

CITY OF EAST PROVIDENCE

JOURNAL-REGULAR COUNCIL MEETING

TUESDAY, JUNE 16, 2020

CALL TO ORDER: 6:00 P.M.

Council May Call Executive Session using the Zoom virtual meeting application

145 TAUNTON AVENUE - CITY COUNCIL CHAMBERS

EAST PROVIDENCE, RHODE ISLAND

RE-OPEN SESSION TO BE IMMEDIATELY FOLLOWED AFTER EXECUTIVE SESSION

AT APPROXIMATELY 6:15 P.M.

City Council:

Council President, Robert Britto - Ward 1

Council Vice-President: Bob Rodericks - At Large

Councilwoman Anna Sousa - Ward 2

Councilman Nate Cahoon - Ward 3

Councilman Ricardo Mourato - Ward 4

City Solicitor, Michael J. Marcello

City Clerk, Samantha N. Burnett

* As a result of the COVID-19 pandemic, and the closure of City Hall, this meeting will be conducted virtually, through an application called, "Zoom".

IN ORDER TO PARTICIPATE, USE THE FOLLOWING OPTIONS:

1. Call the toll free number: 1-877-853-5247 (audio only) and enter the following information:

MEETING ID: 993-0796-0324

You will then be asked for the meeting passcode.

Enter the following passcode number:

PASSCODE: 653929

2. To participate visually (with audio) you will need to log into the following from your computer or smart phone, go to: www.zoom.us

Enter the following information when prompted:

MEETING ID: 993-0796-0324

You will then be asked for the meeting passcode.

Enter the following passcode number:

PASSCODE: 653929

Once entered you will be able to view and listen to the meeting. At the appropriate time for public comment the moderator of the meeting will allow you to provide comment at the meeting.

The meeting will also be viewable live on our city website, located at:

http://www.clerkbase.com/RI_EastProvidence_Live_CityCouncil.html

In addition, written public comment on any agenda item can be submitted by emailing the office of the City Clerk at

sburnett@cityofeastprov.com or mailed to

City Clerk, 145 Taunton Avenue, East Providence, RI 02914

Attn: Public Comment.

A drop box is also available at City Hall.

All written public comment must be received by 5:30 p.m. on June 16, 2020.

If you intend to speak on any agenda topic for public comment, please call the City Clerk at 401.435.7596 to reserve your spot by 5:30 p.m. the day of June 16, 2020.

I. CALL TO ORDER – Council President Britto calls the meeting to order and requests a roll call.

II. INVOCATION

The City Council of East Providence may meet in Executive Session pursuant to Rhode Island General Laws §42-46-5 a(2)

Council Vice President Rodericks made the motion to enter into Executive Session. Seconded by Councilman Mourato. Motion passes unanimously, 4-0 with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa		
Britto	x	

a) Claims

1. Alex Mazika

Member	Aye	Nay
Cahoon		
Mourato		
Rodericks		
Sousa		

Britto		
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b) Sewer Charge Abatements

1. Khalil Rahme

Member	Aye	Nay
Cahoon		
Mourato		
Rodericks		
Sousa		
Britto		

III. OPEN SESSION

IV. PLEDGE OF ALLEGIANCE

V. MOTION TO SEAL MINUTES FROM EXECUTIVE SESSION

Councilman Cahoon made the motion to seal the minutes from Executive Session.

Seconded by Councilman Mourato.

Motion passes unanimously, 4-0, with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa		
Britto	x	

VI. CONSENT CALENDAR

All items under, "Consent Calendar" are considered to be of a routine and noncontroversial nature by the City Council and will be enacted by one motion. There will be no separate discussion on the items unless a Council members so requests, in which event the item will be removed from said Consent Calendar and will be considered in its normal sequence in the docket.

a) COUNCIL JOURNALS/MINUTES OF THE MEETING

1. City Council Meeting: Open and Executive Session on June 2, 2020.

2. TAX ABATEMENTS

2020	\$4,253.87
TOTALS	\$4,253.87

Councilman Cahoon made the motion to approve the consent calendar. Seconded by Council Vice President Rodericks. Motion passes unanimously, 4-0 with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa		
Britto	x	

VII. LICENSES NOT REQUIRING PUBLIC HEARING

a) Hawker's License

1) Keystone Fireworks

Melissa Korsak

Location(s): 1235 Wampanoag Trail, 02915, 40 Highland Avenue, 02914

Council discussed concerns and reviewed logistics with the applicant. All paperwork has been turned in to the City Clerk.

Motion to approve made by Councilman Cahoon.

Seconded by Councilman Cahoon.

Motion passes unanimously, 4-0 with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa		
Britto	x	

2) New England Novelty 

Keith Lambert

Location: 141 Newport Avenue, 02916

Applicant not present. All paperwork has been turned in to the City Clerk's office. Applicant is looking to sell the fireworks inside the building and not outside. This is where Phantom Fireworks was stationed last year.

Motion to approve made by Councilman Mourato.

Seconded by Councilman Cahoon.

Motion passes unanimously, 4-0, with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	

Rodericks	x	
Sousa	x	
Britto	x	

PUBLIC COMMENT

**See Page 1 regarding log in instructions to participate.*

Each speaker will be limited to three (3) minutes. The order of the speakers will be on a first come, first serve basis and the maximum time for public comment shall be limited to thirty (30) minutes per meeting.

No parties signed up for public comment prior to the meeting.

VIII. COUNCIL COMMUNICATIONS

No Council communications for this meeting.

IX. CONTINUED BUSINESS

a) Net Metering Credit Discussion by Green Development

In relation to docket item:

“RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A ONE (1) YEAR [AGREEMENT](#) WITH GREEN ENERGY DEVELOPMENT, LLC REGARDING RENEWABLE ENERGY SAVINGS”

X. NEW BUSINESS

a) Mayor Communications

1. Mayor’s [Message](#) of Disapproval and Veto of: Budget Ordinance Timeline COVID-19 Pandemic as passed by the East Providence City Council on June 2, 2020 entitled,

“AN ORDINANCE IN AMENDMENT OF CHAPTER 2 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED, “ADMINISTRATION”

Mayor Dasilva addressed the Council to speak on behalf of the ordinance. The mayor stated that it is a good piece of legislation, but in the state of emergency, numbers are not yet known, and that created the move of a veto. A new one will be drafted.

Councilman Cahoon made a motion to accept the items a and b from the Mayor’s communication to the Council.

Seconded by Councilman Mourato.

Motion passes unanimously, 4-0 with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa		
Britto	x	

2. Notice of Mayor’s signature on various ordinances
Communication only, no discussion needed.

b) Reports of Other City Officials

1. **City Solicitor’s Report** - Claims Committee Report

-Mike Marcello
Report given.

2. **[Recommendation](#) from the Planning Board to the City Council:**

Land transfer of a 2.9 acre parcel and 600 foot fishing pier located at Map 109, Block 1, Parcel 1.

Owner: Kettle Point, LLC.

-Bill Fazioli

3. **Tourism Escrow Account Opportunity – Discussion Only**

-Bill Fazioli

Planning Director, William Fazioli was available to the Council. This will be a fishing pier for the public to enjoy.

Laura McNamara of the East Bay Chamber of Commerce was available to provide history of this effort and answer questions.

The amount of \$430,000 reserved for the City is held by the Department of Revenue by the State of Rhode Island. Can be used for Rhode Island tourism benefits, but has to go to a tourism bureau. This was generated by a hotel tax. Councilman Mourato asked if by passing a resolution, does that “unlock” the money and available. There is an approval process, including a tourism bureau accepting the City of East Providence, Mr. Fazioli mentioned, as it supports tourism in our community. Council President clarified that this isn’t included, “on the books” with the City and Mr. Fazioli agreed with that. Council Vice President asked Ms. McNamara and Mr. Fazioli if we could be our own tourism bureau? The answer what Ms. McNamara said no, based off of her own experience of trying this in the past.

c) Resolutions

1. **[RESOLUTION](#) PROPOSING AN AMENDMENT TO THE CITY CHARTER REGARDING CHARTER COMMISSIONS**

Sponsored by: Councilman Mourato, Councilwoman Sousa and Councilman Cahoon

Councilman Mourato mentioned that he was going to have this on the July docket, but due to the timeline, he wanted to move it to this date to avoid missing any deadlines or issues.

Motion to pass the ordinance as amended was made by Councilman Mourato.

Seconded by Councilman Cahoon.

Discussion:

Councilman Cahoon mentioned that this is not an attempt to piecemeal changes to the Charter and offered to the public to vote on. The public will be very much involved with in deciding what their foundational governmental document looks like for the City. He invited anyone who would like to get involved, will have that opportunity moving forward. Councilman Cahoon thanked Councilman Mourato for

the research and putting this forward.

Council President Britto asked Councilman Mourato if he could explain to the people what this amendment is about. Councilman Mourato read the resolution, (which is available as part of the June 16, 2020 docket packet available on the Secretary of State, ClerkBase and the Office of the City Clerk).

Motion passes unanimously, 4-0, with Councilwoman Sousa absent for the vote.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa		
Britto	x	

2. **RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A ONE (1) YEAR AGREEMENT WITH GREEN ENERGY DEVELOPMENT, LLC REGARDING RENEWABLE ENERGY SAVINGS**

Sponsored by: Councilwoman Sousa

Christian Capezio, outside counsel was present. Members of Green LLC presented to the Council. (The presentation in printed content will be available at the City Clerk’s Office for inspection and reference).

Motion to approve the resolution as presented made by Councilman Cahoon.

Seconded by Council Vice President Rodericks.

Resolution passes 4-1, with Councilwoman Sousa not originally present for the vote, but arrived later and asked that her vote be recorded.

Member	Aye	Nay
Cahoon	x	
Mourato		x
Rodericks	x	
Sousa	x	
Britto	x	

d) **INTRODUCTION OF ORDINANCES**

Full ordinances on ClerkBase, under 06/16/2020 agenda:

<https://clerkshq.com/EastProvidence-ri>

1. **ORDINANCES VETOED BY THE MAYOR**

CITY COUNCIL CONSIDERATION AND POSSIBLE VOTE TO OVERRIDE/SUSTAIN VETO OF THE MAYOR OF AN ORDINANCE IN AMENDMENT OF CHAPTER 2 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED “ADMINISTRATION”

As transmitted by the Mayor on June 12, 2020.

This is the formal vote following the Mayoral Communication.

City Solicitor Marcello explained that under the Charter 3.3-6 this is part of the veto format.

The City Clerk, Samantha Burnett, read the legal memo from the City Solicitor, Mike Marcello.

Roll call was made to reflect the question in purpose:

“Shall the ordinance and amendment to article 7 section 2-283 be approved notwithstanding the disapproval and veto of the mayor?”

The veto is sustained with a vote of 5-0.

Member	Aye	Nay
Cahoon		x
Mourato		x
Rodericks		x
Sousa		x
Britto		x

2. **ORDINANCES FOR SECOND PASSAGE (PUBLIC HEARING)**

A) **AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED “VEHICLES AND TRAFFIC”**

Section 18-269

(Location: Westwood Avenue and Hope Street)

Sponsored by: Council President Britto

Council President Britto stated that he had a meeting with the residents last night and came to the conclusion that it was not conducive and asked that it be stricken from the record. No vote was taken.

Later City Solicitor did mention that it will need to be voted down, since there is second passage.

Public Hearing offered. No one chose to speak. Public Hearing closed.

Motion to remove this item from the docket by Council Vice President Rodericks.

Seconded by Councilman Cahoon.

Motion passes unanimously.

Member	Aye	Nay
Cahoon		x
Mourato		x
Rodericks		x
Sousa		x
Britto		x

B) **AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED “VEHICLES AND TRAFFIC”**

Section 18-247

(Location: Rice Avenue—one way modification)

Sponsored by: Councilman Cahoon

Councilman Cahoon introduced this ordinance and made the motion to approve for first passage. Seconded by Councilwoman Sousa. Public Hearing offered. The City Clerk did mention that there was a Ms. LaRoche in the virtual audience in Zoom and her hand was raised. The City Clerk allowed her into the meeting to speak. Ms. LaRoche stated that she posted in the Question and Answer portion of the meeting that was relative to another item. She was tabled due to the meeting format but the Council did hear her item later in the meeting.

Public Hearing closed.

Motion passes unanimously.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa	x	
Britto	x	

C) AN ORDINANCE IN AMENDMENT OF CHAPTER 3 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED “ANIMALS”

Section 3-42

(Pertaining to dog parks in East Providence)

Sponsored by: Council President Britto

Public Hearing offered. No parties came forward to speak. Public Hearing closed.

Motion to approve made by Council Vice President Rodericks.

Seconded by Councilwoman Sousa.

Motion passes unanimously.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa	x	
Britto	x	

D) AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED “VEHICLES AND TRAFFIC”

Sec. 18-269

Vincent Avenue at Brown Street

Sponsored by: Councilman Cahoon

Public Hearing offered. No parties came forward to speak. Public Hearing closed.

Motion to approve made by Councilwoman Sousa.

Seconded by Councilman Cahoon. Motion passes unanimously.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa	x	
Britto	x	

XI. RECONVENE IN EXECUTIVE SESSION (if necessary)

Not needed, but the Council allowed Ms. LaRoche to speak on her Public Comment regarding Rose Larisa Park, old Ray’s Market and the current condition, and how this relates to criminology. Councilman Cahoon read her statement that was posted in the Questions and Answer section. Council Vice President Rodericks did mention the owners of the property recently reached out to him and he referred them to City Hall in regards to this building.

XII. ADJOURNMENT

Motion to adjourn made by Council Vice President Rodericks.

Seconded by Councilman Cahoon.

Motion passes unanimously. Meeting is adjourned.

Member	Aye	Nay
Cahoon	x	
Mourato	x	
Rodericks	x	
Sousa	x	
Britto	x	

If communication assistance is needed or any other accommodations to ensure equal participation, please contact the City Clerk, Samantha Burnett at 401.435.7596

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NET METERING CREDIT SALE AGREEMENT

This Net Metering Credit Sale Agreement (the “Agreement”) is entered into as of the 2nd day of June, 2020 (the “Effective Date”) by and between **Green Development, LLC**, a Rhode Island limited liability company having a principal place of business located at 2000 Chapel View Blvd, Suite 500, Cranston, Rhode Island 02920, and/or any one or more of its Affiliates, successors, assignees, nominees, and/or designees, as seller (the “Seller”), and the **City of East Providence**, Rhode Island, having a mailing address of City Manager Office, Room 102, 145 Taunton Ave., East Providence, RI 02914, as buyer (the “Buyer”). In this Agreement, Seller and Buyer are sometimes referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Seller is in the business of financing, developing, owning, operating, and/or maintaining renewable energy electric generation facilities, including but not limited to wind and solar;

WHEREAS, Seller proposes to finance, install, own, operate, and/or maintain one or more renewable energy facilities, including but not limited to solar and/or wind, as further described in **EXHIBIT A** attached hereto and made a part hereof (each a “Renewable Energy Facility”), and to sell to Buyer all or any portion of the output of the Renewable Energy Facility (but to reserve solely for Seller’s own use all Environmental Attributes and Tax Attributes associated therewith);

WHEREAS, the Renewable Energy Facility is expected to qualify or continue to qualify as an Eligible Net Metering System pursuant to the Net Metering Regulations and will therefore generate Net Metering Credits for each kilowatt hour of electricity generated by the Renewable Energy Facility; and

WHEREAS, Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive from Seller, the designated portion of the Net Metering Credits generated by the Renewable Energy Facility during the Term, subject to the terms and conditions, and at the prices, set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Seller and Buyer hereby agree as follows.

ARTICLE 1 **DEFINITIONS**

When used in this Agreement, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this *Article 1* which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Affected Party” has the meaning ascribed to it in *Section 8.2*.

“Affiliate(s)” means with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Person.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction, including the Net Metering Regulations, of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses,

SMB REDLINE 6-8-2020

permits, and other governmental consents which may at any time be applicable to a Party's rights and obligations hereunder, including, without limitation, the construction, operation, and ownership of the Renewable Energy Facility, as well as the selling and purchasing of Net Metering Credits therefrom.

"Business Day" means a day on which Federal Reserve member banks in Providence, Rhode Island are open for business, noting that a Business Day shall open at 8:00 a.m. and shall close at 5:00 p.m. Eastern Daylight Time or Eastern Standard Time, as applicable.

"Commercial Operation Date" means the date on which: (i) the Renewable Energy Facility is ready for daily operation in the ordinary course, generates electric energy on a commercial basis, and is functioning with the EDC; (ii) has been authorized for interconnection to, and has been interconnected to, the local electrical distribution system; (iii) Seller has received an authorization to interconnect from the EDC; and (iv) the Renewable Energy Facility qualifies as an Eligible Net Metering System pursuant to the Net Metering Regulations.

"Confidential Information" means all oral and written information exchanged between the Parties which contains proprietary business or confidential information of a Party and/or is clearly marked, or designated, if oral, as "confidential" by such Party. The Parties agree that the provisions and specifics (but not the existence) of this Agreement constitute Confidential Information. The following exceptions, however, do not constitute Confidential Information for purposes of this Agreement: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Agreement; (b) information that was already known by the receiving Party on a non-confidential basis prior to this Agreement; (c) information that becomes available to receiving Party on a non-confidential basis from a source other than the disclosing Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; (e) *subject to Section 12.2*, information disclosed pursuant to any applicable law, rule, or regulation requiring such disclosure, or as compelled by legal process or pursuant to the order or requirement of a court, administrative agency, or other Governmental Authority; provided that, where allowable by law, notice to the disclosing Party is provided before compliance with such requirement; and (f) information that is disclosed by the receiving Party with the prior written permission of the disclosing Party. Confidential Information does not include information regarding the size, technology, and location of the Renewable Energy Facility, the identity of the Parties, the utility account and other information set forth in **EXHIBIT B** attached hereto and made a part hereof, or the Term of the Agreement.

"EDC" means electric distribution company as set forth in Rhode Island General Laws Section 39-26.4-2.

"Eligible Net Metering System" shall have the meaning set forth in Rhode Island General Laws Section 39-26.4-2.

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

"Environmental Attributes" means any credit, benefit, reduction, offset, financial incentive, tax credit, and/or other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation: (i) all environmental and renewable energy attributes and credits of any kind and nature resulting from or associated with the Renewable Energy Facility and/or its electricity generation; (ii) government financial incentives; (iii) greenhouse gas offsets under the Regional Greenhouse Gas Initiative; (iv) renewable energy certificates

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(commonly referred to as “REC’s”) or any similar certificates or credits under the laws of the State of Rhode Island, any other jurisdiction, and any other Governmental Authority; (v) tax credits, incentives, and/or depreciation allowances established under any federal or state law; and (vi) any other allowances howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of renewable energy generation or the avoidance of the emission of any gas, chemical, or other substance into the air, soil, or water attributable to the Renewable Energy Facility and/or its electricity generation, and excluding, for the avoidance of doubt, any Net Metering Credits and any credit, allowance, entitlement, certificate, product, valuation or other benefit that inures solely to Buyer only because it is a Governmental Authority.

