MEMORANDUM

TO: City Council
FROM: Richard M. Brown, City Manager
RE: Development Agreement
City of East Providence and CME Cornerstone – Forbes Street Redevelopment Project

Enclosed for the review and approval of the City Council is a Development Agreement between the City and CME/Cornerstone regarding the Forbes Street Redevelopment Project. At its meeting of October 19, 2010 the City Council voted unanimously to select CME/Cornerstone as the preferred developer of the Forbes Street property and directed the City Manager and City attorneys to develop a Development Agreement outline the respective responsibilities of the City and CME/Cornerstone in the redevelopment process.

As the Council is aware, the State of Rhode Island is committing up to $1.5 million in every grant funding to support this project, subject to the City executing a development agreement with the selected development partner. This Agreement, which was prepared by the City’s attorneys and reviewed by CME, represents the first step in the process and permits the City to move forward with CME to investigate the feasibility of the Forbes Street site for development as a solar energy facility. Execution of this agreement also permits the City to access State grant funds which may be used to reimburse the City and CME for eligible engineering and other soft costs associated with site preparation and site investigation.

Further negotiation will take place at a later date between the City and CME when more information is available regarding the costs of site development and solar energy production. CME will be required to come back to the City Council at that time to negotiate a land lease and potentially the sale of energy to the City. It is anticipated that it will be several months before the due diligence is completed.
Time is of the essence in moving forward with this project as the State grant funds are competitive and available on a limited basis.

I recommend that the City Council approve the Development Agreement as presented.

Enclosure – Developer Agreement

RMB/JMB/sac.
This DEVELOPMENT AGREEMENT (the “Agreement”) is made the ___ day of November, 2010, by and between the City of East Providence, a Rhode Island municipal corporation (the “City”) and CME Energy LLC, a Delaware limited liability company (the “Developer”).

Recitals

A. The City owns approximately 229 acres of land on Forbes Street in the Riverside section of the City (the “Property”), approximately seventy (70) acres of which was previously used by the City as a municipal landfill (said seventy (70) acre portion of the Property is referred to herein as the “Landfill”).

B. The City and the Developer desire to develop portions of the Property as a source of renewable energy, open space and other potential commercial uses.

C. The City will provide the Developer with access to the Property as set forth herein to enable the Developer to undertake certain due diligence activities and, at the City’s request, to assist the City in the engineering and other related studies with respect to certain site work and to perform applicable site work.

D. The Developer has expressed an interest in working with the City to develop a Master Plan for the Project (as those terms are defined herein), and to develop a detailed plan for the development consistent with such Master Plan, all in such form and substance as is acceptable to the parties.

E. The City and the Developer wish to set forth in this Agreement the terms on which the Developer will develop the Property consistent with the proposal (the “Proposal”) presented to the City entitled “CME Energy and Cornerstone Power Development Response to East Providence RFP”, dated August 17, 2010.

Agreements

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby as provided herein, the City and the Developer hereby agree as follows:

ARTICLE I
DEFINITIONS

In addition to other terms defined in other Articles of this Agreement, as used herein the following terms shall have the following meanings:

“Approved Improvements” means the Project improvements to be constructed by the Developer in accordance with the Master Plan and the detailed plans and specifications approved by the City for such improvements in accordance with this Agreement.

“Commencement of Construction” means Developer has received the permits and approvals necessary to commence construction of the Approved Improvements and work at the Property has begun.

“Developer Default” means any of the following:
(a) Developer's failure to perform or fulfill any term, condition or agreement contained or referred to herein, on the part of the Developer to be performed or fulfilled, such failure having continued for a period of thirty (30) days after notice thereof shall have been given by the City to the Developer identifying the alleged default; provided however, if such failure to perform or fulfill such term, condition or agreement cannot be reasonably remedied within thirty (30) days, the Developer shall be granted such further time as may be reasonably necessary, with due diligence, to complete such performance but not more than one-hundred twenty (120) days from the date of such default notice; or

(b) the Developer being bankrupt or insolvent, or voluntarily or involuntarily taking advantage of any of the provisions of the United States Bankruptcy Code, as amended, or making a general assignment for the benefit of creditors, or a permanent receiver being appointed for its property or any part thereof; or

(c) the dissolution of the Developer.

