

**APPENDIX I**  
**Material Storage Import, or Export MANIFEST**

Project: Mamaroneck Power Flex Solar Installation

Date: \_\_\_\_\_

Location (City and State): Harrison, New York

Construction Contractor (Firm): \_\_\_\_\_

Form Completed by (name, title, and phone #): \_\_\_\_\_

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	Material Storage Import or Export Area Information
Name of Facility Material Being Transferred To or From	
Address	
Facility Contact Name and Title Mailing Address Phone	
General Description of Storage, Import or Export (i.e. Topsoil/Clay/Sand/Rock)	

1. Party responsible for transport of material? Provide Contact Information:

2. Dates of Storage Import or Export:

Start Date: \_\_\_\_\_

End Date: \_\_\_\_\_

3. Material Provided to Site – Total Quantity Estimate (Cubic Yards): \_\_\_\_\_

or

Material Accepted to Site – Total Quantity Estimate (Cubic Yards): \_\_\_\_\_

4. The storage, import, export Site is:

Active Construction Site? ☐  
Industrial Facility (e.g. Mining)? ☐  
Under Active Agricultural Production? ☐  
Other(Describe): \_\_\_\_\_

5. Area of Storage Import or Export (AC)?

Total: \_\_\_\_\_  
Disturbed: \_\_\_\_\_

The Construction Contractor shall coordinate completion of the Material Storage, Import or Export Agreement found in this Appendix and submit the agreement to the Power Flex and Bergmann Project Manager's for all occurrences where soil, dirt, rock, fill or other materials are

- 1) Imported for placement onsite
- 2) Exported off-site

The Construction Contractor shall also complete and keep current the Import / Export Material Information box on the project Site Maps.

**MATERIAL STORAGE IMPORT OR EXPORT AGREEMENT  
("AGREEMENT")**

\_\_\_\_\_, which is the party, entity, or individual that possesses ownership over the real property (as these terms are set forth, defined, or used under applicable laws) (The "Owner" Located at \_\_\_\_\_ (the "off-Site Area"), and \_\_\_\_\_ ("Contractor"), enter into this material Storage, Import or Export Agreement ("Agreement"). In consideration of the mutual covenants set forth on this agreement, the parties hereto agree as follows:

1) Definitions:

- A. Stormwater requirements – all Federal State or local laws, regulations, ordinances, permits or other authorizations, approvals or other requirements relating to storm water discharges or the control of erosion or sediment discharges from construction projects, including but not limited to, the Clean Water Act, 33 U.S.C. 1251 *et seq.* and the July, 2003 NPDES General Permit for Stormwater Discharges Associated with Construction Activities (the "EPA General Permit") and all other applicable federal, state and local laws (collectively the "Stormwater Requirements").
  - B. Material – Rock, soil, or other construction materials obtained from certain real property owned by [Power Flex] as part of an earth disturbing activity.
  - C. Owner – For a corporation a responsible corporate officer. A responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principle business function, or any other person who performs similar policy or decision making functions for the corporation; or (2) the manager of one of more operating facilities provided the manager is authorized to make management decisions which, govern the operation of the facility including having the explicit or implicit duty of making major capital investments recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations. For a partnership or sole proprietorship: by a general partner or the proprietor respectively. For a municipality, State, Federal or other public facility by either a principle executive officer or ranking elected official.
- 2) Contractor covenants and agrees to [deliver / export] the Material to Owner, and the owner agrees to accept the Material outlined in Attachment 1, all subject to the terms and conditions of this agreement. Said delivery of material shall be without representation or warranty of any kind whatsoever, including without limitation representation as to composition: and/or acceptability from any particular use or purpose.
- 3) The Owner covenants and agrees through this agreement and by Accepting the Material to comply with all applicable Stormwater Requirements and the Owner further acknowledges and agrees that, from and after delivery of the Material, neither Contractor, nor any other person other than the Owner shall be responsible for such compliance with respect to the Material.
- 4) To the greatest extent permitted by applicable law, the Owner hereby releases, now and forever, Contractor, Power Flex, and the representatives, agents, consultants,

