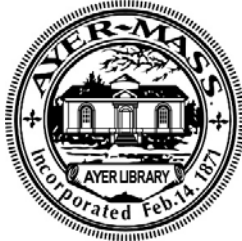


REQUEST FOR PROPOSALS
for
LAND LEASE FOR SOLAR
PHOTOVOLTAIC PROJECTS
AT TOWN-OWNED
LOCATIONS

Issued: September 14, 2016

Under Massachusetts General Laws, c. 30B, §16,
Real Property Disposition

TOWN OF AYER, MA
(Awarding Authority)



Administration

Name: Mr. Robert A. Pontbriand
Title: Town Administrator

Procurement Contact

Name: Mr. Mark Wetzel, P.E.
Title: Ayer DPW Superintendent

Responses Due

Date: Wednesday October 19, 2016
Time: 1:00 PM

REQUEST FOR PROPOSALS

SOLAR PHOTOVOLTAIC PROJECTS AT TOWN OWNED

LOCATIONS

Ayer, MA

The Town of Ayer seeks proposals, pursuant to M.G.L. c. 30B, §16, Real Property Disposition, from solar energy developers ("**Respondents**") to:

1. Lease land at the Primary, Secondary and Additional locations, hereinafter referred to as "Locations", identified below pursuant to a Lease Agreement a form of which is included in this RFP, and install, own, operate and maintain thereon a solar photovoltaic energy system(s) ("Solar Energy Systems" or "Systems").
 - Primary location Closed Town Landfill located at 100 Groton Harvard Road
 - Secondary location Wastewater Treatment Plant Sludge Landfill and adjoining properties located at the end of Brook Street
 - Additional locations---Other Town---owned open land as identified by the Respondent.

It is the desire of the Town to site Solar Energy Systems for the benefit of the Town and the environment. This Request for Proposals is being issued to allow the Town to evaluate options and determine the projects and financial arrangements that best meet the Town's interest. The Town is interested in receiving proposals for the Primary and Secondary locations, and will consider proposals for additional locations as identified by the Respondent. The Town notes that it is not seeking proposals for solar energy generation or net metering.

The Town will evaluate all proposals and reserves the right to select one or more proposals that provide the best economic solution for each location. Proposals for each of the locations will be evaluated against other proposals received for the same locations. In addition to other rights reserved herein, the Town reserves the right to cancel this RFP as to one or more, or all, of the locations, in its discretion and to the fullest extent permitted by law.

Location Tours -Tours of the locations may be arranged upon request at a time and date of the Town's choosing.

Questions - All questions pertaining to this RFP should be referred to Mark Wetzel, Ayer DPW, 978-772-8240, mwetzel@ayer.ma.us no later than Friday October 14 at 3:00 PM.

Proposals must be received by Wednesday October 19, 2016, no later than 1:00 PM and shall be addressed to:

Town of Ayer
Mr. Mark Wetzel, P.E.
Department of Public Works
25 Brook Street
Ayer, Massachusetts 01432

All materials must be contained in a single envelope or package cleared labeled **Land Lease for Solar Photovoltaic Projects at Town-Owned Locations**. Within each envelope or package, the Respondent shall enclose a cover letter with the signature, name, and title of the person authorized to submit the proposal on behalf of the Respondent.

The Respondent's proposal shall include in separate sealed envelopes a "**Technical Proposal**" and a "**Price Proposal**."

- The **Technical Proposal** must include 4 double-sided hard copies and an electronic copy on a CD-ROM or flash drive in Adobe (PDF) format and shall be placed in a sealed envelope within the outer package marked with the Respondent's **company name**, and plainly marked in the lower left hand corner: **"Land Lease for Solar Photovoltaic Project - Technical Proposal."**
- The **Price Proposal** must include 2 double-sided hard copies and an electronic copy on a CD-ROM or flash drive in Adobe (PDF) format, and shall be placed in a separate sealed envelope within the outer package marked with the Respondent's **company name**, and plainly marked in the lower left hand corner: **"Land Lease for Solar Photovoltaic Project - Price Proposal."**

All qualifications should be written in ink or typed. If there is any correction with whiteout, the person signing the statement of qualifications must initial the correction.

It is the Respondents' responsibility to see that its proposal is delivered within the time and at the place prescribed. The Town will open no proposals until the time set for opening. Proposals may be withdrawn upon written request (on the letterhead of the Respondents and signed by the person signing the proposal) and must be received prior to the Public Opening. Proposals may be modified in the same manner. No proposal or modification thereof received after the Public Opening will be considered.

Selected Respondents shall not discriminate against any employee or applicant for employment because of a physical or mental handicap for any position for which the employee or applicant is qualified and, in the event of noncompliance, the Town may declare the selected Respondents in breach and take any necessary legal recourse including termination or cancellation of any contract awarded pursuant to this RFP.

A Respondent filing a proposal thereby certifies that 1) no officer, agent, or employee of the Town of Ayer has a pecuniary interest in the proposal or has participated in contract negotiations on the part of the Town; 2) the proposal is made in good faith without fraud, collusion, or connection of any kind with any other prospective Respondent for the same RFP, and 3) the prospective Respondent is competing solely on its own behalf without connection with, or obligation to, any undisclosed person or firm.

The right is reserved, as the interest of the Town may require, to reject any or all proposals, to waive any technical defect or informality in proposals received, and to accept or reject any proposal or portion thereof.

One copy of this RFP will be furnished electronically to Respondents upon request. It is the Respondent's

responsibility to check prior to the Public Opening for any updates issued as a result of questions or changes needed in this RFP.

All questions pertaining to this RFP must be made in writing to **Mark Wetzel, Ayer DPW, 978-772-8240, mwetzel@ayer.ma.us.**

The RFP and supporting documents will be made available through the Department of Public Works Office, 25 Brook Street, Ayer, MA 01432 (978) 772-8240. Interested parties may request an electronic copy of the RFP document by request to mwetzel@ayer.ma.us.

It is the Respondent's responsibility to check prior to the Public Opening for any updates issued as a result of questions or changes needed in this RFP. A hard copy of the RFP and supporting documents will be available for review during normal business hours at the Ayer Department of Public Works and Board of Selectmen's Office at the Ayer Town Hall.

This RFP contains the following Attachments:

Attachment A – Proposal Forms

Attachment A-1 – Respondent Information Form

Attachment A-2 – Certificate of Non-Collusion

Attachment A-3 – Attestation Regarding Filing of Tax Returns

Attachment A-4 – Disclosure of Beneficial Interests in Real Property Disclosure

Attachment A-5 – Certification Regarding Debarment

Attachment A-6 – Certificate of Authority

Attachment B – Description of Locations

Attachment C – Pricing Bid Forms

Attachment D – Draft Lease Agreement

ANTICIPATED SCHEDULE

Request for Proposals Issued	September 14, 2016
Posting in the Central Registry	September 14, 2016
Questions Due to the Town	TBD
Optional tour of the Locations	As Requested
Responses to Questions/Addenda Issued by the Town	October 14, 2016 3:00 PM
Proposals Due to the Town (See address requirements in RFP)	October 19, 2016 1:00 PM
Anticipated Interviews	Oct 31 through Nov 4
Anticipated Selection of the Most Advantageous Proposal	November 11, 2016
Presentation to Board of Selectmen	November 15, 2016

A. PURPOSE

This RFP is being issued for the Disposition of Real Property under M.G.L. c. 30B, §16. The goal of this RFP is to lease the locations for purposes of siting Solar Energy Systems in order to provide a revenue stream to the Town in the form of lease payments.