"Due Diligence Period" has the meaning provided in Section 2.1.

"Force Majeure" means any of the following, which is beyond the reasonable control of the Developer: (i) storm, earthquake, hurricane, tornado, flood or other act of god; (ii) war, insurrection, epidemics, quarantine restrictions, civil commotion or act of terrorism; (iii) strikes or lockouts; (iv) embargoes; or (v) unavoidable casualty.

"Governmental Approvals" means any permit, license or other approval required to be issued by any Governmental Authority for the development of the Property for the Project in accordance with the Master Plan, and/or the construction, use and/or operation of any Approved Improvements on the Property.

"Governmental Authority(ies)" means the United States, the State, the City and any political subdivision of any thereof, and any agency, department, commission, board, court or instrumentality of any thereof.

"Ground Lease" has the meaning provided in Section 3.1.

"Project" means the alternative energy development contemplated by the Developer for the construction, use and operation of solar panels as outlined in the Proposal.

"State" means the State of Rhode Island and Providence Plantations.

"Term" means the period commencing on the date hereof and expiring on August 31, 2011. In the event the parties agree pursuant to a written letter agreement executed by both parties to extend the Term, the Term will be extended for any applicable period of time set forth in such letter agreement amending this Agreement. It is understood and agreed, however, that neither party shall be obligated to execute any such letter agreement extending the Term.

ARTICLE II

DUE DILIGENCE AND MASTER PLAN

2.1 Due Diligence. During the period commencing on the date hereof and terminating on the last day of the Term (the "Due Diligence Period"), the Developer will perform
due diligence regarding the development of the Property. The Developer will satisfy itself as to title, survey, topographical, environmental, wetlands delineation and surveying, soil conditions and availability of utilities, sewer use and water supply, the overall regulatory framework governing the Property and the Project and required for the Approved Improvements, including without limitation, zoning, subdivision, and other land use requirements, and other applicable laws, ordinances and regulations. The City will reasonably cooperate (at no cost to the City) with Developer in the conduct of such due diligence. All due diligence work and activities will be at the Developer’s sole cost and expense, subject to any funding made available as described in Section 2.6. Subject to at least forty-eight (48) hours prior written notice to the City, during the Term of this Agreement, the Developer and its authorized agents and representatives at Developer’s sole risk and expense shall be entitled to enter the Property for purposes of conducting inspections, tests and examinations of the Property. Notwithstanding the foregoing, if the Developer wishes to engage in any testing which may damage or disturb any portion of the Property, or any testing or sampling of surface or subsurface soils, subsurface water, ground water, or any materials in or about the Property, Developer shall obtain the City’s prior written consent, which will not be unreasonably withheld or delayed. The Developer agrees to employ due diligence and reasonable efforts to mitigate noise and dust in connection with its due diligence activities at the Property and to minimize any impact on any abutting properties in connection therewith. Developer, upon written request of the City will provide the City a true and complete copy of any report or inspection results obtained by the Developer with respect to the Property. Developer will not provide copies of such reports and/or inspection results to any third party (other than Developer’s lender, attorney and agents of Developer) except if required by law. Developer will repair any physical damage to the Property caused by any such tests or investigations and Developer hereby agrees to indemnify, defend and hold the City (and its officers, City Council members, board members and other City governmental officials) harmless from any damages, actions, causes of action, liabilities, claims or other costs or expenses of any nature whatsoever, including, without limitation, property damage or personal injury, arising out of or in connection with any act or omission of the Developer or its agents, servants, invitees, contractors or any other third party for whom the Developer is legally responsible, together with reasonable attorneys’ fees and other costs incurred by the City in connection therewith. This indemnification shall survive the expiration or termination of this Agreement. All such investigations and tests shall be performed by duly licensed contractors. Prior to entering the Property, and as a condition precedent to the foregoing right of access, the Developer and each firm or contractor performing the tests or inspections shall provide the City with evidence of general comprehensive liability coverage providing coverage for the City in an amount not less than $3,000,000.