“Event of Default” has the meaning ascribed to it in *Section 8.1*.

“Force Majeure Event” means any event or circumstance not within the reasonable control of the Affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including but not limited to, acts of God; hurricanes or tornados; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; catastrophes, insurrections; military action; war, whether or not it is declared; acts of terrorism; sabotage; riots; civil disturbances; or explosions. A Party may not assert an event of Force Majeure to excuse it from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party’s power to prevent such act, failure to act, or order. Economic hardship of either Party shall not constitute a Force Majeure Event. To the extent that Buyer is a Governmental Authority, Buyer is estopped from claiming that its own discretionary acts or failures to act constitute a Force Majeure Event.

“Generation Contingent” means that Seller’s failure to deliver is excused if the Renewable Energy Facility for any reason does not generate sufficient energy necessary to deliver Net Metering Credits as contemplated hereunder.

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

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

“Host Customer” means the Person designated by Seller, from time to time, as the Host Customer, and subsequent to such designation recognized by the EDC as the customer of record with respect to the Renewable Energy Facility.

“Interconnection Agreement” shall mean the interconnection service agreement(s) entered into with the local electric distribution company, each of which authorizes the interconnection of the respective Renewable Energy Facility with the local electric distribution system, which confirms the eligibility of the Renewable Energy Facility for treatment as an Eligible Net-Metering System, and which specifies (directly or by reference to the so-called “Schedule B” filed by Seller under the Tariff) the manner in which Net Metering Credits shall be allocated.

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“Interest Rate” means a rate per annum equal to the lesser of: (a) the “prime rate,” as reported in *The Wall Street Journal* (or if the “prime rate” cannot be so determined, then the term “prime rate” shall mean the highest per annum rate of interest then most recently quoted as the “bank prime loan” in STATISTICAL RELEASE H.15 (519) published from time to time by the Federal Reserve Board or any successor publication of the Board of Governors of the Federal Reserve System) plus One Percent (1%); and (b) the maximum interest rate allowed by laws of the State of Rhode Island.

“Invoice” has the meaning ascribed to it in *Section 5.1*.

“Lender” means the entity(ies) or Person(s) providing financing to Seller in connection with the Renewable Energy Facility, including but not limited to bank financing, tax equity financing, and/or any other form of financing.

“Net Metering Credits” shall have the meaning set forth in Rhode Island General Laws Section 39-26.4-1 *et seq.*, and any regulations promulgated thereunder, for Renewable Energy Net-Metering credits, as implemented by the Tariff. One unit of Net Metering Credit shall correspond to one kWh of energy production.

“Net Metering” shall have the meaning as set forth in the Net Metering Regulations.

“Net Metering Regulations” means the Rhode Island net metering statute, Rhode Island General Laws Section 39-26.4-1 *et seq.*, any regulations promulgated thereunder, and the Tariff, as each may be amended from time to time.

“Payment” has the meaning ascribed to it in *Section 4.4*.

“Person” means any natural person, corporation, general partnership, limited partnership, limited liability company, joint venture, trust, union, proprietorship, Governmental Authority, or other entity, association, or organization of any nature, however and wherever organized or constituted.

“Prudent Industry Practices” means the practices, methods, techniques, and standards respecting skill, diligence, care, and safety that are generally used or employed during the period of performance under this Agreement in the solar photovoltaic power industry or wind energy industry, as the case may be, in the United States for use in connection with the operation and maintenance of solar power or wind power, as the case may be, generating projects of similar sizes and types as the Renewable Energy Facility and that, in the exercise of reasonable judgment by Seller, are expected to accomplish the desired result and confirm to any manufacturer requirements, all in a manner consistent with Applicable Legal Requirements.

“Renewable Energy Facility” or “Renewable Energy Facilities” has the meaning ascribed to it in the Recitals to this Agreement. The Parties agree and acknowledge that Seller may designate any one or more of the renewable energy facilities described in EXHIBIT A, or any other one or more renewable energy facilities owned or controlled by Seller or any of its Affiliates, from time to time during the Term of this Agreement provided that Seller does not: (i) designate a renewable energy facility that has not yet reached its Commercial Operation Date in substitution of a renewable energy facility that has already reached its Commercial Operation Date; or (ii) designate a renewable energy facility that is materially farther away from reaching its Commercial Operation Date in substitution of a renewable energy facility that has not yet reached its Commercial Operation Date, by providing written notice of such designation to Buyer, and within Ten (10) days of receipt of such notice Buyer will execute and return to Seller any forms required in connection therewith, including from time to time updated versions of so-called Schedule B.

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“Renewal Term” has the meaning ascribed to it in *Section 2.1*.

“Sublease” has the meaning ascribed to it in *Section 3.4*.

“Tariff” means the tariff for interconnection for distributed generation and net metering services adopted by the Rhode Island Public Utilities Commission, including R.I.P.U.C. No. 2078 and R.I.P.U.C. No. 2075, together with any subsequent amendments and approvals thereto.

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

“Term” has the meaning ascribed to it in *Section 2.1*.

“Utility Service Location” means the location of each Renewable Energy Facility as described and specified in **EXHIBIT B**.

ARTICLE 2 **TERM**

2.1. **Term.** The term of this Agreement shall commence on the Effective Date and shall end on the earlier of: (a) 11:59 p.m. on the day preceding the First (1st) anniversary of the Commercial Operation Date; or (b) such other date as of which this Agreement may be earlier terminated pursuant to the provisions hereof (the “Term”).

2.2. **Early Termination.** Either Party may terminate this Agreement without penalty or any liability if Seller has not achieved the Commercial Operation Date within one year after the Effective Date; provided that Parties may mutually agree, in writing, to extend this Agreement for an additional one year if Seller has not achieved the Commercial Operation Date. Such right of termination shall be subject to the terminating Party giving the other Party prior written notice of termination within thirty (30) days of such one year period (as extended, if applicable), in which case this Agreement shall terminate without further liability on the part of either Party, except that neither party shall be relieved from any payment obligations arising under this Agreement prior to the date of such notice.

ARTICLE 3 **FACILITY DEVELOPMENT, OWNERSHIP, AND OPERATION**

3.1. **Development.** Seller will use commercially reasonable efforts to develop, construct, and operate the Renewable Energy Facility in accordance with Applicable Legal Requirements and Prudent Industry Practices in order to qualify (or continue to qualify) the Renewable Energy Facility as an Eligible Net Metering System pursuant to the Net Metering Regulations. Seller has the right to shut down the Renewable Energy Facility for no longer than reasonably necessary for maintenance and repairs, upgrades, safety matters, compliance with requirements of the EDC or of Governmental Authorities. Seller shall provide prior written notice to Buyer prior to any planned shutdown of the Renewable Energy Facility, which is expected to last for fourteen (14) days or longer, or as soon as reasonably possible for any unplanned shut down, which is expected to last for fourteen (14) days or longer, and shall provide timely updates of the status of the same including but not limited to when the Renewable Energy Facility

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will return to operation upon Buyer's written request to Seller.

3.2. Notice of Commercial Operations Date. Subject to the provisions of this Agreement, Seller shall promptly notify Buyer in writing when the Renewable Energy Facility has achieved the Commercial Operation Date and upon Buyer's written request, provide detailed and timely written updates and information related to the status of achieving the Commercial Operation Date to Buyer.

3.3. Interconnection Requirements. Seller shall be responsible for all costs, fees, charges and obligations required to connect the Renewable Energy Facility to the EDC, including but not limited to fees associated with system upgrades and operation and maintenance charges.

3.4. Approvals; Buyer's Cooperation. Buyer will reasonably cooperate with Seller in preparing, signing, and promptly delivering to Seller, after review of the same, any and all applications or other documents associated with permits, approvals, registrations, qualifications, and other documents requested in good faith by Seller so long as said applications or other documents are prepared and filed in accordance with the Applicable Legal Requirements.

3.5. Insurance. Seller shall during the Term of this Agreement, and at its sole cost and expense, maintain insurance on the Renewable Energy Facility and the property on which the Renewable Energy Facility is located covering property damage, personal injury, automobile liability and workers' compensation and other types of insurance of the type and such amounts as Seller may reasonably deem necessary and in such amounts as are customarily maintained for such projects or as required by the EDC.

3.6. Title. Subject to *Section 4.5* (entitled "Title to Net Metering Credits"), Buyer shall not be entitled to any ownership interest in, and as between Buyer and Seller, Seller shall have sole and exclusive title to, the Renewable Energy Facility, along with any Environmental Attributes and Tax Attributes generated or associated with the Renewable Energy Facility.

3.7. Substitution of Renewable Energy Facility. Seller may substitute any Renewable Energy Facility with any one or more Renewable Energy Facility in its sole discretion so long as each such replacement facility qualifies as an Eligible Net Metering System, is owned or controlled by Seller or any of its Affiliates, such replacement facility or facilities provide no less than the percentage of total expected generation and percentage of generation allocated to the Buyer as provided for in Exhibit A and provided that Seller provides prior written notice thereof to Buyer. The Parties agree and acknowledge that Seller may designate any one or more of the renewable energy facilities described in EXHIBIT A, or any other renewable energy facility owned or controlled by Seller or any of its Affiliates, from time to time during the Term of this Agreement by providing written notice of such designation to Buyer, and within Ten (10) days of receipt of such notice Buyer will execute and return to Seller any forms required in connection therewith, including from time to time updated versions of so-called Schedule B.

3.8. Buyer Site Control. The Renewable Energy Facility will be located at a site over which Buyer will have the required site control for purposes of Applicable Legal Requirements as represented in the form of a sublease, which sublease shall not increase Buyers obligations and/or liabilities under the sublease or this Agreement, and shall be signed by Buyer simultaneously with its execution of this Agreement and which will be in the form attached hereto and made a part hereof as **EXHIBIT E** (the "Sublease").

ARTICLE 4 **PURCHASE AND SALE OF NET METERING CREDITS**

4.1. Sale and Purchase of Net Metering Credits. Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, on a monthly basis Seller agrees to sell to

Buyer, and Buyer agrees to purchase and accept, all of Seller's right, title, and interest to 100% of the Net Metering Credits allocated by Seller to Buyer from the Renewable Energy Facility and designated as the "Buyer's Allocation" on **EXHIBIT A**, free and clear of all claims, liens, security interests, and encumbrances of any kind, nature, and description. The Parties agree and acknowledge that Seller has the unilateral right, once it designates a Renewable Energy Facility, to convert Buyer's Allocation (kWh per year) to no less than the Percentage of Generation Allocated to Buyer, except if requested in writing by Buyer, at which point "Buyer's Allocation" set forth above will automatically and without further action convert to "Buyer's Expected Allocation." Seller is hereby authorized to unilaterally revise and substitute **EXHIBIT A** hereto to reflect any such conversion, provided that Seller shall provide written notice of any such conversion and substitution to Buyer. For avoidance of doubt, Buyer's purchase obligation under this Agreement is a so-called "take-or-pay" commitment. Seller's obligations under this *Article 4* specifically, and under this Agreement in general, are Generation Contingent. Net Metering Credits purchased by Buyer from Seller under this Agreement shall not be resold, assigned, or otherwise transferred to any other person, entity, or enterprise. Notwithstanding anything in this Section 4.1 to the contrary, Buyer shall have no obligation to purchase any Net Metering Credits above Ten Percent (10%) in excess of 5,700,000 kWh per year, meaning that Buyer shall have no obligation to purchase any Net Metering Credits above 6,270,000 (5,700,000 x 1.1 = 6,270,000) kWh per year.

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4.2. Allocation. To facilitate delivery of the Net Metering Credits purchased and sold pursuant to *Section 4.1*, Seller shall request (through periodic completion of the applicable so-called "Schedule B") that the EDC allocate, out of the Host Customer account, the quantity of Net Metering Credits specified in *Section 4.1* to Buyer's customer account(s) described in **EXHIBIT B**. Seller anticipates that the Net Metering Credits received by Buyer for a particular month will be reflected on Buyer's statement from the EDC as a monetary credit amount and not as an electricity quantity; and that such credit will be reflected on Buyer's monthly invoice according to the EDC's billing cycle, which may be approximately One (1) to Three (3) months or more after the Net Metering Credits are generated by the Renewable Energy Facility. The Parties agree and acknowledge that Seller, upon prior written notice to Buyer, may designate any one or more of the renewable energy facilities consistent with the terms and conditions of this Agreement and as described in EXHIBIT A, or any other renewable energy facility owned or controlled by Seller or any of its Affiliates, from time to time during the Term of this Agreement by providing prior written notice of such designation to Buyer, and within Twenty (20) days of receipt of such written notice Buyer, will execute and return to Seller any forms required in connection therewith, including updated versions of so-called Schedule B. Buyer will reasonably cooperate with Seller in reviewing, preparing, signing, and promptly delivering to Seller any and all applications or other documents associated with the Net Metering Credits, including but not limited to from time to time so-called Schedule B. Seller and Buyer will work together in good faith to make any needed adjustments to the Schedule B, the Parties noting that as of the Effective Date the current deadlines to amend Schedule B are May 1 and December 31 of each year.

4.3. Buyer's Purchase and Seller's Sale Contingent on Allocation of Credits by EDC. The Parties acknowledge and agree that Buyer's agreement to purchase Net Metering Credits from Seller and Seller's agreement to sell Net Metering Credits to Buyer are specifically contingent on and subject to the EDC's acceptance of and allocation of such Net Metering Credits to Buyer's customer account with EDC as set forth in *Section 4.2*. During the Term of this Agreement: (a) if for any reason, excluding any action or inaction on the part of Buyer or its representatives, the EDC refuses to allocate all or any a portion of the Net Metering Credits to Buyer's customer account on a temporary basis, this Agreement shall remain in full force and effect but Seller shall promptly refund to Buyer any amounts paid to Seller by Buyer for such Net Metering Credits which the EDC refused to credit to Buyer's customer account; and (b) if for any reason, excluding any action or inaction on the part of Buyer or its representatives, the EDC refuses to allocate the Net Metering Credits to Buyer's customer account on a permanent basis, which refusal is not subject to any appeal rights of Seller pursuant to any adjudication or other action with a Governmental

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Authority, either Party may terminate this Agreement by written notice to the other Party.

4.4. Payment. The amount that Buyer shall pay to Seller for the Net Metering Credits generated by the Seller and allocated by the EDC to Buyer (the "Payment") shall be determined as shown in **EXHIBIT C** attached hereto and incorporated by reference herein. Notwithstanding the foregoing, Buyer acknowledges that Seller does not represent or guarantee that any particular level of production, net metering credit rate, or Net Metering Credits will be achieved in connection with this Agreement. If Buyer is a Governmental Authority, Buyer agrees that during the Term it will budget as necessary to pay timely and in full all amounts due for the purchase of Net Metering Credits to Seller on a monthly basis under this Agreement.

4.5. Title to Net Metering Credits. Title to the Net Metering Credits will pass from Seller to Buyer on allocation to Buyer's customer account(s) by the EDC.

4.6. Non-Exclusive Agreement. Notwithstanding anything in this Agreement to the contrary, the Parties acknowledge and agree that Buyer's agreement to purchase Net Metering Credits from Seller and Seller's agreement to sell Net Metering Credits to Buyer are not exclusive, that Buyer shall have the right and ability to enter into agreements with other parties to purchase additional Net Metering Credits, and that Seller shall have the right and ability to enter into agreements with other parties to sell Net Metering Credits produced by the Renewable Energy Facility in excess of the amounts purchased by Buyer hereunder, subject to all Applicable Legal Requirements.

4.7. Governmental Charges. Buyer is responsible for any Governmental Charges arising from the sale of Net Metering Credits to Buyer, irrespective of whether imposed before, on, or after the allocation and delivery of Net Metering Credits to Buyer. The Parties shall use commercially reasonable efforts to administer this Agreement and implement its provisions so as to minimize Governmental Charges to the extent permitted by law. In the event any of the sales of Net Metering Credits hereunder are to be exempted from or not subject to one or more Governmental Charges, the Party claiming such exemption shall, on a Party's written request therefore, provide the requesting Party in a timely manner with all necessary documentation to evidence such exemption or exclusion.

ARTICLE 5 **PAYMENT**

5.1. Invoicing. During each monthly EDC billing cycle, Seller shall provide Buyer with an invoice for the Net Metering Credits allocated to Buyer's designated account(s) during the prior monthly EDC billing cycle (the "Invoice"). The Invoice shall be based on the percentage of Net Metering Credits that are allocated to the Buyer on the so-called Schedule B in place for the designated account(s) during the applicable EDC billing cycle multiplied by the generation of the Renewable Energy Facility as shown on the EDC bill. Subject to the provisions of *Section 4.3*, Buyer shall pay all invoiced amounts owed to Seller within 30 days. Any payment not received by Seller within Thirty (30) days of the date of Buyer's receipt of an Invoice shall, at Seller's option, bear interest at the Interest Rate from such date through and including the date such payment is actually received by Seller. For the avoidance of doubt, amounts disputed in good faith pursuant to *Section 5.3* shall not bear interest. By signing this Agreement, Buyer agrees to contact Seller with any questions or concerns regarding any Invoice within Ninety (90) days of the date thereof.

5.2. Records and Audits. Each Party shall keep, for a period of not less than three (3) years after the date of each Invoice, electronic records sufficient to permit verification of the accuracy of billing statements, charges, computations, and payments reflected on such Invoice, such as invoices from the EDC, invoices from Seller, and correspondence relating to and documentation of the payment of the

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same. During such period each Party may, at its sole cost and expense, and on reasonable written notice to the other Party, examine the other Party's records pertaining to such Invoice during the other Party's normal business hours. Seller shall, at Buyer's request, provide documentation of the amount of electricity generated by the Renewable Energy Facility and/or the calculation of the Net Metering Credits within Fourteen (14) days of said request.

5.3. Dispute. If a Party, in good faith, disputes an amount owed or paid as provided in this Agreement, the disputing Party shall immediately notify the other Party in writing of the basis for the dispute and shall pay the undisputed portion of such Invoice no later than the due date. On resolution of the dispute: (a) any required payment shall be made to Seller and/or Buyer within Fifteen (15) days of such resolution; and (b) any overpayments shall be returned by the receiving Party on request or deducted from subsequent payments within Fifteen (15) of such resolution. The Parties shall only be entitled to dispute an amount owed or paid within One(1) year from the date of such Invoice. If the Parties are unable to resolve a payment dispute under this *Section 5.3*, the Parties shall follow the dispute resolution procedure set forth in *Section 12.5*.

