

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

NEW MEXICO  
PUBLIC UTILITIES REGULATION  
COMMISSION  
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ORIGINAL SAMPLE FORM NO. 99

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STANDARD SMALL SOLAR REC PURCHASE AGREEMENT FOR THIRD PARTY OWNER  
PARTICIPATION IN PNM'S INTERIM STEP SOLAR REC INCENTIVE PROGRAM

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Standard Small Solar REC Purchase Agreement for Third Party Owner Participation in PNM's Interim Step Solar REC Incentive Program.

**EFFECTIVE**

JUN - 5 2012

REPLACED BY NMPRC  
BY Final Order Case No. 12-00078-UT

Advice Notice No. 449

  
Gerard T. Ortiz  
Executive Director, NM Retail Regulatory Services

GCG#514419

PUBLIC SERVICE COMPANY OF NEW MEXICO  
AGREEMENT NO. \_\_\_\_\_

STANDARD SMALL SOLAR RENEWABLE ENERGY  
CERTIFICATE PURCHASE AGREEMENT FOR  
THIRD-PARTY OWNER PARTICIPATION IN  
PNM'S INTERIM STEP SOLAR REC INCENTIVE PROGRAM

**THIS AGREEMENT** is made and entered into as of the Effective Date, as hereinafter defined, by and among (individually "Party" or collectively "Parties"):

\_\_\_\_\_ ("Customer"),  
\_\_\_\_\_ ("Third-Party Owner")  
and Public Service Company of New Mexico ("PNM").

**WHEREAS**, Customer owns or leases the Premises on which the Small Solar Facility described in Section 1 below is located; and

**WHEREAS**, Third-Party Owner owns and/or operates the Small Solar Facility which is sized no greater than one hundred twenty percent (120%) of the average annual consumption of electricity in kWh<sub>AC</sub> by Customer at the Premises at which the Small Solar Facility is located; and

**WHEREAS**, in accordance with 17.9.572.13.C NMAC, Third-Party Owner is the owner of certain renewable energy certificates associated with the electricity generated by the Small Solar Facility and consumed by Customer on the Premises ("Solar RECs"); and

**WHEREAS**, Third-Party Owner desires to sell and PNM desires to purchase the Solar RECs pursuant to the terms of this Agreement and as provided in PNM Rate 32;

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. **SOLAR FACILITY.** Customer owns or leases the Premises on which the following solar photovoltaic ("PV") or solar thermal electric facility rated no larger than 10kW<sub>AC</sub> (the "Small Solar Facility") is located. The Small Solar Facility is associated with PNM electric service account numbers:  
 \_\_\_\_\_ (" Electric Service Account"), and  
 \_\_\_\_\_ ("REC Payment Account"), and is  
 interconnected to PNM's electric distribution system pursuant to Interconnection Agreement No. \_\_\_\_\_ ("Interconnection Agreement"),  
 effective on \_\_\_\_\_ :

Solar Facility address: \_\_\_\_\_

Rated solar generating capacity: \_\_\_\_\_ (kW<sub>DC</sub> STC)

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“kW<sub>DC</sub> STC” is defined as the rated total capacity of the installed panels or collector at their DC output.

“Premises” is defined as the building, structure, or facility to which electricity is being or is to be furnished by the Solar Facility; two or more buildings, structures, or facilities located on one tract or contiguous tracts of land that are utilized by one Customer for residential, commercial, industrial, institutional, or governmental purposes constitutes one Premises, except that any such building, structure, or facility shall not, together with any other building, structure, or facility, constitute one Premises if the electric service to it is separately metered and the charges for such service are calculated independently of charges for service to any other building, structure, or facility.

