed Operations

Aggregate \$1,000,000

Personal and Advertising Injury \$1,000,000

Each Occurrence \$1,000,000

8.2 Automobile Liability

Bodily injury and property damage for any owned, hired, leased, borrowed, and non-owned vehicles used in the performance of this Agreement.

Combined Single Limit (CSL) \$1,000,000

8.3 Workers' Compensation and Employer's Liability

Workers' Compensation Statutory

Employers' Liability

Each Accident \$100,000

Disease – Each Employee \$100,000

Disease – Policy Limit \$500,000

8.4 Excess Umbrella Liability

Annual Aggregate \$5,000,000

8.5 Contractor's Pollution Liability

For losses caused by pollution conditions that arise from the operations of the Tenant.

The policy shall provide for complete professional service coverage, including coverage for pollution liability that is the result of a breach of professional duties. The policy shall provide for protection against claims for third-party bodily injury, property damage, or environmental damage caused by pollution conditions resulting from general contracting activities for which the Tenant is legally liable. The policy shall provide for cleanup costs when mandated by governmental entities, when required by law, or as a result of third-party claims. If the project requires the transportation of any hazardous materials or regulated substances, then the policy shall provide coverage for claims resulting in bodily injury, property damage or cleanup costs associated with a pollution condition from transported cargo.

Per Occurrence \$1,000,000

General Aggregate \$2,000,000

8.6 Builders' Risk Insurance or Installation Floater

In an amount equal to the initial cost for the construction of the facility. The Town, the Tenant and subcontractors, shall be Insureds on the policy. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy. Policy must provide coverage from the time any covered property becomes the responsibility of the Tenant, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

8.7 Insurance Requirements - Operation Phase

The Tenant and its subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Agreement are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Tenant, his agents, representatives, employees, or subcontractors.

The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. The Town in no way warrants that the minimum limits contained herein are sufficient to protect the Tenant from liabilities that might arise out of the performance of the work under this Agreement by the Tenant, his agents, representatives, employees, or subcontractors.

8.8 Additional Insurance for Operation Phase

All of the insurance listed above shall remain in effect and full force for the term of the lease. In addition, the Tenant shall procure and maintain the following insurance:

8.8.1 Property Insurance

Property insurance shall be written on an all risk and replacement cost coverage.

The Town shall be named as a Loss Payee.

Policy shall be in force at the time of substantial completion of the Electric Generating Facility's construction and continue until the termination of the property lease.

8.8.2 Business Interruption Insurance

The Tenant shall acquire Business Interruption Insurance providing funds to cover all of the Tenant's costs to the extent that they would not be eliminated or reduced by the failure of the Electric Generating Facility to operate, (including but not limited to rent or mortgage payments, interest and principal payments on loans or bonds and salaries and wages) for a period of at least six (6) months after a deductible period not to exceed three (3) months.

8.9 Insurance Requirements

All insurance policies shall include, or be endorsed to include, the following provisions:

- a) The policy shall be endorsed to include the following additional insured language: "The Town of (insert name) shall be named as an additional insured with respect to liability arising out of the activities performed by or on behalf of the Tenant". The town shall be an additional insured to the full limits of liability purchased by the Tenant even if those limits of liability are in excess of those required by this Agreement.
- b) The Tenant's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
- c) The Tenant is responsible for the payment of all policy deductibles.

8.10 Notice of Cancellation

Each insurance policy required by the insurance provisions of this Agreement shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage, or endorsed to lower limits except after thirty (30) days prior written notice has been given to the Town, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given.

8.11 Acceptability of Insurers

Insurance is to be placed with insurers which are duly licensed companies in the State of Massachusetts and with an "A.M. Best" rating of not less than B+ VI. The Town in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

8.12 Verification of Coverage

The Tenant shall furnish the Town with certificates of insurance (ACORD form or equivalent) as required by this Agreement. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the Town before work commences. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Agreement or to provide evidence of renewal is a material breach of contract.

8.13 Subcontractors

Insurance certificate(s) shall include all subcontractors as additional insureds under its policies or Contractor shall furnish to the Town separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.

8.14 The Parties agree to reevaluate the insurance coverage limits set forth herein at least every five years and adjust as necessary to maintain adequate levels of insurance.