ARTICLE 6 OBLIGATIONS OF THE PARTIES

6.1. Net Metering.

6.1.1. Each Party's obligations under this Agreement are subject to the Renewable Energy Facility qualifying for Net Metering as an Eligible Net-Metering System, subject to the provisions of the Net Metering Regulations. If the Renewable Energy Facility ceases to so qualify at no fault of the Seller and/or the Seller's Affiliates, and such failure has not been cured by Seller within Ninety (90) days, this Agreement shall terminate without further liability of Seller to Buyer, or of Buyer to Seller, provided that Buyer and Seller shall not be relieved from any payment or other obligations arising under this Agreement prior to such termination.

6.1.2. Subject to the provisions of this Agreement, each Party agrees to take all commercially reasonable measures, with respect to which it has legal capacity, to facilitate and expedite the review of all approvals necessary for the Renewable Energy Facility to be eligible for and participate in Net Metering as Eligible Net-Metering System.

6.1.3. The Parties acknowledge that the Renewable Energy Facility is intended to qualify as an Eligible Net-Metering System within the meaning of Rhode Island General Laws Section 39-26.4-1 *et seq.* and agree not to take any action inconsistent with the Renewable Energy Facility's status as such facility except insofar as said action is authorized hereunder or in conformance with any approvals necessary for the Renewable Energy Facility to be eligible for and participate in Net Metering as an Eligible Net-Metering System. So long as any such amendment will materially benefit a Party without material detriment to the other Party and is otherwise permitted by law, the Parties shall negotiate in good faith and use commercially reasonable efforts to amend this Agreement to conform to any rule(s) or regulation(s) regarding Net Metering and to ensure that the Renewable Energy Facility is eligible for Net Metering as an Eligible Net-Metering System.

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

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6.1.5. The Parties agree that if during the Term a change in Applicable Legal Requirements occurs, including but not limited to a change in the Net Metering Regulations, or the administration or interpretation thereof by any Governmental Authority (including the Rhode Island Public Utilities Commission or the EDC) which materially interferes with the ability of Seller to perform under this Agreement, or materially interfere with Buyer's economic and energy savings originally intended by the Parties in this Agreement, or the ability of electricity generated by the Renewable Energy Facility to be delivered to the EDC or the ability of Seller to provide to Buyer Net Metering Credits, or results in the Renewable Energy Facility being disqualified for Net Metering (unless such disqualification can be remedied in a reasonable period of time not to exceed Ninety (90) days), or which results in a material increase in Seller's and/or Buyer's costs, then, on receipt of written notice from Seller and/or Buyer, the Parties will promptly enter into good faith negotiations to amend or restate this Agreement as may be necessary to achieve the allocation of economic benefits and burdens originally intended by the Parties, subject to Applicable Legal Requirements. Without limiting the foregoing, such amendments may include an amendment and restatement of this Agreement. If the Parties are unable, despite good faith efforts and commercially reasonable efforts, to reach agreement on such an amendment or restatement of this Agreement within One Hundred Twenty (120) days, Seller and/or Buyer may terminate this Agreement without liability for such termination.

6.2. Seller's Obligations. Seller shall maintain accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required of Seller by (and in the form required by) any Governmental Authority, Applicable Legal Requirements and/or the local electric distribution company. Seller shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements.

6.3. Buyer's Obligations. Buyer shall perform its obligations under this Agreement in full compliance with the Applicable Legal Requirements. Buyer shall use commercially reasonable efforts to cooperate with Seller so that Seller can meet its obligations under this Agreement, including reasonable information sharing on a confidential basis. Such reasonable cooperation by Buyer will include but not be limited to the following: (a) providing to Seller within Thirty (30) days of receipt of Seller's written request for specific and itemized list of information/ documentation to which Buyer has custody, possession or control, with respect to its electrical utility accounts, including its so called utility portal with the EDC and confirmation of any associated user identification designations and passwords associated therewith; and (b) executing and delivering to Seller within Thirty (30) days of request such documents as may be requested of Seller or Buyer in the ordinary course by the EDC, ISO New England, any Governmental Authority, any property lessor of Seller, and/or any Lender, including but not limited to: (i) any property sublease in conjunction herewith; (ii) one or more IRS Forms W-9 (Request for Taxpayer Identification Number and Certification); and (iii) from time to time one or more of so-called Schedule B.

ARTICLE 7
REPRESENTATIONS AND WARRANTIES;
ACKNOWLEDGEMENTS; BUYER'S COVENANTS

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

7.1.1. The Party is duly organized, validly existing, and in good standing under the laws of the State of Rhode Island and the Party has full legal capacity to enter into and perform under this Agreement. The execution of the Agreement has been duly authorized, and each person executing the Agreement on behalf of the Party has full authority to do so and to fully bind the Party. The execution

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and delivery of this Agreement and the performance of the obligations hereunder by such Party will not violate any Applicable Legal Requirement, any order of any court or other agency of government, or any provision of any agreement or other instrument to which the Party is bound.

7.1.2. This Agreement and all other documents, instruments, and agreements executed and delivered herewith constitute the valid and legally binding obligations of each Party and are enforceable against each Party, respectively, in accordance with their respective terms, except as limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally.

7.1.3. There is no litigation, arbitration, administrative proceeding, or bankruptcy proceeding pending or being contemplated by the Party, or any parent or affiliated entities, or to the Party's knowledge threatened against the Party or any parent or affiliated entities, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder. During the Term of this Agreement, the Parties, upon knowledge of the same, shall provide written notice to the other, should litigation, arbitration, administrative proceeding or bankruptcy proceeding be initiated for, against and/or on behalf of the Parties or contemplated by Parties or any parent or affiliated entities or to the Party's knowledge be threatened against the Party or any parent or affiliated entities, that would materially and adversely affect the validity or enforceability of this Agreement or the Party's ability to carry out the Party's obligations hereunder.

7.1.4. Each Party understands, confirms, and acknowledges that: (i) this Agreement is legally binding; (ii) each Party understands the terms and conditions of this Agreement, its respective rights and obligations hereunder, and the financial consequences thereof; (iii) each Party has had the opportunity to consult with independent legal, tax, and energy professionals prior to signing the Agreement and has either done so or has consciously elected not to do so; and (iv) neither Party or any of its representatives has acted as an advisor, fiduciary, analyst, or consultant to the other Party with respect to this Agreement or to the transactions contemplated hereunder.

7.1.5. Forward Contract: Bankruptcy Code. The Parties agree that this Agreement and the transactions contemplated hereunder are intended to be a so-called "forward contract" within the meaning of the United States Bankruptcy Code, and each Party represents that it is a so-called "forward merchant" within the meaning of the United States Bankruptcy Code. Each Party further agrees that to that Seller is not a "utility," as such term is used in Section 366 of the United States Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

7.1.6. Service Contract. The Parties intend that this Agreement be treated as a so-called "service contract" within the meaning of Section 7701(e) of the Internal Revenue Code.

7.2. Representations, and Warranties of Buyer. In connection with this Agreement, Buyer represents and warrants as follows.

7.2.1. The information set forth in **EXHIBIT B** is accurate, and Buyer is a current customer of the EDC named in **EXHIBIT B** at the Utility Service Location specified therein. Buyer will use commercially reasonable efforts to promptly provide to the EDC (or to Seller on behalf of the EDC if so requested by Seller) all applications, documentation, and information required by EDC to evaluate Buyer's qualification for participation in the Net Metering.

7.2.2. Buyer shall not enter into or maintain any arrangements, contracts, or agreements with other parties which will cause Buyer to exceed Applicable Legal Requirements with regard to the capacity allocated to Buyer under this Agreement or the Net Metering Credits made available to Buyer

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under this Agreement.

7.2.3. Buyer shall promptly pay Buyer's utility bills by the date due thereof, and Buyer understands that any failure to pay Buyer's utility bill on time may cause Buyer to no longer be eligible to receive Net Metering Credits under this Agreement.

7.2.4. Buyer has not transferred, assigned, or sold all or any Net Metering Credits or rights with respect to Net Metering Credits or rights under this Agreement to any other Person or entity, and Buyer shall not do so at any time (except to the extent that Seller consents to such transfer, assignment, or sale pursuant to *Section 10*).

7.2.5. Buyer has not granted or placed, or allowed others to place, any liens, security interests, or other encumbrances on Net Metering Credits, and shall not do so during the Term of this Agreement.

7.2.6. Buyer understands that the production of the Eligible Net-Metering System and the Net Metering Credits may fluctuate from time to time based on weather, seasonality, degradation, and other conditions, and that the generating capacity of the Renewable Energy Facility measures the potential for renewable energy electricity production under ideal conditions, which may not occur.

7.2.7. Buyer will not for any reason terminate its service with the EDC at any one or more of the Utility Service Locations set forth in **EXHIBIT B** without providing Seller with no less than three (3) months prior written notice of any such termination. Buyer will not assert or represent at any time that Seller is a utility, electric utility, public utility, public service company, or similar entity or enterprise, or is otherwise subject to rate regulation or any similar requirements.

7.3. Representations and Warranties of Seller. In connection with this Agreement, Seller represents and warrants as follows.

7.3.1. On the Effective Date, the Renewable Energy Facility qualifies or will qualify as an Eligible Net-Metering System and will continue to qualify as an Eligible Net Metering System for the Term of this Agreement, and Seller has no reason to believe that the Renewable Energy Facility will not continue to qualify as an Eligible Net-Metering System.

7.3.2. Seller shall undertake all diligent and commercially reasonable, good faith efforts to obtain and maintain required permits and financing for the Renewable Energy Facility. Using such efforts, Seller shall design, construct, maintain, and operate the Renewable Energy Facility in accordance with Applicable Legal Requirements, prudent industry practice, and applicable manufacturers warranties and instructions and in a manner such that the Renewable Energy Facility qualifies as an Eligible Net Metering System pursuant to the Net Metering Regulations.

7.3.3 Seller and/or one or more of the Seller's Affiliates shall provide a Renewable Energy Facility or facilities for the Term of this Agreement, that is qualified as an Eligible Net Metering System, that generates sufficient energy necessary to deliver Net Metering Credits as contemplated hereunder.

ARTICLE 8 **TERMINATION; DEFAULT; REMEDIES**

8.1. Events of Default. Any one or more of the following shall constitute an "Event of Default" by a Party.

8.1.1. Subject to a Party's right to dispute amounts owed or paid as described in *Section 5.3*, the Party fails to make any payment when due under this Agreement and such failure continues for a period of Fourteen (14) days.

8.1.2. Any representation or warranty of the Party set forth in this Agreement was false or misleading in any material respect when made, unless: (i) the fact, circumstance, or condition that is the subject of such representation or warranty is made true within Thirty (30) days after notice thereof from the other Party; and (ii) either such cure removes any adverse effect on such other Party of such fact, circumstance, or condition being otherwise than as first represented, or such fact, circumstance, or condition being otherwise than as first represented does not adversely affect such other Party.

8.1.3. The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement other than with respect to payment and such failure continues for a period of Thirty (30) days after receipt of written notice thereof from the other Party; provided, however, if the defaulting Party proceeds with due diligence during such Thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within said Thirty (30) days, the defaulting Party's time to do so shall be extended no more than One Hundred and Twenty days (120) to cure the same, provided that the defaulting Party continues to use commercially reasonable efforts in good faith to effect such cure. Such time may be further extended in writing by mutual agreement of the Parties so long as the Parties continue to use commercially reasonable efforts in good faith to effect such cure.

8.1.4. The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation, or merger); (ii) admits in writing its inability generally to pay its debts as they become due; (iii) except for assignments made pursuant to *Section 10.1* (regarding financing), makes a general assignment, arrangement, or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization, or liquidation, which proceeding or petition is not dismissed, stayed, or vacated within Ninety (90) days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) except for exercise of possession through assignments made pursuant to *Section 10.2* (regarding financing), has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration, or other legal process levied, enforced, or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses i to vii inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

8.1.5. Subject to *Section 8.1.3*, Seller's failure to deliver and/or the Renewable Energy Facilities failure generate sufficient energy necessary to deliver Net Metering Credits as contemplated hereunder.

8.2. Force Majeure. Except as specifically provided otherwise herein and except in the case of payment obligations, if by reason of a Force Majeure Event a Party is unable to carry out, either in whole or in part, any of its obligations herein contained, such Party (the "Affected Party") shall not be deemed to be in default during the continuation of such inability, provided that: (i) the Affected Party, within Two (2) weeks after being affected by the Force Majeure Event, gives the other Party written notice describing

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the particulars of the occurrence and the anticipated period of delay; (ii) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure Event and in no event shall the suspension of performance be longer than one hundred and twenty (120) days; (iii) no obligations of the Party which were to be performed prior to the Force Majeure Event shall be excused as a result of the occurrence thereof; and (iv) the Affected Party shall use commercially reasonable efforts in good faith to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If a Force Majeure Event shall have occurred that has materially affected either Party's ability to perform its obligations hereunder and that has continued for a period of one hundred and twenty (120) days, then the other Party shall be entitled to terminate the Agreement upon ten (10) days' prior written notice. Upon termination for a Force Majeure Event, neither Party shall have any liability to the other except for any such liabilities that have accrued prior to the termination.

8.3. Termination for Default.

8.3.1. Except as specifically provided for otherwise in this Agreement, on the occurrence and during the continuance of an Event of Default, the other Party may give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least Fifteen (15) and no more than Thirty (30) Business Days after the giving of such written notice, and on any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof.

8.3.2. In the event this Agreement is terminated as a result of an Event of Default: (i) Seller shall have no further obligation to deliver any Net Metering Credits to Buyer; provided, however, that Buyer shall pay Seller for any Net Metering Credits generated by Seller that have been allocated to Buyer by the EDC; and (ii) Any Net Metering Credits generated by the Seller, paid for by the Buyer but not allocated by the EDC, shall roll over to Buyer's next monthly bill in accordance with the EDC's billing practices, and (iii) Seller shall notify the EDC promptly to stop any future Net Metering Credits allocation to Buyer, other than provided for in section (ii) herein, and shall at the same time provide a written copy of such notification to Buyer. In connection with the foregoing sentence, Buyer and Seller agree to execute any documents as may be reasonably required by the EDC.

ARTICLE 9 **REMEDIES AND LIMITATION OF LIABILITY**

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

9.2. Limitation of Liability. WITH THE EXCEPTION OF THE INDEMNIFICATION OBLIGATIONS SET FORTH IN *SECTION 9.3*, NO PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT OR PUNITIVE DAMAGES OF ANY CHARACTER RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH, OR IN ANYWAY INCIDENT TO ANY ACT OR OMISSION OF ANY OF THE PARTIES RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED IN CONTRACT, WARRANTY, NEGLIGENCE (EXCEPT GROSS NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY AT LAW OR IN EQUITY.

9.3. Indemnification. Each Party shall indemnify, defend, and hold harmless the other Party

from any losses, damages, costs, or reasonable expenses to the extent incurred by the other Party as a direct result of the breach of any of the indemnifying Party's representations, warranties, or covenants contained in this Agreement. The indemnification obligations under this *Section 9.3* shall survive with respect to claims made within a Twelve (12) month period after the Term; provided, however, that the indemnification obligations will remain in effect with respect to any claim for indemnification made within such Twelve (12) month period until such claim has been finally adjudicated by a court of competent jurisdiction and appeals with respect to such claim have been exhausted or waived.

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

ARTICLE 10 ASSIGNMENT; FINANCING; SUBLEASING

10.1. Prior Written Consent. No Party shall assign or in any manner transfer this Agreement or any part thereof without the prior written consent of the other Party, which consent may not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, Seller is expressly permitted to assign all or any portion of its rights and responsibilities under this Agreement, so long as the assignment does not materially interfere with the Buyer's rights under this Agreement, and/or increase Buyer's liabilities and/or obligations with respect to this Agreement, with prior written notice to the Buyer but without obtaining Buyer's consent and in Seller's sole discretion, to: (i) any one or more of the Affiliates of Seller; (ii) any one or more purchasers of the Renewable Energy Facility; (iii) any one or more purchasers of all or substantially all of the assets of Seller; and/or (iv) any one or more purchasers of all or substantially all of the equity or ownership interests of Seller;

10.2. Collateral Assignment; Financing Provisions.

10.2.1. Financing Arrangements. Seller may mortgage, pledge, grant security interests in, assign, or otherwise encumber its interests in this Agreement to any Persons providing financing (including but not limited to bank financing and/or tax equity financing) for the Renewable Energy Facility. Buyer acknowledges that in connection with such transactions Seller may secure Seller's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Renewable Energy Facility. In order to facilitate any sale, conveyance, or financing contemplated by *Section 10.1* or by this *Section 10.2*, and with respect to any lender, lessor, or tax equity partner, as applicable, so long as no such sale, conveyance or financing shall materially interfere with the Buyer's rights under, or increases Buyer's liabilities and/or obligations with respect to this Agreement, Buyer hereby agrees as follows.

10.2.2. Consent to Collateral Assignment. So long as no such sale, conveyance, collateral assignment or financing materially interferes with the Buyer's rights under and/or increases

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Buyer's liabilities and/or obligations with respect to this Agreement, and Seller provides prior written notice of the same to the Buyer, Buyer hereby agrees and consents to: (a) the sale or collateral assignment of all or any portion of Seller's right, title, and interest in the Renewable Energy Facility to any of the parties described in *Section 10.1* and/or in this *Section 10.2*, including any Lender; and (b) the collateral assignment for financing of all or any portion of Seller's right, title, and interest in and to this Agreement; and (c) promptly execute and deliver to Seller any documents that may be reasonably required by any of the parties described in *Section 10.1* and/or in this *Section 10.2*, including any Lender, or that may be otherwise reasonably requested by Seller; provided, however, that no such documents shall materially interfere with Buyer's right under, or increase Buyer's obligations with respect to, this Agreement.

10.2.3. Rights of Lender. Notwithstanding any contrary term of this Agreement, the Parties agree as follows.

10.2.3.1. Step-In Rights. Lender, as owner or collateral assignee of the Renewable Energy Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement.

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

10.2.3.3. Exercise of Remedies. On the exercise of remedies, including any sale of the Renewable Energy Facility by Lender, whether by judicial proceeding, under any power of sale contained therein, or otherwise, or any conveyance from Seller to Lender (or any assignee of Lender as defined below) in lieu thereof, Lender shall give prior written notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not materially interfere with the Buyer's rights under this Agreement, shall not increase the Buyers obligations and/or liabilities under this Agreement and shall not constitute a default under this Agreement.