The selected Respondent will, at its sole cost, design, install, own, operate, maintain, service, repair, and ultimately decommission the Solar Energy Systems and will be solely responsible for performing (and for paying all of the costs associated with) permitting, designing, owning, insuring, commissioning, interconnection, metering, operating, maintaining, monitoring and reporting the system, and for providing security for the system at all times.

Respondent will be responsible for payment of all taxes, including without limitation real and personal property taxes arising from the lease of Town land and the solar energy system(s). Proposers are advised that under Massachusetts General Law, there is no exemption for real and/or personal property taxes for renewable generation assets that supply power to the grid like the Systems contemplated in this RFP. The Town will consider a structured tax agreement such as a payment in lieu of taxes as a compliance option of the real and property tax obligation. Any such structured tax agreement shall conform to requirements set forth by the Massachusetts Department of Revenue. The Town will evaluate the proposals in accordance with the criteria stated in this RFP to determine the best value to the Town.

The Town seeks proposals from entities in the business of developing solar energy generation facilities to finance, install, own, operate and maintain the solar photovoltaic systems on the Locations as identified in this RFP. As owner of the Locations, the Town will grant a Lease to the selected Respondent(s) to allow the Respondent(s) to undertake the project for the purposes, and subject to the conditions, set forth herein.

B. INTRODUCTION

The Town is interested in leasing all or a portion of the Locations listed in Attachment B for a period of not-to-exceed twenty (20) years. The selected Respondent will own the System and will be responsible for the design, engineering, permitting, installation, testing, operation, maintenance, repair and decommissioning of the System, including, without limitation, procurement of the solar photovoltaic equipment and related services. The Town will not be an off-taker of the electricity generated (or net metering) at the locations.

The selected Respondent will be required to document prior to execution of any Lease the suitability of Systems at the Locations, including but not limited to environmental/code compliance and permitting for all Systems.

C. GENERAL TERMS AND CONDITIONS

1. Receipt and Opening of Proposals.

Sealed proposals will be accepted by the Town until the time and location indicated in this RFP and will then be publicly opened in the presence of at least two witnesses. The Town will prepare a listing of responses available for public inspection.

2. Form of Response.

Proposals must be submitted in the format prescribed in the RFP and must include the forms attached to this RFP in Attachment A. No change shall be made in the phraseology of the forms in Attachment A or in the item or items mentioned herein. The proposal must contain the name and proper address of the Respondent, be signed by a responsible member of the Respondent with his/her signature and official title, and include certification of site visitation. Except as otherwise provided in this RFP, responses that are incomplete contain any omissions, erasures, alterations, additions or irregularities of any kind may be rejected.

Submission of a proposal shall be conclusive evidence that the Respondent has examined the locations, and is familiar with all the conditions of this procurement. Upon finding any omissions or discrepancy in the proposal documents, the Respondent shall notify the Issuer immediately so that any necessary addenda may be issued. Failure of the Respondent to completely investigate the locations and/or to be thoroughly familiar with the contract documents (including plans, specifications and all addenda) shall in no way relieve the Respondent from any obligation with respect to the proposal.

3. Submission of Proposals.

(a) Packages containing responses must be sealed and addressed as specified in this RFP.

(b) Any Respondent may withdraw or modify its proposal by written request at any time prior to the established time of the Public Opening. Telephone or email responses, amendments or withdrawals will not be accepted.

(c) After the Public Opening, a Respondent may withdraw, but may not modify, its proposal except in a manner that is not prejudicial to the interest of the Town or to fair competition. Negligence on the part of the Respondent in preparing the proposal confers no rights for the modification of the proposal after it has been opened.

(d) Proposals received prior to the Public Opening will be securely kept unopened. No responsibility will attach to an officer or person for the premature opening of a response not properly addressed and identified.

(e) Any deviation from the requirements of this RFP must be noted in writing and attached as a part of the proposal. The Respondent shall indicate the item or part with the deviation and indicate how the response deviates from the requirements.

(f) Any Respondent taking exception to, or questioning any of the provisions, procedures, conditions, or specifications herein stated, should clearly articulate such exceptions in the proposal in a separate section entitled "Exceptions".

(g) All substantive inquiries from prospective Respondents concerning this RFP must be submitted in writing, electronically by the date provided on the schedule. All responses to substantive questions shall be in writing and will be simultaneously distributed to all recipients of record for the RFP.

(h) The Town may in its discretion waive any and all informalities or allow the Respondent to correct them.

4. Submission of Technical Proposals

The **Technical Proposal** must demonstrate that it meets the minimum qualifications and requirements of this RFP by including the following documents:

(a) Documentation evidencing that the Respondent is responsible, demonstrably possessing the skill, ability and integrity necessary to faithfully perform the work required by a particular contract, based upon a determination of competent workmanship and financial soundness in accordance with M.G.L. c. 149, § 44D.

(b) Department of Capital Asset Management and Maintenance ("DCAMM") certificates of eligibility and update statements.

(c) Certification of financial interest disclosure and of non-collusion, signed and submitted on the form attached to this RFP as Attachment A-2.

(d) Certification of compliance with state tax laws, reporting of employees and contractors, and withholding and remitting of child support, as required by M.G.L.c.62C, § 49A, signed and submitted on the form attached to this RFP as Attachment A-3.

(e) Disclosure of any Beneficial Interests in Real Property, signed and submitted on the form attached to this RFP as Attachment A-4.

(f) Certification Regarding Debarment, signed and submitted on the form attached to this RFP as Attachment A-5.

(g) Certificate of Authority – Must only be submitted if the Respondent's transmittal letter and Certification is not signed by the President or Owner of the company using the form attached to this RFP as Attachment A-6.

(h) Letter of transmittal, signed by an individual authorized to bind the Respondent contractually, certifying that the Respondent will, if selected to negotiate the contract with the Town, be prepared to promptly and actively participate in such negotiations.

(i) Certification that the Respondent, if ultimately awarded a contract, will guarantee completion of all work required within due dates or the time periods needed.

5. Evaluation of Technical Proposals.

The Town will utilize an evaluation system, rank the qualified Respondents and identify a short-list of the most qualified Respondents. It is the responsibility of each Respondent to provide information, evidence or exhibits that clearly demonstrate the Respondent's ability to satisfactorily respond to project requirements and the factors listed on the qualifications forms.

The evaluation process may include verification of references, confirmation of financial information and examination of other information, as the Town deems appropriate. The Town expects to conduct initial interviews and any such additional interviews or discovery, as it may deem necessary to evaluate the Respondents. The Town may require public presentations by Respondents. The Town reserves the right to request or obtain additional information about any and all responses. Any additional information or documentation provided subsequent to the submittal of the proposal shall be supplemental information and considered during the evaluation of the proposals.

6. Submission of Price Proposals.

The Respondent shall be responsible for all project costs including, but not limited to: the furnishing of all materials, services, labor, performance and payment bonds, insurance, and other costs incurred in the preparation of this response and the performance of the contract, signed by an individual authorized to bind the Respondents contractually. The Town will provide every reasonable form of assistance in terms of site access.

The **Price Proposal** must include:

- a) Prices and information per Bid Forms as provided in Attachment C. Please note that the Town requires pricing proposals for the Primary Location at minimum. Pricing proposals for the Secondary and Additional locations are optional, but desired by the Town.

