

ENERGY SERVICES AGREEMENT – ENERGY STORAGE

Southeast Surface Water Treatment Plant

This Energy Services Agreement ("Agreement") is made and entered into as of this ____ day of _____ 2020 (or, if later, the latest date of a Party's execution and delivery to the other Party of this Agreement, the "Effective Date"), between FFP BTM SOLAR, LLC, a Delaware limited liability company ("Provider"), and City of Fresno, a California Municipal Corporation ("Purchaser"; and, together with Provider, each, a "Party" and together, the "Parties").

RECITALS

- A. Purchaser desires that Provider install and operate an energy storage system at the Premises (as hereafter defined) for the purpose of providing Energy Services (as hereafter defined), and Provider is willing to have the Installation Work performed by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed;
- B. Provider and Purchaser acknowledged those certain General Terms and Conditions of Energy Services Agreement between FFP BTM Solar, LLC and Purchaser dated as of _____, 2020 ("General Terms and Conditions"), which are incorporated by reference as set forth herein; and
- C. The terms and conditions of this Energy Services Agreement, excluding the General Terms and Conditions incorporated herein, constitute the "Special Conditions" referred to in the General Terms and Conditions.

In consideration of the mutual promises set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. Incorporation of General Terms and Conditions. The General Terms and Conditions are incorporated herein as if set forth in their entirety.
- 2. Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for ten (10) years from the first day of the Billing Period immediately following the Commercial Operation Date (as defined in the General Terms and Conditions), unless and until extended or terminated earlier pursuant to the provisions of this Agreement (the "Initial Term"). After the Initial Term, this Agreement may be renewed for additional annual terms (each, a "Renewal Term") so long as the Agreement(s) for any systems co-located on the Premises remain in effect. At least one hundred and eighty (180) days, but no more than three hundred and sixty-five (365) days, prior to the expiration of the Initial Term or any Renewal Term, Provider shall give written notice to Purchaser of Provider's election to enter into a Renewal Term. Pricing and any Minimum Guaranteed Demand Reduction for such Renewal Term shall be as is mutually

CONFIDENTIAL AND PROPRIETARY

agreed by the Parties at such time. Absent Provider's election of any Renewal Term, this Agreement shall expire on the last day of the Initial Term or any prior Renewal Term, as applicable. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the "Term".

3. Schedules. The following Schedules hereto are hereby incorporated into this Agreement:

Schedule 1	Description of the Premises, System and Scope of Work
Schedule 2	Intentionally Omitted
Schedule 3	Early Termination Fee
Schedule 4	Delivery of Energy Services and Performance Guarantee
Schedule 5	Notice Information
Schedule 6	Site-Specific Information and Requirements
Schedule 7	Specific Items for Scope of Work

4. Privacy. Purchaser acknowledges that the System may collect certain information about Purchaser's electricity usage and the System performance. Such information may be stored and processed in the United States or any other country in which Provider or its third-party service providers, or its or their respective affiliates, subsidiaries, or service providers, maintain facilities. Purchaser consents to any such transfer of information outside of Purchaser's country.

5. Milestone Dates.

5.1 The Guaranteed Construction Start Date is 730 days from Effective Date provided that the Local Electric Utility is prepared to begin its construction on any required utility, (distribution or transmission), upgrades, if any. In the event that the Local Electric Utility is not prepared to commence construction on required upgrades, if any are required, Provider will be allowed a day for day extension to the Guaranteed Construction Start Date, as defined in the General Terms and Conditions between the Parties.

5.2 The Guaranteed Commercial Operation Date is 550 days from Guaranteed Construction Start Date.

6. Energy Services Payment. Purchaser shall pay to Provider a monthly payment (the "Energy Services Payment") for the Energy Services provided by the System during each calendar month of the Term, equal to the following annual payment multiplied by the Energy Storage System Size in kilowatts AC divided by twelve:

CONFIDENTIAL AND PROPRIETARY

Energy Storage System Size (kW AC)	Energy Services Payment (\$/year/kW AC for each Term Year)
2,000	\$62.68

7. Minimum Incentive Level. Purchaser acknowledges that Provider will be applying for the Self Generation Incentive Program ("SGIP") for the System. To the extent that the value of the incentives to be received through SGIP is less than the Minimum Incentive Level in Schedule 1. D, Provider has the right (but not the obligation) to modify the values in Schedules 1, 3 and 4. Within ten (10) Business Days of receiving written notice of modification to Section 6 above and Schedule 1, 3, and 4, Purchaser may terminate this Agreement by sending Provider a written rejection of the modification to such values. If Purchaser accepts the modified values or fails to respond in writing by the first business day after ten (10) Business Days, the modified values in Section 6 and Schedule 1, 3, and 4 shall be deemed to replace the original values.
8. Additional System Uses. Purchaser acknowledges and agrees that during the Term, Provider may, with Purchaser's consent, not to be unreasonably withheld, conditioned or delayed, use the System to provide additional services to third parties, including without limitation an electric utility and/or the electrical grid operator, provided that no such additional use shall in any way alter, reduce or eliminate Provider's obligations under this Agreement.

