

RESOLUTION OF THE CITY COUNCIL

No. 125

Approved March 22, 2017

RESOLVED, That the Members of the Providence City Council
hereby Authorize Approval of the following Contract Award by the Board of
Contract and Supply, in accordance with Section 21-26 of the Code of Ordinances.

Southern Sky-Renewable Energy RI
(Public Property)

Twenty Year Contract

IN CITY COUNCIL

MAR 16 2017

READ AND PASSED

PRES.

CLERK

I HEREBY APPROVE.

Mayor

Date:

3/22/17



Office of the Internal Auditor

December 9, 2016

Ms. Lori Hagen
City Clerk's Office
City of Providence
25 Dorrance Street
Providence, RI 02903

Dear Lori:

I am writing to request that the following requested contract awards be submitted to the City Council and the Finance Committee for approval.

- **Department of Public Property** - Recommending Southern Sky-Renewable Energy RI, low bidder, for Solar Net Excess Generation, in a unit price bid, with a savings to the City over the contract of approximately \$700,000.00 to \$850,000.00 per year over the twenty year contract.
- **Water Supply Board** - Recommending Envision Technology Advisors, for Server Virtualization Equipment (while not the apparent low bidder, a review of the bids reveal that it is in the best interest of the City to award this bidder based on high scores in Conformance to Technical Specifications, Bidder Capacity and Experience and Cost), in a total amount not to exceed \$700,000.00.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew M. Clarkin, Jr.".

Matthew M. Clarkin, Jr.

Internal Auditor

DEC 15 5 34 PM '16

Cc: Alan Sepe, Director of Operations
James Lombardi, City Treasurer
Ricky Caruolo, General Manager PWSB

CITY HALL • 25 DORRANCE STREET, ROOM 310 • PROVIDENCE, RHODE ISLAND 02903

Phone: (401) 521-7477 • Fax: (401) 521-3920
COUNCIL@PROVIDENCERI.COM



Jorge O. Elorza, Mayor

Date: December 8, 2016

Honorable Jorge Elorza
Chairman, Board of Contract and Supply
City Hall
Providence, RI 02903

Dear Mayor Elorza:

RE: SOLAR NET EXCESS GENERATION – DEPARTMENT OF PUBLIC PROPERTY

In response to our request for proposal regarding the above entitled, our Department received bids from the following companies: (Please list by low bidder first)

	NAME	BASE	BID AMOUNTS ALTERNATES	TOTAL
1	Southern Sky-Renewable Energy RI		See	20 year contract
2	Dynamic Solar, LLC – Dynamic Energy Group		Attached	
3	Solar City Corporation			
4	Conti			
5	Syncarpha Capital			
6	Quahog Solar, LLC			
7	Ameresco			
8	Energy Development Partners, LLC			
9	Altus Power America			

(Additional sheet is ☐ is not attached)

- ☒ On the basis of said bids, we recommend the bidder, as identified on LINE 1, which firm's bid has met the specifications.
- ☐ On the basis of said bids, we recommend the bidder identified on LINE 2, while not the apparent low bidder, a review of the bids reveal that it is in the best interest of the City to reject the low bidder because: their extra fee for deliveries that are less than 250 gallons is not acceptable. Last year the City had more than 50 instances of Heating Oil deliveries less than 250 gallons.

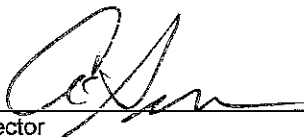
(Additional sheet is ☒ is not ☐ attached)

MINORITY PARTICIPATION \$ _____ %0

Respectfully submitted,

Account Code

Amount


Director

Financial Approval: _____

DEPARTMENT OF PUBLIC PROPERTY
PURCHASING DIVISION

Providence City Hall | 25 Dorrance Street, Rm 408, Providence, RI 02903
401 421 7740 ph | 401 455 0475 fax
www.providenceri.com

RFP | Bid Summary: Pricing



Size (MW DC)		Floor			REC	Incentive
Company/Project		NMC Price	Price/Escalator	Term	Ownership? (Y/N)	Payment Value
Altus - Exeter Opt 1	8	9.0%	\$ 0.090	20	No	
Altus - Exeter Opt 2	8	12.0%	\$ 0.090	25	No	
Syncarpha: N Smithfield	3	13.0%	\$ 0.090	20	No	
EDP: Providence Solar 1	20	22.5%	\$ 0.088	20	No	\$1,000,000
EDP: Providence Solar 3	20	22.5%	-	20	No	
Kearsarge: Aggregate 1	17	25.0%	-	20	No	
SSRE #1 Johnston 1	21.5	27.3%	-	20	No	
SSRE #1 Johnston 2	21.5	30.0%	-	25	No	
SolarCity: Landfill 1	2.26	43.0%	\$ 0.092	20	No	
SolarCity: Farm 1	2	45.0%	\$ 0.089	20	No	
SolarCity Farm 2	10	46.0%	\$ 0.087	20	No	
Syncarpha: N Smithfield w RECs	3	10.0%	\$ 0.090	20	Yes	
Kearsarge: Aggregate 2	17	21.5%	\$ -	20	Yes	
EDP: Providence Solar 2	20	22.5%	\$ 0.100	20	Yes	\$1,000,000
EDP: Providence Solar 4	20	22.5%	-	25	Yes	
SSRE #1 Johnston 3	21.5	25.0%	\$ -	20	Yes	
SSRE #1 Johnston 4	21.5	27.3%	-	25	Yes	
SolarCity: Landfill 1 w RECs	2.26	42.0%	\$ 0.094	20	Yes	
SolarCity: Farm 1 w RECs	2	44.0%	\$ 0.091	20	Yes	
SolarCity Farm 2 w RECs	10	45.0%	\$ 0.089	20	Yes	
Quahog: Aggregate	2.955	\$0.157	2%	25	No	
Altus: Exeter Opt 2	8	\$0.129	2%	20	No	
Ameresco: NK	3.177	\$0.120	0%	20	No	
Ameresco: NS	2.465	\$0.120	0%	20	No	
Dynamic: Rockville	8.2713	\$0.097	0%	20	No	
Dynamic: Rockville 2	8.2713	\$0.081	2%	20	No	

