

AGREEMENT FOR THE SALE OF AWRF EFFLUENT

Between

The City of Brockton

and

Brockton Power Company, LLC

This Agreement for the Sale of AWRF Effluent (“Agreement”) is entered into this 26th day of February, 2015 by and between the City of Brockton, a municipal corporation with a usual place of business at 45 School Street, Brockton, Plymouth County, Massachusetts organized under the laws of the Commonwealth of Massachusetts (hereinafter “the City”) and Brockton Power Company, LLC, a limited liability company organized under Massachusetts law with a usual place of business at 31 Milk Street, Suite 1001, Boston, Suffolk County, Massachusetts (“BPC”). BPC and the City shall hereafter be referred to each as a “Party” or together as “Parties.”

WHEREAS, BPC plans to construct and operate a 350 megawatt electric power generation plant (the “Project”) on approximately sixteen (16) acres of land located in the City of Brockton Industrial Park, located off Oak Hill Way and Industrial Boulevard (hereinafter “the Generator Site”) adjacent to the Brockton Advanced Wastewater Reclamation Facility (hereinafter “the AWRF Facility”); and

WHEREAS, the Project is designed to utilize a wet cooling process to increase operational efficiency and reduce the impact on the surrounding environment; and

WHEREAS, the City owns the AWRF Facility which processes and treats sewage and waste water, located on Oak Hill Way and directly adjacent to the proposed Project; and

Execution Version

WHEREAS, on November 1, 1999 the City of Brockton issued a Request for Proposals entitled "DPW Sewer 99/Surplus Effluent" (the "DPW 1999 Surplus Effluent RFP") pursuant to M.G.L. c. 30B to sell two separate blocks of surplus waste water effluent, each in the amount of 2,000,000 gallons per day ("GPD") of treated effluent from the City of Brockton's AWRF, located on Oak Hill Way and adjacent to the Project; and

WHEREAS, Brockton Power LLC, a limited liability company organized under Delaware law, was the highest eligible and responsive bidder to the DPW 1999 Surplus Effluent RFP by offering to purchase up to 2,000,000 GPD of treated AWRF effluent at the bid price of One Hundred Thousand Dollars (\$100,000.00) per year, under a bid entitled: "Contract DPW #00-009 Sale of Surplus Effluent," dated November 23, 1999 (the "Surplus Effluent Bid"), and

WHEREAS, the City of Brockton accepted the 1999 Surplus Effluent Bid and agreed to contract with Brockton Power LLC to supply up to 2,000,000 GPD of treated effluent from the Brockton AWRF at the 1999 Surplus Effluent Bid price of \$100,000 per year;

WHEREAS, by a vote on February 14, 2000, the Brockton City Council authorized the City of Brockton Department of Public Works ("DPW") to award contracts for a term of forty (40) years to sell surplus effluent from the AWRF Facility to the highest bidder without placing any limit on the number of gallons of treat AWRF effluent that could be sold; and

WHEREAS, BPC is the successor to all right, title and interest of all the rights and assets of Brockton Power LLC and has obtained an assignment of the rights to the Surplus Effluent Bid; and

WHEREAS, the City desires to contract with BPC to supply 2,000,000 GPD of treated effluent from the AWRF Facility.

Execution Version

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Sale of Treated Effluent from the AWRF Facility.

(a) The City agrees to sell BPC treated effluent from the AWRF Facility in the amount of two million (2,000,000) GPD for the Term of this Agreement. BPC shall provide notice to the City no less than 30 days before BPC intends to take effluent from the AWRF Facility.

(b) If requested by BPC, the City agrees to sell BPC an additional 300,000 GPD of treated effluent from the AWRF Facility if necessary to meet technical and engineering requirements of the Project for the Term of this Agreement.

(c) The City makes no representation or warranties as to the suitability of the treated effluent for BPC's use, provided however, the City shall comply with all requirements of the AWRF Facility's NPDES Permit Number 0101010, dated May 11, 2005 (as amended the "NPDES Permit"), issued jointly by Massachusetts Department of Environmental Protection ("DEP") and the U. S. Environmental Protection Agency ("EPA") with respect to the treatment of the AWRF Facility's effluent.

