Burlington Electric Department * 585 Pine St. * Burlington VT * 05401

MEMORANDUM

TO: City of Burlington City Council

FROM: Ken Nolan, Manager of Power Resources

DATE: October 16, 2013

RE: **South Forty Solar LLC Purchase Power Agreement**

cc. Barbara Grimes

BED staff has been working for several months with the developers of South Forty Solar LCC to reach agreement on a Purchase Power Agreement. South Forty Solar is 2.5 MW solar project being proposed for the Flynn Estate, the site of several previous proposals for housing development.

The developers, led by Frank Von Turkovich, approached BED last fall with the proposal feeling it might provide a more palatable development decision for neighbors with less impact than previous proposals for the parcel. The developers have held initial meetings with state agencies to discuss environmental issues, and BED understands that the project has been discussed during at least one NPA meeting to date. The developers have also informed BED that they plan additional outreach to city leaders both legal up to and subsequent to any vote on this agreement.

After several months of discussion, BED staff reached conceptual agreement on a Purchase Power Agreement in June. The agreement is modeled on BED's standard contract for solar power which the city council has approved on several previous occasions. In this case the agreement allows for up to a 2.5 MW solar project to provide power to BED at a price of $0.195/kwh for a 25-year term. It also contains stronger assignment and Force Majeure provisions, given the significant project size. The pricing is comparable with other projects BED has encountered within Chittenden County, and is favorable to other proposals BED has considered. A copy of the agreement is attached.

The Electric Commission first discussed the project in April to consider whether BED should pursue this project given the long history surrounding the proposed locations, and decided that staff should proceed to see if a Purchase Power Agreement could be achieved. Staff reached agreement on most contractual terms in June, and the Commission approved the Purchase Power Agreement at its July meeting subject to legal sign off on the remaining risk related terms. Since then BED has been finalizing the legal terms of the contract, such as Force Majeure definitions.

In approving the contract the Electric Commission was very aware of past neighbor concerns related to this parcel, and held lengthy discussions as to BED's role in any land use discussions. Commissioner Herendeen resides near the project location, and was able to provide the Commission with perspective around the concerns that had been raised previously. After considerable discussion the Commission decided that BED should be making its decision on the project with regard to the impacts on electric customers, and should not be making determinations about site suitability or possible permitting outcomes. In their July, 2013 approval the Commission agreed with BED staff that the Purchase Power Agreement reflected a positive benefit to BED ratepayers; however, they explicitly instructed BED staff not take any positions relative to the suitability of the proposed site for solar development, and to leave that decision to the city and state officials charged with issuing the project its required permits.

The project will need to receive an interconnection agreement from BED's engineering department as well as a §248 permit from the Public Service Board. It may also need city permits for construction activities.

BED staff will attend the City Council meeting to answer any questions you may have.

PROJECT SUMMARY
South Forty Solar Project
Sunset Cliff Road, Burlington, Vermont

Overview

South 40 Solar, LLC, a Vermont based company, is interested in constructing a photovoltaic (solar) generating facility on land located in Burlington's New North End. The site is a 40 acre parcel located on Sunset Cliff Road. The land is bordered by Curtis Avenue on the easterly side; the Strathmore development neighborhood on the southerly and westerly sides; Sunset Cliff, a residential neighborhood, on the north westerly side; and land pertaining to the camps located on Starr Farm, along the Lake Champlain shoreline to the north.

Concept Plan

Initial plans propose the construction of a 2.5 megawatt (AC) fixed panel solar field that would feed energy into the Burlington Electric Department system. The solar facility would occupy approximately 25 acres of the 40 acre site. The remaining 15 acres would be left intact as "buffer" space between the project and neighboring properties and will be available as recreation space (walking paths, etc.).

The developer has indicated that the project will be designed with sufficient screening and buffer areas so that visibility from adjoining properties will be limited. Once the installation has passed its economically productive lifespan, a decommissioning plan will go into effect and the site will be restored.

Neighborhood Outreach

The developer has had several meetings with the local NPA and interested neighbors to discuss and explain the project. Interested persons are welcome to contact the developer directly to obtain more information or to ask questions.

BED Ratepayers

Burlington Electric Department has reviewed the developer's proposal and has determined that purchase of power from the solar development complies with BED's Integrated Resource Plan, and would be in ratepayer's best interest. The proposed contract has been approved by the BED Electric Commission, with the condition that BED remain neutral in any permitting processes. The proposed purchase power contract has been scheduled for consideration at the Burlington City Council meeting on October 21, 2013.

Review

This project is in its very early stages and many issues remain open for review and discussion. More detailed review will take place in the near future if the developer decides to go forward.

Other Documents

The proposed site plan is also available.

Contact

Please contact Frank von Turkovich at (802) 578-2536; fvonturkovich@fvtlaw.com
with any questions about this information.

PURCHASE POWER AGREEMENT

This Purchase Power Agreement ("**Agreement**") is made between SOUTH FORTY SOLAR, LLC, a Vermont limited liability company ("**Producer**") and the CITY OF BURLINGTON, VERMONT, ELECTRIC DEPARTMENT, a Vermont municipal corporation ("**BED**"), each of which entities is herein referred to individually as a "**Party**" or, together, as the "**Parties**."

RECITALS

WHEREAS, Producer is developing a 2.5 MW (AC) photovoltaic solar panel electric generating facility located on Sunset Cliff Road in Burlington, Vermont (the "**Project**").

WHEREAS, Producer desires to produce and sell 100% of the Project's Electricity and Other Products Related to Electric Generation to BED.

WHEREAS, BED, as a utility serving load in Vermont, desires to purchase 100% of said Electricity and Other Products Related to Electric Generation from Producer.