Higher discount = greater savings for Providence

- Note SolarCity has no site control
- Floor prices- increase price risk
- Not all pricing options shown to avoid redundancy
- REC ownership is for years 11 - 20/25

Fixed price proposals – increased price risk, potential upside



RFP | Bid Summary: Analysis

Company/Project	Year 1 NMC		20yr NMC		Savings/kWh of Solar		Total REC Value
	Savings		Savings		20yr NPV	Generated:	
Altus - Exeter Opt 1	\$105,525		\$2,771,513		\$1,075,734	\$0.01536	\$0
Altus - Exeter Opt 2	\$142,034		\$3,695,351		\$2,234,312	\$0.02047	\$0
Syncarpha: N Smithfield	\$57,701		\$1,501,236		\$907,689	\$0.02218	\$0
EDP: Providence Solar 1	\$665,783		\$17,321,956		\$11,425,717	\$0.04060	\$0
EDP: Providence Solar 3	\$665,783		\$17,321,956		\$10,473,336	\$0.03839	\$0
Kearsarge: Aggregate 1	\$623,795		\$16,359,623		\$9,891,484	\$0.04265	\$0
SSRE #1 Johnston 1	\$868,402		\$22,593,605		\$13,660,721	\$0.04658	\$0
SSRE #1 Johnston 2	\$954,288		\$24,828,137		\$15,011,782	\$0.05118	\$0
SolarCity: Landfill 1	\$88,485		\$3,566,473		\$2,108,416	\$0.06995	\$0
SolarCity: Farm 1	\$85,401		\$3,311,836		\$1,960,635	\$0.07340	\$0
SolarCity Farm 2	\$450,655		\$16,989,119		\$10,073,866	\$0.07530	\$0
Syncarpha: N Smithfield w RECs	\$44,386		\$1,154,797		\$899,222	\$0.01706	\$29,943
Kearsarge: Aggregate 2	\$540,763		\$14,069,278		\$8,506,676	\$0.03668	\$1,869,677
EDP: Providence Solar 2	\$593,834		\$17,250,007		\$11,357,194	\$0.04044	\$2,199,619
EDP: Providence Solar 4	\$665,783		\$17,321,956		\$10,473,336	\$0.03839	\$2,199,619
SSRE #1 Johnston 3	\$795,240		\$20,690,114		\$12,509,818	\$0.04265	\$2,364,591
SSRE #1 Johnston 4	\$868,402		\$22,593,605		\$13,660,721	\$0.04658	\$2,364,591
SolarCity: Farm 1 w RECs	\$80,670		\$3,225,848		\$1,908,497	\$0.07149	\$219,962
SolarCity: Landfill 1 w RECs	\$83,189		\$3,469,307		\$2,047,240	\$0.06804	\$248,557
SolarCity Farm 2 w RECs	\$427,003		\$16,559,181		\$9,803,177	\$0.07340	\$1,099,810
Quahog: Aggregate	(\$110,404)		(\$1,275,335)		(\$819,875)	-\$0.01913	\$0
Altus: Exeter Opt 2	(\$36,830)		\$2,601,238		\$1,464,081	\$0.01441	\$0
Ameresco: NK	\$19,188		\$9,627,944		\$1,991,613	\$0.05061	\$0
Ameresco: NS	\$14,888		\$2,814,882		\$1,545,271	\$0.05061	\$0
Dynamic: Rockville	\$274,934		\$13,737,432		\$7,881,046	\$0.07361	\$0
Dynamic: Rockville 2	\$431,440		\$13,535,762		\$8,113,530	\$0.07253	\$0

- Higher discount = greater savings for Providence
- Note SolarCity has no site control
 - Total REC value is for years 11-20
 - NPV at 5% discount, includes incentive payments for EDP #1/2

Fixed price proposals – increased price risk, potential upside

PUBLIC ENTITY NET METERING CREDIT ARRANGEMENT

Public Entity Net Metering Credit Arrangement (“*Agreement*”) is entered into as of _____, 2017 (“Effective Date”) and is by and between Southern Sky Renewable Energy RI, LLC (a Rhode Island limited liability company) as seller (“*Seller*”), and the City of Providence, Rhode Island as buyer (“*Buyer*”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “*Party*” and collectively as the “*Parties*.”

RECITALS

WHEREAS, Seller is in the business of financing, developing, owning, operating and maintaining solar electric generation facilities;

WHEREAS, Seller proposes to finance, install, own, operate and maintain Solar Energy Facilities (such facilities, collectively, the “*Solar Energy Facilities*”);

WHEREAS, the Solar Energy Facilities are each expected to qualify as Eligible Net Metering Systems pursuant to the Net Metering Regulations and will, therefore, generate Net Metering Credits for each kilowatt hour of electricity they generated;

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, the Net Metering Credits generated by the Solar Energy Facilities during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Seller and Buyer agree as follows.

ARTICLE I DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“**Affiliate**” means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Persons.

“**Applicable Legal Requirements**” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction, including the Net Metering Regulations, of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Solar Energy Facilities, as well as the selling and purchasing of Net Metering Credits therefrom.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Buyer’s Percentage” means the percentage of the Net Metering Credits, Environmental Attributes (after year 10) and RECs (after year 10), allocated to Buyer, as set forth in Exhibit C, attached and incorporated hereto.

“Commercial Operations Date” means the first date on which each Solar Energy Facility generates electric energy on a commercial basis, and the interconnection to the local electrical distribution system has been authorized and is functioning with the Local electric Distribution Company (“LDC”).