[Signatures follow on the next page.]

CONFIDENTIAL AND PROPRIETARY

IN WITNESS WHEREOF and in confirmation of their consent to the terms and conditions contained in this Agreement and intending to be legally bound hereby, Provider and Purchaser have executed this Agreement as of the Effective Date.

PROVIDER:
FFP BTM SOLAR, LLC., a Delaware limited liability company

By: 

Name: Go Mizoguchi

Title: President
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

Date: 6/16/2020

By: 

Name: Kristin Frooshani

Title: Secretary
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

Date: 6/17/2020

PURCHASER:
CITY OF FRESNO, a municipal corporation

By: _____

Michael Carbajal, Director
Department of Public Utilities

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  6/17/2020
Jennifer M. Quintanilla Date
Deputy City Attorney

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Date

Deputy

SCHEDULES

I. Schedule 1: Description of the Premises, System and Subsidy

A. <u>Premises</u>	Assessor's Parcel Numbers: 310-083-04T & 310-083-03T
Site diagram attached:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
B. <u>Description of Energy Storage System</u>	"System" means the battery or other technology system and related components to be installed by or for Provider at the Premises.
Energy Storage System Size:	2,000 kW / 3,968 kWh (this is an estimate (and not a guarantee) of the System size; Provider may update the System Size prior to the Commercial Operation Date.
C. <u>Anticipated Subsidy or Rebate</u>	\$0.29/Wh
D. <u>Minimum Incentive Level</u>	\$0.29/Wh

II. Schedule 2 – Intentionally Omitted.

III. Schedule 3 – Early Termination Fee

The Early Termination Fee with respect to the System under this Agreement shall be calculated in accordance with the following:

Early Termination Fee (\$) = Applicable \$/Wac value (from tables below) * Energy Storage System Size (set in Schedule 1) * 1000 as indicated in column 1b and 2b

Early Termination Occurs in Year:	Column 1a Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wac including costs of removal)***	Column 1b Expected Termination Fee based on System Size** / ***
1*	\$1.97	\$3,949,653
2	\$1.42	\$2,841,356
3	\$1.30	\$2,609,554
4	\$1.19	\$2,370,587
5	\$1.06	\$2,123,364

CONFIDENTIAL AND PROPRIETARY

6	\$0.93	\$1,867,495
7	\$0.91	\$1,819,742
8	\$0.89	\$1,776,488
9	\$0.86	\$1,729,955
10	\$0.84	\$1,680,069

Purchase Date Occurs on the 1st day following: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2a Early Termination Fee where Purchaser takes Title to the System (\$/Wac, does <u>not</u> include costs of removal)***	Column 2b Expected Termination Fee based on System Size** / ***
	--	
	--	
	--	
	--	
5 th Anniversary	\$0.43	\$867,495
6 th Anniversary	\$0.41	\$819,742
7 th Anniversary	\$0.39	\$776,488
8 th Anniversary	\$0.36	\$729,955
9 th Anniversary	\$0.34	\$680,069
Thereafter	Fair Market Value	Fair Market Value

At Expiration (the end of the Initial Term), the amount in Column 1 shall be deemed to be zero (0).

*Includes Early Termination prior to the Commercial Operation Date.

**Based on System Size as of the Effective Date. System Size (and therefore Columns 1b and 2b will change upon System Size change).

*** The Early Termination Fee for Column 1 shall be calculated in accordance with and subject to Sections 2.2(a), 11.2(b), and 11.3 of the General Conditions, as applicable. The Early Termination Fee for Column 2 shall be calculated in accordance with and subject to Section 2.3 of the General Conditions.

