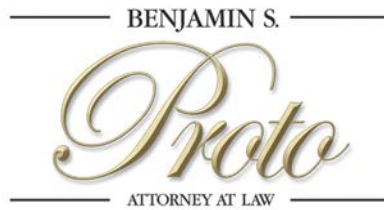


2885 Main Street
Stratford, CT 06614
T 203 378-9595



C 203 260-2121
F 203 378-7765
E ben@protolawfirm.com

July 26, 2017

Melanie A. Bachman
Acting Executive Director/Staff Attorney
Connecticut Siting Council
10 Franklin Square
New Britain, CT 06051

RE: Petition 1078. Petition of CTS Energy, LLC for a Declaratory Ruling that a Certificate of Environmental Compatibility and Public Need is Not Required for a 4.98 MW Fuel Cell Facility located at 245 Chapel Road, South Windsor, Connecticut

REQUEST FOR MODIFICATION

Dear Attorney Bachman:

I represent the Town of South Windsor, Connecticut, Mestek, Inc. and MacKeeber Associates, LLC, an affiliate of Mestek, Inc. (jointly referred to as the "Parties").

The Parties respectfully request that the Connecticut Siting Council modify its Declaratory Ruling that a Certificate of Environmental Compatibility and Public Need is not required for a fuel cell by modifying the address of the proposed fuel cell location from 245 Chapel Road, South Windsor, Connecticut to 515 John Fitch Boulevard, South Windsor, Connecticut (referred to as the "Property").

On December 12, 2013, the Connecticut Siting Council (CSC) approved the above referenced Petition and determined that a Certificate of Environmental Compatibility and Public Need was not required for the proposed fuel cell to be located at 245 Chapel Road, South Windsor, Connecticut. (Copy of Decision attached as Exhibit A). The proposed fuel cell was subject to a Power Purchase Agreement (PPA) between CTS Energy, LLC and Connecticut Light & Power (CL&P), which PPA was approved by the Public Utility Regulatory Authority (PURA) on October 4, 2013 in Docket No 13-06-27 (copy of the PURA Decision attached as Exhibit B).

Subsequent to the CSC approving the above Petition, a number of events occurred which have caused the Parties to seek a modification of the approval issued by the CSC in December, 2013.

CTS Energy, LLC (CTS) originally sought the Declaratory Ruling as it was the developer of the proposed fuel cell. CTS Energy, LLC, is wholly and solely owned by an entity known as Connecticut Studios, LLC. Connecticut Studios, LLC (Studios) is wholly and solely owned by entity known as dck North America, LLC (dck).

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In April, 2016, CTS Energy, LLC, Connecticut Studios, LLC, and dck Leasing, LLC entered into an assignment agreement with South Windsor, whereby CTS Energy, LLC assigned all of its rights, title and interest in the PPA to the Town of South Windsor (copy of the Redacted Assignment Agreement as it appears in PPA attached as Exhibit C).

On September 6, 2016, the Town of South Windsor, together with CTS Energy, LLC, filed a Motion to Reopen Docket No 13-06-27 for the purposes of having PURA approve the assignment of the PPA to the Town of South Windsor and to approve a revised PPA. On October 14, 2016, PURA approved the Assignment of the PPA to the Town of South Windsor. (Copy of PURA Final Decision in Docket No 13-06-27 RE01 attached as Exhibit D).

Subsequent to the approval by PURA of the Assignment of the PPA to South Windsor, South Windsor, together with the Department of Energy and Environmental Protection (DEEP) and CL&P, acting through its parent, Eversource, entered into negotiations to reach agreement on the orders set forth by PURA in the October 14, 2016 Final Decision.

On January 27, 2017, after negotiations broke down, and the parties presented their final proposals to PURA for compliance with the PURA orders set forth in the October 14, 2016 Final Decision, PURA issued a letter ruling setting forth its decision related to compliance with its orders of October 14, 2016. (A copy of the PURA letter ruling is attached as Exhibit E). Upon the issuance of the ruling in Exhibit E, the Amended and Restated Power Purchase Agreement between the Connecticut Light and Power Company dba Eversource Energy and Town of South Windsor, Connecticut was finalized. (Copy of PPA attached as Exhibit F).

As part of the Motion to Reopen, South Windsor proposed moving the fuel cell from the approved location at 245 Chapel Road, South Windsor, CT to 515 John Fitch Boulevard, South Windsor, CT. This proposed alternative location was necessitated by a number of factors.

The approved fuel cell was part of a multi-purpose redevelopment project for the Chapel Street location which included the fuel cell, a multi sound stage movie and television production facility and ancillary buildings to support the studio operations (hereinafter referred to as the "Project").

The proposed and approved Chapel Road location was, and remains, privately owned real estate. The original "agreement" between CTS Energy and CTS Studios called for a purchase price that was in line with the overall cost structure for the entire project. Subsequent to the approvals being granted by PURA and CSC, the owner of the real estate substantially increased the asking price for the real estate. The new price made the entire project financially unfeasible and after long discussions, it was determined that the Chapel Road location would no longer be a viable location for either the fuel cell or the movie studio.

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Once it became clear to South Windsor that the Chapel Road property was no longer a viable location for the fuel cell and movie studio projects, South Windsor entered into discussions with Mestek and MacKeeber to move the fuel cell project to 515 John Fitch Boulevard property. As a result of these discussions, South Windsor, Mestek and MacKeeber joined together, with South Windsor as the lead party, to seek PURA's approval of the assignment of the PPA to South Windsor.

The property located at 515 John Fitch Boulevard, is owned by MacKeeber. The Property was previously leased and utilized by Mestek as a manufacturing facility. Mestek shut down manufacturing operations at this location in October, 2009 and the Property has gone unused since that time. The proposed location of the fuel cell on the Property is approximately 1,950 feet from the approved location at 245 Chapel Road. (See Map of approved and proposed location Exhibit G).

The 515 John Fitch Boulevard location is similar to the approved Chapel Road location, in that the utility connections at the parcel are going to come direct from the nearest road, John Fitch Boulevard. However, the one major distinction is that gas connection is direct, and avoids crossing beneath the railroad, thereby resulting in less environmental impacts. Electric, sanitary sewer and water connections at the proposed location are roughly similar distances as the approved location. Overall, the proposed location is similar in most aspects and provides less of an environmental impact than the approved Chapel Road location. In addition, the Chapel Road location was open to the public, whereas, the proposed location is gated thereby limiting access by the public which will provide an improved public safety component to the proposed location.

As part of the request for modification, the Parties have engaged the services of All-Points Technology Corporation (All-Points) to perform an environmental assessment of the proposed new site location (Environmental Assessment attached as Exhibit H). All-Points performed the environmental assessment for the original Petition.

Below is an executive summary of the Environmental Assessment findings. Detailed information may be found in Exhibit H.

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Environmental Discussion

The project would not have any long-term adverse effects on the existing environment and ecology, nor would it affect the scenic, historic, and recreational values of the vicinity. It would occupy approximately 0.5 acres in the northwest corner of the property, a relatively level area which is currently developed with paved parking.

1) Air and Water Quality

Because there is no fuel combustion, virtually no harmful emissions are generated by the fuel cells. This results in power production that is almost entirely absent of nitrogen oxide, sulfur dioxide, particulate matter carbon monoxide and volatile organic compounds. The project is not expected to cause visible or odorous emissions. During full power operation, the overall water consumption associated with a Fuel Cell Energy DFC3000 fuel cell is estimated at approximately 13,000 gallons/day. Water consumption associated with the project will be made available through the MDC local water supply system and provided via existing lines beneath John Fitch Boulevard. Average wastewater discharge from the water treatment system is approximately 6,500 gallons/day assuming full power operation. The facility will tie into the Town of South Windsor's sewer system beneath John Fitch Boulevard.

2) Site Stormwater

The project will require a portion of existing pavement to be removed. Upon completion, this area would be replaced with gravel and concrete equipment pads. As such, the existing drainage patterns will not be altered and the post-development peak discharge rate will be equal to or slightly less than pre-development conditions. Erosion and sedimentation control measures, consistent with the *2002 Connecticut Guidelines for Erosion and Sedimentation Control* have been included in the Project design.

3) Wetlands and Watercourses

The nearest wetland resource is a narrow floodplain riparian system of the Podunk River and extends within approximately 53 feet of the proposed project site. Due to the facility's relatively close proximity to resource, a wetland protection plan has been proposed (see Exhibit H, Appendix B). , including the use of appropriate erosion control measures to control and contain. Once the project has been completed, site stormwater would be treated in general accordance with the CTDEEP *2004 Connecticut Stormwater Quality Manual* to minimize possible impacts to the Podunk River and its surrounding wetlands.

- 4) Soil Erosion, Sediment Control, and Site Restoration
Ground disturbances would be associated with the construction of the fuel cells, including grading and trenching for the installation of new coax cables, concrete pads and fence posts. Soil erosion and sediment control measures would be incorporated during construction in accordance with the *2002 Connecticut Guidelines for Soil Erosion and Sediment Control*. Disturbed areas surrounding the facility would be restored with gravel and seeded in select areas to establish a landscaped fringe.
- 5) Wildlife and Vegetation
The proposed Fuel Cell Project is located within existing developed and paved areas generally void of vegetation. No tree clearing is required for its construction and operation. Some minor tree trimming may be necessary to facilitate construction. Considering that the site is extensively developed and surrounded by a relatively high level of human activity, wildlife habitat will not be significantly affected by the Project.
- 6) Safety and Health
The Project would not create any safety or health hazards to persons or property. The fuel cell facility would not consume any raw materials, would not produce any by-products and would be unmanned during normal operating conditions. Applicable signage would be installed alerting the general public of the dangers of high voltage associated with the facility, as well as an eight-foot-tall chain-link fence. There are no plans to store fuels or hazardous materials at the facility.

Minimal traffic control measures may be required during certain phases of construction, primarily when connecting to services along John Fitch Boulevard. Subsequent to completion of construction, the facility would not generate any additional traffic to the area other than routine, periodic maintenance visits.
- 8) Visual
Once completed, the project would not be highly visible from public locations. Its location in the northwest corner of the property offers limited direct lines of sight. No scenic areas would be physically or visually impacted by the project. No views of the fuel cells would be achievable from along portions of Main Street, a locally-designated scenic road within the Windsor Farms Historic District. Some nearby agricultural fields that are located within the District could have seasonal views of at least a portion of the facility during leaf-off conditions.

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Acting Executive Director/Staff Attorney
Connecticut Siting Council
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As is shown in the Environmental Assessment, siting the fuel cell at the new proposed location at 515 John Fitch Boulevard would comply with CTDEEP air and water quality standards while producing little to no environmental impact. Developing the project at the proposed John Fitch Boulevard site is as environmentally neutral as the previously approved Chapel Road site.

The proposed John Fitch Boulevard site for the proposed fuel cell meets or exceeds all of the attributes of the approved Chapel Road site. The determination by the CSC that a Certificate of Environmental Compatibility and Public Need was not required for the Chapel Road site should be modified to so as to allow for the installation and operation of the fuel cell at the proposed 515 John Fitch Boulevard location.

In addition, and to ensure clarity in what was and is proposed, the CSC decision references a 4.98 MW fuel cell. It should be noted that, although the fuel cell will generate power up to 5 MW, as referenced in both the October 14, 2013 and October 4, 2016 PURA Final Decisions, the project will consist of two 1.4 MW fuel cells and one 2.8 MW fuel cell, with a total potential capacity of 5.6 MW. Although the equipment will carry faceplates of totaling 5.6 MW, the equipment will be installed with governors to limit the total output to 5MW as was approved by PURA in both the 2013 and 2016 decisions regarding the PPA.

The fuel cell project is presently tied to the development of a motion picture and television studio which is presently planned for development after the installation and start-up of the fuel cell. The waste heat that is generated by the fuel cell will, for the time being, be dissipated into the atmosphere, however it is anticipated that the waste heat could ultimately be utilized by on site activities for heating and cooling purposes. This is a future possibility, and, as indicated above, until such development occurs, the waste heat will be released into the atmosphere, with no harmful effects.

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Acting Executive Director/Staff Attorney

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For the foregoing reasons, the Town of South Windsor, Mestek, Inc, and MacKeeber Associates, LLC respectfully request that the Connecticut Siting Council modify its previous decision by amending the location of the approved fuel cell from 245 Chapel Road, South Windsor, Connecticut to 515 John Fitch Boulevard, South Windsor, Connecticut and find that a Certificate of Environmental Compatibility and Public Need is not required for the 515 John Fitch Boulevard, South Windsor, Connecticut proposed site for the fuel cell project.

The Parties and their consultants are available to answer any questions the members of staff of the Connecticut Siting Council may have regarding this Petition to Modify and respectfully request that this matter be placed on the CSC agenda for August 31, 2017.

Thank you for your consideration.

Sincerely,

Benjamin S. Proto, Jr. /s/

Benjamin S. Proto, Jr.
Counsel for the Parties

Enc.

EXHIBIT A



STATE OF CONNECTICUT
CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

www.ct.gov/csc

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

December 17, 2013

Jesse A. Langer, Esq.
Updike, Kelly & Spellacy, P.C.
One Century Tower
265 Church Street
New Haven, CT 06510

RE: **PETITION NO. 1078** - CTS Energy, LLC petition for declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the installation of a 4.98 megawatt fuel cell facility located at 245 Chapel Road, South Windsor, Connecticut.

Dear Attorney Langer:

At a public meeting held on December 12, 2013, the Connecticut Siting Council (Council) considered and ruled that this proposal would not have a substantial adverse environmental effect, and pursuant to General Statutes § 16-50k would not require a Certificate of Environmental Compatibility and Public Need with the following conditions:

- The approval shall be void if all construction authorized herein is not completed within four years of the effective date of approval; and
- Any request for extension of the time period for construction shall be filed with the Council not later than 60 days prior to the expiration date.

This decision is under the exclusive jurisdiction of the Council and is not applicable to any other modification or construction. All work is to be implemented as specified in the petition, dated October 18, 2013.

Enclosed for your information is a copy of the staff report on this project.

Very truly yours,

Robert Stein
Chairman

RS/MP/jb

Enclosure: Staff Report dated December 12, 2013

c: The Honorable Thomas Delnicki, Mayor, Town of South Windsor
Michele R. Lipe, AICP, Town Planner, Town of South Windsor



STATE OF CONNECTICUT

CONNECTICUT SITING COUNCIL

Ten Franklin Square, New Britain, CT 06051

Phone: (860) 827-2935 Fax: (860) 827-2950

E-Mail: siting.council@ct.gov

www.ct.gov/csc

Petition No. 1078

CTS Energy, LLC

245 Chapel Road, South Windsor

Staff Report

December 12, 2013

On October 18, 2013, the Connecticut Siting Council (Council) received a petition (Petition) from CTS Energy, LLC (CTS) for a declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the proposed installation of a 4.98 megawatt (MW) fuel cell facility at 245 Chapel Road, South Windsor. Specifically, CTS seeks to install two 2.49 MW molten carbonate fuel cell systems on the property of an upcoming motion picture studio complex (Studios Project). The project would have a total power output of 4.98 MW.

This petition was field reviewed on November 15, 2013 by Council members Phil Ashton and Dan Lynch, Staff Attorney/Acting Executive Director Melanie Bachman, and Michael Perrone, Siting Analyst. The following individuals also attended the field review: Craig Stevenson, Economic Development, CT Studios; Michele Lipe, Town Planner, Town of South Windsor; Jesse Langer, Attorney, Updike, Kelly & Spellacy, P.C.; Derek Phelps, Director of External Affairs, Updike, Kelly & Spellacy, P.C.; Michael Libertine, Environmental, All Points Technology; David Jackson, VP – Mechanical Acousticals, Fuss & O'Neil; John Waitcomb, Civil Engineer, All Points Technology; Asa Davis, Fuel Cell Consulting, CT Studios; and Michael Holtzman, President, M.J. Holtzman & Associates.

The area making the up the Studios Project has been the subject of long term planning and investment by the Town of South Windsor (Town) and the State of Connecticut.

The site is currently vacant land occupied by a gravel parking area off of Chapel Road, scrub vegetation, and remnants of an access road associated with a former drive-in movie theater. Deteriorated theater infrastructure, including the steel skeleton of the screen, is located in the southeastern portions of the subject property. The subject parcel is bordered by commercial developments along Chapel Road to the north, Ellington Road to the east, and Route 5 to the west. An overhead electrical transmission corridor extends through the Studios Project in an east to west direction.

Each fuel cell system contains a fuel cell module, as well the associated mechanical equipment and electrical equipment. The fuel cell facility would operate on natural gas to be supplied by Yankee Gas. Each fuel cell system would consume about nine gallons per minute of water and discharge about 4.5 gallons per minute of water. However, the fuel cell systems would only consume water until their internal tanks are full.

The fuel cell compound would be approximately 110 feet by 140 feet and surrounded by an eight-foot tall chain link fence. Gravel access would be provided to the south and connected to the access drive for the CTS building complex.

The fuel cell facility would provide baseload power for the Studios Project and surplus electricity would be sold to the grid. By Decision dated October 4, 2013 in Docket No. 13-06-27, PURA approved a power purchase agreement between CTS and The Connecticut Light and Power Company. The fuel cell facility would also generate Class I renewable energy that would help bring the State closer to its renewable portfolio standards goals.



CTS will participate in Round 2 of the Department of Energy and Environmental Protection (DEEP)'s Microgrid Grant and Loan Pilot Program (Microgrid Program) in accordance with Section 7 of Public Act 12-148. If selected under the Microgrid Program, the fuel cell project would provide electricity for an emergency shelter at the CTS facility during extreme weather events, and therefore, the project would also satisfy the State's goal to "maintain planning and preparedness capabilities necessary to deal effectively with future energy supply interruptions."

The Request for Proposals is expected to be issued by DEEP in January 2014. Awards will be announced in September 2014. CTS also seeks Council approval to install a 250-kW diesel generator at the site to provide black start capability for the fuel cell in the event that this project is selected for as a microgrid project. The backup power would be necessary for microgrid reliability. However, CTS plans to go forward with the fuel cell portion of the project (without the microgrid) in the event that the project is not selected under the Microgrid Program.

CTS is evaluating whether a district heating system would make efficient use of the excess heat generated by the Studio's Project.

The fuel cell project would meet all applicable safety requirements for construction, interconnection, and operation. The chain link fence would secure the facility and associated equipment. CTS would implement a Fire Protection and Emergency Plan in accordance with the Council's Decision and Order in Docket No. NT-2010 and the National Fire Protection Association Standard 853 (2010), which applies to the design, construction, and installation of stationary fuel cell power systems. The facility would have various safety features such as warning alarms, pressure safety devices to prevent system overpressure, flame and smoke detectors, combustible gas detectors, and emergency shutdown buttons in the event that immediate shutdown is necessary.

There are no residences in the vicinity of the site. The nearest residence is approximately 910 feet to the west. Given the commercial/industrial nature of the site, the visual impact is not expected to be significant. Notwithstanding, an earth berm would be placed between the fuel cell facility and Chapel Road to further reduce the visibility of the project. The earth berm would have the following landscaping planted on top: 15 black chokecherries, 14 gray dogwoods, 19 bayberries, 21 common junipers, 15 staghorn sumacs, and 15 virginia roses. The west side of the project would have 24 american boxwood or common boxwoods planted.

The site is not located within a 100-year or 500-year floodplain.

The maximum worst-case noise levels at the nearest property line with both fuel cell units and the backup generator would be 68 dB. This is in compliance with the State and Town of South Windsor standard of 70 dB for an industrial emitter and industrial receptor.

No air permits would be required because of the very low emissions. Oxides of nitrogen (NOx) emissions would be less than 0.01 pounds per megawatt-hour (lbs/MWh). Sulfur oxides (SOx) emissions would be less than 0.0001 lbs/MWh. Particulate matter (PM) output would be less than 0.005 lbs/MWh. Carbon Monoxide (CO) emissions would be less than 0.1 lbs/MWh. Volatile organic compound (VOC) emissions would be less than 0.02 lbs/MWh.

The nearest off-site wetland or watercourse resource to the site is approximately 400 feet to the west and located on the other side of John Fitch Boulevard. This wetland is associated with the Podunk River. The nearest wetland or watercourse resource on the subject property is a man-made pond located approximately 950 feet to the southeast. The constructed pond has limited fringing wetland vegetation, primarily along the west bank of the pond. The pond appears to have been constructed in uplands to serve originally as an agricultural pond possibly for irrigation. A self-storage facility located near the north bank of the pond currently discharges stormwater into the pond, which has no outlet. According to All Points Technology, Inc., the pond has no wildlife habitat value.

No threatened, endangered, or special concern species or critical habitats are likely to occur at the site. Previous investigations identified six species of interest on the CT Studio property, but not within the proposed project site area. Several brown thrashers (a State Species of Special Concern) were observed primarily within the electric transmission line corridor to the south.

A portion of the Studios Project property contains confirmed habitat for the tiger beetle (a State Species of Special Concern). Potential impacts to this habitat have been mitigated off-site through a plan approved by DEEP that included collection of tiger beetle larvae and translocation to a mitigation site off the subject property. The plan was implemented by DEEP and the Town in cooperation with Connecticut Studios and was completed in 2009.

An approximately 4.5-acre grassland patch extends into the southeast corner of the site. This grassland habitat patch was found in 2006 to support a probable breeding pair of grasshopper sparrow, a State Endangered bird. Given the relatively small size of suitable habitat, it is possible that it does not consistently support grasshopper sparrow on an annual basis. Nevertheless, as a precaution, the Town of South Windsor has negotiated with DEEP and CT Studios to provide suitable mitigation. This mitigation includes enhancement and management of existing Town-owned open space at Wapping Park on Clark Street (roughly 2.4 miles to the northeast of the fuel cell site). This mitigation plan would provide 47 acres of grassland habitat to support grasshopper sparrow breeding.

Most of Connecticut's known breeding sites and prime habitat for grasshopper sparrow are in Hartford County's portion of the upper Connecticut River Valley (CRV) drainage with most of the prime habitat located along the CRV from the Hartford area north to the Massachusetts line. The CRV is the primary migratory corridor for grassland bird species that return to this area of the State each spring. Wapping Park is located within the CRV and is a comparable distance from the Connecticut River as other existing managed grassland habitat sites, including Northwest Park and the Department of Corrections property in Enfield/Somers. Therefore, since Wapping Park is located between natural and managed grassland habitats that support grasshopper sparrow breeding, grasshopper sparrows that migrate in the spring along the CRV that may stop to investigate the Connecticut Studios property would also be likely to investigate grassland habitat at nearby Wapping Park.

Three rare plants were identified as potentially occurring on the subject property: Barratt's sedge (a State-designated Endangered Species), clustered sedge (a State-designated Threatened Species), and climbing fern (a State Species of Special Concern). The habitats for Barratt's sedge and climbing fern do not exist on or near the fuel cell site. Clustered sedge grows in dry sandy or rocky soil. Previous investigations of the Studios Project did not reveal any clustered sedge.

By letter dated December 5, 2013, DEEP noted that the two wildlife mitigation plans were developed and approved to address negative impacts to grassland birds and the big sand tiger beetle. Additional mitigation efforts for these species are not warranted. The tiger beetle mitigation plan is already complete. In addition, the Grasshopper Sparrow mitigation plan is also being performed by the Town and DEEP in cooperation with CT Studios. The grasshopper sparrow mitigation plan is expected to be completed by year-end 2013.

No state-designated scenic roads are located in the vicinity of the proposed site. The nearest historic resources proximate to the site are the Windsor Farms Historic District (approximately 850 feet to the west) and the Elmore Houses (approximately 5,400 feet to the east). By letter dated December 4, 2013, the State Historic Preservation Office found that no historic properties would be affected by this project.

By letter dated August 1, 2013, State Senator Gary LeBeau, and State Representatives Bill Aman and Timothy Larson expressed their support for this project. By letter dated August 2, 2013, Matthew Galligan, Town Manager of the Town of South Windsor expressed support for the project. On October 15, 2013, notice was provided to the Town of South Windsor, state and regional agencies and officials, and abutting property owners. By letter dated October 17, 2013, one abutter expressed support for the proposed project.



EXHIBIT B



STATE OF CONNECTICUT

**PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051**

**DOCKET NO. 13-06-27 JOINT APPLICATION OF CTS ENERGY, LLC AND CL&P
FOR REVIEW AND APPROVAL OF A PROPOSED
RENEWABLE POWER PURCHASE AGREEMENT UNDER
SECTION 127 OF P.A. 11-80**

October 4, 2013

By the following Commissioners:

John W. Betkoski, III
Arthur H. House
Michael A. Caron

Lead Staff: J. Buckingham
Legal Advisor: R. Luysterborghs

DECISION

I. INTRODUCTION

A. SUMMARY

In this Decision, the Public Utilities Regulatory Authority approves a Power Purchase Agreement for the Connecticut Studios Project fuel cell electric generation facility located in South Windsor, Connecticut. The Public Utilities Regulatory Authority also authorizes The Connecticut Light and Power Company to seek rate recovery for costs related to the Power Purchase Agreement, and makes certain findings regarding use of the facility output and recovery of costs and benefits associated with the Power Purchase Agreement.

B. BACKGROUND

On June 28, 2013, pursuant to §16-244v of the General Statutes of Connecticut (Conn. Gen. Stat.), CTS Energy, LLC (CTS) and The Connecticut Light and Power Company (CL&P; collectively, the Applicants) submitted an application to the Public Utilities Regulatory Authority (PURA or Authority) to review and approve a proposed Power Purchase Agreement (PPA) with CTS (Application). CTS proposes to construct, operate and solely own a fuel cell project at the Connecticut Studios Project in South Windsor, Connecticut (Studios Project), which will have a generating capacity of up to five megawatts (MWs). The PPA allows for payment at the contract rate for a maximum output of five MWs, and a fuel adjustment clause that provides for recovery of the cost of natural gas procured for the facility. CL&P will not own or jointly own any interest in the CTS Project.

According to the Applicants, Conn. Gen. Stat. §16-244v(a) authorizes CL&P to own or jointly own up to 10 MWs of renewable generation, but it does not obligate it to construct any renewable generation. The Applicants state that CL&P does not intend to fully exercise its right under the above statute to own or jointly own 10 MWs of renewable generation, but it does not want that decision to undermine the goal of the executive branch, the legislature and the Department of Energy and Environmental Protection (DEEP) to facilitate renewable project development. Therefore, the Application proposes to assign 5 of the 10 MWs allocated to CL&P to CTS for the Studios Project. Application, p. 2.

C. CONDUCT OF PROCEEDING

By letter dated January 25, 2013, the Department of Energy and Environmental Protection (DEEP) delegated its review authority to the Authority.

There is no statutory requirement for a hearing on this matter, no person requested a hearing, and none was held.

The Authority issued a draft Decision in this matter on October 3, 2013.

D. PARTICIPANTS

The Authority recognized the following as Participants to this proceeding: CTS Energy, 265 Church Street, New Haven, CT 06510; The Connecticut Light and Power Company, P.O. Box 270, Hartford, CT 06141-0270; the Office of Consumer Counsel, Ten Franklin Square, New Britain, CT 06051; the DEEP Bureau of Energy and Technology Policy, Ten Franklin Square, New Britain, CT 06051.

II. AUTHORITY ANALYSIS

A. OVERVIEW

The Studios Project is a fuel cell powered electric generation facility, which is subject to qualification as Class I renewable energy sources per Conn. Gen. Stat. §16-1(a)(26).¹ The PPA establishes a 20-year fixed payment stream contract for energy and Renewable Energy Certificates (RECs).² The PPA also establishes a fuel adjustment clause that provides a mechanism for CTS to recover the cost of natural gas procured to operate the fuel cell. The Applicants assert that approval of the PPA would result in the following benefits:

1. Economic benefits in the form of jobs and tax revenues;
2. A 55 ton reduction in nitrous oxide emissions and over 20 ton reduction in sulfur dioxide emissions over the life of the project;
3. Furtherance of the goals of the 2013 Comprehensive Energy Strategy for Connecticut, which recommends special consideration be given to expanded fuel cell applications;
4. The price established by the PPA is within the range of other projects that have been approved under Conn. Gen. Stat. §16-244v(a); and
5. The PPA is modeled after other PPAs approved for cost recovery by the PURA.

Application, pp. 3 and 4.

The Applicants request the following from the Authority:

1. Approval of the PPA;
2. Confirmation that Conn. Gen. Stat. §16-244v provides CL&P with the flexibility to either: a) sell the market products arising from the PPA directly into the applicable ISO-New England (ISO-NE) markets or in bilateral transactions, or b) use the energy and capacity as “load reducers” to reduce load in CL&P’s service territory for the benefit of CL&P, wholesale suppliers and competitive retail suppliers;
3. Confirmation that if CL&P either: a) sells these market products directly in the applicable ISO-NE markets or in bilateral transactions and the resulting net cost or benefit is passed through to all customers; or b) uses the energy and capacity

¹ The Authority does not find in this Decision that the Studios Project qualifies as a Class I renewable source; nor has it been requested to do so.

² A REC is associated with the output from a generating facility that has been qualified by the Authority as a Connecticut Class I, II or III renewable resource under Conn. Gen. Stat. §16-1. The REC is in the form of an electronic certificate that is created by the New England Power Pool (NEPOOL) Generation Information System when renewable generators create electricity. One REC is created for each megawatt-hour of net output.

as “load reducers,” then CL&P will be allowed to recover all net PPA-related costs from all customers and credit any net PPA-related benefits to all customers, in each case through the non-bypassable federally mandated congestion costs (NBFMCC) charge;

4. Confirmation that CL&P can recover, through its NBFMCC rate, costs it incurs to administer and enforce the PPA, excluding internal labor costs that are already recovered in rates from electric customers; and
5. That the PURA include adverse accounting or credit rating impact treatment consistent with that approved in its June 5, 2013 Decision in Docket No. 13-01-32, Joint Application of Wind Colebrook South LLC and The Connecticut Light and Power Company for Review and Approval of a Proposed Renewable Power Purchase Agreement with Wind Colebrook South LLC, and its November 21, 2013 Decision in Docket No. 12-05-13, Application for Approval of Renewable Power Purchase Agreements Totaling 10 Megawatts Resulting from Department of Energy and Environmental Protection's December 2011 Requests for Proposals Pursuant to Section 127 of P.A. 11-80.

Application, pp. 6 and 7.

B. POWER PURCHASE AGREEMENT

CTS was awarded a contract following discussions between CTS and CL&P. These discussions began in late August or early September of 2012. In October 2012, CL&P declined to move forward with the project after holding internal meetings. In May 2013, the two parties resumed negotiations after the project was vetted with the Department of Economic and Community Development. Response to Interrogatory EN-8.

The PPA includes provisions that address the following:

- Facility development and operation, including critical project milestones and provisions for damages due to delays;
- Delivery of products, including establishment of the delivery points, metering, and assignment of RECs;
- Price and Payment for products;
- Security for performance, including provisions for deposits;
- Regulatory approval;
- Dispute resolution; and
- Miscellaneous other provisions.

The Studios Project is required by the PPA to enter service within one year of receiving regulatory approval. PPA, Section 3.1.

As cited in Section I.B, Conn. Gen. Stat. §16-244v states that the DEEP (whose authority to review and approve PPAs submitted pursuant to this statute has been delegated to the PURA by letter dated January 25, 2013) may approve a proposal if it finds that the proposal serves the long-term interest of ratepayers.

The PPA is similar to those approved by the DEEP and approved for cost recovery by the Authority in its Decisions in Docket No. 12-05-13 and 13-01-32. The Authority finds that the PPA would promote state energy policy and benefit the environment by increasing available generation from a Class I Renewable Energy Source (i.e., a fuel cell).

The pricing terms of the PPA are comparable to the pricing terms of those approved by the DEEP pursuant to Conn. Gen. Stat. §16-244v, and subsequently approved by the Authority for cost recovery in its Decisions in Docket No. 12-05-13 and 13-01-32. Therefore, the PPA serves the long-term interest of ratepayers, and the Authority hereby approves that agreement.

C. COST RECOVERY OF CONTRACT COSTS AND REVENUES AND USE OF FACILITY OUTPUT

The Applicants request the Authority to determine that Conn. Gen. Stat. §16-244v provides CL&P with the flexibility to either: 1) sell the market products from the PPA directly into the applicable ISO-NE markets or in bilateral transactions, or 2) use the energy and capacity as “load reducers” to reduce load in CL&P’s franchise service territory for the benefit of CL&P, wholesale suppliers and competitive suppliers. CL&P further requests that if it either: 1) sells the market products directly into the ISO-NE markets or in bilateral transactions and the resulting net cost or benefit is passed through to all customers, or 2) uses the energy and capacity as “load reducers,” then CL&P be allowed to recover all net PPA-related costs from all customers and credit any net PPA-related benefits to all customers, in each case through the NBFMCC. Application, p. 7.

Conn. Gen. Stat. §16-244v does not place any restrictions on the use of the output from facilities approved pursuant to this statute, either in the form of energy or RECs. Accordingly, the Authority determines that Conn. Gen. Stat. §16-244v allows the market products from the PPAs to be used in either fashion proposed by CL&P, since either use benefits ratepayers. CL&P may recover any net cost or benefit through the NBFMCC.

D. PPA ADMINISTRATIVE COSTS

The Applicants request that the Authority allow the recovery of all costs, incurred to administer and enforce each PPA through the respective NBFMCC charge, excluding internal labor costs that are already recovered in electric rates. Id.

The Authority does not have any knowledge of any particular administrative cost that is not already recovered through some revenue mechanism, or included in electric

distribution rates. Costs that are already being recovered through electric distribution rates should not be allocated to the PPA. The Authority will review the legitimacy of any administrative costs CL&P may assert are related to the PPA, and not collected elsewhere, in the appropriate proceedings.

E. ADVERSE ACCOUNTING AND CREDIT RATING IMPACTS

The Applicants request findings from the Authority regarding Adverse Accounting or Credit Rating Impacts from the PPA consistent with that provided to PPAs approved in Docket No. 12-05-13 and 13-01-32. Id., p. 7.

