Resolution Relating to

RESOLUTION

Sponsor(s): Board of Finance Councilor Joan ~~Shannon, Paul Decelles, Karen~~ Paul, Sharon Bushor

Introduced: _____

Referred to: _____

_____

Action: _____

Date: _____

Signed by Mayor: _____

APPROVAL OF BURLINGTON ELECTRIC DEPARTMENT'S AGREEMENT FOR THE PURCHASE AND SALE OF RENEWABLE ENERGY CREDITS

CITY OF BURLINGTON

In the year Two Thousand Twelve.....
Resolved by the City Council of the City of Burlington, as follows:

WHEREAS, Burlington Electric Department ("BED") has been working with the University of Vermont ("UVM") on an Agreement for the Purchase and Sale of Renewable Energy Credits ("RECs"); and

WHEREAS, UVM is seeking to purchase REC's to fulfill commitments it has made concerning carbon neutrality; and

WHEREAS, UVM does not possess a REC account in the New England Power Pool Generator Information System ("NEPOOL-GIS") and is therefore unable to take delivery of REC's without the assistance of a NEPOOL-GIS account holder; and

WHEREAS, UVM does not presently have experience trading in RECs; and

WHEREAS, BED is the utility responsible for serving UVM's electric energy needs, is a NEPOOL-GIS account holder, and is actively engaged in trading RECs; and

WHEREAS, BED is willing to partner with UVM by purchasing RECs on the open market and retiring them on behalf of UVM in order to assist UVM in meeting its goals pursuant to the terms and conditions of the attached "Agreement for the Purchase and Sale of Renewable Energy Credits" ("Agreement"); and

WHEREAS, at its regular meeting on March 14, 2012, the Burlington Board of Electric Commissioners approved the attached Agreement and recommended adoption of same by the Burlington City Council.

NOW, THEREFORE, BE IT RESOLVED that the City Council approves the Agreement attached hereto; and

BE IT FURTHER RESOLVED that Barbara Grimes, BED General Manager, and/or her designee(s), be and hereby is authorized to execute the Agreement and all associated documents on behalf of the City of Burlington in a form substantially similar to the form attached hereto subject to final review and revision by the City Attorney or his designee.

AGREEMENT FOR THE PURCHASE AND SALE OF RENEWABLE ENERGY CREDITS

This Agreement for the Purchase and Sale of Renewable Energy Credits ("RECs") is made this ___ day of _____, 2012 by and between City of Burlington, Vermont, acting by and through its Electric Light Department ("BED") and the University of Vermont ("UVM"). In this Agreement, BED and UVM can be referred to individually as "Party" or collectively as "Parties."

RECITALS:

WHEREAS, UVM is seeking to purchase REC's to fulfill commitments it has made concerning carbon neutrality; and

WHEREAS, UVM does not possess a REC account in the New England Power Pool Generator Information System ("NEPOOL-GIS") and is therefore unable to take delivery of REC's without the assistance of a NEPOOL-GIS account holder; and

WHEREAS, UVM does not presently have experience trading in RECs; and

WHEREAS, BED is the utility responsible for serving UVM's electric energy needs, is a NEPOOL-GIS account holder, and is actively engaged in trading RECs; and

WHEREAS, BED is willing to partner with UVM by purchasing RECs on the open market and retiring them on behalf of UVM in order to assist UVM in meeting its goals, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and of the mutual promises hereinafter set forth, the Parties, intending to be legally bound, agree as follows:

AGREEMENT:

1. Definitions

A. As used herein the term "Renewable Energy Credit" or "REC" shall mean an electronic certificate issued by the NEPOOL-GIS representing the environmental attributes associated with a single unit of energy generated by a New England Generator Asset as defined under the NEPOOL-GIS Operating Rules that satisfies the renewable energy source parameters described in a Purchase Request Form (or multiple forms) issued by UVM in accordance with the provisions set forth in this Agreement.

B. As used herein the term "load" shall mean the cumulative amount of electric service, measured in kilowatt hours, taken by UVM from BED as measured using the same meters employed by BED to account for UVM's retail electric service requirements over any time period relevant to the administration of this Agreement.

2. REC Purchase

A. BED will seek to purchase, on behalf of UVM, a specified number of RECs on a per transaction basis, upon receipt from UVM and within the parameters of a purchase request form (or multiple forms) (each a "Purchase Request Form"), consistent in form to the model attached hereto as "Appendix A", each of which to define the quantity of RECs to be purchased, their vintage, and the maximum price per REC (including any charges such as broker commissions or other fees based on transaction price or REC volume) that UVM is willing to pay, as well as any other special requirements desired by UVM (such as constraints on the size or type of generating unit producing the RECs);

B. BED will attempt to purchase the desired quantity of RECs on behalf of UVM, provided that it can do so while respecting the maximum price per REC and special requirements outlined in each Purchase Request Form;

C. In determining if a purchase does not exceed the maximum price per REC specified in a Purchase Request Form, BED will include any transaction charges such as broker commissions or other fees based on transaction price or REC volume, but will not include any amounts payable by UVM for BED administrative / contracting services.

