

PHILIP M. SMALL  
ATTORNEY-AT-LAW

Direct: 860-509-6575  
Fax: 860-509-6675  
psmall@brownrudnick.com

185 Asylum  
Street  
Hartford  
Connecticut  
06103  
tel 860.509.6500  
fax 860.509.6501

February 24, 2016

**VIA ELECTRONIC MAIL AND OVERNIGHT MAIL**

Mr. Robert Stein, Chairman  
Connecticut Siting Council  
Ten Franklin Square  
New Britain, CT 06051

***Re: Petition No. 1192 - SolarCity Corporation Petition for a Declaratory Ruling that no Certificate of Environmental Compatibility and Public Need is Required for the Proposed Construction and Operation of a 2.74 Megawatt Community-Shared Solar Photovoltaic Electric Generating Facility Located on Rogers Road in Norwich, Connecticut -- Connecticut Department of Energy and Environmental Protection Authorization for the Disruption and Post Closure Use of a Closed Solid Waste Disposal Area***

Dear Chairman Stein:

As required by the second and third conditions in the Connecticut Siting Council's ("Council") November 13, 2015 Decision Letter in Petition No. 1192, enclosed are sixteen (16) copies of the Authorization for the Disruption and Post Closure Use of a Closed Solid Waste Disposal Area issued by the Department of Energy and Environmental Protection on February 19, 2016.

The fourth condition in the Decision Letter requires SolarCity to "provide a copy of the final municipal approval for SolarCity to assume responsibility for the maintenance of the landfill cap and inspection within the limits of the solar field area." The attached Solar Power Site License (Commercial) between SolarCity and the City of Norwich constitutes the requested municipal approval.

Please contact me with any questions or if you need additional information.

Very truly yours,

BROWN RUDNICK LLP

By:  

Philip M. Small  
Counsel for SolarCity Corporation

PMS/jmb  
Enclosures

62403230 v1-WorkSiteUS-031819/0001

b  
r  
o  
w  
n  
r  
u  
d  
n  
i  
c  
k  
c  
o  
m

## **AUTHORIZATION FOR THE DISRUPTION AND POST CLOSURE USE OF A CLOSED SOLID WASTE DISPOSAL AREA**

**Municipality:** Norwich  
**Site of Activity:** Norwich Landfills, 82 Rogers Road  
**Licensee:** City of Norwich  
**Application No.:** 201507768

Pursuant to Section 22a-209-7(u) of the Regulations of Connecticut State Agencies (RCSA), the Commissioner of Energy and Environmental Protection (Commissioner) hereby issues this Authorization to the City of Norwich (Licensee) for the disruption of the closed solid waste disposal areas (landfills) located at 82 Rogers Road, Norwich, Connecticut (Site). Disruption activities include: minor regrading of the final cover soil for the purpose of installing pour-in-place concrete ballast molds for supporting pole-mounted solar photovoltaic (PV) panels, the construction of concrete pads for locating two centralized inverters, the installation of off-cap subsurface high-voltage conduit for low voltage electrical wiring, the installation of two (2) eight (8) foot high chain link fences with a six (6) or eight (8) foot high galvanized swing gate each, and the construction of access roads. The 1.49 megawatt renewable energy system consists of galvanized steel solar racks (and associated electrical wiring and cable) configured in two (2) sub-assemblies, one on the former municipal solid waste (MSW) landfill, comprising approximately 4,050 PV panels and utilizing 2.6 acres of the top surface of the landfill, and the other on the former oversized municipal solid waste (OMSW) landfill, comprising approximately 2,490 PV panels and utilizing 2.5 acres of the top surface of that landfill. In accordance with Section 22a-209-13(d) of the RCSA, the Commissioner hereby approves the post-closure use of the Site for the installation of solar PV panels for the generation of renewable energy. The work authorized herein shall conform to the terms and conditions of this Authorization.

Disruption activities on solid waste disposal areas shall be conducted in accordance with the following:

1. a. “Authorized Application for Disruption of a Solid Waste Area, Rogers Road Landfill, Norwich, CT, DEEP-WEED-APP-700, Rogers Road Landfill Solar Project”, dated “September 2015”, prepared for the City of Norwich by Weston&Sampson and received by the Department of Energy and Environmental Protection (the Department) on October 9, 2015. The application package includes: a Scope of Work; a Site Lease Agreement between the City of Norwich and SolarCity Corporation of San Mateo, CA and a Post-Closure Use Request; a description (including equipment) and geotechnical evaluation of the proposed solar PV development on the landfills; a description of proposed construction and post-construction activities incorporating materials management and operations and maintenance; post-construction activities including decommissioning; and a site health and safety plan.

- b. Engineering drawings dated "September 2015" and prepared by Boundaries, LLC depicting, but not limited to: mounting planes for the PV system, topographic surveys, site development plans, an overall site utility plan including details of the configuration of the solar PV panels, erosion and sediment control narrative and details, overall construction details of cross-sections of the racking system, and details on construction of temporary/permanent access roads.
2. Proper sedimentation and erosion controls shall be implemented and maintained at all times by the Licensee and/or its contractor(s) during activities associated with the disruption of this disposal area. For specific details on the design, application and installation of erosion and sedimentation control structures refer to *Connecticut's Guidelines for Soil Erosion and Sediment Control*, dated May 2002, as amended. Prior to commencing disruption activities, the Licensee shall register for the General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities, effective October 1, 2013, as amended and applicable.
3. The Licensee shall continue to conduct post-closure care that includes periodic inspections and the correction of any problems (i.e., maintenance of final cover materials, repair areas of erosion, etc.) that may occur at the disposal areas. These inspections should be an integral part of the thirty (30) year post-closure maintenance program implemented in accordance with Section 22a-209-13(h) of the RCSA.
4. The Licensee shall ensure that any solid wastes inadvertently excavated during the installation of the solar PV panels and associated electrical wiring shall be appropriately characterized, removed from this Site, and properly disposed of at a facility permitted to receive such wastes.
5. The Licensee shall ensure that the final landfill cover system is restored (minimum two feet thickness) in areas where the final cover may have been disturbed or damaged due to construction activities associated with the installation of the racking system and associated subsurface conduit.
6. The Licensee shall at all times take reasonable precautions to control fugitive dust emissions and odors in accordance with Sections 22a-174-18 and 22a-174-23 of the RCSA, respectively.
7. The Licensee shall control all traffic related with disruption activities authorized herein in such a way as to mitigate the queuing of vehicles off-site and excessive or unsafe traffic impact in the project area. Additionally, the Licensee shall ensure that, except as allowed pursuant to Section 22a-174-18(b)(3) of the RCSA, trucks and diesel equipment coming to or used at the project area shall not be left idling for more than three (3) consecutive minutes.
8. No additional solid waste shall be disposed of at this Site as a result of this Authorization.

