

Resolution Relating to

AUTHORIZATION FOR ELECTRIC DEPARTMENT
TO CONSTRUCT SOLAR ARRAY AT
BURLINGTON INTERNATIONAL AIRPORT

RESOLUTION _____

Sponsor(s): Councilors Shannon,
Bushor, Aubin, Knodell: Bd.
of Finance: **Pending Bd. of
Finance approval on 3/10/14**
Introduced: _____
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

CITY OF BURLINGTON

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

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- That WHEREAS, Burlington Electric Department (“BED”), received voter approval to issue revenue bonds in 2009 which were partially intended for the procurement of renewable energy; and
- WHEREAS, BED issued a Request for Proposals in November, 2012 seeking partners to develop solar generation on properties owned by the City of Burlington; and
- WHEREAS, in response to the RFP six (6) vendors submitted nine (9) distinct proposals for installation of a solar array located on the Burlington International Airport (BTV) parking garage; and
- WHEREAS, after evaluating these proposals BED and BTV invited the three (3) most viable bidders to conduct a site visit and refine their proposals; and
- WHEREAS, upon completion of this second round of bidding, BED and BTV staff determined that the proposal which provided the most benefit to Burlington residents while addressing the site constraints was a turnkey installation proposal from Encore Redevelopment, LLC which would result in BED owning the solar array and paying BTV to use space on the BTV parking garage roof for installation and operation of the solar array; and
- WHEREAS, the cost of this project is projected to be \$1.5 million including a contract for design, permitting, and construction with Encore Redevelopment, LLC and BED’s internal costs; and

* * * * *

DISTRIBUTION:

I hereby certify that this resolution
has been sent to the following
department(s) on

ORIGINAL

RESOLUTION RELATING TO

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.....

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Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

* * * * *

**AUTHORIZATION FOR ELECTRIC DEPARTMENT TO
CONSTRUCT SOLAR ARRAY AT BURLINGTON INTERNATIONAL
AIRPORT**

16 WHEREAS, the project will result in an annual payment from BED to BTV for use of the parking
17 garage roof in the amount of \$19,000 per year while resulting in an anticipated \$740,000 total benefit (in
18 nominal dollars) to Burlington residents over the next 20 years; and

19 WHEREAS, all of funds needed to construct the project will be covered by BED's 2009 Revenue
20 Bond and all funds needed to operate and maintain the project will be covered by BED's operating
21 budget; and

22 WHEREAS, the Board of Finance considered this matter at its meeting on March 10, 2014
23 (concurrently with this City Council meeting of the same date) and recommended the City Council's
24 adoption of this Resolution;

25 NOW, THEREFORE, BE IT RESOLVED by the City Council that BED's General Manager is
26 authorized to execute a Development and Construction Contract with Encore Redevelopment, LLC, and
27 BED's General Manager and BTV's Director of Aviation are authorized to enter into a Memorandum of
28 Understanding, all in substantially the same form as attached, subject to the prior review and authorization
29 of the City Attorney and Chief Administrative Officer; and

30 BE IT FURTHER RESOLVED that BED's General Manager is authorized to take such actions as
31 necessary to petition the Public Service Board for a Certificate of Public Good (CPB) and apply for such
32 other permits, licenses, or approvals to develop and construct a solar array at BTV, subject to the review
33 of the Burlington Electric Commission; and

34 BE IT FURTHER RESOLVED that upon receipt of the CPG and all other necessary permits,
35 licenses, or approvals, BED's General Manager is authorized to build and implement the solar array,
36 subject to the review of the Burlington Electric Commission; and

* * * * *

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Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Vol. Page

* * * * *

37 BE IT FURTHER RESOVED that during all stages of the design, approval, and construction of
38 this project, the BTV Director of Aviation is authorized to make the BTV parking garage accessible to
39 BED and its agents and subcontractors for the installation of a solar array.

40

41 lb/GM/Resolutions 2014/BED – Authorization re Contract to Construct Solar Array Panels with Encore Redevelopment, Inc. & Memo of
42 Understanding with BIA

* * * * *

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Adopted by the City Council

....., 20.....

..... Clerk

Approved....., 20.....

..... Mayor

Attest:

Vol. Page

* * * * *

DRAFT DRAFT DRAFT

MEMORANDUM OF UNDERSTANDING
BETWEEN THE BURLINGTON INTERNATIONAL AIRPORT AND THE
BURLINGTON ELECTRIC DEPARTMENT REGARDING THE
INSTALLATION OF SOLAR FACILITIES ON THE ROOF OF THE AIRPORT
PARKING GARAGE

Field Code Changed

This Memorandum of Understanding is made this ___ day of _____, 2014, by and between the Burlington International Airport (hereinafter "BTV"), with its principal address being 1200 Airport Drive, South Burlington, Vermont, and the Burlington Electric Department (hereinafter "BED"), with its principal address being 585 Pine Street, Burlington, Vermont, (hereinafter the "Parties").

Recitals

WHEREAS, BTV is an international airport owned and operated by the City of Burlington, Vermont, that is located in South Burlington, Vermont, including the BTV Parking Garage; and

WHEREAS, BED is an electric utility company owned and operated by the City of Burlington, Vermont, that is located in the City of Burlington, Vermont, and which desires to construct an approximately 500 kW (AC) solar PV generation facility/array (hereinafter "Solar Facilities") on the roof of the BTV Parking Garage; and

WHEREAS, BED desires to enter into a separate agreement, contemporaneous herewith with ENCORE REDEVELOPMENT LLC, to construct said Solar Facilities on and in certain areas of the BTV Parking Garage ("Permitted Areas" as specified in Exhibit A), including solar panels, mounting systems, inverters, transformers, integrators, electrical lines and conduits, cables, transformers, wires, meters, monitoring equipment and all other necessary and convenient equipment and appurtenances needed and used to collect, produce and transmit electricity from exposure to sunlight; and

WHEREAS, BTV desires to support BED's effort to development said renewable energy project as well as to benefit from same and therefore hereby agrees to permit BED to subcontract and arrange for the design, installation, operation, maintenance, and replacement of Solar Facilities in the Permitted Areas;

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which is hereby acknowledged by both Parties, the Parties hereby covenant and agree as follows:

1. **Grant of Permission.** BTV hereby grants to BED:
 - a. permission to install, operate, maintain, improve and replace the Solar Facilities in the Permitted Areas and to run wires, conduits and other equipment needed to connect the Solar Facilities to BED's electricity distribution system; and
 - b. permission to enter BTV and the BTV Parking Garage at all reasonable times, provided reasonable advance notice (other than in the event of an emergency) has been provided to BTV by BED, the granting of which will not unreasonably be withheld, conditioned or delayed, for the purpose of carrying out BED's obligations under this Agreement, including but not limited to installing, operating, maintaining, improving and replacing the Solar Facilities so as to generate electricity for sale and distribution as well as installing, operating, maintaining, improving and replacing any machinery or equipment or other facilities necessary to interconnect the Solar Facilities with the BED electrical distribution system.
2. **Installation of the Solar Facilities.** The Solar Facilities shall be installed within the Permitted Areas based on consultation and agreement between BED and BTV. BED and BTV shall also consult and agree on when the installation shall begin and any reasonable limits on the installation, which shall not impede BED's ability to complete the construction and installation of the solar facilities prior to _____.
3. **Modification and Expansion of the Solar Facilities.** BED may at any time modify the Solar Facilities for the purpose of, among other reasons, adding solar power-generating equipment and/or interconnection equipment and increasing the electricity generated; provided, however, that BTV's prior written approval shall be required for any material modification or expansion that would require additional space beyond the Permitted Areas (a "Material Modification"). BTV shall have no obligation, pursuant to the terms of this Agreement, to grant BED's request for a Material Modification and may choose to grant or deny such a request at its sole discretion. Upon any proposal by BED for a Material Modification, BED shall provide to BTV the plans and specifications of such Material Modification. Such plans and specifications shall be subject to the review and approval of BTV and any approved Material Modification shall comply with and not reasonably deviate from those approved plans and specifications. Any expansion of the Solar Facilities pursuant to this provision of the Agreement shall be controlled by and subject to the terms of this entire Agreement. Pursuant to the August 5, 2010 FAA determination authorizing the construction of the Solar Facilities, which is attached hereto as Exhibit B, BED agrees that if there is any glare, radar reflection, or any other interference with the

safe and efficient use of navigable airspace by aircraft or the safety of persons or property on the ground determined to be caused by the Solar Facilities by the FAA and/or BTV, BED shall immediately mitigate said effects in whatever ways required, including but not limited to, the removal of solar panels or any other elements of the Solar Facilities.