D. BED will notify UVM in a timely manner of all purchases made pursuant to this Agreement.

E. Not later than June 15 of each year, BED will retire RECs on behalf of UVM for the preceding vintage year (i.e. by June 15, 2012, BED will retire 2011 vintage RECs), equal to the lesser of (a) the quantity of REC's actually purchased for UVM for that vintage year pursuant to this agreement or (b) a number of RECs equal to UVM's load for the preceding year expressed in mWh.

F. Not later than June 15 of each year, BED shall provide a summary to UVM showing, (a) the number of RECs purchased for the preceding vintage year, (b) UVM's load for the preceding vintage year, (c) the number of RECs retired for the preceding vintage year, (d) the charges under this agreement relating to REC purchases for the preceding vintage year. This notice shall include written certification to UVM that the specified RECs have been retired on behalf of UVM ("Certification").

G. Unless prohibited by applicable rule or statute from doing so, BED shall, in any representation of BED's renewability for any vintage year, present separately (or exclude from presentation) with its other resources and load the RECs retired on behalf of UVM and an amount of UVM's load equal to the number of RECs retired for that vintage year.

H. UVM shall compensate BED for its services pursuant to this Agreement an administrative/contracting services fee of $500 for each transaction entered to fulfill the requirements specified in each Purchase Request Form(s) it has received. BED will use commercially reasonable efforts to minimize the number of transactions required to fulfill the requirements specified in the Purchase Request Form(s) it has received.

I. In addition to the administrative/contracting services, and the actual price of RECs contracted for pursuant to any Purchase Request Form(s), UVM shall also reimburse BED for reasonable costs incurred by BED in purchasing and retiring RECs on

behalf of UVM, including but not limited to commission costs incurred from brokers and all outside costs relating to such purchases, including without limitation registration fees and auction fees ("Purchase Costs");

J. BED will attempt, to the greatest extent possible, to minimize the total charges to UVM under this Agreement, however, once calculated, BED shall submit an invoice to UVM for the Purchase Costs and UVM shall submit full payment to BED forthwith upon receipt of such invoice in accordance with Section 3 Invoicing;

L. BED will use good faith and commercially reasonable efforts to fulfill the requests identified by UVM in any submitted Purchase Request Form, but will not be liable for any damages resulting from failure to do so unless such damage is the result of the negligence, willful default or neglect on the part of BED, and except to the extent that BED will be obligated to return any amounts paid by UVM for REC's that BED was not charged for (for example due to a seller failing to deliver RECs to BED) or for which BED received a refund or other equivalent.

3. Invoicing

A. BED will invoice UVM monthly as follows:

a. For any payments BED is required to make in the month of invoice to purchase RECs pursuant to this Agreement

b. For any related charges (excluding administrative/contracting services) incurred in the month of invoice relating to purchase of RECs pursuant to this Agreement

c. For any administrative/contracting services relating to transactions entered during the preceding month pursuant to this Agreement.

B. UVM will remit payment within 10 business days of receipt of any such invoice.

C. In the event that BED purchases RECs in accordance with a duly issued Purchase Request Form(s) and such RECs exceed the UVM load for a specific vintage year, no reimbursement or other compensation will be due from BED to UVM for any RECs not retired due to the limitation specified in Section 2E.

D. Upon request, BED shall grant BED or its designee reasonable access to audit all documents and records pertaining to the sale and purchase of RECs pursuant to this Agreement for the purpose of verifying all transactions and Certification completed hereunder.

E. All invoices issues by BED shall be deemed to be final when issued. UVM may challenge, in writing, the accuracy of any invoice (or the data utilized in the forgoing) and subsequent payment no later than twenty-four (24) months after the

due date of the Invoice in which the disputed information is contained. If UVM does not challenge the accuracy within such twenty-four (24) month period, such invoice shall be binding upon UVM and shall not be subject to challenge. If any amount in dispute is ultimately determined (under the terms herein) not to be due, it shall be returned to UVM within three (3) business days of such determination along with interest accrued at the legal rate from the date paid until the date returned.