ARTICLE IX - FORCE MAJEURE

9.1 If either Party to this Agreement is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure that party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that:

- a. the non-performing Party shall as soon as possible, but no later than two weeks after the occurrence of the Force Majeure, give the other party written notice describing the particulars of the occurrence;
- b. the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure;
- c. no obligations of either Party which arose before the occurrence causing the suspension of performance will be excused as a result of the occurrence; and
- d. the non-performing Party uses its best efforts to remedy its inability to perform.

ARTICLE X. EVENTS OF AND REMEDIES OF DEFAULT

14.2.1 Lessee Events of Default - The lessee shall be in default of this agreement as a result of:

- a. Failure of the successful bidder to perform any of its obligations, covenants or agreements under this Contract and the continuance of such failure for fifteen (15) days after written notice thereof from the Town to the lessee; provided, however, that if such default is not susceptible to cure within such fifteen (15) days and if the Contractor commences diligently to cure such default promptly after receipt of notice thereof from the Town, such period of fifteen (15) days shall be extended to a period of time necessary to cure such default with all due diligence, but in no event shall such period exceed a total of one hundred eighty (180) days.
- b. The Lessee becomes insolvent however such insolvency may be evidenced; or makes an assignment for the benefit of creditors; or is adjudicated a bankrupt; or admits in writing its inability generally to pay its debts as they become due.
- c. A trustee, custodian or receiver of the Lessee's business, or any substantial portion of the Lessee's assets, is appointed by or at the behest of the Lessee, or, if appointed in a proceeding brought against the Lessee, the Lessee approves of, consents to, or acquiesces in such appointments or such trustee or receiver is not discharged within ninety (90) days.
- d. Any proceedings involving the Lessee are commenced by or against the Lessee under any bankruptcy or reorganization, arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state, or, if such proceedings are instituted against the Lessee, the Lessee approves of, consents to, or acquiesces in such proceedings or such proceedings are not dismissed within ninety (90) days.
- e. Any representation or warranty made by the Lessee is not true in any material respect as of the date of the issuance or making thereof as contained in this Contract, the proposal for this Contract, or any other document or instrument executed in connection herewith.
- f. The death, dissolution or termination of existence of the Lessee.

14.2.2. Town Events of Default

Failure of the town to pay any sums due the Lessee hereunder within forty-five (45) days after receiving an invoice for payments due from the Lessee, and the continuance of such failure for

fifteen (15) days after written notice thereof from the Lessee to the Program Administrator; provided, however, that if the Project Coordinator notifies the Lessee of a dispute as to any sums within such fifteen (15) days after written notice by the Lessee to the Project Coordinator or Town Chief Financial Officer of such nonpayment, no Event of Default shall occur until a final determination of the correct amount and the failure of the Town to pay such correct amount within forty-five (45) days after receiving the statement next submitted to the Program Administrator after such determination.

14.3.3. Remedies for Successful Bidder Events of Default

Upon any default by the successful bidder, the Town may, in addition to and not in derogation of any other right or remedy available to it under this contract, at law or in equity (which rights and remedies shall be cumulative and shall not be deemed inconsistent with each other and which may be exercised at the same time to the greatest extent permitted by law), immediately terminate this Contract upon written notice thereof to the lessee. At any time following a bidder “Event of Default”, the Town may (but shall not be obligated to) cure any default by the Lessee hereunder, and all costs and expenses incurred by the Town, including attorneys' fees and expenses, in curing a default shall be paid by the Lessee to the Town on demand.

14.3.4. Remedies for Town Events of Default

Upon any Town Event of Default, the successful bidder may, in addition to and not in derogation of the right to sue the Town for such sums actually due hereunder (which rights and remedies shall be cumulative and shall not be deemed inconsistent with each other and which may be exercised at the same time to the greatest extent permitted by law), immediately terminate this Contract upon written notice thereof to the Town. In no event shall the Town be liable for any indirect, special or consequential damages.