4. **Approvals and Permits.** BED or its subcontractors shall be responsible for obtaining all necessary Approvals and Permits required for the installation, construction and operation of the Solar Facilities, and shall be responsible for paying all permit fees required in connection with its activities under this Agreement. BTV shall cooperate with BED in obtaining all such Approvals and Permits.
5. **Maintenance of the Parking Garage and the Solar Facilities; Liability for Damage.** BTV will maintain the BTV Parking Garage in good condition and repair and shall provide BED with at least 30 days prior written notice of any repair, maintenance or construction ("Maintenance") which could foreseeably impede, interrupt or prevent the generation and supply of electricity by the Solar Facilities or damage or otherwise adversely impact the installation, operation and maintenance of the Solar Facilities or BED's performance under this Agreement or BED's agreement with ENCORE REDEVELOPMENT, LLC to develop and install the Solar Facilities in any material respect (collectively, "Adverse Effects"); provided, however, in the event of an emergency requiring immediate Maintenance, BTV shall use commercially reasonable efforts to provide BED with as much notice as may be reasonably practicable under the circumstances. BTV shall coordinate with BED, or its successors and assigns, in good faith and shall take all commercially reasonable measures necessary to ensure that the Adverse Effects in connection with any such Maintenance are avoided or minimized. BED shall cooperate with BTV in relocating the Solar Facilities temporarily, and BED and its successors and assigns will be responsible for and/or pay for the entire cost of any required relocation (the "Relocation Costs"), during those periods of time in which such relocation is necessary to repair or replace the BTV Parking Garage roof or perform any other necessary maintenance or construction to the BTV Parking Garage, provided that:
 - (a) BTV has provided BED with at least 90 days written notice of any such relocation of the Solar Facilities (however, in the event of an emergency requiring immediate action, BTV shall provide BED with as much notice as possible under the circumstances);
 - (b) Such Maintenance is required by law, is set forth on Exhibit B hereto, or necessary to correct or prevent a significant structural problem, an unreasonably dangerous condition, or a condition reasonably likely to result in significant property damage if not remedied;

- (c) Such repair, replacement, maintenance or construction cannot reasonably be performed without the relocation of the solar facilities; and
- (d) BTV shall coordinate with BED, or its successors and assigns, in good faith and shall use its best efforts to ensure that any such repair, replacement, maintenance or construction is performed in a manner that minimizes the Relocation Costs.

Notwithstanding anything in this Agreement to the contrary, BED shall have the right to deduct any reasonable Relocation Costs incurred from any payments, fees or amounts payable by BED to BTV pursuant to this Agreement, and specifically excluding the security deposit payment outlined in Section 12 of this Agreement. The amount of such reasonable Relocation Costs referenced in this Section 5 shall be subject to the review and approval of BTV, which approval shall not be unreasonably withheld, conditioned or delayed, prior to the deduction of any payments, fees or amounts payable by BED to BTV. For the avoidance of doubt, other than BED's deduction of Relocation Costs incurred from the amount of BED's subsequent payments to BTV pursuant to Section 16 of this Agreement, BTV shall have no liability for Relocation Costs incurred by BED pursuant to this Section 5. If the nature of any BTV Maintenance is such that no accommodation, modification or relocation of the Solar Facilities can be made that is satisfactory to BED, in BED's sole discretion, then BED may terminate this Agreement, without being in breach, and remove the Solar Facilities from the Permitted Areas. BTV hereby represents and warrants to BED that, except as set forth on Exhibit C hereto, no repair, replacement, maintenance or construction of the BTV Parking Garage that would require the full or partial relocation of the Solar Facilities is currently planned or contemplated during the term of this Agreement, and to its knowledge, no condition currently exists that is reasonably likely to necessitate repair or replacement of the roof that would require the full or partial relocation of the Facilities.

If damage is caused to the BTV Parking Garage by the Solar Facilities or by BED or its employees, agents or contractors in connection with the installation, operation, maintenance, improvement or replacement of the Solar Facilities, BED shall promptly repair such damage at its own expense. In addition, if BTV, its employees, contractors, or any of its agents are responsible for damage to the Solar Facilities or any of its component parts, BTV shall pay for all reasonably required repairs to the solar facilities and any reasonable expense of diagnosing any failure incurred by BED as a result of such damage; provided however, that, except for damage arising from the gross negligence or intentional misconduct of BTV, to the extent not covered by BTV insurance, BTV's liability under this sentence shall be limited to BED's right to deduct the amount of all such reasonably required repairs and reasonable expenses from any and all amounts

subsequently payable by BED to BTV pursuant to this Agreement and excluding the Security Deposit payments outlined in Section 12 of this Agreement. BED shall provide BTV with notice of the amount of such reasonably required repairs and reasonable expenses referenced in the preceding sentence (the "BED Notice"). If BTV disputes whether such repairs are reasonably required or such expenses are reasonable, the Parties shall follow the dispute resolution process laid out in Section 26.

The Solar Facilities and all repairs, parts, accessories and improvements of any kind or nature furnished or affixed to the Solar Facilities shall at all times be and remain the property of BED and its successors and assigns. BED shall, at its sole expense, operate, maintain and repair the Solar Facilities in accordance with all laws and regulations of any applicable governmental authority and this Agreement.

6. **Exposure to Sunlight.** BTV covenants that it will use its best efforts to not allow vegetation on its property to grow in a manner or initiate or conduct any activities, except those permitted pursuant to the terms of paragraph 12 below, that could reasonably diminish the exposure of the Solar Facilities to sunlight during daylight hours, while this Memorandum of Understanding and License Agreement remains in effect.
7. **Use of Subcontractors.** The use by BED of Encore Redevelopment, LLC and its subcontractors, agents, etc. to construct/install the Solar Facilities shall be deemed approved by BTV by this Agreement. Upon approval of BTV, which approval shall not be unreasonably withheld, conditioned or delayed, BED shall be permitted to use or license other subcontractors or agents to perform any of its obligations under this Agreement, provided however that any third parties used be fully insured and that the use of such third parties shall not relieve BED of its obligations and responsibilities hereunder, and BED shall be responsible for the actions and performance of such third parties.
8. **BTV not to Interfere with the Solar Facilities.** BTV shall not tamper with or undertake any maintenance or alterations to the Solar Facilities without the express written permission of BED. BTV shall take all reasonable measures necessary to ensure that the operation of the BTV Parking Garage does not unreasonably impede, interrupt, reduce or prevent the generation and supply of electricity by the Solar Facilities or damage or otherwise adversely impact the installation, operation and maintenance of the Solar Facilities or BED's performance under this Agreement.
9. **BED not to Interfere with the Operations of BTV.** Without the express written authorization of BTV, BED shall not undertake any alterations, repairs or improvements to the Solar Facilities that may affect the operations of BTV (other

than those reasonably deemed necessary by BED to address emergencies) or may impede or otherwise materially adversely impact BTV operations. BED shall take all reasonable measures necessary to ensure that the Solar Facilities and the operation of the Solar Facilities does not unreasonably affect, interrupt or impede BTV operations.