(d) BPC shall be solely responsible for ensuring that any treated effluent is suitable for its intended use in the Project.

(e) The City shall not be held liable for its failure to supply treated effluent from the AWRF Facility under this Agreement due to any event of force majeure ("Force Majeure.") As used herein, Force Majeure shall mean: any event or circumstance beyond the reasonable control and without the fault or negligence of the City that will adversely affect the City's obligations

Execution Version

hereunder, including acts of God, natural disasters, fires, earthquakes, lightning, floods, storms, terrorism, civil disturbances, riots, war, strikes, lockouts, transportation accidents or delays. Force Majeure shall not include (i) strikes or labor disturbances at the AWRF Facility (unless such event is part of a national or regional labor dispute); (ii) any delay or failure of the City to obtain equipment or materials for the AWRF Facility, including a delay or failure attributable to the City's contractors or subcontractors; or (iii) AWRF Facility equipment failure.

2. Connections to the AWRF Facility.

(a) BPC will design, procure, construct, install and commission, at its own cost and expense, all necessary pipes, valves, connections, pumps and equipment required (i) to connect the Project to the AWRF Facility for purposes of transporting the treated effluent from the AWRF Facility to the Project, and (ii) for the return of waste water to the AWRF Facility, based on plans and specifications prepared by BPC and approved by the Brockton Commissioner of the DPW, such approval not to be unreasonably withheld. In performing this work, BPC will ensure that the daily operation of the AWRF Facility will not be adversely affected and will cooperate with and receive approval from the then current operator/manager of the AWRF Facility, such approval not to be unreasonably withheld. BPC shall provide notice to the City no less than 30 days before BPC intends to install its equipment or pipes in the AWRF Facility.

(b) BPC will obtain all permits necessary in order to effect this Agreement at its cost and expense, provided however, if any amendment is required to Brockton's NPDES Permit, the City will obtain any such amendments to the discharge permit from the EPA or DEP, as applicable, to implement the terms of this agreement, at BPC's cost and expense. The City will use its best efforts to cooperate with BPC to obtain such permits and authorizations, at BPC's cost and expense.

Execution Version

3. Payment for Treated AWRF Effluent.

BPC agrees to pay the City a fixed payment of one hundred thousand Dollars (\$100,000) per year, payable in four quarterly installments of \$25,000 on the first business day of January, April, July and October of each year beginning with the first day of notification by BPC to the City that the Project is ready to withdraw treated effluent from, and discharge wastewater to, the AWRF Facility. Any quarterly payment that is not for a full quarter shall be adjusted pro rata based on the calendar days of the quarter. The treated effluent measurement meter shall be owned and maintained by the City at BPC's expense.

4. Term of Agreement.

(a) The term ("Term") of this Agreement shall begin on the date hereof and shall run for thirty (30) years, unless earlier terminated by BPC pursuant to Section 4(b), below. BPC shall have the right to extend the Term of this Agreement for two additional terms of five (5) years each.

(b) BPC may terminate this Agreement at any time without liability to Brockton if: (i) BPC is unable to secure all final and non-appealable City of Brockton, state and federal permits, authorizations, easements and licenses necessary to build and operate the Project on the Generator Site, or (ii) BPC determines that it cannot develop, finance construct or operate the Project and submits a written notice to the City not less than ninety (90) days prior to its termination of this Agreement.

(c) Upon termination of this Agreement, BPC will remove all of its equipment and any improvements made by BPC on Brockton property and restore the City's property to its original condition and, thereafter, BPC will have no further rights of access to the AWRF Facility or the land of Brockton.

Execution Version

5. Grant of Access to the AWRF Facility.

The City shall grant access for BPC to lay pipes across the City's land as well as authorization to place and operate certain equipment within the AWRF Facility.