In the Decision dated November 21, 2012 in Docket No. 12-05-13, the Authority stated the following regarding this issue:

Consistent with prior precedent on the issue, the EDCs may seek cost recovery for any negative accounting or credit rating treatments that they can prove were caused directly and exclusively as a result of their being counterparties to these PPAs. The EDCs will need to defer any such claimed costs and seek recovery for such costs in their next contested rate case. To reduce the risk against any negative accounting and credit rating treatments, the Authority encourages CL&P and UI to educate the accounting and credit rating industries regarding the fact that CL&P and UI bear no or extremely low risks or costs with these PPAs since the costs are covered through regulated rates. To date, CL&P and UI have recovered all costs associated with every contract they have ever administered as counterparties. Unless, UI and CL&P are asking the Authority to reconsider past precedent, the Authority further finds that it is unnecessary for CL&P and UI to continue to repeatedly assert this particular issue in every proceeding involving PPAs given the clear precedent on the issue, including the clarification provided in this decision regarding how the EDCs must bring any claims to recover any such claimed costs.

Decision dated November 21, 2012 in Docket No. 12-05-13, pp. 7 and 8. The Authority reaffirmed this treatment in its Decision in Docket No. 13-01-32.

The Authority considers the law on this issue well documented and therefore, not required for comment in this or future PPA proceedings.

III. FINDINGS OF FACT

1. CTS proposes to construct, operate and solely own a fuel cell facility in South Windsor, Connecticut which will have a generating capacity of up to five MWs.
2. The PPA allows for payment at the contract rate for a maximum output of five MWs.

3. The PPA establishes a 20-year fixed payment stream contract for energy and RECs.
4. The PPA includes a fuel adjustment clause for the cost of natural gas supplied to the facility.
5. CL&P will not own or jointly own any interest in the Studios Project.
6. By letter dated January 25, 2013, the DEEP delegated its review and approval authority over PPAs to the PURA.
7. CTS was awarded a contract following discussions between CTS and CL&P.
8. The Studios Project is required by the PPA to enter service with one year of approval by the Authority.

IV. CONCLUSION AND ORDERS

A. CONCLUSION

The Authority determines that the PPA is in the long-term interest of ratepayers, and therefore is hereby approved. The Authority approves CL&P's recovery of credits and charges associated with the approved PPA through the NBFMCC. The Authority also approves CL&P's use of the purchased PPA output to benefit customers by either using it to serve load or reselling it into the market.

B. ORDERS

For the following Orders, submit an original and two copies of the required documentation to the Executive Secretary, Public Utilities Regulatory Authority, Ten Franklin Square, New Britain, CT 06051, and file an electronic version through the Authority's website at www.ct.gov/pura. Submissions filed in compliance with Authority Orders must be identified by all three of the following: Docket Number, Title and Order Number.

1. In the event of any instance of non-conformance or non-compliance with any of the terms of Section 3.1 of the PPA (Critical Milestones), CTS shall notify the Authority, CL&P and the DEEP within 15 business days of the occurrence and describe any actions taken to remedy the non-conformance or non-compliance.
2. Not later than October 31, 2014, CTS shall submit to the Authority and CL&P evidence that the Studios Project achieved its Commercial Operation Date as required by the PPA. In the event the Studios Project did not achieve the required Commercial Operation Date, CTS shall submit to the Authority and CL&P its plans for addressing the situation and describe any remedies to be taken pursuant to the PPA.

**DOCKET NO. 13-06-27 JOINT APPLICATION OF CTS ENERGY, LLC AND CL&P
FOR REVIEW AND APPROVAL OF A PROPOSED
RENEWABLE POWER PURCHASE AGREEMENT
UNDER SECTION 127 OF P.A. 11-80**

This Decision is adopted by the following Commissioners:

John W. Betkoski, III

Arthur H. House

Michael A. Caron

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.



Nicholas E. Neeley
Acting Executive Secretary
Public Utilities Regulatory Authority

October 18, 2013

Date

EXHIBIT C

AGREEMENT

This Agreement is entered into as of April 6, 2016 ("Effective Date") by and between the Town of South Windsor ("Town"), CTS Energy, LLC ("CTS Energy"), Connecticut Studios, LLC ("CT Studios"),

WHEREAS, CTS Energy and The Connecticut Light and Power Company *d/b/a* Eversource Energy ("Eversource") executed a Power Purchase Agreement ("PPA"), dated June 28, 2013, concerning the purchase and sale of power to be produced from a Class I renewable energy facility consisting of fuel cell technology ("Facility"). The PPA incorporates as a critical milestone the development of a movie studio project ("Project"), the scope of which is set forth as Exhibit A-1 of the PPA; and

NOW, THEREFORE, in consideration of the promises and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. As of the Effective Date, CTS Energy hereby assigns, transfers and sets over to and for the exclusive benefit of the Town, any and all of the right, title and interest of CTS Energy, in and to the PPA. As of the Effective Date, the Town hereby accepts the aforementioned assignment and assumes and agrees to pay, perform and discharge, and otherwise be and remain responsible for, at its sole cost and expense, all obligations and liabilities of CTS Energy under the PPA, which are required to be performed by CTS Energy under the PPA and first arise and accrue from and after the Effective Date.

2. The assignment of the PPA to the Town will not include the transfer of any additional assets of CTS Energy, CT Studios, , to the extent those entities have any assets. shall provide the Town with any documents, not subject to any privilege recognized by Connecticut law, needed to permit the Town to negotiate with Eversource for the approval of the assignment. Except as stated herein, CT Studios will retain all liabilities for CT Studios and CTS Energy will retain all liabilities for CTS Energy. CTS Energy will provide the Town with complete documentation and information, which are not subject to any privilege recognized by Connecticut law, concerning its efforts to modify the PPA.

4. CTS Energy will be responsible for any delay payments under the PPA due to Eversource up to the Effective Date. The Town will be responsible for delay payments under the PPA after the Effective Date.
5. CTS Energy's security payment being held by Eversource on the PPA will remain with the PPA and will be assigned to the Town until refunded in accordance with the terms of the PPA, at which time it shall be paid to CTS Energy.

- 1
11. All obligations, covenants and undertakings contained in this Assignment shall bind and be enforceable against, and shall inure to the benefit of, CTS Energy and the Town, as assignor and assignee, respectively, and their respective successors, legal representatives and assigns. This Assignment Agreement shall be governed by the laws of the State of Connecticut, and shall be construed in accordance with such law.
 12. Each party hereto shall, from time to time, for a period expiring twelve (12) months after the Effective Date, at the request of the other party (for purposes of this Section 12, the "Requesting Party"), execute and deliver to the Requesting Party such other instruments of transfer, conveyance and assignment, and shall take such other actions as may reasonably be required to (a) more effectively carry out the terms of this Assignment, (b) vest in the Town the

rights intended to be conveyed hereunder, and (c) provide for the assumption by the Town of the duties and obligations delegated by CTS Energy to the Town. The responding party shall comply with a request under this Section 12 at its sole cost and expense.

13. In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Assignment and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by applicable law. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Assignment may be amended or modified only by a written agreement executed by the parties in interest at the time of the amendment or modification. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall be deemed to constitute one and the same agreement.

[signatures follow on the next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

The Town of South Windsor

Witness: Ashley Adams By Matthew B. Galligan
Matthew Galligan Matthew B. Galligan
Title: Town Manager
Date: 4/8/16

CTS Energy, LLC

Witness: [Signature] By CHRIS BARRE
Title: Managing Member
Date: 4/6/16

CT Studios, LLC

Witness: [Signature] By CHRIS BARRE
Title: Managing Member
Date: 4/6/16

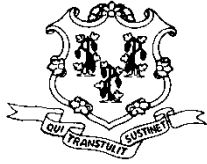
Witness: _____

By _____

Title: _____

Date: _____

EXHIBIT D



STATE OF CONNECTICUT

**PUBLIC UTILITIES REGULATORY AUTHORITY
TEN FRANKLIN SQUARE
NEW BRITAIN, CT 06051**

**DOCKET NO. 13-06-27RE01 JOINT APPLICATION OF CTS ENERGY, LLC AND
CL&P FOR REVIEW AND APPROVAL OF A
PROPOSED RENEWABLE POWER PURCHASE
AGREEMENT UNDER SECTION 127 OF P.A. 11-80 -
ASSIGNMENT OF PPA**

October 14, 2016

By the following Commissioners:

John W. Betkoski, III
Michael A. Caron

Lead Staff: J. Buckingham
Legal Advisor: R. Luysterborghs

DECISION

DECISION

By Decision dated October 4, 2013 in Docket No. 13-06-27, Joint Application of CTS Energy, LLC and CL&P for Review and Approval of a Proposed Renewable Power Purchase Agreement Under Section 127 of P.A. 11-80 - Assignment of PPA (PPA Approval Decision), the Public Utilities Regulatory Authority (Authority) approved a Power Purchase Agreement (PPA) between CTS Energy, LLC (CTS Energy) and The Connecticut Light and Power Company d/b/a Eversource Energy (CL&P) for the Connecticut Studios Project fuel cell electric generation facility located in South Windsor, Connecticut. The PPA was forwarded to CL&P by the Department of Energy and Environmental Protection (DEEP) and approved by the Authority pursuant to General Statutes of Connecticut (Conn. Gen. Stat.) §16-244v. Under the PPA, CTS Energy was responsible for building a fuel cell along with a film studio and CL&P was responsible for buying output from the fuel cell.

Section 14.1 of the PPA provides that CTS Energy may assign the PPA to another party, if CTS Energy obtains the prior written consent of CL&P. Section 14.1 also provides that CL&P's consent to such an assignment may not be unreasonably withheld, conditioned or delayed.

CTS Energy sought CL&P's consent to assign the PPA to the Town of South Windsor (South Windsor). CL&P refused to consent to the assignment of the PPA to South Windsor. CL&P found that South Windsor does not have the requisite financial, managerial and technical resources to successfully complete the project within the current deadlines in the PPA and that if C&LP consented to the assignment South Windsor would seek extensions of the deadline. South Windsor Written Comments, Exhibit 1, Letter dated April 19, 2016 from Tim J. Horan to Matthew Galligan. Following CL&P's refusal to consent to the assignment of the PPA to South Windsor, by Motion dated September 6, 2016 in Docket No. 13-06-27, CTS Energy requested the Authority to reopen the proceeding to make rulings that CTS Energy may assign the PPA to South Windsor and to extend certain deadlines in the PPA to permit South Windsor time to complete the fuel cell project. By Decision dated September 28, 2016 in Docket No. 13-06-27, the Authority reopened this proceeding to consider CTS Energy's request.

The Authority issued a Notice of Request for Written Comments. South Windsor, CL&P, the Office of Consumer Counsel, West Bay Capital, LLC (West Bay), and Mestek, Inc. submitted Written Comments.

The Authority issued a Proposed Final Decision on October 11, 2016. South Windsor, CL&P and OCC submitted Written Exceptions on October 13, 2016.

South Windsor requests that the Authority approve an assignment of CTS, Energy, LLC's interest in the PPA to South Windsor, and that PURA allow the deadlines to commence from the date of the approval of the assignment. South Windsor Written Comments, p. 13. South Windsor claims CL&P's refusal to consent to the assignment of the PPA to South Windsor is unreasonable. South Windsor claims that it, in fact, does possess the requisite financial, managerial and technical support to complete the film studio and fuel cell project with 1) financial support from three sources - \$14 million

in financing from West Bay, a \$30 million financial commitment letter from Mestek, Inc. and possible funding from the State of Connecticut Department of Economic and Community Development (DECD), and 2) managerial and technical support from Pacifica Ventures, LLC, who would be responsible for the film studio part of the project. South Windsor contends that the Authority correctly determined that approval of the PPA is in the long term interest of ratepayers in the PPA Approval Decision. South Windsor claims various economic benefits will result from the completion of the film studio and fuel cell project. South Windsor Written Comments, pp. 3-4 and 8-10.

As a threshold matter, CL&P and OCC wish to terminate the PPA and challenge the Authority's subject matter jurisdiction to review whether CL&P's refusal to consent to the assignment of the PPA was unreasonable. CL&P Written Comments, pp. 7-8 and CL&P Written Exceptions, pp. 7-13; OCC Written Comments, p. 3 and OCC Written Exceptions, pp. 2-4. The Authority rejects this claim and finds that it has jurisdiction and good cause to exercise its regulatory oversight of CL&P with respect to its refusal to consent to CTS Energy's request to assign the PPA to South Windsor. The issue in this proceeding is distinguishable from the Kleen Energy Decision cited to by CL&P¹, in which the Connecticut Supreme Court held that the Authority lacked subject matter jurisdiction under Conn. Gen. Stat. § 16-9 to alter or amend post-execution an Authority-approved contract between CL&P and a counter-party. Kleen Energy Decision, pp. 389-390. The Authority in this instance is not seeking to modify or alter the PPA. Rather, the Authority, pursuant to Conn. Gen. Stat. §§16-11, 16-19, 16-19e, and 16-244i, is exercising its supervisory regulatory authority over CL&P and is reviewing the reasonableness and prudence of CL&P's conduct as party to the PPA. As a matter of statutory construction, Conn. Gen. Stat. §16-244v must be read in harmony with these provisions to preserve the Authority's broad regulatory oversight of CL&P, a public service company.

To that end, Conn. Gen. Stat. §16-11 provides in relevant part that the Authority may order such reasonable changes in the manner of operation of public services companies, as may be reasonably necessary in the public interest. Conn. Gen. Stat. §16-11 specifically addresses the Authority's jurisdiction to regulate the actions of CL&P in this instance by stating that "[t]he general purposes of this section . . . [is] to assure to the state of Connecticut its full powers to regulate its public service companies, to increase the powers of the Public Utilities Regulatory Authority and to promote local control of the public service companies of this state, and said sections shall be so construed as to effectuate these purposes."

The language of Section 16-19e provides additional guidance to resolve the jurisdictional question raised by CL&P and OCC by clearly providing the Authority with broad subject matter jurisdiction to review and regulate CL&P's actions as party to the PPA at issue. Section 16-19e provides that the Authority shall examine and regulate "the operations and internal workings of public service companies" to ensure that "public service companies shall perform all of their respective public responsibilities with economy, efficiency and care for public safety and energy security, and so as to promote economic development within the state with consideration for energy and water

¹ Kleen Energy Sys., LLC v. Commissioner of the Department of Energy and Environmental Protection, 319 Conn. 367, 125 A.3d 905 (2015) (**Kleen Energy Decision**).

conservation, energy efficiency and the development and utilization of renewable sources of energy and for the prudent management of the natural environment.”

The General Assembly expressly granted the Authority broad jurisdictional authority over the manner and method of operation of CL&P pursuant to other statutes, Conn. Gen. Stat. §§16-11, 16-19, 16-19e and 16-244i. As part of this broad jurisdictional power, the Authority has jurisdiction to review CL&P’s administration of this and other PPA’s over which the legislature and DEEP have required or authorized CL&P to act as a purchasing party on behalf of Connecticut citizens and electricity customers to obtain renewable resources, like the fuel cell project, and promote economic development as intended by the PPA at issue. The issue of whether or not CL&P has reasonably withheld consent for CTS Energy to assign the PPA to South Windsor is an issue concerning CL&P’s method and manner of operation which falls within the Authority’s subject matter jurisdiction purview. The Authority’s jurisdictional authority applies to any issues arising with respect to how the public service company CL&P acts in its role as a purchasing party to this and other State of Connecticut-approved or Authority-approved PPAs. The Kleen Energy Decision holding cannot be reasonably read to strip the Authority of its subject matter jurisdiction to perform regulatory review of CL&P’s conduct whenever CL&P is acting in its capacity as a party in a PPA approved by the State of Connecticut, the Authority or DEEP. Even as a party to a PPA, CL&P, as a regulated public service company, remains subject to the Authority’s regulatory review and must always operate in a reasonable, prudent and cost-effective manner and the ultimate review and determination on whether CL&P meets these standards must be made by the Authority, not CL&P itself. The fact that a public service company, like, CL&P, is a party to a PPA does not exempt it or its conduct from the Authority’s continued regulatory oversight pursuant to Conn. Gen. Stat. §§16-11, 16-19, 16-19e, 16-244i.

With respect to CTS Energy’s request that the Authority review CL&P’s refusal to consent to an assignment of the PPA to South Windsor, the Authority finds and determines as follows. The Authority finds that CL&P did not seek guidance, review and/or approval from either DEEP or the Authority in making its determination to withhold consent to CTS Energy’s proposed assignment to South Windsor. Instead, CL&P made its own determination to withhold consent based on several factors that it developed on its own without consulting DEEP or the Authority. CL&P presented information and its opinion in its Written Comments that support a claim that the fuel cell project may not provide the benefits anticipated when the project was awarded a contract in 2013.

The Authority finds that CL&P has not presented evidence sufficient to essentially overturn the prior determination made in the PPA Approval Decision that the fuel cell project is in the long term interest of ratepayers and to award CTS Energy a PPA. The Authority also finds that South Windsor possesses the requisite financial, managerial and technical resources to successfully complete the project. The Authority further finds that CL&P did not act reasonably and failed to conduct proper due diligence when it neglected to confer with either DEEP and/or the Authority prior to deciding to refuse to consent to CTS Energy’s request to assign the PPA to South Windsor. As this PPA potentially has a substantial public policy implication for renewable energy resource and economic development, CL&P needed, at a minimum,

to confer with DEEP, the Authority or both before taking any actions to terminate the PPA. The Authority may review the prudence of the costs CL&P has incurred in connection with its efforts to terminate this PPA and determine whether certain of these costs should be disallowed. By conditionally granting CTS Energy's requests, this Decision seeks to properly place the state of Connecticut's public policy decision-making with DEEP and the DECD, instead of CL&P, regarding the issue of whether or not it is beneficial for South Windsor to proceed with developing the combined film studio and fuel cell project.

Based on the foregoing, the Authority directs that CL&P not terminate the PPA based on an event of default pursuant to Sections 3.2, 3.4, 9.2, and 9.3 of the PPA. The Authority conditionally approves assignment of the PPA from CTS Energy to South Windsor, directs CL&P to consent to the assignment, and approves the request for an extension of the PPA deadlines and milestones contingent upon South Windsor submitting two compliance filings: 1) a letter from DEEP indicating it supports the assignment and extension of project completion deadlines, and 2) documentation that DECD will provide funding to support South Windsor's completion of the project. If South Windsor meets these two conditions, the Authority directs that the PPA deadlines and milestones commence from the due date of the compliance filings. If South Windsor satisfies the two conditions this approval is based on, the Authority directs that CL&P and South Windsor submit new deadlines for completion of project milestones for Authority approval pursuant to Section 18 of the PPA.

ORDERS

For the following Orders, the person or persons identified in the Orders below shall submit one original of the required documentation to the Executive Secretary, 10 Franklin Square, New Britain, Connecticut 06051 and file an electronic version through the Authority's website at www.ct.gov/pura. Submissions filed in compliance with the Authority's Orders must be identified by all three of the following: Docket Number, Title and Order Number. Compliance with orders shall commence and continue as indicated in each specific Order or until the Company requests and the Authority approves that the Company's compliance is no longer required after a certain date.

1. CL&P shall consent to CTS Energy's request to assign the PPA to South Windsor.
2. Not later than November 11, 2016, South Windsor shall submit to the Authority and CL&P documentation that DEEP supports the assignment of the PPA to South Windsor and the extension of the PPA's project completion deadlines.
3. Not later than November 11, 2016, South Windsor shall submit to the Authority and CL&P documentation that DECD will provide funding to support South Windsor's completion of the project.
4. If South Windsor provides the documents required in Orders 2 and 3, CL&P and South Windsor shall, not later than December 1, 2016, submit to the Authority for review amendments to the PPA to establish new project completion milestone deadlines.

**DOCKET NO. 13-06-27RE01 JOINT APPLICATION OF CTS ENERGY, LLC AND CL&P
FOR REVIEW AND APPROVAL OF A PROPOSED
RENEWABLE POWER PURCHASE AGREEMENT UNDER
SECTION 127 OF P.A. 11-80 - ASSIGNMENT OF PPA**

This Decision is adopted by the following Commissioners:

John W. Betkoski, III

Michael A. Caron

CERTIFICATE OF SERVICE

The foregoing is a true and correct copy of the Decision issued by the Public Utilities Regulatory Authority, State of Connecticut, and was forwarded by Certified Mail to all parties of record in this proceeding on the date indicated.

A handwritten signature in black ink, appearing to read 'Jeffrey R. Gaudiosi', is written over a horizontal line.

Jeffrey R. Gaudiosi, Esq.
Executive Secretary
Public Utilities Regulatory Authority

October 14, 2016
Date

EXHIBIT E



STATE OF CONNECTICUT
PUBLIC UTILITIES REGULATORY AUTHORITY

March 2, 2017
Docket No. 13-06-27RE01
Letter re: Compliance filing of 3/1/17
Motion No. 6 Ruling

Vincent Pace, Esq.
The Connecticut Light and Power Company
d/b/a Eversource Energy
P.O. Box 270
Hartford, CT 06141-0270

Benjamin Proto, Jr., Esq.
Law Office of Benjamin S. Proto, Jr.
2885 Main Street
Stratford, CT 06614

Re: Docket No. Docket No. 13-06-27RE01, Joint Application of CTS Energy, LLC and CL&P for Review and Approval of a Proposed Renewable Power Purchase Agreement Under Section 127 of P.A. 11-80 – Assignment of PPA

Dear Messrs. Pace and Proto:

The Public Utilities Regulatory Authority (Authority) acknowledges receipt of the March 1, 2017 compliance filing submitted by The Connecticut Light and Power Company d/b/a Eversource Energy and the Town of South Windsor. The compliance filing consists of a power purchase agreement (PPA), supporting documents and a motion for protective order. The Authority also received a February 28, 2017 letter from Yankee Gas d/b/a Eversource Energy (Yankee) regarding the gas pipeline expansion associated with the fuel cell project at issue in this proceeding.

The Authority declines to take any action in this proceeding with respect to Yankee's letter. Yankee correctly concludes that the appropriate time and place to address the needed gas pipeline expansion is in a gas system expansion reconciliation mechanism proceeding.

The Authority approves the PPA and attachments. The Authority also grants the motion for protective order pursuant to General Statutes of Connecticut §1-210(b)(5)(B) and other precedent cited in the motion.

Sincerely,

PUBLIC UTILITIES REGULATORY AUTHORITY

A handwritten signature in black ink, appearing to read "Jeffrey R. Gaudiosi", written in a cursive style.

Jeffrey R. Gaudiosi, Esq.
Executive Secretary

cc: Service List

EXHIBIT F

AMENDED AND RESTATED
POWER PURCHASE AGREEMENT
BETWEEN
THE CONNECTICUT LIGHT AND POWER COMPANY
DBA EVERSOURCE ENERGY
AND
TOWN OF SOUTH WINDSOR, CONNECTICUT

As of February 28, 2017

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AMENDED AND RESTATED POWER PURCHASE AGREEMENT

THIS AMENDED AND RESTATED POWER PURCHASE AGREEMENT (this “**Amended and Restated Agreement**”) is entered into as of February 28, 2017 (the “**Effective Date**”), by and between The Connecticut Light and Power Company d/b/a Eversource Energy, a Connecticut corporation (“**Buyer**”), and the Town of South Windsor, Connecticut, a political subdivision of the State of Connecticut (“**Seller**”). Buyer and Seller are individually referred to herein as a “**Party**” and are collectively referred to herein as the “**Parties**”.

WHEREAS, Seller is working with a developer to develop a motion picture and television production facility in South Windsor, CT, which is more fully described in Exhibit A-1 hereto (“the Project”); and

WHEREAS, as part of the Project, Seller is developing an electric generation facility which is more fully described in Exhibit A-2 hereto (the “**Facility**”), which shall qualify as a RPS Class I Renewable Generation Unit and which is expected to be in commercial operation by the date set for in Section 3.1(a)(v) hereof; and

WHEREAS, Section 127 of Public Act 11-80, An Act Concerning the Establishment of the Department of Energy and Environmental Protection and Planning for Connecticut’s Energy Future, allows private developers to submit a proposal to the Department of Energy and Environmental Protection to build, own or operate one or more generation facilities, provided that no facility has a nameplate capacity of less than one megawatt or more than five megawatts;

WHEREAS, Section 127(b) contemplates the purchase of power, capacity and related products produced by a generating facility to meet the needs of Standard Service customers; and

WHEREAS, Buyer and Seller desire to enter into this Amended and Restated Agreement whereby Buyer shall purchase from Seller certain Products (each as defined herein) generated by or associated with the Facility;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in this Amended and Restated Agreement and not defined herein shall have the same meaning as ascribed to such terms under the ISO-NE Practices and ISO-NE Rules.

“**Affiliate**” shall mean, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries Controls, is Controlled by, or is under common Control with, such first Person.

“Amended and Restated Agreement” shall have the meaning set forth in the first paragraph of this Amended and Restated Agreement.

“Business Day” means a day on which Federal Reserve member banks in New York, New York are open for business; and a Business Day shall start at 8:00 a.m. and end at 5:00 p.m. Eastern Prevailing Time. Notwithstanding the foregoing, with respect to notices only, a Business Day shall not include the Friday immediately following the U.S. Thanksgiving holiday.

“Buyer’s Percentage Entitlement” shall mean Buyer’s rights to one hundred percent (100%) of the Products up to and including the Contract Maximum Amount.

“Buyer’s Taxes” shall have the meaning set forth in Section 5.4(a) hereof.

“Capacity” shall mean all the capacity from the Facility, whether operable or inoperable, as determined by (i) the Facility’s Qualified Capacity (or successor or replacement rating used to measure capability) as defined in the ISO-NE Rules, or (ii) the Facility’s impact on Connecticut’s capacity market obligations for Facilities that are designated as Load Reducers.

“Certificates” shall mean an electronic certificate, as that term is used in General Statutes of Connecticut (Conn. Gen. Stat.) § 16-245a(b), created pursuant to the Operating Rules of the GIS or any successor thereto to represent the “generation attributes” of each MWh of energy generated within the ISO-NE control area and the generation attributes of certain energy imported into the ISO-NE control area.

“Commercial Operation Date” shall mean the date on which the conditions set forth in Section 3.4(b) have been satisfied, as set out in a written notice from Seller to Buyer.

“Contract Maximum Amount” shall mean 4,980 kWh per hour of Energy and a corresponding portion of all other Products.

“Contract Year” shall mean the twelve (12) consecutive calendar months starting on the first day of the calendar month following the Commercial Operation Date and each subsequent twelve (12) consecutive calendar month period; provided that the first Contract Year shall include the days in the prior month in which the Commercial Operation Date occurred.

“Control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Cover Damages” shall mean, with respect to any Delivery Failure, an amount equal to (a) the positive net amount, if, any, by which the Replacement Price exceeds the applicable Price that would have been paid pursuant to Section 5.1 hereof, multiplied by the quantity of that Delivery Failure, plus (b) any applicable penalties and other costs assessed by ISO-NE or any other Person against Buyer as a result of Seller’s failure to deliver such Products in accordance with the terms of this Amended and Restated

Agreement. Buyer shall provide a statement for the applicable period explaining in reasonable detail the calculation of any Cover Damages.

“Credit Support” shall mean collateral in the form of (a) cash, (b) a letter of credit issued by a Qualified Bank in a form reasonably acceptable to the recipient Party or (c) with respect to Credit Support provided by Seller, any other form acceptable to Buyer in its sole discretion.

“CPR” shall have the meaning set forth in Section 11.2 hereof.

“Critical Milestones” shall have the meaning set forth in Section 3.1 hereof.

“Day Ahead Energy Market” shall have the meaning set forth in the ISO-NE Rules.

“DEEP” shall mean the Connecticut Department of Energy and Environmental Protection and shall include its successors.

“Default” shall mean any event or condition which, with the giving of notice or passage of time or both, could become an Event of Default.

“Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has occurred.

“Delay Damages” shall mean the damages assessed pursuant to Section 3.2(a) hereof.

“Deliver” or **“Delivered”** or **“Delivery”** shall mean with respect to (i) Energy, to supply Energy to Buyer at the Delivery Point in accordance with the terms of this Amended and Restated Agreement and the ISO-NE Rules or the rules of the Interconnecting Utility for those small projects recognized as a Load Reducer, (ii) RECs, to supply RECs in accordance with Section 4.7(e), and (iii) Capacity, to fully participate in the ISO-NE Forward Capacity Market or any successor market, except for those small Connecticut projects recognized as a Load Reducer. Delivery of Capacity for these small Connecticut projects will be satisfied when the Facility, in accordance with Good Utility Practice, is scheduled to be available during the time of ISO-NE's peak load(s) used in the calculation of the Connecticut Installed Capacity Requirement.

“Delivery Failure” shall have the meaning set forth in Section 4.3 hereof.

“Delivery Point” shall mean either (i) the specific Node on the ISO-NE Pool Transmission Facilities, as determined by ISO-NE, through which the Facility is electrically connected and where Seller shall transmit its Energy to Buyer, or (ii) if the Facility is recognized as a Load Reducer, the point of interconnection to Buyer's distribution system as specified in the Facility's Interconnection Agreement with the Interconnecting Utility.

“Development Period Security” shall have the meaning set forth in Section 6.1(a) hereof.

“Eastern Prevailing Time” shall mean either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

“Effective Date” shall have the meaning set forth in the first paragraph hereof.

“Energy” shall mean electric "energy," as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in kWh in Eastern Prevailing Time, less such Facility's station service use, generator lead losses and transformer losses, which quantity for purposes of this Amended and Restated Agreement will never be less than zero.

“Environmental Attributes” shall mean any and all generation attributes under the Public Utilities Regulatory Authority's RPS regulations and under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to Buyer's Percentage Entitlement to the favorable generation or environmental attributes of the Facility or the Products produced by the Facility, up to and including the Contract Maximum Amount, during the Services Term including Buyer's Percentage Entitlement to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Facility's generation using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; (b) any Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained or obtainable by Seller in connection with the generation of Energy by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; or (iii) any state, federal or private grants relating to the construction or ownership of the Facility or the output thereof.

“Event of Default” shall have the meaning set forth in Section 9.1 hereof and shall include the events and conditions described in Section 9.1 and Section 9.2 hereof.

“EWG” shall mean an exempt wholesale generator under 15 U.S.C. § 79z-5a, as amended from time to time.

“Facility” shall have the meaning set forth in the Recitals.

“FERC” shall mean the United States Federal Energy Regulatory Commission, and shall include its successors.

“Force Majeure” shall have the meaning set forth in Section 10.1(a) hereof.

“Generation Unit” shall mean a facility that converts a fuel or an energy resource into electrical energy.

“GIS” shall mean the New England Power Pool Generation Information System or any successor thereto, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity generated or consumed within New England.

“Good Utility Practice” shall mean compliance with all applicable laws, codes and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and acts engaged in or approved by a significant portion of the electric industry in New England during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric utility industry in New England.

“Governmental Entity” shall mean any federal, state or local governmental agency, authority, department, instrumentality or regulatory body, and any court or tribunal, with jurisdiction over Seller, Buyer or the Facility.

“Initial Notice” shall have the meaning set forth in Section 11.1 hereof.

“Interconnecting Utility” shall mean the utility (which may be Buyer or an Affiliate of Buyer) providing interconnection service for the Facility to the transmission or distribution system of that utility.

“Interconnection Agreement” shall mean an agreement between Seller and the Interconnecting Utility regarding the interconnection of the Facility to the transmission or distribution system of the Interconnecting Utility, as the same may be amended from time to time.

“Interconnection Point” shall have the meaning set forth in the Interconnection Agreement.

“ISO” or **“ISO-NE”** shall mean the ISO New England Inc., the independent system operator established in accordance with the RTO arrangements for New England, or its successor.

“ISO-NE Practices” shall mean the ISO-NE practices and procedures for delivery and transmission of energy in effect from time to time and shall include, without limitation, applicable requirements of the NEPOOL Agreement, and any applicable successor practices and procedures.

“ISO-NE Rules” shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such rules may be amended from time to time, including but not limited to, the ISO-NE Tariff, the Market Rules (as defined in the ISO-NE Tariff), the ISO-NE Operating Procedures (as defined in the ISO-NE Tariff), the ISO-NE Planning Procedures (as

defined in the ISO-NE Tariff), the Transmission Operating Agreement (as defined in the ISO-NE Tariff), the Participants Agreement, the manuals, procedures and business process documents published by ISO-NE via its web site and/or by its e-mail distribution to appropriate NEPOOL participants and/or NEPOOL committees, as amended, superseded or restated from time to time.

“ISO-NE Tariff” shall mean ISO-NE’s Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended from time to time.

“ISO Settlement Market System” shall have the meaning as set forth in the ISO-NE Tariff.

“kW” shall mean a kilowatt.

“kWh” shall mean a kilowatt-hour.

“Late Payment Rate” shall have the meaning set forth in Section 5.3 hereof.

“Law” shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications.

“Lender” shall mean any party providing financing for the development and construction of the Facility, or any refinancing of that financing, and receiving a security interest in the Facility, and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a party.

“Load Reducer” shall mean a small generator “of less than 5 MWs” as defined by ISO NE that is not in the ISO-NE market settlement system, but that provides benefit to Buyer by reducing Buyer’s load.

“Meters” shall have the meaning set forth in Section 4.6(a) hereof.

“Moody’s” shall mean Moody’s Investors Service, Inc., and any successor thereto.

“MW” shall mean a megawatt.

“MWh” shall mean a megawatt-hour (one MWh shall equal 1,000 kWh).

“NEPOOL” shall mean the New England Power Pool and any successor organization.

“NEPOOL Agreement” shall mean the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005, as amended and/or restated from time to time.

“NERC” shall mean the North American Electric Reliability Council and shall include any successor thereto.

“Network Upgrades” shall mean upgrades to the Pool Transmission Facilities and the Transmission/Distribution Provider’s transmission and distribution systems necessary for

Delivery of the Energy to the Delivery Point, as determined and identified in the interconnection study approved in connection with construction of the Facility.

“Node” shall have the meaning set forth in the ISO-NE Rules.

“Non-Defaulting Party” shall mean the Party with respect to which a Default or Event of Default has not occurred.

“Operational Limitations” of the Facility are the parameters set forth in Exhibit A-2 describing the physical limitations of the Facility, including the time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the minimum operating limit(s) for the Facility.

“Operating Period Security” shall have the meaning set forth in Section 6.1(b) hereof.

