

ENERGY SAVINGS & PRODUCTION OUTPUT GUARANTY AGREEMENT

THIS ENERGY SAVINGS & PRODUCTION OUTPUT GUARANTY AGREEMENT ("**Agreement**") is made and entered into as of _____, 2021, by and between City of Norman, an Oklahoma municipal corporation and the Norman Utilities Authority, an Oklahoma public trust having as its sole beneficiary, the City of Norman, (together, "**Owner**"), and BioStar E Light JV, LLC, a Kansas limited liability company ("**Contractor**"). Owner and Contractor are referred to hereinafter individually as a "**Party**" and together as the "**Parties**".

WHEREAS, the Parties have entered into to that certain Energy Services Contract dated _____, 2021 (the "**ESC Agreement**") pertaining to the design and installation of one or more solar energy facilities listed on Schedule 1 hereto (each a "**System**") at one or more sites (each, a "**Site**") owned or leased by Owner; and

WHEREAS, the Parties now wish to enter into this Agreement relating to the overall electricity output of each System;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Guarantee: Contractor hereby guarantees to Owner that the actual monetary value from the overall electricity output of each System during each True-Up Period will be equal to or greater than the expected amount determined in accordance with Section 10 of this Agreement. In the event the actual monetary value from a System during any True-Up Period is less than the expected amount, and such shortfall is not excused in accordance with the terms of this Agreement, Owner shall be entitled to receive a Guaranty Payment calculated in accordance with Section 9 as its sole remedy for such shortfall.
2. Term: The term of this Agreement (the "**Term**") shall commence on the date the System achieves final completion pursuant to the ESC Agreement and continue for the period ending on the twenty-fifth (25) year anniversary of such date, unless earlier terminated pursuant to Section 10.
3. Throughout the Term, and as conditions to the obligations of Contractor hereunder, the Owner shall:
 - a. maintain (including making timely payments thereunder) an agreement with Contractor for the operation and maintenance of each systems;
 - b. grant reasonable access to each System to Contractor's personnel and representatives; and
 - c. not modify, alter, shade, damage, service, or repair, without Contractor's prior written approval, any part of any System, the supporting structure for any System or the associated wiring.
4. Definitions:

"**Actual Electricity Production**" means, for each Guaranty Year and portion thereof during the Term, a System's alternating current or "AC" electricity production in

kilowatt-hours (kWh) as metered and calculated according to the methods described herein and consistent with the System's AC electricity output measurements described in the ESC Agreement.

"Annual Degradation Rate" or "ADR" means the rate at which a System is deemed to decrease in AC kWh output each year relative to the prior year due to expected PV module degradation. The ADR is deemed to be 0.50%.

"Baseline Savings Rate" means the agreed baseline savings rate as set forth on Exhibit A.

"DAS" means Contractor's or its agent's data acquisition system that displays historical meteorological and production data over an internet connection and consists of hardware located on-site and software housed on Contractor's or its agent's DAS server. The DAS measures and logs, at minimum, the following parameters on a 15-minute average basis at each Site: actual AC electricity production of the applicable System (in kWh), solar irradiance (in W/m²), ambient and module temperature (in °C), and wind speed (in meters per second).

"Expected Production" is the expected electricity Production measured in kilowatt-hours (kWh) from the System (as adjusted for the ADR) as set forth on Exhibit A, as may be revised from time to time in accordance with this Agreement.

"Guaranty Level" is 90% of the Expected Production (as adjusted for the ADR) for the purpose of calculating the minimum monetary value of electricity purchases that shall be avoided by a System's electricity output for each year of the Term under this Agreement.

"Guaranty Year" means each consecutive year during the Term.

"Energy Savings Model" means the model representing the System to be built by Contractor that shall be used for calculating any Guaranty Payments, and is attached as Exhibit A.

"Uncertainty Allowance" or "UA" means the uncertainty associated with the instruments employed to measure the power output of the system and the environmental parameters. The parties agree that for purposes of this Agreement and the calculation of the Expected Production, the Uncertainty Allowance is 5%.

5. Shading. Each System's output expectations are based on current site conditions. Introducing new shade onto the solar modules will have a negative impact on performance. Contractor will not be responsible for loss of production due to shade that is introduced after the System has been installed. Building alterations, new structures, satellite dishes and new tree growth are examples of objects that cause shade if placed in close proximity to the solar array. The Owner is responsible for maintaining the current site conditions or notifying Contractor of any new shading, at which time Contractor will incorporate new shading into a revised Energy Savings Model and a revised Exhibit A, which will allow the Expected Production to reflect the new shading conditions.

6. Contingency for Equipment Failure. In the event of hardware, communication, or other failure affecting the DAS, Contractor will make reasonable efforts to resolve the failure in a timely manner. In the event that data are lost, Actual Production shall be adjusted to compensate for such lost data:
 - a. Lost Electricity Data. In lieu of lost electricity data, Contractor will utilize the cumulative data from System meter readings to calculate the electricity generated during the missing interval. In the event that data from the System meter are inaccurate or missing, Contractor will simulate electricity production during the missing interval utilizing measured meteorological data and solar energy modeling software. The simulated electricity production during the missing interval will be added to the Actual Electricity Production for the subject Guaranty Year.
7. Adjustment of Expected Production. Contractor, with approval from the Owner, shall submit a corresponding adjustment to Expected Production and the Energy Savings Model by revising Exhibit A accordingly, for the affected period if, and to the extent, there is a material change in the production of electricity by a System owing to any of the following events:
 - a. There are any material changes to the Scope of Work or redesigns of the System or substitution of alternate System(s) made subsequent to execution of this Agreement;
 - b. The manufacturer of the solar specific equipment including any modules, inverters, racking, combiner boxes or monitoring equipment is not able or willing to honor its product warranty to Owner or the warranty has expired and Owner does not remedy by replacement at its own expense, provided that Contractor used its best efforts to assist the Owner in its attempts to oblige the manufacturer to comply with its warranty obligations;
 - c. In the event where Contractor requires the Owner's reasonable cooperation to remedy any source of under-performance (such as tree trimming, or providing access to premises, for example) and is denied that cooperation within a reasonable amount of time;
 - d. There is any failure of the System to perform caused by legislative, administrative or executive action, regulation, order or requisition of any federal, state or local government, local utility or public utilities commission;
 - e. There is an extended power outage;
 - f. There is a Force Majeure Event as defined in the ESC Agreement; or
- b) There is any change in usage of or structures on the Site, or buildings at or near the Site that materially affects the performance of the System(s) unless Contractor provides prior written consent to the change. Data Quality. Where data used in the analysis, whether meteorological, power or energy, exhibit a high degree of error or departure from expected values, those data points may be omitted from the analysis. Data points excluded will be identified and the reason for the exclusion noted.

8. True-Up and Calculation of Guaranty Payment. At the end of each Guaranty Year, Contractor shall within 120 days provide Owner with a report detailing each System's Actual Electricity Production (in AC kWh) for each Guaranty Year and the corresponding monetary value of such Actual Electricity Production at the Baseline Savings Rate (the "**Actual Utility Avoided Cost**"). For all Systems collectively for each Guaranty Year, Contractor shall also provide a true-up calculation that compares the System's Actual Utility Avoided Cost and its corresponding Guaranteed Utility Avoided Cost monetary value, and calculated as follows:

True-Up Calculation for the Utility Avoided Costs. Contractor shall perform the following true-up calculation for each Guaranty Year for all Systems (as set forth on Exhibit A):

Step One: Calculate the **Guaranteed Utility Avoided Cost** value as follows:

$$[\text{Expected Production (kWh)}] \times [.90] \times [(1 - \text{ADR})^{(\text{GUARANTY YEAR} - 1)}] \times [1 - \text{UA}] \times [\text{Baseline Savings Rate (\$/kWh)}]$$

Step Two: Calculate the **Actual Utility Avoided Cost** value as follows:

$$[\text{Actual Electricity Production (kWh)}] \times [\text{Baseline Savings Rate (\$/kWh)}]$$

Step Three: Calculate the **True-Up Amount** by subtracting the Guaranteed Utility Avoided Cost value from the Actual Utility Avoided Cost value.

Actual Electricity Production values shall be based on the revenue grade utility meter measuring the output of each System. When providing the Owner with a true-up report, the Contractor shall, upon the Owner's request, make reasonable efforts to explain the data, calculations, and the results, and shall make available the underlying data and calculations.

- a. Review and Approval of True-Up Report. Within thirty (30) days of receipt of the true-up report, Owner shall either accept the true-up report or may propose revisions to the calculated True-Up Amount. If no objection is made by Owner within the thirty (30) day period, the true-up report will be deemed accepted. Should the Owner dispute the true-up report results, Parties agree to make good-faith efforts to address and resolve the cause of the dispute.
- b. Determining the Guaranty Payment, If Any: If the True-Up Amount is a negative dollar amount, the Contractor has underperformed according to the terms of this Agreement during the Guaranty Year and owes a payment (a "**Guaranty Payment**") in this amount to the Owner. For example, a negative True-Up Amount of <\$10,000> would mean that the Contractor owes \$10,000 to the Owner. If the True-Up Amount is zero or a positive number, the Contractor has exceeded the minimum required performance under this Agreement and therefore owes no Guaranty Payment to the Owner for the Guaranty Year. The Parties agree that no Guaranty Payment that may accrue during a given Guaranty Year shall become due and payable until the end of such Guaranty Year.

- c. Making a Required Guaranty Payment. Any required Guaranty Payment shall be made by Contractor within 30 days of the later of (1) acceptance of the true-up report by Owner, or (2) resolution of any dispute of the true-up report results between Contractor and Owner.

10. Termination

- a. By the Owner. Owner may terminate this Agreement in the event any of the following occurring:
 - i. since the date of this Agreement, a material deterioration of the financial situation/solidity of the Contractor as evidenced by a failure to pay substantial amounts to other creditors for a material period of time or a serious threat that a petition in bankruptcy will be filed against Contractor; or
 - ii. Contractor fails to pay to Owner any Guaranty Payment (other than any amounts which are the subject of a bona fide dispute) within thirty (30) calendar days of written notice of such failure from Owner to Contractor.
- b. By Either Party. Either party may terminate this Agreement in the event of any of the following occurring:
 - i. any failure by the other Party to perform any of its material obligations, except payment of a Guaranty Payment, under this Agreement, which failure is not remedied within fifteen (15) calendar days of written notice of such failure from the non-breaching Party to the breaching Party; provided, however, that if such failure can be remedied, but (A) such failure cannot reasonably be remedied within such fifteen (15) calendar day period, and (B) the breaching Party commences cure of such failure within such fifteen (15) calendar day period and thereafter diligently seeks to remedy such failure, then the non-breaching Party shall not be entitled to terminate this Agreement until such time as the breaching Party ceases all reasonable endeavors to cure such failure unless such failure continues for a period of a thirty (30) calendar days from the original written notice from the non-breaching Party; or
 - ii. a Force Majeure Event, as defined in the ESC Agreement, which conditions continue for a period of sixty (60) days or more.
- c. Preservation of Rights. Termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior to such termination or which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise.