2.2 Termination Right. If the Developer is dissatisfied in its sole discretion with the results of its due diligence review, Developer may terminate this Agreement by written notice to the City at any time prior to the expiration of the Term. If a draft Master Plan is not approved by the parties prior to the expiration of the Term, either party hereto may terminate this Agreement by giving written notice thereof to the other party prior to the expiration of the Term.

2.3 Approval of Third Parties. The Developer’s consultants and contractors, including, without limitation, architects, designers and engineers shall be subject to the City’s prior approval, which approval will not be unreasonably withheld.
2.4 **Prohibition Against Assignment and Recording.** This Agreement may not be transferred or assigned without the prior written consent of the City, which consent may be given or withheld in the City's sole discretion. The Developer agrees not to record this Agreement in the Records of Land Evidence of the City of East Providence, Rhode Island. Any recording of this Agreement in violation of the foregoing covenant shall render this Agreement, at the City's election, null and void and of no further force or effect except for those provisions which are expressly stated herein to survive the expiration or termination of this Agreement.

2.5 **Master Plan.** During the Term, the Developer will prepare a draft Master Plan for the Project and the development of the Property (the "Master Plan"). The Master Plan will address the overall design, infrastructure, transportation plan, rights of way, nature of allowable uses (type, location, square footage and density), location and amount of parking, and all other matters essential to the proper development of the Property for the Project. The parties shall also discuss during the Term the proposed schedule for the Project including the estimated date for the Commencement of Construction with respect thereto. The Master Plan must be approved by the City, which approval will be in the City's sole discretion.

2.6 **Grants.** During the Term the City will investigate the availability of Project funding pursuant to governmental grants. Without limiting the generality of the foregoing, the City will explore the availability of grant funds of up to $1,500,000 for funding soft costs and other qualifying expenditures in connection with the Project. The Rhode Island Office for Renewable Energy ("ORE") has advised the City that up to $500,000 in funding may be available to reimburse qualifying soft costs relating to applicable feasibility studies, engineering work and other qualifying expenditures. In addition thereto, the Rhode Island Economic Development Corporation ("RIEDC") has indicated that up to $250,000 may be available out of its Renewable Energy Fund following satisfactory application by the City for such funds. In addition, up to an additional $250,000 amount may be available from the RIEDC in fiscal year 2012. Based upon the foregoing, the City will agree to apply to the RIEDC for two successive grants in the amount of $250,000 each to be used for qualifying costs as aforesaid. In addition, the State has indicated that up to an additional $500,000 may be available through the ORE towards the payment of qualifying costs. The City agrees to apply for such additional $500,000 amount from the ORE to offset eligible Project costs. Notwithstanding anything contained herein to the contrary, the City acknowledges that the Developer will not be obligated to commence any activities under this Article II unless the City and the Developer confirm that an initial $250,000 grant from the ORE is available to pay the costs related thereto.

2.7 **Documents.** Any documents, reports or other information which are provided to the Developer by the City in connection with Developer's due diligence are provided for informational purposes only to assist Developer in its due diligence and without any representation or warranty from the City. The Developer agrees to conduct its own independent due diligence and analysis with respect to the Property and the Project.

2.8 **Developer Performance.** In the event the Developer agrees to perform any work on behalf of the City after being requested in writing by the City to perform such work, and in the event such work will be performed by employees of the Developer in lieu of a third party, the parties will negotiate the procedure to determine the amount to reimburse the Developer for the reasonable and documented costs of such work. With respect to any work to be performed by a third party including, without limitation, any applicable due diligence activities referenced in Article II which will be reimbursed by the City out of the $250,000 grant referenced in Section