IV. Schedule 4 – Delivery of Energy Services

4.1 Energy Services. Provider shall operate the System to, when feasible, (i) reduce Purchaser’s peak electric energy demand from the Local Electric Utility (“Demand Reduction Services”); and (ii) charge the System during Off-Peak Hours and dispatch stored electric energy to Purchaser during Peak Hours (“Energy Arbitrage Services,” and collectively with Demand Reduction Services, the “Energy Services”).

CONFIDENTIAL AND PROPRIETARY

(a) Demand Charge Management Guarantee. Provider shall perform the Demand Reduction Services such that the Purchaser receives demand charge reductions at a minimum as follows for each Term Year (such amount, the "Minimum Guaranteed Demand Reduction"):

Term Year	Minimum Guaranteed Demand Reduction (kW AC)	Term Year	Minimum Guaranteed Demand Reduction (kW AC)
1	3,260	6	3,260
2	3,260	7	3,260
3	3,260	8	3,260
4	3,260	9	3,260
5	3,260	10	3,260

(b) Energy Arbitrage Guarantee. Provider shall perform the Energy Arbitrage Services such that the Purchaser achieves energy arbitrage at a minimum as follows for each Term Year (such amount, the "Minimum Guaranteed Energy Arbitrage"):

Term Year	Minimum Energy Arbitrage (kWh)	Term Year	Minimum Energy Arbitrage (kWh)
1	642,729	6	642,729
2	642,729	7	642,729
3	642,729	8	642,729
4	642,729	9	642,729
5	642,729	10	642,729

(c) Lost Savings. For each Term Year, if Provider does not provide at least the Minimum Guaranteed Demand Reduction or the Minimum Guaranteed Energy Arbitrage, Provider shall credit Purchaser an amount equal to Purchaser's Lost Savings on an invoice or invoices within ninety (90) days after the end of such period, up to the Lost Savings Cap. Upon Provider's payment of any Lost Savings, Provider shall be deemed to have met the Minimum Guaranteed Demand Reduction and Minimum Guaranteed Energy Arbitrage for each Term Year. "

(d) The "Demand Reduction Guarantee Rate" or "DR" and the "Energy Arbitrage Guarantee Rate" or "ER" for each Term Year are as follows:

Term Year	Demand Reduction Guarantee Rate (\$/kW)	Term Year	Energy Arbitrage Guarantee Rate (\$/kWh)

CONFIDENTIAL AND PROPRIETARY

	AC)		
1	\$19.56	1	\$0.096
2	\$19.56	2	\$0.096
3	\$19.56	3	\$0.096
4	\$19.56	4	\$0.096
5	\$19.56	5	\$0.096
6	\$19.56	6	\$0.096
7	\$19.56	7	\$0.096
8	\$19.56	8	\$0.096
9	\$19.56	9	\$0.096
10	\$19.56	10	\$0.096

(e) The Parties acknowledge and agree that Purchaser's purchase under this Agreement does not include any right or title to seek any capacity payments that may be attributable to the System, and that all such rights are reserved and retained by Provider, subject to Applicable Law.

4.2 The Minimum Guaranteed Demand Reduction and the Minimum Guaranteed Energy Arbitrage shall, for each Term Year, be reduced to the extent Provider's ability or cost to provide the Energy Services are adversely affected by any of the following:

(a) Any act or omission by Purchaser affects the System in any way that impairs its ability to safely store and discharge energy or Provider's ability to monitor or control the System.

(b) Theft, destruction or damage affects the System in any way that impairs its ability to safely store and discharge energy or Provider's ability to monitor or control the System, except to the extent caused by the manufacturer of the System or Provider.

(c) A Disruption Period occurs.

(d) A Purchaser Default, including Provider suspending the Energy Services as a result of a Purchaser Default.

(e) Purchaser fails to provide access to the Premises or the System as required by Section 7.2(d) of the General Terms and Conditions.

(f) A Force Majeure Event.

(g) Purchaser elects to have the Local Electric Utility apply a different tariff to the Premises that has an adverse impact on Provider's ability to reduce Purchaser's peak demand from the Local Electric Utility.

CONFIDENTIAL AND PROPRIETARY

(h) Any material deviation in the Purchaser's load profile at the Premises from the Base Year Load not resulting from the Energy Services or Provider's acts or omissions.

On each invoice submitted by Provider to Purchaser, Provider shall, if applicable, include a statement of the amount by which the Minimum Guaranteed Demand Reduction and Minimum Guaranteed Energy Arbitrage will be reduced pursuant to this Section 4.2. If Purchaser does not dispute the amount of such reduction within thirty (30) days after its receipt of such invoice, Purchaser will be deemed to have accepted such reduction.

