

**ENERGY SERVICES AGREEMENT – SOLAR**

**Northeast 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 a solar photovoltaic 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 is in the business of designing, constructing, owning, financing, and operating solar photovoltaic systems for the purpose of selling power generated by the systems to its purchasers;
- C. The Charter for Purchaser allows for cooperative purchase agreements for work of public improvement. Purchaser is allowed to piggyback an existing government agency's agreement, under Fresno City Charter 1208;
- D. On July 19, 2017, the School Project for Utility Rate Reduction (SPURR) issued a Renewable Energy Aggregated Procurement (REAP) Program Request for Proposal (RFP), seeking prospective vendor terms and conditions for solar and energy storage projects. SPURR selected Provider for an award under the RFP. The RFP is attached hereto as Exhibit A and is incorporated herein by reference. The Parties agree that the Vendor has entered into the Amended and Restated SPURR REAP Program Master Contract. (Original Government Contract);
- E. 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
- F. 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:

**CONFIDENTIAL AND PROPRIETARY**

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 Twenty (20) years from 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 an additional five (5) year term (a "Renewal Term"). 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, Provider shall give written notice to Purchaser of the availability of the Renewal Term. Purchaser shall have sixty (60) days to agree to continuation of this Agreement for the Renewal Term. Absent agreement to the Renewal Term this Agreement shall expire on the Expiration Date. 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 Subsidy
Schedule 2	Energy Services Payment
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information
Schedule 6	Site Specific Information and Requirements
Schedule 7	Specific Items for Scope of Work
Schedule 8	Site Diagram

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.

**CONFIDENTIAL AND PROPRIETARY**

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

6. Purchase Requirement; Energy Services Payment. “Energy Services” means the supply of electrical energy output from the System and any associated reductions in Purchaser’s peak demand from its Local Electric Utility. Purchaser agrees to purchase 100% of the Energy Services generated by the System and made available by Provider to Purchaser during each relevant month of the Term, up to a maximum of 110% of Estimated Annual Production, as defined in Schedule 4. While the Energy Services are calculated and billed on a per kWh basis as set forth in Schedule 2 of these Special Conditions, they represent a package of services and benefits.
7. Estimated Annual Production. The annual estimate of electricity generated by the system for each year of the initial term is set as forth in Schedule 4 of the Special Conditions (“Estimated Annual Production”). Within sixty (60) days of each annual anniversary of the Commercial Operation Date, Provider will provide a statement to Purchaser that shows the actual annual kWh production from the System for the Term Year, the Estimated Annual Production, and the Minimum Guaranteed Output (defined below).
8. Minimum Guaranteed Output. If the System fails to generate at least 95% of the Estimated Annual Production for a full Term Year (such amount, the “Minimum Guaranteed Output”), other than as a result of the acts or omissions of Purchaser or the Local Electric Utility (including a Disruption Period), or an Event of Force Majeure, Provider shall credit Purchaser an amount equal to Purchaser’s Lost Savings on the next invoice or invoices during the following Term Year. The formula for calculating Lost Savings for the applicable Term Year is as follows:

$$\text{Lost Savings} = (\text{MGO} * \text{WPR} - \text{AE}) * \text{RV}$$

MGO = Minimum Guaranteed Output, as measured in total kWh, for the System for the applicable Term Year.

WPR = Weather Performance Ratio, measured as the ratio of the actual insolation over typical (pro-forma) insolation. Such Weather Performance Ratio shall only apply if the ratio is less than 1.00.

AE = Actual Electricity, as measured in total kWh, delivered by the System for the Term Year plus the estimated lost energy production during a Disruption Period.

$$\text{RV} = (\text{ATP} - \text{kWh Rate})$$

ATP = Average tariff price, measured in \$/kWh, for the Term Year paid by Purchaser with respect to the Premises. This price is determined by dividing the total cost for delivered electricity, including all charges associated with such electricity howsoever named, including, without

**CONFIDENTIAL AND PROPRIETARY**

limitation, charges for distribution, transmission, demand, and systems benefits, paid to the Local Electric Utility during the applicable Term Year by the total amount of delivered electricity by the electric utility during such Term Year.

kWh Rate = the kWh Rate in effect for the applicable Term Year(s), measured in \$/kWh.

If the RV is zero or less, then no Lost Savings payment is due to Purchaser. Any Lost Savings payment shall occur no later than sixty (60) days after the end of the Term Year during which such Lost Savings occurred.