9. Throughout implementation of the disruption of the disposal areas, the Licensee or its contractor(s) shall prepare and comply with a site health and safety plan that complies with all applicable requirements of the Occupational Safety and Health Administration's (OSHA) 29 CFR Part 1910.120. A copy of said plan shall be provided to the Commissioner upon request.
10. Staff from the Bureau of Materials Management and Compliance Assurance's Waste Engineering and Enforcement Division (WEED) shall be notified in writing by the Licensee at least five (5) business days prior to the initiation of construction activities associated with the disruption of this disposal area.
11. At all times during disruption activities authorized herein, the Licensee shall retain the services of a qualified environmental consultant (e.g., professional engineer or licensed environmental professional) to document in writing that the disruption activities are being conducted in accordance with approved plans and specifications. Said consultant shall be independent from the Licensee and shall have experience with the oversight of solid waste disposal area disruption projects.
12. Within ninety (90) days of completion of the disruption and closure activities authorized herein, the Licensee shall, in accordance with Section 22a-209-13 subsections (f) and (g) of the RCSA: (a) record on the appropriate municipal land records: (i) a complete set of as-built site plans (certified by a professional engineer licensed by the State of Connecticut) depicting the disposal areas; and (ii) a detailed description of the disposal areas in a format approved by the Commissioner; (b) submit to the Commissioner a copy of the as-built site plans and a copy of the detailed description certified by the municipal clerk as true copies and indicating the volume and page reference to the deed to the property on which the disposal area is located; and (c) submit to the Commissioner a final construction certification report prepared by a qualified environmental consultant (i.e., professional engineer or licensed environmental professional) verifying that the disruption and closure activities were conducted in accordance with approved plans and specifications. Said report shall also include information on the types and volumes of waste materials taken off-site for disposal and the permitted solid waste facility that accepted said waste materials.
13. The Licensee shall submit for the Commissioner's review and written approval all necessary documentation supporting any proposed minor changes in the disruption and closure activities authorized herein. The Commissioner may issue a written approval only if, in the Commissioner's judgment, the proposed minor changes: (a) are deemed necessary for a better and more efficient disruption or closure of the Site; (b) do not significantly change the landform of the Site, or its impact on the environment; and (c) do not warrant the issuance of a permit or authorization pursuant to Section 22a-208 et seq. of the CGS.

14. This Authorization is subject to and in no way derogates any present or future property rights or powers of the State of Connecticut and conveys no property rights in real estate or material nor any exclusive privileges and is further subject to any and all public and private rights and to any federal, state or local laws or regulations pertinent to the property or activity affected hereby.
15. Nothing in this Authorization shall affect the Commissioner's authority to institute any proceeding or to take any actions to prevent violations of law, prevent or abate pollution, recover costs and natural resource damages, and to impose penalties for violations of law.
16. This Authorization does not imply the Department's approval of site wide investigation and remediation or compliance with the Remediation Standard Regulations.
17. This Authorization is non-transferable and may be revoked, suspended, or modified in accordance with law.
18. When this Authorization requires that any document be submitted to the Department of Energy and Environmental Protection (DEEP), such document shall be delivered to: Solid Waste Program, Bureau of Materials Management and Compliance Assurance, Waste Engineering & Enforcement Division, 79 Elm Street, Hartford, CT 06016-5127.
19. If the activities approved with this Authorization are not initiated within one year from the date of issuance, this Authorization shall terminate unless specifically extended by the Commissioner.

Issued: \_\_\_\_\_

2-19-2010



Robert C. Isner, Director  
Waste Engineering and Enforcement Division  
Bureau of Materials Management and  
Compliance Assurance

RCI: jw



### Solar Power Site License (Commercial)

This Solar Power Site License (this "License") is entered into by the parties listed below (each a "Party" and collectively the "Parties") as of the date signed by Licensee below (the "Effective Date").

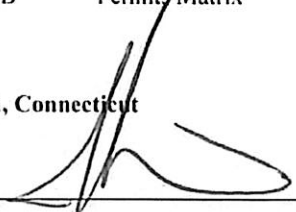
<b>Licensor:</b>	<b>City of Norwich, Connecticut<sup>1</sup></b>	<b>Licensee:</b>	<b>SolarCity Corporation</b>
Name and Address	City of Norwich Connecticut 100 Broadway Norwich, CT06360	Name and Address	SolarCity Corporation 3055 Clearview Way San Mateo, CA 94402 Attention: Legal Department
Phone	(860) 823-3700	Phone	(650) 638-1028
E-mail	JohnBilda@npumail.com	E-mail	Contracts@solarcity.com

This License sets forth the terms and conditions on which Licensor is granting a non-exclusive license to Licensee for the installation and operation of a solar panel system described in Exhibit 1 (the "System") on and above, but not under, the surface of the Licensor's premises described in Exhibit 1 (the "Premises") for the purpose of generating and selling electricity and associated attributes and incentives under a power purchase agreement entered into between Licensee and the Connecticut Municipal Electric Energy Cooperative dated as of September 17, 2014 (the "PPA"). For avoidance of doubt, the rights granted to and the obligation imposed by this License with respect to the Premises shall not include any rights or obligations with respect to the subsurface of the Premises.

The exhibits listed below are incorporated by reference and made part of this License.

- Exhibit 1 System and Premises Description
- Exhibit 2 Terms and Conditions
- Exhibit A Permits
- Exhibit B Permits Matrix

City of Norwich, Connecticut

Signature: 

Printed Name: John Bilda

Title: Acting City Manager

Date: April 29, 2015

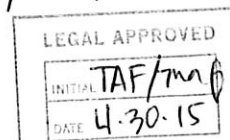
SolarCity Corporation

Signature: 

Printed Name: Lyndon Rive

Title: CEO

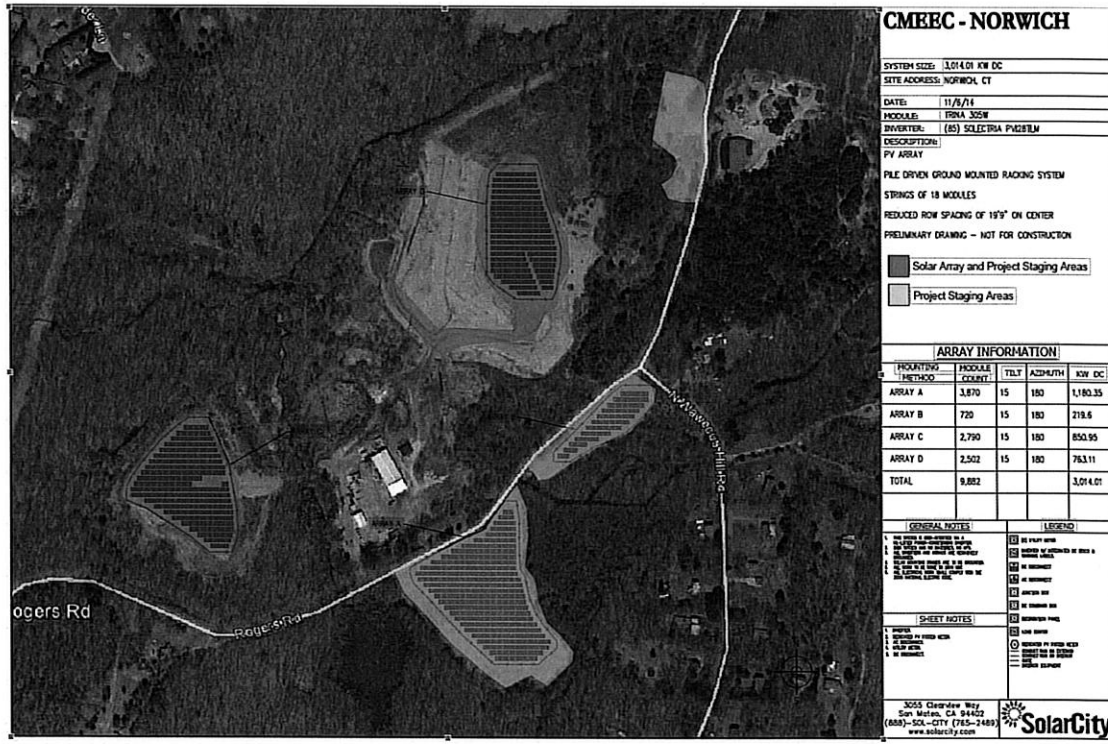
Date: 04/29/15



<sup>1</sup> The term "Licensor" as used in this Agreement means the City of Norwich solely in its capacity as owner of the Premises as defined in Exhibit 1. The term "Licensor" does not include the City of Norwich in any other capacity, including as a taxing authority, a planning and zoning authority or any other capacity except as owner of the Premises nor does the term "Licensor" include any of the city's public water, sewer, electric or gas utilities.