“Party” and **“Parties”** shall have the meaning set forth in the first paragraph of this Amended and Restated Agreement.

“Permits” shall mean any permit, authorization, license, order, consent, waiver, exception, exemption, variance or other approval by or from, and any filing, report, certification, declaration, notice or submission to or with, any Governmental Entity required to authorize action, including any of the foregoing relating to the ownership, siting, construction, operation, use or maintenance of the Facility under any applicable Law.

“Person” shall mean an individual, partnership, corporation, limited liability company, limited liability partnership, limited partnership, association, trust, unincorporated organization, or a government authority or agency or political subdivision thereof.

“Pool Transmission Facilities” has the meaning given that term in the ISO-NE Rules.

“Price” shall mean the purchase price(s) for Products referenced in Article 5 hereof.

“Products” shall mean Energy, Capacity and RECs.

“Project” has the meaning stated in the Recitals.

“PURA” shall mean the Connecticut Public Utilities Regulatory Authority and shall include its successors.

“QF” shall mean a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as amended from time to time.

“Qualified Bank” shall mean a major U.S. commercial bank or the U.S. branch office of a major foreign bank, in either case, having (x) assets on its most recent audited balance sheet of at least \$10,000,000,000 and (y) a rating for its senior long-term unsecured debt obligations of at least (A) “A” by S&P and “A2” by Moody’s, if such entity is rated by

both S&P and Moody's or (B) "A" by S&P or "A2" by Moody's, if such entity is rated by either S&P or Moody's but not both.

"Real-Time Energy Market" shall have the meaning as set forth in the ISO-NE Rules.

"Regulatory Approval" shall mean PURA's approval of this Amended and Restated Agreement, including the recovery by Buyer of all costs incurred and to be incurred under this Amended and Restated Agreement for the full Term, which approval is acceptable in form and substance to Buyer in its sole discretion, does not include any conditions or modifications that Buyer deems, in its sole discretion, to be unacceptable and is final and not subject to appeal or rehearing.

"Rejected Purchase" shall have the meaning set forth in Section 4.4 hereof.

"Renewable Energy Certificates" or **"RECs"** shall mean all of the Certificates and any and all other Environmental Attributes associated with the Products or otherwise produced by the Facility which conform with the eligibility criteria set forth in the applicable Connecticut statutes, regulations and rulings, and are eligible to satisfy the RPS, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such RPS Class I Renewable Generation Unit.

"Replacement Energy" shall mean energy purchased by Buyer as replacement for any Delivery Failure.

"Replacement Price" shall mean the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy and/or Replacement RECs plus (i) transaction and other administrative costs reasonably incurred by Buyer in purchasing such Replacement Energy and/or Replacement RECs, (ii) the Capacity value associated with the Facility in the ISO-NE Forward Capacity Market, and (iii) additional transmission charges, if any, reasonably incurred by Buyer to transmit Replacement Energy to the Delivery Point; provided, however, that (a) in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets, contracts or market positions to minimize Seller's liability, (b) Buyer shall have no obligation to purchase Replacement Energy and/or Replacement RECs, and (c) if Buyer does not purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs at the time of the Delivery Failure (as reasonably determined by Buyer) will replace the price at which Buyer purchases Replacement Energy and/or Replacement RECs in the calculation of the Replacement Price.

"Replacement RECs" shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a RPS Class I Renewable Generation Unit that are purchased by Buyer as replacement for any Delivery Failure; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law and Seller is unable, using commercially reasonable efforts, to continue the Facility's qualification as a RPS Class I Renewable Generation Unit after that change in Law, "Replacement

RECs” shall mean Environmental Attributes including any Certificates or other certificates or credits related thereto reflecting generation by a generating facility having all of the same relevant Environmental Attributes as the Facility and satisfying the other renewable portfolio standards and renewable energy standards for which the Facility is determined eligible at such time pursuant to Section 4.7(c), that are purchased by Buyer as a replacement for any Delivery Failure.

“Resale Damages” shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 5.1(a) hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase, plus (b) any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer’s failure to accept such Products. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

“Resale Price” shall mean the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase, plus transaction and other administrative costs reasonably incurred by Seller in re-selling such Rejected Purchase; provided, however, that in no event shall Seller be required to utilize or change its utilization of the Facility or its other assets, contracts or market positions in order to minimize Buyer’s liability for such Rejected Purchase.

“RPS” shall mean the requirements established pursuant to Conn. Gen. Stat. § 16-245a that require all retail electric suppliers and electric distribution companies in Connecticut to provide a minimum percentage of electricity from RPS Class I Renewable Generation Units, and such successor laws and regulations as may be in effect from time to time.

“RPS Class I Renewable Generation Unit” shall mean a Generation Unit that has received approval from DEEP or PURA, as applicable, to generate RECs in the GIS.

“Rules” shall have the meaning set forth in Section 11.3 hereof.

“RTO” shall mean ISO-NE and any successor organization or entity to ISO-NE, as authorized by FERC to exercise the functions pursuant to the FERC’s Order No. 2000 and FERC’s corresponding regulations, or any successor organization, or any other entity authorized to exercise comparable functions in subsequent orders or regulations of FERC.

“S&P” shall mean Standard & Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor thereto.

“Schedule or Scheduling” shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours) during the Services Term at the Delivery Point.

“Services Term” shall have the meaning set forth in Section 2.2(b) hereof.

“Seller’s Taxes” shall have the meaning set forth in Section 5.4(a) hereof.

“Term” shall have the meaning set forth in Section 2.2(a) hereof.

“Termination Payment” shall have the meaning set forth in Section 9.3(b) hereof.

“Test Period” shall mean the period prior to the Commercial Operation Date, but subsequent to the execution of an Interconnection Agreement.

“Transmission/Distribution Provider” shall mean (a) ISO-NE, its respective successor or Affiliates; (b) Buyer; and/or (c) such other third parties from whom transmission or distribution services are necessary for Seller to fulfill its performance obligations to Buyer hereunder, as the context requires.

2. EFFECTIVE DATE; TERM

2.1 Effective Date. Subject to Section 8.1, this Amended and Restated Agreement is effective as of the Effective Date.

2.2 Term.

(a) The **“Term”** of this Amended and Restated Agreement is the period beginning on the Effective Date and ending upon the final settlement of all obligations hereunder after the expiration of the Services Term or the earlier termination of this Amended and Restated Agreement in accordance with its terms.

(b) The **“Services Term”** is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller (not including Energy and RECs Delivered during the Test Period under Section 4.8) commencing on the Commercial Operation Date and continuing for a period of twenty ((20) years after the Commercial Operation Date, unless this Amended and Restated Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Services Term, the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products delivered prior to such expiration or termination, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Amended and Restated Agreement before such expiration or termination, and (iii) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Amended and Restated Agreement.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

(a) Commencing on the Effective Date, Seller shall develop the Facility in order to achieve the following milestones (**“Critical Milestones”**) on or before the date set forth in this Section 3.1(a):

- (i) receipt of all Permits necessary to construct the Facility, as set forth in Exhibit B, in final form, within 180 days of receiving Regulatory Approval;
- (ii) acquisition of all required real property rights necessary for construction and operation of the Facility, interconnection of the Facility to the Interconnecting Utility, and performance of Seller's obligations under this Amended and Restated Agreement as set forth on Exhibit B, within 180 days of receiving Regulatory Approval;
- (iii) demonstration of the financial capability (whether through third party financing to Seller or Seller's own financial assets) to proceed with the development and construction of the Facility, including, as applicable, Seller's financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of the Network Upgrades within 180 days of receiving Regulatory Approval;
- (iv) issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility within 180 days receiving Regulatory Approval;
- (v) achievement of the Commercial Operation Date within eighteen (18) months of receiving Regulatory Approval; and
- (vi) completion of the construction of the Project within thirty-six (36) months of the Commercial Operation Date, as set forth in paragraph 5.1(a).

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within seven days after that achievement, which notice shall include information demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer requires such written notice solely for monitoring purposes, and that nothing set forth in this Amended and Restated Agreement shall create or impose upon Buyer any responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) The Parties agree that time is of the essence with respect to the Critical Milestones and is part of the consideration to Buyer in entering into this Amended and Restated Agreement.

3.2 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the date set forth in Section 3.1(a):

- (i) For the first twenty-four (24) month period following such failure, Buyer's sole remedy shall be Delay Damages as defined herein. Seller shall pay to Buyer damages for each month from and after such date until the Commercial Operation Date at the rate of Two Thousand Four Hundred Ninety Dollars (\$2,490) per month up to a maximum of twenty-four (24) months of delay, prorated for partial months ("**Delay Damages**"); provided, however, that Delay Damages shall be waived during the portion of such twenty-four month period if and to the extent the delay in achieving the Commercial Operation Date is due to an ongoing delay in receiving Regulatory Approval and the initial twelve (12) month period pursuant to Article 10 has been exhausted. Delay Damages shall be due under this Section 3.2(a) without regard to whether Buyer exercises its right to terminate this Amended and Restated Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Amended and Restated Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination;
- (ii) Subsequent to the initial twenty-four (24) month period, Buyer shall have the rights set forth in Section 9.3, Remedies.
- (iii) Delay Damages due and owing pursuant to Section 3.2(a)(i) above are in addition to any and all Delay Damages paid prior to the execution of this Amended and Restated Agreement, which prior Delay Damages shall be retained by Buyer.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the Commercial Operation Date would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall not limit the amount of damages payable to Buyer if this Amended and Restated Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

(c) By the tenth (10th) day following the end of the calendar month in which Delay Damages first become due and continuing by the tenth (10th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. If Seller fails to pay such amounts when due, Buyer may draw upon the Development Period Security for payment of such Delay Damages, and Buyer may exercise any other remedies available for Seller's default hereunder.

3.3 Construction.

(a) Progress Reports. At the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide supporting documents and detail regarding the same upon Buyer's request. Seller shall permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

(b) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to inspect the Facility site and view the construction of the Facility.

3.4 Commercial Operation.

(a) Seller's obligation to Deliver the Products and Buyer's obligation to pay Seller for such Products commences on the Commercial Operation Date.

(b) The Commercial Operation Date shall occur on the date on which the Facility is substantially completed as described in Exhibit A-2 and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to the Buyer have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied the following conditions precedent as of such date:

- (i) completion of all transmission, distribution and interconnection facilities and any Network Upgrades, including final acceptance and authorization to interconnect the Facility from ISO-NE or the Interconnecting Utility in accordance with the fully executed Interconnection Agreement;
- (ii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades) and for Seller to perform its obligations under this Amended and Restated Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;
- (iii) Seller has received approval from DEEP or PURA, as applicable, qualifying the Facility as a RPS Class I Renewable Generation Unit;
- (iv) Seller has acquired all real property rights needed to construct and operate the Facility, to interconnect the Facility to the

Interconnecting Utility, to construct the Network Upgrades (to the extent that it is Seller's responsibility to do so) and to perform Seller's obligations under this Amended and Restated Agreement;

- (v) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements required for the performance of Seller's obligations in connection with the Facility and this Amended and Restated Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;
- (vi) Seller has successfully completed all pre-operational testing and commissioning in accordance with manufacturer guidelines;
- (vii) Seller (a) has satisfied all Critical Milestones, or (b) has satisfied all Critical Milestones with the sole exception that the Project is not completed and qualified as "built and operational" subject to Section 5.1(a) and Exhibit E;
- (viii) no Default or Event of Default by Seller shall have occurred and remain uncured; and
- (ix) the Facility is under the care, custody and control of Seller.

3.5 Operation of the Facility.

(a) Compliance With Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice; (ii) the Operational Limitations; and (iii) all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by ISO-NE, any Transmission/Distribution Provider, any Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership, operation and maintenance of the Facility and its performance of its obligations under this Amended and Restated Agreement (including obligations related to the generation, Scheduling, interconnection, distribution, and transmission and sale of Energy, the sale of Capacity, and the transfer of RECs), whether such requirements were imposed prior to or after the Effective Date. Seller shall be solely responsible for registering as the "Generator Owner and Generator Operator" of the Facility with NERC and any applicable regional reliability entities.

(b) Permits. Seller shall maintain in full force and effect all Permits necessary for it to perform its obligations under this Amended and Restated Agreement, including all Permits necessary to operate and maintain the Facility.

(c) Maintenance and Operation of Facility. Seller shall, at all times during the Term, construct, maintain and operate the Facility in accordance with Good Utility Practice and in accordance with Exhibit A-2 to this Amended and Restated Agreement. Seller shall bear all costs

related thereto. Seller may contract with other Persons to provide discrete construction, operation and maintenance functions, so long as Seller maintains overall control over the construction, operation and maintenance of the Facility throughout the Term.

(d) Interconnection Agreement. Seller shall comply with the terms and conditions of the Interconnection Agreement.

(e) Forecasts. Upon Buyer's request, Seller shall update and deliver to Buyer in a form reasonably acceptable to Buyer, a twelve (12) month forecast of Energy production by the Facility, which forecast shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided. The provisions of this section are in addition to Seller's requirements under ISO-NE Rules and ISO-NE Practices, including ISO-NE Operating Procedure No. 5.

(f) RPS Class I Renewable Generation Unit. Seller shall be solely responsible for receiving approval from DEEP or PURA that the Facility is eligible to generate Connecticut Class I RECs in the GIS and maintaining such eligibility throughout the Services Term; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to maintain such Statement of Qualification after that change in Law.

(g) Compliance Reporting. Within fifteen (15) days following the end of each calendar quarter, Seller shall provide Buyer information pertaining to power plant emissions, fuel types, labor information and any other information to the extent required by Buyer to comply with the disclosure requirements contained in Conn. Gen. Stat. §§ 16-245o and 16-245p and any other such disclosure regulations which may be imposed upon Buyer during the Term, which information requirements will be provided to Seller by Buyer at least fifteen (15) days before the beginning of the calendar quarter for which the information is required. To the extent Buyer is subject to any other certification or compliance reporting requirement with respect to the Products produced by Seller and Delivered to Buyer hereunder, Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(h) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A-" by the A.M. Best Company the insurance coverage specified on Exhibit D. Within thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with a certified "true and correct" copy of such insurance policies, provisions and endorsements and a certificate of insurance which (i) shall include Buyer as an additional insured on each policy, (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, (iii) shall evidence a firm obligation of the insurer to provide Buyer within thirty (30) days prior written notice of coverage modifications, and (iv) shall be endorsed by a Person who has authority to bind the insurer. If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

(i) Contacts. Each Party shall identify a principal contact or contacts, which contact(s) shall have adequate authority and expertise to make day-to-day decisions with respect to the administration of this Amended and Restated Agreement.

(j) Compliance with Law. Without limiting the generality of any other provision of this Amended and Restated Agreement, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt, Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law.

(k) FERC Status. Seller shall maintain the Facility's status as a QF or EWG at all times after the Commercial Operation Date and shall obtain and maintain any requisite authority to sell the output of the Facility at market-based rates.

(l) Emissions. Seller shall be responsible for all costs associated with the Facility's emissions, including the cost of procuring emission reductions, offsets, allowances or similar items associated with the Facility's emissions, to the extent required to operate the Facility. Without limiting the generality of the foregoing, failure or inability of Seller to procure emission reductions, offsets, allowances or similar items associated with the Facility's emissions shall not constitute a Force Majeure.

3.6 Interconnection and Delivery Services.

(a) Seller shall be responsible for all costs associated with interconnection of the Facility at the Interconnection Point, including the costs of the Network Upgrades, consistent with all standards and requirements set forth by the FERC, ISO-NE, any other applicable Governmental Entity and the Interconnecting Utility.

(b) Seller shall hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) Purchase and Sale of Products. Beginning on the Commercial Operation Date, Seller shall sell and Deliver, and Buyer shall purchase and receive, Buyer's Percentage Entitlement of the Products in accordance with the terms and conditions of this Amended and Restated Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same are unit contingent and shall be subject to the operation of the Facility.

(b) Load Reducer. If the Facility qualifies and elects to be treated as a Load Reducer, then subject to Good Utility Practice, Seller shall not schedule maintenance of the Facility during the months of June through September, and shall operate the Facility so as to be in operation during the hours of anticipated peak load in New England, as determined by ISO-NE. Seller may elect to designate the Facility as a Load Reducer or not from time to time throughout the Term, subject to Buyer's written approval of any change of designation and ISO-NE Rules.

(c) Capacity. If the Facility either no longer qualifies or no longer elects to be treated as a Load Reducer, then Seller shall bid into the ISO-NE Forward Capacity Market or any successor market, and subject to Good Utility Practice, operate the Facility in a manner to maximize the Capacity value credited to the Facility.

(d) Seller shall Deliver Buyer's Percentage Entitlement of the Products produced by the Facility, up to and including the Contract Maximum Amount, exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such Products or any certificate or other attribute associated with such Products to any Person other than Buyer during the Term. Seller shall not enter into any agreement or arrangement under which such Products can be claimed by any Person other than Buyer. Buyer shall have the exclusive right to resell or convey the Products in its sole discretion.

4.2 Scheduling and Delivery.

(a) During the Services Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Amended and Restated Agreement, all ISO-NE Practices and ISO-NE Rules, as applicable. If the Seller elects the Facility to participate in the ISO-NE market system, Seller shall transfer the Energy to Buyer in the Day Ahead Energy Market or Real Time Energy Market, as applicable, in such a manner that Buyer may resell such Energy in the Day Ahead Energy Market or Real Time Energy Market, as applicable. If the Facility qualifies and Seller elects Facility to be recognized as a Load Reducer, Seller shall transfer the Energy to Buyer at the Delivery Point.

(b) The Parties agree to use commercially reasonable efforts to comply with all applicable ISO-NE Rules and ISO-NE Practices in connection with the Scheduling and Delivery of Energy hereunder. Penalties or similar charges assessed by a Transmission/Distribution Provider and caused by noncompliance with the Scheduling obligations set forth in this Section 4.2 shall be the responsibility of Seller.

(c) Without limiting the generality of this Section 4.2, for those Facilities that elect to participate in the ISO-NE market system, Seller shall at all times during the Services Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities, including all charges, penalties and financial assurance obligations, imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility.

4.3 Failure of Seller to Deliver Products. In the event that Seller fails to satisfy any of its obligations to Deliver any of the Products or any portion of the Products hereunder in

accordance with Section 4.1, and such failure is not excused under the express terms of this Amended and Restated Agreement (a “**Delivery Failure**”), Seller shall pay Buyer an amount for such Delivery Failure equal to the Cover Damages. Such payment shall be due no later than the date for Buyer’s payment for the applicable month as set forth in Section 5.2 hereof; provided, however, that if Seller demonstrates to Buyer’s reasonable satisfaction that such Delivery Failure was solely the result of an administrative error by Seller, such payment shall not be due until the later of the date for Buyer’s payment for the applicable month as set forth in Section 5.2 hereof or the date that is fifteen (15) days after such Delivery Failure occurred. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a Delivery Failure would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.4 Failure by Buyer to Accept Delivery of Products. If Buyer fails to accept all or part of any of the Products to be purchased by Buyer hereunder and such failure to accept is not excused under the terms of this Amended and Restated Agreement (a “**Rejected Purchase**”), then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such Rejected Purchase equal to the Resale Damages. Each Party agrees and acknowledges that (i) the damages that Seller would incur due to a Rejected Purchase would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Resale Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.5 Delivery Point.

(a) All Energy shall be Delivered hereunder by Seller to Buyer at the Delivery Point. Seller shall be responsible for the costs of delivering its Energy to the Delivery Point consistent with all standards and requirements set forth by the FERC, ISO-NE and any other applicable Governmental Entity or tariff.

(b) Seller shall be responsible for all applicable charges associated with transmission and distribution interconnection, service and delivery charges, including all related ISO-NE administrative fees and other FERC-approved charges in connection with the Delivery of Energy to and at the Delivery Point, except for small Connecticut projects with a capacity value such that they are recognized by the ISO-NE Rules as a “load reducer”. These small Connecticut projects are not delivering power to the Pool Transmission Facilities and shall pay energy delivery costs only to their Delivery Point.

(c) Buyer shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under this Amended and Restated Agreement from and after the Delivery Point.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the “Meters”), shall be installed, operated, maintained and tested at Seller’s expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller’s expense once each Contract Year. The Meters shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility in whose territory the Facility is located (or an independent Person mutually acceptable to the Parties) shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer’s expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to the Buyer at no cost.

(c) Inspection, Testing and Calibration. In addition to the tests to be conducted pursuant to Section 4.6(a) and/or as may be required pursuant to the Interconnection Agreement, Buyer shall have the right to inspect and test at Buyer’s expense any of the Meters at the Facility at reasonable times and upon reasonable notice from Buyer to Seller. Buyer shall have the right to have a representative present during any testing or calibration of the Meters at the Facility by Seller. Seller shall provide Buyer with timely notice of any such testing or calibration.

(d) Audit of Meters. Buyer shall have access to the Meters and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than two percent (2%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

(f) Telemetry. The Meters shall be capable of sending meter telemetry data, and Seller shall provide Buyer with simultaneous access to such data at no additional cost to Buyer. This provision is in addition to Seller’s requirements under ISO-NE Rules and Practices, including ISO-NE Operating Procedure No. 18.

4.7 RECs.

(a) Seller shall transfer to Buyer all of the right, title and interest in and to Buyer's Percentage Entitlement of the Facility's Environmental Attributes, including the RECs, generated by the Facility during the Term in accordance with the terms of this Section 4.7.

(b) All Energy provided by Seller to Buyer from the Facility under this Amended and Restated Agreement shall meet the requirements for eligibility pursuant to the RPS; provided, however, that if the Facility ceases to qualify as a RPS Class I Renewable Generation Unit solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to ensure that all Energy provided by Seller to Buyer from the Facility under this Amended and Restated Agreement meets the requirements for eligibility pursuant to the RPS after that change in Law.

(c) At Buyer's request and at Seller's sole cost, Seller shall seek qualification under the renewable portfolio standard or similar law of New York and/or one or more New England states (in addition to Connecticut) and/or any federal renewable energy standard. Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualification at all times during the Services Term, or until Buyer indicates such qualification is no longer necessary. Seller shall also submit any information required by any state or federal agency (including without limitation DEEP and/or PURA) with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard to Buyer or as directed by Buyer.

(d) Seller shall comply with all GIS Operating Rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Amended and Restated Agreement and all other GIS Operating Rules to the extent required for Buyer to achieve the full value of the RECs. In addition, at Buyer's request, Seller shall register with and comply with the rules and requirements of any other tracking system or program that tracks, monetizes or otherwise creates or enhances value for Environmental Attributes, which compliance shall be at Seller's sole cost if such registration and compliance is requested in connection with Section 4.7(c) above and shall be at Buyer's sole cost in other instances.

(e) Prior to the delivery of any Energy hereunder (including any Energy Delivered during the Test Period), either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable forward transfer of the Certificates to be Delivered hereunder to Buyer in the GIS; provided, however, that no payment shall be due to Seller for any RECs until the Certificates are actually deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing.

4.8 Deliveries During Test Period. During the Test Period, Seller shall sell and Deliver, and Buyer shall purchase and receive Buyer's Percentage Entitlement of any Products produced by the Facility at the Pricing for Products set forth in Section 5.1(c). In no event shall the Test Period extend beyond six (6) months, except due to Force Majeure.

5. **PRICE AND PAYMENTS FOR PRODUCTS**

5.1 Pricing for Products.

(a) Price for Buyer's Percentage Entitlement of Products up to the Contract Maximum Amount. Buyer's Percentage Entitlement of Products up to the Contract Maximum Amount Delivered to Buyer in accordance with this Amended and Restated Agreement shall be purchased by Buyer at the Price specified in Exhibit E, and in accordance with this Section 5.1(a); provided, however, if the Project is not completed and qualified as "built and operational" within three (3) years of the Commercial Operation Date, the Price shall be reduced prospectively for the then remaining Services Term as described in Exhibit E. For purposes hereof, the term "built and operational" shall mean that the studio facility buildings and related infrastructure are be fully constructed and the studio Project is: 1) registered as a business with the State of Connecticut Secretary of States' Office and the Department of Revenue Services, 2) paid studio employees are working at the studio site, and 3) actively marketing and promoting the studio business. Other than the (i) payment for the Products under this Section 5.1 and as provided in Exhibit E, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment of any Resale Damages under Section 4.4, (v) payment of interest on late payments under Section 5.3, (vi) payments for reimbursement of Buyer's Taxes under Section 5.4(a), (vii) return of any Credit Support under Section 6.3, and (viii) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Amended and Restated Agreement, and Seller shall be solely responsible for all costs incurred by it in connection with the performance of its obligations under this Amended and Restated Agreement.

(b) Price for Products Delivered in excess of Contract Maximum Amount. Products Delivered in excess of the Contract Maximum Amount shall be purchased by Buyer at a Price equal to the product of (x) the MWhs of Energy in excess of the Contract Maximum Amount Delivered to the Delivery Point and (y) ninety percent (90%) of the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month during which such Energy in excess of the Contract Maximum Amount is Delivered to Buyer. All rights and title to RECs associated with Energy Delivered in excess of the Contract Maximum Amount shall remain with Buyer. In the event that Seller receives RECs associated with Energy Delivered in excess of the Contract Maximum Amount, Seller shall not hold or claim to hold equitable title to such RECs and shall promptly transfer such RECs to Buyer's GIS account.

(c) Price of Buyer's Percentage Entitlement of all Products Delivered during the Test Period. Buyer's Percentage Entitlement of Products Delivered to Buyer during the Test Period shall be purchased by Buyer at a Price equal to the product of (x) Buyer's Percentage Entitlement of the MWh of Energy Delivered to the Delivery Point and (y) ninety percent (90%) of the Real Time Locational Marginal Price at such Delivery Point (as determined by ISO-NE) for each hour of the month when Energy during the Test Period is Delivered to Buyer. All rights and title to RECs associated with Energy Delivered during the Test Period shall remain with Buyer. In the event that Seller receives RECs associated with Energy Delivered during the Test Period, Seller shall not hold or claim to hold equitable title to such RECs and shall promptly transfer such RECs to Buyer's GIS account.

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under this Amended and Restated Agreement. On or before the fifteenth (15th) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, based on the Energy Delivered in the preceding month, the financial settlement of the Facility's Capacity Supply Obligation associated with the preceding month (if applicable), and any RECs deposited in Buyer's GIS account or a GIS account designated by Buyer to Seller in writing in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may request.

(b) Timeliness of Payment. All undisputed charges shall be due and payable in accordance with each Party's invoice instructions on or before the later of (x) fifteen (15) days from receipt of the applicable invoice or (y) the last day of the calendar month in which the applicable invoice was received (or in either event the next Business Day if such day is not a Business Day). Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Amended and Restated Agreement, or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twelve (12) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under this Amended and Restated Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Amended and Restated Agreement, including any related damages calculated pursuant to this Amended and Restated Agreement, interest, and payments or credits, may be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the

monthly billing period, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the prime rate specified in the “Money Rates” section of The Wall Street Journal (or, if such rate is not published therein, in a successor index mutually selected by the Parties) plus 1% per cent, and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the “**Late Payment Rate**”).

5.4 Taxes, Fees and Levies.

(a) Seller shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with the Facility or delivery or sale of the Products (“**Seller’s Taxes**”). Buyer shall be obligated to pay all present and future taxes, fees and levies, imposed on or associated with such Products after Delivery of such Products to Buyer or imposed on or associated with the purchase of such Products (other than ad valorem, franchise or income taxes which are related to the sale of the Products and are, therefore, the responsibility of Seller) (“**Buyer’s Taxes**”). In the event Seller shall be required by law or regulation to remit or pay any Buyer’s Taxes, Buyer shall reimburse Seller for such payment. In the event Buyer shall be required by law or regulation to remit or pay any Seller’s Taxes, Seller shall reimburse Buyer for such payment, and Buyer may deduct any of the amount of any such Seller’s Taxes from the amount due to Seller under Section 5.2. Buyer shall have the right to all credits, deductions and other benefits associated with taxes paid by Buyer or reimbursed to Seller by Buyer as described herein. Nothing shall obligate or cause a Party to pay or be liable to pay any taxes, fees and levies for which it is exempt under law.

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller’s or the Facility’s eligibility to receive any federal or state tax credits or qualify for accelerated depreciation for Seller’s accounting, reporting or tax purposes. The obligation of the Parties hereunder, including those obligations set forth herein regarding the purchase and Price for and Seller’s obligation to deliver the Products, shall be effective regardless of whether the production and/or sale of the Products from the Facility is eligible for, or receives, any federal or state tax credits or grants or any particular accounting, reporting or tax treatment during the Term.

6. SECURITY FOR PERFORMANCE

6.1 Seller’s Support.

(a) Seller shall be required to post Credit Support in the amount of Forty-Nine Thousand Eight Hundred Dollars (\$49,800) to secure Seller’s obligations in the period between the Effective Date and the Commercial Operation Date (“**Development Period Security**”). Fifty percent (50%) of the Development Period Security shall be provided to Buyer on the Effective Date; and the remaining fifty percent (50%) of the Development Period Security shall be provided to Buyer within fifteen (15) Business Days after receipt of the Regulatory Approval. If at any time prior to the Commercial Operation Date, the amount of Development Period Security is reduced as

a result of Buyer's draw upon such Development Period Security to less than the amount of Development Period Security required to be provided by Seller through the period ending fifteen (15) days after receipt of the Regulatory Approval, Seller shall replenish such Development Period Security to the amount of Development Period Security required to be provided by Seller through the period ending fifteen (15) days after receipt of the Regulatory Approval within five (5) days of that draw. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer's receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer's receipt of the full amount of the Operating Period Security.

(b) Beginning not later than ten (10) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller's obligations under this Amended and Restated Agreement after the Commercial Operation Date through and including the date that all of Seller's obligations under this Amended and Restated Agreement are satisfied ("**Operating Period Security**"). The Operating Period Security shall be in an amount equal to of Forty-Nine Thousand Eight Hundred Dollars (\$49,800). If at any time on or after the Commercial Operation Date, the amount of Operating Period Security is reduced as a result of Buyer's draw upon such Operating Period Security, Seller shall replenish such Operating Period Security to the total amount required under this Section 6.1(b) within five (5) Business Days of that draw.

6.2 **Cash Deposits.** Any cash provided by Seller as Credit Support under this Amended and Restated Agreement shall be held in an account selected by Buyer in its reasonable discretion. Interest shall accrue on that cash deposit at the daily Federal Funds Rate and shall be retained in that account; provided, however, that to the extent the amount held in that account exceeds the required level of Development Period Security (before and on the Commercial Operation Date) or the Operating Period Security (after the Commercial Operation Date), such excess shall be paid to Seller promptly after Seller requests such a payment in writing delivered to Buyer. Seller agrees to comply with the commercially reasonable requirements of Buyer in connection with the receipt and retention of any cash provided as Credit Support under this Amended and Restated Agreement.

6.3 **Return of Credit Support.** Any unused Credit Support provided under this Amended and Restated Agreement shall be returned to Seller only after any such Credit Support has been used to satisfy any outstanding obligations of Seller in existence at the time of the expiration or termination of this Amended and Restated Agreement. Provided such obligations have been satisfied, such Credit Support shall be returned to Seller within thirty (30) days after the earlier of (a) the expiration of the Term of this Amended and Restated Agreement or (b) termination of this Amended and Restated Agreement under Section 8.3, Section 9.3(b) or Section 10.1(c).

7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

7.1 **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller as follows:

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of Connecticut. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Amended and Restated Agreement.

(b) Due Authorization; No Conflicts. The execution and delivery by Buyer of this Amended and Restated Agreement, and the performance by Buyer of its obligations hereunder, have been duly authorized by all necessary actions on the part of Buyer and do not and, under existing facts and Law, shall not: (i) contravene its certificate of incorporation or any other governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Regulatory Approvals, violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(c) Binding Agreement. This Amended and Restated Agreement has been duly executed and delivered on behalf of Buyer and, assuming the due execution hereof and performance hereunder by Seller and receipt of the Regulatory Approval, constitutes a legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(d) No Proceedings. Except to the extent relating to the Regulatory Approval, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Amended and Restated Agreement) which relate in any manner to this Amended and Restated Agreement or any transaction contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Amended and Restated Agreement or (ii) Buyer's ability to perform its obligations under this Amended and Restated Agreement.

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Amended and Restated Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Amended and Restated Agreement are the result of negotiations that are consistent with the direction given by PURA to the Buyer.

(g) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Buyer, or, to Buyer's knowledge, threatened against it.

(h) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall occur as a result of the performance by Buyer of its obligations under this Amended and Restated Agreement.

7.2 Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as of the Effective Date as follows:

(a) Organization and Good Standing; Power and Authority. Seller is a political subdivision of the State of Connecticut. Subject to the receipt of the Permits listed in Exhibit B, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Amended and Restated Agreement, including all necessary approvals required under the municipal charter of the Town of South Windsor, the Town Council and/or Mayor for the Town of South Windsor, and under state and/or municipal law for the Seller to accept an assignment of, and enter into, this Agreement..

(b) Authority. Seller (i) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it is currently engaged; (ii) is duly qualified and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification; and (iii) holds, as of the Effective Date, or shall hold by the Commercial Operation Date, all rights and entitlements necessary to construct, own and operate the Facility and to deliver the Products to the Buyer in accordance with this Amended and Restated Agreement.

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of this Amended and Restated Agreement, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Permits listed on Exhibit B, violate any order, writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

(d) Binding Agreement. This Amended and Restated Agreement has been duly executed and delivered on behalf of Seller and, assuming the due execution hereof and performance hereunder by Seller and receipt of the Permits listed on Exhibit B, constitutes a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by law or principles of equity.

(e) No Proceedings. Except to the extent associated with the Permits listed on Exhibit B, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Seller or any of its properties (including, without limitation, this Amended and Restated Agreement) which relate in any manner to this Amended and Restated Agreement or any transaction contemplated hereby, or which Seller reasonably expects to lead to a

material adverse effect on (i) the validity or enforceability of this Amended and Restated Agreement or (ii) Seller's ability to perform its obligations under this Amended and Restated Agreement.