4. Representations and Warranties

A. BED hereby represents and warrants to UVM as follows:

a. BED has, and at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.

b. The execution, delivery and performance of this Agreement by BED has been duly authorized by all necessary action and does not violate any of the terms or conditions of BED's governing documents, or any contract to which it is a party, or any law, rule, regulation, order, judgment or other legal or regulatory determination applicable to BED.

c. There is no pending or threatened litigation, arbitration or administrative proceeding that materially adversely affects BED's ability to perform this Agreement.

d. BED hereby warrants that it shall have retired REC's on behalf of UVM, and excluded them from its accounting of renewability as described in any Certification nor will these RECs be represented as being retired on behalf of any other entity,

e. BED makes NO representations or warranties as to the following:

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BED EXPRESSLY NEGATES ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, AND WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

e. This Article 4A. survives expiration or termination of this Agreement.

B. UVM hereby represents and warrants to BED as follows:

a. UVM has, and at all times during the term of this Agreement will have, all necessary power and authority to execute, deliver and perform its obligations hereunder.

b. The execution, delivery and performance of this Agreement by UVM has been duly authorized by all necessary action and does not violate any of the terms or conditions of UVM's governing documents, or any contract to which it is a party, or any law, rule regulation, order, judgment or other legal or regulatory determination applicable to UVM.

c. There is no pending or threatened litigation, arbitration or administrative proceeding that materially adversely affects UVM's ability to perform this Agreement.

d. This Article 4B. survives expiration or termination of this Agreement.

5. Miscellaneous

A. Default. The breach of any of the provisions of this Agreement shall constitute a default if such failure is not remedied within five (5) business days after notice.

B. Termination. Each Party has the right to terminate their participation in this Agreement upon thirty (30) days written notice to the other Party unless in the event of a default, upon which no advance notice is required (beyond that outlined in Section 5A. above). All RECs purchased by BED on behalf of UVM through the termination date shall be treated as per this Agreement.

C. Taxes. UVM shall be responsible for paying any federal, state and local taxes, charges or other fees that are imposed by statute, regulation or other legal authority on the purchase, retirement, assignment and transfer of RECs by BED pursuant to this Agreement.

D. Process. Brokers, auctions, or other market mechanisms may be utilized by BED for the purchase of RECs by BED on behalf of UVM pursuant to this Agreement as deemed appropriate or necessary by BED.

E. Hold Harmless. Except as otherwise provided for herein including the breach of a warranty or representation made by BED, UVM agrees to indemnify and hold harmless BED for any liability arising out of the purchase and/or retirement of RECs by BED pursuant to this Agreement and on its behalf.

F. Limitation on Liabilities. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY WHERE SUCH LIABILITY EXISTS SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

F. Assignment. This Agreement is not assignable by either Party, except as provided herein, without the prior written approval of the non-assigning Party, which shall not be unreasonably withheld or delayed. Any assignment without the written approval of the non-assigning Party, except as provided herein, is voidable by the non-assigning Party.

G. Amendment. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successors in interest.

F. Applicable Law. This Agreement shall be governed by the laws of the State of Vermont without regard to conflicts of laws;

G. Severability. In the event that any provisions of this Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement, and the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

H. Entire Agreement; Amendments and Waivers. This Agreement constitutes the entire agreements between the Parties and supersedes the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this Agreement must be in writing. A Party's waiver of any breach or failure to enforce any of the terms of this Agreement shall not affect or waive that Party's right to enforce the same or any other term of this Agreement in the future.

I. Independent Contractor Status; No Agency Relationship Created. Nothing in this Agreement shall be construed as creating any relationship whereby BED shall be deemed to be the agent of UVM and BED shall serve as an independent contractor of UVM for purchase and retirement of RECs.

J. Dispute Resolution. In the event of disagreement between the Parties as to whether any portion of this Agreement has been violated by one party to the detriment of the other, or either party disputes in good faith the accuracy of any invoice under this Agreement, the parties shall first attempt to resolve such disagreements between each other. If the parties are unable to resolve the dispute in such a manner, the parties shall attempt to resolve the dispute through the utilization of voluntary mediation. If the disagreement persists following mediation, it shall be resolved by final and binding arbitration under the terms and conditions of the Vermont Arbitration Act. To that end, the following ACKNOWLEDGMENT OF ARBITRATION shall be applicable:

ACKNOWLEDGMENT OF ARBITRATION

UVM and BED understand that this agreement contains an agreement to arbitrate. After signing this document, each understands that he/it will not be able to bring a lawsuit concerning any dispute that may arise which is covered by the arbitration agreement, unless it involves a question of constitutional or civil rights. Instead, each agrees to submit any such dispute to an impartial arbitrator.

Dated as of the date first above written.

AGREED:

City of Burlington, Vermont, acting by and through its Electric Light Department	University of Vermont
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____