By way of example only, the Lost Savings would be as follows with the following assumptions:

Lost Savings [Year 5] = (4,504,498 [MGO\*WPR – AE]) x 0.0074 [RV] = \$7,396

MGO = 2,550,428 kWh [Year 5 Estimated Production x 95%]

WPR = 0.98 [Assumes insolation slightly less than pro-forma]

AE = 1,500,000 kWh [Assumes actual delivery of 1,500,000 kWh and no Disruption Period]

RV = \$0.0074 [Year 5 ATP – Year 5 kWh Rate]

ATP = \$0.09 [Assumes all-in tariff rate in Year 5]

KWH RATE = \$0.0826 [YEAR 5 KWH RATE SET FORTH IN SCHEDULE 2]

9. Allowed Disruption Time. Notwithstanding the provisions in Section 4.3 of the General Terms and Conditions to the contrary, during years 4 through 20 (but not years 1 through 3) of the Term, Purchaser shall be afforded a one-time allocation of fifteen (15) days which may be used consecutively or in separate periods of at least twenty-four (24) hours each ("Allowed Disruption Time") during which the System shall be rendered non-operational. Purchaser shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Purchaser be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes, and Provider shall be credited for the estimated lost production the System would have produced during such Allowed Disruption Time toward satisfaction of its Minimum Guaranteed Output, as set forth in Section 8 of the Special Conditions, such estimated lost production to be calculated in the same manner as set forth in Section 4.3 of the General Conditions.

**CONFIDENTIAL AND PROPRIETARY**

10. Sunlight Access. Purchaser will take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System.
11. Use of System. Purchaser will not use electrical energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

**[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**

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 California municipal corporation**

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

Michael Carbajal, Director  
Department of Public Utilities

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

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

ATTEST:  
YVONNE SPENCE, CRM MMC  
City Clerk

By: \_\_\_\_\_  
Deputy  
Date

**SCHEDULES**

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

<b><u>A. Premises</u></b>	Assessor’s Parcel Numbers: 578-020-06T, 578-020-19T, & 578-020-20T
<b>Site diagram attached:</b>	X Yes <input type="checkbox"/> No
<b><u>B. Description of Solar System</u></b>	Behind the Meter Ground-Mounted Solar
<b>Solar System Size:</b>	1,401.57 kW (DC) (this is an estimate (and not a guarantee) of the System size; Provider may update the System Size prior to the Commercial Operation Date.)
<b><u>C. Anticipated Subsidy or Rebate</u></b>	\$0

**II. Schedule 2 – 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 product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate.

The “Actual Monthly Production” means the amount of energy recorded by Provider’s metering equipment during each calendar month of the Term.

The kWh Rate with respect to the System under this Agreement shall be in accordance with the following schedule:

PPA Rate Table

<b>Term Year</b>	<b>kWh Rate (\$/kWh)</b>	<b>Term Year</b>	<b>\$/kWh Rate (\$/kWh)</b>
1	\$0.0826	11	\$0.0826
2	\$0.0826	12	\$0.0826
3	\$0.0826	13	\$0.0826
4	\$0.0826	14	\$0.0826
5	\$0.0826	15	\$0.0826
6	\$0.0826	16	\$0.0826
7	\$0.0826	17	\$0.0826
8	\$0.0826	18	\$0.0826
9	\$0.0826	19	\$0.0826
10	\$0.0826	20	\$0.0826

Distribution, Transmission, and Electrical Infrastructure Upgrades. Within thirty (30) days of receipt of notice from the Local Electric Utility of distribution, transmission, and electrical infrastructure upgrade costs required by the Local Electric Utility, Purchaser will provide written notice (email is acceptable) to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all the distribution, transmission, and electrical infrastructure upgrade costs, and the kWh Rates stated in the PPA Rate Table will remain unchanged. Purchaser shall make payments directly to the Local Electric Utility in accordance with the requirements of the Local Electric Utility.
- b. For every \$0.01 per watt DC of such distribution, transmission, or electrical infrastructure upgrade costs, the kWh rate in the PPA Rate Table will increase \$0.000607 per kWh, with a maximum kWh rate increase of \$0.0236 per kWh. Provider shall then be responsible for all associated costs and payments.
- c. If distribution, transmission, or electrical infrastructure upgrades are required and exceed the maximum kWh increase of \$0.0236 per kWh, then ForeFront Power has the option to terminate this Agreement.

Scope Changes (ITC Eligible). If changes in project scope occur that are eligible for the Federal Investment Tax Credit (including but not limited to adverse geotechnical conditions or the inclusion of spare conduit) and the costs directly related to such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within thirty (30) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all of the reasonably documented scope change costs, and the kWh rate as stated in Table 1 will remain unchanged.
- b. For every \$0.01 per watt DC of such costs, the kWh rate in Table 1 will increase \$0.00038 per kWh, with an additional maximum kWh rate increase of \$0.0104 per kWh. Provider shall then be responsible for all associated costs and payments.