7. Evaluation of Price Proposal

Best Price Criteria: The "best" response price will be determined by the following factor:

- a) The highest total lease payments to the Town over the 20 year period of the Agreement

8. Award and Contract Execution

After a composite rating has been assigned for each Technical Proposal on the basis of the evaluation defined in this RFP, the Town shall then review the Price Proposals and determine the most advantageous proposal, taking into consideration the Technical Proposal ratings and the price.

Based upon the results of the evaluation of the Proposals and interview process (if applicable), a ranking recommendation will be developed and submitted for approval by the respective stakeholders within the Town of Ayer.

The top-ranked Respondent(s), considering the Technical and Price Proposals, will be contacted for negotiation of a Lease Agreement(s) (hereinafter referred to as “Agreements”). All Respondents will be notified in writing of the decision of the Town. The successful Respondent will execute Agreements in the form attached hereto in Attachment D. All Respondents shall review the Agreements and confer with legal counsel prior to submitting a proposal in response to this RFP. **Any changes, objections, exceptions or comments to Attachment E must be specifically noted in the proposal submission or will not be considered during negotiations.** The Town reserves the right to reject any requested changes identified by the Respondents if not previously agreed upon during the proposal review and interview process.

If the Town and the most qualified Respondent are unable, within 60 days following the Town’s notice of commencement of negotiations with a Respondent (or such longer period of time as the Town may deem appropriate), to negotiate satisfactory Agreements with that Respondent at a price the Town determines to be fair, competitive, and reasonable, the Town shall negotiate with the next highly rated Respondent. The Town reserves the right to waive any and all informalities and to award the proposal on the basis of the above procedures to the Respondent it deems most qualified or discard all bids.

9. SCOPE AND PURPOSE

The Town seeks proposals from entities in the business of designing, financing, installing, owning, operating and maintaining Systems to finance, install, own, operate and maintain such Systems. The Town desires to Lease one or more locations to the selected Respondent for the development of Solar Energy Systems for a period not to exceed twenty (20) years (the “Term”).

The selected Respondent will own the System and will be responsible for the design, engineering, permitting (State and Local), installation, testing, operation, maintenance, repair and decommissioning of the System, including, without limitation, procurement of the solar photovoltaic equipment and related services. The Town is not seeking proposals to purchase the generation or net metering credits from any such Solar Energy Systems.

10. PROJECT SITE AND EXISTING SITE CONDITIONS

a) Locations Description.

The locations are described in Attachment B attached to this RFP.

b) Site Conditions.

Before submitting a proposal, each Respondent will be responsible for obtaining such additional studies and data concerning conditions (surface, subsurface and underground facilities) at the locations or otherwise, which may affect the Respondent's ability to promptly negotiate the contract if selected, or which the Respondent otherwise reasonably deems necessary to develop a proposal to undertake the Project in accordance with the terms and conditions of this RFP.

c) Town Support.

To facilitate the development of the Solar Energy Systems, the Town will make best efforts to support the selected Respondent as follows:

- a) Provide reasonable access to the locations to obtain data (whether required or reasonably requested by the Respondent);
- b) Grant the selected Respondent sufficient access and occupancy rights to allow the selected Respondent to undertake the Solar Energy Systems at the locations with the constraints noted in this RFP;
- c) Provide access for the installation, maintenance, ongoing operation and eventual decommissioning of the System.

11. CONTRACTING REQUIREMENTS

Requirements to be addressed in the Proposal.

The selected Respondent and the Town will enter into Agreements, substantially in the form of Attachment D, pursuant to which the selected Respondent will Lease the locations from the Town and have the right to install, own, operate, maintain and decommission the Solar Energy Systems.

The Respondent must include within their proposal assurances to achieve the following items:

- a) Insurance.
 - i. The selected Respondents shall be required to provide the Town with proof that they will be able to purchase and maintain, for the term of the EMSA or longer as may be required by the EMSA, from a company or companies lawfully authorized to do business in the Commonwealth and having a rating no lower than A-(Excellent) from A.M. Best's Key Rating Guide (latest edition in effect at the date of the Agreements and at the time of renewal of any policies required by the Agreements), the following insurance:
 - o Commercial general liability insurance (form CG 00 01 or equivalent) in a limit of not less than \$2,000,000 per occurrence, \$2,000,000 per occurrence for personal injury liability, \$4,000,000 general aggregate (applied per job), and \$2,000,000 products and completed operations aggregate written for a period of three years beyond final payment. Commercial general liability insurance shall also include broad form property damage liability and broad form contractual liability.
 - o Minimum additional \$5,000,000 umbrella for excess liability coverage with terms and conditions that are at least as broad as the underlying liability policies and for concurrent terms with the underlying commercial general liability insurance.

- Professional Liability Insurance, covering errors and omissions, \$2,000,000 each occurrence and \$4,000,000 aggregate limit.
 - Commercial automobile liability with a combined single limit of \$1,000,000 with a hired and non---owned endorsement. Personal automobile liability coverage will be acceptable in lieu of commercial automobile coverage only if the vehicle used at the job site is not commercially insured. Limits for personal auto must be at least \$250,000 bodily injury per person, \$500,000 bodily injury per accident, and \$250,000 property damage per accident with an endorsement that the policy covers business related use with an additional \$1,000,000 personal umbrella policy.
 - Workers' Compensation coverage as required by Chapter 152 of the Massachusetts General Laws with Employers' Liability limits of \$500,000 each accident, \$500,000 disease---each employee and \$500,000 disease-policy limit.
- ii. Additional Insurance Requirements for the Selected Firm:
- The selected firm will agree that the Commercial General Liability insurance set forth above shall be primary and non---contributing with respect to any insurance carried by the Town or the selected firm's subcontractor(s).
 - The selected firm's insurance policy shall not (i) exclude subcontractors from coverage or (ii) have any restrictions on coverage resulting from subcontractors failing to maintain certain levels of insurance.
 - The selected firm's insurance shall name the Town as additional insured with coverage at least as broad as the coverage provided to the named insured.
 - The selected firm will agree that the insurance set forth above shall be written on an occurrence basis, unless the Town approves in writing, coverage on a claims---made basis.
 - Certificates of insurance reasonably acceptable to the Town that include insurance coverage's required and specified above shall be delivered to the Town promptly after execution of the Agreements. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to the project.
 - The certificates and the insurance policies required will contain a provision that coverage's afforded under the policies will not be canceled, modified or allowed to expire until at least thirty (30) days' prior written notice has been given to the Town. The Town will accept a 10---day notice for cancellation for non---payment of premium as required by insurance company. In the event that any insurance policy providing coverage required by the Agreements will expire during the term of the Agreements, the selected firm will, not less than fifteen (15) days prior to the policy's expiration date, deliver to the Town certificates of insurance evidencing renewal of such policies.
 - The failure to provide and continue in force any insurance required in accordance with the terms of the Agreements shall constitute a material breach of the Agreements.
- b) Sizing and Site Feasibility - The selected Respondent will be required to demonstrate prior to execution of the Agreements, the suitability of Systems at the locations, including but not limited to installation on the capped landfill and environmental/code compliance for all Systems.