10.2.3.4. Third Party Beneficiary; Cure of Bankruptcy Rejection. Buyer acknowledges that Lender is a third-party beneficiary of the provisions of this *Section 10.2*. On any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the written request of Lender made within ninety (90) days of such termination or rejection, Buyer shall enter into a new agreement with Lender or its assignee having substantially identical terms and conditions as those set forth in this Agreement and such terms and conditions shall not materially interfere with the Buyer's rights under this Agreement and shall not increase the Buyers obligations and/or liabilities under this Agreement.

10.2.3.5. Right to Cure; Cure Period. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within Thirty (30) days for payment defaults or Ninety (90) days for all other defaults. The Parties' respective obligations will otherwise remain in effect during any cure period.

10.2.3.6. Continuation of Agreement. If Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by Lender, shall acquire title to or control of

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Seller's assets and shall, within the time periods described in *Section 10.2.3.5*, cure all material defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement, then Lender or its assignee shall no longer be in default under this Agreement and, provided that after such change in title or control Buyer shall continue to receive all the Net Metering Credits due to it as set forth in this Agreement, and such terms and conditions shall not materially interfere with the Buyer's rights under this Agreement and shall not increase the Buyers obligations and/or liabilities under this Agreement, then this Agreement shall continue in full force and effect.

10.3. Subleasing. In order to address Applicable Legal Requirements, including but not limited to the current requirements of site control with respect to so-called virtual net metering, and any similar requirements that may be promulgated in the future, the Parties hereby agree that Seller may require Buyer to enter into a Sublease for the site at which any Renewable Energy Facility is or will be located, through which Buyer will be a co-lessee, on any one or more occasions. Buyer hereby agrees, so long as the terms and conditions of said Sublease do not materially interfere with the Buyer's rights under this Agreement and do not increase the Buyers obligations and/or liabilities under the Sublease or this Agreement, to execute one or more Subleases in the form attached hereto and made a part hereof as **EXHIBIT E** within Fourteen (14) days of receipt of written request by Seller. Notwithstanding anything contrary herein or in **EXHIBIT E**, any Sublease shall automatically terminate no later than the date this Agreement terminates, whether because this Agreement is not renewed or otherwise.

10.4. Obligation to Modify the Agreement for Financing. If a Lender requires this Agreement to be modified, or if Seller determines that the Agreement needs to be modified in order to finance, develop, or operate the Renewable Energy Facility, and the modifications do not materially interfere with Buyer's right under, or materially increase Buyer's obligations with respect to, this Agreement, Buyer will promptly execute and deliver to Seller any amendment prepared by Seller making such modifications.

ARTICLE 11
RESERVED

ARTICLE 12
MISCELLANEOUS

12.1. Notices. All demands, notices, requests, and other communications hereunder shall be in writing and shall be deemed to have been duly given and received: (i) if mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth herein, on the date of receipt as disclosed on the applicable return receipt; (ii) if sent by a reputable overnight courier service that promises next business day delivery, addressed as set forth herein, on the next business day; (iii) if sent by hand delivery, on the date delivered; and (iv) if sent by electronic mail addressed as set forth herein on the date sent and confirmation of transmission as long as the same is also sent by one of the other means described herein. Rejection or other refusal to accept or the inability to deliver due to a changed address for which no notice was given shall be deemed receipt of any such notice. All notices hereunder shall be addressed as indicated below or as otherwise specified by the Parties by notifying each other of the same in writing from time to time as provided herein.

12.1.1. If to Buyer:

City of East Providence,
Mayor's Office, Room 102
145 Taunton Ave.
East Providence, RI 02914
Telephone: (401) 435-7500

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Email: mayor@eastprovidenceri.gov
Attn: **The Honorable Bob DaSilva,**
Mayor of East Providence

with a copy (not constituting notice) to:

Michael Marcello, Esq.
Solicitor, City of East Providence
Lewis Brisbois
One Citizens Plaza
Suite 1120
Providence, RI 02903
Telephone: (401) 406-3317
Email: michael.marcello@lewisbrisbois.com

12.1.2. If to Seller:

Green Development, LLC
2000 Chapel View Blvd, Suite 500
Providence, RI 02920
Email: md@green-ri.com
Attn: **Mark P. DePasquale, CEO**

with a copy (not constituting notice) to:

Stephen M. Brusini, Esq.
Orson and Brusini Ltd.
144 Wayland Avenue
Providence, RI 02906
Telephone: (401) 223-2100
Email: sbrusini@orsonandbrusini.com

12.2. Confidentiality. Except as provided in this *Section 12.2*, no Party shall publish, disclose, or otherwise divulge Confidential Information to any Person at any time during or after the term of this Agreement without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents, advisers, investors, providers of financing, directors, officers, and employees who have a need to know, in the sole judgment of such Party, related to this Agreement, or as needed for such Party to obtain professional advice. If required by any law, statute, ordinance, decision, or regulation, or pursuant to any order issued by a court, Governmental Authority, or authority having jurisdiction over a Party, that Party, on giving notice to the other Party if permissible by law, may release or disclose Confidential Information, or a portion thereof, as required by applicable law, statute, ordinance, decision, order or regulation. The Parties acknowledge that Buyer is subject to the Rhode Island Access to Public Records Act, R.I. Gen. Laws § 38-2-1 et seq. ("RIAPRA"), and that Buyer's obligations under RIAPRA supersede its obligations under this Section 12.2.

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12.3. Severability. If any article, section, phrase, or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal, or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable, and independent, and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided that the basic

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purpose of this Agreement and the benefits to the Parties are not substantially impaired, and provided further, however, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties.

12.4. Governing Law; Consent to Jurisdiction; Waiver of Jury Trial. This Agreement is being delivered and is intended to be performed in the State of Rhode Island and shall be construed and enforced in accordance with the laws of that state without reference to the rules of conflicts of laws thereof. In any litigation connected with or arising from this Agreement, the Parties hereby consent to and confer exclusive jurisdiction on the courts of the State of Rhode Island, and hereby expressly waive any objections to personal jurisdiction, venue, and inconvenient forum in any such courts.

12.5. Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this *Section 12.5* shall be the exclusive mechanism to resolve disputes arising under this Agreement.

12.5.1. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of negotiations between respective executive officers of each Party, as identified in *Section 12.1*. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for negotiations shall be Fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties.

12.5.2. In the event that the Parties cannot timely resolve a dispute by informal negotiations, the sole venue for judicial enforcement shall be the Superior Courts of Rhode Island in Providence, Rhode Island. Each Party hereby consents to the jurisdiction of such courts, and to service of process in the State of Rhode Island in respect of actions, suits, or proceedings arising out of or in connection with this Agreement or the transactions contemplated by this Agreement.

12.5.3. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to a form of alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

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

12.7. Press Releases. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of this Agreement or the sale or purchase of Net Metering Credits contemplated herein. Each Party shall have the right to approve, in advance of issuance (with such approval not to be unreasonably withheld, conditioned, or delayed), any publicity materials, press releases, or other public statements by another Party that refer to or that describe any aspect of this Agreement or the sale or purchase of Net Metering Credits contemplated herein. No such releases or other public statements relating to the subject matter of this Agreement (except for filings or other factual statements or releases as may be required by Applicable Legal Requirements) shall be made by any Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No Party shall use the name, trade name, service mark, or trademark of the other in any promotional or advertising material without the prior written consent of the other Party, provided that such consent may require the Parties to execute a separate trademark licensing agreement.

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

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

12.10. Counterparts; Facsimile or Electronic Transmission. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart signed by each of the parties hereto. This Agreement may be executed and delivered by facsimile, pdf, and/or electronic signature and transmission.

12.11. Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall promptly execute, acknowledge, and deliver such documents and assurances as may be reasonably requested by the other and shall take any other action consistent with the terms of the Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement. No Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this *Section 12.11*. For the avoidance of doubt, Buyer's and Seller's obligations under this *Section 12.11* will include but not be limited to: (a) providing to Seller such information as Seller may reasonable deem necessary or desirable in conjunction with its performance under this Agreement, including but not limited to access to information to which Buyer has custody, possession or control with respect to its electrical utility accounts; and (b) executing and delivering to Seller such documents as may be requested of Seller or Buyer by the EDC, ISO New England, any Governmental Authority, any property lessor of Seller, and any Lender, including any property sublease in conjunction herewith and any so-called Schedule B; and (c) providing to Buyer such information as Buyer may reasonable deem necessary or desirable in conjunction with its performance under this Agreement and/or in conjunction with Buyer's Applicable Legal Requirements and/or requests received from Governmental Authorities.

12.12. Survival. The provisions of *Section 3.1* (Title), *Section 5.1* (Payment), *Section 5.2* (Records and Audits), *Section 5.3* (Dispute), *Section 8.3* (Termination for Default), *Section 9.1* (Remedies), *Section 9.2* (Limitation of Liability), *Section 9.3* (Indemnification), *Section 9.4* (Waivers), *Section 10.2* (Collateral Assignment; Financing Provisions), and *Article 12* (Miscellaneous), shall survive the expiration or earlier termination of this Agreement for a period of Three (3) years. The confidentiality provision of *Section 12.2* shall survive the expiration or earlier termination of this Agreement until the longer of Two (2) years after the date of the last disclosure of Confidential Information hereunder or as long as any such information remains confidential.

12.13. No Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any Person not a party to this Agreement unless specifically set forth in this Agreement to the contrary.

12.14. Exhibits and Schedules; Section Headings; Recitals; Construction. Any exhibits or schedules annexed hereto are hereby deemed incorporated by reference into and a part hereof as if the same had been set forth verbatim herein. The section and other headings set forth herein are for reference

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and convenience only, and do not define, limit, or extend the scope of this Agreement in any way. Any and all recitals herein set forth are hereby deemed to be true and correct and shall further be deemed incorporated by reference into and made a part hereof. This Agreement was negotiated and reviewed by all Parties and their respective legal counsel. No portion of this Agreement shall be construed against any drafting Party.

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12.15. Relationship of Parties. The relationship of the Parties will be as independent contractors, and will not be considered or deemed to be that of joint venturers, partners, employer/employee, principal/agent, or any other association whatsoever, and neither Party will have the power to bind or obligate the other except as specifically set forth herein.

[The remainder of this page intentionally left blank. Signature page to follow.]

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

BUYER:

City of East Providence

By: _____
Name:
Title:

SELLER:

Green Development, LLC

By: _____
Mark P. DePasquale, CEO

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SCHEDULE OF EXHIBITS

- EXHIBIT A: Designated Renewable Energy Facility and Allocation
- EXHIBIT B: Designated Buyer's Utility Customer Accounts
- EXHIBIT C: Payment
- EXHIBIT D: RESERVED
- EXHIBIT E: Form of Sublease

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EXHIBIT A

Designated Renewable Energy Facility and Allocation

The Parties agree and acknowledge that Seller may designate any one or more of the Renewable Energy Facilities described in EXHIBIT A, or any one or more other renewable energy facilities owned or controlled by Seller or any of its Affiliates, by providing written notice of such designation to Buyer from time to time during the Term of this Agreement.

Potential Project: GD WG Nooseneck I & II

PROJECT SIZE:	24 MW DC
TECHNOLOGY:	Solar
ADDRESS:	Nooseneck Hill Road West Greenwich, Rhode Island
TOTAL EXPECTED GENERATION: (kWh Year 1)	31,920,000 kWh
PERCENT ALLOCATED TO BUYER	17.86%*
BUYERS ALLOCATION (kWh per year):	5,700,000 kWh*

*The Parties agree and acknowledge that Seller has the unilateral right, upon providing prior written notice to the Buyer, that once it designates a Renewable Energy Facility, to convert Buyer's Allocation (kWh per year) to no less than the Percentage of Generation Allocated to Buyer referenced above, at which point "Buyer's Allocation" set forth above will automatically and without further action convert to "Buyer's Expected Allocation." Seller is hereby authorized to unilaterally revise and substitute EXHIBIT A hereto to reflect any such conversion, provided that Seller shall provide prior written notice of any such conversion and substitution to Buyer. Notwithstanding anything in this EXHIBIT A to the contrary, Buyer shall have no obligation to purchase any Net Metering Credits above Ten Percent (10%) in excess of 5,700,000 kWh per year, meaning that Buyer shall have no obligation to purchase any Net Metering Credits above 6,270,000 (5,700,000 x 1.1 = 6,270,000) kWh per year.

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EXHIBIT B

Designated Buyer's Utility Customer Accounts

EDC/UTILITY: National Grid

Account	Location
00520-28010	80 Boyden Blvd
01929-64006	Francis Ave pole 6
01940-81000	41 Grove Ave
01965-64011	Hoyt Ave Pole 19
01965-89009	Massasoit/N.Brdwy
02484-89009	55 Hoppin Ave
04068-22008	Pawt. Ave Pole 163
04924-50003	Robinson St. Pole 5
04977-16006	41 Hunts Mills rd apt all
13325-25006	1 Crest Avenue
13729-48010	11 Industrial Way
14322-15007	Shore Road Pole 18
14323-15002	Bullocks Pt. Pole 397
14330-11003	1320 Pawtucket Ave
14333-91006	City Hall 145 Taunton Ave
14335-46001	84 Rockway Ave Pole 4
14342-16002	Mauran Ave Pole 21
14343-04007	Bentley St. Pole 4
14359-36003	Taunton/John Pole 69
14360-32004	5TH ST. Pole 61
14361-10003	S. Broadway Pole 18
14361-17002	Breed Hall Pawt. Ave Pole 158
14361-64001	Hunts Mill Rd Pole 7
14362-25009	Sunset Ave Pole 5-2
14855-16006	76 Burnside Ave
15257-31007	Clyde St Pole 9
15258-11000	305 Lyon ave
15258-35000	Dexter Road Pole 4
16366-51003	Pawt. Ave Pole 215
19123-93000	201 Mercer St
25634-74002	Allens Ave Pole 51
26768-14003	Shore Rd. Pole 18
26770-15004	140 Silver Street Pole 2
26780-01004	31 Grove
26781-46008	60 Commercial Way Anim. Shelter
26781-54000	250 Waterman Ave
26785-42000	Fifth St Pole 18
26806-99005	Crescent View Pole 50
27698-59003	Water Street Pole 5
27702-57006	Kingsford St Pole 8
27872-42006	Tripps Lane Pole 11
27872-46004	694 Warren Ave Pole 170

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28108-12001 Greenwich Ave Pole 1-5
28786-99008 Pawt Ave Pole 0211
39246-09006 47 Payette
39254-16005 Mercer St Pole 10
39268-93006 16 Cozzens Ave
39269-31010 Centre St
39269-81001 Broadwy/Renolds Pole 32
39270-26009 Taunton/Purchase Pole 12
39270-27006 Greenwood Ave Pole 9
40150-73019 66 Wampanoag Trail
40159-05007 Village Drive
40159-96008 Pawtucket Ave Pole 59
40330-44007 55 Walmer
40565-89009 Carousel com bullocks pt Pole 399
41048-02006 Budlong Rd Pole 35
41329-53007 65 Hunts Mills Rd
46729-50000 913 Broadway
47128-34023 Kettle Pt Ave
51718-94004 Vet Memorial Pkwy Pole 24
51734-71009 Broadway/Grosner Pole 32
51739-12005 11 Centre
51889-09001 60 Comm.Way Pole 8
51904-73007 30 N Broadway
52615-56008 Pawtucket Ave Pole 124
52792-08002 260 Dover Ave
53023-57003 Orchard St Pole 12
53322-26011 49 Bullocks Pt Ave
53696-35008 Willett Ave Pole 14
53696-36005 N. Broadway
61583-37007 55 Walmer
63290-90017 Valley st, PL#4-1
64168-51008 69 Hunt Mills Rd
64168-51026 69 Hunt Mills Rd
64180-96005 610 Waterman Ave Sr. Ctr.
64205-50005 Warren/Lyon St
64206-00000 Windmill Ln P19
64208-34006 Bullocks Pt Ave Pole 397
65104-20001 Amaral Street Pole 22-01
65485-54003 City Hall
65524-30016 29 Fuller Ave
66156-79006 N. Broadway
66156-81006 Pawtucket Ave/Brightridge Ave
72970-03016 525 Veterans Mem Pkwy Pole 46
75974-32040 Forbes St Pole 17 School Sign
76644-64007 2117 Pawtucket Ave
76653-97005 334 Maurane Ave
76667-48006 Hull St Pole 10
76671-70002 475 Bullocks Pt Ave
77343-34007 Forest Ave Pole 3
77536-42006 Water Street Pole 15
77714-79001 Merritt Road Pole 8

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77944-73007 Massasoit Ave pole 23
78103-55006 Taunton Plaza
78611-85003 So Broadway Pole 18
82320-95008 69 Hunt Mills Rd
84774-10001 Forbes St P 25-84 School Sign
86720-51006 Fifth St Pole 19
89107-15005 329 Bullocks Pt Ave
89107-83003 1035 Bullocks Point Ave
89140-95004 60 Commercial Way
89141-36000 Bullocks Pt Ave Pole 289
89141-61021 Bullocks Pt Ave Pole 416
89142-04003 Taunton/Purchase Pole 12
89816-70006 20 Argyle Ave Pole 1
90009-71003 Forbes Street Pole 33
90035-04004 Pawtucket Ave Pole 119-1
90218-36009 Wannamoisett Road Pole 17
90426-19008 Taunton Ave S-14
90439-03009 Waterman Ave
91080-30001 Willett/Legion

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EXHIBIT C

Payment

During each EDC billing period, the amount that Buyer shall pay to Seller for the Net Metering Credits allocated to Buyer shall be determined as follows.

Each monthly payment from Buyer to Seller will be equal to Seventy-Five Percent (75%) (which equals a Twenty-Five Percent {25%} discount rate and which may be referred to herein as the “Contract Discount”) of the dollar amount credited by the EDC each month to the asset host account invoice and transferred to one or more of Buyer’s electric utility accounts with the EDC, such dollar amount credited being based on a rate calculation maintained by the EDC and commonly referred to as the “Net Metering Credit Rate” or the “NMCR”; provided, however, that: (i) notwithstanding anything in this Agreement to the contrary, under no circumstances, except that described in clause ii hereof, will the rate paid by Buyer to Seller be less than **\$0.09** per kWh (the “Contract Floor”); and (ii) if at any point the so-called Net Metering Credit Rate falls below \$0.09 per kWh, then during the period that the Net Metering Credit Rate remains below \$0.09 per kWh Buyer shall make payments to Seller equal to One Hundred Percent (100%) of the dollar amount credited by the EDC each month to the asset host account invoice and transferred to one or more of Buyer’s electric utility accounts with the EDC, meaning based on a rate equal to the Net Metering Credit Rate (the “NMCR Floor”). By way of illustration only, the following examples are provided.