2. OWNER OF SMALL SOLAR FACILITY. Customer and Third-Party Owner hereby certify that Third-Party Owner is the owner or long-term lessee of the Small Solar Facility. Third-Party Owner’s contact information is:

Name: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
REC Payment Account No. \_\_\_\_\_

3. PURCHASE AND DELIVERY OF SMALL SOLAR RECs. PNM will purchase from Third-Party Owner, and Third-Party Owner will deliver to PNM, the Solar RECs that are generated by the Solar Facility each month on the Premises as metered by PNM. The applicable rate is \_\_\_\_\_ cents per kWh as set forth by PNM in its Notice of Completion of Application and REC Reservation. The payment for the Solar RECs will be calculated by multiplying the applicable rate by the number of kWh of energy generated by the Solar Facility on the Premises as measured by a PNM meter as further described in Section 5 of this Agreement.

Solar REC purchase payments that total in excess of \$20 will be paid to Third-Party Owner on a monthly basis. If the amount due for the Solar RECs is less than \$20 the amount will be carried forward to the following month until such time as the balance due exceeds \$20, at which time the total balance due will be paid directly to Third-Party Owner.

Payments by PNM to Third-Party Owner for Solar RECs will commence subsequent to the execution of a Standard Interconnection Agreement, PNM’s receipt and execution of this Agreement, and one month after the billing cycle in which the meters on Customer’s Premises are read. Payments for Solar RECs shall be made within thirty (30) days of the date the meters on the Premises are read by PNM. Purchase of Solar RECs produced by generating capacity added to the Small Solar System after execution of this Agreement will be made in accordance with Section 4 below.

4. **MODIFICATION OF GENERATING FACILITIES.** The rated capacity of the Solar Facility shall not be increased without prior approval of PNM and shall not be increased to a capacity greater than 10 kW<sub>AC</sub> in any event. PNM will purchase Solar RECs generated by a modified Solar Facility only upon execution of a new REC Purchase Agreement, at the applicable rate as of the effective date of such agreement.
5. **METERING.** Third-Party Owner shall provide and install, at its own expense, a meter socket to accommodate a PNM meter that measures only the total output of the Small Solar Facility inverters. This meter socket shall be installed in accordance with PNM's standard meter specifications and shall be in addition to the PNM meter socket used for the normal billing meter. Unless otherwise approved by PNM, this second meter socket shall be physically located next to the Customer/Third-Party Owner-provided meter socket for the PNM electric billing meter. PNM shall furnish and install a standard kilowatt-hour meter for the purpose of measuring the total output of the Small Solar Facility inverter. In accordance with 17.9.570.14 NMAC, if provision of the net metering option requires metering equipment and related facilities that are more costly than would otherwise be necessary absent the requirement for net metering, PNM shall not incur, and shall not be liable for, any incremental costs associated with installing the more costly metering equipment and facilities.

Attached hereto and incorporated herein as Appendix A is the application for interconnection and sale of Solar RECs, including a one-line diagram showing the Small Solar Facility, the interconnection equipment, breaker panel(s), PNM required disconnect switches, PNM meters, PNM transformers and other required information. Customer and Third-Party Owner represent and warrant, jointly and severally, that the information contained in Appendix A is accurate as of the date of this Agreement.

6. **TERM OF AGREEMENT.** This Agreement shall begin on the Effective Date and shall end on December 31, 2020, unless earlier terminated as provided herein.
7. **TERMINATION.** This Agreement shall automatically terminate (a) upon execution of a new REC Purchase Agreement among the Parties; (b) sixty (60) days after Customer closes the Electric Service Account unless Customer assigns this Agreement and the Interconnection Agreement as provided herein; or (c) upon termination of the Interconnection Agreement.

This Agreement may be terminated by a non-breaching Party if a material breach occurs with respect to any Party at any time during the term of this Agreement. A non-breaching Party may (a) terminate this Agreement upon five (5) business days' notice to the breaching Party with a copy to the other non-breaching Party, and (b) exercise such other remedies as may be available at law or in equity or as otherwise provided in this Agreement.