WHEREAS, Producer and BED desire to enter into this Agreement to set forth the terms for the purchase and sale of Electricity and Other Products Related to Electric Generation provided by the Project.

NOW, THEREFORE, intending to be legally bound, the Parties agree as follows:

1. Defined Terms

Capitalized terms used in this Agreement shall have the meanings set forth above, in paragraph 31hereof, or as defined elsewhere in this Agreement or in the Attachments to this Agreement.

2. Effective Date

This Agreement shall become effective upon execution by both Parties and is of no force and effect whatsoever until that time.

3. Milestones

This Agreement contains certain requirements and deadlines ("**Milestones**") that must be met in order for this Agreement to remain in effect. The Parties shall be entitled to exercise certain rights and remedies in the event that any of the Milestones set forth in **Attachment B** are not met as required.

4. Failure to Achieve Milestones

If any of the herein stated Milestones are not satisfied, the following conditions shall apply:

a. Producer's Failure to Meet Milestones. Should Producer fail to meet any of the Milestones set forth in Attachment B as "**Producer Milestones**," BED shall have the right to:

i. After providing written Notice to Producer of the failure to meet such Milestone in which case Producer shall then be entitled to thirty additional (30) business days from the date of such Notice in which to complete such Milestone, declare this Agreement to be null and void and of no further force and effect. In this event, BED shall provide Notice to Producer of such failure and of the termination of this Agreement which termination will be effective as of the date of Notice. At that time the Parties will have no further obligation to each other.

ii. Grant an extension from the date of such Notice (which shall not be for less than thirty (30) business days) relative to any Producer Milestone, by notifying the Producer in writing of the proposed extension. If Producer does not accept the proposed extension, in writing, within ten (10) business days, BED may, upon written Notice to Producer, terminate this Agreement which shall then be null and void and of no further force and effect. At that time the Parties will have no further obligation to each other.

b. BED's Failure to Meet Milestones. Should BED fail to meet any of the Milestones set for in Attachment B as "**BED Milestones**" Producer shall have the option to either:

i. After providing written Notice to BED of the failure to meet such Milestone in which case BED shall then be entitled to thirty additional (30) business days from the date of such Notice in which to complete such Milestone, declare this Agreement to be null and void and of no further force and effect. In this event, Producer shall provide Notice to BED of such failure and of the termination of this Agreement which termination will be effective as of the date of Notice. At that time the Parties will have no further obligation to each other.

ii. Grant an extension from the date of such Notice (which shall not be for less than thirty (30) business days) relative to BED Milestone, by notifying BED in writing of the proposed extension. If BED does not accept the proposed extension, in writing, within ten (10) business days, Producer may, upon written Notice to BED, terminate this Agreement

which shall then be null and void and of no further force and effect. At that time the Parties will have no further obligation to each other.

5. Interconnection Review Fee and Deposit

At the time of submission of application for interconnection under Vermont Public Service Board ("**Board**") Rule 5.500, BED may request, and Producer shall tender to BED, funds required to pay for the actual, costs incurred by BED for the review of the application for interconnection. In the event that such funds remain unexpended following completion of the review of the application for interconnection, any unexpended amounts will be refunded to Producer. Interest will not accrue on the funds provided or refunded pursuant to this section. The Parties agree to abide by all of the Board's Rules and requirements, as applicable, with respect to the Project and this Agreement.

6. Project Location, Design and Construction; Operations

Producer shall construct the Project at the location and in a manner substantially consistent with the specifications set forth in **Attachment A**, but subject to changes as required by any court or regulatory body or as may be needed to comply with Good Engineering and Operating Practices. Producer shall utilize Commercially Reasonable Efforts in the design, construction and operation of the Project in accordance with Good Engineering and Operating Practices, shall at all times comply with the terms and conditions of any applicable certificate of public good and any other applicable Regulatory Approvals issued relative to the Project, and shall be solely responsible for all costs, expenses, liabilities and other obligations necessary to complete the Project. All operations and deliveries shall be subject to the applicable rules and regulations of the ISO-NE bulk power system in effect during the Term of this Agreement, and Producer shall be responsible for payment of any costs, sanctions or charges arising from actions or inactions of Producer resulting from Producer's failure to comply with such applicable rules and regulations. Producer shall be responsible for payment of all operational costs associated with the Project.

7. Interconnection

Producer shall be solely responsible for the payment of all costs arising under the Interconnection Agreement. At such time as the Interconnection Agreement is executed, it shall be deemed part of this Agreement and a copy shall be appended as **Attachment D** to this Agreement. BED shall be named as a named insured under any policies of insurance required under the Interconnection Agreement. Both Parties shall fully and faithfully perform all of their respective duties and responsibilities under the Interconnection Agreement.

8. Exclusivity

During the Term of this Agreement, Producer shall not enter into any other agreement for the sale or other conveyance of any portion of the Electricity or any Other Products Related to Electric Generation that is the subject of sale under this Agreement. Producer acknowledges that, by entering into this Agreement, Producer is waiving, during the period this Agreement

remains in effect, any and all rights to seek an alternative power sales arrangement, including but not limited to an arrangement through Vermont Public Service Board Rules 4.100, 4.300 and 5.100, or under any Standard Offer contract allowed under 30 V.S.A. section 8005a or any similar qualifying facility or statewide contract structure at any time throughout the Term set forth in this Agreement.