<u>Net Metering Credit Rate</u>	<u>Rate Due Under Agreement</u>	<u>Notes</u>
\$0.15	\$0.1125 (0.15 x .75 = 0.1125)	Contract Discount
\$0.14	\$0.105 (0.14 x .75 = 0.105)	Contract Discount
\$0.13	\$0.0975 (0.13 x .75 = 0.0975)	Contract Discount
\$0.12	\$0.09 (0.12 x .75 = 0.09)	Contract Discount
\$0.11	\$0.09 (0.11 x .75 = 0.0825)	Contract Floor
\$0.10	\$0.09 (0.10 x .75 = 0.075)	Contract Floor
\$0.09	\$0.09 (0.09 x .75 = 0.0675)	Contract Floor
\$0.08	\$0.08 (0.08 x .75 = 0.06)	NMCR Floor
\$0.07	\$0.07 (0.07 x .75 = 0.525)	NMCR Floor

| **SMB REDLINE 6-8-2020**

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EXHIBIT D

RESERVED

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EXHIBIT E

Form of Sublease

SUBLEASE AGREEMENT

This Sublease Agreement (the "Agreement") is entered into as of the ____ day of _____, 20____ by and between _____, LLC, a Rhode Island limited liability company having a principal place of business located at 2000 Chapel View Blvd, Suite 500, Cranston, RI 02920 (the "Lessee"), and the **City of East Providence**, Rhode Island, having a mailing address of City Manager Office, Room 102, 145 Taunton Ave., East Providence, RI 02914, as buyer (the "Sub-Lessee").

WHEREAS, _____, having a principal office located at _____ (the "Lessor") entered into a lease agreement dated _____, 20____, as amended on _____, 20____ (the "Master Lease"), with Lessee respecting certain property located at _____ in the Town of _____, County of _____, State of Rhode Island, and known as (for reference purposes) Tax Assessor's Plat _____, Lot _____, as further described in **EXHIBIT A** attached hereto (the "Property");

WHEREAS, the Master Lease was entered into between Lessor and Lessee in conjunction with and in support of one or more net-metering financing arrangement agreements between Lessee (as seller) and one or more buyers eligible for net-metering under which: (a) Lessee owns and operates an eligible net-metering resource on behalf of such buyers; (b) the eligible net-metering resource is located on the Property, which is owned or controlled by Lessor; and (c) the production from the eligible net-metering resource and the primary compensation paid by such buyer(s) to Lessee for such production through the net-metering financing arrangement agreement(s) is directly tied to the consumption of electricity occurring at the designated eligible net-metered accounts (collectively, the "Project");

WHEREAS, Lessee has entered into a net-metering financing arrangement agreement dated of even date herewith between Lessee (as seller) and Sub-Lessee (as buyer) (the "NMFA") under which: (a) Lessee owns and operates an eligible net-metering resource on behalf of Sub-Lessee; (b) the eligible net-metering resource is located on the Property, which is owned or controlled by means of this Agreement by Sub-Lessee; and (c) the production from the eligible net-metering resource and primary compensation paid by Sub-Lessee to Lessee for such production through the NMFA is directly tied to the consumption of electricity occurring at the designated eligible net-metered accounts as a result of the Project;

WHEREAS, in conjunction with and in support and furtherance of the NMFA, Lessee desires to sublease the Property to Sub-Lessee on a concurrent basis, meaning that: (a) both Lessee and Sub-Lessee shall be deemed to be lessees thereunder and to have concurrent use of the Property for purposes of satisfying any and all site control requirements as may be required by applicable law, regulation, tariff, or requirement of the local utility provider in conjunction with the NMFA; and (b) the obligations of the lessee under the Master Lease shall be performed solely and exclusively by Lessee and not in any manner by Sub-Lessee; and

WHEREAS, the Master Lease provides to Lessee with respect to the portion of the Property on which the eligible net-metering resource is located exclusive control over and the exclusive right to construct, operate, and maintain the eligible net-metering resource specifically and the Project in general, including but not limited to those rights, benefits, and privileges described in the following sections of the Master Lease: (i) Permitted Uses (*Section 3.1*); (ii) Upgrading Project (*Section 3.2*); (iii) Grant of

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Operating Easements (*Section 4.1*); (iv) Lessor Easements (*Section 4.3*); (v) “[Easements] In General (*Section 4.4*); (vi) Location of Certain Easements and the Power Generating Equipment (*Section 5.1*); (vii) Improvements Property of Lessee (*Section 5.3*); (viii) Waiver (*Section 5.5*); (ix) Exclusive Rights (*Section 5.6*); (x) Third-Party Access (*Section 5.7*); (xi) Planning and Zoning (*Section 8*); (xii) Taking (*Section 9*); (xiii) Right to Mortgage and Assign (*Section 14.1*); (xiv) Cooperation (*Section 20*); (xv) No Interference by Lessor (*Section 22.1*); (xvi) Lessee Exclusive Right (*Section 22.2*); (xvii) Rights of Sublessees (*Section 23*); (xviii) Quiet Enjoyment (*Section 33*); and (xix) Covenants Running with the Land (*Section 35*) (all of such rights, benefits, and privileges described in this paragraph and in the corresponding sections of the Master Lease being collectively referred to as “Lessee’s Control Rights”).

NOW THEREFORE, in consideration of the foregoing, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Lessee does hereby sublease to Sub-Lessee the Property, and Sub-Lessee does hereby sublease from Lessee the Property, in each case with such sublease made strictly and explicitly subject to the following terms and conditions.

1. Sublease by Lessee. Other than as specifically set forth in this Agreement to the contrary, Sub-Lessee agrees to be and shall hereby be bound by all of the terms, conditions, and obligations of the Master Lease, a copy of which is attached hereto as **EXHIBIT B**; provided, however, that such sublease is made on a concurrent basis, meaning that: (a) both Lessee and Sub-Lessee shall be deemed to be lessees thereunder, to have concurrent use of the Property for purposes of satisfying any site control requirements as may be required by applicable law, regulation, tariff, or requirement of the local utility provider in conjunction with the NMFA, and to enjoy on a concurrent basis in all respects Lessee’s Control Rights as if and to the same extent that all of such rights, benefits, and privileges described above and in the corresponding sections of the Master Lease had been set forth in full in this Agreement; (b) **THE OBLIGATIONS OF THE LESSEE UNDER THE MASTER LEASE SHALL BE PERFORMED SOLELY AND EXCLUSIVELY BY LESSEE AND NOT IN ANY MANNER BY SUB-LESSEE AND SUCH TERMS AND CONDITIONS UNDER THE MASTER LEASE SHALL NOT INCREASE THE SUB-LESEE OBLIGATIONS AND/OR LIABILITES UNDER THE NET METERING CREDIT AGREEMENT, THE SUB-LEASE AGREEMENT AND/OR THE MASTER LEASE AND SUCH TERMS AND CONDITIONS UNDER THE MASTER LEASE SHALL NOT INCREASE THE SUB-LESEE OBLIGATIONS AND/OR LIABILITES UNDER THE NET METERING CREDIT AGREEMENT, THE SUB-LEASE AGREEMENT AND/OR THE MASTER LEASE**; and (c) Sub-Lessee shall not interfere with Lessee’s performance under and obligations with respect to the Master Lease.

2. Term. The term of this Agreement (the “Sub-Lease Term”) shall be for the same term as the NMFA, which is for a period commencing on _____, 20____, and terminating on _____, 20____, subject to certain renewal rights as described in the NMFA, but under no circumstances shall exceed the term of the Master Lease.

3. Rent. **NO RENT AMOUNTS OF ANY KIND SHALL BE DUE FROM SUB-LESSEE TO LESSEE, OR FROM SUB-LESSEE TO LESSOR, WITH RESPECT TO THE MASTER LEASE, AND THE LESSEE’S RENT PAYMENT OBLIGATIONS UNDER THE MASTER LEASE SHALL BE SATISFIED SOLELY AND EXCLUSIVELY BY LESSEE AND NOT IN ANY MANNER BY SUB-LESSEE.**

4. Miscellaneous.

4.1. Notices. All demands, notices, requests, and other communications hereunder shall be in writing and shall be deemed to have been duly given and received: (i) if mailed by United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth herein, on the

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date of receipt as disclosed on the applicable return receipt; (ii) if sent by a reputable overnight courier service that promises next business day delivery, addressed as set forth herein, on the next business day; (iii) if sent by hand delivery, on the date delivered; and (iv) if sent by electronic mail addressed as set forth herein on the date sent and confirmation of transmission as long as the same is also sent by one of the other means described herein. Rejection or other refusal to accept or the inability to deliver due to a changed address for which no notice was given shall be deemed receipt of any such notice. All notices hereunder shall be addressed as indicated above or as otherwise specified by the parties hereto by notifying each other of the same in writing from time to time as provided herein. Any notices required hereunder may be sent by counsel for a party instead of by the party directly and may be sent to counsel for a party instead of to the party directly.

4.2. Severability; Separability; Supersedure; Entire Agreement; Binding Effect; Recitals.

Any of the parts, provisions, warranties, or covenants set forth herein are severable and separable, and in the event that they, or any one of them, shall be deemed to be void, invalid, or unenforceable by a court of competent jurisdiction; then this Agreement shall be interpreted as if such void, invalid, or unenforceable parts, provisions, warranties, or covenants were not set forth herein, and the remaining provisions hereof shall remain enforceable to the extent permitted by applicable law. This Agreement supersedes all prior negotiations and agreements, whether written or oral, between the parties hereto, and sets forth the entire understanding and agreement of the parties hereto with respect to the transactions contemplated hereunder. Any and all recitals herein set forth are hereby deemed to be true and correct, and shall further be deemed incorporated by reference into and made a part hereof.

4.3. Assignment; Amendment.

This Agreement, whether in whole or in part, may not be assigned, transferred, or pledged by any party hereto, whether by operation of law or otherwise, without the written consent of the parties hereto. No modification or amendment of this Agreement, whether in whole or in part, shall be effective unless made in writing and signed by the parties hereto.

4.4. Governing Law; Consent to Jurisdiction; Counterparts; Exhibits and Schedules.

This Agreement is being delivered and is intended to be performed in the State of Rhode Island and shall be construed and enforced in accordance with the laws of that state without reference to the rules of conflicts of laws thereof. In any litigation connected with or arising from this Agreement, the parties hereto hereby consent to and confer exclusive jurisdiction on the courts of the State of Rhode Island, in Providence, Rhode Island, and on the United States District Court for the District of Rhode Island, and hereby expressly waive any objections to personal jurisdiction, venue, and inconvenient forum in any such courts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Any exhibits or schedules annexed hereto are hereby deemed incorporated by reference into and a part hereof as if the same had been set forth verbatim herein.

4.5. Conflict; Harmonious Interpretation.

In the event of a conflict between the terms of this Agreement and the terms of the Master Lease, the terms of each document are to be read harmoniously and with the common goal of permitting concurrent use and control of the Property for purposes of satisfying any and all site control requirements as may be required by applicable law, regulation, tariff, or requirement of the local utility provider in conjunction with the NMFA.

[The remainder of this page intentionally left blank. Signature page to follow.]

SMB REDLINE 6-8-2020

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IN WITNESS WHEREOF, Lessee and Sub-Lessee have caused this instrument to be executed on the day and date first above written.

WITNESS: _____, LLC, Lessee

Name:

By _____
Mark P. DePasquale, Manager

City of East Providence, Sub-Lessee

Name:

By _____
Name:
Title:

SMB REDLINE 6-8-2020

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EXHIBIT A
TO SUBLEASE

Description of Property

_____, _____, RI _____, Tax Assessor's Plat _____, Lot _____

SMB REDLINE 6-8-2020

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EXHIBIT B
TO SUBLEASE
Copy of Master Lease



City of East Providence
Office of the Mayor
Roberto L. DaSilva
Mayor

June 12, 2020

Mrs. Samantha Burnett
East Providence City Clerk
145 Taunton Ave.
East Providence, RI 02914

Re: Veto

Dear Madam Clerk,

Attached please find the ordinance in amendment of Chapter 2 of the Revised Ordinances of the City of East Providence, Rhode Island, 1998, as amended entitled Administration, as passed by the City Council on June 2, 2020, which I am returning to you having exercised my mayoral veto.

As required by the City Charter, I am enclosing my Message of Disapproval.

Prior to my submission, I have conferred with various members of the City Council.

Sincerely,


Roberto L. DaSilva, Mayor

CC: East Providence City Council

EAST PROVIDENCE, RI
ADMINISTRATIVE CENTER

2020 JUN 12 PM 12:29

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City of East Providence
Office of the Mayor
Roberto L. DaSilva
Mayor

MESSAGE OF DISAPPROVAL

Pursuant to Article III, section 3-6 (2) of the East Providence Home Rule Charter, I reluctantly Veto the City Council Ordinance transmitted to me on June 3, 2020 adding various provisions related to the presentation and submission of the city budget by the Mayor to City Council and the formation of a Financial Review Committee.

Under the current Home Rule Charter, the Mayor is required to submit a budget at least 45 days prior to the beginning of each budget year. (Article V, section 5-3.) The East Providence fiscal year begins November 1. Therefore, the budget must be submitted to the Council no later than September 17. The proposed ordinance would require that the budget be submitted no later than 70 days prior to the beginning of the fiscal year which is August 23 this calendar year. Passage of this ordinance would require the submission of a City budget 25 days earlier than set forth in the Charter.

The rationale for this ordinance is to provide the City Council more time to consider and analyze the proposed budget. While I believe that goal is laudable during ordinary times, since March 9, 2020 the State of Rhode Island and the City has been under a state of emergency due to the COVID-19 pandemic. This state of emergency has curtailed social and business activity, and has caused a strain on the state and municipal coffers.

In fact, I have recently been informed by the Governor's office that the state budget may not be approved until August of this year while the state awaits the status of a potential fourth federal stimulus package that may provide relief for economic losses suffered by the states and municipalities. These delays in passing a state budget will necessarily effect how the City budget is formulated. It is important that the administration have a complete fiscal picture as possible in crafting a spending plan to ensure that our local and educational budget is based on real numbers to avoid unnecessary cuts in services or increases in taxes needed to provide municipal services.

Against this backdrop, requiring the submission of a budget 25 days earlier will not help the Administration nor the City Council review or craft a realistic budget since neither branch of government would have accurate information on which to base their decisions. In more normal times when a state budget is passed before the beginning of the state fiscal year of July 1, this ordinance would meet its intended purpose. However, in these extraordinary times, passage would frustrate its intent and force the submission and review of a spending plan that would not be based on concrete revenues and state aid.

Furthermore, there is nothing in this ordinance which would allow the Mayor to seek relief from these submission deadlines in emergencies like the one that the State and City are currently under. The inclusion

of such an extension mechanism would strengthen the ordinance and make it more acceptable from an administrative perspective.

Finally, the establishment of a Financial Review Committee is a positive and welcome step in ensuring the free flow of budget information and oversight by the city's legislative branch. I am committed to working with the Council on such an endeavor. Unfortunately, the City Charter does not grant the Mayor the ability to exercise a partial line-item veto, and I am therefore left with no legal choice but to veto this council passed measure in its entirety.

I would request that the City Council uphold the exercise of my veto and reconsider its initial passage in light of the concerns that I have raised.

Respectfully submitted,



Mayor Robert DaSilva

Date: June 12, 2020

EAST PROVIDENCE, RI
CITY OF EAST PROVIDENCE

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City of East Providence

OFFICE OF THE CITY CLERK

CITY HALL

145 TAUNTON AVENUE

EAST PROVIDENCE, RHODE ISLAND 02914-4505

TEL (401) 435-7596 FAX (401) 435-7501 TDD (401) 431-1633

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2020 JUN 12 PM 12:30

EAST PROVIDENCE, RI
OFFICE OF THE CITY CLERK

ORDINANCE TRANSMITTAL

East Providence Charter, Section 3-6: Passage of Ordinances Over Veto

Submitted to the Mayor on:

Time: 2:22 pm

Signature of City Clerk: Leah Stoddard deputy city clerk

Recipient of Transmittal: Mark J

Signature of Recipient: _____

Ordinances:

AN ORDINANCE IN AMENDMENT OF CHAPTER 2 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED, "ADMINISTRATION"

AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED, "VEHICLES AND TRAFFIC" (SECTION 18-307)

AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED "VEHICLES AND TRAFFIC" (SECTION 18-308)

AN ORDINANCE IN AMENDMENT OF CHAPTER 12 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED, ENTITLED "POLICE"

SUBMITTED TO THE CITY CLERK ON: 6/12/2020 - jma

By: [Signature]
Recipient of Transmittal



City of East Providence Planning Department


ROBERTO L. DASILVA
MAYOR

WILLIAM J. FAZIOLI
DIRECTOR OF PLANNING & ECONOMIC DEVELOPMENT

MEMORANDUM

June 10, 2020

To: City Council
Roberto DaSilva, Mayor

From: William J. Fazioli, Director of Planning & Economic Development 

Cc: Michael J. Marcello, City Solicitor
Stephen Coutu, Public Works Director
Erik Skadberg, City Engineer
Pamela M. Sherrill, AICP, Executive Director East Providence Waterfront Commission

Re: Recommendation from the Planning Board to the City Council for the land transfer of a 2.9 acre parcel and 600 foot fishing pier located at Map 109, Block 1, Parcel 1. Owner: Kettle Point LLC.

The subject property is a 2.9 acre parcel located on the shoreline of the Providence River immediately west of the East Bay Bike Path. It is the intent of the City to obtain ownership of the parcel to serve as a City park that would provide opportunities for fishing and scenic views of the upper Narragansett Bay. Pedestrian access to the parcel is provided by an entrance on the west side of the East Bay Bike Path with vehicle access provided by a parking lot at the end of Road F that currently has 40 parking spaces open to the public with an additional 6 parking spaces to be added in the near future. For over 75 years the site has been in private ownership with the public prohibited from entering the site, which was known as the former Amoco/Arco, BP fueling pier.

In August 2019 a surface oil seep was observed in the vicinity of the entrance to the pier. As a result, the developer Churchill & Banks hired Sage Environmental, Inc. to investigate and to remove all contaminated soil from the immediate area. In addition, the City hired GZA Environmental, Inc. to perform a peer-review to ensure that the surface oil seep was remediated according to RIDEM standards. RIDEM issued an Interim Letter of Compliance on June 1, 2020 indicating that the soils are in compliance with the RIDEM Remediation Regulations. In addition to the removal of soil, an Environmental Land Use Restriction (ELUR) has been recorded in the City's land evidence record that requires the property to be inspected by an Environmental Professional on an annual basis to evaluate the compliance status of the property.

The pier will require maintenance and inspection to be undertaken by the City, however as a condition of the land transfer, Kettle Point LLC will transfer funds in the amount of \$15,000 to be held by the City for future maintenance and inspections. Future improvements to the pier that will be installed by Kettle Point LLC within 30 days of conveyance to the City include:

- A sign to be installed at the park entrance
- Bike racks and benches to be installed at the park entrance.
- Fencing and a gate to be retained at the pier entrance so that the city will have the potential to limit access as needed for ice conditions and severe weather.