11. Miscellaneous

- a. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma.
- b. Amendments. No amendment to this Agreement shall be binding on the Parties unless set out in writing, expressed to vary this Agreement, and signed by authorized representatives of each of the Parties.
- c. No Waiver. No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing. The failure of either Party to

insist, on one or more occasions, upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

d. Successors and Assigns.

- i. Except as set forth in subsection (ii) of this section, no Party shall be entitled to assign this Agreement or any of its rights or obligations under this Agreement, nor shall it enter into any transaction as a result of which it may transfer, assign, charge or dispose by any title of any of those rights and obligations, without the prior written consent of the other Party, which shall not be unreasonably withheld.
- ii. Notwithstanding the foregoing, Contractor shall be entitled to assign its right, obligation, title and interest in and to this Agreement to any of its affiliates or in connection with a merger, consolidation or sale of all or substantially all of the assets of Contractor.

- e. Notices. Any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; or (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid, with a return receipt requested. Mailed notices shall be addressed as follows to:

Owner

City of Norman
201 W. Gray Street
Norman, OK 73069
ATTN: Chris Mattingly

Contractor

BioStar E Light JV, LLC
9400 Reeds Rd., Ste 150
Overland Park, KS 66207
ATTN: William Love

- f. Time of Essence. Time is expressly agreed to be of the essence of this Agreement and all of the terms, conditions and provisions hereof.
- g. Construction. The following rules of construction and interpretation shall govern the construction and interpretation of this Agreement:
- i. Days. Any reference to days in this Agreement shall mean calendar days unless otherwise specified.
 - ii. Number and Gender. Whenever, in this Agreement, the singular number is used, the same shall include the plural and the neuter, masculine and feminine genders shall include each other, as the context may require. All numbering in this Agreement shall use English numbering conventions.
 - iii. Interpretation and Joint Drafting. The Parties expressly agree that this Agreement was jointly drafted and that each had the opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. The language in all parts of this Agreement shall be in all cases construed according to its fair meaning and not

strictly for or against any of the Parties. In the event any claim is made by any Party relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular Party or counsel for any particular Party.

- iv. Entire Agreement. This Agreement and any agreements executed by the Parties on the date of this Agreement contain the whole agreement between the Parties relating to the transactions contemplated therein and supersede all previous agreements between the Parties relating to these transactions.
 - (1) Each party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those repeated in this Agreement and any other agreement entered into on the date of this Agreement between the Parties) made by or on behalf of any other party at any time before the signature of this Agreement. Each party waives all rights and remedies which, but for this subsection, might otherwise be available to it in respect of any such representation, warranty, collateral contract or other assurance.
- v. Article and Section References. All cross-references in this Agreement to articles, sections and subsections, unless specifically directed to another agreement or document, refer to articles, sections and subsections of this Agreement.
- vi. Captions. The titles of the various exhibits, schedules or attachments to this Agreement and of the various articles, sections or subsections of this Agreement:
 - (1) are inserted for convenience, identification and ease of reference purposes only,
 - (2) do not form part of this Agreement, and
 - (3) are in no way intended to define or limit the scope, extent or intent of this Agreement or any of the provisions of this Agreement and shall not in any way affect the interpretation, application or construction of this Agreement or any of the provisions of this Agreement.
- vii. Severability. The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.
- viii. Multiple Counterparts. This Agreement and any amendments of this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

CITY OF NORMAN

Date: _____, 20__

By: _____

Print Name: _____

Print Title: _____

Attest:

City Clerk

CONTRACTOR

Date: May 5, 2021

By: [Signature]

Print Name: WILLIAM P. LOUE

Print Title: MANAGER

NORMAN UTILITIES AUTHORITY

Date: _____, 20__

By: _____

Print Name: _____

Print Title: _____

Attest:

Approved as to form and legality this ____ day of _____, 2021.

Kathryn Walker, City Attorney/General Counsel

Schedule 1: System(s)

ID	SYSTEM DESCRIPTION	SIZE (DC)	METER ID	LOCATION
#1-A	Solar Array 1 - Water Treatment Plant	300.0	128899922	3000 E Robinson St, Norman, OK
#1-B	Solar Array 1B - Water Treatment Plant	300.0	128899957	3000 E Robinson St, Norman, OK
#2-A	Solar Array 2A - Water Reclamation Facility	300.0	1842192/56966409G	3500 Jenkins Ave, Norman, OK
#2-B	Solar Array 2B - Water Reclamation Facility	300.0	130607728/68743480G	3500 Jenkins Ave, Norman, OK
#2-C	Solar Array 2C - Water Reclamation Facility	500.0	129326032/52304056G	3500 Jenkins Ave, Norman, OK
#2-D	Solar Array 2D - Water Reclamation Facility	300.0	130267248/56965632G	3500 Jenkins Ave, Norman, OK
#2-E	Solar Array 2E - Water Reclamation Facility	270.0	11998945	3500 Jenkins Ave, Norman, OK

Exhibit A: Energy Savings Model used for calculation of Guaranty Payment

ID	SYSTEM DESCRIPTION	EXPECTED PRODUCTION (kWh)	METER BASELINE SAVINGS RATES	BASELINE TOTAL EXPECTED ENERGY SAVINGS	
#1-A	Solar Array 1 - Water Treatment Plant	473,058	\$ 0.101437		\$ 276,455.99
#1-B	Solar Array 1B - Water Treatment Plant	473,058	\$ 0.150112		3,579,790
				BLENDING BASELINE SAVINGS RATE	\$ 0.0772
#2-A	Solar Array 2A - Water Reclamation Facility	473,059	\$ 0.063838		
#2-B	Solar Array 2B - Water Reclamation Facility	473,059	\$ 0.051136		
#2-C	Solar Array 2C - Water Reclamation Facility	788,429	\$ 0.061396		
#2-D	Solar Array 2D - Water Reclamation Facility	473,057	\$ 0.069578		
#2-E	Solar Array 2E - Water Reclamation Facility	426,070	\$ 0.083319		
TOTAL		3,579,790			
GUARANTEED UTILITY AVOIDED COSTS					
YEAR	EXPECTED PRODUCTION (kWh)	90% EXPECTED PRODUCTION (kWh)	UNCERTAINTY ALLOWANCE	BASELINE SAVINGS RATE (\$/kWh)	GUARANTEED UTILITY AVOIDED COSTS
Year 1	3,579,790	3,221,811	x	\$ 0.0772	=
Year 2	3,561,891	3,205,702	x	\$ 0.0772	=
Year 3	3,544,082	3,189,673	x	\$ 0.0772	=
Year 4	3,526,361	3,173,725	x	\$ 0.0772	=
Year 5	3,508,729	3,157,856	x	\$ 0.0772	=
Year 6	3,491,186	3,142,067	x	\$ 0.0772	=
Year 7	3,473,730	3,126,357	x	\$ 0.0772	=
Year 8	3,456,361	3,110,725	x	\$ 0.0772	=
Year 9	3,439,079	3,095,171	x	\$ 0.0772	=
Year 10	3,421,884	3,079,696	x	\$ 0.0772	=
Year 11	3,404,775	3,064,297	x	\$ 0.0772	=
Year 12	3,387,751	3,048,976	x	\$ 0.0772	=
Year 13	3,370,812	3,033,731	x	\$ 0.0772	=
Year 14	3,353,958	3,018,562	x	\$ 0.0772	=
Year 15	3,337,188	3,003,469	x	\$ 0.0772	=
Year 16	3,320,502	2,988,452	x	\$ 0.0772	=
Year 17	3,303,900	2,973,510	x	\$ 0.0772	=
Year 18	3,287,380	2,958,642	x	\$ 0.0772	=
Year 19	3,270,943	2,943,849	x	\$ 0.0772	=
Year 20	3,254,588	2,929,130	x	\$ 0.0772	=
Year 21	3,238,316	2,914,484	x	\$ 0.0772	=
Year 22	3,222,124	2,899,912	x	\$ 0.0772	=
Year 23	3,206,013	2,885,412	x	\$ 0.0772	=
Year 24	3,189,983	2,870,985	x	\$ 0.0772	=
Year 25	3,174,033	2,856,630	x	\$ 0.0772	=
ACTUAL UTILITY AVOIDED COST					
	ACTUAL ELECTRIC PRODUCTION (kWh)	BASELINE SAVINGS RATE (\$/kWh)	ACTUAL UTILITY AVOIDED COSTS		
Year 1	x	\$ 0.0772	=		
Year 2	x	\$ 0.0772	=		
Year 3	x	\$ 0.0772	=		
Year 4	x	\$ 0.0772	=		
Year 5	x	\$ 0.0772	=		
Year 6	x	\$ 0.0772	=		
Year 7	x	\$ 0.0772	=		
Year 8	x	\$ 0.0772	=		
Year 9	x	\$ 0.0772	=		
Year 10	x	\$ 0.0772	=		
Year 11	x	\$ 0.0772	=		
Year 12	x	\$ 0.0772	=		
Year 13	x	\$ 0.0772	=		
Year 14	x	\$ 0.0772	=		
Year 15	x	\$ 0.0772	=		
Year 16	x	\$ 0.0772	=		
Year 17	x	\$ 0.0772	=		
Year 18	x	\$ 0.0772	=		
Year 19	x	\$ 0.0772	=		
Year 20	x	\$ 0.0772	=		
Year 21	x	\$ 0.0772	=		
Year 22	x	\$ 0.0772	=		
Year 23	x	\$ 0.0772	=		
Year 24	x	\$ 0.0772	=		
Year 25	x	\$ 0.0772	=		

ENERGY SERVICES CONTRACT

This ENERGY SERVICES CONTRACT (this “Agreement”), is dated as of _____, 2021 (the “Effective Date”), by and between BioStar E Light JV, LLC, a Kansas limited liability company (“Provider”), the Norman Utilities Authority, an Oklahoma public trust having the City of Norman as its sole beneficiary, and The City of Norman, Oklahoma, an Oklahoma public entity (together referred to as “Owner”). Owner and Provider may be referred to individually herein as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Owner desires to enter into this Agreement to engage Provider to design, construct, operate and maintain a solar photovoltaic system and to provide an energy savings and production guaranty; and

WHEREAS, Owner desires to engage Provider to provide Engineering, Procurement, and Construction Services (the “EPC Services”) for the Owner’s proposed approximately 2,270+/- kWdc solar photovoltaic electric generating facility (the “Project”) on the properties described on Schedule 10 (each, a “Site”), and thereafter, Owner desires to engage Provider to provide ongoing performance monitoring and reporting services, and management of the Project operations and maintenance activities described in Exhibit 7 (the “O&M Services”) and Owner will provide an energy savings and production output guaranty as set forth in Schedule 13 (the “Performance Guaranty”); and

WHEREAS, the EPC Services and the O&M Services (collectively, the “Services”) shall be provided in accordance with the terms of this Agreement. It is understood by the Parties that the final size of the Project may vary from the approximate Project size set forth herein as dictated by local permits and/or Site conditions.