4.3 The Local Electric Utility Tariff means the retail tariff pursuant to which the Local Electric Utility provides electric distribution and interconnection services to Purchaser at the Premises. As of the date below, the Local Electric Utility Tariff applicable to the Premises is as follows:

Date	Local Electric Utility Tariff
Effective Date	E-19P
Commercial Operation Date	B-19P Option R

If at any time after the date above, Provider determines that an alternative Local Electric Utility Tariff is more advantageous for Purchaser, Provider may, with Purchaser's consent, change the Local Electric Utility Tariff set forth above to such alternative Local Electric Utility Tariff for the Premises.

If there is a change in the Local Electric Utility Tariff applicable to the Premises that has a material impact on Provider's ability to provide the Energy Services or evaluate compliance with the performance guarantee in this Schedule 4, then upon written notice from Provider to Purchaser, the Parties shall negotiate in good faith to make the minimum changes to this Agreement necessary to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date; *provided*, any change in the rates or other costs applicable to the Premises under the Local Electric Utility Tariff will not constitute a change that will cause this Section 4.3 to be applicable. Notwithstanding the foregoing, Provider shall continue to provide the Energy Management Services, and Purchaser shall continue to make the Energy Services Payments, while the Parties negotiate the changes to this Agreement contemplated in this Section 4.3.

4.4 Additional Defined Terms.

"Actual Annual Demand Reduction" or "AADR" means the sum of all Actual Demand Reductions during each Term Year, calculated as follows:

CONFIDENTIAL AND PROPRIETARY

$$AADR_{\text{Term Year}} = ADR_{\text{Billing Period 1}} + ADR_{\text{Billing Period 2}} \dots + ADR_{\text{Billing Period 24}}$$

“Actual Demand Reduction” or “ADR” means the sum of the Peak Demand Reductions occurring during Demand Periods for which a Demand Charge is charged within a Billing Period, calculated as follows:

$$ADR_{\text{Billing Period}} = PDR_{\text{Demand Period 1}} + PDR_{\text{Demand Period 2}} \dots + PDR_{\text{Demand Period Final}}$$

“Actual Annual Shifted Energy” or “AASE” means the sum of all Actual Shifted Energy during each Term Year.

“Actual Shifted Energy” or “ASE” means the sum of all electric energy (in kWh) discharged during Peak Hours.

“Actual System Savings” means the savings associated with the AADR and AASE, which is the gross aggregate savings that accrues to Purchaser’s Local Electric Utility bill resulting from the operation of the System, calculated based on Purchaser’s load and the Energy Services metered data, and shall include, but is not limited to, changes in demand charges, energy and utility usage taxes.

“Base Year Load” means the electrical load of the Premises during the 12 months from January 2019 to January 2020, as recorded by the Local Electric Utility meter(s).

“Billing Period(s)” means each of the consecutive time periods applicable to Purchaser during which the Local Electric Utility assesses and bills demand charges for the Premises.

“Demand Charge” means a charge by the Local Electric Utility generally assessed for a given period based upon Purchaser’s maximum demand (on a per kW basis) occurring during such period, generally charged as a fixed rate calculated with reference to such maximum demand.

“Demand Period” means each period within a Billing Period for which a Demand Charge is or could be assessed by the Local Electric Utility. The Premises may have one or more Demand Periods per Billing Period, including, if applicable, Demand Periods referred to as “peak”, “part-peak”, “off-peak”, “non-coincident”, or “on-peak”.

“Demand Reduction Guarantee Rate” or “DR” has meaning set forth in Section 4.1(d) of this Schedule 4.

“Energy Arbitrage Guarantee Rate” or “ER” has the meaning set forth in Section 4.1(d) of this Schedule 4.

“Local Electric Utility Tariff” has meaning set forth in Section 4.3 of this Schedule 4.

CONFIDENTIAL AND PROPRIETARY

“Lost Savings” means the dollar amount Provider will credit to Purchaser in accordance with the terms of this Agreement for any Term Year for which MGDR exceeds AADR or MGEA exceeds ASE, calculated as follows:

$$\begin{aligned} \text{Lost Savings} &= (\text{MGDR} - \text{AADR}) \times \text{DR}; \text{ or} \\ \text{Lost Savings} &= (\text{MGEA} - \text{AASE}) \times \text{ER} \end{aligned}$$

“Lost Savings Cap” means the maximum amount of Lost Savings that Provider will credit to Purchaser in accordance with the terms of this Agreement for any Term Year, calculated as the difference between the Energy Services Payments for the relevant Term Year and the Actual System Savings. The Lost Savings Cap will be deemed to be \$0 to the extent the Actual Systems Savings exceeds the Energy Services Payments for the relevant Term Year.