- c) Permits and Approvals - The selected Respondent is responsible for obtaining, and paying all costs for all permits associated with the system installation projects. These may include but are not limited to the following, provided, however, that this section notwithstanding, it is solely the responsibility of the Respondent to determine what permits are required for the Systems:
- Landfill: MA Department of Environmental Protection Landfill Re---Use Permit.
 - Wetlands: Any proposed work within 100---feet of wetland areas will require the Respondent to file a Notice of Intent with the Ayer Conservation Commission and comply with an Order of Conditions issued for the project.
 - Building Codes: The installation must comply with all local, state and federal laws, regulations, bylaws, codes and standards including the most recent version of the Mass. Building and Electric Codes.
- d) End of Term - At the end of the Term, the selected Respondent will retain ownership of the System and be required to remove the Systems. The Agreements will include a requirement for securing a financial decommissioning assurance instrument to ensure that the System is removed.
- e) Agreements - The Agreements will include a property Lease for Solar Energy Systems.
- f) Prevailing Wages - Because the construction, operation, and maintenance of the System(s) will be financed privately, it is expected that prevailing wage rates will not apply to the construction work. If such laws do apply, however, the selected Respondent for each project shall be responsible for obtaining the relevant prevailing wage rates from the Commonwealth, and shall pay prevailing wages as applicable, and by submitting a proposal agrees to indemnify and hold the Town harmless from any and all costs, claims for wages, fines or any other monetary consequence associated with any failure of the selected Proposer to pay such wages.
- g) Subcontracting - Except to the extent contemplated in the proposal and permitted in the Agreements, the Agreements will prohibit assignment or subcontracting without the Town's express prior written approval.
- h) Indemnification - The Agreements will require that the selected Respondent hold harmless and indemnify the Town and its officers, agents and employees against all claims, demands, actions and suits (including all attorneys' fees and costs) brought against any of them arising from the contractor's work or any subcontractor's work under the Agreements.
- i) Compliance with Laws - The contract will require compliance with all federal, state and municipal laws, ordinances, rules and/or regulations, including labor laws and laws against employment discrimination.
- j) Governing Law and Venue - The Laws of the Commonwealth of Massachusetts shall govern all Agreements entered into by the Town. Any disputes shall be resolved within the Towns preferred venue is the Berkshire Superior Court of the Commonwealth of Massachusetts.

- k) Decommissioning Assurance --- The selected Respondent will be required to provide, in the Town's discretion, security in the form of an escrow fund, irrevocable letter of credit, surety bond or third party guaranty sufficient to cover the cost of the removal of the Systems and restoration of the site(s) at the expiration or earlier termination of the Agreements. Such security shall be in a form satisfactory to the Town.
- l) Legal Fees --- The selected Respondent will be required to provide, in the Town's discretion, reimbursement for any extraordinary legal expenses incurred by the Town in connection with any award resulting from this procurement.
- m) Standard Contract Terms --- Any Agreements resulting from this RFP shall meet the requirements set forth in M.G.L. c. 30B, § 16 Real Property Disposition, and will include, to the extent required by the Town, the Town's standard contract terms.

12. PROPOSAL REQUIREMENTS

Contents must include:

- a) Transmittal Letter.

Each Respondent's response should include a transmittal letter signed by a party authorized to make a formal proposal on behalf of the Respondent. The letter shall clearly indicate that the Respondent has carefully read all the provisions in the RFP and should include a brief overview of the Respondent's proposal. Transmittal letters must also acknowledge receipt and understanding of any Addenda associated with the Project.

- b) Respondent Information.

Company Profile:

- Year founded and number of continuous years in business. Minimum of five (5) years in business is required.
- Ownership status (private or publicly held).
- Number of employees in local branch office at the time of submittal (full-time employees, excluding contractors).
- Corporate Office location
- Local Office location

Project Team:

- Team leader identification for the entire proposal, including full contact information, office location and key qualifications and professional credentials.
- Identification of each business entity, person or firm involved in the proposal and their role (design, installation, civil/environmental, permitting, equipment supply, operations and maintenance, etc.). Prior experience collaborating on projects is preferred.
- Resumes of personnel directly involved with the development of the proposed Systems. Provide evidence of NABCEP-certified Installer, Professional Engineer (P.E.), and Master Electrician.

Licensing:

- Provide a list of all relevant State---Specific Contracting Licenses held, including classification and number.

Insurance:

- Provide evidence of the insurance limits held by firm demonstrating Respondent's ability to comply with the insurance requirements set forth in this RFP.
- Financially viable insurance rating.

Safety History:

- List your firm's OSHA ratings (Recordable Incidence Rates and Lost Workday Incident Rates) for the past 3 years.

Capital Finance Capability:

- Provide evidence that the firm or its affiliates, subsidiaries or partners has the ability to secure financing for the total installed cost of the System proposed in response to this RFP. This should be in the form of a commitment letter from the anticipated funding source.

c) Relevant Solar Project Experience

- List the number, size (in kW DC) and location of PV projects completed in Massachusetts and/or the Northeast within the past 3 years.
- List the total capacity (in kW DC) of operational solar PV installations completed by the firm to date.
- List the total capacity (in kW DC) of solar PV systems installed in the Northeast via the following methods:
 - Capped Landfills
 - Roof---mounted systems
 - Carport/Shade Structure mounted systems
 - Ground---mounted systems
 - Other
- List experience in installing solar PV systems on Capped Landfills within the Massachusetts, in the Northeast or elsewhere in the country if the experience is relevant to this RFP. As part of this response, please provide a detailed discussion of the firm's experience working with MA Department of Environmental Protection ("MA DEP"), and other State or Local regulatory authorities.
- Provide a listing of all Massachusetts solar PV projects implemented under M.G.L. c. 30B, c. 25A § 11I or 11C and identify whether those projects were contracted under a power purchase agreement/lease agreement or a design---build energy management services agreement.
- Discuss in detail Respondents' direct experience interconnecting into LDC distribution systems, specifically NGrid. Please discuss any challenges realized and the firm's efforts to overcome such challenges.

d) References

- For the projects listed above, please provide reference information as listed below. Please note that the Town may contact all or some of the reference listed to aid in the Town's assessment of Respondent's proposal. Required information includes:
 - Reference project name and location.
 - Host Customer and/or Owner's name with contact person's name, email, address, phone number.
 - Date completed
 - Indicate if the installation was installed as a remote net metering asset or for the benefit of the local host community.
 - Any other installation---specific information that may be relevant.

13. PROPOSED SOLAR PV SYSTEM

- a) *System Components*: Include an overview of the proposed photovoltaic system, including brief descriptions of the main components (at a minimum modules, inverters, mounting and data acquisition systems).
- b) *Design*: Include Preliminary Drawings (One---Line) for each of the locations for the proposed solution that include at a minimum:
 - System size (in kW DC and kW AC)
 - Location of modules
 - Location of inverters
 - Any other site---specific information that will aid in overall evaluation.
- c) *Interconnection*: Describe Respondent's approach to interconnecting the system to the NGrid's distribution system. Respondent shall be required to complete all requirements of the specific interconnection process according to tariff requirements. Discuss Respondents familiarity and experience interconnecting to NGrid.

14. EVALUATION CRITERIA

At a minimum, Respondents shall meet the following requirements:

a) Minimum Criteria Information

Each of the items listed on the following table shall be marked (Y) if supplied and (N) if not supplied. Proposals that do not contain all items enumerated in Minimum Required Items as set forth below, may be disqualified prior to further qualification review at the discretion of the Town.