Notwithstanding the foregoing, Producer shall not be bound by the above stated exclusivity provision under the following conditions:

a. If Producer is unable to obtain regulatory approval (including all permits and approvals required by any governmental authority) to construct the Project by the required Milestone.

b. If Producer is prohibited by governmental rules, regulations, or order (or court order) from continuing to operate the Project.

c. If BED defaults under any of its duties and obligations under this Agreement.

d. Producer shall be entitled to conduct negotiations with and enter into agreements for the sale of Electricity or Other Products Related to Electric Generation from the Project with other persons or entities during the Term of this Agreement so long as such sale shall not become effective while this Agreement remains in effect.

9. Exclusivity; Succeeding Contract; Right of First Refusal

If BED shall have exercised its right to terminate this Agreement due to Producer's default under its duties and obligations as set forth herein, Producer shall not be entitled, subsequent to such termination, to enter into agreements for the sale of Electricity or Other Products Related to Electric Generation from the Project with other persons or entities without first offering BED the right to purchase such Electricity or Other Products Related to Electric Generation from the Project on either the same terms and conditions as that which has been initially agreed to by the Parties as set forth herein, or under the terms and conditions that Producer intends to offer to such other person or entity. BED shall have 45 days from the date it receives information in reasonable detail setting forth the terms and conditions that Producer intends to offer to such other person or entity in connection with the sale of Electricity or Other Products Related to Electric Generation from the Project (the "**Succeeding Contract**") to decide and provide Notice its acceptance of the offer in which case the Parties shall then be governed by all of the terms and conditions set forth in this Agreement or the Succeeding Contract as applicable based on BED's election. In the event, BED elects to exercise its right to purchase Electricity or Other Products Related to Electric Generation from the Project under this provision the following conditions shall apply: (a) BED shall be entitled to require that Producer do all things necessary to cure any outstanding Event of Default conditions and, further pay for all costs and expenses incurred by BED as a result of Producer's default under this Agreement; and (b) the parties shall enter into an agreement restoring the terms and conditions the forth in this Agreement, or the terms and conditions of the Succeeding Contract, which shall then remain in

effect, subject to performance of the parties, for the time remaining under the term. The provisions of this paragraph shall survive any termination of this Agreement by BED pursuant to its rights hereunder, but shall not survive if Producer terminates the Agreement, pursuant to its rights hereunder, after an Event of Default by BED.

10. Station Service

Station service, if any is provided by BED, shall be priced only in accordance with any applicable tariff, special contract, order or other means approved by the Board.

11. Delivery of Electricity and Transfer of Other Products Related to Electric Generation

a. Producer hereby unconditionally sells, transfers and assigns to BED all of its right, title and interest in the Electricity and Other Products Related to Electric Generation from the Project. Producer will Deliver Electricity from the Project to BED. Upon request of BED, Producer shall use Commercially Reasonable Efforts to obtain, register, certify or deliver the Other Products Related to Electric Generation or any evidence of BED's right, title and interest thereto to BED, to the ISO-NE Administered Markets or other markets, or as BED reasonably may otherwise direct. So long as BED shall not be in default hereunder, BED shall retain all right, title, and interest in all Other Products Related to Electric Generation. BED shall be entitled, unilaterally and without the consent of Producer, to deal with Other Products Related to Electric Generation in any manner it determines regardless of whether any consideration is separately stated as being received or paid for by BED.

b. Producer shall use Commercially Reasonable Efforts to insure that the Project is available, to the greatest extent possible, in all productive photovoltaic generating hours of the months of December, January, February, and May through September (inclusive). At all other times, Producer will coordinate Project outages (for maintenance or other reasons) with BED to the greatest extent possible.

12. Metering and Reporting Requirements

Producer shall be responsible for meeting such metering requirements as may be established by BED or by regulatory requirement, all at Producer's expense. The testing of metering equipment shall be at the discretion of BED; provided, however, that BED shall cause such testing to be performed not less than once every five years during the Term of this Agreement.

13. Rates and Term

Beginning with Commissioning, BED shall pay Producer for Electricity delivered in accordance with the Rate Schedule and for the Term set forth in **Attachment C** hereto and shall receive from Producer all Electricity and Other Products Related to Electric Generation.

14. Payment to Producer

BED shall pay or cause to be paid to Producer amounts calculated in accordance with Attachment C within 30 days of the end of each billing period during which Electricity was provided by Producer to BED. Any amounts due in excess thereof that remain unpaid after the due date therefore shall accrue interest in favor of Producer at the rate of one percent (1%) per month.

15. Default

Any of the following conditions or occurrences (each, a "**Default**") shall, after the passage of any cure period provided for in this Agreement, and after delivery of Notice from the non-defaulting party to the defaulting party, constitute an "**Event of Default**" hereunder:

a. Producer's failure to Deliver any Electricity from the Project for a period of twelve consecutive months at any time after Commissioning and such failure is not corrected within 30 days of receipt of Notice from BED.

b. Producer fails or ceases to hold any Regulatory Approval, which failure or cessation results in a lack of legal right on the part of Producer to continue to operate the Project. Notwithstanding the foregoing, no such Event of Default will be deemed to have occurred until (a) BED delivers Notice to Producer of such failure or cessation, or (b) Producer is otherwise in receipt of actual notice of such failure or cessation; and, with respect to (a) and (b) above, Producer has not, within 30 days of receipt of such notice, commenced before a court or regulatory body with jurisdiction over such matter, an appeal of such failure or cessation or commenced an application to obtain the legal right necessary to continue to operate the Project.

c. Either Party is found to have committed fraud in relation to this Agreement or any regulatory proceeding relating to the Project.

d. By agreement, decree, judgment or order of a court, either Party is adjudicated bankrupt or insolvent, with the result that such Party is rendered unable to perform its duties and obligations as set forth in this Agreement.