“Energy” means the amount of electricity either used or generated over a period of time, expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the Solar Energy Facility, the production of electrical energy from the Solar Energy Facility and its displacement of conventional energy generation, including (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights related to these avoided emissions, such as Green Tag Reporting Rights and Renewable Energy Credits, as defined in this Agreement, below. Green Tag Reporting Rights are the right of a party to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes do not include Environmental Incentives, Net Metering Credits, and Tax Attributes, as defined in this Agreement, below. Without limiting the generality of the foregoing, Environmental Attributes include carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, emissions allowances, Green Tags, tradeable renewable credits and Green-e® products.

“Event of Default” has the meaning set forth in Article 8.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity, provided, however, that any such discretionary acts, failures to act or orders of any kind by Buyer may not be asserted as an event of *Force Majeure* by Buyer; insurrections; military action; war, whether or not it is

declared; sabotage; riots; civil disturbances or explosions. A Party may not assert an event of *Force Majeure* to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute an event of *Force Majeure*. Events of Force Majeure shall also include (i) LDC system outage, failure or curtailment beyond the control of Seller; and (ii) acts or omissions of third parties causing suspension or reduction of generation by the Solar Energy Facilities, delays in repairs to the Solar Energy Facilities beyond the reasonable control of Seller.

"Governmental Authority" means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth, but including, without limitation, sales, use, gross receipts or similar taxes), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and low income bill payment assistance charges), imposed or authorized by a Governmental Authority, LDC, or other similar entity, on or with respect to the Net Metering Credits.

"Interconnection Agreement" shall mean the Interconnection Service Agreement(s) entered into with the LDC, each of which authorizes the interconnection of the respective Solar Energy Facility with the LDC's system, which confirms the eligibility of each Solar Energy Facility for treatment as an Eligible Net Metering Resource for a Public Entity Net Metering Financing Arrangement, and which specifies (directly or by reference to the "Schedule B" filed by Sellers under the Tariff) the manner in which Net Metering Credits shall be allocated.

"LDC" means the local electric distribution company.

"LDC Schedules" means any exhibits, schedules, forms or related documents required by the LDC to enable the Solar Energy Facilities to qualify for Net Metering, including Exhibit G to Interconnection Agreement and Schedule B.

"Lender" means the entity or person(s) providing financing to Seller in connection with the Solar Energy Facility.

"Net Metering Credits" shall include "Renewable Net Metering Credits" and "Excess Renewable Net Metering Credits" (each as defined in the Net Metering Provision).

"Net Metering" shall have the meaning set forth in the Net Metering Provision.

"Net Metering Provision" means RI PUC No. 2150 Net Metering Provision, as amended from time to time.

"Net Metering Regulations" are Rhode Island General Laws Section 39-26.4 and the Net Metering Provision, as each may be amended from time to time.

“Public Entity Net Metering Financing Arrangement” shall have the meaning set forth in Rhode Island General Laws Section 39-26.4.

“Renewable Energy Certificate” or ***“REC”*** (and included within the meaning of “Environmental Attributes” as defined in this Agreement, above) means a certificate, credit, allowance, Green Tag, or other transferable indicia, including but not limited to Solar RECs, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt hour from a renewable energy source by a renewable energy project, and excluding, for the avoidance of doubt, any Tax Attributes and the Net Metering Credits.

“Solar Energy Facility” means the solar (“PV”) power electrical generation facilities, to be constructed owned, operated and maintained by Seller, as further described in Exhibit D.

“Tariff” means the LDC’s tariff for interconnection for distributed generation and net metering services, as approved by the Rhode Island Public Utilities Commission, together with any subsequent amendments and approvals thereto.

“Tax Attributes” means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Solar Energy Facilities or the output generated by the Solar Energy Facilities (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“Year” means the time period commencing on the anniversary of the Commercial Operations Date and extending until the next twelve-month anniversary of the Commercial Operations Date.

ARTICLE II TERM

2.1 ***Term.*** The term of this Agreement (the ***“Term”***) shall commence on the Effective Date, and shall end at the earlier of (i) 11:59 PM on the day preceding the twentieth (20th) anniversary of the latest Commercial Operations Date (the ***“Termination Date”***), or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof. Provided that the Buyer or Seller are not in default, hereunder (beyond any applicable notice and cure periods; and provided further that the non-defaulting Party does not waive any such default), this Agreement shall automatically renew for an additional period of five (5) years (without the need for any further documentation) and upon such automatic renewal the Termination Date shall be the earlier of (i) 11:59 PM on the day preceding the twenty-fifth (25th) anniversary of the latest Commercial Operations Date, or (ii) such date as of which this Agreement may be earlier terminated pursuant to the provisions hereof. Notwithstanding the fact that no further documentation is needed for the above referenced renewal, either party shall, upon request, provide written confirmation to the requesting party of the occurrence of the aforementioned renewal and then-extended Termination Date.

2.2 Early Termination. The Buyer or Seller may terminate this Agreement as to the Solar Energy Facilities owned by Seller without penalty or any liability (a) prior to the Commercial Operations Date if such Solar Energy Facility has not achieved commercial operation within eighteen (18) months of the Effective Date *provided, however*, that Seller shall have the right to extend such deadline another twelve (12) months in the event of a delay attributable to the LDC interconnection process, or (b) if the average amount of kilowatt hours in any consecutive three year period following the Commercial Operations Date is less than seventy-five percent (75%) of the Expected Generation, as set forth in Exhibit D, hereto, or (c) by Seller, in the event that any of the conditions precedent set forth in Section 6.4 have not been satisfied, provided that the lack of satisfaction of any such condition is not the result of Seller's failure to exercise commercially reasonable efforts and diligence. In the case of termination pursuant to this Section 2.2, the terminating Party shall give the other Party thirty (30) days' prior written notice and this Agreement shall terminate as to that Solar Energy Facility without further liability of the Seller owning that Solar Energy Facility to the Buyer and of the Buyer to the Seller, provided that the Buyer and Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