NOW, THEREFORE, 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:

AGREEMENT

1. DEFINITIONS. Unless otherwise required by the context: (a) capitalized terms used in this Agreement have the respective meanings set forth in this Section 1; (b) the singular includes the plural and vice versa; (c) the word “including” means “including, without limitation”; (d) references to “Sections,” “Schedules” and “Exhibits” are references to sections, schedules and exhibits hereof; (e) the words “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular section or subsection hereof; and (f) references to “this Agreement” includes all Schedules and Exhibits, as the same may be amended, modified, supplemented or replaced from time to time.

“Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by or under common control with, such Person. For the purposes of this definition, “control” (including with correlative meanings, the terms “controlling,” “controlled

by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly through one (1) or more intermediaries, of the power to either (a) elect a majority of the directors or managers (or Persons with equivalent management power) of such Person, or (b) direct or cause the direction of the management or policies of such Person, whether through the Ownership of securities or partnership, membership or other Ownership interests, by contract, by operation of law or otherwise.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Applicable Law” means, at any date of determination during the term of this Agreement, any applicable constitutional provision, law, statute, code, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, injunction, registration, license, permit, authorization, guideline, approval, consent or requirement of any Governmental Authority, in effect on such date and as construed on such date by such Governmental Authority. Applicable Law includes complying with all requirements, classifications and maintaining applicable certifications for the State of Oklahoma.

“Applicable Permits” means any license, authorization, certification, filing, recording, permit or other approval, including, without limitation, each and every environmental, construction or operating permit, that is required by Applicable Law or any Governmental Authority to be obtained in connection with the performance of the Work – such Applicable Permits to specifically include electrical and building permits from the local Government Authority.

“Assigned Warranties” means any Warranty, Equipment warranty or any other warranty that has been assigned by Provider or subcontractor or any Equipment manufacturer to the Owner.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in the State of Oklahoma are obligated to close.

“Certificate of Final Completion” means a certificate issued by Provider and countersigned by Owner in accordance with Section 11.2, evidencing Owner’s acknowledgement that Final Completion has occurred.

“Certificate of Mechanical Completion” means a certificate issued by Provider and countersigned by Owner in accordance with Section 8.2, evidencing Owner’s acknowledgement that Mechanical Completion has occurred.

“Certificate of Substantial Completion” means a certificate issued by Provider and countersigned by Owner in accordance with Section 9.2, evidencing Owner’s acknowledgement that Substantial Completion has occurred.

“Change” has the meaning set forth in Section 12.1.

“Change in Law” means the adoption, enactment, amendment or change in Applicable Law applicable to the Project after the date of this Agreement which has a material, adverse impact on the cost of the Work or the Project Schedule critical path. Notwithstanding the

foregoing, the following shall not be considered a Change in Law: the adoption, enactment, amendment or change in Law with respect to (i) taxes or levies assessed on the Provider's income, profits, revenues, or gross receipts, or (ii) taxes, levies or withholdings that vary the compensation, benefits, or amounts to be paid to or on behalf of, on account of the employees of Provider or any Subcontractor or (iii) any change in a Permit to the extent caused by the negligent or intentional acts or material omissions Provider or any Subcontractor.

"Change Order" means a written document approved by the Parties after the Effective Date authorizing a Change, and, if applicable, setting forth any revisions to this Agreement necessary to effect the Change, including an adjustment of the Contract Price or Project Schedule all in accordance with **Section 12**.

"Contract Documents" means this Agreement, the Exhibits and Schedules hereto, and the Documentation.

"Contract Price" has the meaning set forth in **Section 16.1**.

"DAS" means data acquisition system including the associated (1) weather station; (2) metering; (3) hardware.

"Default Rate" means an interest rate per annum equal to the lower of (a) the rate published by the *Wall Street Journal* as the "prime rate" on the date on which such interest begins to accrue, plus one percent (1%), or (b) the maximum rate permitted under Applicable Law.

"Dispute" has the meaning set forth in **Section 29.1**.

"Documentation" means all materials in printed or electronic format that are or are to be delivered hereunder or otherwise agreed by the Parties to be delivered by Provider to Owner, including all construction plans, drawings, specifications, schedules, schematics, Owner's manual, operator's manual, equipment and software manuals, non-proprietary electrical system loss calculations, non-proprietary wind load engineering calculations, drawings (including "as built" drawings of buildings, structures, plant operating equipment and ancillary plant equipment), reports and test data and results.

"Dollar" and "\$" means the lawful currency of the United States of America.

"Effective Date" has the meaning set forth in the preamble to this Agreement.

"Environmental Law" means any Applicable Law relating to pollution or protection of the environment and human health, including, without limitation, the Hazardous Materials Transportation Act, 49 U.S.C. §1471 et seq., the Toxics Substances Control Act, 15 U.S.C. §§2601 through 2629, the Clean Air Act, 42 U.S.C. §7401, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Safe Drinking Water Act, 42 U.S.C. §300f, et seq., the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 et seq., the Oil Pollution Act, 33 U.S.C. § 2701, et seq., and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001, et seq.

“EPC Services” has the meaning set forth in the recitals.

“Equipment” means (a) any and all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required for prudent design, construction or operation of the Project in accordance with Applicable Law and Industry Standards, and (b) any and all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto described in, required by, reasonably inferable from or incidental to the Work or the Contract Documents. Unless otherwise specified to the contrary in this Agreement, Equipment does not include any Owner Furnished Equipment. The Provider shall be required to furnish all Equipment including but not limited to all of the equipment identified on the Construction Plans for the Project, not including the Owner Furnished Equipment, necessary or appropriate in order to complete the Work (the “Provider Furnished Equipment”). The Provider Furnished Equipment shall include, but not be limited, to the equipment listed in **Schedule 6** attached hereto. **Schedule 6** attached hereto contains a list of any Owner Furnished Equipment.

“Final Completion” means that the Project has achieved all of the conditions set forth in **Section 11.1** (or such conditions which have not been achieved have been waived by Owner).

“Final Completion Date” means the actual date on which Final Completion has occurred, as determined in accordance with **Section 11.3**.

“Force Majeure Event” shall mean, and be limited to, those events listed below and occurring in or having an effect on the Site or the Work, which are outside of the asserting Party’s reasonable control that materially and adversely affect the performance of a Party (other than payment obligations) and such event must prevent the effected Party from performing any other outstanding Work during the occurrence of the event as identified hereunder as: any delay caused by Owner failing to deliver OFE to the Site by the dates indicated on **Schedule 2**; any delay in receipt of permits beyond the time allotted for permits in the Project Schedule attached as **Schedule 2**; any delay caused by the Utility; a Change in Law; acts of war (whether declared or undeclared); riots; pandemic; earthquake; hurricanes; tornados; volcanic eruption; Government decreed official state of emergency; or adverse weather conditions or natural phenomena. to the extent it results in any of the following as determined by the NOAA meteorological station in closest proximity to the Site and identified as Oklahoma City Will Rogers Airport : (i) wind speed > 40 mph continuously for 3 hours, (ii) rain of more than two (2) inches accumulation at the Site during any twelve (12) hour period; or (ii) snowfall of more than two (2) inches accumulation at the Site during any twelve (12) hour period; or any other condition that prevents the Work from being performed in accordance with the Project Safety Standards.

“Governmental Authority” means any national, autonomic, regional, province, town, city, or municipal government, whether domestic or foreign, or other administrative, regulatory or judicial body of any of the foregoing.

“Hazardous Material” means each substance designated as a hazardous waste, hazardous substance, hazardous material, hazardous waste, special waste, radioactive material,

pollutant, contaminant, toxic substance or other compound, element or substance in any form as designated with words of similar meaning and regulatory effect under any Environmental Law, petroleum and petroleum products, derivatives, wastes or additives, polychlorinated biphenyls, asbestos, and any other substance for which liability or standards of conduct may be imposed under Environmental Law.

“Indemnifying Party” has the meaning set forth in **Section 25.5**.

“Industry Standards” means those practices, methods and standards of care, safety, performance and diligence normally practiced or approved by a significant portion of highly qualified solar engineering, construction and installation firms experienced in the engineering, procurement and construction of commercial solar energy projects in performing services of a similar nature in the United States in the geographic area of the Project, and are consistent with good engineering, design, procurement and construction practices, Applicable Permits, Applicable Laws and other standards established for such Work at the particular time it was done in the exercise of good judgment, in light of the facts known at the time the decision was made, and in a manner consistent with economy and expedition. Industry standards are not intended to be limited to optimum standards, to the exclusion of others, but rather are intended to include a range of acceptable high standards generally accepted in the commercial solar energy project engineering, procurement and construction industry.

“Infringement Claims” has the meaning set forth in **Section 25.3**. “Interconnection

Agreement” means the interconnection agreements entered into between Owner and a Utility regarding the terms and conditions for the interconnection of the Project to the Utility at each Site.

“Lien” means any lien, mortgage, pledge, encumbrance, charge, security interest, defect in title, or other claim that would be filed or asserted by or through Provider, a Subcontractor or any other third party under the control or supervision of Provider or any Subcontractor against the Project, the Site, the Equipment, the Owner Furnished Equipment or any other structure or equipment at the Site.