6. Assignment.

(a) BPC reserves the right to transfer, convey or assign, in whole or in part, its interest in the Project to an affiliate, any subsidiary or any unrelated third party; provided, however, that the assumption of this Agreement and the obligations hereunder shall be a condition of any sale or transfer of the Project or any interests in land associated with the Project during the Term of this Agreement.

(b) BPC further reserves the right to transfer, convey or assign, in whole or in part, its interest in the Property and the Project without the consent of the City as security to any party providing financing to construct the Project. The City shall cooperate with any such financing parties in signing customary consents to such assignment for a security interest.

7. Binding Effect.

This agreement is binding upon the City, BPC and their successors and assigns to the fullest extent permitted by law.

8. Insurance; Performance Bond.

(a) Certificate of Insurance: BPC shall supply the City with a properly endorsed certificate of insurance before commencing any work to be performed in the AWRF Facility. Both BPC and the City shall be named as a co-insured and the City shall be named as the owner of the AWRF Facility, and certificates of insurance shall be furnished to both Parties.

(b) Required Insurance Coverages:

(i) *Workers' Compensation*: as required by Massachusetts law.

Execution Version

(ii) *Liability Insurance*: Limits of \$500,000/\$1,000,000. The liability policy shall provide for a waiver of subrogation against the City which may arise by reason of any payments under the policy. The policy shall state that it cannot be cancelled without at least thirty (30) days' notice in writing to the City. The certificates of all policies shall provide for prior notice of cancellation to the City.

(c) Performance Bond: BPC shall provide a performance bond in the amount of Five Hundred Thousand Dollars (\$500,000.00) to insure the completion of any work done in the AWRF Facility or on land owned by the City. The performance bond may terminate twenty-four (24) months after the date of execution of this Agreement.

9. Discharge of Process Water to the AWRF Facility.

BPC shall be permitted to discharge its process water directly to the AWRF Facility twenty-four hours a day, seven days per week. All of BPC's process water discharged directly to the AWRF shall be by continuous flow and gauged by magnetic flow meter. BPC's average daily flow of process water discharged directly back to the AWRF Facility through a dedicated pipe is expected to be approximately five hundred thousand (500,000) GPD. The City shall issue to BPC any required permits and authorizations to connect the Project to the AWRF Facility and to connect the Project to the Brockton public sewer system, including but not limited to, an Industrial Waste Water Discharge Permit.

10. Compliance with Law.

During the term of this Agreement, and as a condition thereof, BPC agrees to abide by any and all laws, rules, regulations and ordinances applicable to it including any amendments thereof.

Execution Version

11. Conditions Precedent to Effectiveness of Agreement.

This Agreement shall not become effective unless and until each of the following events occur: (a) BPC receives, in final, non-appealable form, all approvals, permits, licenses and governmental authorizations necessary for it to construct and operate the Project, including all permits and authorizations needed for construction and operation of the Project from the City; (b) BPC enters into and executes a binding agreement with a contractor with suitable experience for the engineering, procurement and construction of its Project and (c) BPC closes debt and equity financing for construction of the Project. BPC shall notify the City when the aforementioned conditions have been achieved.

12. Representations and Warranties.

- (a) BPC represents and warrants that as of the date hereof:
- (i) BPC is duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts;
 - (ii) BPC has all power and authority to enter into and perform its obligations under this Agreement;
 - (iii) BPC has validly executed this Agreement;
 - (iv) This Agreement constitutes a legal, valid and binding obligation of BPC;
 - (v) The execution, delivery and performance of this Agreement by BPC has been duly authorized by all requisite corporate action and will not conflict with any provisions of its organizational documents or of any other agreements or contracts; and
 - (vi) There are no suits, legal proceedings, orders of a court or administrative agency or threats of suit or proceedings which challenge the validity of this Agreement or

Execution Version

the payments to be made thereunder.