ARTICLE III FACILITY OWNERSHIP AND OPERATION

3.1 Title. Subject to Section 4.5, Buyer shall not be entitled to any ownership interest in, and as between Buyer and Seller, Seller shall have title to, the Solar Energy Facilities, along with any Environmental Attributes, generation capacity attributes and related credits, grants, RECs, and Tax Incentives generated or associated with the Solar Energy Facilities, except that beginning on the tenth anniversary of the Commercial Operations Date, Buyer shall have title to all Environmental Attributes and RECs for the remaining term of the Agreement; provided, however, that for the purposes of complying with the Net Metering Regulations and the Tariff, the Parties agree that during the Term of this Agreement Buyer shall be identified as the customer of record on the "Net Metered Account" associated with each individually metered portion. In connection with the above, Buyer authorizes Seller to file any required LDC Schedules with the LDC, and to take all other necessary and appropriate actions under Applicable Legal Requirements to qualify the Solar Energy Facilities as an Eligible Net Metering Resources and this Agreement as a Public Entity Net Metering Financing Arrangement. For avoidance of doubt, Buyer's ownership of RECs and Environmental Attributes, which starts on the 10th anniversary of the Commercial Operations Date, shall extend only those RECs and Environmental Attributes generated in connection with the Buyer's Percentage of the Solar Energy Facilities.

3.2 Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall promptly notify Buyer in writing when each Solar Energy Facility has achieved the Commercial Operations Date.

3.3 Seller's Operation of Facilities. Seller shall install, operate and maintain each Solar Energy Facility in accordance with all Applicable Legal Requirements, all equipment manufacturers' guidelines and recommendations, and pursuant to widely accepted solar generation industry practice and shall maintain such documents and records necessary to confirm Seller's installation, operation and maintenance of the Solar Energy Facilities in accordance with such standards.

3.4 Seller's Obligation To Maintain Facilities; Insurance. Seller shall maintain the Solar Energy Facilities in good working order at all times during the Term of this Agreement, subject to reasonable time allowed for maintenance, repair, safety-related shut-downs and event(s) of Force Majeure. Seller shall carry insurance coverage in an amount reasonably expected to repair or replace the Solar Energy Facilities if damaged, or in an amount as required by a Lender, at Seller's discretion. Seller shall maintain a valid Certificate of Insurance ("COI") with policy limits for the duration of the contract.

ARTICLE IV PURCHASE AND SALE OF NET METERING CREDITS

4.1 Sale and Purchase of Net Metering Credits. Commencing on the Commercial Operations Date, on a monthly basis Seller agrees to sell to Buyer, and Buyer agrees to purchase and accept all of Seller's right, title and interest to Buyer's Percentage of the Net Metering Credits generated by the Solar Energy Facilities as set forth in Exhibit D, free and clear of all claims, liens, security interests and encumbrances of any kind, nature and description. Buyer will provide first opportunity to Seller to fulfill additional capacity requirements of Buyer.

4.2 Allocation. To facilitate delivery of the Net Metering Credits purchased and sold pursuant to Section 4.1, Seller shall request (through completion of the applicable LDC Schedules) that the LDC allocate the quantity of Net Metering Credits specified in Section 4.1 to Buyer's customer account(s), based on Buyer's direction, as further set forth in Exhibit A, "Buyer's Designation of Customer Accounts," attached hereto and incorporated herein. Buyer understands that the Net Metering Credits received by Buyer for a particular month will be reflected on Buyer's statement from the LDC as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on Buyer's monthly invoice according to the LDC's billing cycle, which may be approximately one (1) month after the Net Metering Credits are generated by the Solar Energy Facilities.

4.3 Buyer's Purchase Contingent on Allocation of Credits by LDC. The Parties acknowledge and agree that Buyer's agreement to purchase Net Metering Credits from Seller is contingent upon and subject to the LDC's acceptance of and allocation of such Net Metering Credits to Buyer's customer account(s) with LDC as set forth in Section 4.2 herein. During the Term of this Agreement, if for any reason the LDC refuses to allocate a portion or all of the Net Metering Credits to Buyer's customer account(s), Buyer's obligation to purchase such Net Metering Credits shall terminate, and Seller shall promptly refund to Buyer the amount paid by Buyer for any such Net Metering Credits which the LDC refused to credit to Buyer's customer account(s).

4.4 Payment. The amount that Buyer shall pay to Seller for the Net Metering Credits allocated by Seller to Buyer (the “**Payment**”) shall be determined as shown in Exhibit B, attached hereto and incorporated herein.

4.5 Title to Net Metering Credits. Title to the Net Metering Credits will pass from Seller to Buyer upon allocation to Buyer’s customer account(s) by the LDC.

4.6 Non-Exclusive Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that Buyer’s agreement to purchase Net Metering Credits from Seller is not exclusive and Buyer shall have the right and ability to enter into agreements with other parties to purchase additional Net Metering Credits and/or RECs, subject to all Applicable Legal Requirements.

4.7 Governmental Charges.

a. Seller is responsible for any Governmental Charges currently attributable to the income from the sale of Net Metering Credits to Buyer, irrespective of whether imposed before, upon or after the allocation and delivery of Net Metering Credits to Buyer. Buyer is responsible for any other Governmental Charges, if any, attributable to the sale of Net Metering Credits to Buyer, whether imposed before, upon or after the allocation and delivery of Net Metering Credits to Buyer, and shall reimburse Seller for any such Governmental Charges paid by Seller.

b. The Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges to the extent permitted by law. In the event any of the sales of Net Metering Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the Party claiming such exemption shall, upon a Party’s written request therefore, provide the requesting Party with all necessary documentation to evidence such exemption or exclusion in a timely manner.