**Exhibit 1**  
**System and Premises Description**

1. **Premises:** Consists of two parcels of land, all owned by Licensor, the City of Norwich, CT, specifically:
  - a. The approximately 4.16 acre parcel located at Rogers Rd., Parcel ID 073-001-031.000-0000, Norwich CT. 06360, ("Landfill Parcel #1") as shown on the attached map.
  - b. The approximately 3.79 acre parcel located at Rogers Rd., Parcel ID 073-001-031.000-0000, Norwich CT. 06360, ("Landfill Parcel #2") as shown on the attached map
2. **System:** (DC kW): The approximately 1.614 megawatt direct current ("MWdc") solar panel electric generating system, including associated equipment, to be installed and operated by Licensee on the Premises.
3. The following sketch indicates project staging areas by yellow shading or by areas in red that are not hatched. Red hatching indicates areas where the solar array and related equipment will be installed and operated.



## Exhibit 2

### Terms and Conditions

*Revised June 19, 2014*

1. **Definitions and Interpretation:** Unless otherwise defined or required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) the words “herein,” “hereof” and “hereunder” refer to this License as a whole and not to any particular section or subsection of this License; (c) references to any agreement, document or instrument mean such agreement, document or instrument as amended, modified, supplemented or replaced from time to time; and (d) the words “include,” “includes” and “including” mean include, includes and including “without limitation.” The captions or headings in this License are strictly for convenience and shall not be considered in interpreting this License.
  
2. **License.** For the License Term, (as defined below), Licensor grants to Licensee and to Licensee’s agents, employees and contractors an irrevocable non-exclusive license running with the Premises (the “**License**”) for access to, on, over, and across, but not under, the surface of the Premises for the sole purposes of (a) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System, all in a good and workmanlike manner in compliance with all laws and permits; (b) performing all of Licensee’s obligations and enforcing all of Licensee’s rights set forth in the PPA and this License; and (c) installing, using and maintaining electric lines and equipment, including inverters and meters, necessary to interconnect the System to the local electric utility’s electric distribution system or that otherwise may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Licensee shall notify Licensor prior to entering the Premises except in situations where there is imminent risk of damage to persons or property. The term of the License shall commence on the date hereof and shall continue until the date that is one hundred and twenty (120) days following the date of expiration or termination of the PPA (including any extensions thereof, provided, however, that any such extensions shall be approved in writing by the Licensor acting in its sole discretion and in the same time and manner as is specified for the Purchaser under the PPA) (the “**License Term**”). During the License Term, Licensor shall ensure that Licensee’s rights under the License and Licensee’s access to the Premises are preserved and protected and shall not interfere with or permit any third parties to interfere with such rights or access. Licensee shall ensure that its activities do not interfere with Licensor’s or Licensor’s agents’, contractors’, lessees’, or employees’ activities at the Premises relating to Licensor’s Transfer Station and the existing and foreseeable recycling operations. Licensor reserves the right to revoke access privileges to any person employed or contracted by Licensee or Licensee’s contractors, agents, or assigns that Licensor determines to be disruptive, unsafe, or who violates any law or unreasonably disobeys any Licensor directive. Licensor shall provide up to Fifty thousand (50,000) sq. ft. of space for the temporary storage and staging of tools, materials and equipment and for the parking of up to Twenty (20) construction crew vehicles and One (1) temporary construction trailer and facilities reasonably necessary during construction. Licensor agrees that Licensee, upon request to Licensor, may record a memorandum of license in the land records respecting the License in form and substance reasonably acceptable to the Parties. Within thirty (30) days after the end of each calendar month during the License Term, Licensee shall pay in arrears to Licensor one-twelfth of the product of \$15,000 per MWdc multiplied by the actual MWdc electric capacity of the System as installed (the “**Monthly Fee**”) as a fee for the License with a 2% escalator applied to each calendar year through the end of the Term. Notwithstanding anything to the contrary herein, Licensee may terminate this License upon written notice to the Licensor within thirty (30) days after receipt of DEEP approval of the [Land Re-Use Permit].
  
3. **Construction of System, Maintenance of Premises, Compliance with Law, Permitting and Utilities.** Licensee shall, at its sole cost and expense, maintain the Premises in good condition and repair. Licensee shall pay the costs of repairing damage to the Premises occasioned by negligent acts or omissions or willful misconduct of Licensee, the Licensee’s officers, agents, employees, clients, invitees, licensees, visitors, guests or servants. Licensee shall at its sole cost be responsible for ensuring that utilities and other services it requires in order to develop, construct, own, operate, and maintain the System are present at the Premises.

Before proceeding with construction of, or in connection with, the System, Licensee shall submit to Licensor, at Licensee’s sole cost and expense, at least two (2) copies of detailed plans and specifications therefor for Licensor’s review and written comment. Licensor shall use its best efforts to review Licensee’s plans and specifications and provide Licensee its written comments within ten (10) business days of its receipt of said plans and specifications. Licensee shall consider all comments provided by Licensor and either accept or respond to Licensor’s comments prior to the commencement of construction of the System. Any improvements for which Licensor’s comments have been obtained shall be performed in accordance with such plans and specifications and no material changes thereto shall be made without the providing Licensor with the opportunity to provide meaningful comment as provided in this Section 3.

Once Licensee has interconnected the System to the local utility grid, except as otherwise provided, Licensor will not directly cause the System to no longer be interconnected to the local utility grid and will not directly cause cessation of electric service to the System from the local utility, except where the failure to remain interconnected and/or the cessation of electric



service is beyond the control of the Licensor. Licensee expressly acknowledges, however, that Licensor's ongoing use of the Premises and the surrounding property may require that the System be temporarily offline for safety or other reasons. To the extent that these situations exceed 48 hours in a calendar year, Licensee may proceed under Section 4 of this Agreement. Licensor shall fully comply with all statutes, regulations, orders, permits and other governmental requirements (collectively "Laws"), applicable to the Premises or to Licensor as the owner of the Premises, including but not limited any to any Laws relating to operation and maintenance of the Premises as a closed municipal landfill and brownfield site. Licensee shall prepare the applications for any permits necessary for the installation and operation of System as a result of the System's location on a closed municipal landfill and brownfield site; Licensor shall cooperate fully with Licensee with the preparation of such applications and shall, subject to reasonable or necessary modifications, sign all such applications as owner of the Premises. Licensor shall also fully cooperate with Licensee's efforts to obtain any permits necessary for the construction, operation, maintenance, and grid connection of the System. Licensee, at Licensee's sole expense, operate the System in a commercially reasonable manner throughout the Term and maintain the System in good order, condition and repair, including the cost of capital repairs and replacement and in compliance with all laws and permit conditions.