contractors \_\_\_\_\_ and \_\_\_\_\_ Subcontractors of either of them, including their respective employees, agents, officers, directors, members and shareholders (collectively, "released Parties"). From any and all known and unknown claims, suits, judgements, orders, costs expenses and damages of any kind or nature (including any attorneys, paralegal, and consultant fees and costs), whether fixed or contingent, now existing or hereafter arising and based on any and every theory of recovery, that the owner may have, suffer, incur or accrue, now or in the future arising from, relating to, or in connection with directly or indirect, (i) in the owners acceptance, receipt, use, handling, and/ or management pf the material or (ii) any third party's subsequent acceptance, receipt, use, handling, and/or management of the material. Owner hereby further irrevocable waives and covenants and agrees to refrain from, directly or indirectly asserting any claim or demand, or commencing instituting or causing the be commenced, any proceeding of any kind against released party based upon any matter purported to be released hereby. Owner acknowledges that is it its attorneys or advisors may hereafter discover pacts in addition or different from those which they now know or believe to be true with respect to the subject matter of this agreement that, if known would materially affect their decision to enter into this agreement. Nevertheless, it is the intention of owner to settle and release the Released parties as to all claims released hereby notwithstanding the discovery of the existence of any additional or different facts.

- 5) To the greatest extent permitted by applicable law, the owner shall indemnify and hold harmless the released Parties, including their respective employees, agents officers directors members and shareholders, from and against any and all claims, suits, judgement, orders, costs, expenses, damages of any kind of nature, remediation and corrective action costs, and penalties (including any attorneys, paralegal and consultant fees and costs) that any released party may have, suffer or incur now or in the future arising from, relating to, or in connection with, directly or indirectly, (i) the owners acceptance, receipt, use handling and/or management of the material or (ii) any third party's subsequent acceptance, receipt, use, handling and/or management of the material. Owner shall promptly and fully comply with its indemnity obligations hereunder upon receipt of notice thereof from any released party, Power Flex shall be entitled to control and direct defense of, and to accept or reject any offer to compromise or settle any and all such matters subject to indemnity hereunder with counsel satisfactory to Power Flex in its discretion. Owner shall cooperate, at owner's expense, with Power Flex and its counsel in all respects in connection with such defense. Owners indemnity obligations hereunder shall survive the acceptance, receipt, use handling and management of the material by owner or any third party until all such matters covered by this indemnity are fully and finally barred by applicable law.
- 6) In accepting and receiving the Material, the Owner acknowledges exclusive control over the Material, and accepts all responsibilities, obligations and duties in connection with such material and with such ownership and control including obligations arising from all storm water Requirements. The Released Parties shall have no ownership or control and shall have no responsibility or obligation whatsoever relating to or in connection with any such material covered by this agreement following the owner's acceptance and receipt of such material. The Owner acknowledges and has been made aware that the Material accepted by the owner is uncontaminated material, and that no contaminated material can leave the site and enter this site.
- 7) To the extent that any third party (other than the Owner) may accept, receive, use handle and or manage any of the Material now or in the future, the owner shall obtain from such third party a written agreement in favor of the released forties, substantially in the same form as this

agreement, in which such third party agrees to comply with the terms and conditions hereof and makes the agreements, covenants, waivers and releases set forth herein in favor of the released parties. The released parties shall be named third party beneficiaries of such written agreement.

- 8) This agreement shall be governed by the laws of the state in which the material is located, without reference to the conflicts of law provisions thereof. This agreement shall supersede any other writing, contract or agreement which specifies the timing, amount, or other specifications of delivery of Material unless any changes are specifically outlined in this agreement. This agreement may be modified only by a writing signed by each of the parties. Owner specifically acknowledges and agrees that the released parties are intended third-party beneficiaries of the provisions of this agreement, Power Flex and the other released parties shall each have all rights and remedies available hereunder, at law and in equity, in the event of any dispute concerning the terms or enforcement of this agreement, the prevailing party shall be entitled to recover costs and attorney fees.
- 9) The Signatories below have the authority to execute this agreement and to bind their respective parties to this agreement, This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by fax or electronically and shall be deemed originals binding upon the parties here to.

*OWNER*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

*CONTRACTOR*

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_