e. Producer fails to resume operation of the Project in comply with Good Engineering and Operating Practices within 30 days after receipt of Notice with respect thereto from BED specifying the particular failure. Notwithstanding the foregoing, so long as such failure does not pose an immediate threat to the safety of persons or property or will not be expected to result in the imminent interruption of the Delivery of Electricity from Producer to BED, if it shall be impracticable or impossible to remedy such failure within such 30 day cure period, the cure period shall extended for the additional time reasonably necessary to effectuate such cure (not to exceed one 120 days) so long as during such

additional cure period, Producer shall diligently pursue a cure of the condition causing the Default.

f. Producer fails to construct the Project substantially in accordance with the description included as Attachment A to this Agreement. For clarity, a substantial change in the Project shall include, but not be limited to, any use of fuels other than those specified in Attachment A, any increase (excluding de minimis increases resulting from repair or replacement of equipment) in the MW rating of the Project from the rating specified in Attachment A, or any change in the Project's location. With respect to any such failure while the Project is under construction or undergoing any maintenance work, BED agrees to endeavor, in good faith, to provide Producer with notice of such failure as soon as possible after BED has reliable information concerning same. Upon receipt of notice from BED specifying the particular failure, Producer agrees to correct same within 60 days. Notwithstanding the foregoing, so long as such failure does not pose an immediate threat to the safety of persons or property or will not be expected to result in the imminent interruption of the Delivery of Electricity from Producer to BED, if it shall be impracticable or impossible to remedy such failure within such 60 day cure period, the cure period shall extended for the additional time reasonably necessary to effectuate such cure (not to exceed one 120 days) so long as during such additional cure period, Producer shall diligently pursue a cure of the condition causing the Default.

g. BED's failure to make any payments when due and such failure is not cured within five(5) Business Days of receipt of Notice thereof, but Producer agrees that BED shall be permitted to make two payments within up to five days after the due date thereof within any calendar year before invoking this provision permitting Producer to declare an Event of Default in connection with such failure.

h. The failure of the defaulting Party to comply with any other material obligations hereunder and such failure continues uncured for ten (10) days after receipt of written Notice thereof. Notwithstanding the foregoing, with respect to such Defaults that (a) do not pose an immediate threat to the safety of persons or property, (b) will not be expected to result in the imminent interruption of the Delivery of Electricity from Producer to BED, or (c) will not be expected to cause material and substantial economic injury to the other Party, if it shall be impracticable or impossible to remedy such failure within the cure period provided for above, the cure period shall extended for an additional period reasonably necessary to effectuate such cure (not to exceed one hundred and twenty days (120) days) so long as during such additional cure period, the defaulting Party shall diligently pursue a cure of the condition causing the Default.

16. Remedies of Non-Defaulting Party

Upon the occurrence of an Event of Default, the non-defaulting Party shall, within 30 days thereof, be entitled to send written Notice to the defaulting Party specifying the Event of Default and declaring the Agreement terminated. If the non-defaulting Party fails to issue such Notice within the 30 day time period specified above, and, during such interim, the defaulting Party, notwithstanding the expiration of the cure periods provided for above, effectuates a cure of the Default upon which such a termination could be based, the Parties agree that such cure shall be deemed to be effective and timely, whereupon the non-defaulting Party shall then be barred from terminating this Agreement on the basis thereof.

17. Effect of Termination or Expiration

Termination of this Agreement, whether by expiration or otherwise, shall not affect or prejudice any rights or obligations of either Party, including those relating to amounts payable under this Agreement up to and including the time of any termination.

18. Force Majeure

In the event of Force Majeure which makes it impossible (after the passage of seven (7) calendar days) for BED to use the Electricity, BED may, upon Notice, suspend its obligation to purchase Electricity under this Agreement for a period of up to thirty (30) days. In no case will an event of Force Majeure excuse Producer's failure to perform for a period of more than twelve consecutive months.

19. Secured Lender Rights

a. Producer shall have the right from time to time, at its cost, to enter into one or more Security Agreements upon such terms as it desires, provided that:

i. in the case of a mortgage, deed of trust, syndication agreement or similar instrument by which the mortgagee, trustee or syndication agent holds security on behalf of, or for the benefit of, other lenders, only the mortgagee, trustee or agent shall be entitled to exercise the rights and remedies under the Security Agreement as the Secured Lender on behalf of the lenders;

ii. BED shall have no liability whatsoever under any Security Agreement for the payment of the principal sum secured or any interest accrued thereon or any other sum secured thereby or accruing thereunder, and the Secured Lender shall not be entitled to seek any damages against the BED for any or all of the same; and

iii. all rights acquired by a Secured Lender under any Security Agreement shall be subject to all of the provisions of this Agreement, including the restrictions on assignment contained herein; and

iv. Producer shall provide any entity with whom it intends to enter a Security Agreement with a copy of this Agreement and the Attachments to this Agreement.

b. While a Security Agreement remains outstanding, and provided that BED has received from Producer prior written Notice of the name and address of the Secured Lender, BED shall provide a copy of any written Notice of default or termination to the Secured Lender at such time that such Notice is sent to Producer. Secured Lender shall at all times have, independent of Producer, the right to effectuate (or cause others to effectuate) a cure of any default or Event of Default before the expiration of any allowable cure period. Subject to the provisions of this Agreement, a Secured Lender may enforce any Security Agreement and acquire Producer's interest in the Project in any lawful way, subject to (1) receipt of any required Regulatory Approvals, (2) the honoring of all obligations of Producer under this Agreement, and (3) payment of all of BED's costs and expenses (including attorney fees) incurred with respect to the acquisition and any related events.

c. The Parties and all Secured Lenders shall, from time to time and subject to any Regulatory Approvals that may be required, enter into and execute estoppel letters confirming the status of instruments and agreements reasonably needed to implement the Security Agreement protection provisions contained in this Agreement.