10. **Cooperation in Securing Rebates, Tax Credits and other Economic Benefits.** BTV will cooperate with BED in completing and filing such applications and other documents as are necessary to permit BED to receive rebates, tax credits and other economic benefits that are now or may hereafter become available to BED in connection with the Solar Facilities.
11. **Term; Removal of the Facilities.** This Agreement shall commence upon execution and shall terminate 20-years from the date on which the Solar Facilities reaches commercial operation by reliably delivering energy to the electric grid (hereinafter the "Agreement Term") unless this term is extended by mutual agreement of the Parties. At the end of the Agreement Term or upon termination of this Agreement, BED, its successors or assigns shall sever, disconnect, and remove the Solar Facilities and all of BED's other property from the BTV Parking Garage. In addition, at the expiration of the Agreement Term or upon termination of this Agreement, BED, its successors and assigns shall promptly repair and restore any damage caused to the BTV Parking Garage resulting from the placement of the Solar Facilities in the Permitted Areas or removal of the Solar Facilities from the Permitted Areas, to the reasonable satisfaction of BTV. BED and its successors and assigns shall be liable for any other damage to the BTV Parking Garage caused by the negligence of BED or its employees, contractors, agents, successors and assigns during such removal, repair or restoration. All removal, repair and restoration shall be at the sole expense of BED or its successors and assigns.
12. **Improvements.** Without the express written consent of BED, BTV shall not install or construct any improvements to the BTV Parking Garage, excluding those projects set forth on Exhibit B, that adversely impact the installation, operation or maintenance of the Solar Facilities, the generation or supply of electricity by the Solar Facilities, or BED's performance or rights under this Agreement. Notwithstanding the foregoing, BED's consent shall not be required if: (a) BTV provides BED with at least 90 days prior written notice of such improvement; and (b) BTV (after coordinating with BED in good faith) grants BED, or its successors and assigns, all rights necessary for the modification or relocation of the Solar Facilities, such that there is no reduction in the electricity generation or capacity of the Solar Facility or breach of BED's obligations under this Agreement, and BED shall have the right to deduct the amount of all reasonable costs and expenses incurred by BED in connection with or as a result of such BTV improvements and such modifications and relocations (including the

value of lost energy) from any and all amounts subsequently payable by BED to BTV pursuant to this Agreement and excluding the Security Deposit payment outlined in Section 12 of this Agreement. The amount of these reasonable costs and expenses referenced in this Section 13 shall be subject to the review and approval of BTV, which approval shall not be unreasonably withheld, conditioned or delayed, prior to the deduction of any payments, fees or amounts payable by BED to BTV. For the avoidance of doubt, other than BED's deduction of costs and expenses incurred from the amount of BED's subsequent payments to BTV pursuant to this Agreement, BTV shall have no liability for costs and expenses incurred by BED pursuant to this Section 13.

13. **Temporary Construction License.** BTV shall provide, at no cost to BED, a mutually satisfactory site in close proximity to the Permitted Areas for the temporary storage and assemblage of materials to construct, erect and install, expand, modify, replace and maintain the Solar Facilities ("Construction Areas"). Upon completion of construction of the Solar Facilities or any expansion, modification or repair thereof that requires the use of a storage or assemblage area, BED, at its sole expense, will remove all remaining materials from such site and will restore such site as nearly as is reasonably possible to the condition in which it existed immediately prior to the commencement of such activity.
14. **Use.** BED will use only the Construction Areas and Permitted Areas for the erection, installation, operation, maintenance, repair, replacement, improvement and removal of the Solar Facilities as well as for all other activities to be conducted by BED, limited to, and in connection with the performance of its obligations and exercise of its rights under this Agreement. BED will comply with all laws, ordinances, orders, rules and regulations (state, federal, or local), specifically including without limitation all environmental and occupational, health and safety requirements relating to BED's use or occupancy of the Permitted Areas and the Solar Facilities and the operation thereof, with respect to activities, conduct, safety and harassment.
15. **Ingress and Egress.** BTV shall provide and maintain all roads, driveways and walkways that are now and may be located in and around the BTV Parking Garage necessary for proper ingress and egress to and from, and occupancy of, the Permitted Areas by BED. BED will observe all speed limits and other rules and regulations established by BTV with respect to such roads and driveways existing at BTV.
16. **Fee.** On the first day of the month following execution of this Agreement, and on the first day of every month thereafter until the expiration of the Agreement Term or this Agreement is terminated, BED shall pay BTV a monthly fee equal to \$1,583 dollars. In addition, to the extent BED sells Renewable Energy Credits (REC) from energy produced by the Solar Facilities BED shall keep the first

\$28.00 per REC sold and shall pay to BTV an amount equal to 50% of all revenues received in excess of \$28.00 per REC, payment to be made within 30-days of BED receiving said revenues. BED may, at BED's option and in its sole discretion, prepay any amounts due or to become due pursuant to this Agreement, in whole or in part, at any time.

17. **Understanding.** This Agreement reflects an understanding between BED and BTV. It does not constitute nor shall it be construed as an easement or lease. BED does not acquire any interest in the Premises or the BTV Parking Garage other than the allowances granted hereby.
18. **Personal Property.** All of the Solar Facilities shall be and remain the personal property of BED and shall not be or become fixtures, notwithstanding the manner in which the Solar Facilities is or may be affixed to the Premises or the BTV Parking Garage. BTV shall not suffer or permit the Solar Facilities to become subject to any lien, security interest or encumbrance of any kind and BTV expressly disclaims and waives any rights it may have in the Solar Facilities at any time and from time to time, at law or in equity. BED shall maintain the Solar Facilities in a good state of repair. BED may grant a security interest in the Solar Facilities and an assignment for purposes of security to its lender or lenders, and BTV shall provide any consent and/or waiver reasonably requested by any lender, consenting to such lender's rights in such Property.
19. **Environmental Matters.** BED shall not be liable for any past, present or future contamination or pollution or breach of environmental laws, if any, relating to the Premises or the BTV Parking Garage, unless attributable to BED's activities, its employees contractors or agents. Accordingly: (a) BED shall not be responsible for any work relating to (i) the existence, use, transportation or treatment of Hazardous Materials, or (ii) the storage, handling, use, transportation, treatment, or the disposal, discharge, leakage, detection, removal, or containment of Hazardous Materials, and (b) BTV agrees to assume full responsibility for (and protect, indemnify and defend BED against, any liability for response costs for any contamination or pollution or breach of environmental laws related to the Premises and the BTV Parking Garage, unless and to the extent attributable to BED's activities. BED may encounter Hazardous Materials when installing, servicing, expanding, modifying or maintaining the Solar Facilities. In the event BED encounters any Hazardous Material at the Premises, BED shall promptly cease any work in progress in an orderly, safe and efficient manner and inform BTV of the nature and location of said Hazardous Materials. It shall then be BTV's responsibility to eliminate or contain such Hazardous Materials in a commercially reasonable manner in compliance with law to allow BED to continue or finalize any work in progress.