ARTICLE V PAYMENT

5.1 Payment. During each monthly LDC billing cycle, Seller shall provide Buyer with an invoice for the Net Metering Credits allocated to Buyer’s designated account(s) during the prior monthly LDC billing cycle (the “**Invoice**”). The Seller shall send a copy of each Invoice to Competitive Energy Services, LLC or its successor as directed by Buyer. The Invoice shall be based on the actual Net Metering Credits that appear in the Buyer’s LDC bill(s) for the designated account(s). Buyer shall either promptly provide its monthly LDC bill to Seller, or shall allow Seller to access Buyer’s monthly bill directly with the LDC, at Buyer’s discretion. Subject to the provisions of Section 4.3, Buyer shall pay all invoiced amounts owed to Seller by a mutually agreeable method. Buyer agrees to pay Seller within thirty (30) days of the Buyer’s receipt of a proper Invoice from Seller by electronic payment.

5.2 Records and Audits. Except as required by law, each Party shall keep, for a period of not less than six (6) years after the expiration or termination of any transaction, records sufficient to permit verification of the accuracy of billing statements, Invoices, charges, computations and payments for such transaction. During such period each Party may, at its sole cost and expense,

and upon reasonable notice to the other Party, examine the other Party's records pertaining to such transactions during the other Party's normal business hours. Seller shall, at Buyer's request, provide documentation of the amount of electricity generated by the Solar Energy Facilities and/or the calculation of the Net Metering Credits.

5.3 Dispute. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall immediately notify the other Party of the basis for the dispute and pay the undisputed portion of such Invoice no later than the due date. Upon resolution of the dispute, any required payment shall be made within seven (7) Business Days of such resolution along with the interest accrued at the Interest Rate, from and including the due date, - through and including the date such payment is actually received by Seller. Any overpayments shall be returned by the receiving Party upon request or deducted from subsequent payments with interest accrued at the Interest Rate at the option of the overpaying Party. The Parties shall only be entitled to dispute an amount owed or paid within twenty-four (24) calendar months from the date of issuance of such Invoice. If the Parties are unable to resolve a payment dispute under this Section 5, the Parties shall follow the procedure set forth in Section 12.3.

ARTICLE VI OBLIGATIONS OF THE PARTIES

6.1 Net Metering.

a. Each Party's obligations under this Agreement are subject to each Solar Energy Facility qualifying for Net Metering as an Eligible Net Metering Resource and this Agreement as a Public Entity Net Metering Financing Arrangement, subject to the provisions of the Net Metering Regulations. If, within fifteen (15) months from the Effective Date, a Solar Energy Facility does not so qualify and the Seller does not have a eligible replacement Solar Energy Facility, this Agreement shall terminate with regards to that portion of the load that is served by that Solar Energy Facility without further liability of the Seller to the Buyer and of the Buyer to Seller, provided however, that notwithstanding the foregoing, Seller shall have the right to extend the fifteen (15) month period set forth above by an additional twelve (12) months. Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement unless and until this Agreement has been terminated.

b. Subject to the provisions of this Agreement, Seller and Buyer, but for Buyer only with respect to any required LDC Schedules, agree to take all reasonable measures with respect to which each has legal capacity to facilitate and expedite the review of all approvals necessary for the Solar Energy Facility to be eligible for and participate in Net Metering as an Eligible Net Metering Resource and this Agreement as a Public Entity Net Metering Financing Arrangement.

c. The Seller acknowledges that each Solar Energy Facility is intended to qualify as an Eligible Net Metering Resource, and agrees not to take any action inconsistent with the Solar Energy Facilities' status as such facilities except insofar as said action is required by any Applicable Legal Requirements.

d. So long as any such amendment will materially benefit a Party without material detriment to the other Parties and is otherwise permitted by law, the Parties commit to each other

in good faith to make commercially reasonable efforts to fully cooperate and assist each other to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering and ensure that the Solar Energy Facilities are eligible for Net Metering pursuant to a Public Entity Net Metering Financing Arrangement.

e. Upon implementation by the Rhode Island Public Utilities Commission, or other Governmental Authority of any rule or regulation that may affect any provision of this Agreement, in particular any rule or regulation regarding the provision of or eligibility for Net Metering, the affected Parties shall negotiate in good faith to amend this Agreement to conform to such rule(s) and/or regulation(s) to the greatest extent possible, and shall use best efforts to conform such amendment to the original intent of this Agreement and to do so in a timely fashion.

6.2 Seller's Obligations.

a. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller (and in the form required) by any Governmental Authority or the LDC.

b. Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

6.3 Buyer's Obligations.

a. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

b. Buyer shall reasonably cooperate with Seller so that Seller can meet its obligations under this Agreement, which cooperation shall include, but not be limited to, timely providing (or to the extent possible, reasonably facilitating the LDC's timely provision) to Seller full and complete information regarding the actual cash value of any Net Metering Credits that have been allocated to Buyer's customer account by the LDC. Buyer agrees to provide reasonable cooperation and assistance to Seller to qualify for any Environmental Attributes, generation capacity attributes and related credits, grants, and Tax Attributes generated or associated with the Solar Energy Facilities.

6.4 Conditions Precedent. Seller's obligation to sell Net Metering Credits to Buyer under the provisions of this agreement is subject to the fulfillment of each of the following conditions precedent:

- (a) Seller shall have obtained all permits and approvals required for the construction and operation of the Project;
- (b) Seller shall have obtained project financing at prevailing rates, terms and conditions of similarly situated projects. Seller shall use diligent efforts to obtain such financing;

- (c) Seller shall have executed an agreement for the payment in lieu of taxes ("PILOT") pursuant to Rhode Island General Laws § 44-3-21.
- (d) Buyer, after having received such documents from Seller, shall deliver a copy of the executed documents required by RI-PUC (No. 2075), including system eligibility requirements as defined in "Eligible Net Metering System" and LDC;
- (e) the Facility shall have been interconnected with the LDC in accordance with the requirements of the interconnection service agreement, the Net Metering Rules and Applicable Legal Requirements; and
- (f) the Facility shall have achieved Commercial Operation

Seller may, in its sole discretion, waive conditions 6.4(b), (c) and/or (d).

ARTICLE VII REPRESENTATIONS AND WARRANTIES; ACKNOWLEDGEMENTS; BUYER'S COVENANTS

7.1 Representations and Warranties. As of the Effective Date, each Party represents and warrants to the other Party as follows.