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2.6, the parties shall discuss the manner in which such work will be bid and subsequently awarded. The City acknowledges that the Developer will not be obligated to perform any work on behalf of the City unless and until the Developer and the City have agreed as provided herein to the scope of the work to be performed and the amount to be paid to the Developer for such work and the billing arrangements with respect thereto. The Developer acknowledges and agrees that the Developer shall not be authorized to act on behalf of the City and shall not hold itself out as having the authority to act as the agent of the City or otherwise empowered to bind the City to any contract or agreement with a third party. It is further understood and agreed that the City will not be obligated to pay for any due diligence or other costs incurred by the Developer out of the City's own funds and that the sole obligation of the City is to remit to the Developer grant funds which are made available to the City as set forth in Section 2.6. The Developer further acknowledges and agrees that the City is making no representation or warranty with respect to the availability of any such grant funds or other funds.

2.9 Power Purchase Contract. The parties shall discuss during the Term the potential purchase and sale of electricity to be generated by the Project. The City reserves the right to participate with other agencies and instrumentalities of the City in connection with the Project and the purchase of electricity including, without limitation, in connection with any real estate adjacent to the Property under the jurisdiction of any such agency or instrumentality of the City. The City also reserves the right to explore an inter-municipal arrangement with other cities and towns in connection with the foregoing.

ARTICLE III
GROUND LEASE

3.1 Ground Lease Terms. During the Term the parties will discuss and negotiate the terms and provisions of the proposed Solar Ground Lease (the "Ground Lease") containing, inter alia, the following basic terms:

3.1.1 Term - The term will be as agreed to by the parties and the Ground Lease will be triple net, so-called, with Developer bearing all costs associated with the Property as hereinafter provided excluding only the Existing Environmental Conditions (as hereinafter defined).

3.1.2 Commencement - The Ground Lease term will commence on the execution date thereof with the rent commencement date to occur on the earlier to occur of (i) the opening of the Approved Improvements for business, or (ii) the expiration of the construction period to be agreed to by the parties and set forth in the Ground Lease.

3.1.3 Base Rent - as negotiated by the parties.

3.1.4 Additional Rent - Developer will also pay all costs and expenses for the ownership, use, operation, insurance, maintenance, repair, replacement and other expenses of the Project, the leased premises and the Approved Improvements excluding only the Existing Environmental Conditions. Such payments will commence upon the date that base rent payments commence under the Ground Lease.
3.1.5 Leased Premises – The applicable portion of the Property on which the Approved Improvements will be constructed. The parties contemplate that the leased premises will be located on the Landfill.

3.1.6 All plans for any construction work for the Approved Improvements or the Project shall be provided to the City for its review and approval (such approval to not be unreasonably withheld, conditioned or delayed). Such work shall be substantially completed within a deadline to be negotiated and agreed to by the parties, with such substantial completion to be evidenced by the issuance of at least a temporary certificate of occupancy for such work pursuant to the aforesaid plans together with a certificate provided by an independent architect which also confirms that the work has been substantially completed in substantial compliance with the applicable plans.

3.1.7 The Ground Lease shall grant the Developer the right to make any and all alterations, renovations, modifications or additions desired by the Developer and to otherwise improve the leased premises or other improvements comprising the leased premises and to construct additional improvements from time to time, provided the Developer does so in compliance with all applicable laws, ordinances and regulations. The Developer must obtain the City’s prior consent to any such work and to the applicable plans for same.

3.1.8 The Ground Lease shall permit the use of the Premises for the Project.

3.1.9 The Ground Lease will require the Developer to remediate any environmental condition on the leased premises or any applicable portion of the Property if and to the extent any such environmental condition is caused by a release or discharge of hazardous materials, hazardous substances or other hazardous chemicals (including, without limitation, oil and petroleum) caused by any act or omission of the Developer, its agents, servants, employees, contractors or other third parties for whom the Developer is legally responsible.

3.1.10 The Ground Lease will also contain provisions addressing the provisions of Article IV hereof.

3.2 Financial Capability. Prior to signing the Ground Lease, Developer will provide the City with all financial information as may be reasonably requested by the City to evidence Developer’s financial ability to complete the development of the Property in accordance with the Master Plan.