“Mechanical Completion” means that the Project has achieved all of the conditions set forth in **Section 8.1** (or such conditions which have not been achieved have been waived by Owner).

“Mechanical Completion Date” means the actual date on which Mechanical Completion has occurred, as determined in accordance with **Section 8.2**.

“Milestone Payments Schedule” means the milestone schedule attached hereto as **Schedule 3**.

“Notice to Proceed” means a written notice given by Owner to Provider to proceed with the Project.

“O&M Services” has the meaning set forth in the recitals.

"O&M Services Commencement Date" has the meaning set forth in **Section 22.2**.

"Owner" has the meaning set forth in the preamble to this Agreement.

"Owner Furnished Equipment" or "OFE" has the meaning assigned to such term in **Section 5.5** of the Agreement.

"Owner's Data" means all of the data collected from Owner's DAS from the solar panels installed as part of the Project, including photovoltaic arrays, sub-arrays and sites, meteorological data, DC and AC current, voltage power, AC power factors, frequency and harmonics.

"Owner's Representative" means the individual designated by Owner in accordance with **Section 3.1**.

"Party" means, individually, each of the parties to this Agreement, and "Parties" means, collectively, both of the parties to this Agreement.

"Performance Guaranty" has the meaning set forth in the recitals.

"Performance Tests" has the meaning set forth in **Section 10.1**.

"Person" means any individual, corporation, limited liability company, partnership, company, joint venture, association, trust, unincorporated organization or Governmental Authority.

"Project" has the meaning set forth in the recitals.

"Project Agreements" has the meaning set forth in the recitals.

"Project Safety Standards" means the Site specific project safety standards applicable to Provider's performance of the Work and attached hereto as **Schedule 5**.

"Project Schedule" means the schedule for the Work to be completed for the Project, as set forth on **Schedule 2**, as modified from time to time in accordance herewith and executed by both parties.

"Provider" has the meaning set forth in the preamble to this Agreement. "Provider's Representative" means the individual designated by Provider in accordance with **Section 3.2**.

"Punch List" means the written list of items of Work (which Provider prepares and with which Owner agrees prior to Substantial Completion) that remain to be completed by Provider after Substantial Completion, but prior to Final Completion, and which shall not affect the safety, reliability, operability or mechanical or electrical integrity of the Project. The value of the Punch

List items may not exceed the amount of the Final Completion milestone.

“Remedial Acts” has the meaning set forth in **Section 25.3**.

“Representatives” means, collectively, Provider’s Representative and Owner’s Representative.

“Services” has the meaning set forth in the recitals.

“Site” has the meaning set forth in the recitals.

“Spare Parts List” has the meaning set forth in **Section 4.8**. In the event that Owner elects to have Provider procure or supply any of the Spare Parts listed in the Spare Parts list. Owner shall pay the cost of Spare Parts including delivery and storage and such cost is not included in the Contract Price unless specifically agreed to be borne in writing by Provider.

“Subcontractor” means any Person, such as a subcontractor, vendor or supplier, that is retained by Provider or any Person hired by Provider or with a Person of any lower tier (e.g., a second- or third-tier subcontractor) to perform any portion of the Work in furtherance of Provider’s obligations under this Agreement, including any Supplier.

“Substantial Completion” means that the Project has achieved all of the conditions set forth in **Section 9.1** (or such conditions which have not been achieved have been waived by Owner).

“Substantial Completion Date” means the actual date on which Substantial Completion has occurred, as determined in accordance with **Section 9.3**.

“Suppliers” means those Equipment suppliers with whom Owner contracts to supply Equipment to the Project.

“Utility” means Oklahoma Gas and Electric Company and Oklahoma Electric Cooperative.

“Warranty” means the warranties made by Provider with respect to the Project that are set forth in **Section 21.1**.

“Warranty Period” has the meaning set forth in **Section 21.1**.

“Work” means all of the EPC Services – i.e. engineering review and collaboration, procurement of Equipment (other than the OFE), permitting, construction and all services, labor, obligations, duties, and responsibilities necessary to complete the Project and achieve Final Completion as set forth at Section 2 and in the Scope of Work attached as **Schedule 1** and in accordance with the Project Schedule attached hereto as **Schedule 2**.

2. **SCOPE**. Provider shall perform or cause to be performed the Scope of Work attached hereto as **Schedule 3** in accordance with this Agreement.

3. REPRESENTATIVES.

3.1 Owner Representative. Owner designates, **Chris Mattingly** as Owner's "Representative" with respect to this Agreement. The actions taken by Owner's Representative shall be deemed to be the acts of Owner and shall be fully binding upon Owner. Owner may, upon notice to Provider in accordance with Section 30, change the designated Owner's Representative.

3.2 Provider Representative. Provider designates **Andy Stancati** as Provider's "Representative" with respect to this Agreement and Provider's performance of the Work. The actions taken by Provider's Representative shall be deemed the acts of Provider and shall be fully binding upon Provider. Provider may, upon notice to Owner in accordance with Section 30, change the designated Provider's Representative.

4. PROVIDER RESPONSIBILITIES.

4.1 Professional Standards. Provider shall perform and complete the Work in accordance with this Agreement, Industry Standards, Applicable Laws and Applicable Permits, and, to the extent applicable, the terms and conditions of the Project Agreements relevant to the Work. Provider hereby confirms that it is familiar with the terms of the Project Agreements relevant to the Work.

4.2 Sufficient Personnel. Provider shall use, and shall require each of its subcontractors, to use a sufficient number of Persons, who shall be qualified, properly trained and, if required by any Applicable Law or any Governmental Authority, licensed, permitted, registered or approved, so that Provider may complete the Work and Provider's other obligations under this Agreement in an efficient, prompt, economical and professional manner and in accordance with the Project Schedule.

4.3 No Liens. Provider shall not be permitted to file or caused to be filed any Lien in connection with the Project, the Site, the Equipment, the Owner Furnished Equipment or any other structure or equipment at the Site unless the Owner shall have failed to pay to Provider any required payment for Work performed by Provider in accordance with the terms of this Agreement and shall have failed to make said payment within any applicable cure periods hereunder.

4.4 Construction Plans. Provider will construct the Project in accordance with the Construction Plans attached hereto as Schedule 4, which may be modified by Provider and Owner, in writing, from time to time.

4.5 Health and Safety. Provider shall perform the Work in accordance with, and shall cause all Subcontractors to perform the Work in accordance with the Project Safety Standards and Applicable Law. Provider shall not revise or amend the Project Safety Standards without the prior written consent of Owner, which consent shall not be unreasonably conditioned, withheld or delayed.

4.6 Training of Owner's Personnel.

4.6.1 Provider shall provide Owner's personnel with operation and maintenance training in respect of the Project, as set forth in **Schedule 1**.

4.6.2 Scheduling of training will be coordinated between Provider and Owner.

4.7 **Utility Use**. Provider shall be responsible to provide and pay for all utilities (such as power, internet, sewage, water, and fuel) that are necessary for any Provider's site office trailer on the Site.

4.8 **Spare Parts**. A preliminary list of recommended spare parts that are required for the ongoing operations and maintenance of the Project will be provided as set forth in **Schedule 1** (the "Spare Parts List").

4.9 **Technical Documents to be Delivered by Provider**. Attached hereto as **Schedule 1** and **Schedule 6** are the technical specifications, product data sheets and bill of materials for the Project.

4.10 **Commissioning Procedures**. Attached hereto as **Schedule 11** are the commissioning procedures for the Project which Provider agrees to perform.

4.11 **Record Drawings**. Provider shall maintain in good order at the Site all material Documentation for the performance of the Work, including at least one (1) record copy and one (1) electronic copy of the drawings and specifications, marked currently to record changes made during construction, all of which will be available to Owner for inspection and use promptly following request therefor.

4.12 **Interconnection**. Provider shall comply with the interconnection requirements as set forth in the Interconnection Agreement. Utility charges and work for upgrades to its distribution system for Interconnection behind the meter are included in the scope of Work and the Contract Price; and Utility charges and work for upgrades to its distribution system for Interconnection in front of the meter are excluded from the scope of Work and the Contract Price.

4.13 **Cooperation**. From NTP until Final Completion of the Project, Provider and Owner agree to cooperate in furnishing periodic status updates, data, responses to request for information and reports to any Governmental Authorities and third parties as may be reasonably requested by the other Party.

4.14 **Compliance with Laws**

4.14.1 Provider specifically agrees that it shall at all times fully comply, and cause all Subcontractors to fully comply, with Applicable Laws, and Provider shall give all applicable notices with respect to, and in accordance with, any Applicable Laws. Provider shall ensure that the Project, as designed, constructed and installed, complies with all Applicable Laws, and that at FinalCompletion will be operable in compliance with all Applicable Law,

assuming operation in accordance with Industry Standards.

4.14.2 Provider shall not be responsible for any environmental liabilities relating to the relevant part of the Site where the Project is located, except for such pollution, toxic emissions and other Hazardous Materials, or any discharge or release thereof, that are caused by Provider or its Subcontractors or their licensees and invitees in connection with the performance of the Work. During the performance of the Work, Provider shall be required to comply with all applicable environmental laws and regulations. Provider shall promptly notify Owner in writing if it becomes aware of any Hazardous Materials on the Site or any Hazardous Materials that are used in the performance of the Work, are caused by the performance of the Work or are discharged or released onto the Site as a result of the performance of the Work.

4.14.3 Owner may judge the Site as unsuitable for a solar system due to Hazardous Materials on the Site, and may decide to not build on such Site without triggering an Owner default or other adverse consequences under this Agreement.

4.15 Permits. Except as provided in Section 5.2, Provider, at Owner's expense, shall obtain, renew and maintain, or cause to be obtained, renewed and maintained, and shall file or cause to be filed any documents required to obtain, renew or maintain, any Applicable Permits necessary to perform the construction Work under this Agreement. Except as set forth in the Scope of Work attached as **Schedule 1**, Owner shall pay, or cause to be paid, all taxes, fees and costs in order to obtain the Applicable Permits. With Owner's cooperation, Provider will obtain all Applicable Permits as set forth in this Agreement, each of which is in full force and effect. A list of such Applicable Permits shall be identified by Provider and Owner and set forth on **Schedule 7**. Owner shall provide Provider with copies of all Applicable Permits obtained which shall be attached to **Schedule 7**. Provider agrees to pick up or cause to be picked up, any Applicable Permits within two (2) Business Days of availability for pickup from the applicable authority.

