

## SOLAR ENERGY SYSTEM LEASE AGREEMENT

This SOLAR ENERGY SYSTEM LEASE AGREEMENT (the “**Agreement**”) is made and entered into as of October 24, 2019 (the “**Effective Date**”), by and between Fresno Street Solar Project 2019, LLC (“**Tenant**”), a Delaware corporation and the City of Fresno (“**Premises Owner**”). Tenant and Premises Owner are sometimes hereinafter individually referred to as a “**Party**” and collectively as the “**Parties**”.

### RECITALS

A. Premises Owner is the fee owner of that certain building with the street address of 2600 Fresno Street, Fresno, CA 93721 (“**Building**”) together with the real property described on **Exhibit A** attached hereto upon which the Building is located (“**Property**” and together with the Building, the “**Facility**”).

B. Tenant is in the business of installing and operating solar power facilities and selling electric energy generated from such facilities.

C. Tenant is seeking to sell energy, renewable energy credits or other products from the System (as defined below).

D. Premises Owner wishes to lease to Tenant and Tenant wishes to lease from Premises Owner the portions of the Facility more particularly described as the Premises on **Exhibit B** attached hereto (“**Premises**”), for the purpose of installing and operating the solar panel system more particularly described as the System on **Exhibit B** attached hereto (“**System**”), and Premises Owner wishes to grant Tenant a Transmission Easement (as defined in Section 1.1(a)), for the purpose of installing and operating the System, all on the terms and conditions set forth below (collectively, the “**Transaction**”).

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

### ARTICLE I LEASE OF PREMISES

#### 1.1 Premises; Title

(a) Premises Owner hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Premises Owner. Premises Owner further grants to Tenant, for a term coterminous with the Term (as defined in Section 2.1), (i) a non-exclusive easement and right on, about, over and across the Facility (including, the raceways and risers of the Building and the electrical and utility rooms of the Building), to construct, use and maintain the System in the easement areas indicated on **Exhibit B** (“**Transmission Easement**”); together with (ii) a non-exclusive easement for access to the Premises, the Transmission Easement and the System across, over or through the Building, any common areas of the Property and any surrounding or adjacent area owned or leased by Premises Owner which is necessary or convenient to gain access to the Premises, the Transmission Easement and/or the System (“**Access Easement**”); and with (iii) the sole and exclusive easement and right to evaluate, develop, capture, use and convert all solar energy resources found on, about, over, across and at the Facility, including the sole and exclusive right to the free and

unobstructed insolation and flow of solar energy resources on, about, over and across the System ("**Solar Development Easement**"); and with (iv) the right to use Premises Owner's electric service for construction, installation, repairs and maintenance work, and Premises Owner's water service for cleaning the System. Premises Owner further grants to Tenant, for a term coterminous with the Term, an exclusive use and right to install and operate the System at the locations designated in **Exhibit B** (which Exhibit, as amended from time to time, shall be incorporated herein by this reference). Premises Owner acknowledges that the Solar Development Easement, including, the free and unobstructed access to sunlight ("**Insolation**"), and the ability to connect the System to the grid for purposes of the sale of power produced by the System, are essential to the value to Tenant of the leasehold interests granted hereunder and are a material inducement to Tenant in entering into this Agreement. Accordingly, Premises Owner hereby agrees that the preceding grants of the Transmission Easement, the Access Easement and the Solar Development Easement (including, the right to Insolation and the free and unobstructed flow of solar energy resources on, about, over and across the System) are essential to Tenant's use and enjoyment of the Premises and operation of the System.

(b) Tenant's rights under this Agreement and the Transmission Easement include the right for Tenant, in its discretion and without further act or consent of Premises Owner, to grant to any utility provider the right to construct, own, operate and maintain such utilities through, on, over and/or under the Transmission Easement and/or Premises as reasonably necessary for Tenant to interconnect the System to the grid, with such grant to be pursuant to any standard form of easement or other agreement used or proposed by the utility. Without limiting the foregoing, if requested by Tenant or such utility provider, Premises Owner shall (A) provide an easement coterminous with the Term (as the same may be extended) to allow the local utility provider to install such utility or utilities through, on, over and/or under the Transmission Easement and/or Premises as reasonably necessary for Tenant to interconnect the System, and (B) execute a utility interconnection agreement or other documents to permit Tenant to interconnect the System to the electrical system of the Facility and transmit power to the utility or utilities either directly or through the electrical system of the Facility, and sell power to the utility or other purchasers or Premises Owners; provided, however, that (i) Premises Owner's failure to execute any such agreement shall not invalidate or void any rights granted by Tenant to such utility provider pursuant to the preceding sentence, and (ii) in furtherance of the foregoing obligations of Premises Owner, Premises Owner hereby appoints Tenant as Premises Owner's true and lawful attorney-in-fact, in its name or in Tenant's name, with full power and authority to enter into any such agreement for and on behalf of Premises Owner and to bind Premises Owner to the terms of any such agreement, which power of attorney is coupled with an interest and shall be irrevocable. Premises Owner confirms that it has the ability to allow Tenant to install and operate the System in such manner and locations.