Scope Changes (Non-ITC Eligible). If changes in project scope occur that are not eligible for the Federal Investment Tax Credit (including but not limited to ADA compliance costs not related to System configuration or construction) and the costs directly related to such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within thirty (30) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:



**CONFIDENTIAL AND PROPRIETARY**

- a. Purchaser will pay the entire amount of such associated costs, and the kWh rate as stated in the PPA Rate Table will remain unchanged.
- b. For every \$0.01 per watt DC of such associated costs, the kWh rate in the PPA Rate Table will increase \$0.000507 per kWh, with an additional maximum kWh rate increase of \$0.0138 per kWh. Provider shall then be responsible for all associated costs and payments.

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 Occurs in Year:	Column 1a Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)***	Column 1b Expected Termination Fee based on System Size**/***
1*	\$3.04	\$4,241,461
2	\$2.54	\$3,555,262
3	\$2.41	\$3,377,237
4	\$2.28	\$3,199,224
5	\$2.16	\$3,020,232
6	\$2.03	\$2,840,686
7	\$2.01	\$2,811,262
8	\$1.99	\$2,781,682
9	\$1.96	\$2,750,993
10	\$1.94	\$2,719,587
11	\$1.92	\$2,687,416
12	\$1.89	\$2,654,872
13	\$1.87	\$2,621,042
14	\$1.85	\$2,586,280
15	\$1.82	\$2,550,519
16	\$1.79	\$2,514,105
17	\$1.77	\$2,476,166
18	\$1.74	\$2,437,006
19	\$1.71	\$2,396,538
20	\$1.68	\$2,355,049

Purchase Date Occurs on the 91 <sup>st</sup> 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 (\$/Wdc, does <u>not</u> include costs of removal)***	Column 2b Expected Termination Fee based on System Size** / ***
	--	
	--	
	--	
	--	
	--	
5 <sup>th</sup> Anniversary	\$1.53	\$2,139,901
6 <sup>th</sup> Anniversary	\$1.51	\$2,110,477
7 <sup>th</sup> Anniversary	\$1.49	\$2,080,897

**CONFIDENTIAL AND PROPRIETARY**

8 <sup>th</sup> Anniversary	\$1.46	\$2,050,208
9 <sup>th</sup> Anniversary	\$1.44	\$2,018,802
10 <sup>th</sup> Anniversary	\$1.42	\$1,986,631
11 <sup>th</sup> Anniversary	\$1.39	\$1,954,087
12 <sup>th</sup> Anniversary	\$1.37	\$1,920,257
13 <sup>th</sup> Anniversary	\$1.35	\$1,885,495
14 <sup>th</sup> Anniversary	\$1.32	\$1,849,734
15 <sup>th</sup> Anniversary	\$1.29	\$1,813,320
16 <sup>th</sup> Anniversary	\$1.27	\$1,775,381
17 <sup>th</sup> Anniversary	\$1.24	\$1,736,221
18 <sup>th</sup> Anniversary	\$1.21	\$1,695,753
19 <sup>th</sup> Anniversary	\$1.18	\$1,654,264

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 – Estimated Annual Production**

Estimated Annual Production commencing on the Commercial Operation Date with respect to System under this Agreement shall be as follows:

<b>Term Year</b>	<b>Estimated Production (kWh)</b>	<b>Term Year</b>	<b>Estimated Production (kWh)</b>
1	2,739,032	11	2,605,121
2	2,725,337	12	2,592,096
3	2,711,710	13	2,579,135
4	2,698,152	14	2,566,240
5	2,684,661	15	2,553,408
6	2,671,238	16	2,540,641
7	2,657,882	17	2,527,938
8	2,644,592	18	2,515,298
9	2,631,369	19	2,502,722
10	2,618,212	20	2,490,208

The values set forth in the table above are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System assuming the System size indicated in Schedule 1 and based on initial System designs. Provider may deliver to Purchaser an updated table on or

about the Commercial Operation Date based on the actual System size and design.

**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:

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

<b>Type of Information</b>	<b>Information Delivered to Provider as of the Effective Date</b>
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**

- 1.1. All System structures shall be permitted through the authority having jurisdiction as ground mounted structures. Provider shall obtain permits on behalf of the project(s), including building department, structural, grading, and/or electrical permits as required. Provider assumes that existing Conditional Use Permits can be amended to include the Project.
- 1.2. Provider and Purchaser have conducted an environmental analysis pursuant to the requirements of CEQA, to be approved by Purchaser as Lead Agency. In the event there are subsequent discretionary approvals necessary to implement the project, which require additional environmental assessment, Provider will prepare any necessary assessment pursuant to the requirements of CEQA. Purchaser shall be responsible for the cost of any additional assessments and any mitigation required by those additional assessments and/or discretionary approvals. As such scope and costs are determined, Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional

## CONFIDENTIAL AND PROPRIETARY

costs, if any, including potentially an increase in the kWh rate in Schedule 2. Additionally, the Construction Start date shall be extended on a day for day basis for delays associated with subsequent mitigations.