3.3 Termination of Agreement. In the event the parties have been unable, for any reason, to negotiate and agree in writing to the terms and provisions of the Ground Lease during the Term, this Agreement will expire without recourse by or against either party except as expressly provided herein with respect to the Developer’s indemnification obligations and the other provisions of Article II. Both parties further agree that either party may at any time, and
for any or no reason, notify the other party that it is withdrawing from any further discussions or negotiations with respect to the Ground Lease, the Master Plan, the Approved Improvements or any other aspect of the Project, in which event this Agreement shall be deemed terminated without recourse by or against either party except as provided above with respect to the Developer’s obligations under Article II.

ARTICLE IV
EXISTING ENVIRONMENTAL MATTERS

The Developer acknowledges that the Property is subject to the terms and provisions of that certain Memorandum of Understanding Between the Rhode Island Department of Environmental Management and the City of East Providence Concerning Acceptance of Type 0 Former I-195 Roadway Embankment Material at the Former Forbes Street Landfill Site (the “MOU”), dated September, 2010. The MOU establishes certain responsibilities and procedures between the Rhode Island Department of Environment Management (“RIDEM”) and the City with respect to the acceptance of certain soils (the “Material”) generated during the removal of the former I-195 embankments in Providence, Rhode Island. The Rhode Island Department of Transportation (“RIDOT”) will excavate and transport up to 50,000 cubic yards of Material to the Property. The Material will be deposited on the Landfill or other applicable portions of the Property as directed by the City. The City will take into consideration the recommendations of the Developer with respect to the most advantageous locations for the placement of the Material based upon the anticipated site work and construction of the Approved Improvements as contemplated with respect to the Project which will occur at a subsequent date. The Developer agrees to assist (at no cost to the Developer) the City in connection with the foregoing delivery and stockpiling of the Material and in connection with the spreading and disbursal of such Material on the Property.

The Developer also acknowledges and agrees that the City has agreed to provide a Site Investigation Report (“SIR”) to RIDEM for review and approval by RIDEM. The purpose of SIR is to describe previous site investigations conducted at the Property, present the applicable analytical data and provide site mapping illustrating the nature and extent of contaminants identified therein together with a presentation of the remedial alternatives to address the foregoing existing contaminants (all existing contaminants referenced in the SIR and in any other environmental site assessment report provided by the City to the Developer are collectively referred to herein as the “Existing Environmental Conditions”). In addition, the Developer acknowledges and agrees that the City shall prepare and submit to RIDEM a Remedial Action Work Plan (“RAWP”) for the Property and to execute an Environmental Land Usage Restriction (“ELUR”) which will include a post-construction Soil Management Plan (“SMP”). The Developer acknowledges and agrees that all construction and other development activities contemplated in the future with respect to the Project and the lease, construction, use and operation of the Approved Improvements will be subject to the MOU and the subsequent RAWP, ELUR and SMP as well as any other applicable documents executed by the City or otherwise arising out of or in connection with the discussions between the City and RIDEM with respect to the remediation of the Existing Environmental Conditions. The City acknowledges and agrees that in the event RIDEM includes any requirements in the ELUR or the SMP which the Developer believes will cause the Project to be no longer economically viable, the Developer
may terminate this Agreement. The Developer agrees to cooperate with the City (at no cost to the Developer) in connection with all of the foregoing activities.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER

Section 5.1 Representations and Warranties of Developer. Developer hereby represents and warrants as follows:

(a) Developer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware with full power and authority to enter into this Agreement and the transactions contemplated hereby.

(b) The execution and delivery of this Agreement and the performance of Developer's obligations hereunder have been duly authorized by all required limited liability company action of Developer, including any action required by Developer's shareholders, members or partners, as applicable. This Agreement has been duly authorized, executed and delivered by Developer and is the legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

Section 5.2 Maintenance of Existence. During the Term of this Agreement, Developer shall continue to do all things necessary to preserve, renew, and keep in full force and effect its limited liability company existence, and rights and franchises necessary to continue such business and preserve and keep in force and effect all licenses and permits necessary for the proper conduct of its business.