(c) With respect to any PPA (as defined below), Premises Owner acknowledges and agrees that, notwithstanding anything to the contrary herein, a termination of the PPA (whether pursuant to the terms thereof or otherwise) shall not affect the rights of Tenant under this Agreement or otherwise result in a termination of

this Agreement and, (x) Tenant shall nonetheless have the right to maintain the System at the Facility, (y) Tenant shall have the right to sell the power produced by the System, or any portion of such power, directly to the grid, and (z) any PPA Sections that are referenced and incorporated herein shall survive the termination of the PPA. As used in this Agreement, the term “**PPA**” shall refer to one or more electricity sales contract(s) for the sale of energy, renewable energy credits or other products from the System entered into by Premises Owner and Tenant. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed thereto in the PPA. Except as otherwise expressly set forth herein, any reference to “**PPA Section**” shall mean and refer to the cited section contained in Exhibit 3 to the PPA.

**1.2 Quiet Enjoyment.** Premises Owner warrants that Tenant shall peaceably hold and enjoy the Premises, the Transmission Easement, the Access Easement, the Solar Development Easement and any and all other rights granted by this Agreement for the entire Term without hindrance, interruption, suit, trouble or interference of any kind by Premises Owner or any other person or entity claiming (whether at law or in equity) by, through or under Premises Owner. Premises Owner shall protect and defend the right, title and interest of Tenant hereunder from any other rights, interests, title and claims. Without limiting the generality of the foregoing, Tenant shall have quiet and peaceful possession of the Premises and easements granted herein and the exclusive right of occupancy of the Premises, and shall be permitted to access the Premises and the Transmission Easement twenty-four (24) hours a day, seven (7) days a week throughout the Term of this Agreement.

**1.3 Covenants Running with the Land.** The burdens of the Transmission Easement, the Access Easement, and the Solar Development Easement shall run with and against the Property during the Term and any extension of the Term, and shall be binding upon Premises Owner and its successors, permitted assigns, employees, and agents. The Transmission Easement, the Access Easement, and the Solar Development Easement shall inure to the benefit of Tenant and its successors, permitted assigns, employees, and agents. Premises Owner hereby consents to the recording of such easements and appoints Tenant as Premises Owner’s true and lawful attorney-in-fact, in its name or in Tenant’s name, with full power and authority to take all such steps as may be necessary to effectuate such recording (at Tenant’s own expense) for and on behalf of Premises Owner and to bind Premises Owner to the terms of any such recording, which power of attorney is coupled with an interest and shall be irrevocable.

## **ARTICLE II TERM AND RENT**

**2.1 Term.** The initial term of this Agreement (the “**Initial Term**”) shall begin on the Effective Date and shall expire on the last day of the month which is three hundred (300) full months from the Commercial Operation Date (as defined in the PPA). Tenant shall have the option to extend the term of this Agreement for two (2) additional term of five years (collectively with the Initial Term, the “**Term**”); provided, however, that the Term of this Agreement shall be automatically extended if the term of the PPA is extended. If Tenant wishes to extend this Agreement beyond the expiration of the Initial Term, Tenant shall provide Premises Owner with Notice (as defined in Section 5.4) on

or before the expiration of the Initial Term, provided, that no such Notice shall be required in connection with the extension of the PPA and corresponding extension of the Term of this Agreement. Notwithstanding the foregoing, Tenant, at its sole and absolute discretion, shall have the right to terminate this Agreement at any time and for any reason during the Term. Following any such termination, except for rights and obligations that expressly survive termination as set forth herein, neither party shall have any further liability under this Agreement.