20. **Assignment.** This Agreement and the rights of BED hereunder may be assigned by BED upon written approval of BTV, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that any such assignment will not relieve BED of any of its obligations hereunder. With the written consent of BED, this Agreement may be assigned by BTV provided, however, that any such assignment will not relieve BTV of any of its obligations hereunder.
21. **Liability for Injury and Damage.** BED shall defend, indemnify and hold harmless BTV from any and all liability, loss, cost, damage or expense sustained by reason of the injury or death of any person, and/or damage to or destruction of any property arising from or caused by the Solar Facilities and/or caused by any act, omission, or neglect of BED or its subcontractors, agents, servants, or employees, including reasonable attorney's fees and other litigation expenses. BED shall obtain liability insurance naming BTV an additional insured for this purpose in an amount not less than \$1,000,000 as a condition of this Agreement. BED shall provide BTV with certificate(s) of insurance naming BTV as an additional insured and evidencing the procurement of insurance contemplated in this Section 23.
22. **Hold Harmless.** BED shall be liable for and hold harmless, indemnify, and defend BTV from any other claims or actions brought by any person or reason arising from BED's negligence in connection with the Solar Facilities or out of the erection, installation, operation, maintenance, repair, replacement, improvement and removal of the Solar Facilities as well as for all other activities to be conducted by BED, limited to, and in connection with the performance of its obligations and exercise of its rights under this Agreement throughout the duration of the term of this Agreement.
23. **Clean Up.** BED or its subcontractors or agents, shall clean up after each day's work during any erection, installation, operation, maintenance, repair, replacement, improvement or removal of the Solar Facilities to the degree necessary to provide for entrance and exit, public safety, fire lanes, and operation of all necessary BTV business. At the conclusion of any erection, installation, operation, maintenance, repair, replacement, improvement or removal of the Solar Facilities, BED or its subcontractors or agents shall clean up and remove all equipment, excess materials, and wastes etc., and shall promptly return the BTV Parking Garage and/or Premises to its prior condition (excluding any approved construction or additions by BED) as it existed prior to any work by BED.
24. **Revocation.** In the event of a default in the terms of this Agreement by either BTV or BED, the other party may terminate this Agreement / Revoke the License granted herein. Events that shall constitute a default under this Agreement shall include, but not be limited to, a party's failure to perform or comply with any material provision of this Agreement; an unauthorized assignment, a party's

insolvency or inability to pay debts as they mature, or an assignment for the benefit of creditors; or if a petition under any foreign, state, or United States bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended, is filed by a party.

No party shall be in default under this Agreement unless and until it has been given written notice of a breach of this Agreement by the other party and shall have failed to cure such breach within thirty (30) days after receipt of such notice. When a breach cannot reasonably be cured within such thirty (30) day period, the time for curing may be extended by agreement of the parties for such time as may be necessary to complete the cure, provided that the defaulting party shall have proceeded to cure such breach with due diligence.

25. **Resolution of Disputes.** Any dispute that arises hereunder shall be resolved by submission of the dispute to the Mayor or his/her delegate.
26. **Monitoring/Data Access.** Following the installation and commission of the Solar Facility, if requested by BTV, BED shall provide BTV with access to an online monitoring portal for the Solar Facility, which BTV staff will be able to access.

IN WITNESS WHEREOF, the parties, as evidenced by the signatures of their Duly Authorized Agents, do hereby execute this Memorandum of Understanding and Solar Facilities License Agreement this ____ day of _____, 201__.

IN PRESENCE OF:

BURLINGTON INTERNATIONAL
AIRPORT

Witness

By: _____
Gene Richards, Director of Aviation
Duly Authorized Agent

BURLINGTON ELECTRIC
DEPARTMENT

Witness

By: _____
Barbara Grimes, General Manager of Power
Resource
Duly Authorized Agent

APPROVED BY BURLINGTON CITY COUNCIL

WITNESS

By: _____
Mayor

Exhibit A

"Permitted Areas"

[Attached hereto]

Exhibit B

"FAA Determination"

[Attached hereto]

Exhibit C

The following repairs, replacements, maintenance or construction are anticipated to the BTV Parking Garage during the term of the Solar Facilities License Agreement between BED and BTV that may have some manner of impact on the Solar Facilities and/or equipment/appurtenances attached thereto:

- 1.
- 2.
- 3.



PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENT

This PROJECT DEVELOPMENT AND CONSTRUCTION AGREEMENT (this "Agreement") is made this __th day of March, 2014, between **Burlington Electric Department** (hereinafter, "Owner" or "BED"), a municipally owned utility existing under the laws of the State of Vermont, with a principal office located at 585 Pine Street, Burlington, Vermont 05401 and **Encore Redevelopment, LLC**, a limited liability company organized under the laws of the State of Vermont, with principal place of business at 110 Main Street, Suite 2E, Burlington, Vermont 05401 (hereinafter, "Manager").

WITNESSETH:

WHEREAS, Owner intends to own and operate the Project (as defined below) and desires to engage Manager to render project development, management and construction services with respect thereto; and

WHEREAS, Manager won a competitive procurement process coordinated by the Owner to provide project development and management and construction services for the Project; and

WHEREAS, Manager has significant expertise in the management of similar development and construction projects and desires to manage the development and construction of the Project;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter contained, the parties agree as follows:

1. Definitions. Terms not defined elsewhere in this Agreement shall have the following meanings. .
 - a. "BED Distribution System" – shall mean the electrical distribution system owned by BED and used for distributing power from the Green Mountain Power electrical system to BED's customers at the Burlington International Airport.
 - b. "Certificate of Public Good" or "CPG" shall mean a determination, pursuant to 30VSA, §248 allowing the construction and operation of the Project.

- c. "Commissioning" – Shall mean the Project has been energized and has delivered power to the BED Distribution System for not less than 30 days without being shut down for technical reasons
- d. "Delivery to Site" - Shall mean that materials have been delivered to the Project Site or Property and deposited/stored in the area(s) designated by Owner.
- e. "Procurement" - Shall mean submitting documented orders to suppliers for the major equipment described in Exhibit 1.
- f. "Project" – Shall mean an approximately 537 kWdc solar array, to include major equipment described in Exhibit 1.
- g. "Project Site" – Shall mean the areas of the Property necessary for construction of the Project or connecting the Project to the BED Distribution System.
- h. "Property" Shall mean the Burlington International Airport Parking Garage
- i. "Representatives" – Shall mean employees, agents, contractors, sub-contractors, or other persons acting on behalf of a party under this Agreement.
- j. "Substantial Completion" – Shall mean that all major equipment listed in Exhibit 1 has been installed at the Project Site and connected to the BED Distribution System.
- k. "Work" or "The Work" – Shall mean the duties and responsibilities of the Manager pursuant to this Agreement, including, but not limited to design, engineering, permit attainment, procurement, construction and installation of the Project and all other services to be provided by Manager hereunder, and described in more detail in Exhibit 4.

2. Management of Project. In connection with the construction of the Project located at the Property, Owner hereby retains Manager, and Manager does hereby agree to undertake all project development and construction management obligations and services with respect to the Project. In the performance of services under this Agreement, it is understood that Manager shall at all times be acting and performing independently of Owner's control as to the details and means by which the services are provided. Manager is providing services to Owner as an independent contractor and not as an employee, partner, or agent of Owner. Nothing contained herein shall be deemed to create a relationship of employment, association, partnership, or joint venture between Owner and Manager. It is understood that Owner does not by reason of this Agreement agree

to use Manager exclusively or at any fixed level. It is likewise understood that Manager is free to contract for similar services with other persons or companies while under contract with Owner.