(f) Consents and Approvals. Subject to the receipt of the Permits listed on Exhibit B on or prior to the date such Permits are required under applicable Law, the execution, delivery and performance by Seller of its obligations under this Amended and Restated Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable. To Seller's knowledge, Seller shall be able to receive the Permits listed in Exhibit B in due course and as required under applicable Law to the extent that those Permits have not previously been received.

(g) New RPS Class I Renewable Generation Unit. The Facility shall be an RPS Class I Renewable Generation Unit, approved by DEEP or PURA, as applicable, as eligible to participate in the RPS program, under Conn. Gen. Stat. § 16-245a (subject to Section 4.7(b) in the event of a change in Law affecting such qualification as a RPS Class I Renewable Generation Unit) and shall have a commercial operation date, as verified by DEEP, on or before the Commercial Operation Date .

(h) Title to Products. Seller has and shall have good and marketable title to all Products sold and delivered to Buyer under this Amended and Restated Agreement, free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person, and no Person other than Seller can claim an interest in any Product to be sold to Buyer under this Amended and Restated Agreement.

(i) Negotiations. The terms and provisions of this Amended and Restated Agreement are the result of negotiations that are consistent with the direction given by PURA..

(j) Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other such proceedings pending against or being contemplated by Seller, or, to Seller's knowledge, threatened against it.

(k) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under this Amended and Restated Agreement.

7.3 Continuing Nature of Representations and Warranties. The representations and warranties set forth in this Section are made as of the Effective Date and deemed made continually throughout the Term. If at any time during the Term, any Party obtains actual knowledge of any event or information which causes any of the representations and warranties in this Article 7 to be materially untrue or misleading, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Amended and Restated Agreement, other than the Parties' obligations under Section 6.1, Section 6.2, Section 8.2, Section 8.3 and Section 12, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of PURA regarding this Amended and Restated Agreement that is not acceptable in form and substance to Buyer in its sole discretion.

8.2 Filing for Regulatory Approval. Buyer shall use commercially reasonable efforts to (i) file an application for the Regulatory Approval with PURA by not later than 30 days from the Effective Date and (ii) at Buyer's sole discretion, exercise commercially reasonable efforts to obtain the Regulatory Approval, including using commercially reasonable efforts to obtain a favorable resolution in any appeal of an order of PURA with respect to this Amended and Restated Agreement. Seller shall use commercially reasonable efforts to cooperate with Buyer in obtaining the Regulatory Approval.

8.3 Failure to Obtain Regulatory Approval. If Buyer on any date notifies Seller that it has received an order of PURA regarding this Amended and Restated Agreement ("PURA Order") that is not acceptable in form and substance to Buyer in its sole discretion, or if Seller notifies Buyer that such PURA Order is not acceptable in form and substance to Seller in its sole discretion, then in each case either Party may terminate this Amended and Restated Agreement within thirty (30) days after such date by delivery of written notice to the other Party in accordance with Section 17. Upon such termination, neither Party shall have any further liability hereunder except for any obligations arising under Sections 6.3 and 12 which accrued prior to such termination.

9. BREACHES; REMEDIES

9.1 Events of Default by Either Party. It shall constitute an event of default ("**Event of Default**") by either Party hereunder if:

(a) Representation or Warranty. Any material breach of any representation or warranty of such Party set forth herein, or in filings or reports made pursuant to this Amended and Restated Agreement, and such breach continues for more than thirty (30) days after the Non-Defaulting Party has provided written notice to the Defaulting Party that any material representation or warranty set forth herein is false, misleading or erroneous in any material respect without the breach having been cured; or

(b) Payment Obligations. Any undisputed payment due and payable hereunder is not made on the date due, and such failure continues for more than ten (10) Business Days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; or

(c) Other Covenants. Other than a Delivery Failure (the sole remedy for which shall be the payment of Cover Damages under Section 4.3), a Rejected Purchase (the sole remedy for which shall be the payment of Resale Damages under 4.4), or an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2, such Party fails to perform, observe or otherwise to

comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period and provided that corrective action has been taken by the Defaulting Party within such thirty (30) day period and so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event within one hundred fifty (150) days; or

(d) Bankruptcy. Such Party (i) is adjudged bankrupt or files a petition in voluntary bankruptcy under any provision of any bankruptcy law or consents to the filing of any bankruptcy or reorganization petition against such Party under any such law, or (without limiting the generality of the foregoing) files a petition to reorganize pursuant to 11 U.S.C. § 101 or any similar statute applicable to such Party, as now or hereinafter in effect, (ii) makes an assignment for the benefit of creditors, or admits in writing an inability to pay its debts generally as they become due, or consents to the appointment of a receiver or liquidator or trustee or assignee in bankruptcy or insolvency of such Party, or (iii) is subject to an order of a court of competent jurisdiction appointing a receiver or liquidator or custodian or trustee of such Party or of a major part of such Party's property, which is not dismissed within sixty (60) days; or

(e) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval) necessary for such Party to perform its obligations under this Amended and Restated Agreement.

9.2 Events of Default by Seller. In addition to the Events of Default described in Section 9.1, it shall constitute an Event of Default by Seller hereunder if:

(a) Taking of Facility Assets. Any asset of Seller that is material to the construction, operation or maintenance of the Facility or the performance of its obligations hereunder is taken upon execution or by other process of law directed against Seller, or any such asset is taken upon or subject to any attachment by any creditor of or claimant against Seller and such attachment is not disposed of within sixty (60) days after such attachment is levied; or

(b) Failure to Maintain Credit Support. The failure of Seller to provide, maintain and/or replenish the Development Period Security or the Operating Period Security as required pursuant to Article 6 of this Amended and Restated Agreement, and such failure continues for more than five (5) Business Days after Buyer has provided written notice thereof to Seller; or

(c) Energy Output. During the Services Term, the Facility's Energy output is zero for a period of two consecutive Contract Years for any reason, other than if the lack of output is due in whole or in part to a Force Majeure; or

(d) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE, and such failure has a material adverse effect on the Facility or Seller's ability to perform its obligations under this Amended and Restated Agreement or on Buyer or Buyer's ability to receive the benefits under this

Amended and Restated Agreement, provided that if Seller's failure to satisfy any material obligation under the ISO-NE Rules or ISO-NE Practices does not have a material adverse effect on Buyer or Buyer's ability to receive the benefits under this Amended and Restated Agreement, Seller may cure such failure within thirty (30) days of its occurrence;

(e) Failure to Meet the Commercial Operation Date. The failure of Seller to meet the Commercial Operation Date by the date set forth therefor in Section 3.1(a)(v); or

(f) Failure to Comply with Maintenance Schedule Limitations. If the Facility is acting as a Load Reducer, the failure of Seller to comply with the provisions of Section 4.1(b).

9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Amended and Restated Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Amended and Restated Agreement or, to the extent not inconsistent with the terms of this Amended and Restated Agreement, at law, including, without limitation, the termination right set forth in Section 9.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Amended and Restated Agreement.

(b) Termination and Termination Payment. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate this Amended and Restated Agreement at its sole discretion by providing written notice of such termination to the Defaulting Party. If the Non-Defaulting Party terminates this Amended and Restated Agreement, it shall be entitled to calculate and receive as its sole remedy for such Event of Default a "**Termination Payment**" as follows:

(i) *Termination by Buyer Prior to Commercial Operation Date.*
If Buyer terminates this Amended and Restated Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the undrawn amount of any Development Period Security provided to Buyer by Seller.

(ii) *Termination by Seller Prior to Commercial Operation Date.*
If Seller terminates this Amended and Restated Agreement because of an Event of Default by Buyer prior to the Commercial Operation Date, Seller shall only receive a Termination Payment if the Commercial Operation Date either occurs by the date set forth therefor in Section 3.1(a) or would have occurred by such date but for the Event of Default by Buyer giving rise to the termination of this Amended and Restated Agreement. In such case, the Termination Payment due to Seller shall be calculated according to the methodology in Section 9.3(b)(iv), as if the Commercial Operation Date had occurred prior to the date of the termination by Seller.

(iii) *Termination by Buyer On or After Commercial Operation Date.* If Buyer terminates this Amended and Restated Agreement because of an Event of

Default by Seller occurring on or after the Commercial Operation Date, the Termination Payment due to Buyer shall be equal to the amount, if positive, calculated according to the following formula: (x) the present value, discounted at nine percent (9%), of (i) the amount, if any, by which the forward market price of Energy, Capacity and RECs, as determined by the average of the mid-market quotes of at least two national energy brokers chosen by Buyer, for Replacement Energy, Capacity and Replacement RECs, exceeds the applicable Price that would have been paid pursuant to Exhibit E of this Amended and Restated Agreement, multiplied by (ii) the projected Energy output and Capacity value of the Facility as determined by a recognized third party fuel cell expert mutually agreed upon by both Parties, plus, (y) any reasonable incidental costs incurred by Buyer as a result of the Event of Default and termination of the Amended and Restated Agreement.

Buyer shall provide Seller with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(iii).

(iv) *Termination by Seller On or After Commercial Operation Date.* If Seller terminates this Amended and Restated Agreement because of an Event of Default by Buyer occurring on or after the Commercial Operation Date, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula: (x) the present value, discounted at nine percent (9%), of (i) the amount, if any, which the applicable Price that would have been paid pursuant to Exhibit E of this Amended and Restated Agreement, exceeds the forward market price of Energy, Capacity and RECs as determined by the average of the mid-market quotes of at least two national energy brokers chosen by Seller, for Replacement Energy, Capacity and Replacement RECs, multiplied by (ii) the projected Energy output and Capacity value of the Facility as determined by a recognized third party fuel cell expert mutually agreed-upon by both Parties, plus, (y) any reasonable incidental costs incurred by Seller as a result of the Event of Default and termination of the Amended and Restated Agreement,

Seller shall provide Buyer with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(iv).

(v) *Acceptability of Liquidated Damages.* Each Party agrees and acknowledges that (i) the damages that the Parties would incur due to an Event of Default would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Payment as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

(vi) *Payment of Termination Payment.* The Defaulting Party shall make the Termination Payment within ten (10) Business Days after such notice is effective. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute;

provided, however, the Defaulting Party shall first transfer Credit Support to the Non-Defaulting Party in an amount equal to the Termination Payment as calculated by the Non-Defaulting Party. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

(vii) *Use and Return of Credit Support.* In the event that the Defaulting Party fails to pay the Termination Payment in full within the time period set forth in Section 9.3(b)(vii), the Non-Defaulting Party may draw upon any Credit Support provided by the Defaulting Party to satisfy the unpaid portion of the Termination Payment. Upon the payment of the Termination Payment in full, any undrawn Credit Support shall be promptly returned to each Party providing that Credit Support.

(viii) *Reinstatement of Amended and Restated Agreement.* In the event that Buyer terminates this Amended and Restated Agreement prior to the Commercial Operation Date pursuant to Section 9.3(b)(i) and Seller thereafter achieves the Commercial Operation Date within one (1) year after such termination, Buyer may elect to reinstate this Amended and Restated Agreement in accordance with its terms by providing Seller with at least six (6) months' prior written notice of such reinstatement. Upon such reinstatement, Buyer shall return to Seller any Termination Payment made by Seller, together with interest accruing at the Late Payment Rate, on or prior to the date selected for reinstatement of this Amended and Restated Agreement.

(c) Set-off. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any payments and any other amounts owed by the Defaulting Party to the Non-Defaulting Party, including any Termination Payment payable as a result of any early termination of this Amended and Restated Agreement.

(d) Notice to Lenders. Buyer shall provide a copy of any notice given to Seller under this Section 9 to one, but not more than one, Lender of which Buyer shall have written notice, and Buyer shall afford such Lender the same opportunities to cure Defaults under this Amended and Restated Agreement as are provided to Buyer hereunder.

(e) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AMENDED AND RESTATED AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR

DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term “**Force Majeure**” means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Amended and Restated Agreement. Under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller’s ability to sell the Products at a price greater than that set out in this Amended and Restated Agreement, or (z) Buyer’s ability to procure the Products at a price lower than that set out in this Amended and Restated Agreement. In addition, a delay or inability to perform attributable to a Party’s lack of preparation, a Party’s failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) Subject to Section 9.2(c), if either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Amended and Restated Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Amended and Restated Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, if the Force Majeure prevents full or partial performance under this Amended and Restated Agreement for a period of twelve (12) months or

more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Amended and Restated Agreement upon written notice to the other Party and without further recourse.

(d) Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission/Distribution Provider unless (i) such Party has contracted for firm transmission with a Transmission/Distribution Provider for the Energy to be delivered to or received at the Delivery Point and (ii) such curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the Transmission/Distribution Provider’s tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in Section 10.1(a) has occurred.

11. DISPUTE RESOLUTION

11.1 Negotiation Between Executives. In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Amended and Restated Agreement (collectively, a “**Dispute**”), the Parties shall attempt in good faith to resolve such Dispute promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Amended and Restated Agreement. Either Party may give the other Party written notice of any Dispute not resolved in the normal course of business. Such notice shall include: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive (“**Initial Notice**”). Within five (5) Business Days after delivery of the Initial Notice, the receiving Party shall respond with: (a) a statement of that Party’s position and a summary of arguments supporting that position; and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within fifteen (15) Business Days after delivery of the Initial Notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

11.2 Mediation. If the Dispute has not been resolved by negotiation within thirty (30) Business Days of the disputing Party’s Initial Notice, or if the Parties failed to meet within fifteen (15) Business Days of the delivery of the Initial Notice, the Parties shall endeavor to settle the Dispute by mediation under the then current International Institute for Conflict Prevention & Resolution (“**CPR**”) Mediation Procedure; however, in the case of Disputes that are or may be subject to FERC’s jurisdiction over wholesale power contracts, then either Party may elect to proceed with the mediation through the FERC’s Dispute Resolution Service; provided, however, that if one Party fails to participate in the negotiations as provided in Section 11.1, the other Party can initiate mediation prior to the expiration of the thirty (30) Business Days. Unless otherwise agreed, the Parties will select a mediator from the CPR Panels of Distinguished Neutrals or FERC panel, as appropriate.

11.3 Referral to PURA. If the Dispute has not been resolved by mediation as described in the preceding section, then either Party may seek to resolve such Dispute before the PURA; provided, however, if PURA disclaims jurisdiction because the Dispute is subject to FERC's jurisdiction, then the Parties may seek to resolve such Dispute before the FERC.

11.4 Consent to Jurisdiction. The Parties agree to the jurisdiction of PURA in connection with any Dispute arising out of or in connection with this Amended and Restated Agreement. SELLER, WHICH IS A MUNICIPAL CORPORATION, EXPRESSLY AND UNCONDITIONALLY WAIVES ANY CLAIM OR CHALLENGE IT HAS OR MAY HAVE TO THE DISPUTE RESOLUTION PROCESS DESCRIBED IN THIS SECTION 11 BASED UPON A CLAIM OR DEFENSE OF SOVEREIGN IMMUNITY, GOVERNMENTAL IMMUNITY AND/OR MUNICIPALITY IMMUNITY.

11.5 Allocation of Dispute Costs. The fees and expenses associated with mediation, shall be divided equally between the Parties. Each Party shall be responsible for its own legal fees, including but not limited to attorney fees. The Parties may, by written agreement signed by both Parties, alter any time deadline, location(s) for meeting(s), or procedure outlined herein or in the Rules. The procedure specified herein shall be the sole and exclusive procedure for the resolution of Disputes.

11.6 Waiver Of Jury Trial. EACH PARTY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF, RESULTING FROM OR IN ANY WAY RELATING TO THIS AMENDED AND RESTATED AGREEMENT.

12. CONFIDENTIALITY

12.1 Nondisclosure. Buyer and Seller each agrees not to disclose to any Person and to keep confidential, and to cause and instruct its Affiliates, officers, directors, employees, partners and representatives not to disclose to any Person and to keep confidential, any non-public information relating to the terms and provisions of this Amended and Restated Agreement, and any information relating to the Products to be supplied by Seller hereunder, and such other non-public information that is designated as "Confidential." Notwithstanding the foregoing, any such information may be disclosed:

(a) to the extent Buyer determines it is appropriate in connection with efforts to obtain or maintain the Regulatory Approval or to seek rate recovery for amounts expended by Buyer under this Amended and Restated Agreement;

(b) as required by applicable laws, regulations, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the receiving Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable;

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders and their advisors of either Party or their Affiliates, but solely to the extent they have a need to know that information;

(d) in order to comply with any rule or regulation of ISO-NE, any stock exchange or similar Person or for financial disclosure purposes;

(e) to the extent the non-disclosing Party shall have consented in writing prior to any such disclosure; and

(f) to the extent that the information was previously made publicly available other than as a result of a breach of this Section 12.1;

provided, however, in each case, that the Party seeking such disclosure shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this Section 12.1.

12.2 Public Statements. No public statement, press release or other voluntary publication regarding this Amended and Restated Agreement or the transactions to be made hereunder shall be made or issued without the prior consent of the other Party.

13. INDEMNIFICATION

Except as set forth in Sections 3.5(h), 3.5(j) and 3.6(b) and Exhibit D, neither Party shall indemnify, defend or hold harmless the other Party or its partners, shareholders, directors, officers, employees or agents from and against any liabilities, damages, losses, penalties, claims, demands, suits or proceedings claimed by, due to or instituted by any third party as a result of either Party's execution, delivery or performance of this Amended and Restated Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Section 14, this Amended and Restated Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed except that the Seller shall be allowed to assign, and the Buyer does hereby consent to the assignment of, all of the Seller's right, title and interest in and to this Amended and Restated Agreement from the Seller to Mestek Energy Park, LLC so long as said assignment occurs on or before the Commercial Operation Date of the Facility and so long as Mestek Energy Park, LLC agrees to assume in writing and perform all the obligations imposed on Seller under this Amended and Restated Agreement, including Seller's obligations to construct the Facility described in the Recitals and the Project described in Exhibit A-1 hereto. When assignable, this Amended and Restated Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Amended and Restated Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Amended and Restated Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor

from its obligations thereunder, with the understanding and agreement that the Buyer does hereby consent to the assignment, pledge and/or other transfer of the Seller's obligations to Mestek Energy Park, LLC pursuant to the terms set forth in this Section 14.1.

14.2 Permitted Assignment by Seller. Seller may pledge or assign the Facility, this Amended and Restated Agreement or the revenues under this Amended and Restated Agreement to any Lender as security for the financing of the Facility, subject to Buyer's execution of a consent to assignment that is in form and substance reasonably satisfactory to Seller and such Lender that incorporates terms and conditions customary for a transaction of this type (including the provisions included in Section 9.3(d)); provided, however, that Buyer shall not be obligated to enter into any consent which shall adversely affect Buyer's rights under this Amended and Restated Agreement. Buyer shall not unreasonably withhold, condition or delay providing its consent to an assignment to a Lender.

14.3 Change of Control over Seller. Buyer's consent shall be required for any "Change of Control" (as defined below) over Seller, which consent shall not be unreasonably withheld, conditioned or delayed and shall be provided if Buyer reasonably determines that such Change of Control does not have or will not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Amended and Restated Agreement. For purposes of this Section 14.3 "Change of Control" shall mean either (a) change in ownership of more than fifty percent (50%) of the equity interest of Seller in the Facility, either directly or indirectly, or (b) a change of control in fact of Seller.

14.4 Permitted Assignment by Buyer. Buyer shall have the right to assign this Amended and Restated Agreement without consent of Seller (a) in connection with any merger or consolidation of the Buyer with or into another Person or any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property or any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer, or (b) to any substitute purchaser of the Products; so long as in the case of either clause (a) or clause (b) of this Section 14.4, either (1) the proposed assignee's credit rating is at least either BBB- from S&P or Baa3 from Moody's or (2) the proposed assignee's credit rating is equal to or better than that of Buyer at the time of the proposed assignment, or (3) such assignment, or in the case of clause (a) above the transaction associated with such assignment, has been approved by PURA.

14.5 Prohibited Assignments. Any purported assignment of this Amended and Restated Agreement not in compliance with the provisions of this Section 14 shall be null and void.

14.6 Assignment from CTS Energy LLC to Town of South Windsor. Pursuant to Section 1 of an Agreement dated April 6, 2016 between CTS Energy, LLC ("CTS Energy"), Connecticut Studios, LLC, dck Leasing, LLC and the Town of South Windsor, CTS Energy assigned all of its right, title and interest in the original Agreement to the Town of South Windsor. A redacted copy of the April 6, 2016 Agreement is provided in Exhibit F hereto. Pursuant to a ruling dated January 27, 2017 on Motion No. 5 in Docket No. 13-06-27RE01, the Public Utilities Regulatory Authority approved the assignment of the original Agreement from CTS Energy to the Town of South Windsor.

15. TITLE; RISK OF LOSS

Title to and risk of loss related to Buyer's Percentage Entitlement of the Energy shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to Buyer's Percentage Entitlement of the RECs shall transfer to Buyer when the same are credited to Buyer's GIS account(s) or the GIS account(s) designated by Buyer to Seller in writing. Seller warrants that it shall deliver to Buyer the Products free and clear of all claims therein or thereto by any Person.

16. AUDIT

16.1 Audit. Each Party shall have the right, upon reasonable advance notice, and at its sole expense (unless the other Party has defaulted under this Amended and Restated Agreement, in which case the Defaulting Party shall bear the expense) and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Amended and Restated Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantities of Products delivered or provided hereunder. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof shall be made promptly and shall bear interest at the Late Payment Rate from the date the overpayment or underpayment was made until paid.

16.2 Consolidation of Financial Information. The Parties agree that generally accepted accounting principles and SEC rules may, from time to time, and in accordance with such accounting principles and rules changes throughout the Term, require Buyer access to Seller's financial records and personnel. Seller shall provide to Buyer within fifteen (15) days of receipt of Buyer's written request, any and all listed financial information and statements then available to Seller as well as access to financial personnel, so that Buyer may comply with generally accepted accounting principles and SEC rules for financial reporting purposes.

17. NOTICES

Any notice or communication given pursuant hereto shall be in writing and (1) delivered personally (personally delivered notices shall be deemed given upon written acknowledgment of receipt after delivery to the address specified or upon refusal of receipt); (2) mailed by registered or certified mail, postage prepaid (mailed notices shall be deemed given on the actual date of delivery, as set forth in the return receipt, or upon refusal of receipt); or (3) delivered by fax or electronic mail (notices sent by fax or electronic mail shall be deemed given upon confirmation of delivery); in each case addressed as follows or to such other addresses as may hereafter be designated by either Party to the other in writing:

If to Buyer:

[for U.S. Mail deliveries]

Director- Electric Supply
Eversource Energy Service Company
P.O. Box 270
Hartford, CT 06141-0270

[for hand deliveries]

Director- Electric Supply
Eversource Energy Service Company
107 Selden Street
Berlin, CT 06037

With a copy to:

[for U.S. Mail deliveries]

General Counsel
Eversource Energy Service Company
P.O. Box 270
Hartford, CT 06141-0270

[for hand deliveries]

General Counsel
Eversource Energy Service Company
107 Selden Street
Berlin, CT 06037

If to Seller: Town of South Windsor
Office of Town Manager
1540 Sullivan Avenue
South Windsor, CT 06074

With a copy to: Mestek Energy Park, LLC
260 North Elm Street
Westfield, MA 01085
Attn: Legal Dept.

18. WAIVER AND MODIFICATION

This Amended and Restated Agreement may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of this Amended and Restated Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of this Amended and Restated Agreement shall not be construed as a waiver of or acquiescence in or to such provision. Buyer shall determine in its sole discretion whether any amendment or waiver of the provisions of this Amended and Restated Agreement shall require PURA approval or filing, and if Buyer determines that PURA approval or filing is required for any amendment or waiver of the

provisions of this Amended and Restated Agreement, then such amendment or waiver shall not become effective unless and until such PURA approval is obtained or such PURA filing is made.

19. INTERPRETATION

19.1 Choice of Law. Interpretation and performance of this Amended and Restated Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Connecticut (without regard to its principles of conflicts of law).

19.2 Headings. Article and Section headings are for convenience only and shall not affect the interpretation of this Amended and Restated Agreement. References to articles, sections and exhibits are, unless the context otherwise requires, references to articles, sections and exhibits of this Amended and Restated Agreement. The words “hereof” and “hereunder” shall refer to this Amended and Restated Agreement as a whole and not to any particular provision of this Amended and Restated Agreement.

19.3 Forward Contract; Commodities Exchange Act. The Parties acknowledge and agree that this Amended and Restated Agreement and the transactions contemplated hereunder are a “forward contract” within the meaning of the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is (i) a “forward merchant” within the meaning of the United States Bankruptcy Code and (ii) an “eligible commercial entity” and an “eligible contract participant” within the meaning of the United States Commodities Exchange Act.

19.4 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of or changes to any portion of this integrated, non-severable Amended and Restated Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party of, by FERC acting *sua sponte* shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Serv. Co., 350 U.S. 332 (1956) and Federal Power Comm’n v. Sierra Pac. Power Co., 350 U.S. 348 (1956). Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Amended and Restated Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Amended and Restated Agreement.

19.5 Change in ISO-NE Rules and Practices. This Amended and Restated Agreement is subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of this Amended and Restated Agreement, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Amended and Restated Agreement to embody the Parties’ original intent regarding their respective rights and obligations under this Amended and Restated Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Amended and Restated Agreement. The intent of the Parties is that any such amendment or clarification reflect, as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as

such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to this Amended and Restated Agreement, or (ii) the Price.

20. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of this Amended and Restated Agreement may be executed, and each shall have the same force and effect as an original. Facsimile signatures hereon or on any notice or other instrument delivered under this Amended and Restated Agreement shall have the same force and effect as original signatures.

21. NO DUTY TO THIRD PARTIES

Except as provided in any consent to assignment of this Amended and Restated Agreement, nothing in this Amended and Restated Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Amended and Restated Agreement.

22. SEVERABILITY

If any term or provision of this Amended and Restated Agreement or the interpretation or application of any term or provision to any prior circumstance is held to be unenforceable, illegal or invalid by a court or agency of competent jurisdiction, the remainder of this Amended and Restated Agreement and the interpretation or application of all other terms or provisions to Persons or circumstances other than those which are unenforceable, illegal or invalid shall not be affected thereby, and each term and provision shall be valid and be enforced to the fullest extent permitted by law.

23. INDEPENDENT CONTRACTOR

Nothing in this Amended and Restated Agreement shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be the agent of the other Party for any purpose by reason of this Amended and Restated Agreement, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.


24. ENTIRE AGREEMENT

This Amended and Restated Agreement shall constitute the entire agreement and understanding between the Parties hereto and shall supersede all prior agreements and communications.

[Signature page follows]

IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amended and Restated Agreement to be duly executed on its behalf as of the date first above written.

THE CONNECTICUT LIGHT AND POWER COMPANY d/b/a Eversource Energy

By: 
James Daly:
Vice President – Energy Supply:

TOWN OF SOUTH WINDSOR, CONNECTICUT

By: _____

IN WITNESS WHEREOF, each of Buyer and Seller has caused this Amended and Restated Agreement to be duly executed on its behalf as of the date first above written.

THE CONNECTICUT LIGHT AND POWER COMPANY d/b/a Eversource Energy

By: _____

James Daly:

Vice President – Energy Supply:

TOWN OF SOUTH WINDSOR, CONNECTICUT

By: _____

Matthew B. Galligan

Matthew Galligan

Town Manager, duly Authorized

**Matthew B. Galligan
Town Manager
Town of South Windsor**

EXHIBIT A-1

DESCRIPTION OF THE PROJECT

- A state-of-the-art, full-service motion picture production studio located at 515 John Fitch Boulevard in South Windsor, CT.
- Two buildings (each containing two sound stages and two sets of production offices). In total 4 sound stages totaling approximately 72,000 square feet of space and 48,000 square feet of production office space.
- Additional 36,000 square feet of interior space to serve as mill, storage and equipment rental space as part of the two building complex (or for use as supplemental sound stage space).
- Integration of fuel cell power capability with production studio operation, including but not limited providing heating, ventilating and air conditioning (HVAC) services.

EXHIBIT A-2

DESCRIPTION OF FACILITY

Facility: The Facility will consist of two (2) Fuel Cell Energy DFC power plants. The Facility will be located at property known as 515 John Fitch Boulevard, South Windsor, Connecticut.

Technology: The Facility will utilize fuel cells.

Operational Limitations: The Facility will have a control system that will limit the output of the Facility to a maximum of 5MWs

EXHIBIT B

SELLER'S CRITICAL MILESTONES PERMITS AND REAL ESTATE RIGHTS

Part 1 – Permits

a. Construction Permits

CT Siting Council
Town of South Windsor building permit

b. Operating Permits

CL&P interconnection agreement

Part 2 – Real Estate Rights

20 year ground lease from Mestek, Incorporated

EXHIBIT C

FORM OF PROGRESS REPORT

For the Quarter Ending: _____

Status of construction and significant construction milestones achieved during the quarter:

Status of permitting and significant Permits obtained during the quarter:

Status of Financing for Facility:

Events during quarter expected to result in delays in Commercial Operation Date:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT D

INSURANCE

Seller shall maintain insurance coverages throughout the Term of this Amended and Restated Agreement as customarily maintained by owners and operators of comparable renewable energy facilities, and as otherwise legally required.

EXHIBIT E

PRODUCTS AND PRICING

Payment for Delivered Products.

Buyer shall pay Seller, in accordance with the provisions of Article 5 of the Amended and Restated Agreement and this Exhibit E. The Price for Buyer's Percentage Entitlement of Delivered Products up to the Contract Maximum Amount shall be as follows:

Table 1. Energy and REC Fixed Pricing

Contract Year	Energy Price (¢/kWh)	REC Price (\$/REC)
	All Hours	
1	6.24	70.10
2	6.24	70.10
3	6.24	70.10
4	6.24	70.10
5	6.24	70.10
6	6.24	70.10
7	6.24	70.10
8	6.24	70.10
9	6.24	70.10
10	6.24	70.10
11	6.24	70.10
12	6.24	70.10
13	6.24	70.10
14	6.24	70.10
15	6.24	70.10
16	6.24	70.10
17	6.24	70.10
18	6.24	70.10
19	6.24	70.10
20	6.24	70.10

- (1) **Reduction of the Energy Price.** As further described in (2) below, the Energy Price shall be reduced from 6.24 cents/kWh to 5.24 cents/kWh if the Project (i.e., movie studio facility) is not built and operational within thirty – six (36) months of the Commercial Operation Date. In order to qualify as “built and operational”, the studio facility buildings and related infrastructure must be fully constructed and the studio must (x) be registered as a business with the State of Connecticut Secretary of States’ Office and the Department of Revenue Services, (y) have paid studio employees working at the studio site, and (z) be actively marketing and promoting the studio business.

(2) Energy Delivered to the Delivery Point up to the Contract Maximum Amount.

Energy Delivered from the Facility to the Delivery Point, during the preceding month, up to the Contract Maximum Amount, shall be purchased by Buyer at the Energy Prices set forth in Table 1 of this Exhibit E according to the Contract Year in which such Energy is Delivered; provided, however, if the Project is not completed and qualified as “built and operational”, as such term is defined in (1) above, within three (3) years of the Commercial Operation Date, the Price shall be reduced for the then remaining Service Term by one cent per kWh . The payment for such purchased Energy shall equal the product of (1) the kWhs of Energy purchased and (2) the Energy Price from Table 1 for the applicable Contract Year. The pricing above was developed using natural gas for fuel, at an assumed base Supply Charge, as established monthly in accordance with and pursuant to the Yankee Gas Purchased Gas Adjustment Clause (PGA) as approved by PURA, of \$0.3859/ccf (converted to \$3.77 per MMBtu at a conversion of 1cf = 1,025 Btu) and an assumed distribution system charge for Yankee Gas of \$1.80/MMBtu. The fuel consumption of the Facility to be used for calculating the adjustment is 0.008396 MMBtu/kWh, for each calendar month billing period. To the extent the base Supply Charge or the Yankee Gas distribution charge differs from the assumed base price of \$3.77 and \$1.80 per MMBtu respectively, the follow adjustment(s) will be applied:

a. Base Supply Charge Monthly Adjustment:

- i. Should the Yankee Gas Supply Charge for the applicable month be less than \$3.77 per MMBtu, then the invoice shall be adjusted to include a credit for the difference between \$3.77 per MMBtu and the Yankee Gas Supply Charge (i.e., the current PGA converted to MMBtu using a conversion rate of 1cf = 1,025 Btu) times 0.008396 MMBtu/KWh times the KWh Delivered.
- ii. Should the Yankee Gas Supply Charge for the applicable month be greater than \$3.77 per MMBtu, then the invoice shall be adjusted to include a payment for the difference between the Yankee Gas Supply Charge (i.e., the current PGA converted to MMBtu using a conversion rate of 1cf = 1,025 Btu) and \$3.77 times 0.008396 MMBtu/KWh times the KWh Delivered.

b. Yankee Gas Distribution System Tariff Rate Monthly Adjustment:

- i. Should the “Monthly Average Unit Rate” of the applicable Yankee Gas tariff (currently the Yankee Gas firm supply tariff, “Large General Firm Service”, designated as Rate 30), which is defined as the total charges invoiced for the corresponding gas flow month less the “Supply Charge” divided by the “Actual ccf Use” and converted to \$/MMBtu using the corresponding Btu Conversion Rate and Fuel Loss Factor as filed with the Connecticut PURA be less than \$1.80 per MMBtu, then the invoice shall be adjusted to include a credit for the difference between \$1.80 per

MMBtu and the Monthly Average Unit Rate times 0.008396
MMBtu/KWh times the KWh Delivered.

- ii. Should Monthly Average Unit Rate of the applicable Yankee Gas tariff, (currently the Yankee Gas firm supply tariff, "Large General Firm Service", designated as Rate 30) which is defined as the total charges invoiced for the corresponding gas flow month less the "Supply Charge" divided by the "Actual ccf Use" and converted to \$/MMBtu using the corresponding Btu Conversion Rate and Fuel Loss Factor as filed with the Connecticut PURA be greater than \$1.80 per MMBtu, then the invoice shall be adjusted to include a payment for the difference between the Monthly Average Unit Rate and \$1.80 per MMBtu times 0.008396 MMBtu/KWh times the KWh Delivered.