**2.2 Rent.** Commencing on the date that is five (5) business days after Tenant gives Premises Owner written notice that the System has been successfully commissioned and tested, as demonstrated to Premises Owner and continuing thereafter throughout the Term, Tenant agrees to pay the Rent in the amounts designated below to Premises Owner in arrears on a quarterly basis. The first payment shall be due and payable in arrears on the first day of the calendar quarter following the calendar quarter in which the Commercial Operation Date occurs for the portion of the calendar quarter from the Commercial Operation Date to the end of such calendar quarter, and each subsequent payment of Rent shall be made on the first day of each calendar quarter of the Term thereafter with respect to the previous calendar quarter. If the Commercial Operation Date occurs on a day other than the first day of a Calendar Quarter or the Term expiration occurs on a day other than the last day of a calendar quarter, then Rent payable with respect to such calendar quarter shall be prorated in proportion to the number of days elapsed or remaining in such calendar quarter, as applicable. As used herein, the term “**Rent**” shall mean, an annual amount equal to \$1. Notwithstanding the foregoing, Premises Owner acknowledges and agrees that so long as the PPA remains in full force and effect, Tenant shall have the right for accounting convenience to apply the amount of the then due and owing Rent payable pursuant to this Agreement as a credit off-set against the monthly payment amounts payable by Premises Owner pursuant to the PPA as provided therein.

### **ARTICLE III OPERATIONAL PROVISIONS**

**3.1 Incorporation of Select PPA Terms.** Except as otherwise expressly provided in this Agreement, the terms, provisions, and conditions contained in the PPA that are expressly incorporated in this Agreement are made a part hereof as if herein set forth at length, Premises Owner being substituted for “Purchaser” under the PPA, Tenant being substituted for “Seller” under the PPA, and this Agreement being substituted for “Agreement” under the PPA. Notwithstanding the foregoing, unless expressly incorporated herein the terms and provisions of the PPA are not made a part hereof and following the termination of the PPA, Tenant shall not be bound by or obligated to perform any of the obligations of Seller under and pursuant to the provisions of the PPA.

**3.2 Ownership of System; Environmental Attributes and Environmental Incentives.** Premises Owner acknowledges the terms of PPA Sections 5 (Environmental Attributes), 8(d) (No Alteration of Facility), 18(a) (Ownership of System) and 26(f) (Non-Dedication of Facilities) and agrees that (x) the System is and (except where Premises Owner has exercised the purchase option set forth in

PPA Section 18(b)) at all times shall be owned by Tenant, (y) Tenant shall be the owner of the Environmental Attributes and Environmental Incentives, and (z) Tenant shall be entitled to the benefit of all Tax Attributes (as such terms are defined in the PPA) during the Term of this Agreement, in each case, irrespective of the expiration or earlier termination of the PPA. Notwithstanding the foregoing, Premises Owner shall have the obligation to pay any and all Taxes assessed on the generation, sale, delivery or consumption of electric energy produced by the System or the interconnection of the System to the electric distribution system of the Utility (as defined below) that are in effect as of the Effective Date, including property Taxes on the System. Premises Owner shall be responsible for and pay (i) all Taxes which are assessed, levied, charged or imposed by any public authority against or relating to (A) the Facility and all improvements thereon, and/or (B) the lease and other rights of use granted to Tenant pursuant to this Agreement, and (ii) all Taxes and changes in Taxes that come into effect after the Effective Date.

**3.3 Maintenance and Alteration of Facility.** At all times during the Term of this Agreement, Premises Owner agrees to the following, which shall apply irrespective of the expiration or earlier termination of the PPA:

(a) Cooperation. Premises Owner shall (i) provide Tenant and its subcontractors, consultants, agents and representatives with reasonable access to the Facility for the purpose of designing the System, including conducting related inspections and studies, and accessing relevant documents, materials and records of Premises Owner in conjunction with such activities, (ii) cooperate with Tenant's reasonable requests for information and access to the Facility for purposes of designing and installing the System and (iii) cooperate with all of Tenant's requests to assist Tenant in obtaining any necessary agreements, permits and approvals, including (x) any zoning, land use, environmental, building and other permits required to construct, install, operate and maintain the System and (y) any agreements and approvals from the Utility necessary in order to interconnect the System to the Facility electrical system and/or the Utility's electric distribution system.

(b) Maintenance of Facility. Premises Owner shall, at all times at Premises Owner's sole cost and expense, maintain the Facility in a manner sufficient to structurally support the System (including the roof and all raceways and risers of the Facility) and the sale of the System's electrical output.

(c) Security. Premises Owner shall be responsible for using commercially reasonable efforts to maintain the physical security of the Facility and the System against known risks and risks that should have been known by Premises Owner. Premises Owner shall not conduct activities on, in or about the Facility that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.

### **3.4 Insurance and Liability; Indemnification.**

(a) Insurance Coverage. At all times during the Term, the Parties shall maintain the following insurance:

(i) Tenant's Insurance. Tenant shall maintain the insurance required under Section 17.b of the PPA.