Section 5.3 Conduct of Business. Developer shall conduct and maintain its business in compliance in all material respects with all laws, regulations and ordinances.

Section 5.4 Compliance with Agreements. Developer shall comply with all material provisions of all contracts, agreements, undertakings or other instruments to which it is a party relating to or affecting the transactions contemplated hereby.

Section 5.5 Notification of Disputes. Developer shall promptly notify the City of any materially adverse claims, actions or proceedings materially and adversely affecting its ability to perform its obligations under this Agreement.

Section 5.6 Notification of Attachments. Developer shall promptly notify the City of any levy, attachment, execution or other lien or process against its assets that will materially adversely affect its ability to perform its obligations under this Agreement.

Section 5.7 Further Assurances. Upon reasonable request, the Developer shall execute and deliver, or cause to be executed and delivered, such further instruments and do or cause to be done such further acts as may reasonably be necessary or proper to carry out the intent and purposes of this Agreement.

Section 5.8 Equal Employment Opportunity. Developer shall comply with all applicable federal, state and local laws in effect from time to time pertaining to equal employment, anti-discrimination and affirmative action, including executive orders and rules and regulations or appropriate federal, state and local agencies unless otherwise exempt therefrom. Developer shall include the provisions of the foregoing sentence in every contract or purchase
order and will require the inclusion of these provisions in every subcontract entered into by any of its contractors and vendors, so that such provisions will be binding upon each such contractor and vendor.

Section 5.9  
**Time of the Essence.** Subject to Force Majeure, time is of the essence of this Agreement, and the Developer shall diligently, promptly and punctually perform the obligations required to be performed by it and shall diligently, promptly and punctually fulfill the conditions applicable to it, subject to any extension granted to Developer pursuant to the terms hereof.

### ARTICLE VI

**REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CITY**

**Section 6.1**   
Representations and Warranties of the City. City hereby represents and warrants as follows:

(a) City is a municipal corporation of the State of Rhode Island, validly existing and in good standing under the laws of the State of Rhode Island, with full power and authority to enter into this Agreement and the transactions contemplated hereby.

(b) The execution and delivery of this Agreement and the performance of the City's obligations hereunder have been (or will be) duly authorized by all required corporate action of the City Council of the City. This Agreement has been (or will be) duly authorized, executed and delivered by the City and is the legal, valid and binding obligation of the City, enforceable in accordance with its terms.

**Section 6.2**   
Further Assurances. Upon reasonable request, the City shall execute and deliver, or cause to be executed and delivered, such further instruments and do or cause to be done such further acts as may reasonably be necessary or proper to carry out the intent and purposes of this Agreement provided no such document or agreement shall expose or obligate the City to incur any liability or obligation greater than those set forth herein.

### ARTICLE VII

**TERMINATION**

**Section 7.1**  
Termination and Disposition of Documentation. Upon the termination of this Agreement as provided herein, the Developer shall, immediately upon the request of the City, deliver to the City copies of all reports, plans, documents or other due diligence prepared by or for Developer with respect to the Property and the Project.

### ARTICLE VIII

**MISCELLANEOUS**

**Section 8.1**  
Indemnification. The Developer shall indemnify, defend and hold the City, its officers, City Council and Board members, consultants, employees, representatives and agents harmless from and against any and all liabilities, losses, damages, penalties, judgments, awards, claims, demands, costs, expenses, actions, lawsuits or other proceedings to the extent arising directly or indirectly out of the actions or inactions of the Developer or its consultants,
employees, representatives, agents and contractors in connection with this Agreement. The
indemnity shall survive any expiration or termination of this Agreement.

Section 8.2  Assignment by the Developer. The Developer shall not assign this
Agreement or any right, title or interest hereunder without the prior consent of the City, which
consent may be given or withheld for any or no reason. Any purported assignment of this
Agreement or any right, title or interest hereunder not complying with this Section 8.2 shall, at
the option of the City, be void and of no force or effect whatever. Notwithstanding the
foregoing, the Developer shall be entitled to assign this Agreement to any limited liability
company or other entity of which CME Energy LLC and/or CornerStone Power Development
has an ownership interest without the consent of the City.