- (b) The City represents and warrants that as of the date hereof:
 - (i) The City is a municipal corporation chartered under the laws of the Commonwealth of Massachusetts, legally and validly acting by and through its Mayor and the City Council for the City of Brockton.
 - (ii) The City is duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, has all power and authority to enter into and perform its obligations under this Agreement;
 - (iii) The City has validly executed this Agreement;
 - (iv) This Agreement constitutes a legal, valid and binding obligation of the City;
 - (v) The execution, delivery and performance of this Agreement by the City has been duly authorized by all requisite municipal action and will not conflict with any provisions of effective City Ordinances or of any other agreements or contracts entered into by the City;
 - (vi) There are no suits, legal proceedings, orders of a court or administrative agency or threats of suit or proceedings which challenge the validity of this Agreement or the payments to be made thereunder.

13. Default.

The failure of any Party (the “Defaulting Party”) to comply with any material terms or conditions of this Agreement shall be deemed a material breach of this Agreement. The non-breaching Party shall have the right, after thirty (30) days’ notice has been given to the Defaulting Party and the Defaulting Party has failed to cure any such breach or default (a “Default”), at the non-breaching Party’s option, to cancel, terminate or suspend this Agreement.

Execution Version

Provided however, in recognition that BPC cannot operate the Project without the treated effluent from the AWRF Facility, if the City fails to provide treated effluent to the Project and such failure is not cured or remedied within twelve (12) hours after notice from BPC, BPC shall have the right, but not the obligation, to cure any default of Brockton hereunder, including, but not limited to, making repairs or replacements to equipment within the AWRF Facility, and the City shall reimburse BPC for any such cure costs. Provided further, upon the occurrence of any Default, either Party shall have rights to initiate a claim for damages or equitable relief pursuant under Dispute Resolution, Section 15, below.

14. Indemnification.

(a) BPC shall indemnify and hold harmless the City and its directors, officers, employees and agents from and against any costs, losses, expenses, suits, liabilities, damages or claims for damages (“Damages”) directly arising from this Agreement but only to the extent caused by any acts, omission or negligence of BPC or any of its subcontractors, provided however, BPC shall not be obligated to indemnify the City if the Damages were caused by the willful acts or negligence of the City or its officials, employees, agents or contractors. BPC also will hold harmless the City of Brockton if the AWRF Facility is directed by a court or regulatory agency with relevant jurisdiction to reduce the quantity of treated effluent provided to the Project in order for the AWRF to maintain a minimum discharge of treated effluent during periods of extreme natural low flow in the Salisbury Plain River, and at its own expense BPC may participate in any proceeding on such issues before a court or regulatory agency.

(b) The City shall indemnify and hold harmless BPC and its directors, officers, employees and agents from and against any costs, losses, expenses, suits, liabilities, damages or claims for Damages directly arising from this Agreement but only to the extent caused by any

Execution Version

acts, omission or negligence of the City or any entity under its control, provided however, the City shall not be obligated to indemnify BPC if the Damages were caused by the willful acts or negligence of BPC or its directors, officers, employees, agents or contractors.

15. Dispute Resolution

In case of a Default or any breach of this Agreement the non-breaching Party shall be entitled to relief both at law and in equity, including, but not limited to injunctive relief and specific performance. Jurisdiction for any litigation arising from or relating to this Agreement shall be in the federal or state courts located in Boston, Massachusetts.

16. Notices.

Any notice permitted or required under the provisions of this Agreement to be given or served by either of the Parties hereto upon the other Party shall be in writing and signed in the name or on behalf of the Party giving or serving the notice. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified U.S. mailing properly addressed or if sent by an overnight courier with a receipt of delivery. Notice to BPC shall be deemed sufficient if sent to:

Brockton Power Company LLC
c/o Advanced Power Services (NA) Inc.
31 Milk Street, Suite 1001
Boston, MA 02109
Attention: Thomas Spang, President
T: 617-456-2203
Email: Tspang@advancedpowerna.com

With a copy to:

Advanced Power Services (NA) Inc.
31 Milk Street, Suite 1001
Boston, MA 02109
Attention: Arnold Wallenstein,
Senior Vice President and General Counsel
T: 617-456-2204
Email: awallenstein@advancedpowerna.com

Execution Version

Notice to Brockton shall be deemed sufficient if sent to:

The Mayor of the City of Brockton
City Hall
Brockton, MA 02301

17. Entire Agreement.

This Agreement contains the entire agreement of BPC and Brockton with respect to the sale of effluent from the AWRF Facility. This Agreement supersedes any prior agreements or understandings whether verbal or written relating to the sale of effluent from the AWRF Facility.