(ii) Premises Owner's Insurance. Premises Owner shall maintain (A) commercial general liability insurance for the Facility with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (B) property insurance on the Facility covering "All Risks" perils in an amount equal to the full replacement cost of the Facility; [(C) business interruption insurance covering Premises Owner's operations at the Facility;] (D) where applicable, employer's liability insurance with coverage of at least \$1,000,000 and (E) where applicable, workers' compensation insurance as required by law.

(iii) Policy Provisions. All Premises Owner's insurance policies provided hereunder shall (i) contain a provision whereby Premises Owner shall provide Tenant (A) not less than ten (10) days written notice before the insurance is cancelled, or terminated as a result of non-payment of premiums, or (B) not less than thirty (30) days written notice before the insurance is otherwise cancelled or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party. Premises Owner shall name the Tenant as additional insured as respects commercial general liability and employers liability.

(iv) Certificates. Upon the Tenant's request Premises Owner shall deliver to the Tenant certificates of insurance evidencing the above required coverage. A Party's receipt, review or acceptance of such certificate shall in no way limit or relieve the other Party of the duties and responsibilities to maintain insurance as set forth in this Agreement.

(v) Deductibles. Unless and to the extent that a claim is covered by an indemnity set forth in this Agreement, each Party shall be responsible for the payment of its own deductibles.

(b) Indemnity. Irrespective of the expiration or earlier termination of the PPA, at all times during the Term of this Agreement, the Parties will indemnify each other in the same manner and to the same extent as provided in PPA Section 19, subject to the limitations set forth in PPA Section 20. In addition, each party represents and warrants to the other that it has dealt with no broker, agent or other person in connection with this Agreement and that no broker, agent or other person brought about this Agreement, and each party agrees to indemnify and hold the other harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with the indemnifying party with regard to this Agreement.

### **3.5 Assignment and Financing.**

(a) Assignment. This Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party. Notwithstanding the foregoing, Tenant may, without the prior written consent of Premises Owner, (i) assign, mortgage, pledge or otherwise collaterally assign its interests in this Agreement

and the System to any Financing Party, (ii) directly or indirectly assign this Agreement and the System to an affiliate or subsidiary of Tenant, (iii) assign this Agreement and the System to any entity through which Tenant is obtaining financing or capital for the System (iv) assign this Agreement and the System to any person succeeding to all or substantially all of the assets of Tenant (provided that Tenant shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Tenant's obligations hereunder by the assignee) and (v) assign this Agreement and the System to any assignee that (x) has experience in operating and maintaining photovoltaic solar systems comparable to the System and providing services comparable to those contemplated by this Agreement, or will contract with parties who have such experience and (y) has the financial capability to maintain the System and provide the services contemplated by this Agreement in the manner required by this Agreement. In the event of any such assignment, Tenant shall be released from all its liabilities and other obligations under this Agreement. However, any assignment of Tenant's rights and/or obligations under this Agreement shall not result in any change to Premises Owner's rights and obligations under this Agreement. This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees.

(b) **Financing.** The Parties acknowledge that Tenant may obtain construction and long-term financing or other credit support from one or more Financing Parties. "**Financing Parties**" means a person or persons providing construction or permanent financing to Tenant in connection with construction, ownership, operation and maintenance of the System or, if applicable, any person to whom Tenant has transferred the ownership interest in the System. Both Parties agree in good faith to consider and to negotiate changes or additions to this Agreement that may be reasonably requested by the Financing Parties; provided, that such changes do not alter the fundamental economic terms of this Agreement. In connection with an assignment pursuant to Section 3.5(a), and within five (5) business days after receipt of a written request by Tenant, Premises Owner agrees to execute any consent, estoppel, or acknowledgement in form and substance reasonably acceptable to such Financing Parties.

(c) **Successor Servicing.** The Parties further acknowledge that in connection with any construction or long term financing or other credit support provided to Tenant or its affiliates by Financing Parties, that such Financing Parties may require that Tenant or its affiliates appoint a third party to act as backup or successor provider of operation and maintenance services with respect to the System and/or administrative services with respect to this Agreement (the "**Successor Provider**"). Premises Owner agrees to accept performance from any Successor Provider so appointed so long as such Successor Provider performs in accordance with the terms of this Agreement.

**3.6 Casualty.** If the PPA has been terminated in accordance with its terms but this Agreement remains in force and effect and the Facility is damaged or destroyed by casualty of any kind or any other occurrence other than Tenant's gross negligence or willful misconduct, such that the operation of the Facility and/or Premises Owner's ability to accept the electric energy produced by the System are materially impaired or prevented, Premises Owner shall promptly repair and restore the Facility to its pre-

existing condition; provided, however, that if more than fifty percent (50%) of the Facility is destroyed during the last five years of the Initial Term or during any extension of the Term, Premises Owner shall not be required to restore the Facility if Premises Owner purchases the System "AS-IS" for an amount equal to the Fair Market Value of the System minus the amount of insurance proceeds, if any, Tenant receives for damage to the System. This Agreement will terminate upon Premises Owner's purchase of the System in accordance with the preceding sentence.