4.16 Equipment. Other than the OFE, Provider, at its expense, (a) shall purchase, inspect, and insure all Equipment necessary to complete the Project as required hereunder and (b) transport and deliver the Equipment to the Project Site. Owner shall transport and deliver the OFE to the Site at its cost and, for use in connection with the construction of the Project as required hereunder. Upon delivery to the Site, Provider, at its expense, shall inspect and insure the OFE. Provider shall insure and bear the risk of loss to the Equipment from the time at which the Provider takes possession of the Equipment at the time of delivery until Final Completion of the Project. Provider shall install and construct all Equipment and OFE. Provider agrees that all Equipment, or any component thereof, to be supplied by Provider or its Subcontractors that is to be a part of or be incorporated into, the Project shall be new, in good condition and fit for the use(s) for which it is employed by Provider or its Subcontractors and shall meet the specifications and requirements as set forth on the Construction Plans. Such Equipment shall at all times be used and installed as part of the Work, in accordance with maintained inspected and operated as required by Applicable Law, consistent with Industry Standards, the engineered plans and in accordance with, and in a manner that does not void, any manufacturer's or supplier's warranties (including any warranties of any

Subcontractors). Provider further agrees that all licenses, permits, registrations and certificates or other approvals required by Applicable Law or any Governmental Authority will be procured and maintained for such Equipment at all times during the use of the same by Provider or its Subcontractors in the performance of any of Provider's obligations under this Agreement. Provider shall, as a requirement of Final Completion, (i) deliver to Owner redacted invoices or other documentation evidencing Provider's proof of purchase of the Equipment, and (ii) submit completed warranty cards for the Equipment to the original equipment manufacturers.

4.17 Screening Measures. Provider shall comply with all applicable labor and immigration laws that are relevant to Provider's Work under this Agreement, including, without limitation, the Form I-9 requirements. Without limiting the generality of the foregoing, to the extent required by Applicable Law, Provider shall perform all required employment eligibility and verification checks and maintain all required employment records.

4.17.1 Upon request, Provider shall provide background checks for each of Providers Employees or any Subcontractors' employees who will perform work on the Project in a form satisfactory to Owner.

4.18 Protective Measures.

4.18.1 Provider shall take all precautions reasonably necessary to protect from personal injury, death or occupational disease, all workers and all other Persons who may be on or about the Site or the surrounding premises where Work is being done. Provider shall comply with Applicable Law and the Project Safety Standards and the safety representative for the Site and surrounding premises where the Work is performed shall be the Provider Representative, who Provider represents and warrants is experienced in, and knowledgeable about, safety-related matters. It shall be Provider's responsibility to ensure the Safety Standards are up to date and compliant with Industry Standards.

4.18.2 Provider shall be responsible for the safety of its employees and Subcontractor's employees working at the Site until the Final Completion Date. Provider shall undertake commercially reasonable measures to ensure that all Persons comply with all Applicable Law relating to health and safety. Provider shall provide measures required for health/safety of the Project, the Site, the Equipment, the OFE and personnel. Without limiting the generality of the foregoing, Provider shall: (a) take all precautions to prevent injury to all Persons on the Site and arrange to have first aid administered to all Persons who are injured or become ill on the Site, and promptly report all accidents, incidents, mistakes and injuries to Owner; (b) provide sufficient light for all Work; and (c) make contact with the local fire department, police department and hospital (the

"Emergency Entities") and be aware of local emergency response procedures (including conspicuously posting all phone numbers for such Emergency Entities at the Project Site which shall be regularly updated).

4.18.3 Owner shall have the right to require Provider immediately to stop Work whenever, in Owner's judgment, safety violations or other conditions or circumstances exist that could be reasonably expected to result in serious personal injury, death, occupational disease or significant damage to property (collectively, the "Safety Violations"). The issuance of a stop Work order by Owner under this Section 4.18.3 shall not constitute a Force Majeure Event for Provider and Provider shall not be entitled to any additional time to complete the Work. Provider shall seek Owner's permission to resume the Work after providing Owner with a safety report detailing Provider's action plan to remedy the Safety Violations. The expense of any such stoppage of Work, including any standby time or other cost incurred, shall be at Provider's expense unless such stoppage is due to the gross negligence or willful misconduct of Owner. Persons responsible for Safety Violations shall be removed from the Site until such time as and if, in the reasonable judgment of Provider and Owner, such Persons have received appropriate safety instructions and training. All Work done and materials used on the Site shall be in material compliance with the Safety and Health Standards promulgated under the Occupational Safety and Health Act of 1970 as amended.

4.18.4 Provider shall notify and provide Owner, in accordance with Applicable Law, with (a) a reasonably detailed preliminary accident report within one (1) Business Day of any material accident, including any accidents resulting in bodily injury or property damage or significant near miss incidents or fires arising out of or in connection with the Work, with a final report to follow within five (5) Business Days thereafter and (b) a copy of all reports made to Governmental Authorities and insurance companies relating to any accident or injury occurring during the performance of the Work within one (1) Business Day of their submission. Each final report and each report made to Governmental Authorities shall also contain an analysis of cause and a correction plan to prevent similar occurrences.

4.18.5 All trucks, vehicles, equipment, machinery, or the like provided or utilized by Provider shall be in safe operating condition and at all times shall be properly protected, inspected, registered, insured, maintained, and safely operated. Provider shall be required to ensure that anyone operating any vehicles, equipment and machinery shall have the proper training and licenses as applicable.

4.18.6 Provider, its Subcontractors and employees are prohibited from reporting for duty under the influence of any intoxicating substance which will in any way adversely affect their working ability, alertness, coordination or response, or adversely affect the safety of any person at the Site. It is the responsibility of Provider and its Subcontractors and employees to ensure that employees reporting for duty at the Site are free from the influence of any intoxicating substance. Employees who report to work while under the influence of any intoxicating substance will be immediately removed from the Site and reported to their supervisor. All employees removed from the Site and proved to be working under the influence will be permanently banned from the Site.

4.18.7 Provider shall follow good construction practices, including dust monitoring and erosion control, at the Site. Provider shall have a Person on Site,

with the requisite training and experience, to observe on-Site activities with a view to, among other things, reviewing the potential need for additional worker protections.

4.18.8 Provider shall keep the relevant part of the Site where the Project is located and surrounding areas free from waste, garbage and debris on a daily basis, and in accordance with the expectations and direction given by the Owner. Prior to the Final Completion Date, Provider shall have removed from the Site all tools, trailers, surplus and waste materials, and shall otherwise leave the Project and the Site (i) in a condition equal to or better than the condition that the Project and Site were in at the commencement of construction, notwithstanding non-material changes that were necessary for the purpose of construction that do not affect structure, function, topography, landscaping or access, and (ii) in a neat and clean condition.

4.19 Prevailing Wage. Provider and all of Provider's Subcontractors must comply with the requirements of Oklahoma law regarding the payment of applicable prevailing wage rates for Cleveland County.

4.20 Pre-Existing Site Conditions. Provider (and its subcontractors) shall be responsible to document any pre-existing conditions on the Site. Within ten (10) days of the Effective Date and prior to commencement of construction, Provider shall identify, document and photograph all pre-existing conditions ("Pre-Existing Conditions Report") at the Site which shall be verified by Owner within ten (10) days receipt by written notice in accordance with Section 30. Upon such verification, the Pre-Existing Conditions Report shall be executed by Owner and Provider. Provider shall be responsible for any damage at the Site that has not been documented in the Pre-Existing Conditions Report.

4.21 Reporting. Provider shall submit to Owner the reports as described in Schedule 1.

5. OWNER RESPONSIBILITIES.

5.1 Site Preparation. Owner shall be responsible for providing all preparation of the Sites necessary for the ground to be prepared and in order to install the Project in accordance with this Agreement, including tree clearing, site leveling, installation of site access roads, perimeter fencing, removal or relocation of existing, abandoned utilities or hidden or buried structures or other items that interfere with the installation with fourteen (14) calendar days of notice, as described on Schedule 8.

5.2 Owner Provided Reports / Permits. Owner shall obtain the environmental reports and/or environmental permits outlined on Schedule 8.

5.3 Access and Easements. Owner shall be responsible for securing possession of each Site for Owner and acquiring and any all easements necessary for Provider to interconnect the Project behind each Utility meter. Owner shall be responsible for providing Provider with all necessary access to the Site. Owner shall provide Provider with

all necessary access to the Site and work areas Provider reasonably requires for completion of the Work in accordance with this Agreement.

5.4 Owner Subcontractors. Owner reserves the right to engage any subcontractors to perform auxiliary services on the Project Site which are not included in Provider's Scope of Work (e.g fencing, tree removal, utility repairs, etc.). Provider shall cooperate with Owner to coordinate its Work with any of Owner's other subcontractors.

5.5 Cooperation. Owner will use reasonable efforts to respond promptly and in good faith to requests of Provider made of Owner in connection with the performance of the Work.

5.6 Compliance with Laws. Owner shall perform its obligations hereunder in accordance with Applicable Laws.

5.7 Owner-Furnished Equipment. Owner shall procure and pay for the equipment and materials identified in Schedule 8 to this Agreement (the "Owner-Furnished Equipment" or "OFE"). Provider shall take possession of the OFE at the Project Site and shall thereafter be responsible for storing, insuring, installing, maintaining and providing security for all of the OFE, and the risk of loss of the OFE shall pass to Provider upon the taking possession of the Owner-Furnished Equipment at delivery at the Project Site until Final Completion. Provider shall provide an accurate accounting of each delivery within twenty-four (24) hours of such delivery. Provider shall also provide a weekly inventory to Owner reflecting items and quantities for all OFE. In the event of a shortage in any OFE, Provider shall provide immediate written notice to Owner in order to permit Owner sufficient time to procure additional requirements.

6. INSPECTION. All Work performed by Provider or its Subcontractors and all Equipment shall be subject to inspection by Owner, and any independent engineers of Owner, but such right of inspection, or such inspection, of the Work or Equipment shall not relieve Provider of its responsibility in accordance with the provisions hereof for the performance of the Work or the Equipment. Owner shall ensure, in coordination with Provider, that any inspections by Owner do not unreasonably interfere with or delay Provider's performance of the Work under this Agreement.

7. SEQUENCE OF WORK.

7.1 Notice to Proceed. Within five (5) Days of receipt of a Notice to Proceed for the Work agreed upon under this Agreement, Provider shall commence with engineering, permitting, interconnection and procurement of materials and subcontractors for the Project, and Owner agrees to commence with its obligations under Sections 5.1, 5.2 and 5.3.