Manager shall have no authority hereunder to take any action, create any obligation, make any commitment, incur any indebtedness, or enter into any agreement on behalf of Owner. Manager shall not in connection with any services provided to or on behalf of Owner represent to any person or entity that Manager is associated with Owner in any capacity other than that of an independent contractor.

3. Duties. Manager shall perform, either directly or through the use of subcontractors, the Work. The primary responsibilities of Manager are listed in Exhibit 4. For the avoidance of doubt, unless specifically identified as a responsibility of the Owner (BED) in Exhibit 5, all activities required to achieve Project Commissioning are the responsibility of Manager.

If Owner requests Manager to perform additional services beyond the Work, Manager shall perform such additional services only upon obtaining written authorization from Owner. Such additional work shall be described in a written change order or other writing signed by both parties which, upon execution, shall be incorporated herein by reference, and such work will be performed in accordance with any additional terms and conditions (such as payment terms) set forth therein.

4. Insurance. Manager shall obtain insurance with respect to its duties hereunder in accordance with BED policies as represented in Exhibit 2 to this Agreement, with all such policies naming Owner as additional insured, and shall provide to Owner a certificate evidencing such insurance at the time of execution of this Agreement. Manager will provide to Owner proof of worker's compensation liability insurance for all Manager's Representatives working on site, for the entire duration of the project. Manager will be responsible for any damage to the Property by its employees, contractors, sub-contractors, etc. that occurs in conjunction with work performed under this Agreement.
5. Standard of Care. Manager shall provide services in accordance with generally accepted practices of project managers, contractors, engineers and other professionals providing similar services in the same locale under similar circumstances. Owner recognizes that Manager's services are on behalf of and for the exclusive use of Owner in relation to the Project. Owner recognizes that the services provided require decisions, which are not based upon pure science but rather upon professional judgmental considerations. Owner hereby recognizes that in circumstances involving application for permits, variances, waivers, approvals and the like Manager cannot and does not guarantee, represent or warrant a favorable reply from governing and regulating entities, and Owner agrees that payment to Manager for services already rendered shall not be delayed

or denied due to unfavorable replies, rulings, requirements or results; provided, however, that Manager shall not commence construction until all permits necessary for the construction of the Project have issued. With the written approval of Owner, Manager may commence construction of the Project before such time as any applicable appeal period for any necessary permit has expired without appeal. Manager shall bear the risk of any additional costs and delays as the result of any subsequent appeals.

6. Manager Warranty. Manager shall warrant all Work performed hereunder by Manager and its subcontractors will be free from defects in design, workmanship, materials and equipment for five (5) years from commissioning. Manager shall ensure that Owner shall have the benefit of all manufacturers' warranties for components of the Project. Critical equipment warranties are shown in Exhibit 1. Manager will be held harmless from actions and omissions by the Owner that result in the voiding of manufacturers' warranties, including unapproved changes, maintenance and repairs or failure to comply with prescribed operation and maintenance instructions. Manager shall, for the protection of Owner, use commercially reasonable efforts to obtain from all vendors and subcontractors from which Manager, or its subcontractors, procures machinery, equipment or materials or services, warranties and guarantees with respect to such machinery, equipment, materials or services, which shall be made available to Manager to the full extent of the terms thereof. In no case shall Manager proceed with the Project without the written approval of Owner if the warranties shown for Major Equipment in Exhibit 1 cannot be obtained. Manager shall at all times perform its construction, installation, and commissioning activities in a manner consistent with all such warranties and shall not perform any actions that may violate or void such warranties.

7. Compensation for Services. Owner agrees to pay Manager, as total compensation for the Work and the construction of the project as detailed below, the total sum of \$ 1,213,250, equal to \$2.26/watt installed and based on a 537 kWdc output. The final compensation under this Agreement shall be adjusted up or down based on the final installed output of the Project at a \$2.26/watt price, as long as final project size is at least 500kWdc. Should the final project size be below 500kWdc, Owner and Manager will negotiate an appropriate total project cost or else terminate the Agreement in accordance with Section 16. Any adjustment will be reflected by increasing or decreasing the progress payments shown below under "Procurement" and "Delivery to Site", with 50% of any adjustment being added to, or subtracted from, each of these amounts.

	Total Cost (\$)	Unit Cost (\$/W)	% of Total
TOTAL	\$ 1,213,620	\$ 2.26	100.0%
Retainer Upon Engagement	\$ 20,000	\$ 0.04	1.6%
Completion of Permit Design	\$ 15,000	\$ 0.03	1.2%

Submit CPG filing	\$ 15,000	\$ 0.03	1.2%
Receipt of CPG	\$ 15,000	\$ 0.03	1.2%
Procurement	\$ 400,000	\$ 0.74	33.0%
Delivery to Site	\$ 400,000	\$ 0.74	33.0%
Substantial Completion	\$ 274,125	\$ 0.51	22.6%
Commissioning	\$ 74,125	\$ 0.14	6.1%
TOTAL	\$ 1,213,250	\$ 2.26	100.0%

- a. \$20,000 due upon execution of this Agreement;
 - b. \$15,000 due upon completion of permit design (anticipated to be February 28, 2014);
 - c. \$15,000 due upon submission of Certificate of Public Good petition (anticipated to be April 1, 2014);
 - d. \$15,000 due upon receipt of Certificate of Public Good (anticipated to be July 1, 2014);
 - e. \$400,000 due upon Procurement for all major equipment shown in Exhibit 1 for Project (anticipated to be July 2, 2014).
 - f. \$400,000 due upon delivery of modules and racking to the jobsite necessary to commence construction (anticipated to be September 2, 2014);
 - g. \$274,125 due upon substantial completion of the project, as defined by all panels mounted on racking and all inverters and balance of system equipment installed (anticipated to be November 2, 2014); and
 - h. \$74,125 due upon Project Commissioning (anticipated by November 30, 2014)
8. Completion Date/Force Majeure. Manager will work to achieve the earliest commissioning date possible, with a target date of November 30th, 2014. Manager shall have no liability for any failure to perform or delay in performance due to any circumstances beyond its reasonable control, including, but not limited to, any act of Owner or Owner's agents, strikes, riots, wars, fire, flood, explosion, acts of nature, any act or failure to act of government, or inability to obtain materials or equipment for reasons beyond its reasonable control. In the event of any delay in performance due solely to the foregoing circumstances, the time for performance shall be extended by a period of time necessary to overcome the effect of such delay. Notwithstanding the above, no compensation is due to Manager under this Agreement until services are completed as described in "Compensation for Services".
9. Work for Hire. Manager agrees that any work of authorship created or developed by Manager during the rendition of services to Owner, either individually or jointly with others, in the course of the rendition of services to Owner (including, but not limited to business or site plans, electrical diagrams, research reports, plans, permits, models and marketing or public relations documents) shall be

deemed a "work for hire," and the exclusive property of Owner. With respect to any invention, trade secret, or work of authorship (to the extent not deemed a "work for hire" by operation of law) created or developed in the course of the rendition of services to Owner, Manager hereby irrevocably assigns, transfers, and conveys to Owner all of Manager's right, title and interest in such property, including but not limited to, all rights of patent, copyright, trade secret or other proprietary rights in such property. Further, Manager agrees to execute any documents or take any action reasonably requested by Owner to perfect Owner's ownership of any such property. Manager further agrees that, to the best of its knowledge, all work created or developed by Manager will be original and non-infringing.