Enclosed is a report prepared by the Waterfront Commission that provides details on the sites remediation status and conditions to be placed on the land transfer, see Waterfront Planner's Report, dated June 2, 2020.

Recommendation to the City Council

At the June 8, 2020 Planning Board meeting, on a motion by Mr. D'Aiello, seconded by Mr. Grant, the Planning Board voted 6-0 on a roll call vote to provide a positive recommendation to the City Council to accept the land transfer subject to the following conditions:

1. Required Coastal Resources Management Council (CRMC) Assent Modification shall be obtained by Kettle Point LLC.
2. Kettle Point LLC shall transfer the \$15,000 reserve fund referenced in the 2016 CRMC Assent Modification to the City of East Providence upon transfer of the property.
3. Kettle Point LLC shall provide the latest pier inspection report.
4. Sage Environmental LLC shall continue to conduct groundwater monitoring and the City of East Providence will be billed for said services at a cost not to exceed \$2,500 per year.
5. Sage Environmental, Inc. shall properly close monitoring wells per RIDEM remedial action work plan.
6. Kettle Point LLC shall complete the following site improvements within 30 days of transfer of the subject parcel to the City of East Providence:
 - a. Sign to be installed at the park entrance: City of East Providence ~ Kettle Point Park ~ donated by Churchill Banks.
 - b. Bike racks and benches to be installed at the park entrance.
 - c. Fence and gate to be retained at the pier entrance so that the city will have the potential to limit access as needed (say for icing/hazardous weather).
7. Receipt of a letter from GZA Environmental indicating that the remedial actions in response to the oil seep adequately protect the City of East Providence's interests.
8. The annual maintenance inspection of the pier that was scheduled for 2020 must take place prior to the City accepting ownership.

Enclosures: Planning Board notice of decision
 Waterfront Planner's Report, dated June 2, 2020.
 Kettle Point Public Access Improvement Plan, DiPrete Engineers, August 2, 2019
 RIDEM Interim Letter of Compliance, June 1, 2020
 Environmental Land Use Restriction, recorded in the City of East Providence
 Land Evidence Records on June 1, 2020 (Book 4267, Pages 269-282).

**CITY OF EAST PROVIDENCE
PLANNING BOARD**

NOTICE OF DECISION

Meeting of the East Providence Planning Board held on June 8, 2020 at 7:00 pm. As a result of the COVID-19 pandemic and the closure of City Hall, this meeting was held virtually through an application called "Zoom".

On a motion by Mr. Crook, seconded by Mr. Grant, the board voted 6-0 on a roll call vote to enter the following items into the record:

1. Waterfront Planner's Report, dated June 2, 2020.
2. Kettle Point Public Access Improvement Plan, DiPrete Engineers, August 2, 2019
3. RIDEM Interim Letter of Compliance, June 1, 2020
4. Environmental Land Use Restriction, recorded in the City of East Providence Land Use Records on June 1, 2020 (Book 4267, Pages 269-282)

On a roll call vote:

Mr. Batty: Yea
Mr. Grant: Yea
Mr. Robinson: Yea
Mr. Crook: Yea
Mr. D'Aiello: Yea
Mr. Cunha: Yea

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CITY OF EAST PROVIDENCE RI

On a motion by Mr. D'Aiello, seconded by Mr. Grant, the board voted 6-0 on a roll call vote to provide a positive recommendation to the City Council to accept the land transfer subject to the following conditions:

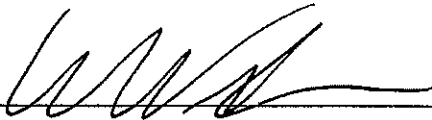
1. Required Coastal Resources Management Council (CRMC) Assent Modification shall be obtained by Kettle Point LLC.
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3. Kettle Point LLC shall provide the latest pier inspection report.
4. Sage Environmental LLC shall continue to conduct groundwater monitoring and the City of East Providence will be billed for said services at a cost not to exceed \$2,500 per year.
5. Sage Environmental, Inc. shall properly close monitoring wells per RIDEM remedial action work plan.
6. Kettle Point LLC shall complete the following site improvements within 30 days of transfer of the subject parcel to the City of East Providence:
 - a. Sign to be installed at the park entrance: City of East Providence ~ Kettle Point Park ~ donated by Churchill Banks.
 - b. Bike racks and benches to be installed at the park entrance.
 - c. Fence and gate to be retained at the pier entrance so that the city will have the potential to limit access as needed (say for icing/hazardous weather).

7. Receipt of a letter from GZA Environmental indicating that the remedial actions in response to the oil seep adequately protect the City of East Providence's interests.
8. The annual maintenance inspection of the pier that was scheduled for 2020 must take place prior to the City accepting ownership.

On a roll call vote:

Mr. Batty: Yea
Mr. Grant: Yea
Mr. Robinson: Yea
Mr. Crook: Yea
Mr. D'Aiello: Yea
Mr. Cunha: Yea

Present and voting were: Chairman Michael P. Robinson, Burton P. Batty, Jr., Octavio Cunha, Eric Crook, Christopher Grant, and Alan D'Aiello.



William J. Fazioli, Director of Planning and Economic Development



EAST PROVIDENCE WATERFRONT SPECIAL DEVELOPMENT DISTRICT COMMISSION

WATERFRONT PLANNER'S REPORT

Date: June 2, 2020
To: Planning Board
RE: Transfer of land to City of East Providence
Address: 0 Kettle Point Ave., west of the East Bay bike path
Location: Map 109 - Block 01 - Parcel 001
Lot: 2.9 acres, including the 600-foot rehabilitated fishing pier
Owner: Kettle Point LLC
Zoning: Kettle Point Sub-district

The following information is provided to the Planning Board in support of the transfer of land from Kettle Point LLC to the City of East Providence for creation of Kettle Point Park. The Planning Board has been asked to vote on an advisory opinion to City Council regarding this transfer.

Background

The subject lot is part of Churchill Bank's 48.61-acre Kettle Point development which has been under construction the past three years. To date, 44 of the 62 condos are completed, 4 of 5 Class A apartment buildings are complete and fully leased (175 of 228 units), and the 88,000 sf University Orthopedics building has been operational for two years.



Figure 1: View west across the East Bay bike path toward proposed Kettle Point Park (prior to remediation and removal of the fence).

Public access to the shoreline has always been one of the visions for the Waterfront Special Development District Commission. Public access to the 4,300-lf coastal shoreline on Watchemoket Cove, the Providence River and Long Rock Cove is also a criteria for Coastal Resources Management Council's (CRMC) Urban Coastal Greenway (UCG). Features of the UCG include the following:

- 9 secondary pathways are provided
- More than 46 public parking spaces are provided including 6 additional spaces at Road F/East Bay bike path parking area
- Three coastal access points are provided including access to the proposed Kettle Point Park
- The UCG is vegetated with native species with the exception of the paths and parking areas
- Over the entire development, 65% is vegetated (31.75 acres)

Proposed Kettle Point Transfer

Transfer of the Kettle Point parcel to the City has been anticipated since 2013 when the Waterfront Commission received the Kettle Point development application. As indicated in the CRMC Assent Modification (2013-06-080) dated May 16, 2016, #15 references Article VII,

7.1(f)(2) the Declaration of Covenants, Conditions and Restrictions regarding a \$15,000 reserve fund for maintenance of the rehabilitated pier.

The point of land at Kettle Point is a 2.9-acre parcel located west of the East Bay bike path and east of the Providence River, adjacent to CRMC Type 5 water. Until recently the site has been fenced off, with no public access. The shoreline is rocky/ledge with no safe water access. The former Amoco/Arco, BP fueling pier, 600-lf in length, has been upgraded for recreational fishing, with dramatic views of the upper bay and Providence. Repair of the pier was conducted by Borden Light Marine Contracting, Inc.

With creation of a city park at Kettle Point, the public will have access to fishing opportunities, sunsets, July Fourth fireworks, and cool sea breezes, as well as an attractive rest stop along the East Bay bike path. Convenient parking is provided at the 40-space parking area (proposed for expansion to 46 spaces in accordance with CRMC assent modification) at the end of "Road F" along the East Bay bike path. Road F is a privately owned, publicly accessed road off the northern entrance of Kettle Point Avenue (right turn before University Orthopedics).



Figure 2 Kettle Point Pier view toward Providence



Figure 3 View from viewing deck toward Kettle Point



Figure 4 Viewing deck, looking toward Providence

Title Search and Draft Deed

Rhode Island Title Services has completed a title search of the subject parcel. Title commitment was received by the Michael Marcello, City Solicitor June 12, 2019.

Site Remediation Status

Sage Environmental, Inc. conducted remedial excavation of petroleum-impacted soils in 2018 as approved by the RI Department of Environmental Management in the Remedial Action Work Plan Closure Report. Post-remediation groundwater monitoring wells were installed, and four quarterly rounds of groundwater monitoring were performed through May 2019.

In August 2019 an oil seep was observed along the northern shoreline in the vicinity of the pier. In response Churchill & Banks (CB) and Sage Environmental, Inc. initiated the removal of four

truckloads of oily soil with disposal in New Hampshire and the area was capped with clean fill and seeded. The City hired GZA Environmental to review the file including response actions on behalf of the City of East Providence. RIDEM issued an Interim Letter of Compliance for File No. SR-10-0056E dated June 1, 2020 indicating that soils at the "are in compliance with the Remediation Regulations at this time. Upon completion of the required groundwater gauging and monitoring, the Department will issue a Letter of Compliance for the Property." An Environmental Land Use Restriction (ELUR) has been recorded in the City of East Providence Land Evidence Records for the subject property on June 1, 2020 (Book 4267, Pages 269-282). In accordance with the ELUR, the property must be inspected by an Environmental Professional or Company Representative on an annual basis to evaluate the compliance status of the property. The next evaluation for this property is due on or before June 1, 2021. Groundwater monitoring will continue as required, by Sage Environmental at a cost of \$2,500/year to the city.

Proposed improvements

As indicated on the attached plan, Kettle Point LLC is committed to providing the following:

- Sign to be installed at the park entrance: City of East Providence ~ Kettle Point Park ~ donated by Churchill Banks.
- Bike racks and benches to be installed at the park entrance.
- Fence and gate to be retained at the pier entrance so that the city will have the potential to limit access as needed (say for icing/hazardous weather).

Draft Conditions of Approval for Transfer of Land to the City of East Providence

1. Required Coastal Resources Management Council (CRMC) Assent Modification shall be obtained by Kettle Point LLC.
2. Kettle Point LLC shall transfer the \$15,000 reserve fund referenced in the 2016 CRMC Assent Modification to the City of East Providence upon transfer of the property.
3. Kettle Point LLC shall provide the latest pier inspection report.
4. Sage Environmental LLC shall continue to conduct groundwater monitoring and the City of East Providence will be billed for said services at a cost not to exceed \$2,500 per year.
5. Sage Environmental, Inc. shall properly close monitoring wells per RIDEM remedial action work plan.
6. Kettle Point LLC shall complete the following site improvements within 30 days of transfer of the subject parcel to the City of East Providence:
 - a. Sign to be installed at the park entrance: City of East Providence ~ Kettle Point Park ~ donated by Churchill Banks.
 - b. Bike racks and benches to be installed at the park entrance.
 - c. Fence and gate to be retained at the pier entrance so that the city will have the potential to limit access as needed (say for icing/hazardous weather).
7. Receipt of a letter from GZA Environmental indicating that the remedial actions in response to the oil seep adequately protect the City of East Providence's interests.
8. The annual maintenance inspection of the pier that was scheduled for 2020 must take place prior to the City accepting ownership.

Pamela M. Sherrill, AICP, Executive Director

cc: Waterfront Commission

Michael Marcello, City Solicitor
William Fazioli, Planning Director
Steven Coutu, PE, DPW Director
Richard Baccari, Kettle Point LLC

Attachments:

- Kettle Point Public Access Improvement Plan, DiPrete Engineers, August 2, 2019
- RIDEM Interim Letter of Compliance, June 1, 2020
- Environmental Land Use Restriction, recorded in the City of East Providence Land Evidence Records on June 1, 2020 (Book 4267, Pages 269-282)



RHODE ISLAND

DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

OFFICE OF LAND REVITALIZATION & SUSTAINABLE MATERIALS MANAGEMENT

235 Promenade Street, Providence, Rhode Island 02908

INTERIM LETTER OF COMPLIANCE

June 1, 2020

File No. SR-10-0056E

(Formerly Part of Case No. 2000-064)

Mr. Richard P. Baccari
Kettle Point, LLC
10 Greene Street
Providence, RI 02903

RE: AMOCO Oil Terminal – Area 1/City of East Providence
4 Kettle Point Avenue
East Providence, Rhode Island
Plat 109, Block 1, Lot 1

Dear Mr. Baccari:

Effective April 22, 2020, the Rhode Island Department of Environmental Management's (the Department) Office of Waste Management has changed the office name to the Office of Land Revitalization and Sustainable Materials Management (LRSMM), as reflected in the re-codified 250-RICR-140-30-1, Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (the Remediation Regulations). The purpose of these regulations is to create an integrated program requiring reporting, investigation, and remediation of contaminated sites in order to eliminate and/or control threats to human health and the environment in a timely and cost-effective manner.

In the matter of the above-referenced property (the Site), the Department's Office of LRSMM is in receipt of the following documentation submitted pursuant to the Remediation Regulations in response to the reported release at the Site:

1. Remedial Status Report, Kettle Point Areas 1, 2 & 3, Kettle Point Avenue, East Providence, Rhode Island, received by the Department on January 26, 2017, and prepared by SAGE Environmental, Inc. (SAGE);
2. Remedial Action Work Plan Completion Report and First Quarterly Groundwater Monitoring Report, Kettle Point (AREA 1), 4 Kettle Point Avenue, Plat 109, Block 1, Lot 1, East Providence, Rhode Island, received by the Department on October 30, 2018, and prepared by SAGE;
3. Quarterly Groundwater Monitoring Report – Q2 and Q3, Kettle Point (AREA 1), 4 Kettle Point Avenue, Plat 109, Block 1, Lot 1, East Providence, Rhode Island, received by the Department on April 24, 2019, and prepared by SAGE;

4. Quarterly Groundwater Monitoring Report – Q4, Kettle Point (AREA 1), 4 Kettle Point Avenue, Plat 109, Block 1, Lot 1, East Providence, Rhode Island, received by the Department on July 19, 2019, and prepared by SAGE;
5. Remedial Action Work Plan Completion Report - Addendum, Kettle Point (AREA 1), 4 Kettle Point Avenue, Plat 109, Block 1, Lot 1, East Providence, Rhode Island, received by the Department on April 20, 2020, and prepared by SAGE;
6. Remedial Action Completion Report Addendum 2 / Responses to Comments, Kettle Point (former AMOCO terminal), 4 Kettle Point Avenue, East Providence, Rhode Island, received by the Department on May 27, 2020, and prepared by SAGE;
7. Area 1 Gauging Data, Kettle Point (former AMOCO terminal), East Providence, Rhode Island, received by the Department on May 28, 2020, and prepared by SAGE; and
8. A certified copy of the Department approved Environmental Land Usage Restriction (ELUR) and Soil Management Plan (SMP), which was recorded in the City of East Providence Land Evidence Records for the subject property on June 1, 2020 (Book 4267, Pages 269-282), received by the Department on June 1, 2020.

Based upon the information contained in these submittals, the Department has concluded that the soils at the above referenced property are in compliance with the Remediation Regulations at this time. Upon completion of the required groundwater gauging and monitoring, the Department will issue a Letter of Compliance for the property (Plat 109, Block 1, Lot 1).

Be advised that the Department reserves the right to require additional actions under the aforementioned Remediation Regulations at the subject property should any of the following occur:

- Conditions at the property previously unknown to the Department are discovered;
- Information previously unknown to the Department becomes available;
- Policy or regulatory requirements change;
- Groundwater gauging and monitoring at the site is discontinued without specific Department approval; and/or
- Kettle Point, LLC, or any future holder[s] of any interest in the property fails to adhere to the terms and conditions of the ELUR or the SMP for the property.

Please also be advised that in accordance with the ELUR, the property must be inspected by an Environmental Professional or Company Representative on an annual basis to evaluate the compliance status of the Property. For your convenience, a copy of the Annual Compliance Evaluation Form is online at <http://www.dem.ri.gov/programs/wastemanagement/site-remediation/index.php#process>. The next evaluation for this Property is due on or before **June 1, 2021**.

Nothing in this Interim Letter of Compliance relieves the responsible party, or the site, from compliance with all other applicable local, State, or Federal rules, regulations, and requirements.

If you have any questions regarding this letter or would like the opportunity to meet with Department personnel, please contact me by telephone at (401) 222-2797, ext. 7109, or by E-mail at joseph.martella@dem.ri.gov.

Sincerely,



Joseph T. Martella II
Environmental Engineer III
Office of Land Revitalization &
Sustainable Materials Management

Authorized by,



Kelly J. Owens
Supervising Engineer
Office of Land Revitalization &
Sustainable Materials Management

cc: Susan Forcier, Esq, RIDEM/Office of Legal Services
Charles Horbert, RIDEM/OWR
Neal Personeus, RIDEM/OWR/WQC
David Reis, RI CRMC
Raymond Lavey, Churchill & Banks
William Fazioli, Planning Director, City of East Providence
Pamela M. Sherrill, AICP, Executive Director, East Providence Waterfront Commission
Joshua A. Berlinsky, Esq., Darrow Everett LLP
Rick Mandile, SAGE Environmental, Inc.



ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction ("Restriction") is made on this day of June, 2020 by Kettle Point, LLC and its successors and/or assigns (hereinafter, the "Grantor"). / 57

WITNESSETH:

WHEREAS, the Grantor Kettle Point, LLC is the Owner in fee simple of property identified as a portion of 4 Kettle Point Avenue (Plat 109, Block 1, Lot 1), in East Providence, Rhode Island (the "Property"), more particularly described in Exhibit A (Legal Description) which is attached hereto and made a part hereof;

WHEREAS, the Property has been determined to contain soil and/or groundwater which is contaminated with certain Hazardous Materials and/or petroleum in excess of applicable residential and/or industrial/commercial Direct Exposure Criteria, criteria pursuant to the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations");

WHEREAS, the Grantor and the Department have determined that the environmental land use restrictions set forth below are consistent with the regulations adopted by the Rhode Island Department of Environmental Management ("Department") pursuant to R.I.G.L. § 23-19.14-1 and that this restriction shall be a Conservation Restriction pursuant to R.I.G.L. § 34-39-1 et. seq. and shall not be subject to the 30 year limitation provided in R.I.G.L. § 34-4-21;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: Order of Approval issued pursuant to the Remediation Regulations;

WHEREAS, to prevent exposure to or migration of Hazardous Substances and to abate hazards to human health and/or the environment, and in accordance with the Order of Approval, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Property;

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

WHEREAS, the Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against the Grantor and the Grantor's successors and assigns. NOW, THEREFORE, Grantor agrees as follows:

- A. **Restrictions Applicable to the Property:** In accordance with the Order of Approval, the use, occupancy and activity of and at the Property is restricted as follows:
 - i. No residential use of the Property shall be permitted that is contrary to Department approvals and restrictions contained herein;
 - ii. No groundwater at the Property shall be used as potable water;

- iii. No soil at the Property shall be disturbed in any manner without written permission of the Department's Office of Land Revitalization & Sustainable Materials Management, except as permitted in the Remedial Action Work Plan (RAWP) or Soil Management Plan (SMP) approved by the Department in a written approval letter and attached hereto in Exhibit B;
- iv. Humans engaged in activities at the Property shall not be exposed to soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department approved Direct Exposure Criteria set forth in the Remediation Regulations;
- v. No subsurface structures shall be constructed on the Property over groundwater containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department approved GB Groundwater Objectives set forth in the Remediation Regulations; and
- vi. The engineered controls at the Property described in the SMP contained in Exhibit B attached hereto shall not be disturbed and shall be properly maintained to prevent humans engaged in residential activity from being exposed to soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department- approved residential Direct Exposure Criteria in accordance with the Remediation Regulations.

B. No action shall be taken, allowed, suffered, or omitted at the Property if such action or omission is reasonably likely to:

- ii. Create a risk of migration of Hazardous Materials and/or petroleum;
- iii. Create a potential hazard to human health or the environment; or
- iv. Result in the disturbance of any engineering controls utilized at the Property, except as permitted in the Department-approved SMP contained in Exhibit B.

C. Emergencies: In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to, maintenance and repair of utility lines or a response to emergencies such as fire or flood, the application of Paragraphs A (iii.- viii.) and B above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

- i. Grantor shall notify the Department's Office of Land Revitalization & Sustainable Materials Management in writing of the emergency as soon as possible but no more than three (3) business days after Grantor's having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);
- ii. Grantor shall limit both the extent and duration of the suspension to the minimum period reasonable and necessary to adequately respond to the emergency;

- iii. Grantor shall implement reasonable measures necessary to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;
- iv. Grantor shall communicate at the time of written notification to the Department its intention to conduct the Emergency Response Actions and provide a schedule to complete the Emergency Response Actions;
- v. Grantor shall continue to implement the Emergency Response Actions, on the schedule submitted to the Department, to ensure that the Property is remediated in accordance with the Remediation Regulations (or applicable variance) or restored to its condition prior to such emergency. Based upon information submitted to the Department at the time the ELUR was recorded pertaining to known environmental conditions at the Property, emergency maintenance and repair of utility lines shall only require restoration of the Property to its condition prior to the maintenance and repair of the utility lines; and
- vi. Grantor shall submit to the Department, within ten (10) days after the completion of the Emergency Response Action, a status report describing the emergency activities that have been completed.

- D. Release of Restriction; Alterations of Subject Area:** The Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Restriction unless the Grantor has received the Department's prior written approval for such alteration. If the Department determines that the proposed alteration is significant, the Department may require the amendment of this Restriction. Alterations deemed insignificant by the Department will be approved via a letter from the Department. The Department shall not approve any such alteration and shall not release the Property from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the Property in accordance with applicable regulations.
- E. Notice of Lessees and Other Holders of Interests in the Property:** The Grantor, or any future holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Restriction. The failure to include such provision shall not affect the validity or applicability of this Restriction to the Property.
- F. Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.
- G. Binding Effect:** All of the terms, covenants, and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each Owner and any other party entitled to control, possession or use of the Property during such period of Ownership or possession.
- H. Inspection & Non-Compliance:** It shall be the obligation of the Grantor, or any future holder of any interest in the Property, to provide for annual inspections of the Property for compliance with the ELUR in accordance with Department requirements.

I. Inspection & Non-Compliance: It shall be the obligation of the Grantor, or any future holder of any interest in the Property, to provide for annual inspections of the Property for compliance with the ELUR in accordance with Department requirements.

A qualified environmental professional will, on behalf of the Grantor or future holder of any interest in the Property, evaluate the compliance status of the Property on an annual basis. Upon completion of the evaluation, the environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of any interest in the Property an evaluation report detailing the findings of the inspection, and noting any compliance violations at the Property. If the Property is determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of any interest in the Property shall submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the Property into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan.

In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation, all Department approvals and agreements relating to the Property may be voided at the sole discretion of the Department.

J. Terms Used Herein: The definitions of terms used herein shall be the same as the definitions contained in Section 3 (DEFINITIONS) of the Remediation Regulations.

IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

Kettle Point, LLC

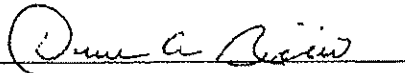
By:


Grantor (signature)

Richard Baccari II
Grantor (typed name)

STATE OF RHODE ISLAND
COUNTY OF Providence

In (CITY/TOWN), in said County and State, on the 1st day of June, 2020 before me Personally appeared Richard Baccari II, to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

Notary Public: 

My Comm. Expires:

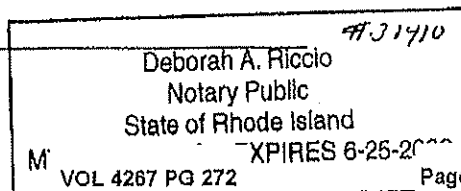


EXHIBIT A



5/29/2020

Metes and Bounds Description
Remediation Area 1 (AP 109, Block 1, Lot 1), Kettle Point
East Providence, Rhode Island

That certain parcel of land, with all buildings and improvements, situated southerly of Veterans Memorial Parkway in the City of East Providence, Providence County, the State of Rhode Island and Providence Plantations and shown as AP 109 Block 1 Lot 1 on that plan entitled "Boundary Survey Kettle Point East Providence, Rhode Island Kettle Point Road" by DiPrete Engineering scale 1"=100' Revised July 13, 2015 and being more particularly described as follows:

Beginning at station 656+35.86 Left 41.25 Feet of the Providence Warren and Bristol RR Company 1915 Centerline, said point being on the westerly line of land now or formerly of the City of East Providence a.k.a. "The East Bay Bike Path" (AP 109 Block 1 Lot 5); said point also being the northwesterly corner of the herein described parcel;

Thence the following two (2) courses bounded in a general northeasterly direction by said land of the East Bay Bike Path (AP 109 Block 1 Lot 5);

1. S 31° 13' 45" E for a distance of 282.94 feet to a point of curvature;
2. Along a curve turning to the left having a center angle of 01° 28' 24", a radius of 9,863.43 feet, a chord bearing of S 31° 57' 56" E, a chord distance of 253.61 feet for a arc distance of 253.62 feet to a point of non-tangency at land now or formerly of Atlantic Richfield Company (AP 109 Block 1 Lot 3);

Thence S 57° 55' 10" W, bounded southeasterly by said land of the Atlantic Richfield Company (AP 109 Block 1 Lot 3), a distance of 8.41 feet to the waters of the Providence River.

Thence northerly approximately 1,390 feet along the mean high water line of the Providence River, said water line being represented by the following nine (9) course closing line:

1. N 57° 02' 39" W, a distance of 107.79 feet;
2. S 65° 57' 29" W, a distance of 88.30 feet;
3. N 70° 10' 36" W, a distance of 394.00 feet;
4. S 84° 47' 45" W, a distance of 103.65 feet;
5. N 19° 04' 14" E, a distance of 127.11 feet;
6. N 25° 15' 48" E, a distance of 124.41 feet;
7. N 34° 30' 00" E, a distance of 142.48 feet;
8. N 62° 25' 19" E, a distance of 132.65 feet;
9. S 38° 56' 29" E, a distance of 124.45 feet to the point of beginning.

The above described parcel contains 174,992 Square Feet. (4.02 Acres), more or less

Z:\DEMAIN\Projects\0717-062 Kettle Point- VMP\Reports & Calculations\Survey\Remed Areas 2 3\0717-062-ENVR-A01-MTBN-INHS.docx

EXHIBIT B

**Post-Remediation Soil Management Plan
Kettle Point
4 Kettle Point Avenue
Plat 109, Block 1, Lot 1
East Providence, Rhode Island
RIDEM Case No. 2000-064**

This Soil Management Plan (SMP) has been prepared to establish procedures that will be followed should future construction/maintenance activities at a portion of 4 Kettle Point Avenue (Plat 109, Block 1, Lot 1) in East Providence, Rhode Island (the "Site") require the need to manage soils excavated from the subsurface or when existing site surfaces / Department approved engineered controls (asphalt, concrete, landscaping and/or foundations) are disturbed. The plan serves to supplement, and will be initiated by, the RIDEM notification requirement established by the Environmental Land Use Restriction (ELUR) for the property.

Background

The Property, located at a portion of 4 Kettle Point Avenue (Plat 109, Block 1, Lot 1) in East Providence, Rhode Island (identified by SAGE as Area-1), was formerly utilized as a bulk petroleum product storage and distribution terminal from the 1920's until 1984. Historically, Area 1 operations consisted of the storage and handling of gasoline and No. 2 fuel oils, as well as the filling and offloading of fuel barges from the Providence River. There are currently no structures at the Site. A portion of the Site is developed with a former road and storm water control system along the central portion of the Site. The remainder of the Site is undeveloped and overgrown with various indigenous vegetation, and bedrock outcroppings. A pier formerly utilized to off-load barges was recently repaired for future recreational use. The property was found to contain total petroleum hydrocarbons (TPH), benzene, total xylenes, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, chrysene, dibenzo(a,h)anthracene, indeno(1,2,3-cd)pyrene, and light non-aqueous phase liquid (LNAPL) during a site investigation performed at the property. More recently, the site has been remediated through a combination of the removal, treatment and reinternment of soils impacted with petroleum hydrocarbons, installation of culvert collection wells, the removal of surficial oil or tar materials off of bedrock, and the installation of post remedial monitoring wells and has been developed with an open space, vegetated area. The Department approved remedy included a combination of the removal, treatment and reinternment of soils impacted with petroleum hydrocarbons, installation of culvert collection wells, the removal of surficial oil or tar materials off of bedrock, and the installation of post remedial monitoring wells. The approved remedy also included regulated site soils being covered with Department approved engineered controls, consisting of two (2) feet of clean fill or one (1) foot of clean fill over a geofabric in order to prevent direct exposure to regulated soils and/or infiltration through soils which exceed the Department's Method 1 (GA or GB) Leachability Criteria.

Applicable Area

This SMP and affiliated ELUR, which limits activity at the property to restricted Residential use, pertains to the Property. See attached figure included as Figure 1.

Soil Management

The risk of direct exposure of humans to contaminated soil is the primary concern at the site. Individuals engaged in activities at the site may be exposed through incidental ingestion, dermal contact, or inhalation of vapors or entrained soil particles if proper precautions are not taken. Therefore, the following procedures will be followed to minimize or eliminate the potential of exposure.

During site work, the appropriate precautions will be taken to restrict unauthorized access to the property.

During all site/earth work, dust suppression (i.e. watering, etc.) techniques must be employed at all times. If it is anticipated due to the nature of the contaminants of concern that odors may be generated during site activities, air monitoring and means to control odors will be utilized, as appropriate (i.e. odor-suppressing foam, etc.). Best management practices also include the managing and minimizing of the migration and/or surface run-off of hazardous materials at the site during the remedial and/or future site surface disturbances. This should be achieved via the installation of hay bales, silt fencing and any other appropriate measures during the entire duration of site/earth work.

In the event that an unexpected observation or situation arises during site work, such activities will immediately stop. Workers will not attempt to handle the situation themselves but will contact the appropriate authority for further direction.

In the event that certain soils on site were not previously characterized, these soils are presumed to be regulated until such time that it is demonstrated to the Department, through sampling and laboratory analysis that they are not regulated. (For example, presumptive remedies or locations of previously inaccessible soil.)

If excess soil is generated / excavated from the Property, the soil is to remain on-site for analytical testing, to be performed by an environmental professional, in order to determine the appropriate disposal and/or management options. The soil must be placed on and covered with a minimum of 6-mil polyethylene/plastic sheeting during the entire duration of its staging and secured with appropriate controls to limit the loss of the cover and protect against storm-water and / or wind erosion (i.e. hay bales, silt fencing, rocks, etc.).

Excavated soils will be staged and temporarily stored in a designated area of the property. Within reason, the storage location will be selected to limit the unauthorized access to the materials (i.e., away from public roadways/walkways). No regulated soil will be stockpiled on-site for greater than 60 days without prior Department approval.

In the event that stockpiled soils pose a risk or threat of leaching hazardous materials, a proper leak-proof container (i.e. drum or lined roll-off) or secondary containment will be utilized.

Soils excavated from the site may not be re-used as fill on residential property. Excavated fill material shall not be re-used as fill on commercial or industrial properties unless it meets the Department's Method 1 Residential Direct Exposure Criteria for all constituents listed in Table 1 of the Rules and Regulations for the Investigation and Remediation of Hazardous Material

Releases (Remediation Regulations). Soil must be sampled and analyzed, by a qualified environmental professional, at a frequency of one sample per 500 tons for all constituents. Copies of the laboratory analysis results shall be maintained by the site owner and included in the annual inspection report for the site, or the closure report if applicable. In the event that the soil does not meet any of these criteria, the material must be properly managed and disposed of offsite at a licensed facility.

Site soils, which are to be disposed of off-site, must be done so at a licensed facility in accordance with all local, state, and federal laws. Copies of the material shipping records associated with the disposal of the material shall be maintained by the site owner and included in the annual inspection report for the site.

Best soil management practices should be employed at all times and regulated soils should be segregated into separate piles (or cells or containers) as appropriate based upon the results of analytical testing, when multiple reuse options are planned (i.e. reuse on-site, reuse at a Department approved Industrial/Commercial property, or disposal at a Department approved licensed facility).

All non-disposable equipment used during the soil disturbance activities will be properly decontaminated as appropriate prior to removal from the site. All disposable equipment used during the soil disturbance activities will be properly containerized and disposed of following completion of the work. All vehicles utilized during the work shall be properly decontaminated as appropriate prior to leaving the site.

At the completion of site work, all exposed soils are required to be recapped with Department approved engineered controls (2 ft of clean fill or equivalent: building foundations, 4 inches of pavement/concrete underlain with 6 inches of clean fill, and/or 1 foot of clean fill underlain with a geotextile liner) consistent or better than the site surface conditions prior to the work that took place. These measures must also be consistent with the Department approved ELUR recorded on the property.

Any clean fill material brought on site is required to meet the Department's Method 1 Residential Direct Exposure Criteria or be designated by an Environmental Professional as Non-Jurisdictional under the Remediation Regulations. All clean fill, including sub-grade material and loam, imported to the site must be sampled prior to delivery and placement. Laboratory analytical results must be submitted via fax. Clean fill and loam must be sampled for arsenic at a frequency of one sample per 500 cubic yards. One-quarter of the total number of compliance samples of clean fill and loam will be sampled for VOCs, Total Metals (RCRA 13), and TPH. All soil that is to be utilized onsite must meet the Residential Direct Exposure Criteria (Res DEC) or be certified to be non-jurisdictional. The Annual Inspection Report for the site, or Closure Report if applicable, should include either analytical sampling results from the fill demonstrating compliance or alternatively include written certification by an Environmental Professional that the fill is not jurisdictional.

Engineered Controls installed at the property included the encapsulation of regulated site soils with a minimum of two (2) feet of clean soil. The encapsulated area is depicted on the Post-Construction Capping Plan/As-Built attached hereto as Figure 2.

Worker Health and Safety

To ensure the health and safety of on-site workers, persons involved in the excavation and handling of the material on site are required to wear a minimum of Level D personal protection equipment, including gloves, work boots and eye protection. Workers are also required to wash their hands with soap and water prior to eating, drinking, smoking, or leaving the site.

Department Approval

In accordance with Section A iii of the ELUR, no soil at the property is to be disturbed in any manner without prior written permission of the Department's Office of Land Revitalization & Sustainable Materials Management, except for minor inspections, maintenance, and landscaping activities that do not disturb the contaminated soil at the Site. As part of the notification process, the site owner shall provide a brief written description of the anticipated site activity involving soil excavation. The notification should be submitted to the Department no later than 60 days prior to the proposed initiation of the start of site activities. The description shall include an estimate of the volume of soil to be excavated, a list of the known and anticipated contaminants of concern, a site figure clearly identifying the proposed areas to be excavated/disturbed, the duration of the project and the proposed disposal location of the soil.

Following written Notification, the Department will determine the post closure reporting requirements. Significant disturbances of regulated soil will require submission of a Closure Report for Department review and approval documenting that the activities were performed in accordance with this SMP and the Department approved ELUR. Minor disturbances of regulated soil may be documented through the annual certification submitted in accordance with Section H (Inspection & Non-Compliance) of the Department approved ELUR. The Department will also make a determination regarding the necessity of performing Public Notice to abutting property owners/tenants concerning the proposed activities. Work associated with the Notification will not commence until written Department approval has been issued. Once Department approval has been issued, the Department will be notified a minimum of two (2) days prior to the start of activities at the site. Shall any significant alterations to the Department approved plan be necessary, a written description of the proposed deviation, will be submitted to the Department for review and approval prior to initiating such changes.