- Proposal Completeness and Adherence to Form
- Form of legal entity and year entity was established.
- List any other legal names of the firm, including but not limited to the names of any affiliates, subsidiaries or special purpose entities of the firm, and formation date of such affiliates, subsidiaries or special purpose entities.
- Describe any changes in ownership status over the past five (5) years.
- List ultimate parent company, if applicable.
- Federal Tax Identification
- DCAMM Certificate of Eligibility and Update Statement. Please note that the Town will require either the Engineer of Record or the Construction Firm to be certified in the Energy

Management or Electrical categories.

- Financial Statements – Please submit detailed financial report for the Respondent prepared in accordance with generally accepted accounting principles (GAAP) reflecting the current (as of the most recent financial statement date) financial condition of the firm. Such report must include a balance sheet, income statement and statement of cash flows, along with applicable footnotes, dated concurrently for at least each of the last preceding 3 years ending on the most recent fiscal quarter such statements were prepared. Public entities or subsidiaries should attach SEC Form 10---K along with, as applicable, detailed unaudited statements for the submitting firm. Non---public firms may attach either unaudited financial statements or copies of tax forms and schedule that are filed with the Internal Revenue Service where applicable. To the extent this information is considered sensitive, competitive or confidential; Respondent must provide such information in a separate sealed envelope and clearly identify such information as sensitive, competitive or confidential.
- Lawsuits and Disputes – Discuss whether your firm (including any affiliates, subsidiaries or special purpose entities) has ever been involved in a lawsuit or dispute regarding a contract. If so, please provide all such incidents and describe the circumstances and outcomes of such lawsuit(s) or litigation. Further, please discuss whether your firm has been barred from providing performance---based energy services or other services in any states.
- Debarment Statement

Criteria	Supplied
Minimum Requirements	Y/N
Proposal Completeness and Adherence to Format	Y/N
Form of Legal Entity	Y/N
Other Entity Names	Y/N
Changes in Ownership	Y/N
Parent Company (if applicable)	Y/N
Federal Tax ID	Y/N
DCAMM Certificate of Eligibility & Update Statement	Y/N
Financial Statements	Y/N
Lawsuits and Disputes	Y/N
Debarment Statement	Y/N

b) General Requirements and Evaluation Criteria–Technical Proposal

Proposals that meet the above Minimum Requirements will be evaluated against the Technical Proposal criteria categories listed below and graded on a scale of unacceptable to highly advantageous.

The information provided in the technical and price proposals combined with the information provided from references will form the basis of the Town's evaluation. Please note that Technical criteria will be weighted with Pricing offers to determine the overall score. The responses will be ranked using the following criteria:

- | | |
|-------------------------|--|
| i. Unacceptable: | Criteria was not addressed |
| ii. Not Advantageous: | Criteria was addressed minimally |
| iii. Acceptable | Criteria was addressed adequately |
| iv. Advantageous: | Criteria was addressed well |
| v. Highly Advantageous: | Criteria was addressed in a Superior fashion |

- *Respondent Qualifications and Experience*

- i. *Experience* - Specialized experience is required in a series of work areas. Proposals will be evaluated on how well the Respondent demonstrates full knowledge, understanding, and experience in the methods, techniques and guidelines required for the performance of the required work. All elements within this factor are of equal importance.
- ii. *Capacity to Perform Work* --- The proposal will be evaluated on how well the Respondent demonstrates by reference projects, the Respondent's capacity and capability to perform the work as presented in the indicative project schedule provided in this RFP, and be responsive to the Town's concerns should be clear.
- iii. *Personnel Qualifications and Availability* --- Proposals will be evaluated on the level of expertise provided in response to this RFP.
- iv. *Energy and Environmental Policy and Regulation Experience*. The Respondent will be evaluated on how well they can demonstrate comprehensive knowledge and experience of relevant energy and environmental laws and regulations (including the Massachusetts Green Communities Act, Solar Carve-Out Program, Interconnection of Distributed Generation Assets to LDC distribution networks, Net Metering, among others), and experience with implementation of programs related to such laws and regulations, will facilitate the appropriate and efficient planning, structuring, financing and implementation of the Project.

- *Performance Record of Respondent and its affiliates, subsidiaries or partners* --- Proposal must at a minimum provide information on solar projects and experience requested in this RFP and related reference information. Respondents will be evaluated on their record of experience

Provided and their demonstrated understanding of environmental conditions and requirements at capped landfills.

- *Location Understanding*

- i. *Relevant Specific Knowledge/Experience* -- Landfill closure, permitting and redevelopment experience. Given that the Primary Location is municipal landfill site, the Respondent or its affiliates, subsidiaries or partners must clearly demonstrate experience in permitting and redevelopment with respect to environmentally complex sites, including landfills.
- ii. *Local Knowledge/Experience* -- The Respondent or its affiliates, subsidiaries or partners must demonstrate knowledge of local regulations, sighting, permitting, connectivity, and other issues as evidenced by prior work experience in Massachusetts and/or the New England region.

- *Overall System Plan and Optimization of Site*

The Proposal shall show how the system will be located on the locations, describe how site constraints will be addressed, and describe how to maximize power production while minimizing costs to optimize system performance as requested.

- *Financing Plan:* The Town will evaluate the Respondent's financing plan and financial ability to execute the project in order to determine the capability of the Respondent to obtain the financing to complete the Project in a timely manner. Respondents shall provide evidence that the firm or its affiliates, subsidiaries or partners has the ability to secure financing for the total installed cost of the System proposed in response to this RFP. This should be in the form of a commitment letter from the anticipated funding source.

c) General Requirements and Evaluation Criteria --- Price Proposal

The Respondent's Price Proposal must include all of the information required in the price proposal form as articulated in this RFP.

a) **Overall Economic Benefit:**

Each Price Proposal will be evaluated to determine the best overall economic benefit to the Town based on the following criteria:

- | | |
|-------------------------|--|
| i. Unacceptable: | Criteria was not addressed |
| ii. Not Advantageous: | Criteria was addressed minimally |
| iii. Acceptable | Criteria was addressed adequately |
| iv. Advantageous: | Criteria was addressed well |
| v. Highly Advantageous: | Criteria was addressed in a Superior fashion |

15. ATTACHMENTS

Attachment A – Proposal Forms

Attachment A-1 – Respondent Information Form

Attachment A-2 – Certificate of Non-Collusion

Attachment A-3 – Attestation Regarding Filing of Tax Returns

Attachment A-4 – Disclosure of Beneficial Interests in Real Property Disclosure

Attachment A-5 – Certification Regarding Debarment

Attachment A-6 – Certificate of Authority

Attachment B – Description of Locations

Attachment C – Pricing Bid Forms

Attachment D – Draft Lease Agreement

ATTACHMENT A---1
CERTIFICATION OF EXAMINATION FORM

The undersigned has read the Request for Proposals (RFP) and has carefully examined all specifications/evaluation criteria therein. The undersigned certifies that he/she has visited the Locations and that there are no known obstacles to prevent the prompt negotiation and execution of an agreement with the Issuers. The undersigned acknowledges that the Town of Ayer, MA may reject all proposals, or waive portions of the RFP for all proposals, if it deems it in the best interests of the public.

Signature: _____

Name: _____

Title: _____

Respondent Information

Name of Respondent: _____

Address: _____

Name of Primary Contact: _____

Title of Primary Contact: _____

Primary Contact Phone Number: _____

Primary Contact Fax Number: _____

Primary Contact Email Address: _____

Addenda Acknowledgement: _____

ATTACHMENT A---2
CERTIFICATE OF NON---COLLUSION

The undersigned certifies, under penalties of perjury, that this proposal has been made and submitted in good faith and without collusion or fraud with any other person.