“Minimum Guaranteed Energy Arbitrage” or “MGEA” has the meaning set forth in Section 4.1(b) of this Schedule 4.

“Minimum Guaranteed Demand Reduction” or “MGDR” has the meaning set forth in Section 4.1(a) of this Schedule 4.

“Off-Peak Hours” means 9:01pm – 4:00pm, Pacific time.

“Peak Demand Level” or “PDL” means the maximum electricity service demand level (in kW AC) in a Demand Period for the Premises, as billed by the Local Electric Utility.

“Peak Demand Reduction” or “PDR” means the amount of the reduction in maximum electricity service demand level (in kW AC) in a Demand Period for the Premises, calculated as True Peak Load minus Peak Demand Level.

“Peak Hours” means 4:01pm – 9:00pm, Pacific time.

“True Peak Load” means the maximum electricity service demand level in a Demand Period for the Premises, which demand may be supplied by the Storage System, the Local Electric Utility, on-site electricity generation (if any), or other distributed energy resource. The True Peak Load is calculated as the highest combined total of the electricity sources concurrently providing electric energy to the Premises during a month.

4.5 System Size. To the extent there is a change in System size, Provider shall be required to obtain Purchaser consent to such change. If Purchaser consents to such change in System size, then the Parties agree to amend the Agreement accordingly. Purchaser’s City Manager or designee is authorized to amend this Agreement for the sole purpose of reflecting the change in System size. The Guaranteed Commercial

CONFIDENTIAL AND PROPRIETARY

Operation Date and the Guaranteed Construction Start Date shall be extended on a day for day basis for delays in obtaining any such consent and/or amendment.

V. Schedule 5 – Notice Information

Purchaser:

Department of Public Utilities
Attn: Director of Public Utilities
2600 Fresno Street, Room 4019
Fresno, CA 93721

Provider:

FFP BTM Solar, LLC
c/o Forefront Power, LLC
Attn: Director, Energy Services
100 Montgomery St., Suite 725
San Francisco, CA 94104

With a copy to

FFP BTM Solar, LLC
c/o Forefront Power, LLC
Attn: Legal Department
100 Montgomery St., Suite 725
San Francisco, CA 94104
Email:
FPLegal@forefrontpower.com

Financing Party:

[To be provided by Provider
when known]

VI. Schedule 6 – Site Specific Information and Requirements

In accordance with Section 7.2(f) of the General Terms and Conditions, the following information references any known restrictions on the use of the Premises for the construction, ownership, use and operation of the System, including any land use restrictions, known underground structures or equipment, or limitations arising under permits or applicable law, as well as any additional Environmental Documents, reports or studies in the possession or control of the Purchaser, which shall each have been delivered to Provider as of the Effective Date:

Type of Information	Information Delivered to Provider as of the Effective Date
Phase I environmental site assessment	Not Applicable

CONFIDENTIAL AND PROPRIETARY

Type of Information	Information Delivered to Provider as of the Effective Date
Reports on site sampling (soil or groundwater)	Not Applicable
Land use restrictions imposed by governmental authorities	Not Applicable
Lease restrictions on proposed solar installation	Not Applicable
Cleanup plan, corrective action plan or permits applicable to Premises	Not Applicable
Open spill reports or unresolved release reports	Not Applicable
Known underground storage tanks, foundations, utilities	Not Applicable
Utility easements or public rights of way	Not Applicable
Completed closure or "cap" on buried waste or other materials	Not Applicable
Systems in place for extracting and collecting methane, groundwater or leachate	Not Applicable
Subject to the control of a trustee, group of entities or entities other than landlord and/or Purchaser	Not Applicable

VII. Schedule 7 –Specific Items for Scope of Work

Storage:

1. Provider Responsibilities:

- 1.1. Provider shall be responsible for securing, maintaining and paying all fees associated with all Governmental Approvals (as defined in Section 1.1 of the General Terms) necessary for the installation, operation, and maintenance of the System, including but not limited to permitting and approval as may be required by the [authority having jurisdiction].
- 1.2. Provider shall be responsible for all grading, paving, or other Site preparation necessary in order to install the System, and for the payment of all costs associated with such Site preparation.