ARTICLE XI - TERMINATION

10.1 The Town may terminate this Agreement in the event the Tenant:

- a. fails to pay the Town the Annual and Optional Payments within thirty (30) days of the date due;
- b. fails to properly operate and maintain the Electric Generating Facility in accordance with the material terms of this Agreement, provided the Town notifies the Tenant in writing of such failure and provides the Tenant with a reasonable time in the opinion of the Town, under the circumstances in which to correct the failure;
- c. otherwise does not materially comply with its obligations under this Agreement, provided the Town notifies the Tenant in writing of such default and provides the Tenant with a reasonable time under the circumstances in which to cure the default;
- d. if the Tenant ceases to be in good standing with the Massachusetts Secretary of State or upon filing of an IRS or Massachusetts Tax Department lien for unpaid taxes and the Tenant shall provide written notice to the Town within five (5) days of receiving notice from the State that the Tenant is not in good standing or that a lien from the State or the IRS has been filed; provided further that the Tenant shall have ten (10) days to cure such default or provide a bond for any lien.
- e. is adjudged bankrupt or insolvent, or makes a general assignment to the benefit of the Tenant’s creditors, or a trustee of receivers appointed for the Tenant or for any of its property, or files a petition to take advantage of any debtors’ act, or to reorganize under bankruptcy or similar law.

10.2 The Tenant may terminate this Agreement if the Town:

- a. does not materially comply with the Town’s obligations under this Agreement, provided the Tenant notifies the Town in writing of such default and provides the Town with reasonable time under the circumstances in which to cure the default;
- b. is adjudged bankrupt or insolvent, or makes a general assignment to the benefit of the Town’s creditors, or a trustee or receivers appointed for the Town or for any of its property, or files a petition to take advantage of any debtor’s act or to reorganize under bankruptcy or similar law.

ARTICLE XI - MISCELLANEOUS PROVISIONS

11.1 This Agreement will be interpreted and construed in accordance with the laws of the State of Massachusetts.

11.2 The Parties hereto shall not discriminate against any person based on race, age, disability, gender, creed, color, religion, national origin, or sexual orientation, place of birth, ancestry, HIV status, or veteran status. Massachusetts and federal law prohibit employment discrimination or retaliation on race, color, religion, gender, or national origin.

11.3 The headings of the Articles used throughout this Agreement are inserted for reference purposes only and are not to be considered or taken into account in construing the terms or provisions of any Article, or to be deemed in any way to qualify, modify or explain the effect of any such provisions or terms.

11.4 Unless herein provided to the contrary, any notice called for in this Agreement shall be in writing and shall be considered properly delivered if delivered by hand, or when mailed, if sent by United States registered or certified mail, return receipt requested, with all postage prepaid, in either case:

if to the Town, to: Town Manager
Town of Longmeadow
20 Williams Street
Longmeadow, MA 01106

With a copy to: (Legal counsel to be specified)

Or if to the Tenant, to: TO BE DETERMINED

With a copy to: (Legal counsel to be specified)

11.5 All express or implied covenants of this Agreement shall be subject to all federal, state and local laws, orders, rules or regulations.

11.6 This Agreement, the RFP dated DATE, 2010, the Tenant’s Proposal, and all Financial Proposals, all as attached hereto, constitutes the entire understanding and agreement between the parties and supersedes all prior understandings and agreements relating hereto.

11.7 If any term or provision of this Agreement or the application thereof to any person or circumstances to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such terms and provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

11.8 In the event of any breach or default by either party, the other party is entitled to all rights and remedies provided for in this Agreement, and/or available at law, in equity, by statute or otherwise, all of which rights and remedies are cumulative (and not exclusive). The failure of either party to take action as a result of a breach by the other party shall constitute neither a waiver of the particular

breach involved nor a waiver of either party's right to enforce any provision of this Agreement through any remedy granted by law or this Agreement.

11.9 The Parties agree that in addition to the remedies it may have at law or in equity, either party may seek recovery of all reasonable costs and expenses (including reasonable attorneys' fees) incurred as a result of having to sue to enforce such Party's rights hereunder.

11.10 The Parties agree that this agreement may be amended from time to time, in part or in whole, at the request of either party. Either party will not unreasonably withhold action on such request. Parties agree that the terms of this agreement will be reviewed jointly at least every five years.

11.11 Each of the parties under this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.

11.12 Both parties took part in the negotiation of this Agreement and agree that legal concepts intended to construe the Agreement against the drafter will not apply against either party.

In witness whereof, the parties have signed this Agreement, with the intent that it be a sealed instrument, as of the date of the last signature below.

In Presence Of:

Town of Longmeadow

_____ By: Robin Crosbie
Title: Town Manager

Duly Authorized

_____ By: Sandy Choquette
Title: Town Accountant

(Tenant)

_____ By: _____
Title: _____

Duly Authorized