(3) RECs Produced and Delivered up to the Contract Maximum Amount. RECs produced by the Facility and Delivered into the Buyer's GIS account, during the preceding month, up to the Contract Maximum Amount, shall be purchased by Buyer at the REC Prices set forth in Table 1 above of this Exhibit E according to the Contract Year in which such RECs were produced. The payment for such purchased RECs shall equal the product of (1) the quantity of such Delivered RECs and (2) the REC Price from Table 1 for the applicable Contract Year.

(4) Financial Settlement of the Facility's Capacity Supply Obligation. If the Facility qualifies and elects to participate in the ISO-NE Forward Capacity Market, Seller shall include in each month's invoice a credit equal to the amount that it received in the preceding month for such participation, which credit shall offset the payment Buyer owes to Seller for Delivered Products. The Facility's Forward Capacity Auction Clearing Price Payment for Capacity shall be determined by the product of (i) the ISO-NE annual Forward Capacity Auction payment rate for the Commitment Period applicable to the month, and (ii) the Facility's ISO-NE Capacity Supply Obligation for the month. The applicable ISO-NE Forward Capacity Auction payment rate applicable to the month shall not be reduced for any Peak Energy Rents or other penalties incurred by Seller in the Forward Capacity Market. If the Facility qualifies and elects to be a Load Reducer, there will be no reduction to the Payment for Delivered Products.

The Energy and REC Fixed Pricing set forth in Table 1 shall apply throughout the Term of the Amended and Restated Agreement.

EXHIBIT F

See attached redacted Agreement dated April 6, 2016 between CTS Energy, LLC (“CTS Energy”), Connecticut Studios, LLC, dck Leasing, LLC and the Town of South Windsor

AGREEMENT

This Agreement is entered into as of April 6, 2016 ("Effective Date") by and between the Town of South Windsor ("Town"), CTS Energy, LLC ("CTS Energy"), Connecticut Studios, LLC ("CT Studios"),

WHEREAS, CTS Energy and The Connecticut Light and Power Company *d/b/a* Eversource Energy ("Eversource") executed a Power Purchase Agreement ("PPA"), dated June 28, 2013, concerning the purchase and sale of power to be produced from a Class I renewable energy facility consisting of fuel cell technology ("Facility"). The PPA incorporates as a critical milestone the development of a movie studio project ("Project"), the scope of which is set forth as Exhibit A-1 of the PPA; and

NOW, THEREFORE, in consideration of the promises and of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. As of the Effective Date, CTS Energy hereby assigns, transfers and sets over to and for the exclusive benefit of the Town, any and all of the right, title and interest of CTS Energy, in and to the PPA. As of the Effective Date, the Town hereby accepts the aforementioned assignment and assumes and agrees to pay, perform and discharge, and otherwise be and remain responsible for, at its sole cost and expense, all obligations and liabilities of CTS Energy under the PPA, which are required to be performed by CTS Energy under the PPA and first arise and accrue from and after the Effective Date.

REDACTED

2. The assignment of the PPA to the Town will not include the transfer of any additional assets of CTS Energy, CT Studios, , to the extent those entities have any assets. shall provide the Town with any documents, not subject to any privilege recognized by Connecticut law, needed to permit the Town to negotiate with Eversource for the approval of the assignment. Except as stated herein, CT Studios will retain all liabilities for CT Studios and CTS Energy will retain all liabilities for CTS Energy. CTS Energy will provide the Town with complete documentation and information, which are not subject to any privilege recognized by Connecticut law, concerning its efforts to modify the PPA.

4. CTS Energy will be responsible for any delay payments under the PPA due to Eversource up to the Effective Date. The Town will be responsible for delay payments under the PPA after the Effective Date.
5. CTS Energy's security payment being held by Eversource on the PPA will remain with the PPA and will be assigned to the Town until refunded in accordance with the terms of the PPA, at which time it shall be paid to CTS Energy.

REDACTED

11. All obligations, covenants and undertakings contained in this Assignment shall bind and be enforceable against, and shall inure to the benefit of, CTS Energy and the Town, as assignor and assignee, respectively, and their respective successors, legal representatives and assigns. This Assignment Agreement shall be governed by the laws of the State of Connecticut, and shall be construed in accordance with such law.
12. Each party hereto shall, from time to time, for a period expiring twelve (12) months after the Effective Date, at the request of the other party (for purposes of this Section 12, the "Requesting Party"), execute and deliver to the Requesting Party such other instruments of transfer, conveyance and assignment, and shall take such other actions as may reasonably be required to (a) more effectively carry out the terms of this Assignment, (b) vest in the Town the

REDACTED

rights intended to be conveyed hereunder, and (c) provide for the assumption by the Town of the duties and obligations delegated by CTS Energy to the Town. The responding party shall comply with a request under this Section 12 at its sole cost and expense.

13. In the event that any covenant, condition or other provision herein contained is held to be invalid, void or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Assignment and shall in no way affect, impair or invalidate any other covenant, condition or other provision herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such covenant, condition or other provision shall be deemed valid to the extent of the scope or breadth permitted by applicable law. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or any other provision hereof. This Assignment may be amended or modified only by a written agreement executed by the parties in interest at the time of the amendment or modification. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall be deemed to constitute one and the same agreement.

[signatures follow on the next page]

REDACTED

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first hereinabove written.

The Town of South Windsor

Witness: Ashley Adams By Matthew B. Galligan
Matthew Galligan Matthew B. Galligan
Title: Town Manager
Date: 4/8/16
Town of South Windsor

CTS Energy, LLC

Witness: [Signature] By CHRIS BARBE
Title: Managing Member
Date: 4/6/16

CT Studios, LLC

Witness: [Signature] By CHRIS BARBE
Title: Managing Member
Date: 4/6/16

REDACTED

Witness: _____

By _____

Title: _____

Date: _____

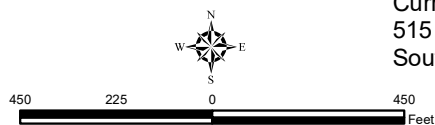
EXHIBIT G



Legend

- Proposed Modified Site Location
- Originally Approved Site Location
- Approximate Assessor Parcel Boundary (CTDEEP)

Map Notes:
 Base Map Source: CTECO 2016 Aerial Photograph
 Map Scale: 1 inch = 450 feet
 Map Date: July 2017



Originally Approved Site Location and Proposed Modified Site Location

Proposed Fuel Cell
 Currently Proposed at
 515 John Fitch Boulevard
 South Windsor, Connecticut



EXHIBIT H



ENVIRONMENTAL ASSESSMENT

FUEL CELL GENERATION FACILITY INSTALLATION

515 JOHN FITCH BOULEVARD

SOUTH WINDSOR, CONNECTICUT

HARTFORD COUNTY

Prepared for:

**Mestek, Inc.
260 North Elm Street
Westfield, MA 01085**

Prepared by:

**All-Points Technology Corporation, P.C.
3 Saddlebrook Drive
Killingworth, CT 06419**

June 2017

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A	Wetlands Report	
B	Agency Correspondence	
C	Noise Study	
D	Wetland Protection Plan	
E	Photo-simulations	

Site Plans

(bound separately)

Fuel Cell Project Introduction

Mestek, Inc. ("Mestek"), retained All-Points Technology Corporation, P.C. ("APT") to prepare this Environmental Assessment ("EA") for the relocation, modification and installation of a previously approved 5.6-megawatt ("MW") fuel cell generation facility (Connecticut Siting Council Petition #1078 – "Petition") at a new location in the Town of South Windsor (the "Fuel Cell Project" or the "Project").

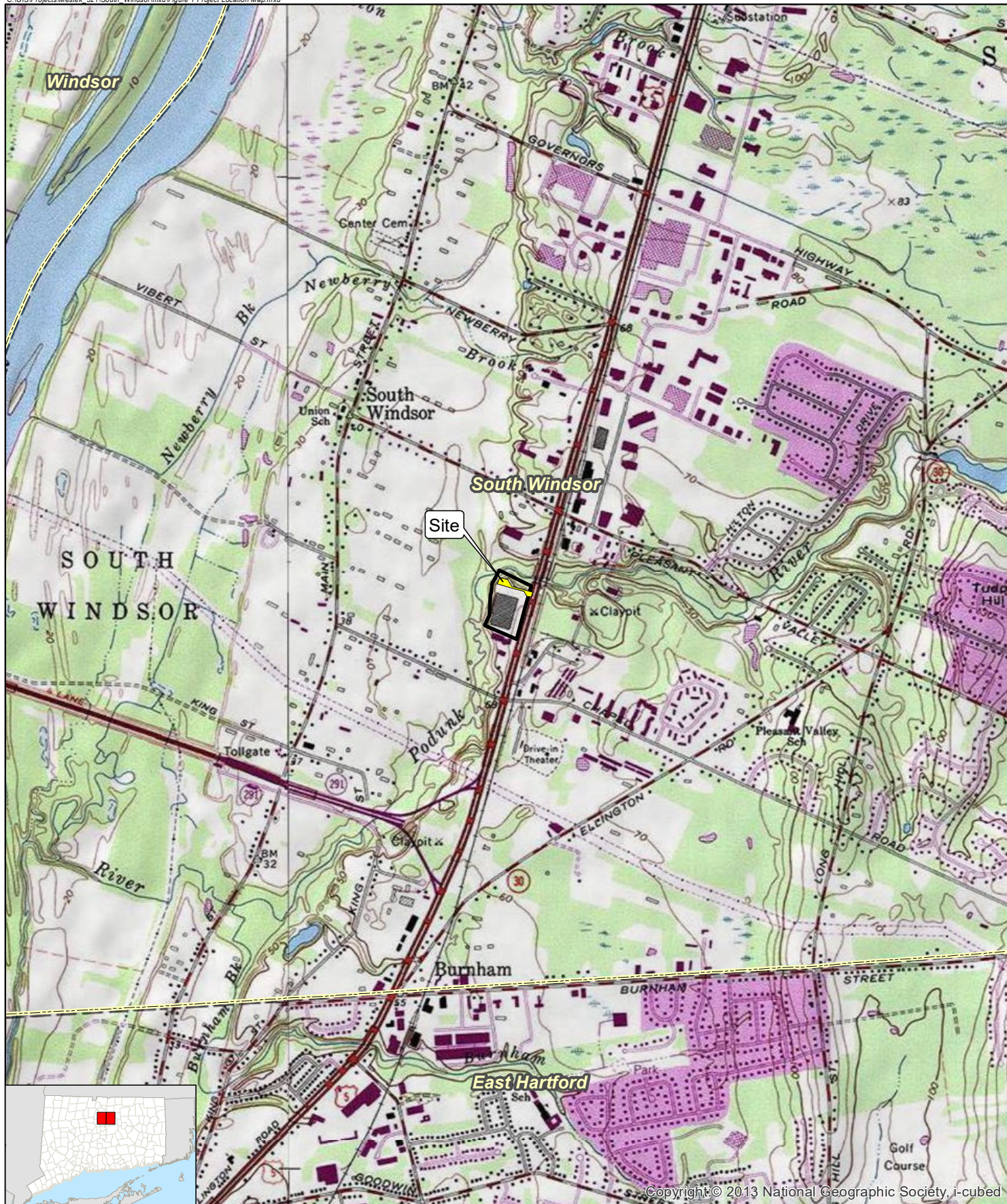
This EA has been completed to support Mestek's modified Petition¹ submission for the Fuel Cell Project. As demonstrated from the information included in this EA, the Project will not have a substantial adverse effect on the environment and will comply with air and water quality standards of the Connecticut Department of Energy and Environmental Protection ("CTDEEP").

The Fuel Cell Project will be located at 515 John Fitch Boulevard (US Route 5), on a ±11.4-acre parcel identified in the South Windsor Assessor records as Map 22, Lot 1 ("Subject Parcel"). The Subject Parcel is bound by John Fitch Boulevard (US Route 5) to the east, undeveloped land to the north and west, and a commercial business specializing in recreational vehicle sales to the south. The Podunk River flows in a westerly direction beyond the northern border of the Subject Parcel before turning south.

Mestek is proposing the installation of a 5.6 MW fuel cell facility in the paved northwest corner of the Subject Parcel (the "Site"). The facility would include twin 2.8 MW Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads. New gas and electrical utilities will be brought to the facility from John Fitch Boulevard (US Route 5).

For purposes of this evaluation, the Site is defined as an irregularly shaped, 0.5-acre area with the fuel cell power plants equipment compound measuring roughly ±80 feet wide by ±155 feet long abutting the northwest corner of the Subject Parcel boundary. Figure 1, *Project Location Map*, depicts the location of the Subject Parcel, the Site and surrounding area.

¹ Petition for declaratory ruling that no Certificate of Environmental Compatibility and Public Need is required for the construction, maintenance, and operation of the Fuel Cell Project.



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Legend

- Project Area
- Subject Property
- Municipal Boundary

Map Notes:
 Base Map Source: USGS 7.5 Minute Topographic Quadrangle
 Maps: Hartford North and Manchester, CT (1982)
 Map Scale: 1:24,000
 Map Date: June 2017

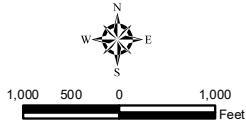


Figure 1 Project Location Map

Proposed Fuel Cell
 515 John Fitch Boulevard
 South Windsor, Connecticut



Existing Conditions

The purpose of this section is to describe current conditions on the Subject Parcel. An *Environmental Resources Map*, depicting current conditions on the Site, its access, abutting properties, and several key features discussed herein, is provided as Figure 2. A detailed discussion of the Fuel Cell Project's effects on the environment is provided in the following section of this document.

Fuel Cell Project Location

The ±11.4-acre Subject Parcel is located in South Windsor, Hartford County, Connecticut and is identified by the South Windsor Assessor's Office as Map 22, Lot 1. The Subject Parcel is located in an "I" Industrial zone.

The Site is located in a paved section of the northwest corner of the Subject Parcel, approximately 390 feet west of John Fitch Boulevard (US Route 5). The Site is currently occupied by a ±166,838-square-foot commercial building and paved parking area. A small portion of the Subject Parcel is wooded to the north of the existing building and paved parking area near the Podunk River.

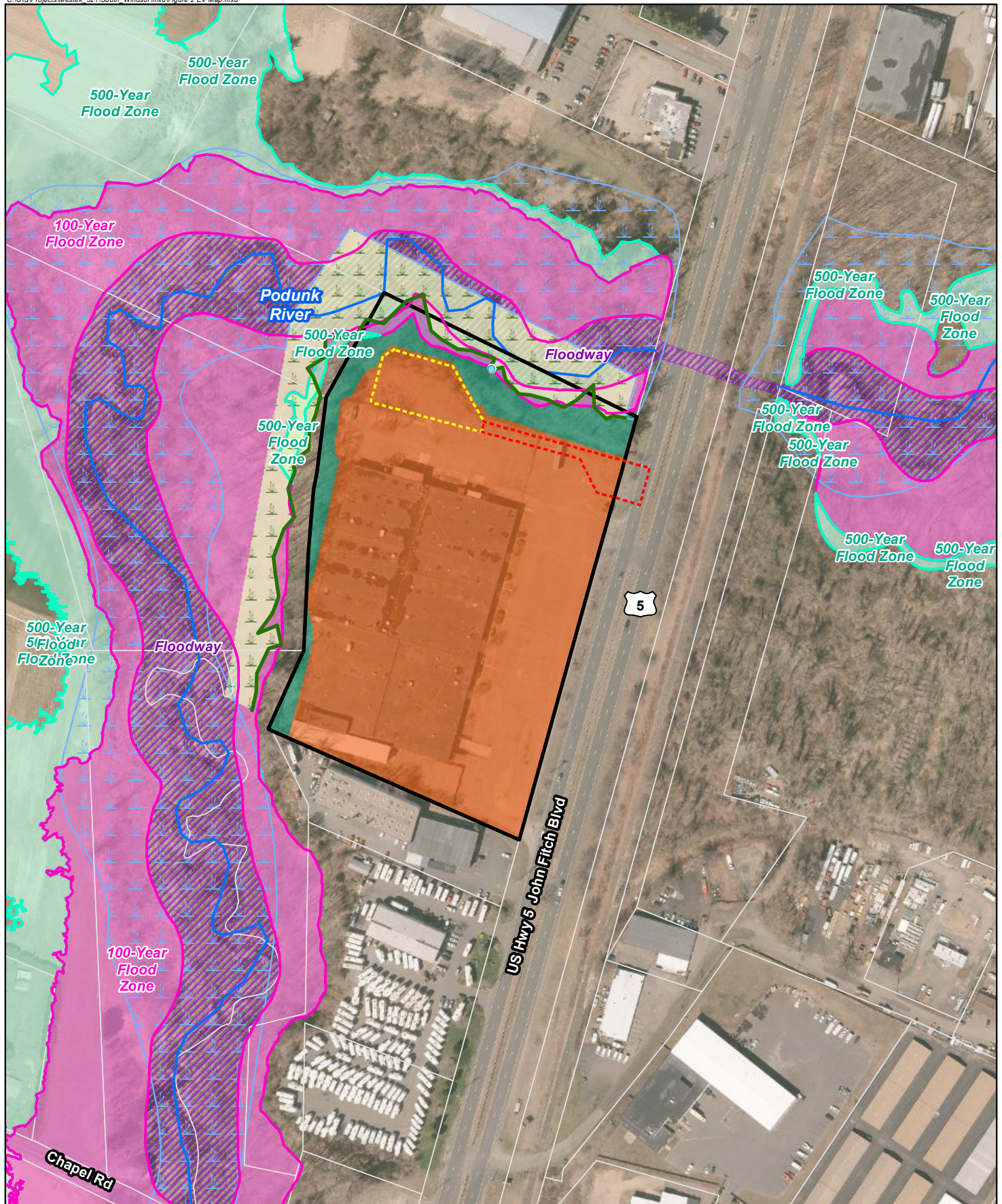
The Subject Parcel is bordered by John Fitch Boulevard (US Route 5) to the east, undeveloped land to the north and west, and a commercial business specializing in recreational vehicle sales to the south. The Podunk River flows in a westerly direction beyond the northern border of the Subject Parcel before turning south. The nearest residence to the Site is located approximately 0.25 miles to the northeast, at 245 Pleasant Valley Road.

Site Access

Access to the Site is gained via curb cuts from John Fitch Boulevard (US Route 5) that lead to an existing fenced paved parking area with an access gate.

Wetlands and Watercourses

Dean Gustafson, a Connecticut registered Professional Soil Scientist with APT, conducted an inspection of the Subject Parcel on May 6, 2017, to determine the presence or absence of wetlands and watercourses within approximately 200 feet of the Site. The delineation methodology followed was consistent with both the Connecticut Inland Wetlands and Watercourses Act (IWWA) and the Corps of Engineers *Wetland Delineation Manual* (1987) and the *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, Version 2.0* (January 2012). A copy of the Wetlands Report is provided in Appendix A.



Legend

- | | | |
|--|---|---|
| <ul style="list-style-type: none"> --- Proposed Fuel Cell Energy Layout --- Proposed Underground Utility Interconnections □ Subject Property □ Approximate Assessor Parcel Boundary (CTDEEP) — Delineated Wetland Boundary — Delineated Wetland Area | <p>Habitat</p> <ul style="list-style-type: none"> Developed (+/-9.4 acres) Undeveloped (+/-2 acres) CTDEEP Watercourse CTDEEP Wetland Area | <p>FEMA Flood Zones</p> <ul style="list-style-type: none"> 100-Year Flood Zone 500-Year Flood Zone Floodway |
|--|---|---|

Map Notes:
 Base Map Source: CTECO 2016 Aerial Photograph
 Map Scale: 1 inch = 250 feet
 Map Date: June 2017



**Figure 2
Environmental Resources Map**

Proposed Fuel Cell
 515 John Fitch Boulevard
 South Windsor, Connecticut



The nearest wetland resource to the Site is a narrow floodplain riparian wetland system associated with the Podunk River, which extends onto northern portions of the Subject Parcel. It is located approximately 50 feet north of the proposed Site at its nearest point. The Podunk River and its broader wetland areas are located off-site farther to the north and west. The Podunk River is subject to direct stormwater discharges from John Fitch Boulevard (US Route 5) and surrounding commercial/industrial properties, including the Subject Parcel. A stormwater outfall originating on the Subject Parcel is located along the southern bank of the river along the north property boundary, which was found to have caved in some time ago. Both the headwall (located along the riverbank) and several sections of concrete pipe were found collapsed due to historic erosion that had undermined the soils previously supporting these sections. At the time of the wetland inspection, it appears that the erosion and resulting collapsed pipes had generally stabilized, although it has resulted in the remaining intact stormwater pipe daylighting ± 10 feet above the bottom of an eroded channel that now leads out to the river. The eroded channel has inadvertently created a quasi-plunge pool.

Soils encompassing the Site and surrounding area were field classified as upland soil units Udorthents and Windsor loamy sand, generally consistent with digitally available soil survey information obtained from the Natural Resources Conservation Service ("NRCS").² Udorthents is a miscellaneous land type used to denote moderately well to excessively drained earthen material that has been so disturbed by cutting, filling, or grading that the original soil profile can no longer be discerned. The Windsor series consists of very deep, excessively drained soils formed in sandy glacial outwash. They are nearly level to very steep soils on glaciofluvial landforms.

Vegetation and Wildlife

Over 90 percent of the Subject Parcel is developed with a large industrial building and pavement. The highly developed nature of the Subject Parcel combined with the presence of John Fitch Boulevard (Route 5) to the east and commercial development to the south limits wildlife use as a travel or migratory corridor.

Undeveloped forest and the Podunk River to the north and west of the Site offer habitat for songbirds that likely favor edge habitats and suburban areas. Avian species likely to be present include species habituated to a high level of human activity, including blue jay (*Cyanocitta cristata*), American crow (*Corvus brachyrhynchos*), robin (*Turdus migratorius*), black capped chickadee (*Poecile atricapillus*), hairy woodpecker (*Picoides villosus*), vireo (*Vireo spp.*), northern cardinal (*Cardinalis cardinalis*), catbird (*Dumetella carolinensis*), house sparrow (*Passer domesticus*), and tufted titmouse (*Baeolophus bicolor*), among others.

Since the surrounding forested areas are fragmented and separated from other natural areas by major roads, agricultural fields, and development, wildlife usage by larger species would also be limited. Generalist wildlife species that are tolerant of human disturbance would be expected.

² NRCS Web Soil Survey, <http://websoilsurvey.nrcs.usda.gov/app/>, accessed on September 9, 2013.

Larger mammals and other species that require large blocks of un-fragmented habitats are not likely to utilize the Site to any appreciable degree. Species such as raccoon (*Procyon lotor*), striped skunk (*Mephitis mephitis*), grey squirrel (*Sciurus carolinensis*), Virginia opossum (*Didelphus virginiana*), eastern chipmunk (*Tamias striatus*), and white-tailed deer (*Odocoileus virginianus*) are among the mammals that likely use forested habitat adjacent to the Site.

Rare Species

APT submitted requests to the CTDEEP's Natural Diversity Data Base ("NDDB") program and US Fish and Wildlife Service ("USFWS"), which included a description of the Project, Site plans, photographs, and recent mapping. No responses have been received from either agency to date. Copies of these submissions are provided in Appendix B, Agency Correspondence.

CTDEEP's Natural Diversity Data Base ("NDDB") program performs hundreds of environmental reviews each year to determine the impact of proposed development projects on state listed species and to help landowners conserve the state's biodiversity. State agencies are required to ensure that any activity authorized, funded or performed by a state agency does not threaten the continued existence of endangered or threatened species. Maps have been developed to serve as a pre-screening tool to help applicants determine if there is a potential impact to state listed species.

The NDDB maps represent approximate locations of endangered, threatened and special concern species and significant natural communities in Connecticut. The locations of species and natural communities depicted on the maps are based on data collected over the years by CTDEEP staff, scientists, conservation groups, and landowners. In some cases, an occurrence represents a location derived from literature, museum records and/or specimens. These data are compiled and maintained in the NDDB. The general locations of species and communities are symbolized as shaded (or cross-hatched) areas on the maps. Exact locations have been masked to protect sensitive species from collection and disturbance and to protect landowner's rights whenever species occur on private property.

APT reviewed the most recent CTDEEP NDDB mapping (June 2017) to determine if any Threatened, Endangered, or Special Concern species or critical habitats occur at or within the vicinity of the Subject Parcel. A shaded area encompasses a portion of the Subject Parcel, including the Site.

Similarly, APT conducted a desk-top evaluation with respect to potential federally-listed threatened or endangered species through the USFWS's Information, Planning, and Conservation System ("IPaC")³ and in conformance with the USFWS New England Field Office's Endangered Species Consultation policy⁴. Two (2) federally-listed⁵ threatened species are

³ IPaC Consultation Tracking Number: 05E1NE00-2017-SLI-1629, dated May 24, 2017

⁴ https://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm

⁵ Listing under the federal Endangered Species Act

known to occur in the vicinity of the Subject Parcel. Please note that these species were **not** identified on the Subject Parcel or specifically within the Site area under consideration herein.

Northern Long-eared Bat

The northern long-eared bat ("NLEB"; *Myotis septentrionalis*) is a medium-sized bat with a body length of 3 to 3.7 inches but a wingspan of 9 to 10 inches. Their fur color can be medium to dark brown on the back and tawny to pale-brown on the underside. As its name suggests, this bat is distinguished by its long ears. The range of the NLEB encompasses the entire State of Connecticut. Suitable NLEB roost habitat includes trees (live, dying, dead, or snag) with a diameter at breast height ("DBH") of three (3) inches or greater.

Dwarf Wedgemussel

The dwarf wedgemussel (*Alasmidonta heterodon*) is a small (shell rarely exceeds 1.5 inches) freshwater mussel occurring on muddy sand, sand, and gravel bottoms in creeks and rivers of varying sizes, in areas of slow to moderate current and little silt deposition.⁶ Threats to dwarf wedge mussel include: impoundment of waterways, siltation, pollution, land use changes and geographic isolation resulting in genetic bottlenecks. According to The Dwarf Wedgemussel Waters of Connecticut Map (USFWS, August 27, 2007)⁷, a segment of the Podunk River is known to support dwarf wedgemussel, including the stretch located along the Subject Parcel's northern boundary and adjacent areas.

Water Supply Areas

There are no public water supply wells within a 0.5-mile radius of the Site. The Subject Parcel is not located within an Aquifer Protection Area. Properties in the vicinity of the Subject Parcel are supplied potable water by the Metropolitan Water District ("MDC") via the local water distribution system that extends along John Fitch Boulevard (US Route 5). No private water supply wells are known to exist on the Subject Parcel or in the immediate area.

Water Quality

Groundwater beneath the Site and within the majority of the Subject Parcel has been classified as "GA."

A "GA" classification indicates groundwater within the area is presumed to be suitable for human consumption without treatment. Designated uses in GA-classified areas include existing private and potential public or private supplies of drinking water and base flow for hydraulically-connected surface water bodies.

The groundwater beneath the southern portion of the Subject Parcel is classified by CTDEEP as "GA, GAA may not meet current standards".

⁶ United States, U.S. Fish and Wildlife Service, Northeast Region, Dwarf Wedge Mussel Recovery Plan (Hadley: Region Five, 1993)

⁷ https://www.fws.gov/newengland/pdfs/CT_DWM.pdf

A "GA/GAA" classification indicates groundwater within the area is presumed to be suitable for human consumption without treatment and may represent a potential public drinking water supply. Designated uses in GA/GAA-classified areas include existing private and potential public or private supplies of drinking water and base flow for hydraulically-connected surface water bodies. The groundwater in the mapped area does not currently meet the GA/GAA standards. Based upon review of publicly available information, an abutting property at the corner of Chapel Road and John Fitch Boulevard has had subsurface contamination as a result of release incidents involving chlorinated volatile organic compounds ("VOCs"). This condition has likely contributed to the "GA, GAA may not meet current standards" groundwater classification beneath the Site.

The Subject Parcel and Site are located within the Connecticut Main Stem Regional Drainage Basin and in the Podunk River Sub-Regional Basin. The Podunk River meanders through the northern portion of the Subject Parcel in a westerly direction. The Podunk River then continues west off the Subject Parcel before turning south and continuing its route to the Connecticut River.

Surface water within the general area of the Site has been classified as "A" (Podunk River) or "B" (Connecticut River).

"Class A" designated uses are habitat for fish and other aquatic life and wildlife; potential drinking water supplies; recreation; navigation; and water supply for industry and agriculture.

"Class B" designated uses are habitat for fish and aquatic life and wildlife; recreation; navigation; and industrial and agricultural water supply.

Scenic Areas

Based on information contained in the Town of South Windsor's 2013 Plan of Conservation and Development, the preservation of scenic areas and scenic views is encouraged, however, no specific areas or viewsheds are identified. Main Street, located approximately 2,500 feet to the west, is the only locally-designated scenic road in South Windsor. No State-designated scenic roads are located within South Windsor or proximate to the Site.

Historic and Archaeological Resources

APT reviewed information at the State Historic Preservation Office to determine whether the Site holds potential historic and/or architectural significance. Records indicate that one reported archaeological site and one old state archaeological site may have existed within the proposed area of disturbance.

The nearest historic resources proximate to the Site are the Windsor Farms Historic District (its eastern boundary is located approximately 540 feet west of the Site) and the Elmore Houses at

78 and 87 Long Hill Road, over 1.2 miles to the southeast. These resources are listed on the National Register of Historic Places; a very small section of the Windsor Farms Historic District that is not listed nationally is recognized by the Town as a Local Historic District.

Natural Resources

Bedrock in the vicinity of the Subject Parcel and Site is identified as Portland Arkose of the Lower Jurassic Formation. Portland Arkose is described as a reddish-brown to maroon micaceous arkose and siltstone and red to black fissile silty shale. No exposed bedrock was observed at the Site or on the Subject Parcel. A majority of the Subject Parcel and Site has been developed since the 1960s, and therefore surficial materials have been heavily disturbed and are presently covered with an existing structure and pavement. A small portion of the northern section of the Subject Parcel remains undeveloped near the Podunk River. Soils in the vicinity of the Site are identified as Urban Land with Limerick and Lim soils present north of the Site along the northern border of the Subject Parcel.

Floodplain Areas

APT reviewed the United States Federal Emergency Management Agency ("FEMA") Flood Insurance Rate Map ("FIRM") for the area. A FIRM is the official map of a community on which FEMA has delineated both the special hazard areas and risk premium zones applicable to the community. Based on this review, the Site is located outside of the 100-year and 500-year floodplains within a designated Zone X, which is defined as an area of minimal flooding. A small portion of the Subject Property is within the 100-year floodplain and floodway and 500-year floodplain (*FIRM PANEL #09003C0378F, dated September 26, 2008*). See *Figure 2, Environmental Resources Map*.

Recreational Areas

There are no recreational areas directly abutting the Subject Parcel. The nearest recreational area, Veterans Memorial Park located at 575 Pleasant Valley Road, South Windsor, CT, is located approximately 623 feet to the east of the Site across John Fitch Boulevard (US Route 5).

Seismic Areas

The USGS-National Earthquake Reduction Program has developed a series of maps that depict the estimated probability that certain levels of ground shaking from an earthquake will occur within a given period of time. USGS takes into account the seismic history of an area and the expected decrease in intensity with distance from the epicenter. Based on a review of USGS National Earthquake Reduction Program maps and information obtained by the Weston (MA) Observatory (a geophysical research laboratory), there are no significant seismic areas located at the Subject Parcel or in the general region.

Noise

The Subject Parcel is occupied by an existing commercial building (currently vacant) with paved parking areas. Contributing factors for noise generation in the area are traffic noises generated from the adjacent John Fitch Boulevard highway corridor and surrounding businesses. Based on Site data collected on June 5, 2017 for a Noise Study report (prepared by HMB Acoustics, LLC, dated June 30, 2017), the existing background noise levels in the surrounding area range from 40 dBA to 45 dBA. On the East side of the Subject Parcel, fronting John Fitch Boulevard, existing noise levels were 50 dBA to 55 dBA due to vehicular traffic.

A copy of the HMB Noise Study is provided in Appendix C.

Lighting

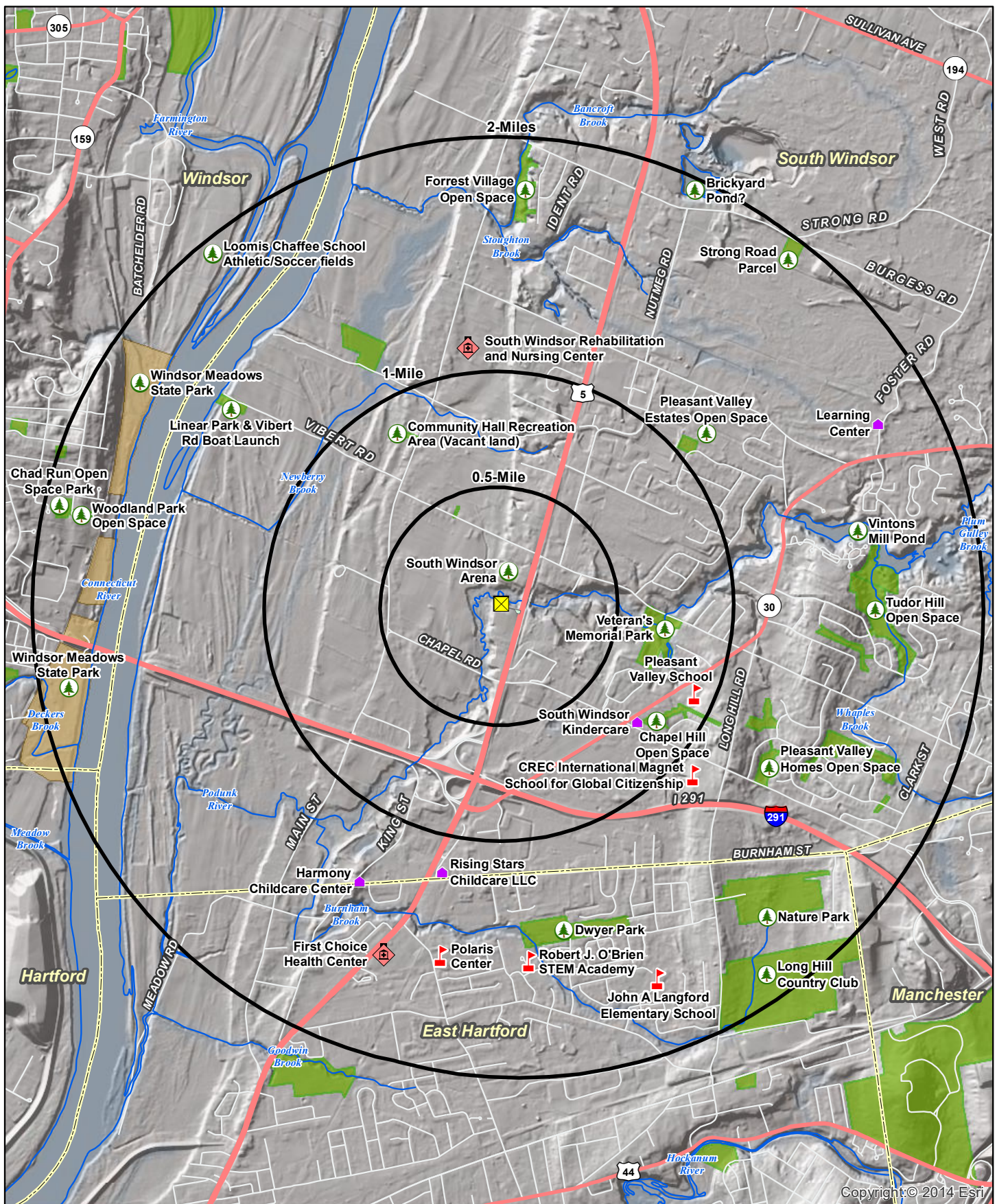
No lighting facilities are currently located at the Site. The general area is developed with commercial/industrial businesses. Street illumination and security lighting associated with existing industry are present throughout the general area.