As used in this Agreement, "material breach" means, as to the breaching Party (a) failure to make, when due, any payment required under this Agreement if such failure is not subject to offset and is not remedied within ten (10) business days after written notice of such failure is given to the breaching Party; or (b) any representation or

warranty made by the breaching Party in this Agreement shall prove to have been false or misleading in any material respect when made; or (c) failure to perform any covenant or agreement set forth in this Agreement (other than its obligations to make any payment or obligations that are otherwise specifically covered as a separate material breach), and such failure is not cured by the breaching Party within thirty (30) days of written notice from any non-breaching Party, or, if such breach is not susceptible to cure within thirty (30) days, if the breaching Party has not commenced to cure the breach within thirty (30) days and/or fails to proceed with reasonable diligence to cure such breach; under no circumstances, however, shall the total cure period exceed ninety (90) day; or (d) making an assignment or any general arrangement for the benefit of creditors; or (e) filing a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause under any bankruptcy or similar law for the protection of creditors, or having such petition filed against it and such proceeding remains undismissed for thirty (30) days; or (f) otherwise becoming bankrupt or insolvent (however evidenced), or (g) being unable to pay its debts as they become due.

If this Agreement is terminated for any reason, the final Small Solar REC payment will be calculated based on PNM's last meter readings at the Premises and Solar Facility. The Third-Party Owner will be paid for RECs up to the amount generated at the Premises through the date of the last meter reading, except that PNM may offset such payment against any amounts owed to PNM by Third-Party Owner. PNM shall purchase any Excess Energy from Customer at PNM's avoided cost, except that PNM may offset such payment against any amounts owed to PNM by Customer, Payment for any Excess Energy will be calculated and paid directly to Customer within thirty (30) calendar of the last meter reading.

8. TRANSFER OF PREMISES; ASSIGNMENT OF AGREEMENT. If Customer sells or leases the Premises, Customer may assign this Agreement and the Interconnection Agreement to the new owner or occupant of the Premises upon prior written consent of Third-Party Owner and PNM, which consent shall not be unreasonably withheld or delayed. Such assignments must be made within sixty (60) days of the date the Customer terminates the Electric Service Account. If this Agreement and the Interconnection Agreement are not assigned within the 60-day period, this Agreement terminates.
9. TRANSFER OF SMALL SOLAR FACILITY; ASSIGNMENT OF AGREEMENT. If Third-Party Owner sells the Small Solar Facility, Third-Party Owner may assign this Agreement and the Interconnection Agreement to the new owner of the Small Solar Facility upon prior written consent of Customer and PNM, which consent shall not be unreasonably withheld or delayed. Such assignment must be made within thirty (30) days of the date the Third-Party Owner closes on the sale of the Small Solar Facility. If this Agreement and the Interconnection Agreement are not assigned within the 30-day period, this Agreement terminates.
10. RELOCATION OF SOLAR FACILITY.
  - a. If Third-Party Owner relocates the Solar Facility in its entirety to a different property owned or leased by Customer within PNM's service area, Third-Party

Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; and (c) complete the interconnection process. The Parties shall amend this Agreement to reflect the new Premises, the new Electric Service Account number and the new REC Payment Account number. The Parties understand and agree that the rated solar generation of the Solar Facility shall not be modified, and the term of this Agreement shall not be extended, on account of the relocation.

- b. If Third-Party Owner relocates the Solar Facility in its entirety to a different property within PNM's service area, and such property is not owned by or leased by Customer, this Agreement shall terminate upon disconnection of the Solar Facility from PNM's system, unless earlier terminated as set forth in this Agreement. Third-Party Owner shall: (a) notify PNM of such relocation within 30 days before the Solar Facility is relocated; (b) submit a new Application for Interconnection for the new Premises; (c) complete the interconnection process; and (d) enter into a new REC purchase agreement at the applicable rate as of the effective date of such agreement.

11. **INTERRUPTION OR REDUCTION OF DELIVERIES; DISCONTINUANCE OF SERVICE.** PNM shall not be obligated to pay for a reduction in the number of Solar RECs caused by interruptions of utility service or by utility-required Small Solar Facility shutdowns as specified in the executed Standard Interconnection Agreement or due to actions caused by Customer or Third-Party Owner. If service to the Electric Service Account is discontinued for any time period for any reason permitted under applicable NMPRC rules: (a) PNM shall have no liability for and shall not pay Customer for any actual or potential generation that may or could have occurred while such service was discontinued; and (b) PNM shall have no liability for and shall not pay Third-Party Owner for any RECs associated with any actual or potential generation that may or could have occurred while service to the Electric Service Account is discontinued.

