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ENERGY SERVICES AGREEMENT – SOLAR

Mary Ella Brown Community Center

This Energy Services Agreement (“Agreement”) is made and entered into as of this ____ day of _____ 2022 (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 June 25, 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:

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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 450 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, and the City has completed construction within the area of solar development (as indicted in Schedule 8). In the event that the Local Electric Utility is not prepared to commence construction on required upgrades, if any are required, or the City has not completed construction within the area of solar development, 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.

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- 5.2 The Guaranteed Commercial Operation Date is 270 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:

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

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

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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.

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

$$\text{Lost Savings [Year 5]} = (462,879 \text{ [MGO*WPR} - \text{AE]}) \times 0.0692 \text{ [RV]} = \$32,031$$

$$\text{MGO} = 5,982,530 \text{ kWh [Year 5 Estimated Production} \times 95\%]$$

$$\text{WPR} = 0.98 \text{ [Assumes insolation slightly less than pro-forma]}$$

AE = 5,400,000 kWh [Assumes actual delivery of 2,700,000 kWh and no Disruption Period]

$$\text{RV} = \$0.0692 \text{ [Year 5 ATP} - \text{Year 5 kWh Rate]}$$

$$\text{ATP} = \$0.188 \text{ [Assumes all-in tariff rate in Year 5]}$$

$$\text{kWh Rate} = \$0.1188 \text{ [Year 5 kWh Rate set forth in Schedule 2]}$$

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.

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.

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- 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.

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

PURCHASER:
CITY OF FRESNO, a municipal corporation

By: 


By: _____
Scott Mozier, Director
Department of Public Works

Name: Michael Smith

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

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

Date: July 28, 2022

DocuSigned by:
By:  8/2/2022
1CF5444CAA64DB...
Brandon M. Collet Date
Supervising Deputy City Attorney

By: 

Name: Kristin Frooshani

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

ATTEST:
Todd Stermer, CMC
City Clerk

Date: July 28, 2022

By: _____
Deputy Date

CONFIDENTIAL AND PROPRIETARY**SCHEDULES****I. Schedule 1 – Description of the Premises, System and Subsidy**

<u>A. Premises</u>	Assessor's Parcel Numbers: 328-140-27T
Site diagram attached:	X Yes <input type="checkbox"/> No
<u>B. Description of Solar System</u>	Behind the Meter, Net Energy Metering Solar System.
Solar System Size:	93.96 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.)
<u>C. Anticipated Subsidy or Rebate</u>	\$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

Term Year	kWh Rate (\$/kWh)	Term Year	\$/kWh Rate (\$/kWh)
1	\$0.2022	11	\$0.2022
2	\$0.2022	12	\$0.2022
3	\$0.2022	13	\$0.2022
4	\$0.2022	14	\$0.2022
5	\$0.2022	15	\$0.2022
6	\$0.2022	16	\$0.2022
7	\$0.2022	17	\$0.2022
8	\$0.2022	18	\$0.2022
9	\$0.2022	19	\$0.2022
10	\$0.2022	20	\$0.2022

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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 \$0.00068 per kWh, with a maximum kWh rate increase of \$0.0361 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 \$0.00068 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 \$0.00042 per kWh, with an additional maximum kWh rate increase of \$0.0158 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:

- 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.

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- b. For every \$0.01 per watt DC of such associated costs, the kWh rate in the PPA Rate Table will increase \$0.00057 per kWh, with an additional maximum kWh rate increase of \$0.0301 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*	\$6.38	\$599,563
2	\$5.40	\$507,343
3	\$5.06	\$475,901
4	\$4.75	\$446,013
5	\$4.44	\$416,816
6	\$4.13	\$387,677
7	\$4.07	\$382,680
8	\$4.03	\$378,235
9	\$3.98	\$373,638
10	\$3.93	\$368,946
11	\$3.87	\$364,011
12	\$3.82	\$358,885
13	\$3.76	\$353,550
14	\$3.70	\$348,056
15	\$3.64	\$342,261
16	\$3.58	\$336,204
17	\$3.51	\$329,865
18	\$3.44	\$323,280
19	\$3.37	\$316,312
20	\$3.29	\$308,989

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Purchase Date Occurs on the 91st 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^{**} / ^{***}
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5 th Anniversary	\$3.63	\$340,697
6 th Anniversary	\$3.57	\$335,700
7 th Anniversary	\$3.53	\$331,255
8 th Anniversary	\$3.48	\$326,658
9 th Anniversary	\$3.43	\$321,966
10 th Anniversary	\$3.37	\$317,031
11 th Anniversary	\$3.32	\$311,905
12 th Anniversary	\$3.26	\$306,570
13 th Anniversary	\$3.20	\$301,076
14 th Anniversary	\$3.14	\$295,281
15 th Anniversary	\$3.08	\$289,224
16 th Anniversary	\$3.01	\$282,885
17 th Anniversary	\$2.94	\$276,300
18 th Anniversary	\$2.87	\$269,332
19 th Anniversary	\$2.79	\$262,009

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.