20. Indemnification

Neither BED nor Producer shall be liable under this Agreement or under any cause of action relating to the subject matter of this Agreement for any special, indirect, incidental, punitive, exemplary or consequential damages, including loss of profits, loss of use or any property or claims of customers or contractors of the Producer or BED for any such damages. The Parties hereby agree to indemnify, defend and hold each other and their respective directors, officers, members, managers, city councilors, commission members, elected and appointed officials, volunteers, employees, shareholders, advisors, and agents (including contractors and their employees) (collectively, the "**Indemnitees**") harmless from and against any and all claims, demands, suits, losses, damages, liabilities, penalties, obligations, payments, costs and expenses, interest accrued thereon (including the costs and expense of, and interest accrued on, any and all actions, suits, proceedings for personal injury (including death) or property damage, assessments, judgments, settlements and compromises relating thereto and reasonable attorney fees and reasonable disbursements in connection therewith), asserted against or suffered by the Indemnitees relating to, in connection with, resulting from, or arising out of the performance by the Parties of their respective duties and obligations under this Agreement, or any occurrence or event relating thereto, or any occurrence or event on the Party's side of the Interconnection Point, or a breach by the Party of any of its representations, warranties, obligations or covenants contained in this Agreement.

21. Liability

If Producer is not a single legal entity, then all such entities comprising Producer shall be jointly and severally liable to BED for all representations, warranties, obligations, covenants, and liabilities of Producer under this Agreement.

22. Record Retention

Producer and BED each shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. Without limiting the generality of the foregoing, Producer shall keep all records and other documentary evidence that may be necessary to establish, substantiate or maintain any claim or title of BED to any Other Products Related to Electric Generation. All such records shall be maintained as required by law, but for no less than seven (7) years after the creation of the record or data. Producer shall provide or cause to be provided reasonable access by BED to the relevant and appropriate non-confidential financial and operating records and data kept by it or on its behalf relating to this Agreement reasonably required for BED to comply with its obligations under this Agreement, or to verify billings or to verify information provided in accordance with this Agreement or relating to compliance by Producer with this Agreement.

23. Project Inspection; Performance Assurance; Public Access

BED shall have the right to inspect the Project prior to Commissioning and shall have the right to inspect the Project for the purpose of verifying Producer's compliance with its duties and obligations as set forth herein during normal business hours during the Term of this Agreement, upon at least five business days' Notice to Producer.

Subject to satisfactory arrangements with respect to safety and liability, Producer agrees to cooperate with BED to facilitate access to the Project for educational purposes.

24. Notices

Unless otherwise stated, all Notices pertaining to this Agreement (each, a "**Notice**") shall be in writing and shall be transmitted, by the Party giving Notice, via electronic mail and one of the following methods of delivery: US Mail (certified, with return receipt); overnight nationally recognized courier (FedEx, UPS, etc.); or hand delivery, and addressed to the other Party as follows ("**Notice Addresses**"):

If to Producer:

South Forty Solar, LLC
c/o LAW OFFICES OF FJ VON TURKOVICH, PC
One National Life Drive
Montpelier, VT 05604

Attention: FJ von Turkovich
E-mail: fvonturkovich@fvtlaw.com

With copy to:

Brian Dunkiel and Andrew Raubvogel
DUNKIEL SAUNDERS ELLIOT RAUBVOGEL & HAND
91 College St.
Burlington, VT 05401

E-mail: bdunkiel@dunkielsaunders.com
araubvogel@dunkielsaunders.com

If to BED:

General Manager
BURLINGTON ELECTRIC DEPARTMENT
585 Pine Street
Burlington, VT 05401

Notice transmitted or delivered as provided above shall be deemed to have been given and received on the day it is transmitted (if by electronic mail or facsimile) or delivered (if by courier or hand delivery), provided such Notice is transmitted or delivered on a business day prior to 5:00 p.m. local time in the place of delivery or receipt. If a Notice is transmitted or delivered after 5:00 p.m. local time or such day is not a business day, then such Notice shall be deemed to have been given and received on the next business day. Either Party, by written Notice to the other, may change its contact person or Notice Address.

25. Confidentiality; Public Records

Producer acknowledges its understanding that BED is subject to Vermont's Access to Public Records law, 1 V.S.A. § 315 et seq. ("**Public Records Law**"). To the extent that BED may receive requests under the Public Records Law for confidential information provided by Producer to BED, BED shall notify Producer of the request not later than the next business day after the request is received. Producer shall then be allowed ten (10) business days (or such lesser time as is prescribed by law) to review such request for the purpose of identifying proprietary (trade secrets) information or other confidential information that may be exempt from public disclosure pursuant to applicable law. Information related to the development of the Project shall be considered, to the fullest extent permissible, to be trade secrets under 30 V.S.A. § 317(9) for purposes of application of that statute, and, accordingly, BED agrees to not disclose any such information without Producer's consent to the extent allowable by law. It shall be the responsibility of the Party seeking to maintain confidentiality of specific information to seek an appropriate protective order, or other remedy, or to undertake such court action as may be necessary, at such Party's sole expense.

26. Business Relationship

The relationship between the BED and Producer is that between independent contractors, and nothing in this Agreement shall create or be deemed to create a relationship of partnership, joint venture, fiduciary, principal and agent or any other relationship between the Parties.

27. Non-Party Rights

Except as set out otherwise in this Agreement, this Agreement shall not confer upon any person or entity, except the Parties and permitted assigns, any rights, interests, obligations or remedies under this Agreement.