**3.7 Removal.** Upon the expiration or earlier termination of this Agreement (provided Premises Owner has not exercised the purchase option set forth in the PPA), Tenant shall remove, at Tenant's sole cost and expense, all of its tangible property comprising the System from the Facility on a mutually convenient date, but in no event later than one hundred eighty (180) days after the expiration of the Term; provided, however, Premises Owner shall bear all costs and expenses of Tenant's removal of the System if removal is necessary due to a Premises Owner Event of Default. Excluding ordinary wear and tear, the Facility shall be returned to its original condition including the removal of the System; provided, however, Tenant shall not be required to remove (i) any supports, canopies, anchors, penetrations, conduits or other similar ancillary equipment which were installed by Tenant if, in Tenant's reasonable judgment, the removal of such supports, anchors, penetrations, conduits or other similar ancillary equipment would cause harm and damage to the Facility, and (ii) any underground foundations or underground or buried conduits and cabling installed by Tenant on or about the Facility. In no case shall Tenant's removal of the System affect the integrity of the Facility's roof, which shall be as leak proof as it was prior to removal of the System and shall be flashed and/or patched to existing roof specifications. Tenant shall leave the Facility in neat and clean order. If Tenant fails to remove or commence substantial efforts to remove the System by such agreed upon date, Premises Owner shall have the right, at its option, to remove the System to a public warehouse and restore the Facility to its original condition (other than ordinary wear and tear) at Tenant's cost. Premises Owner shall provide sufficient space at no expense to Tenant for the temporary storage and staging of tools, materials, and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during System removal. Tenant shall have a continuing easement to enter the Facility for the purpose of removing the System for one hundred eighty (180) days after the expiration of the Term.

## **ARTICLE IV DEFAULT**

**4.1 Tenant Event of Default.** Each of the situations set forth below shall constitute a breach of this Agreement by Tenant (each a "**Tenant Event of Default**"), and shall entitle Premises Owner to exercise the remedies set forth in this Agreement: (i) failure by Tenant to pay any installment of the Rent or any other payment due hereunder, where such failure to pay continues for a period of ninety (90) days after Notice of such non-payment from Premises Owner; or (ii) failure by Tenant to comply with any of the material provisions of this Agreement and, unless otherwise expressly provided for hereunder, such failure to comply continues for more than forty-five (45) days from the date on which Premises Owner provides Notice of such breach to Tenant;



provided that such forty-five (45) day period shall be extended by such longer period of time as may be reasonably necessary for Tenant to cure such breach if such breach cannot reasonably be cured within a forty-five (45) day period so long as Tenant is diligently pursuing such cure. Upon each occurrence of a Tenant Event of Default, and after expiration of all applicable Notice and cure periods, Premises Owner may at any time subsequent to such breach and at its discretion take such action as provided for in this Agreement or as may be available to Premises Owner at law or in equity.

**4.2 Premises Owner Event of Default.** Each of the situations set forth below shall constitute a breach of this Agreement by Premises Owner (each a “**Premises Owner Event of Default**”), and shall entitle Tenant to exercise the remedies set forth in this Agreement: (i) Premises Owner prevents Tenant from installing the System or Premises Owner otherwise performs or fails to perform in a way that prevents the delivery of electric energy from the System (whether to Premises Owner pursuant to the PPA or in connection with any permitted sale of such energy by Tenant to a Utility or a third party); (ii) Premises Owner loses its right to occupy the Facility; (iii) Premises Owner is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement and this Agreement is rejected or otherwise terminated in any such action; or (iv) failure by Premises Owner to comply with any of the material provisions of this Agreement and, unless otherwise expressly provided for hereunder, such failure to comply continues for more than forty-five (45) days from the date on which Tenant provides Notice of such breach to Premises Owner; provided that such forty-five (45) day period shall be extended by such longer period of time as may be reasonably necessary for Premises Owner to cure such breach if such breach cannot reasonably be cured within a forty-five (45) day period so long as Premises Owner is diligently pursuing such cure. Upon the occurrence of a Premises Owner Event of Default, and after expiration of all applicable Notice and cure periods, Tenant may at any time subsequent to such breach and at its discretion (A) terminate this Agreement; (B) specifically enforce this Agreement and compel compliance by Premises Owner with its obligations under this Agreement; and/or (C) take such action and recover such damages as provided for at law or in equity. Without limiting the foregoing, (x) in the event of a breach or default by Premises Owner of any of Premises Owner’s duties or obligations hereunder (including, without limitation, the obligations set forth in Section 1.1(a), 1.2, 3.2, 3.3, 3.4 and 3.7 hereof), Tenant shall have the right but not the obligation to perform such duty or obligation on Premises Owner’s behalf, and/or (y) in the event of a breach pursuant to items (i), (ii) or (iii) above, Tenant may elect to have Premises Owner pay Tenant an amount equal to Premise Owner’s Termination Payment and thereupon terminate this Agreement. All costs incurred by Tenant in performing any duties or obligations of Premises Owner shall be repaid by Premises Owner to Tenant upon written demand, together with interest computed from the date such costs and expenses are incurred; provided, however, if Premises Owner exercises the right to reject this Agreement in any bankruptcy reorganization or other proceeding, then Tenant shall have the right to off-set the costs incurred by Tenant in performing any such duties or obligations of Premises Owner against the Rent payable under this Agreement. **Remedies Cumulative.** No remedy herein conferred upon or reserved to Premises Owner or Tenant shall exclude any other remedy herein or at law, but each