4. **No Alteration of Premises.** Licensor shall not make any alterations or repairs to the Premises which are likely to adversely affect the operation and maintenance of the System without Licensee's prior written consent, such consent shall not be unreasonably withheld. If Licensor wishes to make such alterations or repairs, Licensor shall give prior written notice to Licensee, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Licensee the opportunity to advise Licensor in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Licensor shall be responsible for all damage to the System caused by Licensor or its contractors. To the extent that temporary cessation of operation, disconnection or removal of the System is necessary to perform such alterations or repairs, results from Pre-Existing Environmental Conditions not exacerbated by Licensee, or results from any action taken by Licensor in compliance with Environmental Laws, (a) such work and any replacement of the System after completion of Licensor's alterations and repairs shall be done by Licensee or its contractors at Licensor's cost, and (b) to the extent (i) Licensor or Licensor's contractors caused such temporary cessation of operation or disconnection and (ii) such temporary cessation of operation or disconnection as caused by Licensor or Licensor's contractors exceeds 48 hours in any calendar year, Licensee may reasonably estimate the amount of electricity that would have been delivered to Connecticut Municipal Electric Energy Cooperative or other party purchasing electricity under the PPA ("Purchaser") during the period of time in which the System is not operational. Thereafter during the term of the PPA, if such alteration/repairs adversely affect ongoing operation and maintenance of the System, Licensee shall invoice Licensor for such amount and any associated lost or recaptured revenues attributable to monetized Environmental Incentives (as defined in the PPA) and lost sales (and penalty payments associated with the same) of associated Environmental Attributes (as defined in the PPA). All of Licensor's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits.
5. **Liens.** Except as otherwise provided in Section 8, Licensor shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on or with respect to the System or any interest therein. Licensor shall immediately notify Licensee in writing of the existence of any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim, shall promptly cause the same to be discharged and released of record without cost to Licensee, and to the extent permitted by law shall indemnify Licensee against all costs and expenses (including reasonable attorneys' fees) incurred in discharging and releasing any such mortgage, pledge, lien, charge, security interest, encumbrance or other claim.
6. **Security.** Licensee shall be responsible for using commercially reasonable efforts to maintain the physical security of the Premises the System against known risks. Licensor will not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System's electrical output. Licensee shall promptly report all security incidents occurring in, on, or at the Licensed Premises to the Licensor and to the local or State Police, as applicable, with a follow up written report to the Licensor.
7. **Insolation.** Licensor understands that unobstructed access to sunlight ("**Insolation**") is essential to Licensee's performance of its obligations and a material term of this License. Licensor shall not in any way cause and, where possible, shall not in any way permit any reduction of the System's Insolation as measured at the beginning of the Term. If Licensor becomes aware of any activity or condition that could diminish the Insolation of the System, Licensor shall notify Licensee immediately and shall cooperate with Licensee in preserving the System's existing Insolation levels; however, all costs of preserving Insolation levels, shall be the responsibility of the Licensee, except to the extent Insolation levels are diminished as a result of Licensor's acts. Licensee shall also be responsible for costs associated with tree trimming and other similar maintenance activities in order to preserve existing Insolation levels. If such Insolation levels are not or cannot be maintained as a result of Licensor's actions, and the reduction on Insolation can be reasonably documented by Licensee, then Licensee may reasonably estimate the amount of electricity that would have been delivered to Purchaser under the PPA but for the reduced insolation levels, and elect to invoice Licensor for such amount and any associated lost or recaptured

Environmental Incentives (as defined in the PPA) and lost sales (and penalties payments associated with the same) of associated Environmental Attributes (as defined in the PPA).

8. **Impositions.** Licensee shall pay, before any fine, penalty, interest or cost may be added thereto, or become due or be imposed by operation of law for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, transit taxes, charges for public utilities, excises, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, unforeseen and foreseen, of any kind and nature whatsoever which at any time prior to or during the term of this License may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien on, (i) the System or any part thereof or any appurtenances thereto, (ii) the income or other payments received by Licensee from the operation of the Licensee System, (iii) any use or operation of the Premises and the System, (iv) such franchises as may be appurtenant to the use of the Premises and the System, and (v) this transaction or any document to which Licensee is a party, creating or transferring an interest or estate in the Premises and/or the System (all such taxes, assessments, water and sewer rents, transit taxes, rates and charges, charges for public utilities, excises, levies, license fees and other governmental charges being hereinafter referred to as "**Impositions.**")

Nothing herein contained shall require Licensee to pay municipal, state or federal income taxes assessed against Licensor, nor municipal, state or federal capital levy, estate, succession, inheritance or transfer taxes required to be paid by Licensor, or corporation franchise taxes imposed upon any corporate owner of the fee of the Premises; provided, however, that if, at any time during the term of this License, the methods of taxation prevailing at the commencement of the term hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed (i) a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise, on the rents received from the Licensee, or (ii) a tax, assessment, levy (including but not limited to any municipal, state or federal levy), imposition or charge measured by or based in whole or in part upon the rents from the Premises and imposed upon Licensor, or (iii) a license fee measured by the license fee payable to Licensee under this License, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based, shall be deemed to be included within the term "Impositions" for the purposes hereof to the extent such "Impositions" would be payable if the Premises were the only property of Licensor subject to such Impositions, and Licensee shall pay and discharge the same as herein provided with respect to the payment of Impositions.

Licensee, upon request of Licensor, will furnish to Licensor, within ten (10) days before the date when any Imposition assessed against the Licensee and/or the System would become delinquent, official receipts of the appropriate taxing authority, or other evidence satisfactory to Licensor, evidencing the payment thereof.

Licensee shall have the right to contest the amount or validity, in whole or in part, of any Imposition assessed solely against the Licensee and/or the System and against the Property or the Premises by appropriate proceedings diligently conducted in good faith, Licensor shall not be required to join in any proceedings referred to in this Section 8 unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by and/or in the name of Licensor or any owner of the Property, or Premises, and the System, in which event Licensor shall join in such proceedings or permit the same to be brought in its name. Licensor shall not be subjected to any liability for the payment of any costs or expenses in connection with any proceedings, and Licensee will indemnify and save Licensor harmless from any and all such costs and expenses.

9. **Removal of System at Expiration.**

Upon the expiration or earlier termination of this License (provided Licensor does not exercise its purchase option), Licensee shall, at its expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date, but in no event later than ninety (90) days after the expiration of the Term. Licensee shall ensure that such removal complies with all applicable Laws and permits, including ensuring that the caps in place over the closed landfill areas are not disturbed. Excluding ordinary wear and tear, the Premises shall be returned to its original condition including the removal of System mounting pads or other support structures Licensee shall leave the Premises in neat and clean order. If Licensee fails to remove or commence substantial efforts to remove the System by such agreed upon date, Licensor shall have the right, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Licensee's cost. Licensee shall, on or before Commercial Operation Date of the System, provide financial assurance in the form of an annually-renewing irrevocable Letter of Credit from a financial institution acceptable to Licensor, in the form of financial assurance agreeable to the Licensor to be in place prior to the start issuance of building permit naming Licensor as the beneficiary and to be drawn upon by Licensor in the event that Licensee fails to timely perform all of its obligations concerning removal of the System as required by this License. Such Letter of Credit shall remain effective and in force until such time as the System is fully removed and the Premises restored in accordance with this License or until such time that Licensor exercises its purchase option. Licensor shall provide up to Fifty thousand (50,000) sq. ft of space for

the temporary storage and staging of tools, materials and equipment and for the parking of up to Twenty (20) construction crew vehicles and one (1) temporary construction trailer and facilities reasonably necessary during System removal.