28. Assignment

Neither party may assign its rights and duties under this Agreement without the prior approval of the other Party, which approval shall not be unreasonably conditioned, delayed or withheld, and any assignee shall be required to make a statement in writing assuming all of the Party's obligations under this Agreement and shall give the other Party written Notice of the assignment within thirty days of the date of the assignment. Nothing in this provision shall be deemed to alter the Party's responsibility or obligations to obtain any and all Regulatory Approvals that may be required in conjunction with a transfer of all or part of any legal interest in the Project.

29. BED Setoff Rights

In addition to its other rights of setoff under this Agreement or otherwise arising in law or equity, BED may set off any amounts owed to it by Producer against any monies owed by BED to Producer.

20. Further Assurances

Each Party, from time to time on written request of the other Party, shall perform further acts, including execution of documents, as may be reasonably required in order to fully perform and to more effectively implement and carry out the terms of this Agreement, provided that such acts shall not be inconsistent with this Agreement or any law or Regulatory Approvals pertaining to the Project. Producer agrees to operate and maintain the Project in conformance with generally acceptable industry standards

31. Definitions

The following terms shall have the respective meanings set forth below for purposes of this Agreement:

a. "Commercially Reasonable Efforts" means efforts that are designed to enable a Party, directly or indirectly, to satisfy a condition to, or otherwise assist in the consummation of, a transaction, activity or undertaking contemplated by this Agreement and that do not require the performing Party to expend any funds or

assume liabilities other than expenditures and liabilities that are reasonable in nature and amount in the context of the transaction contemplated by this Agreement.

b. "Commissioning" means the date on which the Project has received all approvals, including approval of the final interconnection, and begins Delivering Electricity to the Distribution System of BED.

c. "Interconnection Agreement" means the agreement or agreements entered into between BED and Producer with respect to the connection of the Project to the Distribution System.

d. "Interconnection Costs" means all costs which are payable by Producer with respect to the interconnection of the Project to the Distribution System.

e. "Interconnection Point" means that certain location specified in the Interconnection Agreement where the Parties have agreed Producer will Deliver Electricity from the Project to the Distribution System.

f. "Interconnecting Utility" means BED.

g. "Deliver" or "Delivered" (in the context of Electricity) means transmission of Electricity to the Interconnection Point

h. "Distribution System" means the system which is owned and operated by BED, and includes any structures, equipment or other things used for the purpose of transmitting, distributing, or providing Electricity to end-use customers.

i. "Electricity" means electric energy, measured at the Interconnection Point, in kWh.

j. "Force Majeure" means any act, event, cause or condition that (i) prevents a Party from performing its obligations, (ii) would not have been reasonably anticipated as of the date this Agreement was entered into; and (iii) is beyond the affected Party's reasonable control, except that no act, event, cause or condition shall be considered to be an event of Force Majeure:

(1) if and to the extent the Party seeking to invoke Force Majeure has caused or contributed to the applicable act, event, cause or condition by its act, fault or negligence or has failed to use Commercially Reasonable Efforts to prevent or remedy such act, event, cause ,or condition and, so far as possible and within a reasonable time period, remove it (except in the case of strikes, lockouts and other labor disturbances, the settlement of which shall be wholly within the discretion of the party involved);

(2) if the act, event, cause or condition involves a failure or delay on the part of the Interconnecting Utility or its agents to complete network or system upgrades or otherwise perform responsibilities under an Interconnection Agreement, and such failure or delay is not attributable to a change in specifications of the Interconnection Point or the Project by the Producer or other act by Producer not allowed under this Agreement or the Interconnection Agreement;

(3) if the act, event, cause or condition is the result of a violation of law or the terms of any regulatory approval by the Party seeking to invoke Force Majeure;

(4) if the act, event, cause or condition was caused by a lack of funds or other financial cause; or

(5) to the extent that the duration of such act, event, cause or condition prevents a Party from performing its obligations for a period exceeding twelve consecutive months.

k. "Good Engineering and Operating Practices" means any of the practices, methods and activities adopted by a significant portion of the North America electric utility industry as good practices applicable to the design, building, and operation of generating facilities of similar type, size and capacity or any of the practices, methods or activities that, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent generator of Electricity in light of the facts known at the time the decision was made, reasonably could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, expedition and laws and regulations.

l. "ISO-NE" means the Independent System Operator-New England, or its successor.

m. "ISO-NE Administered Markets" has the meaning given to it by the ISO-NE Market Rules.

n. "Meter" means a meter owned by or under the control of the Interconnecting utility that measures and records the quantity of Electricity which passes through it.

o. "Other Products Related to Electric Generation" includes; (i) renewable energy credits ("**RECS**") resulting directly or indirectly from the generation of Electricity by the Project; (ii) capacity, reliability or other attributes associated with the generation of Electricity from the Project; and (iii) reduced transmission costs, loss savings or other benefits resulting from the Project. Other Products Related to Electric Generation specifically excludes any federal or state tax credits or grants, including but not limited to production tax credits, investment tax credits,

or section 1603 grants, or similar tax credits or grant generally available to parties such as Producer.

p. "Secured Lender" means the lender(s) or secured party(ies) under a Security Agreement.

q. "Security Agreement" means an agreement or instrument, including a mortgage or deed or trust or similar instrument securing bonds or debentures, or other evidences of indebtedness, containing a charge, mortgage, pledge, security interest, assignment, sublease, deed of trust or similar instrument with respect to all or any part of the Producer's Interest granted by the Producer that is security for any indebtedness, liability or obligation of the Producer, together with any amendment, change, supplement, restatement, extension, renewal or modification thereof.

r. "Station Service" means the Electricity used at the Project for excitation, on-site maintenance and operation of auxiliary and other facilities that are essential to operation of the Project.

s. "Regulatory Approval" means the receipt of any federal, state or local permit, license or other assent of any governmental body, where such assent is required for Producer to construct or operate the Project or for BED to purchase the Electricity, Other Products Related to Electric Generation, or otherwise enter into and perform under this Agreement.

t. "Site Control" means proof of dominion over real property to the extent necessary to construct the Project in accordance with the description set forth on attachment A. Site control may be established by (1) fee simple title to the property; (2) a valid written leasehold interest in the property for at least the duration of the contract Term, (3) a valid written option, unconditionally exercisable by Producer, to purchase or lease such real property, or (4) a duly executed contract for the purchase or lease of such property.