such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

## **ARTICLE V MISCELLANEOUS**

**5.1 Representations of Premises Owner.** The representations and obligations of Premises Owner (as Purchaser) set forth in PPA Sections 16(a) and 16(b) are incorporated herein by this reference and shall remain in full force and effect for the benefit of Tenant during the Term of this Agreement. Additionally, without limiting the generality of the foregoing, Premises Owner represents and warrants that, as of the Effective Date and the date that Tenant is prepared to, or engages one of its affiliates to, construct and install the System at the Facility, (A) Premises Owner has lawful and marketable title to the Facility and full right to enter into this Agreement; (B) the Facility is free from any mortgages and rights of third parties that could adversely affect Tenant's rights under this Agreement to use and occupy the Facility as permitted herein; (C) there are no existing conditions, encumbrances, leases, agreements, or use restrictions that prevent the construction, installation or operation of the System on, upon or around the Facility; and (D) there are no ground leases, master leases, liens, security interests or other encumbrances on the Facility. Notwithstanding the foregoing, to the extent, if any, that any third party has any interest in the Facility or any other claim, lien, encumbrance or right of possession on or against the Facility, Premises Owner will obtain such consents, non-disturbance agreements, or other written documents as Tenant may reasonably request in order to evidence the consent of such third party to the transactions contemplated by this Agreement and the acknowledgement by such third party of the right, title and interest of Tenant in and to the System and the rights of Tenant granted pursuant to this Agreement. In addition to the foregoing, if there is an existing mortgage, deed of trust or similar security instrument encumbering all or any portion of the Facility, Premises Owner covenants and agrees to deliver to Tenant a recordable non-disturbance agreement in a form reasonably acceptable to Tenant evidencing the right, title and interest of Tenant in and to the System and the rights of Tenant granted pursuant to this Agreement.

**5.2 General Rules of Construction; Binding Effect.** The rules of construction set forth in PPA Section 1 are incorporated by this reference. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement. This Agreement and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the Parties hereto, together with their respective successors and permitted assigns.

**5.3 Memorandum of Lease; Fixture Filing.** Premises Owner hereby agrees to execute within ten (10) days after receipt of Tenant's request and authorizes Tenant to record a memorandum of this Agreement (substantially in the form attached as **Exhibit C** hereto) in the land registry or title records of the county where the Facility is located or other applicable government office. Tenant (or any Tenant's Lender) shall be entitled to, and is hereby authorized to, file one or more precautionary UCC financing statements or fixture filings in such jurisdictions as it deems appropriate with respect to the System in order to provide Notice of its ownership of the System.

**5.4 Notices.** All notices (each a “**Notice**”) under this Agreement shall be in writing and shall be delivered as provided in PPA Section 26(c).

**5.5 Choice of Law; Waiver of Jury Trial.** This Agreement shall be construed in accordance with the laws of the State in which the Facility is located (without regard to its conflict of laws principles). TO THE EXTENT PERMITTED BY LAW, TENANT AND PREMISES OWNER WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN PREMISES OWNER AND TENANT ARISING OUT OF THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith OR THE TRANSACTIONS RELATED HERETO. In the event of any dispute by the parties, the dispute shall then be settled by final, binding arbitration pursuant to the California Arbitration Act, C.C.P. §§ 1280 et seq. (“CAA”). The parties shall mutually select one local arbitrator. In the even the parties are not able to agree on an arbitrator, an arbitrator will be pointed as provided in the CAA.