Coastal Zone Management Areas

The Town of South Windsor is not located within the Coastal Area or Coastal Boundary, as defined by the Coastal Management Act, CGS § 22a-94(a).

Other Surrounding Features

Figure 3, *Surrounding Features Map* depicts the locations of non-residential development and other resources in the general vicinity of the Site.



Legend

- Site
- 0.5-2-Mile Radii
- Site_Area
- Municipal and Private Open Space
- State Forest/Park
- Municipal Boundary
- Day Care
- Health Care
- Park/Recreation
- School



3,000 1,500 0 3,000 Feet

Base Map Source: ESRI & CTECO Shaded Relief
Map Scale: 1 in = 3,000 ft Map Date: June 2017

Figure 3 Surrounding Features Map

Proposed Fuel Cell
515 John Fitch Boulevard
South Windsor, Connecticut



ALL-POINTS
TECHNOLOGY CORPORATION

Effects on the Environment

The purpose of this section is to describe future conditions on the Subject Parcel with the development of the Fuel Cell Project. The Fuel Cell Project would not have any long-term adverse effects on the existing environment and ecology, nor would it affect the scenic, historic, and recreational values of the vicinity. A *Proposed Conditions Map* is included as Figure 4.

Proposed Fuel Cell Project Development

When developed, the ± 0.5 -acre Site will include a $\pm 12,400$ -square-foot facility including twin 2.8 MW Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads within an existing fenced and gated portion of the Subject Parcel. The system will be fueled by natural gas with new natural gas and electrical utilities brought to the facility from John Fitch Boulevard (US Route 5).

Each fuel cell generation system will include two fuel cell modules, main process components, electric balancing system, and water treatment unit. The fuel cell generators will have their own desulphurization systems and system switch gears, both also located within the compound. The system will be fueled by natural gas, which is available to the Site from John Fitch Boulevard. A fuel cell switching gear will be located southeast of the fuel cells within a separate fenced compound area.

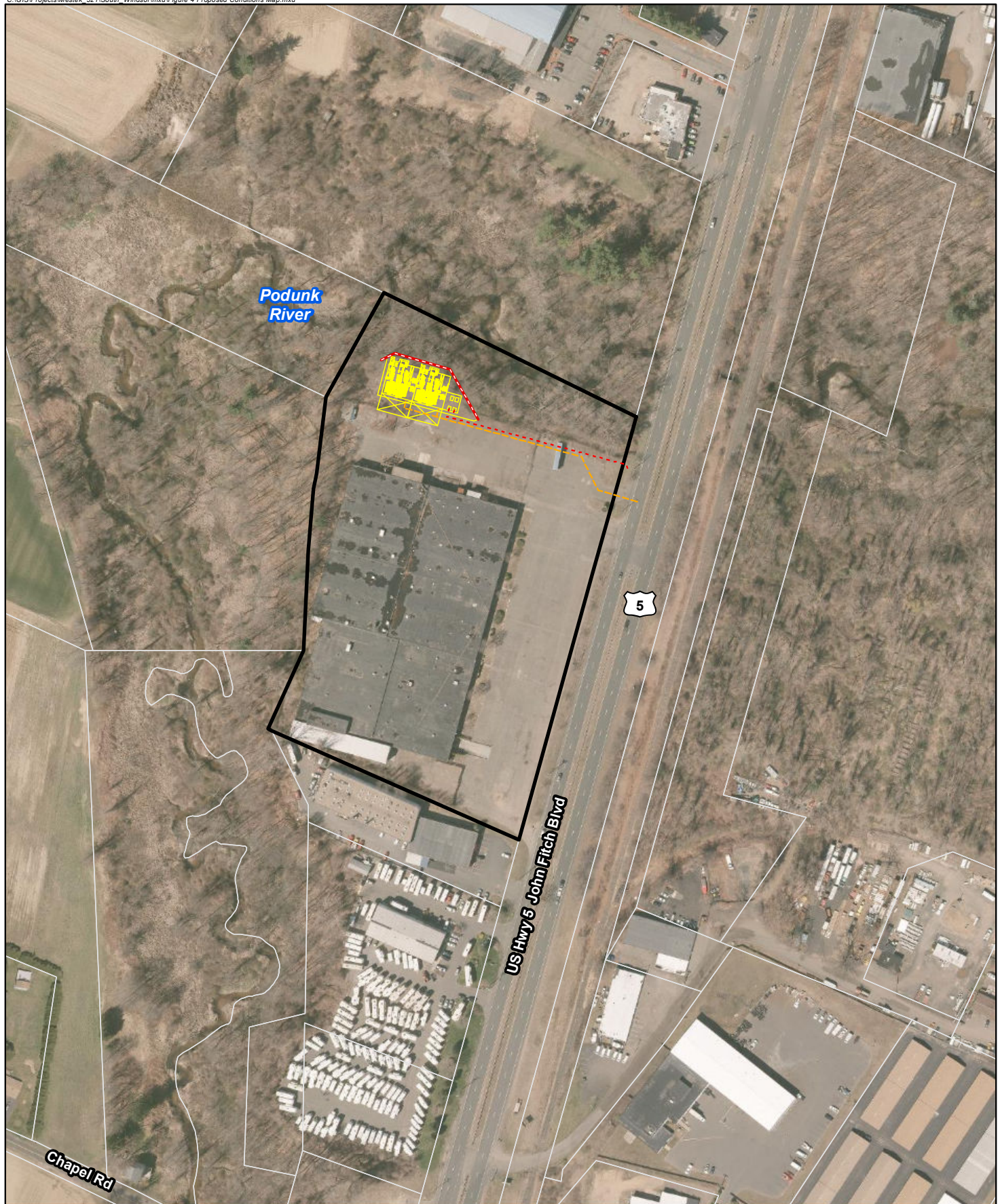
The proposed development of the Fuel Cell Project would not have any long-term adverse effects on the existing environment and ecology, nor would it affect the scenic, historic and recreational values of the vicinity.

Public Health and Safety

The Fuel Cell Project would be designed to applicable industry, State, and local codes and standards, and would not pose a safety concern or create undue hazard to the general public. The fuel cell facility would not consume any raw materials, would not produce any by-products and would be unmanned during normal operating conditions. Applicable signage would be installed alerting the general public of the dangers of high voltage associated with the Fuel Cell Project, as well as an eight-foot-tall chain-link fence. There are no plans to store fuels or hazardous materials at the facility.

Local, State, and Federal Land Use Plans

The Fuel Cell Project is consistent with local, State, and federal land use plans. The Fuel Cell Project is not located within an Aquifer Protection Zone, and it supports the State's energy policy by developing a renewable energy resource while not having a substantial adverse environmental effect. Although local land use application processes do not specifically apply to



Legend

- Subject Property
- Proposed Fuel Cell Energy Layout
- Proposed Underground Electrical Line
- Proposed Underground Gas Line
- Proposed Silt Fence
- Approximate Assessor Parcel Boundary (CTDEEP)

Map Notes:
 Base Map Source: CTECO 2016 Aerial Photograph
 Map Scale: 1 inch = 250 feet
 Map Date: June 2017

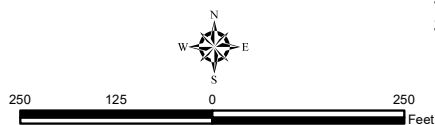


Figure 4 Proposed Conditions Map

Proposed Fuel Cell
 515 John Fitch Boulevard
 South Windsor, Connecticut



the Fuel Cell Project, it has been designed to meet the intent of local land use regulations. According to the Town of South Windsor Zoning Regulations, the Property lies within an "I" Industrial Zone, a designation specifically intended to accommodate industrial uses, including power plants.

Pursuant to Section 4.5 of the South Windsor Zoning Regulations, the Fuel Cell Project would constitute a *well-planned, functional, and aesthetically-pleasing environment for a prosperous industrial community; and which, by design, are compatible with abutting zones and uses.*

Existing and Future Development

The Fuel Cell Project would benefit the community by serving as an economic driver for future development opportunities. The net benefit is improved electrical service in the Town through enhanced capacity.

Roads

Access to the Site will be via an existing entrance and parking areas on the Subject Parcel that originate east off John Fitch Boulevard (US Route 5).

Wetlands

The Project would be located ± 53 feet from the nearest wetland area with the edge of gravel yard located ± 45 feet from wetlands. Due to the Project's relatively close proximity to wetlands, a wetland protection plan is recommended. The wetland protection plan would consist of several components: use of appropriate erosion control measures to control and contain erosion while avoiding/minimizing wildlife entanglement; periodic inspection and maintenance of erosion control measures; education of all contractors and sub-contractors prior to initiation of work on the site on the environmentally sensitive nature of nearby resources; protective measures; and, reporting. The Wetland Protection Plan is included in Appendix D.

Wildlife and Vegetation

The proposed Fuel Cell Project is located within existing developed areas generally void of vegetation associated with the paved parking area of the existing commercial structure.

Considering that the Site is extensively developed and surrounded by a relatively high level of human activity, wildlife habitat will not be significantly affected by the Project.

Rare Species

A NDDB review request has been submitted to CTDEEP to determine if the proposed Fuel Cell Project would affect any State-listed species. CTDEEP's response has not been received as of the date of this report; NDDB review response correspondence will be forwarded upon receipt.

Two federally-listed⁸ threatened species are known to occur in the vicinity of the Subject Parcel. In accordance with USFWS New England Field Office's Section 7 consultation policy, APT evaluated the Subject Parcel habitat to determine whether it is suitable for northern long-eared bat and dwarf wedgemussel. The findings of this evaluation are summarized below and documented in the USFWS Section 7 Consultation submittal, provided in Appendix B, Agency Correspondence.

Northern Long-eared Bat

The proposed Facility would be located within an existing developed and paved area that is not anticipated to result in any forest clearing. In addition, consultation with the CTDEEP NDDB revealed that the Site is neither within 150 feet of a known occupied maternity roost tree nor within 0.25 mile of a known NLEB hibernaculum. The nearest NLEB habitat resource to the Site is located in Granby, ±11 miles to the northwest. Therefore, the Project is not likely to adversely affect NLEB.

Dwarf Wedgemussel

A segment of the Podunk River is known to support dwarf wedgemussel, including the stretch located along the Subject Parcel's northern boundary near the Site. Conservation measures will be implemented during construction to avoid potential impact to dwarf wedgemussel, including adherence to the CTDEEP 2002 Connecticut Guidelines for Soil Erosion and Sediment Control and implementation of the aforementioned Wetland Protection Plan. Once completed, Site stormwater would be treated in general accordance with the CTDEEP 2004 Connecticut Stormwater Quality Manual to minimize possible impacts to the Podunk River and its surrounding wetlands.

Water Supply Areas

There are no public water supply wells located in the vicinity of the Site. Potable water is supplied to properties within the Site vicinity by the local MDC distribution system. No additional liquid fuels are associated with the Fuel Cell Project. Based on these design considerations, the Fuel Cell Project would have no adverse environmental effect on any water resources.

⁸ Listing under the federal Endangered Species Act

Water Quality

The fuel cell facility will be unmanned and no potable water uses are planned. The fuel cells do require a reliable and stable water supply for operations. Water consumption associated with the Fuel Cell Project will be made available through the MDC local water supply system and provided via existing lines beneath John Fitch Boulevard (US Route 5).

During full power operation, the overall water consumption associated with a Fuel Cell Energy DFC3000 fuel cell is estimated at approximately 13,000 gallons/day. The unit only consumes water while it is filling its water storage tank. When the tank is full, the facility does not draw any water, except when the system is back flushing. While filling the tank, the power plant typically draws about 12 gallons per minute ("gpm"). During this same time, it is discharging water at about 6 gpm.

Average wastewater discharge from the water treatment system is approximately 6,500 gallons/day assuming full power operation. Mestek has coordinated with the Town of South Windsor to tie into the sewer system that extends beneath John Fitch Boulevard east of the Site. The system also periodically back flushes to recharge some of the water treatment components. During the back-flushing process, the unit can draw and discharge up to 30 gpm. Backwash discharges from the system, comprised of the water supply along with any suspended matter removed from the pretreated water, will also be discharged directly to the sanitary sewer system.

The proposed development activities all take place within a previously disturbed (asphalt paved) area. The construction of the proposed development will require a portion of the existing pavement to be removed for the installation of the concrete pads to support the facilities; and upon completion, the area between the concrete pads and existing pavement would be replaced with gravel. As such, the existing drainage patterns will not be altered and the post-development peak discharge rate will be equal or slightly less than the pre-development, thus not requiring the need for a stormwater management plan. Erosion and sedimentation control measures, consistent with the *2002 Connecticut Guidelines for Erosion and Sedimentation Control* (2002 Guidelines) have been included in the Project design.

Air Quality

The only emissions source associated with the Fuel Cell Project will be two custom-modified FuelCell Energy DFC3000 direct fuel cells, using the molten carbonate fuel cell technology to produce electricity from hydrogen that is directly generated from natural gas. Because there is no combusting of fuel, virtually no harmful emissions are generated by the fuel cells. This results in power production that is almost entirely absent of nitrogen oxide, sulfur dioxide, particulate matter carbon monoxide ("CO"), and volatile organic compounds VOCs, which are emitted in significantly higher amounts by conventional fossil fuel-fired power plants on an equivalent electricity output basis. The modified fuel cells also have a low carbon footprint.

Fuel cells operating on natural gas generally release less CO₂ than combustion-based power generation due to the high efficiency of the fuel cell power generation process.

The proposed Fuel Cell Project was reviewed for applicability of and compliance with EPA and CTDEEP regulations for permitting and control of air pollutant emissions from stationary sources. Based on estimated potential emission levels, the Fuel Cell Project will not be classified as a Major Stationary Source with respect to Prevention of Significant Deterioration (PSD) or nonattainment New Source Review regulations, nor will it trigger CTDEEP minor source permitting regulations. The Fuel Cell Project will not be in any of the listed source categories under EPA New Source Performance Standards (NSPS – 40 CFR Part 60), it will not emit any of the pollutants or fall under any of the source categories regulated by National Emissions Standards for Hazardous Air Pollutants (NESHAP – 40 CFR Part 61) and will not be classified as a new or existing Major Stationary Source of HAPs or otherwise be subject to any of the NESHAPs for Source Categories (40 CFR Part 63). Additionally, the Fuel Cell Project will not trigger any requirements under the EPA Acid Rain Program or Mandatory Greenhouse Gas Reporting requirements. Based on a review of potentially-applicable CTDEEP air pollution regulations, the Fuel Cell Project will only be subject to generally-applicable regulations that limit visible and odorous emissions at the Subject Parcel boundaries. Based on the nature of proposed operations, the Fuel Cell Project is not expected to cause visible or odorous emissions at the Subject Parcel boundaries.

Scenic Areas

No scenic areas would be physically or visually impacted by development of the Fuel Cell Project. No views of the Fuel Cell Project would be achievable from along portions of Main Street, South Windsor's lone locally-designated scenic road.

Historic and Archaeological Resources

Records indicate that one reported archaeological site and one old state archaeological site may have existed within the proposed area of the Site. Because the proposed fuel cell site is located at an address that has been substantially developed since the 1960s and disturbed through excavations and paving during previous construction activities, no intact soils remain in this area. Therefore, it is unlikely that this area retains potential to yield intact prehistoric or historic period cultural deposits.

The nearest historic resources proximate to the Site, the Windsor Farms Historic District could have seasonal views of at least a portion of the Fuel Cell Project during leaf-off conditions. However, this area is occupied by cultivated agricultural fields. The Elmore Houses located at 78 and 87 Long Hill Road, South Windsor, would not have any views of the Fuel Cell Project.

A review request has been submitted to the State Historic Preservation Office ("SHPO") for confirmation of this opinion. The SHPO's response had not been received as of the date of this report but will be forwarded upon receipt.

Natural Resources

No adverse effects are anticipated on natural resources occurring at and/or nearby the Subject Parcel. No tree removal is anticipated for the construction of the Fuel Cell Project, but some trees may need to be pruned in order to maintain safe separation distances or to accommodate construction equipment. Minor earthwork is required for construction of the Fuel Cell Project, however, no impacts to wetlands, water courses or significant habitat would occur.

Floodplain Areas

The Site is located entirely outside of the 100-year and 500-year floodplains. Therefore, no special design elements are necessary with respect to flooding concerns.

Recreational Areas

No recreational areas would be impacted by the Fuel Cell Project.

Seismic Areas

The Fuel Cell Project would meet or exceed the State Building Code, which includes seismic loading, wind loading, and snow and ice loadings, among others.

Noise

According to the Town of South Windsor Zoning classifications, the abutting property to the south and those located across the street to the east are classified as Commercial zones; western and northern abutters would be considered Residential zones. After the Fuel Cell Project is constructed and in service, the combined noise level at the property lines would not exceed 45 dB, which is below the noise level criteria from an Industrial Emitter to a Commercial Zone (66 dBA) and Residential Zone (61 dBA daytime 51 dBA nighttime) as established by the South Windsor Noise Control regulations (*South Windsor Code, Article III, §§ 50-61 through 50-69*) and the CTDEEP Noise Zone Standards, §22a-69-3.5. Therefore, the Project would not have any substantial effect on existing noise levels emanating from the Subject Parcel today.

The Noise Study prepared by HMB Acoustics is attached to the Petition as Appendix C.

Lighting

The fuel cell facility would have low-level lighting for safety and security purposes. These lights would be recessed or activated manually to minimize visual effects at night. No existing residences are located in the vicinity of the Site. Additional lighting capability would exist in the compound to allow for work at night under abnormal or emergency conditions.

Coastal Zone Management Areas

No Coastal Zone Management Areas would be affected by the Fuel Cell Project.

Other Surrounding Features

No adverse effects are anticipated to the facilities identified in Figure 3, primarily because of their sufficient distance from the Fuel Cell Project and/or the presence of the existing transportation and utility infrastructure corridor.

Visibility

Once completed, the Fuel Cell Project would not be highly visible from public locations. Its location in the northwest portion of the Subject Parcel offers limited direct lines of sight into the Site.

Partial views would occur from John Fitch Boulevard (US Route 5) near the Subject Parcel's entrance. No residences would have views of the Project. The nearest home is located approximately 0.25 mile to the northeast, at 245 Pleasant Valley Road, with commercial structures and forested land separating the two properties.

Photographs of existing conditions and corresponding depictions of the Fuel Cell Project are presented in Appendix E, Photo-simulations. The locations depicted represent the general extent of visibility into the Site from publicly accessible areas.

Conclusion

As demonstrated from in this EA, the Fuel Cell Project will not have a substantial adverse effect on the environmental. Additionally, the Fuel Cell Project will comply with CTDEEP air and water quality standards. Therefore, it is our opinion that no Certificate of Environmental Compatibility and Public Need is required.

Appendix A:

Wetlands Report



WETLAND INSPECTION

June 8, 2017

APT Project No.: CT521100

Prepared For: Mestek, Inc.
260 North Elm Street
Westfield, MA 01085
Attn: Mr. Steven F. Olearcek

Site Address: 515 John Fitch Boulevard
South Windsor, Connecticut

Date(s) of Investigation: 5/6/2017

Field Conditions: **Weather:** sunny, mid 60's
Soil Moisture: dry to moist

Wetland/Watercourse Delineation Methodology*:

- ☒ Connecticut Inland Wetlands and Watercourses
- ☐ Connecticut Tidal Wetlands
- ☐ Massachusetts Wetlands
- ☒ U.S. Army Corps of Engineers

Municipal Upland Review Area/Buffer Zone:

Wetlands: 80 feet
Watercourses: 80 feet

The wetlands inspection was performed by[†]:

Dean Gustafson, Professional Soil Scientist

Enclosures: Wetland Delineation Field Form & Wetland Inspection Map

This report is provided as a brief summary of findings from APT's wetland investigation of the referenced subject property.[‡]

* Wetlands and watercourses were delineated in accordance with applicable local, state and federal statutes, regulations and guidance.

† All established wetlands boundary lines are subject to change until officially adopted by local, state, or federal regulatory agencies.

‡ APT has relied upon the accuracy of information provided by Mestek, Inc. regarding the subject property and project locations for identifying wetlands and watercourses within the study area.

Attachments

- Wetland Delineation Field Form
- Wetland Inspection Map

Wetland Delineation Field Form

Wetland I.D.:	Wetland 1	
Flag #'s:	WF 1-01 to 1-50	
Flag Location Method:	Site Sketch <input checked="" type="checkbox"/>	GPS (sub-meter) located <input checked="" type="checkbox"/>

WETLAND HYDROLOGY:

NONTIDAL ☒

Intermittently Flooded <input type="checkbox"/>	Artificially Flooded <input type="checkbox"/>	Permanently Flooded <input type="checkbox"/>
Semipermanently Flooded <input type="checkbox"/>	Seasonally Flooded <input checked="" type="checkbox"/>	Temporarily Flooded <input type="checkbox"/>
Permanently Saturated <input type="checkbox"/>	Seasonally Saturated – seepage <input type="checkbox"/>	Seasonally Saturated - perched <input type="checkbox"/>
Comments: Wetland 1 is a floodplain riparian wetland system associated with the Podunk River.		

TIDAL ☐

Subtidal <input type="checkbox"/>	Regularly Flooded <input type="checkbox"/>	Irregularly Flooded <input type="checkbox"/>
Irregularly Flooded <input type="checkbox"/>		
Comments: None		

WETLAND TYPE:

SYSTEM:

Estuarine <input type="checkbox"/>	Riverine <input type="checkbox"/>	Palustrine <input checked="" type="checkbox"/>
Lacustrine <input type="checkbox"/>	Marine <input type="checkbox"/>	
Comments: None		

CLASS:

Emergent <input type="checkbox"/>	Scrub-shrub <input type="checkbox"/>	Forested <input checked="" type="checkbox"/>
Open Water <input checked="" type="checkbox"/>	Disturbed <input type="checkbox"/>	Wet Meadow <input type="checkbox"/>
Comments: None		

WATERCOURSE TYPE:

Perennial <input checked="" type="checkbox"/>	Intermittent <input type="checkbox"/>	Tidal <input type="checkbox"/>
Watercourse Name: Podunk River		
Comments: None		

Wetland Delineation Field Form (Cont.)

SPECIAL AQUATIC HABITAT:

Vernal Pool Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Potential <input type="checkbox"/>	Other <input type="checkbox"/>
Vernal Pool Habitat Type: None	
Comments: None	

SOILS:

Are field identified soils consistent with NRCS mapped soils?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If no, describe field identified soils		

DOMINANT PLANTS:

Red Maple (<i>Acer rubrum</i>)	Eastern Cottonwood (<i>Populus deltoides</i>)
American Elm (<i>Ulmus americana</i>)	Spicebush (<i>Lindera benzoin</i>)
Asiatic Bittersweet* (<i>Celastrus orbiculatus</i>)	Multiflora Rose* (<i>Rosa multiflora</i>)
Jewelweed (<i>Impatiens capensis</i>)	Garlic Mustard* (<i>Alliaria petiolata</i>)
Sensitive Fern (<i>Onoclea sensibilis</i>)	Skunk Cabbage (<i>Symplocarpus foetidus</i>)

* denotes Connecticut Invasive Species Council invasive plant species

GENERAL COMMENTS:

The subject parcel is nearly 100% developed with a vacant industrial building (Mesktek, Inc.) and paved parking and storage areas. The subject parcel is bound by John Fitch Boulevard (U.S. Route 5) to the east, undeveloped forested upland and wetland areas and the Podunk River to the north and west and commercial/industrial properties to the south.

One wetland area was identified on and adjacent to the subject property, consisting of a floodplain riparian wetland system associated with the Podunk River. The Podunk River and narrow bordering wetlands are located along the north property boundary of the subject parcel while the river and broader wetland areas are located off-site near the west property boundary. The Podunk River is subject to direct stormwater discharges from Route 5 and surrounding commercial/industrial properties, including the subject property. A stormwater outfall from the subject property is located along the southern bank of the river along the north property boundary, which was found to have collapsed some time ago. Both the headwall (located along the riverbank) and several sections of concrete pipe were found collapsed due to historic erosion which had undermined the soils previously supporting the pipe sections and headwall. At the time of the wetland inspection, it appears that the erosion and resulting collapsed pipes had generally stabilized although it has resulted in the remaining intact stormwater pipe daylighting ± 10 feet above the bottom of the eroded channel that now leads out to the river. The eroded channel has inadvertently created a pseudo plunge pool.

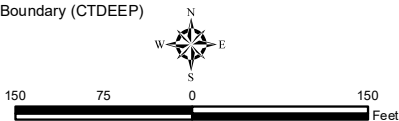
Mestek, Inc. proposes to install a fuel cell facility in the northwest portion of the industrial property. The facility would consist of two Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads surrounded by a gravel compound. Stormwater from the proposed facility would follow existing drainage patterns that flow to a nearby catch basin which discharges directly to the Podunk River to the north through the aforementioned collapsed pipe. Alternatives for proper stormwater management for runoff from the proposed fuel cell facility being considered include an infiltration system (the fuel cell facility will have a gravel yard that removes existing pavement thereby reducing runoff from existing conditions and the underlying glaciofluvial soils are conducive to infiltration) or reconstruction of the collapsed stormwater outfall with installation of a plunge pool (set back from bank of the Podunk River).

If the stormwater infiltration option is pursued, no mature vegetation would be impacted by the proposed project and no direct or indirect impacts to the Podunk River or bordering wetlands would occur as all work would be isolated to existing developed and paved areas. The proposed fuel cell facility would be located ± 53 feet from the nearest wetland area (at wetland flag WF 1-17) with the edge of gravel yard located ± 45 feet from wetlands.

Should the stormwater outfall reconstruction option be pursued, then a road for construction equipment would need to be built in order to access the existing collapsed headwall area. Some trees in uplands located adjacent to the Podunk River riparian wetland system would need to be removed to accommodate this work and minor permanent/temporary impacts would occur to wetlands bordering the Podunk River for construction of the new plunge pool/stormwater outfall.

In either case, erosion control measures would follow the CTDEEP 2002 Connecticut Guidelines for Soil Erosion and Sediment Control and stormwater would be treated in general accordance with the CTDEEP 2004 Connecticut Stormwater Quality Manual to minimize possible impacts to the Podunk River and surrounding wetlands. Due to the project's relatively close proximity to wetlands and the Podunk River, known to support habitat for the dwarf wedgemussel (*Alasmodonta heterodon*), a Federal and State Endangered Species, a wetland protection plan is recommended. The wetland protection plan would consist of several components: use of appropriate erosion control measures to control and contain erosion while avoiding/minimizing wildlife entanglement; periodic inspection and maintenance of erosion control measures; education of all contractors and sub-contractors prior to initiation of work on the site on the environmentally sensitive nature of nearby resources; protective measures; and, reporting.

Map Notes:
Base Map Source: CTECO 2016 Aerial Photograph
Map Scale: 1 inch = 163 feet
Map Date: May 2017



Proposed Fuel Cell
515 John Fitch Boulevard
South Windsor, Connecticut



Appendix B:

Agency Correspondence



Connecticut Department of
Energy & Environmental Protection
Bureau of Natural Resources
Wildlife Division

CPPU USE ONLY

App #: _____

Doc #: _____

Check #: No fee required

Program: Natural Diversity Database
Endangered Species

Hardcopy _____ Electronic _____

Request for Natural Diversity Data Base (NDDB) State Listed Species Review

Please complete this form in accordance with the [instructions](#) (DEEP-INST-007) to ensure proper handling of your request.

There are no fees associated with NDDB Reviews.

Part I: Preliminary Screening & Request Type

Before submitting this request, you must review the most current Natural Diversity Data Base "State and Federal Listed Species and Significant Natural Communities Maps" found on the [DEEP website](#). These maps are updated twice a year, usually in June and December.

Does your site, including all affected areas, fall in an NDDB Area according to the map instructions:

☒ Yes ☐ No Enter the date of the map reviewed for pre-screening: December 2016

This form is being submitted for a :

☒ New NDDB request

☐ Renewal/Extension of a NDDB Request, **without** modifications and within **one year** of issued NDDB determination (no attachments required)

[CPPU Use Only - NDDB-Listed Species Determination # 1736]

☐ New **Safe Harbor Determination** (optional) must be associated with an application for a GP for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities

☐ Renewal/Extension of an existing Safe Harbor Determination
☐ With modifications
☐ Without modifications (no attachments required)

[CPPU Use Only - NDDB-Safe Harbor Determination # 1736]

Enter NDDB Determination Number for Renewal/Extension:

Enter Safe Harbor Determination Number for Renewal/Extension:

Part II: Requester Information

If the requester is a corporation, limited liability company, limited partnership, limited liability partnership, or a statutory trust, it must be registered with the Secretary of State. If applicable, the name shall be stated **exactly as it is registered with the Secretary of State. Please note, for those entities registered with the Secretary of State, the registered name will be the name used by DEEP. This information can be accessed at the Secretary of the State's database CONCORD.*

www.concord-sots.ct.gov/CONCORD/index.jsp

If the requester is an individual, provide the legal name (include suffix) in the following format: First Name; Middle Initial; Last Name; Suffix (Jr, Sr., II, III, etc.).

If there are any changes or corrections to your company/facility or individual mailing or billing address or contact information, please complete and submit the [Request to Change company/Individual Information](#) to the address indicated on the form.

1. Requester*

Company Name: **Mestek, Inc.**

Contact Name: **Steven F. Olearcek**

Address: **260 North Elm Street**

City/Town: **Westfield**

State: **MA**

Zip Code: **01085**

Business Phone: **413-564-5768**

ext.

E-mail: **solearcek@mestek.com

****By providing this email address you are agreeing to receive official correspondence from the department, at this electronic address, concerning this request. Please remember to check your security settings to be sure you can receive emails from "ct.gov" addresses. Also, please notify the department if your e-mail address changes**

a) Requester can best be described as:

☐ Individual ☐ Federal Agency ☐ State agency ☐ Municipality ☐ Tribal

☒ *business entity (* if a business entity complete i through iii):

i) Check type ☒ corporation ☐ limited liability company ☐ limited partnership

☐ limited liability partnership ☐ statutory trust ☐ Other:

ii) Provide Secretary of the State Business ID #: 0294757 This information can be accessed at the Secretary of the State's database (CONCORD). (www.concord-sots.ct.gov/CONCORD/index.jsp)

iii) ☐ Check here if your business is **NOT** registered with the Secretary of State's office.

b) Acting as (Affiliation), pick one:

☐ Property owner ☐ Consultant ☐ Engineer ☐ Facility owner ☒ Applicant

☐ Biologist ☐ Pesticide Applicator ☐ Other representative:

2. List Primary Contact to receive Natural Diversity Data Base correspondence and inquiries, if different from requester.

Company Name: **All-Points Technology Corporation, P.C. (APT)**

Contact Person: **Dean Gustafson**

Title: **Senior Environmental Scientist**

Mailing Address: **3 Saddlebrook Drive**

City/Town: **Killingworth**

State: **CT**

Zip Code: **06419**

Business Phone: **860-663-1697**

ext. **201**

E-mail: **dgustafson@allpointstech.com

Part III: Site Information

This request can only be completed for one site. A separate request must be filed for each additional site.

1. SITE NAME AND LOCATION

Site Name or Project Name: **South Windsor Fuel Cell**

Town(s): **South Windsor**

Street Address or Location Description:
515 John Fitch Blvd.

Size in acres, or site dimensions: **±11.4 acres**

Latitude and longitude of the center of the site in decimal degrees (e.g., 41.23456 -71.68574):

Latitude: **41.816247**

Longitude: **-72.612403**

Method of coordinate determination (check one):

☒ GPS ☐ Photo interpolation using [CTECO map viewer](#) ☐ Other (specify):

2a. Describe the current land use and land cover of the site.

The subject parcel is nearly 100% developed with a vacant industrial building (Mesktek, Inc.) and paved parking areas that were constructed in circa 1960. The subject parcel is bound by John Fitch Boulevard (U.S. Route 5) to the east, undeveloped forested upland and wetland areas and the Podunk River to the north and west and a commercial/industrial properties to the south. The immediate vicinity is predominantly commercial/industrial in nature.

b. Check all that apply and enter the size in acres or % of area in the space after each checked category.

<input checked="" type="checkbox"/> Industrial/Commercial <u>95%</u>	<input type="checkbox"/> Residential _____	<input checked="" type="checkbox"/> Forest <u>5%</u>
<input checked="" type="checkbox"/> Wetland <u>5%</u>	<input type="checkbox"/> Field/grassland _____	<input type="checkbox"/> Agricultural _____
<input checked="" type="checkbox"/> Water <u><5%</u>	<input type="checkbox"/> Utility Right-of-way _____	
<input type="checkbox"/> Transportation Right-of-way _____	<input type="checkbox"/> Other (specify): _____	

Part IV: Project Information

1. PROJECT TYPE:

Choose Project Type: Other , If other describe: **Fuel Cell Generation Facility**

2. Is the subject activity limited to the maintenance, repair, or improvement of an existing structure within the existing footprint? ☐ Yes ☒ No If yes, explain.