- 1.3. Provider shall obtain a Conditional Use Permit for the project. If required, Provider shall not be responsible for the cost of any visual screening requirements, including but not limited to landscaping and fence slats, resulting from the permitting process. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional costs, if any, including potentially an increase in the kWh rate in Schedule 2.
- 1.4. Fencing shall be 6' tall chain link, without barbed wire. Provider will determine the number of gates that are to be installed on the perimeter fencing, and such location(s) will be indicated on Provider's drawings and plan submittals to Purchaser.
- 1.5. Provider intends to interconnect the System to Purchaser-owned 4.16 kV service conductors at a mutually agreeable location. Provider assumes that the existing conductors and service equipment are sufficiently capable of accepting the additional electrical load of the System. Provider shall not bear responsibility for any required upgrades to the Purchaser's pre-existing electrical system and infrastructure. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional costs, if any, including potentially an increase in the kWh rate by exercising the Scope Changes (Non-ITC Eligible) rates in Schedule 2.
- 1.6. Provider shall be responsible for all fees associated with the interconnection application, except that Provider shall not be responsible for transmission, electrical infrastructure, or distribution upgrades determined necessary by the Local Electric Utility. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional costs, if any, including potentially an increase in the kWh rate by exercising the Distribution, Transmission, and Electrical Infrastructure Upgrades rates in Schedule 2.
- 1.7. Provider assumes that soil conditions are class 3 soils, and not such soils that are rocky, sandy, contaminated, ground water, caving, or otherwise have problematic construction limitations, including liquefaction. If soil conditions prove to be other than class 3 soils, Provider shall not be responsible for such additional expenses as a result of additional subterranean geotechnical work including boring, trenching as well as increased foundation requirements for the solar

## CONFIDENTIAL AND PROPRIETARY

racking and/or equipment pads. As such scope and costs are determined, Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional costs including potentially an increase in the kWh rate by exercising the Scope Changes (ITC Eligible) rates in Schedule 2.

- 1.8. Provider assumes a balanced site. Any spoils from pre-existing activities shall be removed or used to create a level grade on site by Purchaser. Any spoils that result from the installation of the System are assumed to be spread on site. Provider shall not be responsible for exporting soils. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay any such additional costs including potentially an increase in the kWh rate by exercising the Scope Changes (Non-ITC Eligible) rates in Schedule 2.
- 1.9. Provider assumes that existing grade is level and that no grading is required in support of System installation.
- 1.10. Provider does not intend to use PVC coated rigid conduits, nor concrete encased conduits.
- 1.11. Provider assumes that there is a water source on site, and available for Provider's use.
- 1.12. Provider assumes Risk Level I Best Management Practices as it relates to relevant Stormwater Protection Plan assumptions for the installation of the System.
- 1.13. Provider will execute a Phase I Environmental Site Assessment, in accordance with ASTM e1527. Provider assumes that there are no Recognized Environmental Conditions, Historical Recognized Environmental Conditions or de minimis concerns associated with the Project Site.
- 1.14. Provider agrees to construct the System in no more than 1 construction phase, and that Provider will be allowed ample space to store material on site.
- 1.15. Provider shall be responsible for all inspection and inspector costs associated with the installation of the system.
- 1.16. In the event the Local Electric Utility requires electrical infrastructure upgrades, Purchaser shall bear responsibility for the full scope of required upgrades to the Purchaser's electrical system and infrastructure. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such

## CONFIDENTIAL AND PROPRIETARY

additional costs, if any, including potentially an increase in the kWh rate by exercising the Scope Changes (Non-ITC Eligible) rates in Schedule 2.

- 1.17. Purchaser agrees to have area of development clear of soil spoils and equipment for solar development by the milestones described in Recitals Section 5. In the event construction of water tank is not complete or equipment and spoils from construction not removed before Construction Start Milestone, the Construction Start date shall be extended on a day for day basis.
- 1.18. The relocation of a planned swale detailed on the Site Plan that is currently shown within the area of solar development shall not be the responsibility of the Provider.

### 2.0 Rooftop

- 2.1 Purchaser has requested that construction of solar project begin after the planned water tank has been constructed and is structurally sound to support the installation of solar.
- 2.2 Provider agrees to work in good faith to accommodate infrastructure required on top of the water tank, such as inspection ports and entry pathways. In the event the final locations for infrastructure causes a material change to the siting of solar or causes a reduction of capacity greater than 50kW, Purchaser shall work with Provider in good faith to determine a mutually-acceptable solution for Purchaser to pay additional costs, if any, including potentially an increase in the kWh rate in Schedule 2.



VIII. Schedule 8 – Site Diagram