As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity, or group of individuals.

(Signature)

(Name of person signing qualifications)

(Name of business)

ATTACHMENT A---3
ATTESTATION REGARDING FILING OF TAX RETURNS

Pursuant to M.G.L. c. 62C, § 49A, I certify under the penalties of perjury that the undersigned respondent has complied with all laws of the commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Federal Identification Number

Signature of Individual or Officer

Name of Corporation

Date

ATTACHMENT A---4

DISCLOSURE OF BENEFICIAL INTERESTS IN REAL PROPERTY TRANSACTION

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Asset Management, as required by M.G.L. c. 7, §40J, prior to the conveyance of or execution of a sale or lease of the real property described below. Attach additional sheets, if necessary.

1. Public Agency Involved in This Transaction: Town of Ayer, Massachusetts

2. Description of the Property:

3. Type of Transaction: Lease of property

4. Lessor: Ayer Board of Selectmen

Bidder: _____

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has, or will have, a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed, except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need not be disclosed.*

NAME

ADDRESS

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts, except as noted below:

<u>NAME</u>	<u>TITLE OR POSITION</u>
_____	_____
_____	_____
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in Item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation. The undersigned acknowledges and swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

**ATTACHMENT A---5
CERTIFICATION REGARDING DEBARRMENT**

The undersigned certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty---nine F of chapter twenty---nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.

Signature

Name of person signing qualifications

Date

Name of Business

ATTACHMENT A---6
CERTIFICATE OF AUTHORITY

I hereby certify that I am the Clerk/Secretary of _____
(Insert full name of Corporation)

corporation, and that _____
(Insert the name of officer who signed the **contract and bonds**)

is the duly elected _____
(Insert the title of the officer in line 2)

of said corporation, and that on _____
(The date must be **ON OR BEFORE** the date the officer signed the **contract and bonds**.)

at a duly authorized meeting of the Board of Directors of said corporation, at which all the directors were present or waived notice, it was voted that

_____ the _____
(Insert **name** from line 2) (Insert **title** from line 3)

of this corporation be and hereby is authorized to execute contracts and bonds in the name and on behalf of said corporation, and affix its Corporate Seal thereto, and such execution of any contract of obligation in this corporation's name and on its behalf, with or without the Corporate Seal, shall be valid and binding upon this corporation; and that the above vote has not been amended or rescinded and remains in full force and effect as of the date set forth below.

ATTEST: _____ AFFIX
CORPORATE (Signature of **Clerk or Secretary**)* SEAL HERE

Name: _____
(Please print or type name in line 6)*

Date: _____
(Insert a date that is **ON OR AFTER** the date the officer signed the **contract and bonds**.)

* The name and signature inserted in lines 6 & 7 must be that of the Clerk or Secretary of the corporation.

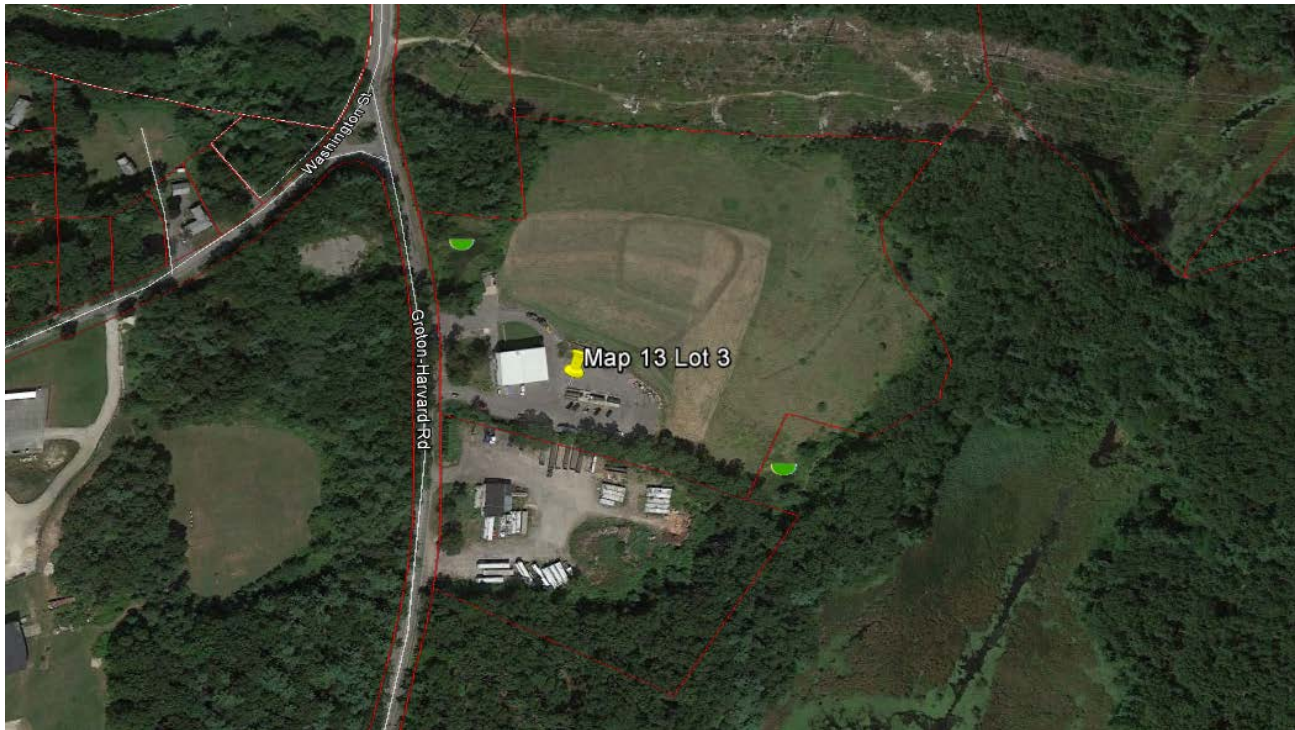
This form is required with RFP Proposal submission if the Proposal is signed by a person other than the owner or president of the company.

**ATTACHMENT A---7
PROPOSER MINIMUM REQUIREMENTS CHECKLIST**

Criteria	Supplied
Minimum Requirements	Y/N
Proposal Completeness and Adherence to Format	Y/N
Form of Legal Entity	Y/N
Other Entity Names	Y/N
Changes in Ownership	Y/N
Parent Company (if applicable)	Y/N
Federal Tax ID	Y/N
DCAMM Certificate of Eligibility & Update Statement	Y/N
Financial Statements	Y/N
Lawsuits and Disputes	Y/N
Debarment Statement	Y/N

ATTACHMENT B DESCRIPTION OF LOCATIONS

General Description: Primary Location: Closed Town Landfill, 100 Groton Harvard Road. Portion of Map 13 lot 3 - This is the closed municipal sanitary landfill and the operating Solid Waste Transfer Station. The total parcel size is 12.95 acres.



- Documents:
 - Assessor Maps
 - Landfill Monitoring report
 - MA DEP Closure Permit

Secondary Location: Town of Ayer closed wastewater sludge landfill, 25 Brook Street. Portion of Map 25 lot 23 - This is the closed sludge landfill and is located adjacent to the Town Wastewater Treatment Plant. The total parcel size is 76.5 acres and the Town would be interested in leasing a portion of the land, not used for Wastewater Treatment and other DPW functions.