18. Severability.

If at any time subsequent to the date hereof, any provisions of this Agreement shall be held by any court of competent jurisdiction to be illegal, void or unenforceable, such provision shall be of no force or effect, but the illegality or unenforceability of such provision shall have no effect upon and shall not impair the enforceability of any other provision of this Agreement.

19. No Waiver of Rights.

No right hereunder may be waived by a Party, except pursuant to a writing signed by the Party against which enforcement of the waiver is sought. No failure or delay on the part of any Party in exercising any of its rights under this Agreement, no partial exercise by any Party of any of its rights under this Agreement, and no course of dealing among the Parties, shall constitute a waiver of the rights of a Party.

20. Governing Law.

This Agreement shall be governed by, and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of the conflicts of law rules of the Commonwealth.

21. Counterparts.

This Agreement may be executed in original counterparts and shall be valid as if signed in one document.

Execution Version

22. Authorization to Execute Agreement.

(a) BPC shall attach to this Agreement a certified copy of a vote of corporate authority or other evidence of the capacity and authority of the party executing this Agreement for BPC.

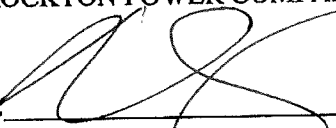
(b) By approving this Agreement as to form, the City Solicitor of Brockton certifies that the Mayor is authorized to execute this Agreement.

Signature page follows.

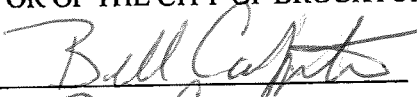
Execution Version

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above by the undersigned who represent that they are fully authorized to act on behalf of their principals.


BROCKTON POWER COMPANY LLC

By: 
Name: Thomas E. Spang
Title: President

MAYOR OF THE CITY OF BROCKTON

By: 
Name: BILL CARPENTER
Title: MAYOR

CHIEF FINANCIAL OFFICER OF THE CITY OF BROCKTON

By: 
Name: JOHN A. CONDON
Title: CEO

APPROVED AS TO FORM AND LEGALITY:
PHILLIP NESSRALLA, CITY SOLICITOR




BROCKTON POWER COMPANY LLC
RESOLUTION OF THE MEMBERS

The Members of Brockton Power Company LLC, a Massachusetts limited liability company (the "Company") acting by written consent pursuant to the Massachusetts Limited Liability Company Act and the Operating Agreement of the Company, hereby agree to adopt the following Resolutions of the Company:

1. The Company shall be authorized to enter into and perform under a Settlement Agreement (the "Settlement Agreement") with the City of Brockton, Massachusetts (the "City") to settle and ultimately dismiss the litigation filed by the Company against the City and others in the United States District Court for the District of Massachusetts, Civil Action No.112-CV-1147-LTS.
2. The Company shall be authorized to enter into and perform under an Agreement for the Sale of AWRF Effluent (the "AWRF Agreement") between the Company and the City.
3. The duly authorized and acting President of the Company, Thomas Spang, President of the Managing Member of the Company, AP Energy Holdings Inc., and any other officers of the Company shall be authorized to execute and deliver the Settlement Agreement and the AWRF Agreement, and any other certificates and documents necessary to give effect to the foregoing Resolutions of the Company.

The undersigned Secretary of the Company certifies that the foregoing Resolutions of the Company were approved by the Members of the Company on February 25, 2015.

By 

Name: Arnold R. Wallenstein

Title: Secretary

AP Energy Holdings Inc.

The Managing Member of the Company