- a. The Party is duly organized, validly existing, and in good standing under the laws of Rhode Island.
- b. The Party has full legal capacity to enter into and perform this Agreement.
- c. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party.
- d. The execution and delivery of this Agreement and the performance of the obligations hereunder will not violate any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.
- e. There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or to the Party's knowledge, threatened against the Party, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

7.2 Forward Contract; Bankruptcy Code. Sellers assert that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of the United States Bankruptcy Code, and that Seller is a "forward merchant" within the meaning of the

United States Bankruptcy Code. The Seller further asserts that Seller is not a “utility,” as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

7.3 Covenants of Buyer.

(a) Net Metering.

- (i) Host Customer. Buyer shall take such reasonable action and execute any documents, that are necessary to designate (and, as necessary, re-designate) Seller to LDC as an authorized recipient of the energy billing and usage data with respect to the LDC utility meters serving the Facilities. In addition, Buyer shall take such reasonable actions and execute any documents that are necessary, and otherwise reasonably cooperate with Seller, so as to permit Seller to advocate with the LDC and/or the DPU with respect to City’s rights as the LDC customer of record and Municipal Customer, including, without limitation, for the purpose of ensuring timely and accurate recording of Net Metering Credits generated in connection with the Facilities.
- (ii) Allocation of Net Metering Credits to “Buyer’s Designation of Customer Accounts”. The Buyer shall designate its utility accounts with the LDC to receive Net Metering Credits generated by the Facility, such accounts identified as of the Effective Date in Exhibit A attached hereto (the “Buyer’s Designation of Customer Accounts”). The Buyer shall promptly take action and execute documents, as reasonably required, to allocate all Net Metering Credits generated by the Facility to the Target Buyer Accounts, including without limitation, a net metering service application.
- (iii) Net Metering Facility of a Governmental Entity. The Buyer acknowledges that the Facility will be an Eligible Net Metering Facility of a municipality or other governmental entity within the meaning of Rhode Island General Laws § 39-26.4-2, and agrees not to take any action inconsistent with the Facility’s status as such a facility.
- (iv) Cooperation on Assurance of Net Metering Eligibility. The Buyer agrees to provide such information and reasonable assistance to Seller as may be reasonably necessary to allow seller to avail itself of any reasonable system established by the PUC and/or the LDC to provide certain assurances that a facility will be an Eligible Net Metering System once the facility commences operation.

(b) Customer Interconnection Acknowledgement. In order to fulfill the LDC’s requirements for interconnecting to the LDC distribution grid an energy generating facility that is owned by one party but is located behind the LDC utility meter of another party, Seller shall be party to the interconnection service agreement and the Buyer agrees, within a

reasonable period of time following Seller's request, to enter into the customer interconnection acknowledgement agreement with LDC in a form substantially similar to the form of customer interconnection acknowledgement agreement attached to the LDC's interconnection tariff.

ARTICLE VIII TERMINATION/DEFAULT/REMEDIES

8.1 Events of Default. The following shall each constitute an Event of Default by a Party.

a. The Party fails to make any material payment due under this Agreement within thirty (30) days after such payment is due unless the specific amount of the payment not made is being disputed in good faith.

b. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement and such failure continues for a period of thirty (30) days after receipt of written notice thereof from another Party; provided, however, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party's time to do so shall be extended by the time reasonably necessary to cure the same, but in no event shall this time exceed 90 days.

c. Fraud or intentional misrepresentation by the Party with respect to any of the covenants or agreements of this Agreement.

d. The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) except for assignments made pursuant to Section 10.1 (regarding financing), makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) except for exercise of possession through assignments made pursuant to Section 10.1 (regarding financing), has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to

(vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

e. Each Party agrees that it has a duty to exercise commercially reasonable efforts to mitigate damages that it may incur as a result of the other Party's default under this Agreement.

8.2 Force Majeure. Except as specifically provided herein, if by reason of *Force Majeure* a Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (i) the non-performing Party, within two (2) weeks after the occurrence of the *Force Majeure* event, gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the *Force Majeure* event; (iii) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (iv) the non-performing Party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations.

8.3 Termination for Default. Upon the occurrence of an Event of Default, a non-defaulting Party at any time thereafter may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) Business Days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

In the event this Agreement is terminated as a result of an Event of Default or for any other reason, including an Early Termination under Section 2.2, (i) Seller shall have no further obligation to deliver, and Buyer shall have no further obligation to purchase, any Net Metering Credits from Seller, provided, however, that Buyer shall pay Seller for any Net Metering Credits generated by Seller that have or may continue to be allocated to Buyer by the LDC, and (ii) Seller shall notify the LDC promptly to stop any future Net Metering Credits allocation to Buyer forthwith, and shall promptly provide a copy of such notification to Buyer. In connection with the foregoing sentence, Buyer and Seller agree to execute any documents as may be reasonably required by the LDC.

ARTICLE IX REMEDIES AND LIMITATION OF LIABILITY

9.1 Remedies. Subject to the limitations set forth in this Agreement, each Party reserves and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty to mitigate damages that it may incur as a result of a Party's non-performance under this Agreement.

9.2 Limitation of Liability. WITH THE EXCEPTION OF THE OBLIGATIONS SET FORTH IN THE FOLLOWING SECTION 9.3, NO PARTY SHALL BE LIABLE TO THE OTHERS FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF ANY OF THE PARTIES RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY. Notwithstanding anything to the contrary in this Agreement, Buyer's liability is subject to the Governmental Tort Liability Act, R.I. Gen. Laws §§ 9-31-1 *et seq.*

9.3 Indemnification. Seller shall (with counsel of its choice) defend, indemnify and hold harmless Buyer and its respective officers, directors, agents, and employees from and against any and all claims, demands, liens, lawsuits, judgments or actions of any nature that may be brought by third parties on account of the construction, installation, operation, maintenance, repair or replacement of the Solar Energy Facilities or any component thereof. Nothing in this Section 9.3 shall require Seller to indemnify Buyer for any losses or claims to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, Buyer, its council members, officers, directors, agents, invitees and employees. Seller shall, subject to applicable legal requirements, have full, reasonable control of such defense, in its reasonable discretion, and shall keep the indemnified party and its counsel reasonably informed of the defense of such claim and no such claim shall be settled without the approval of the indemnified party, which approval shall not be unreasonably withheld.