- Documents:
 - Assessor Maps
 - Landfill Monitoring report
 - MA DEP Closure Permit

Additional Locations:

To be identified by the Respondent.

ATTACHMENT C

PRICING BID FORMS

**SOLAR PHOTOVOLTAIC PROJECT LAND
LEASE**

**PRICE PROPOSAL SUBMISSION FORMS
TOWN OF AYER, MASSACHUSETTS**

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

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

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

ATTACHMENT C

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

The bidder hereby agrees to pay the Town of Ayer the following amounts to lease up to **12 acres of the closed town landfill** for the construction and operation of a photovoltaic solar power facility:

Fiscal Year	Start Date	End Date	Lease Payment amount	
			Figures	Words
2018	7/1/2017	6/30/2018	\$_____.	
2019	7/1/2018	6/30/2019	\$_____.	
2020	7/1/2019	6/30/2020	\$_____.	
2021	7/1/2020	6/30/2021	\$_____.	
2022	7/1/2021	6/30/2022	\$_____.	
2023	7/1/2022	6/30/2023	\$_____.	
2024	7/1/2023	6/30/2024	\$_____.	
2025	7/1/2024	6/30/2025	\$_____.	
2026	7/1/2025	6/30/2026	\$_____.	
2027	7/1/2026	6/30/2027	\$_____.	
2028	7/1/2027	6/30/2028	\$_____.	
2029	7/1/2028	6/30/2029	\$_____.	
2030	7/1/2029	6/30/2030	\$_____.	
2031	7/1/2030	6/30/2031	\$_____.	
2032	7/1/2031	6/30/2032	\$_____.	
2033	7/1/2032	6/30/2033	\$_____.	
2034	7/1/2033	6/30/2034	\$_____.	
2035	7/1/2034	6/30/2035	\$_____.	
2035	7/1/2035	6/30/2036	\$_____.	
2037	7/1/2036	6/30/2037	\$_____.	

TOTAL AMOUNT FOR TWENTY-FIVE YEARS (Closed Town Landfill, Groton Harvard Road):

\$_____

ATTACHMENT C

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

The bidder hereby agrees to pay the Town of Ayer the following amounts to lease up to **12 acres of the closed Wastewater Sludge Disposal Landfill** for the construction and operation of a photovoltaic solar power facility:

Fiscal Year	Start Date	End Date	Lease Payment amount	
			Figures	Words
2018	7/1/2017	6/30/2018	\$_____.	
2019	7/1/2018	6/30/2019	\$_____.	
2020	7/1/2019	6/30/2020	\$_____.	
2021	7/1/2020	6/30/2021	\$_____.	
2022	7/1/2021	6/30/2022	\$_____.	
2023	7/1/2022	6/30/2023	\$_____.	
2024	7/1/2023	6/30/2024	\$_____.	
2025	7/1/2024	6/30/2025	\$_____.	
2026	7/1/2025	6/30/2026	\$_____.	
2027	7/1/2026	6/30/2027	\$_____.	
2028	7/1/2027	6/30/2028	\$_____.	
2029	7/1/2028	6/30/2029	\$_____.	
2030	7/1/2029	6/30/2030	\$_____.	
2031	7/1/2030	6/30/2031	\$_____.	
2032	7/1/2031	6/30/2032	\$_____.	
2033	7/1/2032	6/30/2033	\$_____.	
2034	7/1/2033	6/30/2034	\$_____.	
2035	7/1/2034	6/30/2035	\$_____.	
2035	7/1/2035	6/30/2036	\$_____.	
2037	7/1/2036	6/30/2037	\$_____.	

TOTAL AMOUNT FOR TWENTY-FIVE YEARS (Closed Sludge Landfill, WWTP):

\$_____

ATTACHMENT D

DRAFT PROPERTY LEASE AGREEMENT

This Property Lease Agreement ("Agreement") is dated as of _____, 2017, by and between the Town of Ayer, a body politic of the State of Massachusetts ("Town"), and _____, ("Tenant").

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

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

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

ARTICLE I - DEFINITIONS

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

- a. "Annual Payment" shall mean the consideration paid under this Agreement by the Tenant to the Town as set forth in Article IV.
- b. "Electric Generating Facility" shall mean the equipment used to collect solar energy, convert it to usable electricity and deliver it to purchasers. It is anticipated that the Electric Generating Facility will include solar photovoltaic panels, inverter(s), cables, wires, utility lines, transmission lines, any communications facilities, and supporting equipment and structures thereto, installed and owned by the Tenant within the Leased Property or Landfill.
- c. "Force Majeure" shall mean unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure. Without limiting the generality of the foregoing, Force Majeure shall include catastrophic failure of facilities, flood, earthquake, storm, lightning, fire, explosion, epidemic, war, riot, civil disturbance, labor trouble, labor strike, terrorism, sabotage, restraint by court or public authority which by exercise of due diligence and foresight either Party could not be expected to avoid and any change in any laws, orders, rules or regulations precluding operation of the facility.
- d. "Hazardous Substances" means any and all materials and substances that are defined as "hazardous waste", "extremely hazardous waste", "hazardous substances" or "hazardous material" pursuant to federal, state or local government law including, without limitation (1) any "hazardous waste" as defined by the Resource Conservation and Recovery Act of 1976 ("RCRA") 42 U.S.C. 9601 et. seq. as amended from time to time, and regulations promulgated thereunder; (2) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601 et. seq. ("CERCLA"), as amended from time to time and regulations promulgated thereunder; (3) any "hazardous material" as defined in the Massachusetts Hazardous Waste Regulations 310 CMR 30.00, as amended from time to time; (4) any oil, petroleum products, and their by-products; and (5) any substance that is or becomes regulated by any federal, state or local government authority that may fall within any of the above-referenced categories.

ATTACHMENT D

- e. "Landfill" shall mean the parcel of land owned by the Town upon which the Town manages a closed and capped solid waste landfill, the legal description of which is provided, attached hereto as Exhibit A.
- f. "Leased Property" shall mean those certain premises owned by the Town consisting of approximately ___ acres of land more particularly depicted and described as parcel No.____, Town identification number_____, which is attached hereto as Exhibit B and made a part hereof.
- g. "Solar Energy Project" shall mean all activities that encompass the installation, operation, and maintenance of solar photovoltaic panels and all other activities proposed to be conducted by the Tenant under this Agreement and as described in the Tenant's response to the Request for Proposals (RFP) dated September.
- h. "Term" shall mean the Agreement term as set forth in Article IV of this Agreement.