Part IV: Project Information (continued)

3. Give a detailed description of the activity which is the subject of this request and describe the methods and equipment that will be used. Include a description of steps that will be taken to minimize impacts to any known listed species.

The fuel cell facility would be located within developed and paved northwest portion of the industrial property, which is surrounded by an existing chainlink fence. The facility would consist of two Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads. Each DFC3000 Power Plant has a maximum height of 25.5 feet above ground level (AGL). New gas and electrical utilities will be brought to the facility underground from John Fitch Blvd. (U.S. Route 5). The proposed facility would follow existing drainage flows that are directed to a catch basin that discharges directly to the Podunk River to the north. The stormwater outfall at the bank of the Podunk River has collapsed due to historic erosion. The fuel cell facility is considering alternatives including underground infiltration (the fuel cell facility will have a gravel yard that removes existing pavement and reduces runoff from existing conditions and underlying glaciofluvial soils are conducive to infiltration) or reconstruction of the collapsed outfall with installation of a plunge pool (set back from bank of the Podunk River) to correct the erosion. Typical equipment anticipated to be used include dump trucks of varying sizes, excavators, bulldozers, cranes, and other equipment necessary for carrying out the install of the fuel cell energy power plant.

Erosion control measures will follow the CTDEEP 2002 Connecticut Guidelines for Soil Erosion and Sediment Control and stormwater will be treated in accordance with the CTDEEP 2004 Connecticut Stormwater Quality Manual to minimize possible impacts to wildlife and the Podunk River.

4. If this is a renewal or extension of an existing Safe Harbor request *with* modifications, explain what about the project has changed.

5. Provide a contact for questions about the project details if different from Part II primary contact.

Name:

Phone:

E-mail:

Part V: Request Requirements and Associated Application Types

Check *one* box from either Group 1, Group 2 *or* Group 3, indicating the appropriate category for this request.

Group 1. If you check one of these boxes, complete Parts I – VII of this form and submit the required attachments A and B.

- ☐ Preliminary screening was negative but an NDDB review is still requested
- ☐ Request regards a municipally regulated or unregulated activity (no state permit/certificate needed)
- ☐ Request regards a preliminary site assessment or project feasibility study
- ☐ Request relates to land acquisition or protection
- ☐ Request is associated with a *renewal* of an existing permit, with no modifications

Group 2. If you check one of these boxes, complete Parts I – VII of this form and submit required attachments A, B, *and* C.

- ☒ Request is associated with a *new* state or federal permit application
- ☐ Request is associated with modification of an existing permit
- ☐ Request is associated with a permit enforcement action
- ☐ Request regards site management or planning, requiring detailed species recommendations
- ☐ Request regards a state funded project, state agency activity, or CEPA request

☐ **Group 3.** If you are requesting a **Safe Harbor Determination**, complete Parts I-VII and submit required attachments A, B, and D. Safe Harbor determinations can only be requested if you are applying for a GP for the Discharge of Stormwater and Dewatering Wastewaters from Construction Activities

If you are filing this request as part of a state or federal permit application(s) enter the application information below.

Permitting Agency and Application Name(s):

Connecticut Siting Council, Petition for a Declaratory Ruling

State DEEP Application Number(s), if known: **N/A**

State DEEP Enforcement Action Number, if known: **N/A**

State DEEP Permit Analyst(s)/Engineer(s), if known: **N/A**

Is this request related to a previously submitted NDDB request? ☐ Yes ☒ No

If yes, provide the previous NDDB Determination Number(s), if known: _____


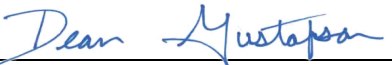
Part VI: Supporting Documents

Check each attachment submitted as verification that *all* applicable attachments have been supplied with this request form. Label each attachment as indicated in this part (e.g., Attachment A, etc.) and be sure to include the requester's name, site name and the date. **Please note that Attachments A and B are required for all new requests and Safe Harbor renewals/extensions with modifications.** Renewals/Extensions with no modifications do not need to submit any attachments. Attachments C and D are supplied at the end of this form.

<input checked="" type="checkbox"/> Attachment A:	Overview Map: an 8 1/2" X 11" print/copy of the relevant portion of a USGS Topographic Quadrangle Map clearly indicating the exact location of the site.
<input checked="" type="checkbox"/> Attachment B:	Detailed Site Map: fine scaled map showing site boundary and area of work details on aerial imagery with relevant landmarks labeled. (Site and work boundaries in GIS [ESRI ArcView shapefile, in NAD83, State Plane, feet] format can be substituted for detailed maps, see instruction document)
<input checked="" type="checkbox"/> Attachment C:	Supplemental Information, Group 2 requirement (attached, DEEP-APP-007C) <input checked="" type="checkbox"/> Section i: Supplemental Site Information and supporting documents <input checked="" type="checkbox"/> Section ii: Supplemental Project Information and supporting documents
<input type="checkbox"/> Attachment D:	Safe Harbor Report Requirements, Group 3 (attached, DEEP-APP-007D)

Part VII: Requester Certification

The requester *and* the individual(s) responsible for actually preparing the request must sign this part. A request will be considered incomplete unless all required signatures are provided.

<p>"I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of the individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief."</p>	
	June 7, 2017
Signature of Requester (a typed name will substitute for a handwritten signature)	Date
Dean Gustafson, APT, Agent for Applicant	Sr. Environmental Scientist
Name of Requester (print or type)	Title (if applicable)
	June 7, 2017
Signature of Preparer (if different than above)	Date
Dean Gustafson, APT	Sr. Environmental Scientist
Name of Preparer (print or type)	Title (if applicable)

Note: Please submit the completed Request Form and all Supporting Documents to:

CENTRAL PERMIT PROCESSING UNIT
DEPARTMENT OF ENERGY & ENVIRONMENTAL PROTECTION
79 ELM STREET
HARTFORD, CT 06106-5127

Or email request to: deep.nddbrequest@ct.gov

Attachment C: Supplemental Information, Group 2 requirement

Section i: Supplemental Site Information

1. Existing Conditions

Describe all natural and man-made features including wetlands, watercourses, fish and wildlife habitat, floodplains and any existing structures potentially affected by the subject activity. Such features should be depicted and labeled on the site plan that must be submitted. Photographs of current site conditions may be helpful to reviewers.

The subject property is mainly developed with a vacant industrial facility that consists of a large building and extensive paved parking and storage areas. The Podunk River and bordering wetlands are located along the north parcel boundary and off-site near the west parcel boundary. The proposed fuel cell facility would be located within a paved storage area in the northwest portion of the developed property. Erosion controls will be diligently maintained throughout construction to avoid sediment discharges to the Podunk River, known to provide habitat to the Dwarf Wedge Mussel (*Alasmidonta heterodon*), a State Endangered Species.

☒ **Site Photographs (optional) attached**

☒ **Site Plan/sketch of existing conditions attached**

2. Biological Surveys

Has a biologist visited the site and conducted a biological survey to determine the presence of any endangered, threatened or special concern species ☐ Yes ☒ No

If yes, complete the following questions and submit any reports of biological surveys, documentation of the biologist's qualifications, and any NDDB survey forms.

Biologist(s) name: _____

Habitat and/or species targeted by survey: _____

Dates when surveys were conducted: _____

☐ **Reports of biological surveys attached**

☐ **Documentation of biologist's qualifications attached**

☐ **[NDDB Survey forms](#) for any listed species observations attached**

Section ii: Supplemental Project Information

1. Provide a schedule for all phases of the project including the year, the month and/or season that the proposed activity will be initiated and the duration of the activity.

The proposed construction project is anticipated to extend over a period of 6 to 8 months. Start of construction will be developed pending approval from the Connecticut Siting Council.

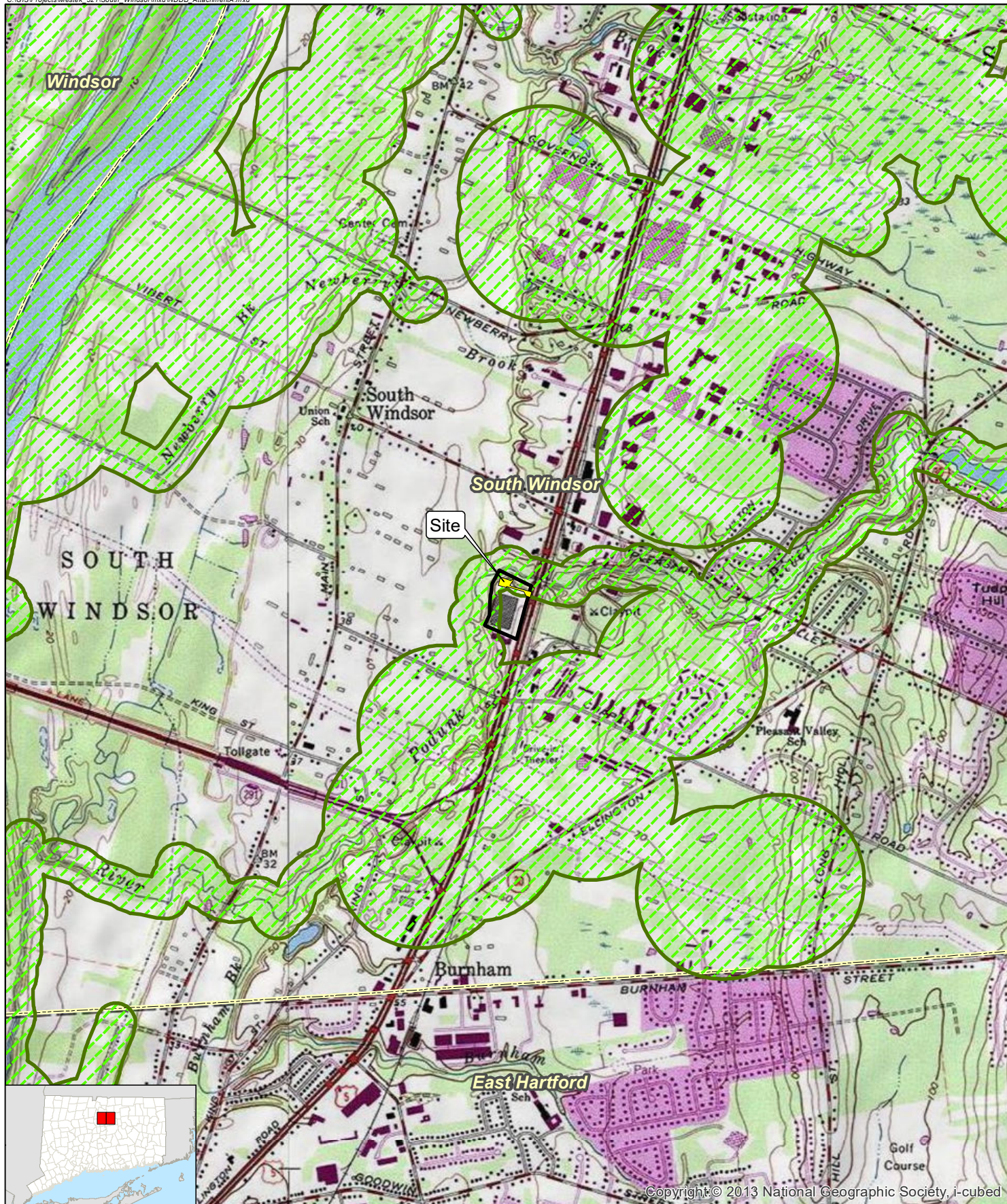
2. Describe and quantify the proposed changes to existing conditions and describe any on-site or off-site impacts. In addition, provide an annotated site plan detailing the areas of impact and proposed changes to existing conditions.

Unless the existing stormwater outfall is reconstructed, no mature vegetation would be impacted by the proposed project and no direct impacts to the Podunk River or bordering wetlands would occur as all work would be isolated to existing paved areas.

Should the stormwater outfall need to be reconstructed, then an access road for construction equipment would need to be built in order to access the existing collapsed headwall. Some trees in uplands located adjacent to the riparian wetland system would need to be removed to

accommodate this work and minor permanent/temporary impacts would occur to wetlands bordering the Podunk River.

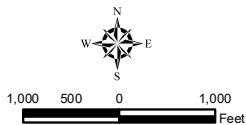
☒ **Annotated Site Plan attached**



Legend

- Project Area
- Subject Property
- Municipal Boundary
- CTDEEP Natural Diversity Database (updated Dec. 2016)

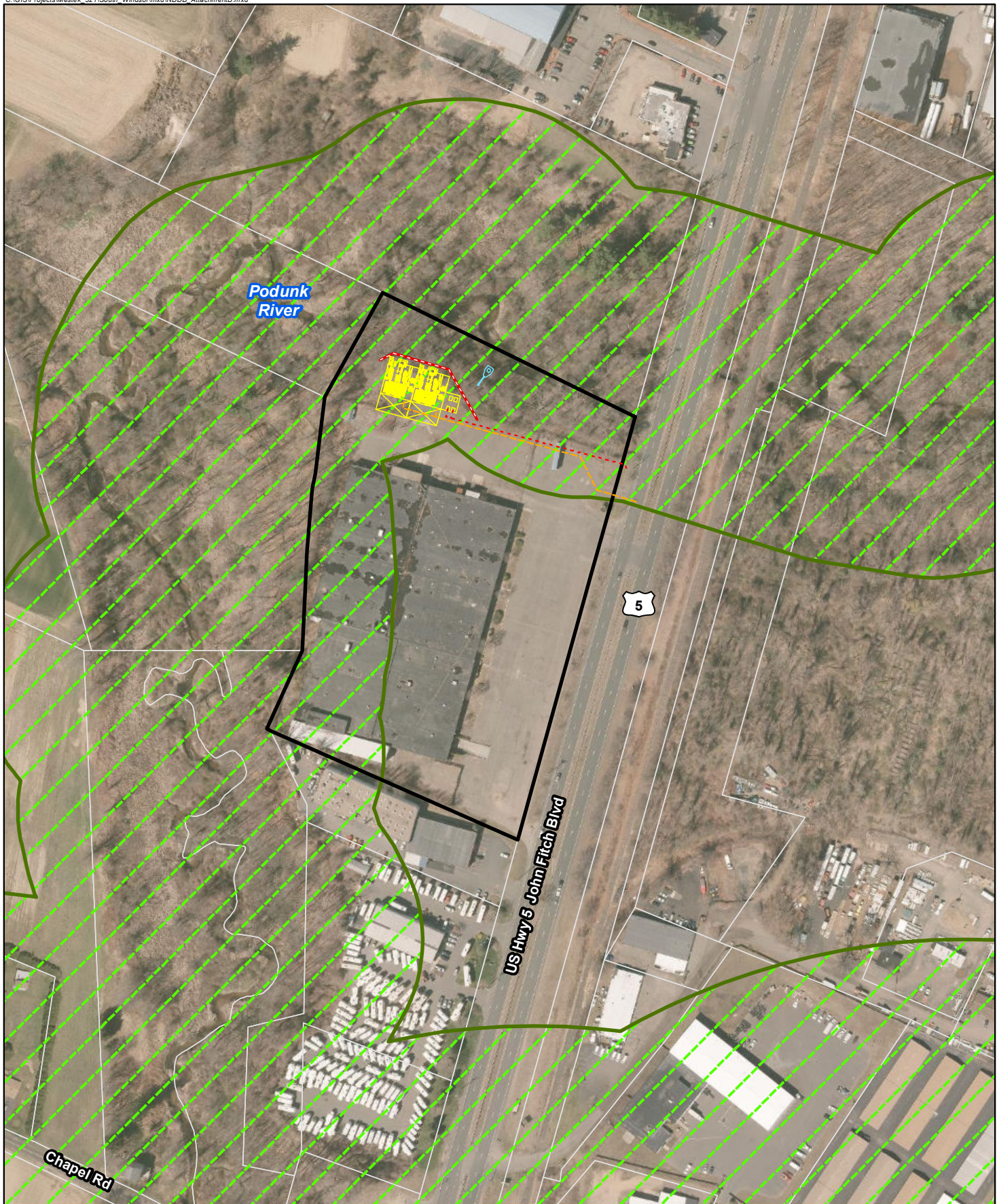
Map Notes:
Base Map Source: USGS 7.5 Minute Topographic Quadrangle
Maps: Hartford North and Manchester, CT (1982)
Map Scale: 1:24,000
Map Date: May 2017



NDDB Attachment A: Overview Map

Proposed Fuel Cell
515 John Fitch Boulevard
South Windsor, Connecticut





Legend

- Subject Property
- Proposed Fuel Cell Energy Layout
- Proposed Underground Electrical Line
- Proposed Underground Gas Line
- Proposed Silt Fence
- Proposed Plunge Pool and Culvert
- CTDEEP Natural Diversity Database (updated Dec. 2016)
- Municipal Boundary
- Approximate Assessor Parcel Boundary (CTDEEP)

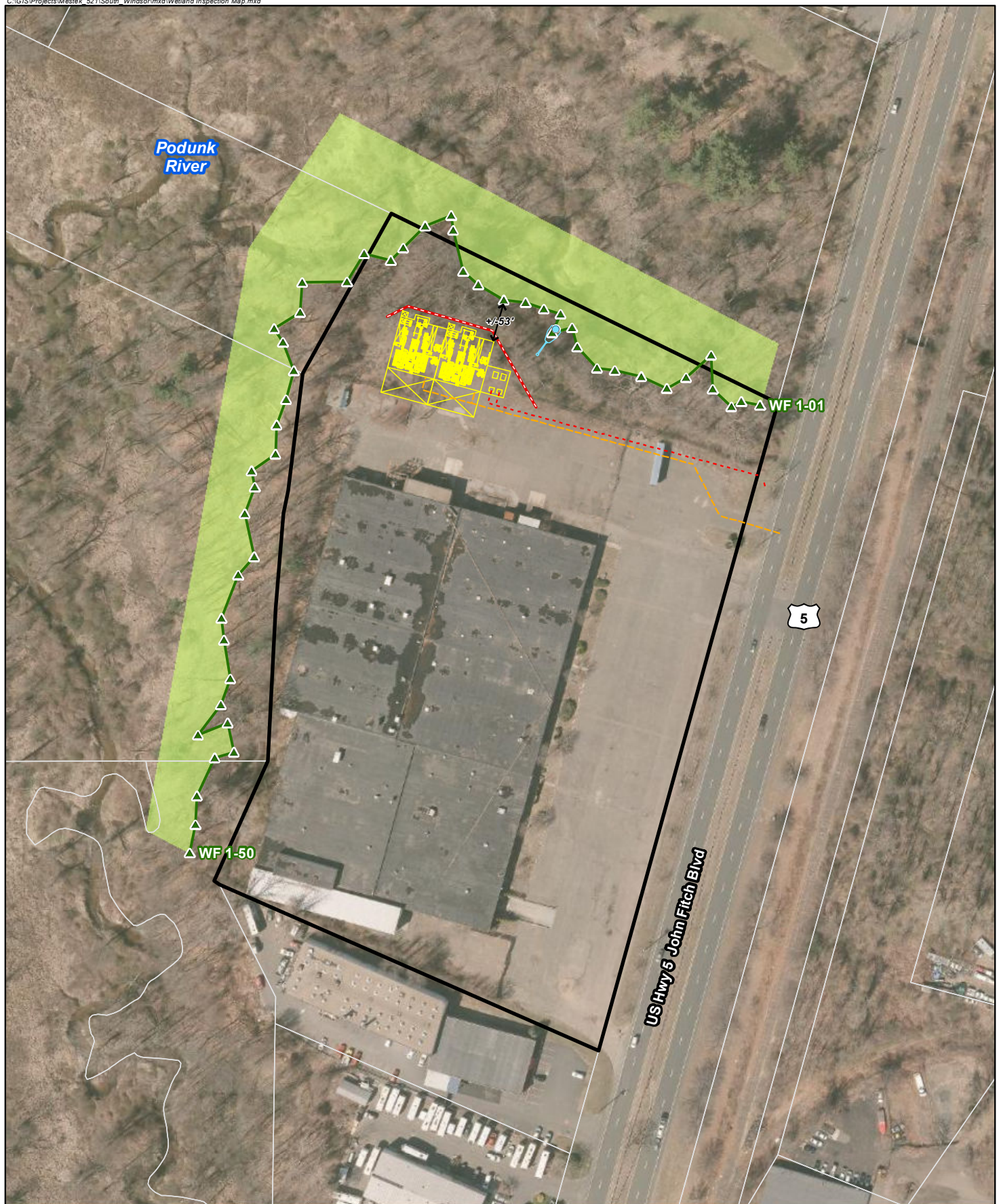
Map Notes:
Base Map Source: CTECO 2016 Aerial Photograph
Map Scale: 1 inch = 250 feet
Map Date: May 2017

250 125 0 250 Feet

NDDB Attachment B: Detailed Site Map

Proposed Fuel Cell
515 John Fitch Boulevard
South Windsor, Connecticut
Lat: 41.8163229105152
Long: -72.6124117284307

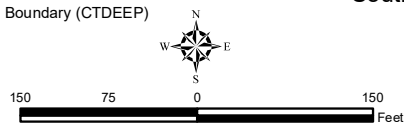




Legend

- | | |
|--------------------------------------|---|
| Subject Property | Existing Culvert |
| Proposed Fuel Cell Energy Layout | Wetland Flag |
| Proposed Underground Electrical Line | Wetland Boundary |
| Proposed Underground Gas Line | Wetland Area |
| Proposed Silt Fence | Approximate Assessor Parcel Boundary (CTDEEP) |
| Proposed Plunge Pool and Culvert | Municipal Boundary |

Map Notes:
 Base Map Source: CTECO 2016 Aerial Photograph
 Map Scale: 1 inch = 163 feet
 Map Date: May 2017



Wetland Inspection Map

Proposed Fuel Cell
 515 John Fitch Boulevard
 South Windsor, Connecticut





Photo 1: View of subject property looking north; John Fitch Boulevard in right side of photo and Mestek building in left side.



Photo 2: View of proposed fuel cell area in paved northwest corner of property looking east.



Photo 3: View of proposed fuel cell area looking west.



Photo 4: View of Podunk River looking southwest along north side of property.



Photo 5: View of Podunk River and narrow floodplain PFO looking northeast near northwest corner of property.



Photo 6: View of eroded and collapsed stormwater outfall from site to Podunk River looking south.



Section 7 Consultation

June 9, 2017

APT Project No.: CT521100

**U.S. Fish and Wildlife Service
70 Commercial Street, Suite 300
Concord, NH 03301-5087**

Attn: Thomas R. Chapman

**Re: Proposed Fuel Cell Facility
515 John Fitch Boulevard
South Windsor, Hartford County, CT**

Dear Mr. Chapman,

On behalf of Mestek, Inc. ("Mestek"), All-Points Technology Corporation, P.C. ("APT") performed an evaluation with respect to possible federally-listed, threatened or endangered species in order to determine if the proposed referenced fuel cell facility ("Facility") would result in a potential adverse effect to federally-listed species. This consultation was completed in accordance with Section 7 of the Endangered Species Act through the U.S. Fish and Wildlife Service's ("USFWS") Information, Planning, and Conservation System ("IPaC")¹ and USFWS New England Field Office's Endangered Species Consultation policy² for possible regulatory responsibilities under the Clean Water Act (Federal agency nexus). Refer to the enclosed Site Location Map, Aerial Photograph and Project Site Plans for information regarding the location of the Facility and Subject Parcel and details regarding the proposed project. The Subject Parcel was inspected on May 6, 2017 during which time a wetland delineation and preliminary habitat evaluation were performed. A Wetland Inspection Report and photographs of the proposed Facility location and nearby resources are enclosed.

Subject Parcel Description

The Facility will be located at 515 John Fitch Boulevard (U.S. Route 5), on a ±11.4-acre parcel identified in the South Windsor Assessor records as Map 22, Lot 1 ("Subject Parcel"). The Subject Parcel is bound by John Fitch Boulevard to the east, undeveloped parcels with the Podunk River running in a westerly then southerly route to the north and west and a commercial business specializing in recreational vehicle sales to the south. The Subject Parcel is currently improved with a vacant ±166,838 square foot industrial building and paved parking and storage areas which dominate the property. A small portion of the Subject Parcel is wooded to the north of the existing building and paved parking/storage areas near the Podunk River.

One wetland area was identified and delineated on and adjacent to the Subject Parcel, consisting of a floodplain riparian wetland system associated with the Podunk River. The Podunk River and narrow bordering wetlands are located along the north property boundary of the Subject Parcel while the river and broader wetland areas are located off-site near the west property boundary. The Podunk River is subject

¹ IPaC Consultation Tracking Number: 05E1NE00-2017-SLI-1629, dated May 24, 2017

² https://www.fws.gov/newengland/EndangeredSpec-Consultation_Project_Review.htm

to direct stormwater discharges from U.S. Route 5 and surrounding commercial/industrial properties, including the Subject Parcel. A stormwater outfall from the Subject Parcel is located along the southern bank of the river along the north property boundary, which was found to have collapsed some time ago. Both the headwall (located along the riverbank) and several sections of concrete pipe were found collapsed due to historic erosion which had undermined the soils previously supporting the pipe sections and headwall. At the time of the wetland inspection, it appears that the erosion and resulting collapsed pipes had generally stabilized although it has resulted in the remaining intact stormwater pipe daylighting ± 10 feet above the bottom of the eroded channel that now leads out to the river. The eroded channel has inadvertently created a pseudo plunge pool and some level of ongoing siltation of the river is anticipated during storm events that result in a discharge from the defunct pipe.

Proposed Fuel Cell Development Description

Mestek is proposing the installation of a 5.6 MW fuel cell Facility in the paved northwest corner of the Subject Parcel (the "Site") as part of its overall site redevelopment. The Facility would include twin 2.8 MW Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads and surrounded by a gravel compound within an existing paved, fenced and gated portion of the Site. New underground gas and electrical utilities will be brought to the Facility from John Fitch Boulevard. Additionally, the existing storm drainage pipe that has collapsed due to erosion may be reconstructed.

For purposes of this evaluation, the Site is defined as an irregularly shaped, ± 0.5 -acre area with the fuel cell power plant's equipment compound measuring roughly ± 80 feet wide by ± 155 feet long abutting the northwest corner of the Subject Parcel boundary. The enclosed Site Location Map depicts the location of the Subject Parcel, the Site and surrounding area.

Stormwater from the Site would follow existing drainage patterns that flow to a nearby catch basin which discharges directly to the Podunk River to the north through the aforementioned collapsed pipe. Alternatives for proper stormwater management of runoff from the Site being considered include an infiltration system (the Facility would have a gravel yard that replaces existing pavement thereby reducing runoff from existing conditions and the underlying glaciofluvial soils are conducive to infiltration) or reconstruction of the collapsed stormwater outfall with installation of a plunge pool (set back from bank of the Podunk River).

If the stormwater infiltration option is pursued, no mature vegetation or trees would be impacted by the proposed Facility and no direct or indirect impacts to the Podunk River or bordering wetlands would occur as all work would be isolated to existing developed and paved areas. The proposed Facility would be located ± 53 feet from the nearest wetland area (at wetland flag WF 1-17) with the edge of gravel yard located ± 45 feet from wetlands.

Should the stormwater outfall reconstruction option be pursued, then a road for construction equipment would need to be built in order to access the existing collapsed headwall area. Some trees in uplands located adjacent to the Podunk River riparian wetland system would need to be removed (± 0.1 acre) to accommodate this work and minor permanent/temporary impacts would occur to wetlands bordering the Podunk River for construction of the new plunge pool/stormwater outfall.

Northern Long-eared Bat and Dwarf Wedgemussel

Two federally-listed³ threatened species are known to occur in the vicinity of the Subject Parcel documented as the northern long-eared bat ("NLEB"; *Myotis septentrionalis*) and dwarf wedgemussel (*Alasmodonta heterodon*). Northern long-eared bat's range encompasses the entire State of Connecticut while dwarf wedgemussel is known to occur in a section of the Podunk River, which includes a segment of the river

³ Listing under the federal Endangered Species Act

that flows onto the northern portion of the Subject Parcel and adjacent areas. As a result of this preliminary finding and in accordance with USFWS New England Field Office's Section 7 consultation policy, habitat supported by the Subject Parcel and an evaluation of whether it is suitable for northern long-eared bat and dwarf wedgemussel is described below.

NLEB An evaluation to determine if the proposed Facility would result in a likely adverse effect to NLEB was performed. This consultation framework allows federal agencies to rely upon the USFWS January 5, 2016, intra-Service Programmatic Biological Opinion ("BO") on the Final 4(d) Rule for the NLEB for section 7(a)(2) compliance by: (1) notifying the USFWS that an action agency will use the streamlined framework; (2) describing the project with sufficient detail to support the required determination; and (3) enabling the USFWS to track effects and determine if reinitiation of consultation is required per 50 CFR 402.16.

The proposed Facility would be located within an existing developed and paved area that would result in minimal forest clearing. In addition, the project is not located near known NLEB hibernacula or maternity roost trees. Consultation with the Connecticut Department of Energy & Environmental Protection ("CTDEEP") Wildlife Division Natural Diversity Data Base ("NDDDB") revealed that the proposed facility is not within 150 feet of a known occupied maternity roost tree and is not within 0.25 mile of a known NLEB hibernaculum. The nearest NLEB habitat resource to the proposed activity is located in Granby ±11 miles to the northwest. Therefore, the proposed project is not likely to adversely affect NLEB. Please find enclosed the completed USFWS's NLEB final 4(d) rule Streamlined Consultation Form.

Mestek understands that if the USFWS does not respond within 30 days from submittal of this form, we may presume that USFWS determination is informed by the best available information and that Mestek's project responsibilities under 7(a)(2) with respect to the NLEB are fulfilled through the USFWS January 5, 2016, Programmatic BO.

Mestek would consider following additional voluntary measures for NLEB conservation, noted below and as the project schedule allows.

- Conduct tree removal activities outside of the NLEB pup season (June 1-July 31) and active season (April 1-October 31) to minimize impacts to pups at roosts not yet identified.
- Avoid clearing suitable spring staging and fall swarming habitat within a five-mile radius of known or assumed NLEB hibernacula during the staging and swarming seasons (April 1-May 15 and August 15-November 14, respectively). NOT APPLICABLE TO THIS PROJECT.
- Maintain dead trees and large trees when possible.
- Use herbicides and pesticides only if unavoidable.
- Minimize exterior lighting, opting for down-shielded, motion-sensor security lights or other light minimization measures.

Dwarf Wedgemussel The dwarf wedgemussel is a small (shell rarely exceeds 1.5 inches) freshwater mussel occurring on muddy sand, sand, and gravel bottoms in creeks and rivers of varying sizes, in areas of slow to moderate current and little silt deposition.⁴ Threats to dwarf wedge mussel include: impoundment of waterways, siltation, pollution, land use changes and geographic isolation resulting in genetic bottlenecks. According to The Dwarf Wedgemussel Waters of Connecticut Map (USFWS, August 27, 2007)⁵, a segment of the Podunk River is known to support dwarf wedgemussel, including the stretch located along the Subject Parcel's northern boundary and adjacent areas.

⁴ United States, U.S. Fish and Wildlife Service, Northeast Region, Dwarf Wedge Mussel Recovery Plan (Hadley: Region Five, 1993) 3

⁵ https://www.fws.gov/newengland/pdfs/CT_DWM.pdf

The following conservation measures will be implemented during construction to avoid potential impact to dwarf wedgemussel. Erosion control measures would follow the CTDEEP 2002 Connecticut Guidelines for Soil Erosion and Sediment Control and stormwater would be treated in general accordance with the CTDEEP 2004 Connecticut Stormwater Quality Manual to minimize possible impacts to the Podunk River and surrounding wetlands. Due to the project's relatively close proximity to wetlands and the Podunk River, known to support habitat for the dwarf wedgemussel, a Podunk River protection plan is recommended. The Podunk River protection plan would consist of several components: use of appropriate erosion control measures to control and contain erosion while avoiding/minimizing wildlife entanglement; periodic third-party inspection and maintenance of erosion control measures; education of all contractors and sub-contractors prior to initiation of work on the site on the environmentally sensitive nature of nearby resources; erosion and siltation protection measures; and, reporting. A copy of the Podunk River protection plan is enclosed.

There is a potential that the dwarf wedgemussel or its critical habitat, the Podunk River, may be affected by the proposed action. The potential for affect is minimized should the stormwater infiltration option be pursued since no work would occur in close proximity to the river and therefore the potential for siltation of dwarf wedgemussel habitat is unlikely to occur, particularly with implementation of the Podunk River protection plan. The potential for affect to dwarf wedgemussel habitat is slightly higher should the collapsed stormwater outfall reconstruction option be selected since work would occur in close proximity to the Podunk River and the potential for sediment release and siltation of dwarf wedgemussel habitat is greater. However, in the case of the reconstructed stormwater outfall option, a long-term benefit to dwarf wedgemussel habitat would be realized with correction of an existing eroded stormwater discharge. This action would result in removal of ongoing siltation of the river which occurs when soils are resuspended during storm discharges from the defunct pipe outfall. In addition, implementation of the Podunk River protection plan would further mitigate the potential for a likely adverse effect to dwarf wedgemussel.

For these reasons, we conclude that the proposed Facility is not likely to adversely affect dwarf wedgemussel. We respectfully request your concurrence with our determination.

Please feel free to contact me by phone at (860) 663-1697 ext. 201 or via email at dgustafson@allpointstech.com with any questions of if additional documentation is required.