9.4 Waivers.

a. No Implied Waivers – Remedies Cumulative. No covenant or agreement under this Agreement shall be deemed to have been waived by a Party, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's duly authorized agent. Consent or approval of a Party to any act or matter must be in writing, shall apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve any other Party from the obligation wherever required under this Agreement to obtain consent or approval for any other act or matter. The failure of a Party to insist upon the strict performance of any one of the covenants or agreements of this Agreement or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of a Party herein specified or any other right or remedy that a Party may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

b. Acceptance of Payment. Neither receipt nor acceptance by a Party of any payment due herein, nor payment of same by a Party, shall be deemed to be a waiver of any default under the covenants or agreements of this Agreement, or of any right or defense that a Party may be entitled to exercise hereunder.

ARTICLE X ASSIGNMENT

10.1 Prior Written Consent. No Party shall assign or in any manner transfer, pledge or assign this Agreement or any part thereof without the prior written consent of the other Party which consent may not be unreasonably conditioned, withheld or delayed, except that no prior written consent shall be required in connection with any assignment by the Seller of all or a portion of its rights and obligations hereunder (i) to an Affiliate of Seller that will be the owner of all or substantially all Project assets, or (ii) to the purchaser of the Solar Energy Facility and of substantially all of the assets or stock of Seller, or (iv) to an entity that acquires the Project or, prior to the construction of the Project, the development rights thereto. In the event of any such assignment, Seller shall provide written notice to the City of the existence of such sale or assignment together with the name and address of the purchaser or assignee, and with respect to an assignee, documentation establishing that the assignee has assumed (or as of the closing of such transaction will assume) all or a portion of Seller's rights and all of Seller's obligations under this Agreement. The Buyer agrees to promptly execute any document reasonably requested of Seller in acknowledgement of such assignment and consent thereto, including upon request, consent to a Change of Control. Seller shall, notwithstanding any assignment hereunder, remain liable under this Agreement, unless any such assignment is a full and effective assignment of all of Seller's rights and obligations under the Agreement satisfying the terms of this Agreement, and unless otherwise provided by the terms of any assignment agreement between Seller and the assignee, in which event Seller shall have no liability arising under this Agreement after the effective date of the assignment. Upon the request of the Seller the Buyer shall within ten (10) days execute a consent and agreement in a form reasonably requested by the Seller.

10.2 Collateral Assignment; Financing Provisions.

a. Financing Arrangements. Seller may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any persons providing financing for the Solar Energy Facility. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Solar Energy Facilities. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, as applicable, Buyer agrees as follows:

i. Consent to Collateral Assignment. Buyer hereby consents to the collateral assignment for the financing of the Seller's right, title and interest in and to this Agreement.

ii. Rights of Lender. Notwithstanding any contrary term of this Agreement:

(A) Step-In Rights. The Lender, as owner of the Solar Energy Facilities, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. The Lender shall also be entitled to exercise all rights and remedies of owners or secured parties,

respectively, generally with respect to this Agreement and the Solar Energy Facilities;

(B) Opportunity to Cure Default. The Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Lender to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so;

(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Solar Energy Facility by the Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Seller to the Lender (or any assignee of the Lender as defined below) in lieu thereof, the Lender shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

(D) Cure of Bankruptcy Rejection. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Lender made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with Lender or its assignee having substantially the same terms and conditions as this Agreement.

b. Successors and Assigns. Subject to the foregoing limitations, the provisions of this Agreement shall bind, apply to and inure to the benefit of, the Parties and their permitted heirs, successors and assigns.

(i) Right to Cure.

(A) Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given the Lender prior written notice at the address provided by Lender of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller's default reasonably cannot be cured by the Lender within such period and the Lender commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Lender, shall acquire title to or control of Seller's assets and shall, within the time periods described in Section 10.2(a)(iii)(A), cure all material defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then the Lender or its assignee shall no longer be in default under this Agreement, and provided that after such change in title or control Buyer shall continue to receive all the Net Metering Credits due to it as set forth in this Agreement, this Agreement shall continue in full force and effect.

(C) Lender a Third Party Beneficiary. Buyer agrees and acknowledges that Lender is a third party beneficiary of the provisions of this Section 10.2.

(D) Entry to Consent to Assignment. Buyer agrees to (i) execute any reasonable consents to assignment or acknowledgements and (ii) provide such opinions of counsel concerning Buyer's legal status and authority as may be reasonably requested by Seller and/or Lender in connection with the financing or sale of the Solar Energy Facilities, pursuant to this Section 10.2.

ARTICLE XI AMENDMENT FOR FINANCING

11.1 Modifications of the Agreement for Financing. If a Lender requires this Agreement to be modified, or if a Seller, in good faith, requires the Agreement to be modified in order to finance the Solar Energy Facility or Facilities, the Parties shall enter into negotiations to amend this Agreement to materially conform to such requirements and to the original intent of this Agreement in a timely manner. If the Parties, negotiating in good faith, cannot agree on such amendments, or if a Seller determines in good faith that the Agreement cannot be amended to allow the Solar Energy Facility to be financed in a commercially reasonable manner, then the terminating Party shall give the other Party thirty (30) days' prior written notice and this Agreement shall terminate as to that Solar Energy Facility without further liability of the Seller owning that Solar Energy Facility to the Buyer and of the Buyer to that particular Seller, provided that the Buyer and such Seller shall not be released from any payment or other obligations arising under this Agreement prior to such termination.