12. **ACCESS TO PREMISES.** PNM may enter Customer's Premises at all reasonable hours to read or test meters and for access to the Solar Facility.

13. **NO WARRANTY OR GUARANTEE.** The Parties agree that the sale and purchase of the Solar RECs is not an endorsement, confirmation, warranty, guarantee or representation concerning the safety, operating characteristics, durability or reliability of the Small Solar Facility. No Party assumes the duty of inspecting any other Party's lines, wiring, apparatus, machinery or appliances, or any part thereof (collectively, "Associated Equipment") and shall not be responsible to any other Party therefor. PNM further disclaims any obligation to inspect, and any liability for, Associated Equipment owned by Third-Party Owner. Third-Party Owner and Customer agree to install and maintain, or to have installed and maintained, in a safe and efficient manner, and in accordance with good electrical practices and all applicable regulations, all of the Associated Equipment connected at the Premises to PNM's electric distribution system.

14. **POTENTIAL TAX LIABILITY.** Third-Party Owner understands that the sale and purchase of the Small Solar RECs may create a tax liability for Third-Party Owner. Third-Party Owner further understands that PNM may issue Internal Revenue Service Form 1099 or other tax form to Third-Party Owner relating to these transactions. By signing this Agreement, Third-Party Owner acknowledges and agrees that Third-Party Owner has the sole responsibility for paying any federal, state or local taxes, including federal income tax, that may be due on amounts received by Third-Party Owner, as a result of transactions under this Agreement. Third-Party Owner hereby indemnifies and defends PNM and Customer, and their respective officers, directors, employees, boards, commission, agents, successors and assigns, from and against any and all such taxes and any and all charges or damages arising out of Third-Party Owner's failure to pay such taxes or any associated penalties.
15. **GOVERNING LAW.** This agreement shall be interpreted, governed, and construed under the laws of the state of New Mexico as if executed and to be performed wholly within the state of New Mexico.
16. **AMENDMENT, MODIFICATIONS OR WAIVER.** Any amendments or modifications to this Agreement shall be in writing and agreed to by the Parties. The failure of any Party at any time or times to require performance of any provision hereof shall in no manner affect the right at a later time to enforce the same. No waiver by any Party of the breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, shall be deemed to be, or construed as, a further or continuing waiver of any such breach or a waiver of the breach of any other term or covenant unless such waiver is in writing.
17. **NOTICES.** Except as expressly agreed in writing among the Parties, any notice, request, approval, consent, instruction, direction or other communication required or permitted under this Agreement shall be in writing and shall be deemed given if personally delivered, delivered by reputable overnight courier or sent by First Class Mail, postage prepaid, and shall be deemed received, if personally delivered, or delivered by courier, upon delivery, and if mailed, on the third day following deposit in the U. S. mail.

If to PNM:

Attention: Customer Owned Generation Programs  
Public Service Company of New Mexico  
Alvarado Square  
Albuquerque, NM 87158-0510

If to Customer:

Customer Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_

If to Third-Party Owner:

Third-Party Owner Name: \_\_\_\_\_  
Contact Name: \_\_\_\_\_

Agreement No. \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

All notices under this Agreement shall refer to the Solar Facility address set forth in Section 1 of this Agreement.

18. ASSIGNMENT. Except as otherwise provided in this Section 18, no Party shall assign this Agreement without the prior written consent of the other Parties, which consent shall not be unreasonably conditioned, delayed or withheld.

18.1 Any Party may assign any of its rights, duties, or obligations under this Agreement to any Affiliate (which shall include a successor entity in a merger or acquisition transaction) of the assigning Party, provided such assignee (a) has a credit rating that is equal to or greater than the credit rating of the assigning Party's credit rating; (b) has the legal authority and operational ability to satisfy the assigning Party's obligations under this Agreement; and (c) agrees to be bound by the terms and conditions of this Agreement. In the event PNM makes such an assignment, it shall be relieved of all financial responsibility related to this Agreement.