**5.6 Premises Owner Bankruptcy.** Each of the Parties agrees and acknowledges that this Agreement is a lease of real property and, to the maximum extent permissible by applicable laws, this Agreement shall continue in full force and effect, and the respective duties and obligations of Tenant and Premises Owner shall not be released, discharged or otherwise affected, by reason of any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to Premises Owner, or any action taken with respect to either the PPA or this Agreement by a court, trustee or receiver in any such proceeding. Each of the Parties further agrees and acknowledges that each of the PPA and this Agreement is a separate and distinct agreement that is independent of the other agreement, and that the transactions contemplated by the PPA and the transactions contemplated by this Agreement are separate and distinct transactions and are not part of a single integrated transaction. The Parties agree that should this Agreement or the provisions of this Agreement ever be part of an agreement that is rejected in a bankruptcy case of the Premises Owner, the Tenant shall be entitled to all of the protections of Section 365(h) of the United States Bankruptcy Code, including, the right to continue to occupy the Premises, the Transmission Easement, the Access Easement and the Solar Development Easement.

**5.7 Severability.** If one or more provisions of this Agreement are found by a court of competent jurisdiction over the Parties hereto to be illegal, invalid or unenforceable, in whole or in part, the remaining terms and provisions of this Agreement shall remain in full force and effect disregarding such illegal, invalid or unenforceable portion and such court shall be empowered to modify such illegal, invalid or unenforceable provision to the extent necessary to make this Agreement enforceable in accordance with the intent or purposes of the Parties expressed in this Agreement to the fullest extent practicable and as permitted by applicable law.

**5.8 Entire Agreement; Counterparts.** This Agreement (including the terms and provisions of the PPA expressly incorporated herein by reference) represents the full and complete agreement between the Parties hereto with respect to the subject matter contained herein and supersedes all prior written or oral agreements between

said Parties with respect to said subject matter. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or other electronically transferred signatures shall have the same effect as original signatures and each Party's consent to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

***[Remainder of Page Intentionally Left Blank; Signature Page Follows]***

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the day and year first above written.

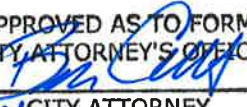

**PREMISES OWNER:**

City of Fresno

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

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

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

APPROVED AS TO FORM  
CITY ATTORNEY'S OFFICE  
BY:   
 CITY ATTORNEY

**TENANT:**

Fresno Street Solar Project 2019, LLC

By: 