ARTICLE XII MISCELLANEOUS

12.1 Notices. All notices and other formal communications which a Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon receipt, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested, and shall be sent to the following addresses:

If to Seller:

Southern Sky Renewable Energy RI, LLC
117 Metro Center Boulevard, Suite 2007
Warwick, RI 02886
Telephone No: (401) 258-8111
Facsimile: (401) 884-8000
Email: Ralph@southernskyre.com

With a copy to:

Preston W. Halperin, Esq.
Shechtman Halperin Savage, LLP
1080 Main Street
Pawtucket, RI 02860
Tel: (401) 272-1400

If to Buyer:

City of Providence
25 Dorrance Street
Providence, RI 02903

With a copy to:

Competitive Energy Services, LLC
148 Middle St., Suite 500
Portland, ME 04101

Any Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

12.1 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired, and provided further, however, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

12.2 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Rhode Island without regard to principles of conflicts of law.

12.3 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.3 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

a. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of formal negotiations between respective executive officers of each Party. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for formal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

b. In the event that the Parties cannot timely resolve a dispute by formal negotiations, the Parties involved in the dispute agree to submit the dispute to non-binding mediation. Within fourteen (14) days following the expiration of the time period for formal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. The period within which the mediation shall be completed shall not exceed ninety (90) days from the time the dispute arises, unless such time period is modified by written agreement of the Parties involved in the dispute, and the mediation shall be conducted in accordance with procedures mutually agreed to by the Parties. The Parties shall not be required to mediate a dispute for more than a single day of mediation, unless they otherwise agree in writing. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by all Parties involved in the dispute.

c. In the event that the Parties cannot resolve a dispute by formal negotiations or mediation, venue for judicial enforcement shall be the Federal Courts and/or State Superior Court located in Providence County, Rhode Island. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. Each Party consents to such venue and expressly waives any objections to venue it might otherwise be able to raise. Notwithstanding anything to the contrary herein, either Party may at any time initiate proceedings to seek equitable and/or injunctive relief to prevent perceived irreparable harm.

d. Notwithstanding anything to the contrary herein, either Party may at any time initiate proceedings to seek equitable and/or injunctive relief to prevent perceived irreparable harm.

12.4 Entire Agreement. This Agreement, together with its exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

12.5 Press Releases. No Party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other Parties, provided that such consent by Buyer may require the Parties to execute a separate trademark licensing agreement. Further, Buyer shall not issue any statement or make any representation to the effect that during the Term of this Agreement Buyer is consuming or otherwise using the energy generated from the Solar Energy Facilities, or that during the first ten years of the Term of this Agreement, Buyer is using the Environmental Attributes for its own purposes.

12.6 No Joint Venture. Each Party will perform all obligations under this Agreement as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of any other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of each Party hereunder are individual and neither collective nor joint in nature.

12.7 Amendments; Binding Effect. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by each of the Parties to this Agreement or its respective successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and each of their respective successors and permitted assigns.

12.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

12.9 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

12.10 Good Faith. All rights, duties and obligations established by this Agreement shall be exercised in good faith and in a commercially reasonable manner.

12.11 Survival. The provisions of Sections 3.1 (Title), 5.1 (Payment), 5.2 (Records and Audits), 5.3 (Dispute) and 8.3, second paragraph (Termination for Default) shall survive the expiration or earlier termination of this Agreement for a period of three (3) years and the provisions of Sections 9.1 (Remedies), 9.2 (Limitation of Liability), 9.4 (Waivers), 10.2(a)(ii)(D) (Cure of Bankruptcy Rejection) and Article 12 (Miscellaneous) shall survive the expiration or earlier termination of this Agreement indefinitely .

12.12 No Third-Party Beneficiaries. Except as expressly set forth in this Agreement, nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement, except that this Section 12.12 shall not limit the rights of a Lender.

12.13 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including without limitation, all attorneys' fees and expenses.

12.14 Cooperation. Subject to Applicable Legal Requirements, each Party acknowledges that this Agreement may require approval or review by third parties and agrees that it shall use commercially reasonable efforts to cooperate in seeking to secure such approval or review. The Parties further acknowledge that the performance of each Party's obligations under this Agreement may often require the reasonable assistance and reasonable cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term reasonably cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

[Signature page to follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

BUYER

By: _____

Name:

Title:

BUYER

By: _____

Name:

Title:

SELLER

By: _____

Name:

Title:

List of Exhibits to Agreement

Exhibit A – Buyer’s Designation of Customer Accounts

Exhibit B – Payment

Exhibit C – Projected Net Metering Credits

Exhibit D - Solar Energy Facility

EXHIBIT A

BUYER'S DESIGNATION OF CUSTOMER ACCOUNTS

Utility	Narragansett Electric Company
Account Number	[To be provided]

EXHIBIT B
PAYMENT

During each LDC Billing Period, the amount that Buyer shall pay to Seller for the Net Metering Credits allocated to Buyer shall be determined by multiplying the actual value of the Net Metering Credits allocated to Buyer pursuant to this Agreement by an amount equal to one (1) minus the applicable percentage discount (the “*Discount*”) shown in the table.

Year	Discount
1	27.25%
2	27.25%
3	27.25%
4	27.25%
5	27.25%
6	27.25%
7	27.25%
8	27.25%
9	27.25%
10	27.25%
11	27.25%
12	27.25%
13	27.25%
14	27.25%
15	27.25%
16	27.25%
17	27.25%
18	27.25%
19	27.25%
20	27.25%
21	27.25%
22	27.25%
23	27.25%
24	27.25%
25	27.25%

EXHIBIT C
Buyer's Percentage and Projected Net Metering Credits

Buyer's Percentage is equal to 100% of the generation from Seller's Solar Energy Facility.

EXHIBIT D
Solar Energy Facilities

Project Size	18.2MWs (AC)
Service Territory	Rhode Island - National Grid
Coordinates	
Town/City	Cranston/Hopkinton/Johnston
Expected Generation (Year 1)	28,672,000 kWhs (+/-)