Section 8.3  Consents and Approvals. All consents and approvals which may be given
under this Agreement shall, as a condition of their effectiveness, be in writing. The granting of
any consent or approval by a party to perform any act requiring consent or approval under the
terms of this Agreement, or the failure on the part of a party to object to any such action taken
without the required consent or approval, shall not be deemed a waiver by the party of its right to
require such consent or approval for any further similar act.

Section 8.4  Relationship of Parties. This Agreement is not to be construed to create a
partnership or joint venture between the Developer and the City.

Section 8.5  Notices. Whenever it is provided herein that notice, demand, request,
consent, approval or other communication (a "notice") shall or may be given to, or served upon,
either of the parties by the other, or whenever either of the parties desires to give or serve upon
the other any notice, each such notice shall be in writing and shall be effective for any purpose
only when received or refused as hereinafter provided, and if given or served by personal
delivery, or by recognized overnight courier, in either instance as evidenced by acknowledgment
of receipt or written confirmation of refusal to accept delivery, or by facsimile with automated
acknowledgement of receipt showing the date, time and telephone number of the recipient, or
sent by overnight delivery service or by certified mail, postage prepaid, return receipt requested,
addressed as follows:

If to the City:  City of East Providence
               145 Taunton Avenue
               East Providence, Rhode Island 02914
               Attn: Mayor's Office

With a copy to:  Hinckley, Allen & Snyder LLP
                 50 Kennedy Plaza, 15th Floor
                 Providence, Rhode Island 02903
                 Attn: Robin L. Main, Esq.

If to the Developer:  CME Energy LLC
                    20 Park Plaza
                    Suite 400
                    Boston, Massachusetts 02116
                    Attn: William Martin

With a copy to:  Adler Pollock & Sheehan P.C.
Any party may by notice to the other party to change the address to which notices to such party shall thereafter be given.

Section 8.6 Negotiated Document. The parties acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against any party by reason of such party having drafted such provision or this Agreement.

Section 8.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island. In any litigation arising from this Agreement, Developer consents to and confers personal jurisdiction of the state and federal courts located within the State of Rhode Island, and agrees that any such litigation shall be brought only in a state or federal court within the State of Rhode Island.

Section 8.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

Section 8.9 Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

Section 8.10 Gender, etc. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular, as the context may require.

Section 8.11 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Agreement shall, or shall be construed to confer, upon any person other than the Developer or the City, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

Section 8.12 Successors and Assigns. The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the City and the Developer, their respective permitted successors and assigns.

Section 8.13 No Amendment. Neither this Agreement nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, modification, amendment, supplement, alteration, waiver, discharge or termination is sought.

Section 8.14 Separability. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement and if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise...
affected thereby, and each term and provision of this Agreement shall be valid and enforced to
the extent permitted by law.

Section 8.15 Confidentiality. Developer and its representatives shall hold in strictest
certainty all confidential data and information obtained with respect to the City and the
Property which the City notifies the Developer in writing is confidential, whether obtained
before or after the execution and delivery of this Agreement, and shall not disclose the same to
others; provided, however, that it is understood and agreed that Developer may disclose such
data and information to the employees, lenders, consultants, accountants and attorneys of
Developer provided that such persons agree to treat such data and information confidentially. In
the event this Agreement is terminated or Developer fails to perform hereunder, Developer shall
promptly return to City any statements, documents, schedules, exhibits or other written
information obtained from City or its agents or consultants in connection with this Agreement or
the transactions contemplated by this Agreement. In the event of a breach or threatened breach
by Developer or its agents or representatives of this Section, the City shall be entitled to an
injunction restraining Developer or its agents or representatives from disclosing in whole or in
part, such confidential information. To the extent the City can lawfully do so due to the fact that
it is a municipal corporation, the City agrees to keep confidential any data which is stamped as
confidential by the Developer and which is not already in the public domain. The City may
disclose any such data, however, to its employees, lenders, consultants, accountants, attorneys,
city council members and all other similar representatives or employees of the City. In the event
the City receives a public records request for documents marked confidential by the Developer,
the City will notify the Developer in writing of the request prior to any disclosure of such
confidential information. In the event of any breach or threatened breach by the City of the
foregoing confidentiality provision, the Developer shall be entitled to an injunction restraining
the City from disclosing any such confidential information. Neither party shall be liable to the
other party for any type of damages including, without limitation, actual damages, consequential
damages or any other damages in connection with any violation of the foregoing confidentiality
provisions. The provisions of this Section shall survive the expiration or termination of this
Agreement.