10. Professional Services. All services to be performed by Manager pursuant to this Agreement shall be performed and/or supervised by Manager. All services performed will be in keeping with the professional standards applicable in the State of Vermont. Manager shall provide services in accordance with generally accepted practices of project managers, contractors, engineers and other professionals providing similar services in the same locale under similar circumstances. All services under this Agreement, whether by Manager or Manager's employees, contractors, sub contractors, etc. will be in conformance with all applicable local, state, and federal laws, including the local ordinances referenced in Exhibit 3.
11. Deadlines for Performing Services. Services shall be rendered in a timely fashion, with the target commissioning date of November 30, 2014. Manager will not be responsible or held liable for delays beyond its control, including delays in Owner securing approval for initiation of project, delays in permitting approvals, and changes requested by the Owner that have an impact on the overall project schedule.
12. No Guarantee that Approvals Will be Obtained. Subject to the provisions of Section 5, nothing contained herein shall be construed by Owner as a guarantee that any necessary approvals or permits will be approved by any applicable municipal, state or federal agency. Manager shall not be responsible for changes at the utility with respect to tariffs, interconnection requirements or legislative changes that go into effect after the date of this Agreement.
13. Billing and Payment. Manager shall submit an invoice upon completion of payment milestones listed in "Compensation for Services". Except for the initial \$20,000 payment, which shall be invoiced and payable upon the execution of this Agreement, Owner shall make payment within fifteen (15) business days of receiving written notice from Manager that the applicable payment milestone has been achieved. If the Owner disputes any written notice requesting payment or portion thereof, the Owner shall give the Manager written notice of such dispute within fifteen (15) days after receipt of such request. In such an event, the Owner shall timely pay the undisputed portion of any such invoice and the Parties shall

meet and confer in an attempt to resolve any disputed amount. Upon resolution of any disputed amount, the agreed-upon amount shall be paid within fifteen (15) business days after resolution of the dispute. The Owner shall not be deemed to be in default of this Agreement by reason of withholding payment with respect to the disputed portion of any legitimately disputed invoice or payment. Interest on any payment which is not made shall be the lesser of two (2) percent over the per annum rate of interest equal to the prime lending rate published in the Wall Street Journal under "Money Rates" and the maximum rate permitted by applicable law. Provided this Agreement is executed by both parties by March __, 2014, the compensation shown in Section 7 is not subject to change or adjustment as a result of changes and increases in the cost of the Work, unless and to the extent such change or increase is due to or arises from a change requested by Owner (and agreed to by the Manager, in its discretion) or any breach by Owner of its obligations hereunder.

14. Project Specifications. For the payment outlined above in Section 7, Manager will provide to Owner the Project, to include Major Equipment as defined in Exhibit 1. Manager shall not modify these equipment specifications without written approval by Owner. Modifications to equipment, or extensions of warranties, shall be described in a written change order or other writing signed by both parties which, upon execution, shall be incorporated herein by reference, and in accordance with any additional terms and conditions (such as payment terms) set forth therein.
15. Events of Default. The occurrence of any of the following events shall be an "Event of Default" with respect to the applicable party under this Agreement:
 - (a) With respect to Owner, after written notice from Manager, Owner fails to make any payment on the due date therefore, and such failure continues for a period of thirty (30) days after the applicable due date.
 - (b) With respect to either Party, the other Party breaches or fails to perform any material covenant, agreement or obligation set forth in this Agreement and such breach or failure remains uncured sixty (60) days or more after the Party claiming default provides written notice to the other Party, specifying the provision pursuant to which the alleged default has occurred. The Party accused of default shall have sixty (60) days from the date of the notice to cure the default. In the event that the defaulting Party shall fail to cure the default within sixty (60) days, the non-defaulting Party shall be entitled to send a notice of termination of this Agreement to the defaulting Party and shall be entitled to pursue any and all remedies available at law or in equity.
 - (c) No Party shall be considered to be in default in the performance of its obligations under this Agreement to the extent that performance of any such obligation is prevented or delayed by a Force Majeure Event. "Force Majeure Event" means any act, event, cause or condition that prevents a

Party from performing its obligations, was not reasonably anticipated as of the date of this Agreement, and 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 if and to the extent the Party seeking to invoke the Section has caused or contributed to the applicable act, event, cause or condition by its act, fault or negligence. A Force Majeure Event may include, but shall not be limited to the following: fires, storms, earthquakes, floods, lightening, landslides, volcanic eruptions, hurricanes, tidal waves, epidemics, tornadoes, acts of God, changes in laws or regulations, war, strikes, terrorism, riot or insurrection. If a Party is prevented or delayed in the performance of any such obligation by a Force Majeure Event, such Party shall promptly provide written notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. The Party affected by a Force Majeure Event shall diligently endeavor to resume performance of its obligations as soon as reasonably practicable. Neither Party may use its claim of a Force Majeure Event to excuse a failure to pay when due an amount owed to the other Party hereunder unless the event of Force Majeure affects the banking system used to tender payments.

16. Term and Termination. Unless earlier terminated in accordance with this Agreement, this Agreement shall commence upon the date first set forth above and shall continue in full force until satisfactory completion of Manager's duties under this Agreement. Either party may terminate this engagement at any time with written notice. If Owner terminates for reasons other than breach or default, Owner must pay Manager for remaining milestones on a pro rata basis of percent complete. Manager must deliver project documents to Owner along with justification of percentage complete calculation for any pending milestones.
17. Right of Entry. Owner hereby grants to Manager, or represents and warrants, that permission has been duly granted for a right of entry, from time to time, by Manager's Representatives, upon the Project Site for the purpose of performing and with the right to perform all acts, assessments, research, staging, construction and installation, all to be in compliance with Owner's standard safety protocols. While on the Owner's premises or Project Site, Manager's Representatives shall confine themselves to areas designated by Owner. Manager's Representatives shall be subject to any applicable badge, pass or other physical and technical security measures employed by Owner at the project site or other Owner sites visited by them. Manager and its Representatives shall comply with all rules, regulations and guidelines specified by Owner for conduct on such sites.
18. Hazardous Wastes. Owner hereby warrants that if Owner knows or has any reason to assume or suspect that hazardous materials may exist at the Project site, Owner has so informed Manager. Owner also warrants that Owner has done all that is reasonably possible to inform Manager of any such known or suspected hazardous materials' types, quantity and location. Manager shall promptly

provide written notice to Owner if Manager observes any hazardous materials at or around the Project Site during the course of construction or installation of any equipment. In the event Manager encounters any Hazardous Material at the Property or Project Site, Manager shall promptly cease any work in progress in an orderly, safe and efficient manner and inform both BED and the Burlington International Airport of the nature and location of said Hazardous Materials. It shall then be BED's responsibility to arrange for the elimination or containment of such Hazardous Materials in a commercially reasonable manner in compliance with law to allow Manager to continue or finalize any work in progress

Manager shall comply with all applicable laws in connection with the use, handling, and disposal of any hazardous substances in the performance of its Work.

19. Cross Indemnity. Owner shall indemnify, defend and hold harmless Manager and the officers, directors, agents and employees of Manager providing services hereunder (herein collectively referred to as an "Owner Indemnified Person"), from and against any and all claims, losses, damages, liability, costs, or actions including but not limited to attorneys' fees and fees of experts and investigators which such Owner Indemnified Person may suffer or for which such Owner Indemnified Person may be held liable for by any reason of injury (including death) to any person or persons or damage to any property arising out of or resulting from, directly or indirectly, the performance of any or all of Owner's obligations under this Agreement as per Exhibit 5 and Owner's obligations under any subcontractor or other third party agreement related to the Project executed by Owner, including payments to such subcontractor or third party, except to the extent such claims arise from an Owner Indemnified Person's negligence, gross negligence, or willful misconduct.