**10. Default, Remedies and Damages.**

- a. **Default.** Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below shall be deemed a “**Defaulting Party**”, the other Party shall be the “**Non-Defaulting Party**” and each event of default shall be a “**Default Event**”:
- (1) failure of a Party to substantially perform any material obligation. other than those described in subsections (2) to (5) of this Section 10(a), under this License within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that such thirty (30) day cure period shall be extended (but not beyond ninety (90) days) if and to the extent reasonably necessary to cure the Default Event, if (i) the Defaulting Party initiates such cure within the thirty (30) day period and continues such cure to completion and (ii) there is no material adverse effect on the Non-Defaulting Party resulting from the failure to cure the Default Event;
  - (2) if any representation or warranty or covenant of a Party proves at any time to have been incorrect in any material respect when made and is material to the transactions contemplated hereby, if the effect of such incorrectness is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
  - (3) Licensor loses its rights to occupy and enjoy the Premises;
  - (4) a Party, or its guarantor (if any) becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within ninety (90) days); or
  - (5) Licensor prevents Licensee from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System, if such Default Event is not cured within thirty (30) days following receipt of written notice from Licensee demanding such cure. Such Default Event shall not excuse Licensor’s obligations to make payments that otherwise would have been due under this License.
- b. **Remedies.** On the occurrence of a Default Event, the Non-Defaulting Party may pursue any remedy under this License, at law or in equity, including an action for damages (with respect to any Default Event by Licensor, including but not limited to an action for specific performance, and an action for damages related to the loss or recapture of federal or State tax credits and incentives and all lost revenue from the System (for the avoidance of doubt, the Parties agree that all such damages shall be deemed to be direct damages)) and termination of this License, upon five (5) days prior written notice to the Defaulting Party following the occurrence of the Default Event. Nothing herein shall limit either Party’s right to collect damages upon the occurrence of a breach or a default by the other Party that does not become a Default Event. If a Non-Defaulting Party terminates this License pursuant to this Section 10(b), then following such termination, Licensee shall, at the sole cost and expense of the Defaulting Party, remove the equipment constituting the System. The Non-Defaulting Party shall take all commercially reasonable efforts to mitigate its damages as the result of a Default Event.

**11. Representations and Warranties.**

- a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:
- (1) Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this License have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and shall not violate any law; and this License is valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors’ rights generally).

- (2) Such Party has obtained all licenses, authorizations, consents and approvals required by any governmental authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this License; and such Party is in compliance with all laws that relate to this License in all material respects.

**b. Licensor's Representations and Warranties.** Licensor represents and warrants to Licensee the following:

- (1) License. Licensor has title to or a leasehold or other property interest in the Premises. Licensor has the full right, power and authority to grant the License. Such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Licensor or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Licensor is bound or that affects the System. If Licensor does not own the Premises, Licensor has obtained all required consents from the owner of the Premises to grant the License and enter into and perform its obligations under this License.
- (2) Other Agreements. Neither the execution and delivery of this License by Licensor nor the performance by Licensor of any of its obligations under this License conflicts with or will result in a breach or default under any agreement or obligation to which Licensor is a party or by which Licensor or the Premises is bound.
- (3) Accuracy of Information. To Licensor's knowledge, all information provided by Licensor to Licensee, as it pertains to the Premises, is accurate in all material respects. Prior to DEEP approval of the [Landfill Re-Use Permit], Licensee will be provided access to the Premises in order to conduct feasibility and configuration assessments, environmental assessments, and other inspections of the Premises as Licensee deems necessary.
- (4) Compliance with Law. Licensor is in compliance with, and for the License Term, Licensor shall fully comply with all applicable Laws, including but not limited any to any Environmental Laws relating to operation and maintenance of the Premises as a closed municipal landfill and brownfield site. Environmental Permits. Except to the extent (i) a permit filing specifically relates to the development or construction of the System and will not be made until after this License Agreement is signed or (ii) is otherwise the responsibility of Licensee, Licensor has obtained, possesses, is in compliance with and has made all necessary filings for issuance or renewal of, all material Environmental Permits applicable to the Premises, and all such Environmental Permits as listed on Exhibit B.
- (5) Environmental Compliance. Licensor is, and during the past five (5) years has been, in material compliance with Environmental Laws applicable to the Premises.
- (6) No Environmental Proceedings. Except with respect to matters that have been settled or resolved with no ongoing liabilities or obligations, Licensor has not received any written notice of any proceeding regarding any actual or alleged violation of, or liability under Environmental Laws, or any investigatory, remedial or corrective obligations under Environmental Laws, in each case with respect to the Premises, nor is any such proceeding threatened to Licensor's knowledge.
- (7) No Environmental Releases. To Licensor's knowledge, the Licensor has not caused the release of Hazardous Substances at, on, about, under or from any of the Premises which would reasonably be expected to give rise to material liability under Environmental Laws.
- (8) No Environmental Events. To Licensor's knowledge, there are no events: (i) that would prevent continued compliance by the Licensor with Environmental Laws and the requirements of Environmental Permits applicable to it or the operation of the Premises in the same manner as presently operated and as contemplated by this License, or (ii) based upon the acts or omissions of the Licensor, that would result in the liability of Licensor under any applicable Environmental Laws.
- (9) Environmental Written Materials. Licensor has delivered to Licensee true, correct and complete copies of all Environmental Written Materials pertaining to the Premises in its possession, receipt, access or control.

**c. Licensee's Representations and Warranties.** Licensee represents and warrants, to the Licensor the following:

- (1) Compliance with Law. Licensee is in compliance with, and for the License Term, Licensee shall fully comply with all applicable Laws, including all applicable Environmental Laws and Environmental Permits.
- (2) Other Agreements. Neither the execution and delivery of this License by Licensee nor the performance by Licensee of any of its obligations under this License conflicts with or will result in a breach or default under any agreement or obligation to which Licensee is a party or by which Licensee is bound
- (3) Premises Condition. Prior to DEEP approval of the [Landfill Re-Use Permit], Licensee will inspect the Premises and every aspect thereof and represent to Licensor that the Premises is then in an acceptable condition for Licensee's anticipated use of the Premises as provided in this License.
- (4) As-Is Condition. Except with respect to subsurface and groundwater conditions to the extent such conditions require remediation under Environmental Laws, Licensee accepts the Premises in its as-is condition and acknowledges that except as expressly stated in this License, Licensor has not made any statements or representations or warranties regarding the Premises and Licensee is not relying upon any statement or representation of warranty by Licensor or any third party regarding the Premises, the fitness of the Premises for any particular use by Licensee or any other matter. Licensor expressly disclaims and Licensee hereby waives all implied warranties, including any warranty of merchantability or warranty of fitness for a particular use or purpose.
- (5) Maintenance of System. All of Licensee's operating and maintenance personnel will be adequately qualified and trained throughout the Term.

d. Environmental Conditions. Licensee states and Licensor represents, warrants, acknowledges, covenants and agrees that:

- (1) The Parties acknowledge and agree that the Premises were previously operated by Licensor as municipal solid waste landfill(s), and as between the Parties the Licensor is legally responsible for Pre-Existing Environmental Conditions;
- (2) Except to the extent exacerbated by Licensee or Licensee's employees, agents, contractors or assigns, Licensee has no liability for claims of any nature that currently exist or may hereafter arise relating to the Pre-Existing Environmental Conditions;
- (3) Licensee bears no responsibility for any Pre-Existing Environmental Conditions on the Premises whatsoever, except to the extent such Pre-Existing Environmental Conditions are exacerbated by the acts or omissions of Licensee or Licensee's employees, invitees, guests, agents, contractors, or assigns (collectively, "Licensee's Affiliates"). Licensor, for and on behalf of itself and all its successors in title and assigns, hereby waives, relinquishes, and releases Licensee, Licensee's Affiliates and its and their respective employees and agents from, and covenants not to sue Licensee, Licensee's Affiliates and its and their respective employees and agents for, any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) of any and every kind or character, known or unknown, which Licensor might assert or allege against Licensee (or Licensee's Affiliates and its and their respective employees or agents) at any time by reason of or arising out of Pre-Existing Environmental Conditions, except to the extent such Pre-Existing Environmental Conditions are exacerbated by the acts or omissions of Licensee or Licensee's Affiliates.
- (4) As between Licensor and Licensee, Licensor is and shall be solely responsible for all Pre-Existing Environmental Conditions on the Premises. To the extent permitted by law, and except to the extent such Pre-Existing Environmental Condition is exacerbated by Licensee, Licensor hereby covenants and agrees to defend and pay any and all claims arising out of, related to or resulting from such Pre-Existing Environmental Conditions, including, without limitation, costs of remediation and claims by any Person for property damage, bodily injury or death, except to the extent such Pre-Existing Environmental Conditions are exacerbated by, or claims arise from, the acts or omissions of Licensee.

- (5) Environmental Written Materials. Each Party shall promptly furnish to the other Party, on an on-going basis throughout the Term and without necessity of request, all final Environmental Written Materials.
- (6) Licensee shall be responsible for completing and filing all applications relating to any permit, approval, or condition required by any Governmental Authority or local utility service (collectively, "Authorizations") company in order to develop and construct the System. Prior to the Licensee filing any applications for Authorizations, Licensor shall have five (5) business days to review and provide meaningful comment on such applications. Licensor shall reasonably cooperate with Licensee throughout the application process, including providing information to Licensee which is reasonably known by Licensor and signing documents required to be signed by the property owner. To the extent any required Authorization places an undue, material burden on Licensor, as to be solely determined by Licensor, Licensor reserves the right, at its sole discretion, to require Licensee to continue to negotiate with the Governmental Authority issuing the Authorization and/or request that Licensee reimburse Licensor for any costs Licensee incurs as a result of such Authorization. If Licensor determines, no later than thirty (30) days after DEEP approval of the [Landfill Re-Use Permit], in its reasonably exercised discretion that such Authorization imposes an undue, material burden on Licensor, Licensor may then reimburse Licensee for half of its documented out-of-pocket costs incurred to date (up to maximum reimbursement amount of \$25,000) and terminate this License.
- (7) Licensee shall provide Licensor with copies of all Authorizations. A list of all Authorizations required to be obtained in order to develop, construct, and operate the System and a citation to relevant authority for such permit, approval, or condition is provided in Exhibit A

e. **Definitions.** For the purposes of Sections 11, 12, and this License, the following terms shall have the following meanings:

- (1) **"Environmental Laws"** means all federal, state and local laws, regulations, by-laws and ordinances, including policies and guidelines, orders, consent orders, settlement agreements and judgments of any Governmental Authority relating to pollution, protection of the environment or human health or safety, now or hereafter in effect.
- (2) **"Environmental Permits"** means all federal, state and local authorizations, certificates, permits, franchises, licenses, approvals required by, and any filings made to, any Governmental Authority pursuant to Environmental Laws regarding the Premises, Facility and the System, including, without limitation, a post-closure use permit for the Landfill.
- (3) **"Environmental Written Materials"** means all information, data, studies, analyses, tests, monitoring, notices, reports, applications, approvals or other communications of any kind concerning the Premise's compliance with Environmental Laws and Environmental Permits as Licensor or Licensee may possess, receive, file or submit or to which it otherwise has access or control from time to time, including, without limitation, any release or suspected or threatened release of Hazardous Substances at, on, about, under or from the Premises, compliance with applicable Environmental Laws and Licensee's or Licensor's liability under applicable Environmental Laws including, but not limited to Landfill and/or waste site closure design, remediation requirements, operation and maintenance requirements, testing and monitoring or any proceeding initiated or threatened by any person alleging liability under Environmental Laws, or seeking or imposing investigatory, remedial or corrective obligations under Environmental Laws
- (4) **"Governmental Authority"** means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, or any arbitrator with authority to bind a party at law.
- (5) **"Hazardous Substance"** means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," "petroleum," "petroleum product," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by

any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

- (6) **“Pre-Existing Environmental Conditions”** means the now closed Norwich Municipal Landfill located on the Premises and any and all Hazardous Substances which are on or under the Premises as of the Effective Date, whether or not such Hazardous Substances resulted from the operation or maintenance of such landfill.

**12. Environmental Obligations**

- a. Each Party shall comply strictly in all respects with all of the applicable requirements of Environmental Laws.
- b. Licensee shall not use any Hazardous Substance at, on, under, or about the Premises except as such Hazardous Substance use is approved in writing by Licensor, except for Hazardous Substances required in the ordinary course of System construction, installation and operation and which are used, stored, and disposed of in compliance with Environmental Laws.
- c. Licensee shall remediate at its sole cost and expense all Hazardous Substance contamination caused by or exacerbated by Licensee or Licensee’s Affiliates.

**13. Insurance.**

- a. **Insurance Coverage.** At all times during the Term, Licensee and Licensor shall maintain the following insurance:
  - i. **Licensee’s Insurance.** Licensee shall maintain (i) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) employer’s liability insurance with coverage of at least \$1,000,000; and (iii) workers’ compensation insurance as required by law.
  - ii. **Licensor’s Insurance.** Licensor shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- b. **Policy Provisions.** All insurance policies provided hereunder shall (i) contain a provision whereby the insurer agrees to give the party not providing the insurance thirty (30) days (ten (10) days in the event of non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, (iii) be maintained with companies either rated no less than A-VII as to Policy Holder’s Rating in the current edition of A.M. Best’s Insurance Guide or otherwise reasonably acceptable to the other party.
- c. **Certificates.** Upon the other Party’s request each Party shall deliver to the other Party certificates of insurance evidencing the above required coverage. A Party’s receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this License.
- d. **Deductibles.** Unless and to the extent that a claim is covered by an indemnity set forth in this License, each Party shall be responsible for the payment of its own deductibles.

**14. Ownership of System; Option to Purchase.**

- a. Throughout the Term, Licensee shall be the legal and beneficial owner of the System and all of the System’s electric output and Environmental Attributes, and the System shall remain the personal property of Licensee and shall not attach to or be deemed a part of, or fixture to, the Premises. Each of the Licensee and Licensor agree that the Licensee is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this License. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Licensor covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Licensor shall provide a disclaimer or release from such lienholder. If Licensor is the fee owner of the Premises, Licensor consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises is located. If Licensor is not the fee owner, Licensor will obtain such consent

from such owner. For the avoidance of doubt, in either circumstance Licensee shall file such disclaimer. Upon request, Licensor agrees to deliver to Licensee a non-disturbance agreement in a form reasonably acceptable to Licensee from the owner of the Premises, any mortgagee with a lien on the Premises, and other persons holding a similar interest in the Premises. To the extent that Licensor does not own the Premises, Licensor shall provide to Licensee immediate written notice of receipt of notice of eviction from the Premises or termination of Licensor's lease of the Premises.