32. Miscellaneous

a. Headings. The inclusion of headings in this Agreement is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

b. Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement.

c. Waiver, Amendment. Except as expressly provided in this Agreement, no amendment or waiver of any provision of this Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver or any provision of this Agreement shall constitute a waiver of any other provision nor shall it

constitute a continuing waiver or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply, unless otherwise expressly provided.

d. Enforcement; Severability; Sovereign Immunity. This Agreement shall be controlled by and construed under the laws of the State of Vermont. If any provision hereof shall be found to be illegal of unenforceable by a court of competent jurisdiction, the remaining provisions shall remain binding upon the Parties and the remaining terms and conditions of the Agreement shall be enforceable to the maximum extent possible. BED waives any right to claim sovereign immunity in connection with its obligations hereunder.

(Execution pages follow)

IN WITNESS WHEREOF, Producer and BED have executed this instrument on the respective dates set forth below.

PRODUCER

South Forty Solar, LLC

By: _____
Duly authorized agent

Dated: _____

BED

City of Burlington, Vermont, Electric Department

By: _____
Barbara L. Grimes, General Manager

Dated: _____

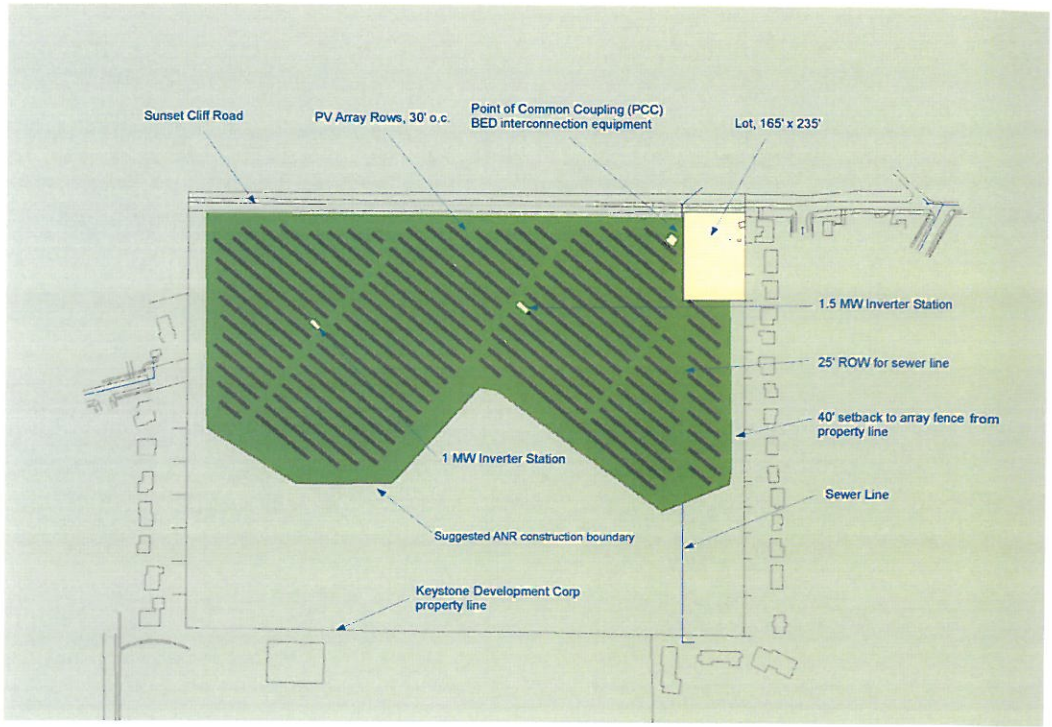
Attachment A

Project Description

The proposed South Forty Solar Farm is a 2,500 kW (+/-) (AC) solar electric generation facility located on Sunset Cliff Road, in Burlington, Vermont. The facility will be sited on approximately 20 acres of the 40 +/- acre property controlled by Keystone Development Corporation. The facility will consist of approximately 12,000 (+/-) photovoltaic modules with a combined DC rated output of 2,500 kW at Standard Test Conditions (STC). Modules will be ground mounted facing true south on a steel support structure. The facility will utilize five 500 kW inverters for a combined maximum AC output of 2,500 kW (+/-). A medium voltage transformer will step up inverter output (480V) to distribution voltage for interconnection to BED's distribution circuit (upgraded to 3 phase power) located on Starr Farm Rd.

A preliminary site plan, dated July 26, 2013, is included as part of Attachment A. The Parties acknowledge and agree that the site plan is subject to change in configuration based upon design engineering and review by permitting authorities and component suppliers, but no such changes shall materially alter the terms and conditions set forth in this Agreement or the benefits to be conferred to BED hereunder.

Preliminary site plan follows after this page.