ARTICLE II - LEASED PROPERTY

- 2.1 The Town owns a parcel of land located at_____, commonly known as Town of Ayer Landfill. The Landfill is more particularly described in Exhibit A attached hereto. The Town leases to Tenant and Tenant leases from the Town approximately _____square feet of the surface of the Landfill (the "Leased Property"), as more particularly described and shown in Exhibit B attached hereto. The Town hereby leases to _____, the Tenant, the Leased Property and appurtenant access rights thereto in their now-existing condition.
- 2.2 Notwithstanding anything to the contrary contained herein, the Tenant shall not do any digging or soil borings on the Leased Property without the prior written consent of the Town, which consent will not be unreasonably withheld. The Tenant acknowledges that the Leased Property is on a landfill and that below the surface of the Leased Property there are capped soils possibly encapsulating methane gas, which cap must be safeguarded and cannot be punctured, degraded or compromised in any way.
- 2.3 The Tenant recognizes that the Town has certain obligations to maintain the Landfill and will not construct or operate the Solar Energy Project in a manner that will interfere with the proper maintenance of the Landfill by the Town. Furthermore, the Town retains the right to develop and/or use other portions of the Town property, which do not impact or interfere with the Solar Energy Project.
- 2.4 The Tenant has the right to construct, erect, install, maintain, test, replace, remove, operate and upgrade on the Leased Property a solar photovoltaic system, including without limitation photovoltaic panels, fencing, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices, wiring, wire kits and data monitoring systems.
- 2.5 Upon the Town's prior written consent, the Tenant, at its sole cost and expense, may take all approved actions to prevent flora on the Leased Property or the landfill from overshadowing or otherwise blocking access of sunlight to the Solar Energy Project.
- 2.6 Tenant shall use the Leased Property only for the activities of the Solar Energy Project and shall maintain the Leased Property consistent with federal, state, regional, & local regulations. Tenant shall have the right to erect structures upon the Leased Property incidental to and necessary for the normal operation of the Solar Energy Project on the Leased Property, subject, however, to the prior written consent of the Town, which consent shall not be unreasonably withheld or delayed, and subject further to Tenant obtaining all necessary permits for such construction and operation. Tenant shall not commit waste on the Leased Property and shall maintain the Leased Property in accordance with accepted professional standards applicable to similar electric generating facilities. Notwithstanding the foregoing, the Town acknowledges that it has provided consent to the Solar Energy Project described in the Project Description attached hereto.

ATTACHMENT D

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

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

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

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

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

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

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

2.11 Replacement Costs. The Tenant will secure in a separate financial account an amount equal to the cost to replace 2% of the solar panels in a given year and provide proof to the Town that said amount is being held. The amount to be deposited in this financial account shall also include an annualized replacement cost for the inverter and any other equipment that will need to be replaced before the term expires.

2.12 Financial Assurance for System Removal. The Tenant will secure a separate financial account to be held by the Town, in an amount sufficient to return the landfill property to pre-project status. The amount

ATTACHMENT D

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

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

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

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

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

2.17 Eminent Domain. If there is a taking in whole or in part of the Leased Property by Eminent Domain or condemnation, that substantially affects operation, the affected party shall have the right to terminate this Agreement upon written notice to the town within thirty (30) days after a final order of condemnation

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is entered. If either party does not so elect to terminate, the Agreement shall continue in effect, and the town will use best efforts to agree to an adjustment in the Annual Payment payable by Tenant, which adjustment shall reflect the value of the portion taken, compared to the total value of the Leased Property immediately before the taking. Any award or compensation due or payable to the Town for the condemnation of any portion of the Leased Property shall be allocated between the Town and Tenant in amounts proportionate to the value of the condemned property (whether real or personal) owned or occupied by each. The value of the lease term remaining shall also be used to calculate the total amount to be allocated between the parties.

ARTICLE III - RIGHTS AND RESPONSIBILITIES

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

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

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

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

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

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

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ARTICLE IV - TERM OF AGREEMENT

4.1 This Agreement shall remain in force for a term commencing on , 2018 and expiring on , 2037; provided, however, that the Parties shall have the right to terminate this Agreement, or any extension thereof, pursuant to Article X of this Agreement.

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

ARTICLE V - PAYMENT

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

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

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

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

ARTICLE VI - ASSIGNMENT

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

ARTICLE VII - CROSS-INDEMNIFICATION

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

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

7.2 Environmental Indemnities.

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

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

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

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

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

ARTICLE VIII - INSURANCE

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

8.1 Commercial General Liability – Occurrence Form

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

General Aggregate \$4,000,000 Products – Completed Operations

Aggregate \$2,000,000 Personal and Advertising Injury \$2,000,000

Each Occurrence \$2,000,000

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8.2 Automobile Liability

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

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

8.3 Workers' Compensation and Employer's Liability Workers' Compensation Statutory Employers' Liability

Each Accident \$100,000 Disease – Each Employee \$100,000 Disease – Policy Limit \$500,000

8.4 Excess Umbrella Liability Annual Aggregate \$5,000,000

8.5 Contractor's Pollution Liability

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

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

Per Occurrence \$1,000,000 General Aggregate \$2,000,000

8.6 Builders' Risk Insurance or Installation Floater

In an amount equal to the initial cost for the construction of the facility. The Town, the Tenant and subcontractors, shall be Insureds on the policy. Coverage shall be written on an all risk, replacement cost basis and shall include coverage for soft costs. Policy shall be endorsed such that the insurance shall not be canceled or lapse because of any partial use or occupancy.

Policy must provide coverage from the time any covered property becomes the responsibility of the Tenant, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site.

8.7 Insurance Requirements - Operation Phase

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

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

8.8 Additional Insurance for Operation Phase

All of the insurance listed above shall remain in effect and full force for the term of the lease.

In addition, the Tenant shall procure and maintain the following insurance:

8.8.1 Property Insurance

Property insurance shall be written on an all risk and replacement cost coverage. The Town shall be named as a Loss Payee.

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

8.8.2 Business Interruption Insurance

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

8.9 Insurance Requirements

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

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

8.10 Notice of Cancellation

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

8.11 Acceptability of Insurers

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

8.12 Verification of Coverage

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

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

8.13 Subcontractors

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

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

ARTICLE IX - FORCE MAJEURE

9.1 If either Party to this Agreement is rendered wholly or partly unable to perform its obligations under this Agreement because of Force Majeure that party shall be excused from whatever performance is

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affected by the Force Majeure to the extent so affected, provided that:

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

ARTICLE X. EVENTS OF AND REMEDIES OF DEFAULT

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

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

14.2.2. Town Events of Default

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

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14.3.3. Remedies for Successful Bidder Events of Default

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

14.3.4. Remedies for Town Events of Default

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

ARTICLE XI - TERMINATION

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

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

10.2 The Tenant may terminate this Agreement if the Town:

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

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ARTICLE XI - MISCELLANEOUS PROVISIONS

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

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

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

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

if to the Town, to: Town Administrator
 Town of Ayer 1 Main Street
 Ayer, MA 01432

With a copy to:

Or if to the Tenant, to: With a copy to:

(Legal counsel to be specified) TO BE DETERMINED

(Legal counsel to be specified)

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

11.6 This Agreement, the RFP dated DATE, 2016, the Tenant's Proposal, and all Financial Proposals, all as attached hereto, constitutes the entire understanding and agreement between the parties and supersedes all prior understandings and agreements relating hereto.

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

11.8 In the event of any breach or default by either party, the other party is entitled to all rights and remedies provided for in this Agreement, and/or available at law, in equity, by statute or otherwise, all of which rights and remedies are cumulative (and not exclusive). The failure of either party to take action as a result of a breach by the other party shall constitute neither a waiver of the particular breach involved nor a waiver of either party's right to enforce any provision of this Agreement through any remedy granted by law or this Agreement.

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

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

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agree that the terms of this agreement will be reviewed jointly at least every five years.

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

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

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

In Presence Of:

Town of Ayer

By: _____ Title: Chairman, Board of Selectmen

Duly Authorized

By: _____ Title: Town Accountant

(Tenant)

By:

Title:

Duly Authorized