7.2 Owner Notification of Job Site Readiness. Upon the satisfaction of the Owner's obligations under Section 5.1, 5.2 and 5.3, Owner and Provider shall execute the Job Site Readiness Release Letter in the form attached hereto as Exhibit 5.

7.3 Commencement of Construction. Upon satisfaction of the conditions set

forth in Section 7.2 and receipt of approved Applicable Permits, receipt of approved Interconnection Agreements and issuance of IFC drawings, Provider will commence construction.

8. MECHANICAL COMPLETION.

8.1 Conditions to Mechanical Completion. The following are the conditions precedent for Mechanical Completion:

(a) the Project has been completely installed, is mechanically and electrically sound, and is ready for initial start-up, adjustment and testing in accordance with all requirements and this Agreement;

(b) the Project may be started-up and thereafter operated without damage to the Project, the Sites or any other property and without injury to any Person; and

(c) the Provider and each Subcontractor has delivered a Conditional Waiver and Release on Progress Payment, in each case dated no later than the proposed Mechanical Completion Date.

8.2 Mechanical Completion Certificate. Upon achieving the conditions precedent to Mechanical Completion, Provider shall submit the Mechanical Completion Certificate, substantially in the form of Exhibit 1. Within seven (7) Business Days of receipt of a Mechanical Completion Certificate, Owner shall notify Provider in writing whether Provider has fulfilled the requirements to complete such certificate. If Provider has not fulfilled such requirements, the notice to Provider shall specify in reasonable detail the reasons that such requirements have not been met. Owner shall request that Provider correct such deficiencies so as to meet the requirements for the certificate as soon as possible. Following any such remedial action, Provider shall deliver to Owner a new certificate and the provisions of this **Section 8.2** shall apply with respect to the new certificate in the same manner as they applied to the original certificate. The "Mechanical Completion Date" shall be the date of the Project Mechanical Completion Certificate executed by Provider and Owner.

8.3 No Project Activation prior to Issuance of Mechanical Completion Certificate. From the date Provider notifies Owner of its belief that the Project has achieved Mechanical Completion until the date the Mechanical Completion Certificate is issued pursuant to **Section 8.2**, Provider and Owner shall not interconnect the Project to the transmission provider or the transmission provider's transmission grid pursuant to the Interconnection Agreement without Owner's prior written approval and delivery of the Mechanical Completion Certificate.

9. SUBSTANTIAL COMPLETION.

9.1 Substantial Completion. "Substantial Completion" of the Project shall be deemed to have occurred upon the satisfaction of all of the following conditions:

9.1.2 Provider shall have performed the Performance Tests in accordance with Schedule 11.

9.1.3 The Project shall be electrically constructed and completed in accordance with all terms and conditions of this Agreement and approved/signed off on by the local authority, construction officials and the Utility;

9.1.4 The Project is interconnected, in accordance with the requirements of the Interconnection Agreement or the Interconnection Approval;

9.1.5 Provider shall have provided to Owner a Certificate executed by an authorized officer of Provider stating that all Applicable Permits have been obtained and maintained as required by Applicable Law and, to the extent applicable to achieve Final Completion, are in full force and effect;

9.1.6 The Punch List shall have been submitted by the Provider to the Owner and have been agreed upon and accepted in writing by Owner; provided, however, that Owner shall be required to either accept the Punch List in writing or notify Provider in writing as to why it does not accept the Punch List within five (5) days of Owner's receipt of the Punch List from Provider. The parties shall make a good faith effort to resolve any disputes related to the Punch List pursuant to Section 29. In no event shall the outstanding "Punch List" works value exceed the value of the Final Completion milestone. The parties agree to reduce the Substantial Completion milestone value and correspondingly increase the Final Completion milestone value to account for the "Punch List" works value.

9.1.7 Provider shall have provided to Owner any Documentation set forth in Schedule 1 that is required to be delivered at Substantial Completion;

9.1.8 Provider shall have provided to Owner (i) reserved; (ii) proof of Provider's current insurance policies covering the Project; (iii) all warranty documentation for the Project; (iv) a complete up-to-date inventory of OFE; and (v) a certificate executed by an authorized officer of Provider stating that all applicable Permits for the Project are closed with a copy of the closed Permits attached.

9.1.9 Provider has provided Owner with an inventory of OFE, accounting for usage and any damage/shortage and shall have, in Owner's sole discretion, (i) reimbursed Owner the cost paid for such OFE; or (ii) replaced such OFE, in connection with any shortage or damaged OFE.

9.2 Certificate of Substantial Completion. When Provider believes that it has achieved Substantial Completion for the Project, Provider shall notify Owner in writing in accordance with Section 30 and shall submit to Owner a Certificate of Substantial Completion, substantially in the form of Exhibit 2, which shall be accompanied by the Punch List following submission to and acceptance by the Owner and any other information deemed reasonably necessary by Provider. Promptly thereafter, Owner and any third-party independent engineers of Owner shall conduct such investigations and

inspections as they deems necessary or appropriate to determine if Substantial Completion has in fact been achieved. Within five (5) Business Days after its receipt of Provider's notice and the Certificate of Substantial Completion, Owner shall notify Provider either that (a) Substantial Completion has been achieved, in which event Owner shall countersign and deliver to Provider the Certificate of Substantial Completion, or (b) Substantial Completion has not been achieved, stating in reasonable detail the reasons therefor. If clause (b) is applicable, Provider shall, at its sole cost and expense, insofar as such failure to achieve Substantial Completion is due to the performance, or lack of performance, of the Work, immediately correct or remedy the defects, deficiencies and other conditions which prevent Substantial Completion from having occurred. The foregoing procedures shall be repeated until Substantial Completion has in fact been achieved. Following Substantial Completion, Provider and Owner shall from time to time mutually update the Punch List to remove items as and when they are completed. Certificates of Substantial Completion can be submitted and shall be accepted by the Owner on a per site basis. Acceptance of a Certificate of Substantial Completion shall not be unreasonably withheld or conditioned by the Owner. Failure by Owner to notify Provider within ten (10) Business Days that Substantial Completion has not be achieved shall mean Substantial Completion has been achieved. In the event of a dispute between Provider and Owner in connection with this **Section 9**, said dispute shall be resolved in accordance with **Section 29** hereof.

9.3 Substantial Completion Date. The effective date of the Certificate of Substantial Completion shall be the date on which Owner countersigns the Certificate of Substantial Completion submitted by Provider, provided, however, that if within five (5) Business Days after its receipt thereof, Owner notifies Provider that Substantial Completion has been achieved and countersigns such Certificate "as submitted" by Provider, with no additional Work having been performed by Provider following the submittal thereof, or if Owner has sent no notice of failure to achieve Substantial Completion in accordance with **Section 9.2** of this Agreement, then the effective date of such Certificate of Substantial Completion shall be the date on which Provider submitted such Certificate of Completion to Owner..

9.4 Acceptance. Acceptance by Owner of the Certificate of Substantial Completion shall not constitute acceptance by Owner of defective or otherwise non-conforming Work or in any way operate to release Provider from any obligation under this Agreement Contract (other than the obligation of Provider to achieve Substantial Completion).

10. PERFORMANCE TESTING.

10.1 Performance Tests. Prior to Final Completion, Provider shall perform, or cause to be performed, the Performance Tests in conformance with the applicable requirements of **Schedule 11** and in accordance with the terms of this Agreement (the "Performance Tests"). Provider's technical personnel (or, when applicable, the installer and/or manufacturer's personnel, with Provider's supervision) shall operate the Project during the Performance Tests, although Provider shall ensure that Owner (and Owner's personnel, agents, representatives, consultants and invitees) are notified and invited to be present during any Performance Tests. Provider shall provide Owner with at least ten (10)

Business Days' prior written notice of the commencement of any Performance Tests in order to permit Owner's Representative to coordinate attendance and observation of such Performance Tests for Owner; provided, however, that Provider shall use commercially reasonable efforts to provide such notice at an earlier date including, but not limited to, identifying the target date for Performance Tests in the Weekly Report.

10.2 Satisfaction of Performance Tests. Within seven (7) days following successful completion of the Performance Tests, Provider shall submit to Owner's Representative the raw data and completed results of such Performance Tests, together with a Certificate of Performance Tests. By submitting the foregoing, Provider shall be deemed to represent to Owner that the raw data and completed results are accurate and the Performance Tests have been conducted in conformance with the applicable requirements of **Schedule 11** and in accordance with the terms of this Agreement. Owner shall, within ten (10) days following receipt of the raw data and completed results of such Performance Tests, together with a Certificate of Performance Tests from Provider, either (a) countersign the Certificate of Performance Tests, or (b) notify Provider that it does not believe that the performance has been satisfied under the Performance Test, stating in reasonable detail the reasons therefore. In the event Owner provides written notice (the "Performance Test Notice") that the performance under the Performance Test has not been satisfied, Provider shall, after receipt of such notice and immediately, but in no event later than fifteen (15) days, adjust or modify any of the Work and take all corrective actions so that the Project may successfully achieve the performance and repeat the Performance Tests in accordance with this Section, without prejudice, however, to any of Owner's rights and remedies in accordance with this Agreement; it being expressly understood that Provider may pursue repeated retesting in order to achieve satisfactory performance or propose a lower performance level with a reasonable price adjustment. In the event of a Dispute regarding satisfaction of the Performance, the dispute shall be resolved in accordance with **Section 29** hereof; provided, however, that, pending resolution of any such Dispute, Provider shall continue to take such actions as Owner may require in its notice.

11. FINAL COMPLETION.

11.1 "Final Completion" of the Project shall be deemed to have occurred upon the satisfaction of all of the following conditions:

11.1.1 The System is generating electricity, as evidenced by the DAS;

11.1.2 A Certificate of Substantial Completion has been approved in accordance with **Section 9.2**;

11.1.3 Provider shall have provided the training to Owner's personnel required pursuant to **Section 4.6**.

11.1.4 Provider shall have provided to Owner a list of the Project's major equipment, including, without limitation, the make and model number of all photovoltaic modules, inverters, racking, DAS, step-up transformers, switchgear and balance of system components.

11.1.5 Provider shall have provided Owner with a recommended spare parts list that are required for the ongoing operations and maintenance of the Project.