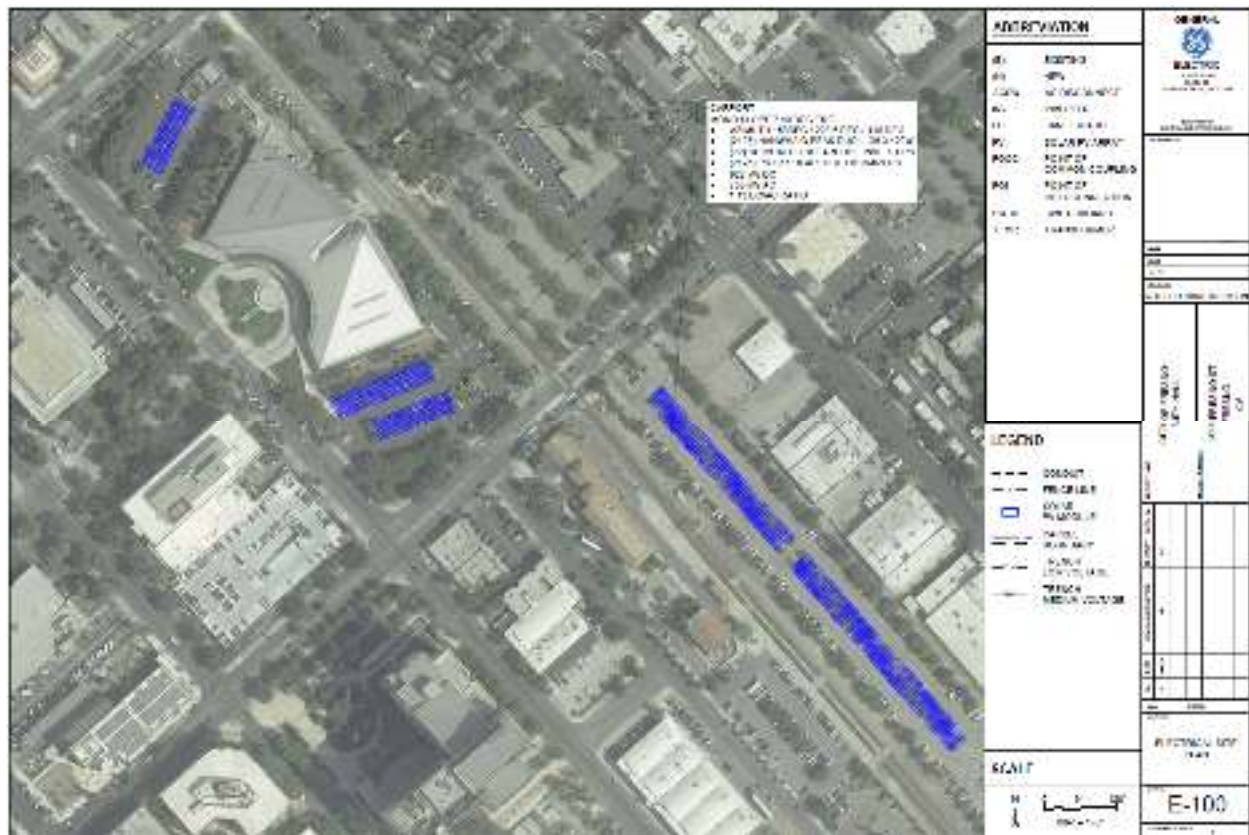
Name: Erik Schiemann

Title: President

**Exhibit A**  
**Legal Description of Property**

Exhibit A

## Facility and System Layout



**Exhibit C**  
**Form of Memorandum of Lease**

PREPARED BY, RECORDING  
REQUESTED BY AND WHEN  
RECORDED RETURN TO:

c/o Distributed Solar  
Development, LLC  
41 Farnsworth St.  
Boston, MA 02210  
Attention: Jennifer Gerrard

---

(Space Above for Recorder's Use only)

**MEMORANDUM OF SOLAR POWER LEASE**

THIS MEMORANDUM OF SOLAR POWER LEASE (this "**Memorandum**") is made and entered into as of October \_\_, 2019, by and between City of Fresno, a California municipality ("**Lessor**"), and Fresno Street Solar Project 2019, LLC, a Delaware limited liability company ("**Lessee**"). Lessor and Lessee are referred to collectively herein as the "**Parties**".

WITNESSETH:

- A. Lessor is the fee owner of certain real property located at 2600 Fresno Street, Fresno CA 93721 as more particularly described in **Exhibit A** attached hereto.
- B. Pursuant to that certain Solar Energy System Lease Agreement dated October 24, 2019 ("Lease"), Lessor granted to Lessee an exclusive lease and easement for the installation, construction, maintenance, operation, inspection, repair and replacement of certain photovoltaic systems and related cables, electrical lines, ducts, transformers and other equipment, on, under and over a portion of the real property more particularly described in **Exhibit B** attached hereto and incorporated herein by reference, together with the right of ingress and egress to and from the Premises as described in the Lease.

NOW, THEREFORE, in consideration of the payments and covenants to be paid and performed by Lessee under the terms of the Lease, the receipt and sufficiency of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

- 1. The Initial Term of the Lease commenced on the effective date set forth therein, and will continue in full force and effect for a period of three hundred (300) months from the Commercial Operation Date with two (2) additional renewal options for five (5) years each, unless earlier terminated as provided in the Lease.

Exhibit C



2. The Parties desire to execute this Memorandum, which is to be recorded in order that third parties may have notice of the interests of Lessee in the Premises and of the existence of the Lease and of certain easement rights granted to Lessee in the Premises as part of the Lease.
3. All of the terms, conditions, provisions, and covenants of the Lease are hereby incorporated into this Memorandum by reference as though fully set forth herein, and the Lease and this Memorandum shall be deemed to constitute a single instrument or document.
4. Should there be any inconsistency between the terms of this Memorandum and the Lease the terms of the Lease shall prevail.
5. The Lease contains the entire agreement of the Parties with respect to the subject matter thereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including, without limitation, any options for easements or easements previously entered into by the Parties with respect to the Premises), are superseded by the Lease and shall be and hereby are revoked and terminated.
6. All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Lease.

*[Signature page follows]*

IN WITNESS WHEREOF, Lessor and Lessee have executed this Memorandum  
as of the day and year first above written.

**Lessor:**

**City of Fresno,  
a California municipality**

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

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

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

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officerpersonally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

☐ Corporate Officer Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

**Lessee:**

[ ]

a Delaware limited liability company

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

Name: Erik Schiemann

Title: President

State of New York )

ss.)

County of Schenectady )

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared Erik Schiemann, ☐ personally known to me OR ☐ proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal:

\_\_\_\_\_

My Commission Expires:

Exhibit C

**Exhibit A**

**DESCRIPTION OF PROPERTY**

Exhibit C

**Exhibit B**  
**PREMISES**

Exhibit C