Manager shall indemnify, defend and hold harmless Owner and the officers, directors, agents and employees of Owner providing services hereunder (herein collectively referred to as a "Manager Indemnified Person"), from and against any and all claims, losses, damages, liability, costs, or actions including but not limited to attorneys' fees and fees of experts and investigators which such Manager Indemnified Person may suffer or for which such Manager Indemnified Person may be held liable for by any reason of injury (including death) to any person or persons or damage to any property arising out of or resulting from, directly or indirectly, the Manager's performance or failure to perform of any or all of the services contracted for hereunder; failure to pay any taxes, assessments, or contributions which Manager is required to pay; bodily injury and property damage, fines, penalties, cleanup costs, costs associated with delay or work stoppage, and third party claims that in any way result from or arise from Manager owned or generated hazardous materials and substances; and any third party claims of infringement, except to the extent such claims arise from a Manager Indemnified Person's negligence, gross negligence, or willful misconduct.

This section shall survive the termination of this Agreement.

20. Remedy. Except for matters for which Manager is obligated to indemnify Owner, Manager's entire liability and Owner's exclusive remedy for all situations involving performance or nonperformance of the services contracted hereunder shall be the adjustment or correction of the services hereunder or, at Manager's option, the services shall be redone, or if after repeated efforts, Manager is unable to adequately perform, Owner shall be entitled to recover a pro-rated credit of the sums actually paid by Owner for such defective portion of the services.
21. Compliance. Manager by virtue of providing services hereunder does not assume Owner's responsibility, liability or legal responsibility for the site or otherwise undertake Owner's responsibility for reporting to any federal, state, or local public agencies any conditions at the site that may present a potential danger to public health, safety, or the environment except as far as Manager's work on the project so requires. Owner acknowledges that it is the Owner's responsibility to notify the appropriate federal, state, or local public agencies as required by law, or otherwise to disclose, in a timely manner, any information that may be necessary to prevent any danger to public health or safety. Manager shall comply with all applicable laws, regulations, regulatory guidance and industry best practices in the performance of its duties under this Agreement.
22. Notices. All notices called for by this Agreement shall be in writing and shall be deemed to have been sufficiently given or served when deposited in the mail, postage prepaid, certified and return receipt requested, addressed to the parties hereunder as shown above or to such other address as a party may advise the other in writing prior to the notice being given or served.
23. Miscellaneous. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the relationship between the parties under this Agreement is not affected in any manner materially adverse to any party. Upon such a determination, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties to the fullest extent possible. Headings, titles and paragraph captions used in this Agreement are for descriptive purposes only, and shall not be deemed to add or detract or otherwise modify the meaning of the applicable paragraph. Any delay or omission on the part of a party to exercise any right or remedy specified hereunder shall not constitute a waiver of the party's right to exercise the same in the future. The individual signing this Agreement warrants he/she has authority to sign as, or on behalf of, Manager or Owner, as applicable.

24. Confidentiality. Manager and Owner fully understand that "Confidential Information" under this Agreement shall be defined as information disclosed in writing of a competitively sensitive or proprietary nature, which is either marked as confidential or with a similar legend. Confidential Information shall include any and all information relating to the parties' businesses or operations, including without limitation documents, drawings, designs, schedules, product plans, marketing plans, technical procedures and information, manufacturing processes, software or system architecture, source code, prototypes, samples, methodologies, formulations, patent applications, know-how, trade secrets, specifications, financial statements, Project-related documentation and other business information that is marked as confidential at the time of disclosure. Manager agrees that it will not disclose any of the aforesaid, directly or indirectly, or use any of them in any manner, either during the term of the Agreement or at any time thereafter, except as authorized by Owner during the period of rendition of services to Owner and except as required by law, provided that Manager provides Owner a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure. Manager shall not retain any copies of Confidential Information (including electronic copies) after the termination of this Agreement without Owner's prior written permission.
25. Entire Agreement. This Agreement, together with the other written agreement and instrument executed concurrently herewith or pursuant to the provisions hereof, contains the entire agreement between the parties concerning the matters herein set forth and supersedes all prior agreements between them respecting such matters. Any amendments hereto shall be in writing, signed by both parties.
26. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. At the trial of any matter arising under this Agreement, only one counterpart need be produced.
27. Assignment; Binding Effect. Except as to the assignment of proceeds, Manager will not assign its interest in this Agreement, in whole or in part, without the prior written consent of the Owner. The Owner may assign its interest in this Agreement in connection with any transfer of the Property or to any affiliate it controls, by which it is controlled by or with which it is under common control. This Agreement shall be binding upon, and inure to the benefit of, both parties, and their respective heirs, representatives, successors and assigns.

a.

ENCORE REDEVELOPMENT, LLC

By: _____
Chad Farrell, Member and a duly authorized
representative of Encore Redevelopment

BURLINGTON ELECTRIC DEPARTMENT

By: _____
_____ a Duly Authorized
Representative of Burlington Electric
Department

EXHIBIT 1: LIST OF MAJOR EQUIPMENT

Component	Quan.	Unit Output	Man/Model	Warranty
Solar Modules	1,704	315W	SolarWorld SW315	25 yr
Inverter(s)	1	500kWac	Solectria 500 PE	5 yr
Data Acquisition System	1	N/A	Locus LGATE 320	5 yr
Racking System	537W	N/A	AET Rayport B	15 yr

Notes:

1. Extended warranties available for purchase
2. Procurement or installation of step-up transformer not included in scope of work
3. Racking, modules and inverters are all American-made
4. BED responsible for costs and installation of:
 - a. New production meter
 - b. New step up transformer and connections
 - c. Any required auxiliary equipment on the high side of the transformer, to include network upgrades in BED or GMP service territory
 - d. Extension of cellular or telephone communication service and infrastructure
5. The cost and installation of all materials not listed above under #4 required to achieve Project Commissioning shall be the responsibility of Manager

EXHIBIT 2 – Owner/BED Insurance Requirements

BURLINGTON ELECTRIC DEPARTMENT (B.E.D.)

INSURANCE REQUIREMENTS: TYPE 4 Contractor's Order

- 1.1 Contractor shall purchase and maintain insurance coverage for not less than the following limits:

	<u>COVERAGE</u>	<u>MINIMUM LIMIT</u>
a.	Excess/Umbrella: (in conjunction with the liabilities listed below)	
	Bodily Injury	\$3M to \$5M each occurrence \$3M to \$5M in aggregate
	Property Damage	\$3M to \$5M each occurrence \$3M to \$5M in aggregate
	(Note: A combined single limit in the range of \$3,000,000 to \$5,000,000 per occurrence is acceptable.)	
b.	Comprehensive General Liability:	
	Bodily Injury	\$1,000,000 each occurrence \$2,000,000 in aggregate
	Property Damage	\$1,000,000 each occurrence \$2,000,000 in aggregate
	(Note: A combined single limit of \$1,000,000 each occurrence, \$2,000,000 in aggregate is acceptable.)	
c.	Automobile Liability:	
	Bodily Injury	\$1,000,000 each person \$1,000,000 each occurrence
	Property Damage	\$1,000,000 each occurrence
	(Note: A combined single limit of \$1,000,000 for bodily injury and property damage liability is acceptable.)	
d.	Workers' Compensation:	Statutory Limits