11.1.6 All items on the Punch List shall have been completed or otherwise resolved by mutual agreement of the Parties in accordance with **Section 11.2**;

11.1.7 Provider shall have provided Owner with the final versions, in hard copy and electronic formats, of the Owner's manual(s), operator's manual(s) and as-built drawings stamped by a professional engineer or the engineer of record for the Project, together with all other Documentation required to be delivered pursuant to this Agreement and **Schedule 1** and not otherwise delivered in final form to Owner in connection with the achievement of Substantial Completion, including test and inspection certificates and reports applicable to the Work;

11.1.8 Provider shall have removed all of its construction equipment, material and support personnel from the Site

11.1.9 Provider shall have provided Owner with redacted invoices or other documentation evidencing Provider's proof of purchase of the Equipment and shall have provided Owner with all warranty documents for the equipment;

11.1.10 Provider shall have provided Owner with an Affidavit of Payment and Final Release, in substantially the form set forth as **Exhibit 4**;

11.1.11 The Site shall be (i) free of Provider or Subcontractor-generated waste, garbage and construction debris, and (ii) in a condition equal to or better than the condition that the Project and Site were in at the commencement of construction, except for non-material changes that do not affect structure, function, topography, landscaping or access that were necessary and typical for construction; and

11.1.12 Provider shall have provided Owner with the Operating Manual described in **Schedule 1**.

11.2 **Certificate of Final Completion.** When Provider believes that it has achieved Final Completion for the Project, Provider shall notify Owner in writing in accordance with **Section 30** and shall provide Owner with a Certificate of Final Completion, substantially in the form of **Exhibit 3**, which shall be accompanied by any information deemed commercially reasonably necessary by Provider. Promptly thereafter, Owner shall conduct such investigations and inspections as they deem necessary or appropriate for Owner to determine if Final Completion has in fact been achieved. Within ten (10) Business Days after its receipt of Provider's notice, the Certificate of Final Completion and the Completed Punch List, Owner shall notify Provider that either (a) Final Completion has been achieved and countersign and deliver to Provider the Certificate of Final Completion, or (b) Final Completion has not been achieved, stating in reasonable detail the reasons therefor. Acceptance of a Certificate of

Final Completion shall not be unreasonably withheld or conditioned by the Owner. In the event that Owner provides timely written notice that Final Completion has not been achieved, Provider shall, at its sole cost and expense insofar as such failure to achieve Final Completion is due to the performance, or lack of performance, of the Work by Provider, immediately correct or remedy the defects, deficiencies and other conditions which prevent Final Completion. The foregoing procedures shall be repeated until Final Completion has in fact been achieved. In the event of a dispute between Provider and Owner in connection with this **Section 11.2**, said dispute shall be resolved in accordance with **Section 29** hereof.

11.3 **Final Completion Date.** The effective date of the Certificate of Final Completion for the Project shall be the date on which Owner countersigns the Certificate of Final Completion for said site submitted by Provider, provided, however, that, if, within ten (10) Business Days after its receipt thereof, Owner notifies Provider that Final Completion has been achieved and countersigns such Certificate of Final Completion "as submitted" by Provider to Owner, with no additional Work having been performed by Provider following the submittal of such Certificate of Final Completion, the effective date of such Certificate of Final Completion shall be the date on which Provider submitted such Certificate of Final Completion for said site to Owner. Any Disputes regarding whether Final Acceptance has been achieved shall be resolved in accordance with **Section 29**.

11.4 **Acceptance.** Acceptance by Owner of the Certificate of Final Completion shall not constitute acceptance by Owner of defective or otherwise non-conforming Work or in any way operate to release Provider from any obligation under this Agreement (other than the obligation of Provider to achieve Final Completion); provided, however, that in the event that defective or otherwise non-conforming Work is discovered by Owner during the period of twelve (12) months from the date of Owner's acceptance of the Certificate of Final Completion, then said defective or otherwise non-conforming Work shall be corrected at Provider's sole cost and expense.

12. **CHANGES AND EXTRA WORK.**

12.1 **Changes.** Without invalidating this Agreement, Owner may initiate a change in the Work consisting of additions, deletions or other revisions (each, a

"Change") by advising Provider in writing. For the avoidance of doubt, a "Change" does not include any minor modifications in or to the Work (a) not involving (i) extracost, (ii) change in design, quality or performance, or (iii) adverse effects on the safety of equipment and (b) not inconsistent with the purposes of the Work. Any Change shall be authorized through a Change Order, which shall only be effective when signed and accepted by both Provider and Owner.

12.2 **Proposal and Change Orders.** As soon as practicable after receipt of notice of a requested Change, Provider shall, with respect to such Change, prepare and forward to Owner a proposed Change Order, together with any details of any of Provider's proposed adjustments to the Contract Price, Project Schedule, or any other terms or conditions of this Agreement. The proposed Change Order shall reflect a detailed

breakdown of costs including that Provider or its subcontractor to detail labor rates by the number of man hours, total men, equipment being provided at cost, materials being provided at cost, any overhead and anticipated profit. The proposed Project Schedule, updated with version number, date and a reference as to why it is revised (i.e. Force Majeure or Change Order), shall accompany any proposed Change Order. If Change Order is less than Forty Thousand (\$40,000) in value, within ten (10) Business Days after receipt of a proposed Change Order, Owner shall either (a) return a countersigned copy of the proposed Change Order to Provider, or (b) provide written notice to Provider that it does not accept the proposed Change Order, describing in reasonable detail its objections to the proposed Change Order. If no response is received within ten (10) Business Days, Change Order shall be deemed approved. If Change Order is greater than Forty Thousand (\$40,000) in value, within ten (10) Business Days after receipt of a proposed Change Order, Owner shall (a) submit the approved Change Order to that certain governing body from which Owner seeks approval, where said approval shall not take in excess of 10 Business Days, or (b) provide written notice to Provider that it does not accept the proposed Change Order, describing in reasonable detail its objects to the proposed Change Order. Regardless of the amount of the Change Order, if no response is received within ten (10) Business Days, Change Order shall be deemed approved.

12.3 Performance of Changes. All Changes shall be performed in accordance with the provisions of this Agreement, except as may be otherwise provided in the Change Order.

12.4 Provider Proposed Changes. Provider may propose Changes to Owner if those Changes improve the Project or are otherwise advisable for the Work but shall have no right to require a Change which is not contemplated by this Agreement, and all such changes shall require the written consent of Owner, which may be withheld by Owner in its sole, exclusive discretion except as otherwise specifically set forth in this Agreement. Any proposed Changes, regardless of whether or not such Change is ultimately accepted by Owner, shall not affect the obligations of Provider to perform the Work and to deliver the Project in the configuration required by this Agreement.

12.5 Payments agreed to in Change Orders shall be due to be paid with the Final Completion payment milestone unless otherwise specified and agreed in the applicable Change Order.

13. FORCE MAJEURE.

13.1 Force Majeure. A Party shall (x) notify the other Party in writing in accordance with Section 30 of this Agreement of any delay or anticipated delay in such Party's performance of this Agreement due to a Force Majeure Event as soon as practicable but in any event no later than within forty eight (48) hours after the occurrence of such Force Majeure Event and (y) provide to the other Party, as soon as practicable but in any event no later than three (3) Business Days after the occurrence of the Force Majeure Event, a written report noticed in accordance with Section 30 in reasonable detail of the reason for and anticipated length (in days) of the delay. In the event Provider fails to notify Owner in the time frame set forth herein, Provider shall have waived the ability

to claim such Force Majeure Event. In the event of any Force Majeure Event, the Party affected by such Force Majeure Event shall (i) exercise all reasonable efforts to bring the situation caused by the Force Majeure Event under control and mitigate the extent, duration, and impact of such Force Majeure Event on the Work and the Project, and (ii) provide periodic reports to the other Party with respect to its actions and plans for actions in accordance with (i) above and promptly notify the other Party in writing of the cessation of the event or condition giving rise to the Force Majeure Event. Upon mutual agreement of such conditions, the parties shall execute a Change Order. The Party whose performance is affected by the Force Majeure Event shall be entitled to a reasonable extension of time for delays due to such Force Majeure Event; provided (xx) the extension of time will be day for day for the duration of the Force Majeure Event; and (yy) that in the event of any Force Majeure Event that prevents performance of the Work for a period of time greater than sixty (60) days, Owner, in its sole discretion, shall have the right to terminate this Agreement without penalty. In the event of the termination of this Agreement because of a Force Majeure Event, Provider shall be paid for the documented value of the Work performed prior to the termination of this Agreement as determined by Owner's independent engineer. Any modification to the Contract Price or Project Schedule pursuant to this **Section 13** shall be documented by a written Change Order to this Agreement; provided, however, that any change in the Contract Price shall only take into account the direct costs, including overhead cost, incurred by Provider in connection with the Force Majeure Event and must be noticed to Owner in accordance with **Section 30** within forty-eight (48) hours of the Force Majeure Event occurrence and subject to approval by Owner.

14. **EVENTS OF DEFAULT.**

14.1 **Provider Events of Default.** Each of the following is a "Provider Event of Default":

14.1.1 Provider effects an assignment or purported assignment of its rights or duties under this Agreement in violation of **Section 43**;

14.1.2 Provider voluntarily commences bankruptcy, insolvency or similar debtor-relief proceedings, or becomes insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes an assignment for the benefit of creditors;

14.1.3 Insolvency, receivership, reorganization, bankruptcy or a similar proceeding is commenced against Provider and such proceeding is not dismissed or stayed within a period of sixty (60) days thereafter;

14.1.4 Provider fails to make payment to any of its Subcontractors for properly performing or providing any part of the Work when required under its subcontractor agreements and for which Owner has in turn made payments to Provider. If Provider disputes the amount of an invoice from a Subcontractor, Provider shall be required to immediately notify Owner in writing detailing the nature, scope and amount of the dispute. If only a part of an Invoice is disputed, then Provider shall pay the Subcontractor the amount of the Invoice not in dispute

when required under its subcontract agreements;

14.1.5 Provider fails to comply in any material respect with Applicable Law and Provider fails to cure such failure within ten (10) calendar days of the date Provider knew of the failure to comply with Applicable Law;

14.1.6 Any representation or warranty made by Provider in this Agreement or in any certificate furnished to Owner by Provider as required by this Agreement proves to have been false or misleading in any material respect as of the time made, confirmed or furnished;

14.1.7 Provider breaches any of its obligations under this Agreement and fails to cure such breach within fifteen (15) Business Days following receipt of written notice of such breach from Owner. Owner, in its sole discretion, may extend the cure period for Provider.