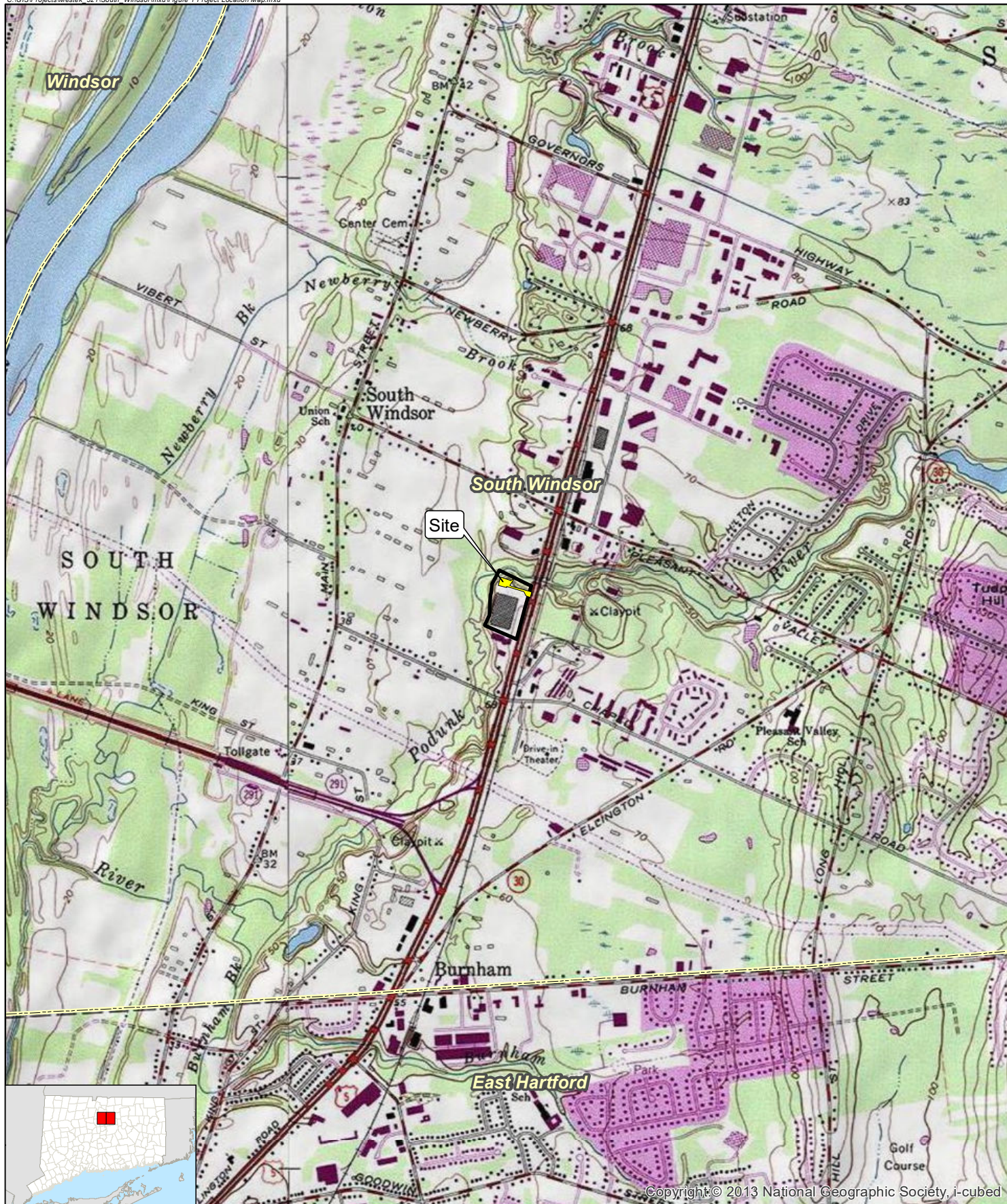
Sincerely,



Dean Gustafson
Senior Environmental Scientist

Enclosures

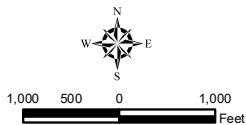
Site Location Map and Aerial Photograph



Legend

- Project Area
- Subject Property
- Municipal Boundary

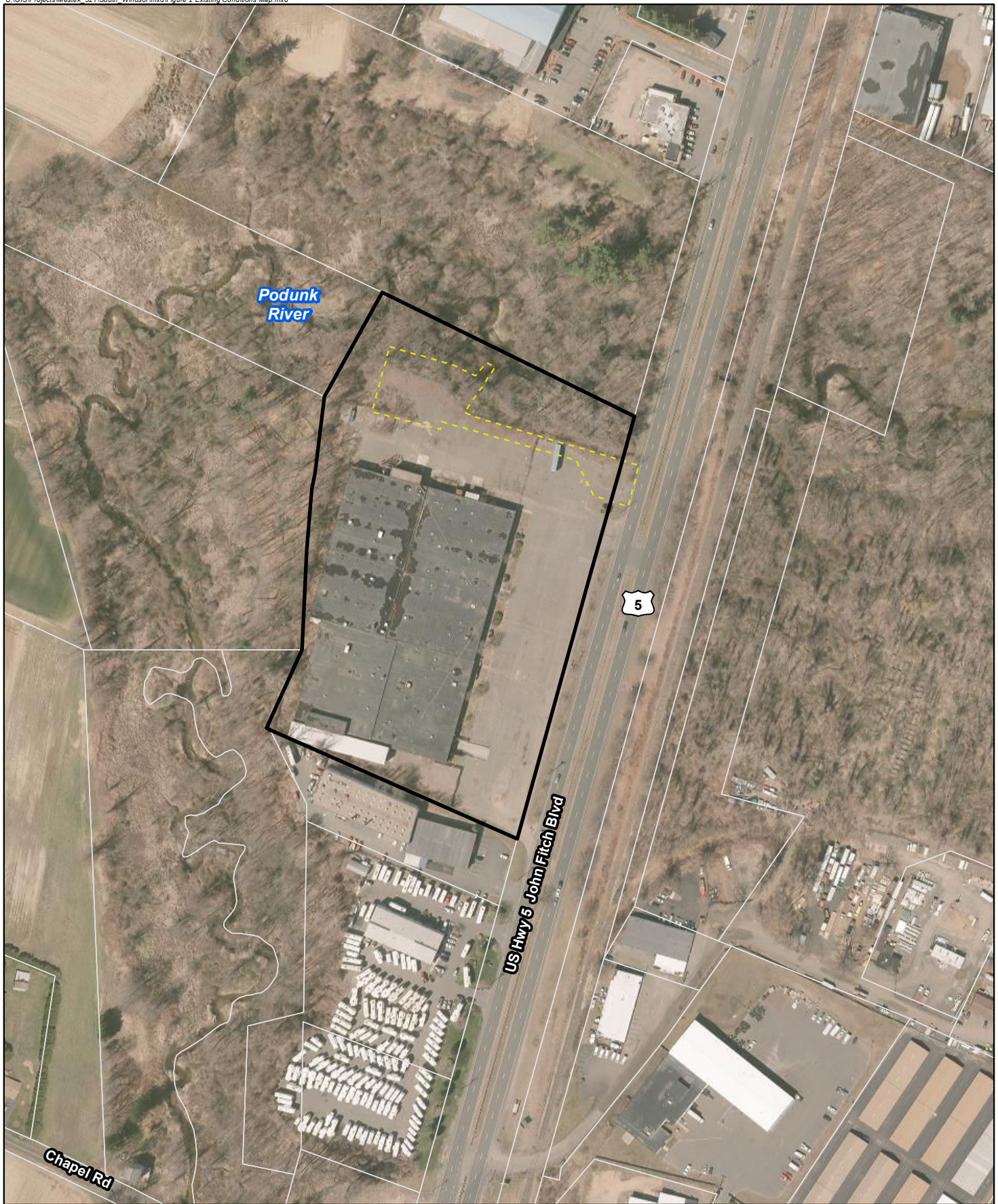
Map Notes:
 Base Map Source: USGS 7.5 Minute Topographic Quadrangle
 Maps: Hartford North and Manchester, CT (1982)
 Map Scale: 1:24,000
 Map Date: May 2017



Site Location Map

Proposed Fuel Cell
 515 John Fitch Boulevard
 South Windsor, Connecticut

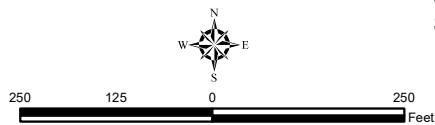




Legend

- Subject Property
- Project Area
- Municipal Boundary
- Approximate Assessor Parcel Boundary (CTDEEP)

Map Notes:
Base Map Source: CTECO 2016 Aerial Photograph
Map Scale: 1 inch = 250 feet
Map Date: May 2017



Aerial Photograph Map

Proposed Fuel Cell
515 John Fitch Boulevard
South Windsor, Connecticut



Wetland Inspection Report



WETLAND INSPECTION

June 8, 2017

APT Project No.: CT521100

Prepared For: Mestik, Inc.
260 North Elm Street
Westfield, MA 01085
Attn: Mr. Steven F. Olearcek

Site Address: 515 John Fitch Boulevard
South Windsor, Connecticut

Date(s) of Investigation: 5/6/2017

Field Conditions: **Weather:** sunny, mid 60's
Soil Moisture: dry to moist

Wetland/Watercourse Delineation Methodology*:

- ☒ Connecticut Inland Wetlands and Watercourses
- ☐ Connecticut Tidal Wetlands
- ☐ Massachusetts Wetlands
- ☒ U.S. Army Corps of Engineers

Municipal Upland Review Area/Buffer Zone:

Wetlands: 80 feet
Watercourses: 80 feet

The wetlands inspection was performed by[†]:

Dean Gustafson, Professional Soil Scientist

Enclosures: Wetland Delineation Field Form & Wetland Inspection Map

This report is provided as a brief summary of findings from APT's wetland investigation of the referenced subject property.[‡]

* Wetlands and watercourses were delineated in accordance with applicable local, state and federal statutes, regulations and guidance.

† All established wetlands boundary lines are subject to change until officially adopted by local, state, or federal regulatory agencies.

‡ APT has relied upon the accuracy of information provided by Mestek, Inc. regarding the subject property and project locations for identifying wetlands and watercourses within the study area.

Attachments

- Wetland Delineation Field Form
- Wetland Inspection Map

Wetland Delineation Field Form

Wetland I.D.:	Wetland 1	
Flag #'s:	WF 1-01 to 1-50	
Flag Location Method:	Site Sketch <input checked="" type="checkbox"/>	GPS (sub-meter) located <input checked="" type="checkbox"/>

WETLAND HYDROLOGY:

NONTIDAL ☒

Intermittently Flooded <input type="checkbox"/>	Artificially Flooded <input type="checkbox"/>	Permanently Flooded <input type="checkbox"/>
Semipermanently Flooded <input type="checkbox"/>	Seasonally Flooded <input checked="" type="checkbox"/>	Temporarily Flooded <input type="checkbox"/>
Permanently Saturated <input type="checkbox"/>	Seasonally Saturated – seepage <input type="checkbox"/>	Seasonally Saturated - perched <input type="checkbox"/>
Comments: Wetland 1 is a floodplain riparian wetland system associated with the Podunk River.		

TIDAL ☐

Subtidal <input type="checkbox"/>	Regularly Flooded <input type="checkbox"/>	Irregularly Flooded <input type="checkbox"/>
Irregularly Flooded <input type="checkbox"/>		
Comments: None		

WETLAND TYPE:

SYSTEM:

Estuarine <input type="checkbox"/>	Riverine <input type="checkbox"/>	Palustrine <input checked="" type="checkbox"/>
Lacustrine <input type="checkbox"/>	Marine <input type="checkbox"/>	
Comments: None		

CLASS:

Emergent <input type="checkbox"/>	Scrub-shrub <input type="checkbox"/>	Forested <input checked="" type="checkbox"/>
Open Water <input checked="" type="checkbox"/>	Disturbed <input type="checkbox"/>	Wet Meadow <input type="checkbox"/>
Comments: None		

WATERCOURSE TYPE:

Perennial <input checked="" type="checkbox"/>	Intermittent <input type="checkbox"/>	Tidal <input type="checkbox"/>
Watercourse Name: Podunk River		
Comments: None		

Wetland Delineation Field Form (Cont.)

SPECIAL AQUATIC HABITAT:

Vernal Pool Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Potential <input type="checkbox"/>	Other <input type="checkbox"/>
Vernal Pool Habitat Type: None	
Comments: None	

SOILS:

Are field identified soils consistent with NRCS mapped soils?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If no, describe field identified soils		

DOMINANT PLANTS:

Red Maple (<i>Acer rubrum</i>)	Eastern Cottonwood (<i>Populus deltoides</i>)
American Elm (<i>Ulmus americana</i>)	Spicebush (<i>Lindera benzoin</i>)
Asiatic Bittersweet* (<i>Celastrus orbiculatus</i>)	Multiflora Rose* (<i>Rosa multiflora</i>)
Jewelweed (<i>Impatiens capensis</i>)	Garlic Mustard* (<i>Alliaria petiolata</i>)
Sensitive Fern (<i>Onoclea sensibilis</i>)	Skunk Cabbage (<i>Symplocarpus foetidus</i>)

* denotes Connecticut Invasive Species Council invasive plant species

GENERAL COMMENTS:

The subject parcel is nearly 100% developed with a vacant industrial building (Mesktek, Inc.) and paved parking and storage areas. The subject parcel is bound by John Fitch Boulevard (U.S. Route 5) to the east, undeveloped forested upland and wetland areas and the Podunk River to the north and west and commercial/industrial properties to the south.

One wetland area was identified on and adjacent to the subject property, consisting of a floodplain riparian wetland system associated with the Podunk River. The Podunk River and narrow bordering wetlands are located along the north property boundary of the subject parcel while the river and broader wetland areas are located off-site near the west property boundary. The Podunk River is subject to direct stormwater discharges from Route 5 and surrounding commercial/industrial properties, including the subject property. A stormwater outfall from the subject property is located along the southern bank of the river along the north property boundary, which was found to have collapsed some time ago. Both the headwall (located along the riverbank) and several sections of concrete pipe were found collapsed due to historic erosion which had undermined the soils previously supporting the pipe sections and headwall. At the time of the wetland inspection, it appears that the erosion and resulting collapsed pipes had generally stabilized although it has resulted in the remaining intact stormwater pipe daylighting ± 10 feet above the bottom of the eroded channel that now leads out to the river. The eroded channel has inadvertently created a pseudo plunge pool.

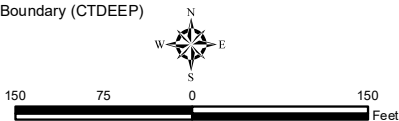
Mestek, Inc. proposes to install a fuel cell facility in the northwest portion of the industrial property. The facility would consist of two Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads surrounded by a gravel compound. Stormwater from the proposed facility would follow existing drainage patterns that flow to a nearby catch basin which discharges directly to the Podunk River to the north through the aforementioned collapsed pipe. Alternatives for proper stormwater management for runoff from the proposed fuel cell facility being considered include an infiltration system (the fuel cell facility will have a gravel yard that removes existing pavement thereby reducing runoff from existing conditions and the underlying glaciofluvial soils are conducive to infiltration) or reconstruction of the collapsed stormwater outfall with installation of a plunge pool (set back from bank of the Podunk River).

If the stormwater infiltration option is pursued, no mature vegetation would be impacted by the proposed project and no direct or indirect impacts to the Podunk River or bordering wetlands would occur as all work would be isolated to existing developed and paved areas. The proposed fuel cell facility would be located ± 53 feet from the nearest wetland area (at wetland flag WF 1-17) with the edge of gravel yard located ± 45 feet from wetlands.

Should the stormwater outfall reconstruction option be pursued, then a road for construction equipment would need to be built in order to access the existing collapsed headwall area. Some trees in uplands located adjacent to the Podunk River riparian wetland system would need to be removed to accommodate this work and minor permanent/temporary impacts would occur to wetlands bordering the Podunk River for construction of the new plunge pool/stormwater outfall.

In either case, erosion control measures would follow the CTDEEP 2002 Connecticut Guidelines for Soil Erosion and Sediment Control and stormwater would be treated in general accordance with the CTDEEP 2004 Connecticut Stormwater Quality Manual to minimize possible impacts to the Podunk River and surrounding wetlands. Due to the project's relatively close proximity to wetlands and the Podunk River, known to support habitat for the dwarf wedgemussel (*Alasmodonta heterodon*), a Federal and State Endangered Species, a wetland protection plan is recommended. The wetland protection plan would consist of several components: use of appropriate erosion control measures to control and contain erosion while avoiding/minimizing wildlife entanglement; periodic inspection and maintenance of erosion control measures; education of all contractors and sub-contractors prior to initiation of work on the site on the environmentally sensitive nature of nearby resources; protective measures; and, reporting.

Map Notes:
Base Map Source: CTECO 2016 Aerial Photograph
Map Scale: 1 inch = 163 feet
Map Date: May 2017



Proposed Fuel Cell
515 John Fitch Boulevard
South Windsor, Connecticut



Site Photographs



Photo 1: View of subject property looking north; John Fitch Boulevard in right side of photo and Mestek building in left side.



Photo 2: View of proposed fuel cell area in paved northwest corner of property looking east.



Photo 3: View of proposed fuel cell area looking west.



Photo 4: View of Podunk River looking southwest along north side of property.



Photo 5: View of Podunk River and narrow floodplain PFO looking northeast near northwest corner of property.



Photo 6: View of eroded and collapsed stormwater outfall from site to Podunk River looking south.

NLEB final 4(d) rule Streamlined Consultation Form

Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form

Federal agencies should use this form for the optional streamlined consultation framework for the northern long-eared bat (NLEB). This framework allows federal agencies to rely upon the U.S. Fish and Wildlife Service's (USFWS) January 5, 2016, intra-Service Programmatic Biological Opinion (BO) on the final 4(d) rule for the NLEB for section 7(a)(2) compliance by: (1) notifying the USFWS that an action agency will use the streamlined framework; (2) describing the project with sufficient detail to support the required determination; and (3) enabling the USFWS to track effects and determine if reinitiating of consultation is required per 50 CFR 402.16.

This form is not necessary if an agency determines that a proposed action will have no effect to the NLEB or if the USFWS has concurred in writing with an agency's determination that a proposed action may affect, but is not likely to adversely affect the NLEB (i.e., the standard informal consultation process). Actions that may cause prohibited incidental take require separate formal consultation. Providing this information does not address section 7(a)(2) compliance for any other listed species.

Information to Determine 4(d) Rule Compliance:	YES	NO
1. Does the project occur wholly outside of the WNS Zone ¹ ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Have you contacted the appropriate agency ² to determine if your project is near known hibernacula or maternity roost trees?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Could the project disturb hibernating NLEBs in a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Could the project alter the entrance or interior environment of a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Does the project remove any trees within 0.25 miles of a known hibernaculum at any time of year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Would the project cut or destroy known occupied maternity roost trees, or any other trees within a 150-foot radius from the maternity roost tree from June 1 through July 31.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

You are eligible to use this form if you have answered yes to question #1 **or** yes to question #2 **and** no to questions 3, 4, 5 and 6. The remainder of the form will be used by the USFWS to track our assumptions in the BO.

Agency and Applicant³ Mestek, Inc., 260 North Elm Street, Westfield, MA 01085

Project Name: South Windsor Fuel Cell

Project Location: 515 John Fitch Boulevard, South Windsor, Hartford County, CT

Project IPaC SLI#: 05E1NE00-2017-SLI-1629

Basic Project Description: Mestek, Inc. is proposing the installation of a 5.6 MW fuel cell Facility in the paved northwest corner of the Subject Parcel as part of its overall site redevelopment. The Facility would include twin 2.8 MW Fuel Cell Energy DFC3000 Power Plants and associated electrical equipment located on concrete pads and surrounded by a gravel compound within an existing paved, fenced and gated portion of the Site. New underground gas and electrical utilities will be brought to the Facility from John Fitch Boulevard. Additionally, the existing storm drainage pipe that has collapsed along the banks of the Podunk River due to erosion may be reconstructed.

¹ <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>

² See <http://www.fws.gov/midwest/endangered/mammals/nleb/nhisites.html>

³ If applicable - only needed for federal actions with applicants (e.g., for a permit, etc.) who are party to the consultation.

General Project Information	YES	NO
Does the project occur within 0.25 miles of a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the project occur within 150 feet of a known maternity roost tree?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the project include forest conversion ⁴ ? (if yes, report acreage below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Estimated total acres of forest conversion	±0.1 ac.	
If known, estimated acres ⁵ of forest conversion from April 1 to October 31	±0.1 ac.	
If known, estimated acres of forest conversion from June 1 to July 31 ⁶	±0.1 ac.	
Does the project include timber harvest? (if yes, report acreage below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated total acres of timber harvest		
If known, estimated acres of timber harvest from April 1 to October 31		
If known, estimated acres of timber harvest from June 1 to July 31		
Does the project include prescribed fire? (if yes, report acreage below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated total acres of prescribed fire		
If known, estimated acres of prescribed fire from April 1 to October 31		
If known, estimated acres of prescribed fire from June 1 to July 31		
Does the project install new wind turbines? (if yes, report capacity in MW below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated wind capacity (MW)		

Agency Determination:

By signing this form, the action agency determines that this project may affect the NLEB, but that any resulting incidental take of the NLEB is not prohibited by the final 4(d) rule.

If the USFWS does not respond within 30 days from submittal of this form, the action agency may presume that its determination is informed by the best available information and that its project responsibilities under 7(a)(2) with respect to the NLEB are fulfilled through the USFWS January 5, 2016, Programmatic BO. The action agency will update this determination annually for multi-year activities.

The action agency understands that the USFWS presumes that all activities are implemented as described herein. The action agency will promptly report any departures from the described activities to the appropriate USFWS Field Office. The action agency will provide the appropriate USFWS Field Office with the results of any surveys conducted for the NLEB. Involved parties will promptly notify the appropriate USFWS Field Office upon finding a dead, injured, or sick NLEB.

Signature: Dean Gustafson

Date Submitted: June 9, 2017

Dean Gustafson, Sr. Environmental Scientist, All-Points Technology Corp., P.C.,
Agent for Mestek, Inc.

⁴ Any activity that temporarily or permanently removes suitable forested habitat, including, but not limited to, tree removal from development, energy production and transmission, mining, agriculture, etc. (see page 48 of the BO).

⁵ If the project removes less than 10 trees and the acreage is unknown, report the acreage as less than 0.1 acre.

⁶ If the activity includes tree clearing in June and July, also include those acreage in April to October.

Podunk River Protection Plan

PODUNK RIVER PROTECTION PLAN

The project site is located within an environmentally sensitive area that includes rare species, wetlands and the Podunk River. The Contractor is required to follow the protection programs identified below to avoid adversely affecting rare species and special habitats during construction with particular attention to erosion controls to avoid sediment discharge to and siltation of the Podunk River.

Dwarf wedgemussel, a Federal- and State-listed Endangered species afforded protection under the Federal and Connecticut Endangered Species Acts, is known to occur in the vicinity of the site in the Podunk River. As a result, the following protective measures include protocols to be followed to help avoid potential degradation of water quality within the Podunk River during construction activities.

It is of the utmost importance that the Contractor complies with the requirement for the installation of erosion control protective measures and the education of its employees and subcontractors performing work on the project site. All-Points Technology Corporation, P.C. ("APT") will serve as the Environmental Monitor for this project to ensure that these protection measures are implemented properly and will provide an education session on this rare species and the project's proximity to sensitive habitat prior to the start of construction activities. The Contractor shall contact Dean Gustafson, Senior Environmental Scientist at APT, at least 5 business days prior to the pre-construction meeting. Mr. Gustafson can be reached by phone at (860) 984-9515 or via email at dgustafson@allpointstech.com.

The proposed protection program consists of several components: isolation of the project perimeter with extensive erosion controls; periodic third-party inspection and maintenance of erosion control measures; education of all contractors and sub-contractors prior to initiation of work on the site; and, reporting.

1. Isolation Measures & Erosion and Sedimentation Controls

- a. Plastic netting used in a variety of erosion control products (i.e., erosion control blankets, fiber rolls [wattles], reinforced silt fence) has been found to entangle wildlife, including reptiles, amphibians, birds and small mammals. No permanent erosion control products or reinforced silt fence are anticipated for the proposed project. Temporary erosion control products will use either erosion control blankets and fiber rolls composed of processed fibers mechanically bound together to form a continuous matrix (netless) or netting composed of planar woven natural biodegradable fiber to avoid/minimize wildlife entanglement.
- b. Installation of erosion and sedimentation controls (i.e., silt fencing, compost filter socks/straw wattles, catch basin silt socks, etc.), required for erosion control compliance in accordance with the final approved site plans, shall be performed by the Contractor prior to any pavement cutting or earthwork activities. The Environmental Monitor will inspect the erosion control barrier installation prior to earthwork activities. The intent of the barrier is to provide sedimentation and erosion control to avoid any sediment release to the Podunk River.
- c. The Contractor is responsible for daily inspections of all erosion control measures for tears, or breeches in the fabric and accumulation levels of sediment, particularly following storm events that generate a discharge. APT will provide periodic inspections of erosion control measures throughout the duration of construction activities as it pertains to protection of rare species and the Podunk River. Third party monitoring of sedimentation and erosion controls that may be required as

necessary under applicable local, state and/or federal regulations will be performed by other parties.

- d. The extent of erosion control measures will be as shown on the final approved site plans. The Contractor shall have additional sedimentation and erosion control materials stored on site should field or construction conditions warrant extending/adding the fencing/controls as directed by APT.
- e. No equipment, vehicles or construction materials shall be stored outside of the isolation barrier fencing.
- f. All silt fencing and sedimentation and erosion controls shall be removed within 30 days of completion of work and permanent stabilization of site soils.

2. Contractor Education

- a. Prior to work on site, the Contractor shall attend an educational session at the pre-construction meeting with APT. This orientation and educational session will consist of an introductory meeting with APT emphasizing the environmentally sensitive nature of the project site and the need to protect the Podunk River.
- b. The Contractor will be provided with cell phone and email contacts for APT personnel to immediately report any erosion or sedimentation issues. Educational poster materials will be provided by APT and displayed on the job site to maintain worker awareness of the environmentally sensitive nature of the site throughout the construction duration.

3. Petroleum Materials Storage and Spill Prevention

- a. Certain precautions are necessary to store petroleum materials, refuel and contain and properly clean up any inadvertent fuel or petroleum (i.e., oil, hydraulic fluid, etc.) spill to avoid possible impact to nearby Podunk River.
- b. A spill containment kit consisting of a sufficient supply of absorbent pads and absorbent material will be maintained by the Contractor at the construction site throughout the duration of the project. In addition, a waste drum will be kept on site to contain any used absorbent pads/material for proper and timely disposal off site in accordance with applicable local, state and federal laws.
- c. The following petroleum and hazardous materials storage and refueling restrictions and spill response procedures will be adhered to by the Contractor.
 - i. Petroleum and Hazardous Materials Storage and Refueling
 - 1. Refueling of vehicles or machinery shall occur a minimum of 100 feet from wetlands or watercourses and shall take place on an impervious pad with secondary containment designed to contain fuels.
 - 2. Any fuel or hazardous materials that must be kept on site shall be stored on an impervious surface utilizing secondary containment a minimum of 100 feet from wetlands or watercourses.
 - ii. Initial Spill Response Procedures
 - 1. Stop operations and shut off equipment.
 - 2. Remove any sources of spark or flame.

3. Contain the source of the spill.
4. Determine the approximate volume of the spill.
5. Identify the location of natural flow paths to prevent the release of the spill to sensitive nearby waterways or wetlands.
6. Ensure that fellow workers are notified of the spill.

iii. Spill Clean Up & Containment

1. Obtain spill response materials from the on-site spill response kit. Place absorbent materials directly on the release area.
2. Limit the spread of the spill by placing absorbent materials around the perimeter of the spill.
3. Isolate and eliminate the spill source.
4. Contact the appropriate local, state and/or federal agencies, as necessary.
5. Contact a disposal company to properly dispose of contaminated materials.

iv. Reporting

1. Complete an incident report.
2. Submit a completed incident report to the Connecticut Siting Council and any other applicable local, state and/or federal agencies.

4. Herbicide and Pesticide Restrictions

- a. In the event herbicides and/or pesticides are required at the proposed facility, their use will be used in accordance with Integrated Pest Management ("IPM") principles with particular attention to minimize applications within 100 feet of wetland or watercourse resources. No applications of herbicides or pesticides are allowed within actual wetland or watercourse resources.

5. Reporting

- a. Daily Compliance Monitoring Reports (brief narrative and applicable photos) documenting each APT inspection will be submitted to Mestek, Inc. for compliance verification.
- b. Following completion of the construction project, APT will provide a Compliance Monitoring Summary Report to Mestek, Inc. documenting implementation of the Podunk River protection program and monitoring observations. Mestek, Inc. will provide a copy of the Compliance Monitoring Summary Report to the Connecticut Siting Council for compliance verification.
- c. Any observations of rare species will be reported to CTDEEP by APT, with photo-documentation (if possible) and with specific information on the location and disposition of the animal.

Appendix C:

Noise Study

Noise Evaluation Report

Mestek, Inc.
“South Windsor Fuel Cell”
515 John Fitch Blvd.
South Windsor, CT

June 30, 2017

Prepared For:
All-Points Technology Corporation
3 Saddlebrook Drive
Killingworth, CT

Prepared By:
Allan Smardin
HMB Acoustics LLC
3 Cherry Tree Lane
Avon, CT

Introduction

On June 5, 2017, an acoustical evaluation of the site was made at 515 John Fitch Boulevard, South Windsor, CT. All pertinent site plans and specifications were reviewed. Background noise measurements were taken in the surrounding areas, and measured 40-45 dBA. On the East side of John Fitch Boulevard, the level was 50-55 dBA due to vehicular traffic. The purpose of this evaluation was to determine whether the proposed equipment will comply with the South Windsor Noise Code. The premises will be enclosed with an 8 foot tall chain link fence with screening slats. Two DFC3000 Fuel Cell Energy Systems will be used on the site. They will be placed on concrete pads. The proposed fuel cell site is classified as an Industrial Zone.

Noise Control Code

The Town of South Windsor has enacted regulations which limit the amount of noise which may be transferred from one property to another. Both the Town of South Windsor and this report utilize a dBA scale. This scale is used because it closely approximates the response characteristic of the human ear to loudness, and is the scale most commonly used in the measurement of community noise. In pertinent part, the South Windsor Noise Control Code provides as follows:

Sec. 50-64. Definitions

Daytime hours means the hours between 7 a.m. and 8 p.m. on every day but Sunday and the hours of 9 a.m. through 8 p.m. on Sundays.

Nighttime hours means the hours between 8 p.m. and 7 a.m. each day from Sunday evening through Saturday morning except that night shall mean the hours between 8 p.m. Saturday and 9 a.m. Sunday.

Sec.50-65. Performance Standards

Noise emitted from Industrial Zones beyond the boundary of the lot or parcel shall not exceed the dBA levels stated in the following table to the respective adjacent zones:

Receptor's Zone (dBA)			
Emitter Zone	Commercial	Residential	Residential
		Day	Night
Industrial	66	61	51

The calculated dBA noise levels for the two (2) fuel cells operating simultaneously were projected to the nearest property lines. The dBA scale takes into account the effect of acoustical shielding provided by other structures on the premises. The data demonstrates that the noise levels, from the fuel cells, meet the conditions for compliance as set forth in the noise regulations when projected to the nearest property lines.

Nearest Receptor Property Lines	
<u>Industrial Emitter</u>	<u>Projected Noise Levels (dBA)</u>
North	44
South	36
East	43
West	45

Appendix D:

Wetland Protection Plan

PODUNK RIVER PROTECTION PLAN

The project site is located within an environmentally sensitive area that includes rare species, wetlands and the Podunk River. The Contractor is required to follow the protection programs identified below to avoid adversely affecting rare species and special habitats during construction with particular attention to erosion controls to avoid sediment discharge to and siltation of the Podunk River.

Dwarf wedgemussel, a Federal- and State-listed Endangered species afforded protection under the Federal and Connecticut Endangered Species Acts, is known to occur in the vicinity of the site in the Podunk River. As a result, the following protective measures include protocols to be followed to help avoid potential degradation of water quality within the Podunk River during construction activities.

It is of the utmost importance that the Contractor complies with the requirement for the installation of erosion control protective measures and the education of its employees and subcontractors performing work on the project site. All-Points Technology Corporation, P.C. ("APT") will serve as the Environmental Monitor for this project to ensure that these protection measures are implemented properly and will provide an education session on this rare species and the project's proximity to sensitive habitat prior to the start of construction activities. The Contractor shall contact Dean Gustafson, Senior Environmental Scientist at APT, at least 5 business days prior to the pre-construction meeting. Mr. Gustafson can be reached by phone at (860) 984-9515 or via email at dgustafson@allpointstech.com.

The proposed protection program consists of several components: isolation of the project perimeter with extensive erosion controls; periodic third-party inspection and maintenance of erosion control measures; education of all contractors and sub-contractors prior to initiation of work on the site; and, reporting.

1. Isolation Measures & Erosion and Sedimentation Controls

- a. Plastic netting used in a variety of erosion control products (i.e., erosion control blankets, fiber rolls [wattles], reinforced silt fence) has been found to entangle wildlife, including reptiles, amphibians, birds and small mammals. No permanent erosion control products or reinforced silt fence are anticipated for the proposed project. Temporary erosion control products will use either erosion control blankets and fiber rolls composed of processed fibers mechanically bound together to form a continuous matrix (netless) or netting composed of planar woven natural biodegradable fiber to avoid/minimize wildlife entanglement.
- b. Installation of erosion and sedimentation controls (i.e., silt fencing, compost filter socks/straw wattles, catch basin silt socks, etc.), required for erosion control compliance in accordance with the final approved site plans, shall be performed by the Contractor prior to any pavement cutting or earthwork activities. The Environmental Monitor will inspect the erosion control barrier installation prior to earthwork activities. The intent of the barrier is to provide sedimentation and erosion control to avoid any sediment release to the Podunk River.
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Appendix E:

Photo-simulations



EXISTING CONDITIONS

Photo Source - Pictometry
2014



PROPOSED CONDITIONS



DOCUMENTATION

PHOTO	LOCATION	ORIENTATION	DISTANCE TO SITE
1	JOHN FITCH BOULEVARD	NORTHEAST	+/- 475 FEET



PROPOSED

PHOTO

1

LOCATION

JOHN FITCH BOULEVARD

ORIENTATION

NORTHEAST

DISTANCE TO SITE

+/- 475 FEET