- 1.2 Contractor shall purchase and maintain such comprehensive general liability and other insurance as set forth above which will provide protection from claims arising from the result of Contractor's performance and furnishing of services outlined in the awarded Purchase Order and/or Contract, whether it is performed or furnished by Contractor or by anyone directly or indirectly employed by the Contractor to perform or furnish any of the work outlined in the Purchase Order and/or Contract. The Contractor shall hold B.E.D. harmless for any and all damages/claims (including but not limited to bodily/personal injury, property damage, loss of income, business interruption, or wrongful death), while performing or as a result of, work assigned/related to the awarded contract.
- 1.3 Contractor shall provide B.E.D. with a certificate of insurance for coverages set forth above which shall not be subject to cancellation without at least thirty (30) days advance written notice to B.E.D. Such evidence of insurance shall be received at B.E.D. before the commencement of work, or Purchase Order and/or Contract is awarded, whichever is sooner, and such insurance shall be maintained throughout the duration of awarded contract. Forward certificate of insurance to Burlington Electric Department, 585 Pine St., Burlington, VT 05401, Attention: Insurance Analyst.
- 1.4 Any claim in excess of limits set forth above or which are not covered by the Contractor's comprehensive general liability, automobile liability, or worker's compensation insurance are the sole responsibility of the Contractor.
- 1.5 B.E.D. and/or any affiliated or subsidiary companies shall be recognized as additional insureds with respect to insurance. Coverage provided by the contractor shall be primary to any other valid and collectible insurance available with respect to B.E.D. as additional insured.

Revised 9/9/2010

EXHIBIT 3 – Ordinance Compliance and Certifications

COMPLIANCE WITH LAWS: The Manager shall comply with all applicable federal, state and local laws, including but not limited to the City of Burlington's Livable Wage Ordinance, Outsourcing Ordinance, and Union Deterrence Ordinance. As a condition of this contract, the Contractor shall submit the written certifications required by the ordinances attesting to compliance. Said certifications are attached below.

Certification of Compliance with the City of Burlington's

Livable Wage Ordinance

I, _____, on behalf of Encore Redevelopment, LLC (Manager) and in connection with the Project Development and Construction Agreement with Burlington Electric Department dated March __, 2014, hereby certify under oath that (1) Manager shall comply with the City of Burlington's Livable Wage Ordinance; (2) as a condition of entering into this contract or grant, Manager confirms that all covered employees, as defined by Burlington's Livable Wage Ordinance, shall be paid a livable wage for the term of the contract as determined and adjusted annually by the City of Burlington's Chief Administrative Officer, (3) a notice regarding the applicability of the Livable Wage Ordinance shall be posted in the workplace or other location where covered employees work, and (4) payroll records or other documentation, as deemed necessary by the Chief Administrative Officer, shall be provided within ten (10) business days from receipt of the City's request.

Dated at _____, Vermont this ____ day of _____, 2014.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

**Certification of Compliance with the City of Burlington's
Outsourcing Ordinance**

I, _____, on behalf of Encore Redevelopment, LLC (Manager) and in connection with the Project Development and Construction Agreement with Burlington Electric Department dated March __, 2014, hereby certify that all services provided under this contract shall be performed in the United States or Canada. I understand that this requirement also applies to any subcontractor I may hire to provide services for the City of Burlington. .

Dated at _____, Vermont this ____ day of _____, 2014.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

**Certification of Compliance with the City of Burlington's
Union Deterrence Ordinance**

I, _____, on behalf of Encore Redevelopment, LLC (Manager) and in connection with the Project Development and Construction Agreement with Burlington Electric Department dated March __, 2014, hereby certify that Manager (1) shall comply with the City of Burlington's Union Deterrence Ordinance; (2) has not advised the conduct of any illegal activity under that Ordinance, (3) does not currently, and will not over the life of the contract provide union deterrence services in violation of this Ordinance.

Dated at _____, Vermont this ____ day of _____, 2014.

By: _____
Duly Authorized Agent

Subscribed and sworn to before me: _____
Notary

EXHIBIT 4 – Duties of Manager

A. Project Management

- Provide BED with weekly progress reports tracking progress towards project schedule
- Promptly notify BED of any issues that arise with Project.
- Designate a Project Manager as single point of contact for technical, regulatory, legal or financial matters
- Coordinate with various stakeholders and jurisdictions to ensure code compliance and safety standards

B. System Design

- Coordinate with BED and Airport on system design criteria
- Provide electrical engineering and production optimization
- Provide civil/structural design and warranty verification
- Coordinate with cell service provider proposing antennas at site to ensure compatibility between separate facilities
- Ensure technical compliance with State and local electrical and building code where applicable

C. Interconnection Approval

- Submit 5.500 interconnection application and supporting documentation.
- Interface with BED (and GMP as necessary) to ensure system stability
- Facilitate interconnection study process with inverter and transformer manufacturers
- Facilitate execution of Generator Interconnection Agreement (GIA) as deemed necessary
- Procure communications service as necessary from local provider

D. Permitting

- Prepare Section 248 filing with Vermont Public Service Board, including 45-day notice of pending application
- Draft supporting documents including necessary expert testimony for applicable criteria.
- Support necessary tasks including pre-hearing conference, public hearings, technical hearings as necessary
- Obtain, in BED's name, a Certificate of Public Good (CPG) and all other applicable local, State and Federal permits including Federal Aviation Administration (FAA) determination and State Electrical Inspection.

E. Procurement

- Responsible for purchase of all project equipment up to the Point of Interconnection. See Exhibit 1 for breakdown/specifics of key components.
- Manage logistics related to shipping and delivery of equipment
- Provide equipment warranties as shown in Exhibit 1

F. Construction

- Obtain all necessary construction permits
- Coordinate with BTV airport management for construction access, staging/laydown areas, security authorization and scheduling.
- Limit use to only those areas defined as either temporary areas for construction use, or areas defined as within the Project Site
- Hire and work with construction contractor to install facilities per approved design
- Clean up after each day's work during any erection, installation, operation, maintenance, repair, replacement, or improvement of the Solar Facilities to the degree necessary to provide for entrance and exit, public safety, fire lanes, and operation of all necessary Burlington International Airport business.

G. Commissioning

- At the conclusion of any erection, installation, operation, maintenance, repair, replacement, or improvement of the Solar Facilities, Manager or its subcontractors or agents shall clean up and remove all equipment, excess materials, and wastes etc., and shall promptly return the Property and/or Premises to its prior condition (excluding any approved construction or additions by BED) as it existed prior to any work by Manager
- Coordinate with BED to energize project and confirm project meets technical specifications
- Configure data acquisition system (DAS) and provide access credentials to BED
- Provide BED with long term operations & maintenance manual and close-out documentation.

EXHIBIT 5 – Duties of Owner/BED

A. Project Management

- Provide a primary and alternate point-of-contact for Manager to communicate with

B. System Design

- Coordinate with Manager and Airport staff to facilitate and approve project design up to the Point of Interconnection

C. Interconnection Approval

- Coordinate with BED engineering to obtain expedited approval (30 days maximum from date of 5.500 submittal)
- Obtain approval from GMP as deemed necessary
- Perform (or pay to perform) necessary system impact studies and facilities studies

D. Permitting

- Facilitate waiver of 45-day Notice with City and Regional Planning Commission
- Perform (or pay to perform) alternatives analysis and compliance studies required for CPG
- Provide direct testimony as necessary concerning utility and economic criteria (§248(b)(2,4,6,7,10)).

E. Procurement

- Procure production meter, transformer and any auxiliary equipment required from the Point of Interconnection to BED's Distribution System.

F. Construction

- Install production meter, transformer and any auxiliary equipment on high side of transformer

G. Commissioning

- Coordinate system testing and inspections to support energizing and commissioning of system