Section 8.16 Entire Agreement. This Agreement, together with the Exhibits hereto,
contains all of the promises, agreements, conditions, inducements and understandings between
the City and the Developer concerning the subject matter of this Agreement and there are no
promises, agreements, conditions, inducements or understandings, oral or written, express or
implied, between them other than as expressly set forth herein.

Section 8.17 Standstill Provision. During the Term of this Agreement, the City will not
negotiate with or solicit third party interest in development of the Property for a competing
Project.

Section 8.18 City Representatives not Individually Liable. No City Council or other
board member, official, elected representative or employee of the City shall be personally liable
to Developer or any successor in interest in the event of any default or breach by the City or for
any amount which may become due by City to Developer hereunder or on any obligations of the
City under this Agreement.

Section 8.19 City Approval. The Developer acknowledges and agrees that the City is
executing this Agreement in its capacity as a contracting party and that any applicable agencies,
boards or other instrumentalities of the City in any way involved in connection with the Project including, without limitation, in connection with the Governmental Approvals applicable thereto that are within the jurisdiction of the City shall be applied for by the Developer without any representation or warranty by the City as to whether any such board or other instrumentality of the City will grant such permits or approvals.

Section 8.20 Broker. The City and the Developer each represent and warrant to the other that it has dealt with no broker, finder or similar party in connection with the transactions contemplated under this Agreement.

Section 8.21 Leasing. The Developer agrees that the Developer will lease the applicable leased premises "AS IS", "WHERE IS" and "WITH ALL FAULTS", without any representation or warranty on the part of the City with respect thereto except as otherwise expressly set forth in this Agreement and the City disclaims any and all warranties or representations with respect to the condition of the leased premises or the Property or with respect to the feasibility of the Project including, without limitation, with respect to the suitability of the Property for such use.

ARTICLE IX
DEFAULT

9.1 Default by the Developer. Upon the occurrence of any Developer Default, the City shall have the right to terminate this Agreement and recover from the Developer the third party costs and fees incurred by the City in connection with this Agreement up to the maximum amount of $10,000 and as the City sole and exclusive remedy at law or in equity. The parties agree that the foregoing represents a reasonable estimate of the City’s damages which are not otherwise readily ascertainable. Notwithstanding the foregoing, however, nothing contained in this Section shall limit the liability or obligations of the Developer under its indemnification obligations and under its other obligations under Article IV hereof.

9.2 Default by the City. If the City defaults in its obligations under this Agreement and such default is not cured within a period of thirty (30) days after written notice from the Developer of such default (or, in the case of a default which is of such a nature that it cannot be cured within such thirty (30) day cure period, the City shall have such additional period of time as is necessary to cure such default provided the City utilizes due diligence to cure such default and does so within a period of 120 days from the foregoing default notice), the Developer may terminate this Agreement and recover from the City the third party costs and fees incurred by the Developer to unrelated third parties in connection with this Agreement (excluding attorneys’ fees) up to the maximum amount of $10,000. The foregoing shall be the Developer’s sole and exclusive remedy at law or in equity. In no event shall the City be responsible for any incidental, consequential or other damages based upon the City’s default as aforesaid. Further, the Developer may not seek the remedy of specific performance. Recourse against the City, in any event, is limited to its interest in the Property.

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITY OF EAST PROVIDENCE

By: ____________________________
Name: __________________________
Title: __________________________

CME ENERGY LLC

By: ____________________________
Name: __________________________
Title: __________________________