- b. At the end of the sixth (6th) and tenth (10th) Contract Years (as defined in the PPA) and at the end of the Initial Term and each Additional Term (each as defined in the PPA), so long as Licensor is not in default under this License, Licensor may purchase the System from Licensee on any such date for a purchase price equal to the Fair Market Value of the System. The "Fair Market Value" of the System shall be determined by mutual agreement of Licensor and Licensee; provided, however, if Licensor and Licensee cannot agree to a Fair Market Value within thirty (30) days after Licensor has exercised its option, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties; provided that in no event shall the amount paid to purchase the System be less than the Termination Payment (as defined under the PPA) as of the date of System title transfer. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. Licensor must provide a notification to Licensee of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be complete prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable. Licensee shall transfer good title to the System to Licensor upon Licensee's receipt of the Purchase Option Price but otherwise disclaims all warranties of any kind, express or implied, concerning the System, "as is, where is, with all faults"; provided that Licensee shall assign to Licensor any manufacturers warranties that are in effect as of the purchase, and which are assignable pursuant to their terms. Upon purchase of the System, Licensor will assume complete responsibility for the operation and maintenance of the System and liability for the performance of the System, and Licensee shall have no further liabilities or obligations hereunder.

#### 15. Indemnification and Limitations of Liability.

- a. **General.** To the extent permitted by law, Each Party (the "Indemnifying Party") shall defend, indemnify and hold harmless the other Party and the directors, officers, shareholders, partners, members, agents and employees of such other Party, and the respective affiliates of each thereof (collectively, the "Indemnified Parties"), from and against all loss, damage, expense, liability and other claims, including court costs and reasonable attorneys' fees (collectively, "Liabilities") resulting from any third party actions relating to the breach of any representation or warranty set forth in Section 11 and from injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this License; provided, however, that nothing herein shall require the Indemnifying Party to indemnify the Indemnified Party for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnified Party. This Section 15(a) however, shall not apply to liability arising from any form of hazardous substances or other environmental contamination, such matters being addressed exclusively by Section 15(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a "Claim"), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys' fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party shall settle any Claim covered by this Section 15 unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party shall have no liability under this Section 15(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.** Licensee shall indemnify, defend and hold harmless all of Licensor's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance to the extent deposited, spilled or otherwise caused by or to the



extent any Pre-Existing Condition was exacerbated by Licensee or Licensee's Affiliates. To the extent permitted by law, Licensor shall indemnify, defend and hold harmless all of Licensee's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (including but not limited to any Hazardous Substance resulting from or relating to any Pre-Existing Conditions and any settling or subsidence of the Premises), except to the extent deposited, spilled or otherwise caused by or to the extent any Pre-Existing Condition was exacerbated by Licensee or any of its employees, contractors, or agents. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally not previously disclosed or any deposit, spill or release of any Hazardous Substance.

**d. Limitations on Liability.**

- i. No Consequential Damages. Except as specifically stated in this License, and except with respect to indemnification for Liabilities pursuant to this Section 15 and damages that result from the willful misconduct of a Party, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, incidental, exemplary, punitive, statutory, or consequential loss or damage of any nature arising out of their performance or non-performance hereunder even if advised of such.
- ii. Actual Damages. Except with respect to indemnification for Liabilities pursuant to this Section 15, damages that result from the willful misconduct of Licensee, and except with respect to Licensor's obligations under Sections 4 and 7 (which shall be capped at the Termination Payment as defined in the PPA), and with respect to any damage or loss of the System that results from the fault of Licensor or any third party for which Licensor is responsible (which shall be capped at Fair Market Value), each Party's aggregate liability under this License arising out of or in connection with the performance or non-performance of this License shall not exceed \$1,000,000. The provisions of this Section 15(d) shall apply whether such liability arises in contract, tort (including negligence), strict liability or otherwise.

**16. Force Majeure.**

- a. **"Force Majeure"** means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. It shall include, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any governmental authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any governmental authority (provided that such action has been timely requested and diligently pursued); any Change in Law that makes it unlawful, impossible or materially impracticable for either Party to perform under this License; unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence); and failure of equipment not utilized by or under the control of the Party claiming Force Majeure.
- b. Except as otherwise expressly provided to the contrary in this License, if either Party is rendered wholly or partly unable to timely perform its obligations under this License because of a Force Majeure event, that Party shall be excused from the performance affected by the Force Majeure event (but only to the extent so affected) and the time for performing such excused obligations shall be extended as reasonably necessary; provided, that: (i) the Party affected by such Force Majeure event, as soon as reasonably practicable after obtaining knowledge of the occurrence of the claimed Force Majeure event, gives the other Party prompt oral notice, followed by a written notice reasonably describing the event; (ii) the suspension of or extension of time for performance is of no greater scope and of no longer duration than is required by the Force Majeure event; and (iii) the Party affected by such Force Majeure event uses all reasonable efforts to mitigate or remedy its inability to perform as soon as reasonably possible. The Term shall be extended day for day for each day performance is suspended due to a Force Majeure event.
- c. If a Force Majeure event continues for a period of thirty (30) days or more within a twelve (12) month period and prevents a material part of the performance by a Party hereunder, then the Parties shall, within thirty (30) days following receipt by the other Party of notice of such Force Majeure event, meet and attempt in good faith to negotiate amendments to this License. If the Parties are unable to agree upon such amendments within such thirty

(30) day period, then Licensee shall have the right to terminate this License without either Party having further liability to the other Party except with respect to payment of amounts accrued prior to termination.

- d. **“Change in Law”** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation; (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date of this License (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any governmental authority which in the case of any of (i), (ii) or (iii), establishes requirements affecting owning, supplying, constructing, installing, operating or maintaining the System, or other performance of the Licensee’s obligations hereunder; provided, that a change in federal, state, county or any other tax law after the Effective Date of this License shall not be a Change in Law pursuant to this License.

17. **Assignment and Financing.**

- a. **Assignment.** This License may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the previous sentence, Provided, Licensor may only assign this License to an owner of the Premises. Licensee may, without the prior written consent of Licensor, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this License to any Financing Party, any entity through which Licensee is obtaining financing from a Financing Party, any affiliate of Licensee or any person succeeding to all or substantially all of the assets of Licensee (provided that Licensee shall provide written notice of such assignment as soon as practicable to Licensor and Licensee shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon (i) Licensor receiving such notice of the assignment and (ii) assumption of Licensee’s obligations hereunder by the assignee). This License shall be binding on and inure to the benefit of the successors and permitted assignees.
- b. **Financing.** The Parties acknowledge that Licensee may obtain construction and long-term financing or other credit support from lenders or third parties (including tax equity or similar investors) (“**Financing Parties**”) in connection with the installation, construction, ownership, operation and maintenance of the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this License that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this License. The Parties also agree that Licensee may assign this License to the Financing Parties as collateral, and in connection with any such assignment, Licensor agrees to execute a consent to assignment in customary form and reasonably acceptable to the Financing Parties.