Legend
 --- Appropriate ELUR
 --- Boundary

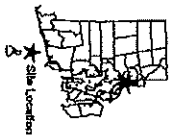
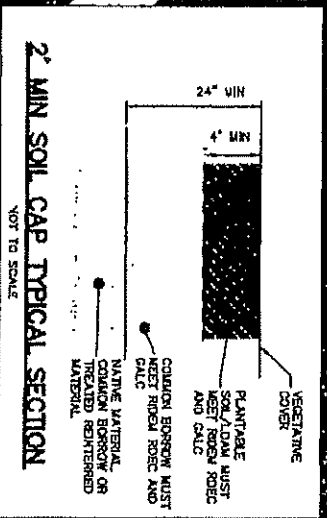
0 100 200 Feet
 Data Provided by GIS
 Outlines may be provided by customer

Area 1
ELUR Boundary
 Kettle Point
 East Providence
 Rhode Island

Date: 05/26/2020
 Job #: R051B
 Created By: ALM

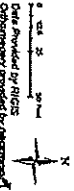
Figure 1





Legend

- ▬ Partially Ravelled Core Mat
- ▬ Approximate Area of Excavation
- ⊕ Approximate Area of Excavation to Be Backfilled
- ⊕ SSB/Vegetation Cap
- ⊕ No CAP
- ⊕ Clay/Gravel/Stone/Gravel
- ⊕ Wall
- ⊕ Separate Paved Oil Wood Intermittently
- ⊕ 25' Collector Walls



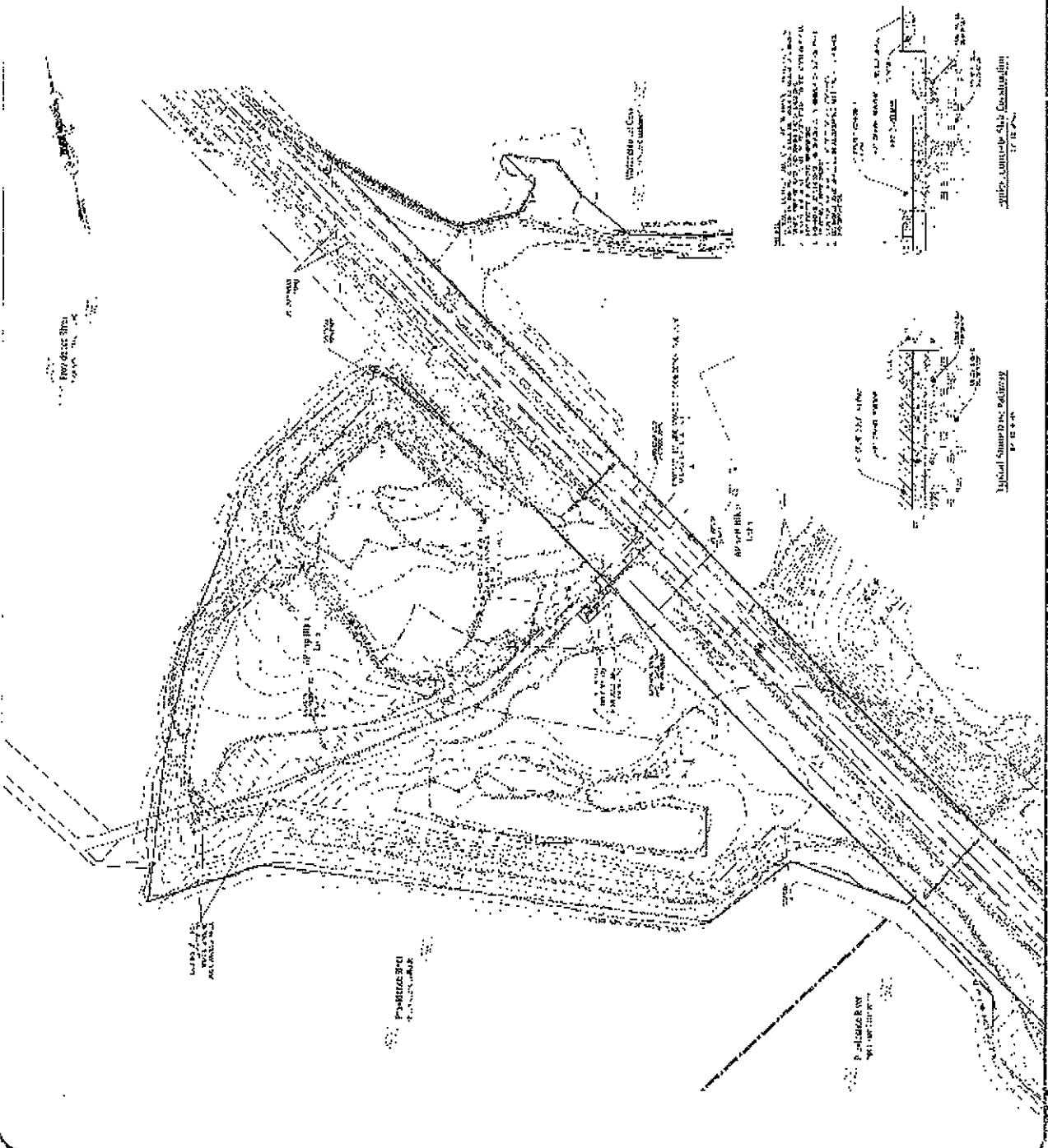
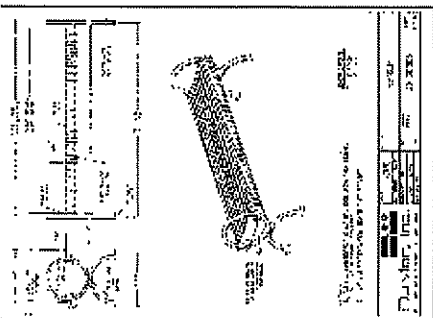
Date provided by RIGIS
Orthorectified/ provided by Intermap

Area 1
As-Built
Capping Plan
Kettle Point
East Providence
Rhode Island

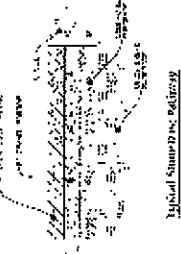
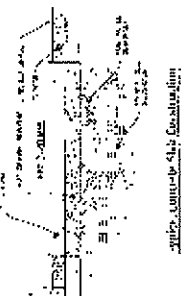
Date: 05/26/2020
Job #: R051E
Created By: ALM

Figure 2





Notes:
 1. All dimensions are in feet and inches.
 2. All elevations are in feet above sea level.
 3. All bearings are in degrees, minutes, and seconds.
 4. All distances are in feet.



Proposed Site
 1/1/2024

Proposed Site
 1/1/2024

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

RESOLUTION NO.

RESOLUTION PROPOSING AN AMENDMENT TO THE CITY CHARTER
REGARDING CHARTER COMMISSIONS

WHEREAS, Article XIII, §8 of the Rhode Island Constitution allows for the legislative body of any city or town to propose amendments to that city or town's charter, which said proposed amendments shall then be submitted for approval to the qualified electors of the city or town at a general or special election;

WHEREAS, The East Providence City Council has reviewed and approved the below language and hereby wishes to propose the below amendment to the East Providence City Charter to qualified electors of the City of East Providence;

WHEREAS, The qualified electors of the City of East Providence shall have the opportunity to vote to ratify the proposed amendment at the 2020 general election;

WHEREAS, The East Providence City Council wishes that the proposed amendment and the effects it will have on the East Providence City Charter be clearly and readily understandable by the simple language on the ballot;

WHEREAS, The East Providence City Council has approved the following ballot questions which sets forth the effects the proposed amendment will have on the East Providence City Charter;

WHEREFORE, It is hereby resolved that the following ballot question shall be placed on the 2020 City of East Providence General Election Ballot allowing a public referendum of the following amendment to the East Providence City Charter:

Ballot Question #To Be Determined
Charter Commissions

Duly adopted by the East Providence City Council on-July 7, 2020, proposal to amend Article I, "Basic Provisions," by adding thereto Section 4, "Charter Commission."

Shall the East Providence City Charter be amended such that a non-partisan Charter Commission of both elected and appointed members shall be established every eight (8) years?

Proposed Amendment

Sec. 1-4 Charter Commission.

Starting with the 2022 General Election, and the Statewide General Election every eight (8) years thereafter, there shall be a non-partisan election of a Charter Commission. Said Charter Commission shall consist of nine (9) members, two members (2) shall be Mayoral appointments appointed by the Mayor, two (2) shall be appointed by the City Council City Council appointments, and five (5) shall be elected, one (1) elected member from each City Ward who shall be a resident of each ward and one (1) elected at-large member. The Charter Commission shall choose the Chairperson of the Charter Commission by simple majority vote of the Commission.

If any member appointed by the Mayor or City Council resigns, dies, or is otherwise ineligible to complete the term of office, their replacement shall be made by the original appointing authority. If fewer than five (5) members are elected or if the elected member resigns, dies, or is otherwise ineligible to complete the term of office, the vacant elected seats shall be appointed by majority vote of the City Council.

The ~~duty of the~~ Charter Commission shall ~~be to~~ meet at least monthly. ~~Within and within~~ nine (9) months from the date of their ~~election or appointment~~, the Charter Commission ~~shall may~~ deliver ~~Charter a series of amendment proposals recommendations to the City Council regarding Charter language, amendments, additions, or removal to the City Council for their consideration.~~ The City Council shall determine, after a public hearing, the number of Charter Amendment proposals to be submitted to the electors of the City at the next state general election ballot questions that are posted on the subsequent Statewide General Election ballot.

Nothing in this Section shall be construed to limit any power of the City Council related to the Home Rule Charter Amendment process granted to it under Article XIII, Section 8 of the Rhode Island Constitution.

∴
This Resolution shall take effect upon passage.

Adopted: _____

Attest:

City Clerk of the City of East Providence, RI

Introduced by: Councilman Mourato, Councilwoman Sousa, Councilman Cahoon

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

RESOLUTION NO.

**RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
NET METERING CREDIT SALE AGREEMENT WITH GREEN DEVELOPMENT LLC**

WHEREAS, the City of East Providence and Green Development LLC have been negotiating a net metering credit sale agreement for several months; and

WHEREAS, the City is desirous of lowering its electric energy costs and to promote the use and development of renewal energy within the City and the State of Rhode Island, and

WHEREAS, the agreement contemplates a sub-lease of a portion of the project by the City of East Providence which can only be entered into with City Council approval; and

WHEREAS, Green Energy Development LLC desires to sell and deliver to the City of East Providence, and the City of East Providence desires to purchase and receive from Green Development LLC, the designated portion of the Net Metering Credits generated by the Renewable Energy Facility;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of East Providence hereby authorizes the Mayor of the City of East Providence to enter into a Net Metering Credit Sale agreement in substantial form as set forth in the attached **Exhibit A** and authorizes the Mayor, with the approved of the Law Department, to execute any and all documents, including but not limited to any sub-leases, necessary to perfect and carryout all the provision of the Net Metering Credit Sales Agreement for the term stated therein.

Adopted by the City Council: _____

Attest:

City Clerk of East Providence, Rhode Island
Sponsored by: Councilwoman Sousa

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

AN ORDINANCE IN AMENDMENT OF CHAPTER 2 OF THE
REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE,
RHODE ISLAND, 1998, AS AMENDED, ENTITLED "ADMINISTRATION"

THE COUNCIL OF THE CITY OF EAST PROVIDENCE HEREBY ORDAINS:

SECTION I. Chapter 2 of the Revised Ordinances of the City of East Providence, Rhode Island, 1998, as amended, entitled "Administration" is amended by adding thereto the following:

Article VII. Budget Ordinance

Sec. 2-283. Timelines for Presentation and Passage of the Budget Ordinance.

- A. The Mayor shall submit to the Council a budget and explanatory message to the Council at least seventy (70) days prior to the beginning of the next fiscal year.
- B. The City Council shall take a final action on the budget ordinance at least fourteen (14) days prior to the end of the fiscal year.
 1. A "final action" is defined as a vote by a quorum of the Council at a duly noticed public meeting.
- C. The Council shall be furnished with a final updated copy of the certified budget within thirty (30) days passage of the budget ordinance.

Sec. 2-284. Financial Review Committee.

- A. There shall be a Financial Review Committee whose duty shall be to review the financial records, budgetary concerns, and other issues of fiscal import.
 1. The Financial Review Committee shall take no actions that are binding upon the City.
 2. The Financial Review Committee shall have the authority to seek the expertise of consultants
 - i. Any expenditure of funds related thereto must be approved by the Mayor or the Council
 3. The Financial Review Committee may make requests of the Mayor or the Council for information, including but not limited to requests that the Mayor or the Council make certain personnel available to give presentations regarding fiscal issues.
- B. The Financial Review Committee shall meet at least quarterly.
- C. The Financial Review Committee shall publicly issue a quarterly update regarding status of capital projects and requests for capital funding.
- D. The Financial Review Committee shall be comprised of the following:
 1. The Mayor or the Mayor's Designee
 2. The Council President or the Council President's Designee
 3. The Finance Director

RECEIVED

4. The Planning Director

Sec. 2-285. Annual Capital Projects Presentation.

2020 JUN 12 PM 12:29

A. The Financial Review Committee shall make an annual presentation to the Council at least ninety (90) days prior to the end of the fiscal year. During said presentation, the Financial Review Committee shall:

EAST PROVIDENCE, RI
OFFICE OF CITY CLERK

1. Provide a status report as to all Capital Projects
2. For any completed Capital Projects, present the Council with a Resolution that closes out said completed project, de-authorizes any remaining appropriations, and appropriately transfers all remaining unspent funds.
3. Make proposals as to future Capital Projects.

SECTION II. This ordinance shall take effect upon its second passage and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Given first passage _____ and referred to _____ at 7:30 p.m. for a hearing and consideration of final passage; and adopted

Attest:

City Clerk of East Providence, Rhode Island

Requested by: Councilman Cahoon, Councilman Mourato, Councilwoman Sousa

IN CITY COUNCIL

FIRST READING
READ AND PASSED

CLERK

**IN CITY
COUNCIL**

FINAL READING
READ AND PASSED

PRESIDENT

VETO
I HEREBY DISAPPROVE AND VETO

MAYOR

DATE: 6-12-2020

EAST PROVIDENCE, RI
OFFICE OF CITY CLERK

2020 MAY 29 PM 3:21

RECEIVED

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

CHAPTER

AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE
REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE,
RHODE ISLAND, 1998, AS AMENDED, ENTITLED
"VEHICLES AND TRAFFIC"

THE COUNCIL OF THE CITY OF EAST PROVIDENCE HEREBY ORDAINS:

SECTION I. Subsection (b) of Sec. 18-269 entitled "Stop and yield intersections designated; when stops required" is amended by adding thereto the following:

Westwood Avenue (westbound and eastbound traffic) at Hope Street

Hope Street (southbound traffic) at Westwood Avenue

SECTION II. This ordinance shall take effect upon second passage and all ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Given first passage and referred to at 6:00 p.m. for a hearing and
consideration of final passage; and adopted

Attest:

City Clerk of the City of East Providence, RI

Introduced by: Council President Britto

EAST PROVIDENCE RI
MAY 29 2008

2008 MAY 29 PM 3:21

RECORDED

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

CHAPTER

AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE, RHODE ISLAND, 1998, AS AMENDED, ENTITLED "VEHICLES AND TRAFFIC"

THE COUNCIL OF THE CITY OF EAST PROVIDENCE HEREBY ORDAINS:

SECTION I. Section 18-247 entitled "Designation of one-way streets" of Article VIII entitled "One-Way Streets" of Chapter 18 entitled "Vehicles and Traffic" is amended by modifying the Rice Avenue one-way designation as follows:

Rice Avenue (eastbound) from Pawtucket Avenue to ~~Dover Avenue~~ a point 90 feet east

SECTION II. This ordinance shall take effect upon second passage and all ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Given first passage and referred to at 6:00 p.m. for a hearing and consideration of final passage; and adopted

Attest:

City Clerk of the City of East Providence, Rhode Island

Requested by: Councilman Cahoon

RECEIVED
2020 MAY 29 PM 3:21
EAST PROVIDENCE
CITY CLERK'S OFFICE

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

CHAPTER

AN ORDINANCE IN AMENDMENT OF CHAPTER 3 OF THE
REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE,
RHODE ISLAND, 1998, AS AMENDED, ENTITLED "ANIMALS"

THE COUNCIL OF THE CITY OF EAST PROVIDENCE HEREBY ORDAINS:

SECTION I. Article II entitled "Dogs" of Chapter 3 of the Revised Ordinances of the City of East Providence, Rhode Island, 1998, as amended, entitled "Animals" is amended by adding thereto the following:

Sec. 3-1. Definitions.

Dog Park means any park, or section of a park, designated by the Director of Department of Public Works, where the definition of "restraint" is relaxed to mean when a dog is under verbal control of its owner, and where dogs may be allowed to run freely without being leashed.

Sec. 3-42. Access to East Providence Dog Park for licensed dogs; permit and rules

- (a) The Director of Department of Public Works shall have the power to designate any City park, or a portion thereof, as a dog park.
- (b) Every resident of the City of East Providence who is the owner or keeper of a currently licensed dog, pursuant to section 3-35, shall be permitted to use any designated dog park. provided that the resident obtains:
 - 1) An annual dog park permit ~~or tag~~, to be issued by the City Clerk, at no additional fee, upon the granting of a dog license from the City Clerk pursuant to Sec. 3-35.
 - 2) Only one dog park permit shall be issued for each dog license issued pursuant to Sec. 3-35 and the dog permit ~~or tag~~ shall not be transferred to any other dog.
 - 3) ~~The dog park permit or tag shall be affixed to the collar of the dog at all times when the dog is in the dog park.~~
- (c) The Animal Control Officer (ACO) shall promulgate a set of rules and regulations governing access and use of any dog park to protect the health and safety of patrons and dogs within the park. The rules and regulations shall include the following:
 - 1) All dogs within the park must be collared, with City of East Providence Dog License attached, at all times.
 - 2) Every dog must be attended by its owner or keeper at all times.
 - 3) No dog previously adjudicated as dangerous, aggressive, or vicious shall be permitted within the park.

- (d) Pursuant to Sec. 3-13, the ACO and/or officer of the East Providence Police Department may issue a citation for a violation of this ordinance including a temporary order prohibiting further use of the dog park by a violator subject to a hearing in municipal court.
- (e) Any owner of a dog in violation of this section shall be fined pursuant to Sec. 3-16 (a) of this chapter, and shall be prohibited from use of any City dog park until such time as any outstanding fines are paid and/or a proper license is obtained.

SECTION II. This ordinance shall take effect upon its second passage and all ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Given first passage _____ and referred to _____ at 6:00 p.m. for a hearing and consideration of final passage; and adopted

Attest:

City Clerk of East Providence, Rhode Island

Introduced by: Council President Britto

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CITY OF EAST PROVIDENCE

CHAPTER

AN ORDINANCE IN AMENDMENT OF CHAPTER 18 OF THE
REVISED ORDINANCES OF THE CITY OF EAST PROVIDENCE,
RHODE ISLAND, 1998, AS AMENDED, ENTITLED
"VEHICLES AND TRAFFIC"

THE COUNCIL OF THE CITY OF EAST PROVIDENCE HEREBY ORDAINS:

SECTION I. Subsection (b) of Sec. 18-269 entitled "Stop and yield intersections designated; when stops required" is amended by adding thereto the following:

Vincent Avenue (eastbound traffic) at Brown Street;
Vincent Avenue (westbound traffic) at Brown Street

SECTION II. This ordinance shall take effect upon second passage and all ordinances and parts of ordinances inconsistent herewith are hereby repealed.

Given first passage and referred to at 7:00 p.m. for a hearing and
consideration of final passage; and adopted

Attest:

City Clerk of the City of East Providence, RI

Introduced by: Councilman Cahoon

EAST PROVIDENCE RI
CITY CLERK

2020 MAY 29 PM 3:21

FILED