18.2 Third-Party Owner may assign any of its rights, duties or obligations under this Agreement to one or more Affiliates or third parties in connection with a sale-and-leaseback or other debt and/or equity financing transaction to aid in financing of the Small Solar Facility. In connection with such an assignment, Third-Party Owner may pledge its interest in this Agreement, including any rights to payment, as collateral or security for loans or financing against its personal property. Any financing arrangement entered into by Third-Party Owner pursuant to this section will provide that, before or upon the exercise of the secured party's, trustee's, mortgagee's or other third party's assignment rights pursuant to such arrangement, the secured party, trustee, mortgagee or other third party will notify PNM of the date and particulars of any such exercise of assignment right(s).

18.3 Notwithstanding anything to the contrary herein, no assignment by Third-Party Owner or Customer shall be effective until Third-Party Owner or Customer has notified PNM of such assignment and has obtained all applicable consents from PNM. No assignment under this Agreement shall expand a Party's obligations under this Agreement. Any attempted assignment that violates this Section 18 is void and ineffective.

18.4 As used herein, "Affiliate(s)" of a Party means any other Person that, directly or indirectly, controls, is controlled by, or is under common control with such Party and any Person in which a Party has an ownership interest and to which the Party or an Affiliate of the Party provides services. For the purposes of this definition, (a) "control" means the power to direct the management or policies directly or indirectly whether through the ownership of voting securities, by contract, or otherwise; and (b) "Person" means an individual, partnership, corporation, limited liability company, company, business trust, joint stock



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company, trust, un incorporated association, joint venture, government authority or other legally recognized entity of whatever nature.

19. REGULATORY. This Agreement shall at all times be subject to such changes and modifications as shall be required from time to time by any legally constituted regulatory body, including the Commission, having jurisdiction to require such changes and modifications. Notice shall be given in accordance with the Commission's requirements if and when the Commission is requested to take action that could cause a change in terms of this Agreement.
20. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES. Third-Party Owner acknowledges and agrees that the RECs generated from the Small Solar Facility represent all of the environmental attributes associated with the generation of electricity from the Small Solar Facility. Third-Party Owner certifies that the attributes represented by the Small Solar RECs are not being claimed by, delivered, sold and/or transferred to any other entity, in whole or in part. Third-Party Owner represents and warrants that Third-Party Owner has good and marketable title to the Solar RECs and will transfer good and marketable title, free and clear of all claims, liens, security interests and encumbrances of any kind. Customer understands and agrees that Solar REC payments to be made under this Agreement will be made to Third-Party Owner and that Customer has no right, title or interest in or to such Solar REC payments or the RECs generated by the Solar Facility.
21. THIRD PARTY BENEFICIARIES. Except as expressly provided in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third party beneficiary of this Agreement not specifically included herein.
22. ENTIRE AGREEMENT. It is understood and agreed that all representations and agreements among the Parties covering the subject matter hereof are expressed herein and that no other representation of any kind or nature, whether made by the officers or agents of either of the Parties, shall be binding. There shall be no presumption or burden of proof favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.
23. EFFECTIVE DATE. This Agreement is effective as of the last date of execution set forth below.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives. This Agreement is effective as of the last date set forth below.

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CUSTOMER

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_  
e.g., "Homeowner, "Business Owner", etc.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_  
e.g., "Homeowner, "Business Owner", etc.

Date: \_\_\_\_\_

THIRD-PARTY OWNER

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APPENDIX A

APPLICATION FOR THE SMALL SOLAR REC INCENTIVE PROGRAM  
THIRD-PARTY OWNER'S ONE-LINE DIAGRAM AND  
SITE DRAWING SHOWING SMALL SOLAR SYSTEM, METERING AND  
PROTECTION EQUIPMENT