18. **Confidentiality and Publicity.**

- a. **Confidentiality.** If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the System or of Licensor's business ("**Confidential Information**") to the other or, if in the course of performing under this License or negotiating this License a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of this License. Notwithstanding the above, a Party may provide such Confidential Information to its officers, directors, members, managers, employees, agents, contractors and consultants (collectively, "**Representatives**"), and affiliates, lenders, Financing Parties and potential assignees of this License (provided and on condition that such potential assignees be bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information), in each case whose access is reasonably necessary to the negotiation and performance of this License. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by any entity to whom that Party improperly discloses Confidential Information. The terms of this License (but not its execution or existence) shall be considered Confidential Information for purposes of this Section 18, except as set forth in Section 18. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party agrees that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, in the event of a breach of the provision of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18 (, but shall be in addition to all other remedies available at law or in equity.
- b. **Permitted Disclosures.** Notwithstanding any other provision in this License, neither Party shall be required to hold confidential any information that (i) becomes publicly available other than through the receiving Party, (ii) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena (but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement to the extent permitted by applicable law), (iii) is independently developed by the receiving Party, (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality, or (v) requested and required to be provided under the Freedom of Information Act ("FOIA"), Conn. Gen. Stat. §§ 1-200, et. seq. If disclosure of information is required by a Governmental Authority or pursuant to FOIA, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall cooperate with the other Party in efforts to limit the disclosure to the maximum extent permitted by law.

19. **Goodwill and Publicity.** Neither Party shall use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this License, and each Party shall have the right to promptly review, comment upon and approve any publicity materials, press releases or other public statements by the other Party that refer to, or that describe any aspect of, this License. Neither Party shall make any press release or public announcement of the specific terms of this License (except for filings or other statements or releases as may be required by applicable law) without the specific prior written consent of the other Party. Without limiting the generality of the foregoing, all public statements must accurately reflect the rights and obligations of the Parties under this License, including the ownership of Environmental Attributes and Environmental Incentives and any related reporting rights.

20. **General Provisions**

- a. **Choice of Law.** The law of the State of Connecticut shall govern this License without giving effect to conflict of laws principles.
- b. **Arbitration and Attorneys' Fees.** Any dispute arising from or relating to this License shall be arbitrated in Hartford, Connecticut. The arbitration shall be administered by the American Arbitration Association in accordance with its rules and procedures governing commercial arbitrations, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this License shall be entitled to reasonable attorneys' fees and costs.

- c. **Notices.** All notices under this License shall be in writing and shall be by personal delivery, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices shall be sent to the person identified in this License at the addresses set forth in this License or such other address as either party may specify in writing. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.
- d. **Survival.** Provisions of this License that should reasonably be considered to survive termination of this License shall survive. For the avoidance of doubt, surviving provisions shall include, without limitation, Section 11 (Representations and Warranties), Section 13 (Insurance Coverage), Section 12 (Licensee's Environmental Obligations), Section 15 (Indemnification and Limitations of Liability), Section 18 (Confidentiality and Publicity), Section 20(a) (Choice of Law), Section 20(b) (Arbitration and Attorneys' Fees), Section 20(c) (Notices), Section 20(g) (Comparative Negligence), Section 20(i) (No Partnership) Section 20(j) (Full Agreement, Modification, Invalidity, Counterparts, Captions) and Section 20(k) (No Third Party Beneficiaries).
- e. **Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this License and which do not involve the assumptions of obligations other than those provided for in this License, to give full effect to this License and to carry out the intent of this License.
- f. **Right of Waiver.** Each Party, in its sole discretion, shall have the right to waive, defer or reduce any of the requirements to which the other Party is subject under this License at any time; provided, however that neither Party shall be deemed to have waived, deferred or reduced any such requirements unless such action is in writing and signed by the waiving Party. No waiver will be implied by any usage of trade, course of dealing or course of performance. A Party's exercise of any rights hereunder shall apply only to such requirements and on such occasions as such Party may specify and shall in no event relieve the other Party of any requirements or other obligations not so specified. No failure of either Party to enforce any term of this License will be deemed to be a waiver. No exercise of any right or remedy under this License by Licensor or Licensee shall constitute a waiver of any other right or remedy contained or provided by law. Any delay or failure of a Party to exercise, or any partial exercise of, its rights and remedies under this License shall not operate to limit or otherwise affect such rights or remedies. Any waiver of performance under this License shall be limited to the specific performance waived and shall not, unless otherwise expressly stated in writing, constitute a continuous waiver or a waiver of future performance.
- g. **Comparative Negligence.** It is the intent of the Parties that where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.
- h. **Estoppel.** Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person specified by such requesting Party: (i) that this License is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this License and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by the requesting Party. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.
- i. **No Partnership.** No provision of this License shall be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither shall be considered the agent of the other.
- j. **Full Agreement, Modification, Invalidity, Counterparts, Captions.** This License, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This License may be modified only by a writing signed by both Parties. If any provision of this License is found unenforceable or invalid, such unenforceability or invalidity shall not render this License unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law. This License may be executed in any

number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same License. The captions or headings in this License are strictly for convenience and shall not be considered in interpreting this License.

- k. **No Third Party Beneficiaries.** Except as otherwise expressly provided herein, this License and all rights hereunder are intended for the sole benefit of the Parties hereto and shall not imply or create any rights on the part of, or obligations to, any other Person.

**Exhibit A**  
**Permits**

1. General Permit for a Municipal Transfer Station, Permit #1040888-MTSGP
2. General Permit for the Discharge of Stormwater Associated with Industrial Activity, Permit #GSI 000645
3. Current CT DEEP Consent Order No. SW-405

**Exhibit B**

**Permits Matrix**

<i>Permit Name</i>	<i>Activity Requiring Permit</i>	<i>Authority</i>
<b>LOCAL</b>		
Site Plan Review (TBD)	Proposed development requiring review for conformance with local Engineering and Construction Standards	City Planning and Zoning Commission
Inland Wetland and Watercourses Permit (Permission to Conduct a Regulated Activity)	Construction within 100' of an inland wetland or watercourse	C.G.S. Sections 22a-36 to 22a-45
Building Permit	Construction of PV System and Site Development	State Building Code and Zoning Regulations.
Electrical Permit	Construction of PV System will involve electrical elements	State Building Code and Zoning Regulations.
Sign Permit (TBD)	Construction of free-standing and/or mounted sign	State Building Code and Zoning Regulations.
Street Opening Permit (TBD)	All construction within a City ROW	State Building Code and Zoning Regulations.
<b>STATE</b>		
Authorization Application for Disruption of a Solid Waste Disposal Area	Disturbance (excavation, boring, regrading, etc.) or removal of deposited solid waste material, including cover material.	Regulations of Connecticut State Agencies (RSCA) Section 22a-209-7(u)
Post Closure Use	Redevelopment of a closed solid waste disposal areas for use as a renewable energy facility.	Regulations of Connecticut State Agencies (RSCA) Section 22a-209-13(d)
Certificate of Environmental Compatibility and Public Need - Declaratory Ruling (Connecticut Siting Council)	Construction of a renewable energy facility under CGS 16-50i (a) (3)	CGS 16-50g - 16-50aa CGS 16a-7c CGS 16-50j-1 - 16-50z-4



General Permit for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities	All discharges of stormwater and dewatering wastewater from construction activities which result in the disturbance of one or more total acres of land area on a site	C.G.S. Section 22a-430b
Connecticut Natural Diversity Database Endangered and Threatened Species	Activities within shaded area on CTDEEP Natural Diversity Database (NDDB) map or is less than 1/2-mile from a shaded area.	C.G.A. Section 26-310 (a)
State Historic Preservation Office	Cultural resources/historic properties, including those on or eligible for listing in the National Register of Historic Places, in the project's identified Area of Potential Effect (APE)	CGS Section 10-392
<b>FEDERAL</b>		
FAA Form 7640-1 (TBD)	Construction of a structure which exceeds 200' in height	
U.S. Army Corps of Engineers General Permit (TBD)	Structures within jurisdictional limits	