Not for Construction

L..W. SEDDON, LLC
13 Bailey Ave.
Montpelier, VT 05602 USA
Tel: 802-272-7284

Client:
South Forty Solar, LLC
300 Swift St.
S. Burlington, VT 05403

Project:
South Forty Solar Farm
Sunset Cliff Rd.
Burlington, VT 05401

AC Capacity: 2.5 MW AC
Array Size : 3.28 MW DC
Annual Output = 3,870 MWH
Module: 300 Watt
Mounting: driven pile
Module tilt: 30 degrees
Azimuth: 180 degrees (True)

Vers	By	Date	Changes
1	LWS	12-Nov-2012	
2	LWS	2-Feb-2013	wetland delineation
3	LWS	15-Apr-2013	array size
4	LWS	26-Jun-2013	Array area & size
5	LWS	4-Sep-2013	NE Corner Lot

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Drawing:
PV-A01

Description:
Site Plan

Scale:
1" = 250 '
(Printed 11x17)

0" 1/2" 1" 2" 3" 4" 5" 6" 7" 8" 9" 10" 11" 12"

BED-SFS

Attachment B

Milestones

Producer Milestones

a. Within six months of the date of this Agreement, Producer shall file with BED a complete application for interconnection under Board Rule 5.500.

b. Obtain all Regulatory Approvals required to construct and operate the Project not later than February 28, 2014.

c. The Project shall achieve Commissioning not later than December 31, 2015.

BED Milestones

a. Obtain all required Regulatory Approvals not later than February 28, 2014.

BED-SFS

Attachment C

Rate Schedule and Term

Rate Schedule:	$0.195 (nineteen and one half cents) per kWh of Electricity Produced
Term:	25 years (from date of Project Commissioning)

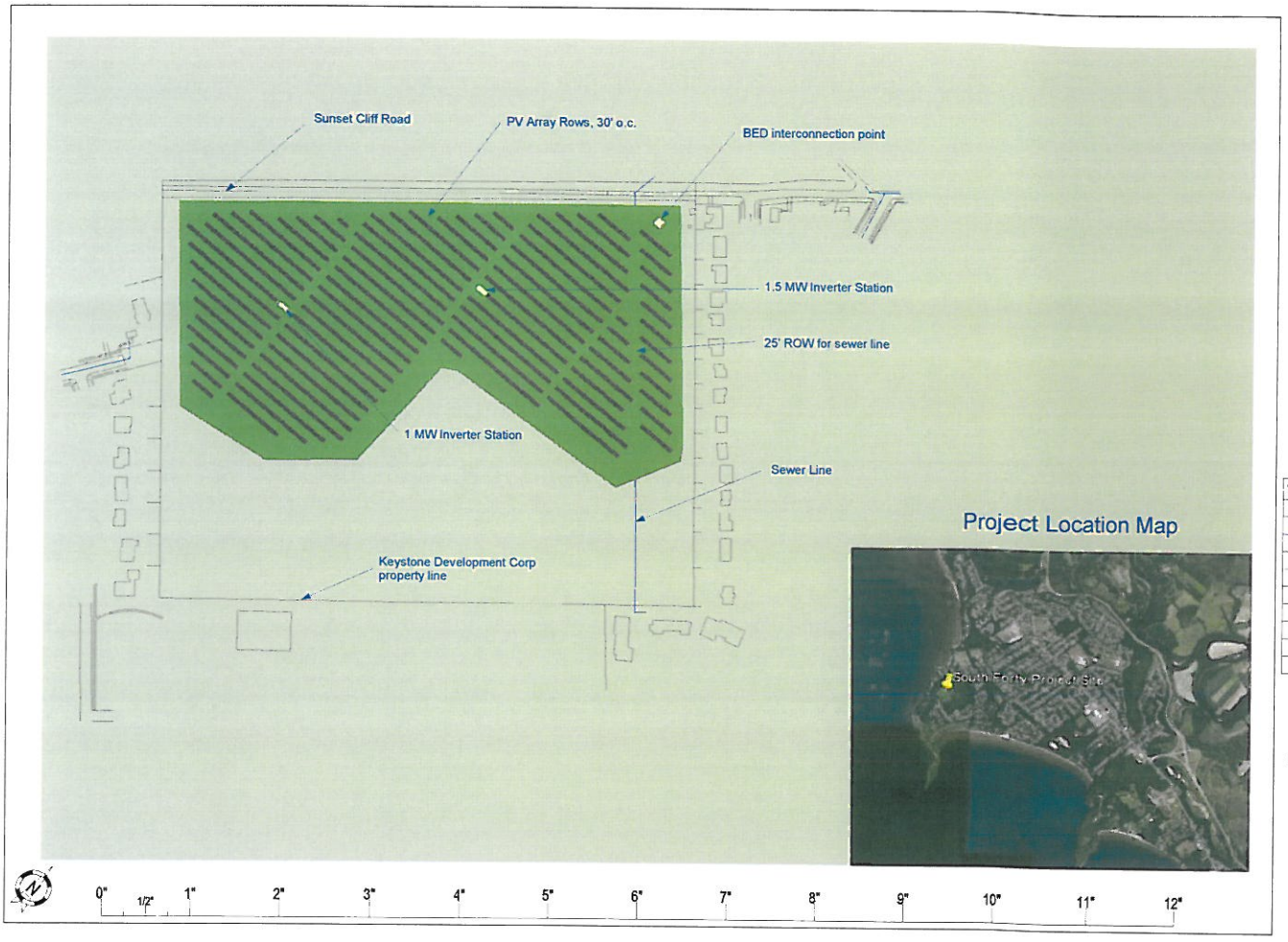
BED-SFS

Attachment D

Interconnection Agreement

(The Interconnection Agreement with the Interconnecting Utility shall be filed within five business days of its execution.)

BED-SFS



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2	LWS	2-Feb-2013	wetland delineation
3	LWS	15-Apr-2013	array size
4	LWS	26-Jul-2013	Array area & size
5	LWS	8-Oct-2013	Locator Map

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