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

Term Year	Estimated Production (kWh)	Term Year	Estimated Production (kWh)
1	162,300	11	154,365
2	161,489	12	153,593
3	160,681	13	152,825
4	159,878	14	152,061
5	159,078	15	151,301
6	158,283	16	150,544
7	157,491	17	149,792
8	156,704	18	149,043
9	155,920	19	148,298
10	155,141	20	147,556

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 Works
Attn: Director of Public Works
2600 Fresno St, Room 4016
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

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[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
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

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7.1. All System structures shall be permitted through the authority having jurisdiction as carports or shade structures, as applicable. 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.

7.2. Solar arrays will have a canopy height of 10' minimum clearance, as indicated in Schedule 8. In the event additional height is required, 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.

7.3. Provider and Purchaser are operating under the assumption that the premises will be eligible for a CEQA Notice of Exemption (NOE), and that a special use, conditional use, or zoning permit will not be required. Provider assumes that Purchaser, as lead agency, will issue a Notice of Exemption for CEQA. Upon request, Provider shall provide such limited support as necessary to Purchaser to obtain the NOE, including, if necessary, biological study and associated consultant statement and summary citing exemptions applicable. Provider shall not be responsible for costs or delays associated with any unforeseen required CEQA studies, special use, conditional use, or zoning permits, or mitigations that may result from a CEQA submittal and public comment.

7.4 Provider intends to interconnect the System to Purchaser-owned 208V service conductors at a mutually agreeable location. Provider assumes that the future conductors and service equipment will be sufficiently capable of accepting the additional electrical load of the System. Provider shall not bear responsibility for any required upgrades to the Purchaser's planned or 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.

7.5 Provider shall be responsible for all fees associated with the interconnection application, except that Provider shall not be responsible for transmission, electrical infrastructure 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.

7.6 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

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

7.7 Provider shall install code-compliant electrical infrastructure to support the future installation of Electrical Vehicle Charging Stations (EVCS), as shown in Schedule 8. After installation of such EVCS infrastructure, Provider shall have no further rights or duties with respect to the use or maintenance thereof; provided, if at any time during the Term, Purchaser needs to conduct any repairs or replacements of such infrastructure, it shall coordinate with Provider prior to commencing any such repairs or replacements to ensure that the System is not damaged or impacted in any way except as is expressly provided for in this Agreement.

7.8. Provider shall be responsible for all tree trimming and tree removal in order to facilitate the installation of the Systems. Purchaser shall acknowledge and approve removal of trees identified by Provider, in order to install the system and such approval shall not be unreasonably withheld. Provider shall be responsible for all afforestation, reforestation or payment in lieu for any trees removed. Irrigation re-routing shall not be the responsibility of the Provider.

7.9 Provider shall be responsible for verifying and understanding existing ADA parking, striping, and paths of travel and what code-required upgrades may be necessary as a result of the System and any pre-existing non-compliance. Provider shall be responsible for all required ADA striping, signage within the solar canopy footprint and connecting to existing ADA-compliant path of travel. Provider's scope excludes any demolition, grading, paving, curb cuts, or truncated domes throughout the Premises to achieve ADA compliance, or any required ADA striping and signage outside of the solar canopy footprint and connecting to the existing ADA-compliant path of travel. Should any excluded items for ADA-compliance be required, Provider will work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay the costs associated with such upgrades, including potentially an increase in the kWh rate in Schedule 2.

7.10 Provider assumes that soil conditions are not such soils that are rocky, sandy, contaminated, ground water, caving, or otherwise have problematic construction limitations. Specifically, ForeFront Power assumes no required shoring or de-watering for trenches, and a maximum required pier depth of 12' and diameter of 30". If soil conditions prove to be more adverse than these assumptions, Provider shall not be responsible for such additional expenses. 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 in Schedule 2.

7.11 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.

7.12 Provider shall be responsible for all inspection and inspector costs associated with the installation of the system.

VII. Schedule 8 –Site Diagram