14.2 Certain Owner Remedies. In the event of the occurrence of a Provider Event of Default, that has not been cured (if permitted pursuant to this Agreement), Owner and in addition to Owner's right to terminate this Agreement, exercisable by written notice of termination to Provider, and to exercise all legal and equitable remedies available to it or otherwise, Owner shall have the right to:

14.2.1 take possession of and use the Site and Equipment (excluding tools owned by Provider or a subcontractor) and all Work, which shall be provided at cost without payment of any profit or sales commission, notwithstanding that such may belong to or be rented or leased by Provider, and finish the Work by whatever method it may deem expedient (it being understood that Provider shall not remove any Work, Equipment or OFE from the Site unless Owner so directs in writing);

14.2.2 take possession of and keep and take title to any Equipment, or component thereof, that is to comprise or be incorporated into the Project and is located off Site under Provider's possession or control and is unique, specially-designed or manufactured for use or incorporation in the Work or which is not readily available on the general market without delay; provided, however, that, to the extent that any such Equipment was not covered by any invoice previously paid by Owner, the foregoing shall not excuse Owner's payment obligation with respect to such Equipment which shall be provided to Owner at cost as evidenced by certified invoices from the applicable vendor;

14.2.3 use any subcontractor with or without assuming its subcontract, and pay it in accordance with the terms of its subcontract, or in accordance with such other terms on which Owner and subcontractor may mutually agree, and credit payments against the Contract Price or charge Provider therefor upon written demand for any sums that are paid directly by Owner to any subcontractor for any Work that (a) is not covered by any invoice that has been previously issued to Owner by Provider, and paid by, Owner hereunder, and (b) if covered by an invoice that has been previously issued to Owner by Provider, and paid by, Owner hereunder, are in excess of the invoice amount allocated to such Work;

14.2.4 suspend all payments due to Provider until Provider has fully remedied said Event of Default except for payments for Work completed satisfactorily under the terms of this Agreement and Equipment on Site but not yet incorporated into the Project; and require Provider to assign any or all of the Assigned Warranties to Owner to the extent that any such Assigned Warranties have not already been assigned to Owner and require Provider to provide evidence reasonably satisfactory to Owner that Provider has assigned such Assigned Warranties to Owner.

14.3 Additional Owner Remedies. In the event that Owner elects to terminate this Agreement as a result of a Provider Event of Default, in addition to any rights otherwise available to Owner hereunder and its rights to seek any legal and equitable remedies available to it, (a) Provider shall use reasonable efforts to reduce or otherwise mitigate any expense or damage to Owner to the extent possible, (b) Provider shall provide to Owner copies of certified payroll, updated insurance policies and any outstanding documentation through the date of termination and (c) Owner shall have the right to complete, or have completed, the Work and seek cover damages for completion of the Work.

14.4 Cumulative Remedies. The remedies set forth in this Agreement are not exclusive, but are in addition to any other rights and remedies that may be available to Owner under Applicable Law.

14.5 Owner Events of Default. Each of the following is an “Owner Event of Default”:

14.5.1 any representation or warranty made by Owner in this Agreement that proves to have been false in any material respect as of the time made, confirmed or furnished (but, if such breach is capable of being cured, only to the extent such breach continues for sixty (60) days following receipt of a notice in writing of such breach from Provider) and so long as such representation or warranty has a material impact on Provider; and

14.5.2 Owner breaches any of its material obligations under this Agreement and fails to cure such breach within thirty (30) days following receipt of written notice of such breach from Provider.

14.6 Provider Remedies. In the event of any Owner Event of Default, Provider shall have all rights and remedies that may be available to Provider under this Agreement or Applicable Law.

15. INTELLECTUAL PROPERTY.

15.1 Ownership of Rights in Documentation. All right, title and interest in and to the Documentation shall be owned by Owner and the Documentation shall immediately become the property of Owner when prepared by Provider pursuant hereto; provided that nothing in the foregoing shall impair, alter or otherwise affect Provider’s proprietary rights in its patents, products or other intellectual property in the Documentation or otherwise

prejudice the rights of Provider.

15.2 Ownership of Invention Rights. Subject to Section 15.3, any additional inventions or intellectual property created by Provider during the performance of the Work shall be owned by Owner.

15.3 License. Provider hereby grants to Owner an irrevocable, sub- licensable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of Provider related to the Work now or hereafter owned or controlled by Provider to the extent reasonably necessary for the operation, maintenance, decommissioning or repair of the Project or any component thereof designed, specified, or constructed by Provider under this Agreement. No other license in such patents and proprietary information is granted pursuant to this Agreement.

16. CONTRACT PRICE.

16.1 Amount. Subject to the following sentence, as full compensation for the Work and all of Provider's obligations hereunder, Owner shall pay to Provider as the contract price for the Work (the "Contract Price") hereunder the sum of Four Million Seven Hundred Seventy-Five Thousand and No/100 Dollars (\$4,775,000.00) for the Project. The Contract Price is subject to potential modification by Change Orders approved in accordance with Section 14. The Contract Price shall be paid in accordance with Section 17. The Contract Price excludes any fees for O&M Services.

16.2 Fixed Price. Except as otherwise set forth herein, the Contract Price is firm and fixed and not subject to any variation or price adjustments and includes all taxes, direct and indirect costs and expenses to be incurred by Provider in connection with the performance of the Work, including all costs and expenses related to Equipment, erection, commissioning tests and Performance Tests, travel, lodging and Applicable Permits, except excluding the costs for approved Change Orders. A cost breakdown estimate that summarizes the milestones of the Work is included as Schedule 9 for Owner's use and reference, which is a reasonable representation of the value of the related Equipment, materials and labor. The cost breakdown will be prepared in good faith by Provider; provided, however, that the sole use of the cost breakdown is for providing a guideline to show milestones complete for invoicing purposes.

17. INVOICING AND PAYMENT.

17.1 Milestones. The milestones set forth in Schedule 3 attached hereto have allocated to them the amount of the Contract Price which Provider shall be entitled to receive upon the completion of the particular milestone. To the best of Provider's knowledge and judgment, each milestone payment listed on Schedule 3 is a reasonable representation of the value of the related elements and stages of the Work and that such allocated amounts are fair and reasonable.

17.2 Invoices. Upon completion of a particular milestone set forth in Schedule 3, Provider shall submit to Owner (a) an invoice with respect to such milestone that

Provider has completed and for which Provider has not been paid, together with (b) any other reasonable documentation directly related to the milestone that Owner may in good faith commercially reasonably request to substantiate Provider's progress or right to payment.

17.3 Payments. Invoices shall be sent by email. Owner shall have seven (7) business days advise Provider by written notice in accordance with Section 30 if the invoice is deficient in any material respect. If so, Provider shall be required to resubmit that invoice in proper form before Owner incurs any obligation to pay any disputed milestone in it. Except for any milestone(s) of any invoices disputed in good faith, the undisputed milestone(s) of all invoices shall be paid by Owner. If payment of an undisputed invoice is not made within ten (10) days after it becomes past due, then the Provider shall have the right to suspend work in accordance with Section 18. Owner shall have the right to withhold payment on any portions milestone(s) disputed in good faith until such Dispute is cured by Provider or resolved in accordance with Section 29. If a payment obligation falls due on a day other than a Business Day, the obligation shall be deemed to be due on the next Business Day. At the discretion of Owner, all payments may be made by ACH or wire transfer pursuant to payment instructions to be provided by Provider.

17.4 Final Invoice. Upon Final Completion, Provider shall submit to Owner a final invoice which shall set forth all remaining amounts due to it pursuant to this Agreement. The final invoice shall also be accompanied with an affidavit of payment and a final release substantially in the form attached hereto as Exhibit 4. Final payment acceptance and payment shall be submitted to Owner's governing body for approval within ten (10) business days upon receipt. The governing body shall have twenty (20) business days to approve and then payment shall be made within ten (10) business days of the governing body approval.

17.5 Set Off. Owner may set off or deduct any amounts due and payable by Provider to Owner hereunder or any reasonably disputed monies from any amounts due and payable by Owner to Provider hereunder so long as Owner has provided written notice to Provider in accordance with Section 30 of its intention to offset any amounts and until such dispute or offset is cured by Provider or resolved in accordance with Section 29. For clarity, a Set Off shall have the same effect as a cash payment to Provider and shall not be construed as a reduction in the Contract Price.

17.6 No Acceptance by Payment. No partial payment made under this Agreement shall be construed to be acceptance or approval of any part of the Work or to relieve Provider of any of its obligations under this Agreement. No partial payment made under this Agreement shall be construed to be acceptance by the Provider as a settlement payment on any disputed amounts.

18. SUSPENSION OF WORK.

18.1 By Owner. Owner may, in its sole discretion, direct Provider to suspend all or any portion of the Work for such period of time as Owner shall specify in the written notice thereof to Provider (with such suspension to commence on the date specified therein). Provider shall resume any suspended Work in accordance with a further written notice from Owner in accordance with Section 30 to such effect. Such suspension shall

extend the schedule dates and all milestones by the same time together with a commercially reasonable re-mobilization time.

18.2 By Provider. Subject to Provider's compliance with the terms and conditions set forth in Sections 17.2 and 17.3, Provider may suspend the Work temporarily if Owner fails to make any undisputed payment (not paid when due under Section 17.3) within ten (10) days after receipt of written notice in accordance with Section 30 that such payment is past due; provided, however, that Provider shall, promptly following receipt of any such payment by Owner, resume the Work. So long as Provider has not improperly suspended its Work, a suspension shall extend the schedule dates and all milestones by the same time together with a reasonable re-mobilization time.

18.3 Changes. In the event of a suspension of Work pursuant to Section 18.1 which is not due to the fault of Provider or properly pursuant to Section 18.2, Provider shall be entitled to an extension of the deadlines of this Agreement equal to the period of the suspension, and the Contract Price, if applicable and if substantiated, shall be adjusted as provided in Section 18.4.

18.4 Resumption of Work. After Provider resumes the performance of the Work, Provider shall, after due notice to Owner, examine the Work affected by the suspension. Provider shall make good any defect, deterioration or loss of the construction or the Work affected that may have occurred during the suspension period. Costs properly incurred by Provider (including mobilization costs, storage costs for Equipment, increased costs of Equipment not yet on Site, insurance fees and other costs) shall be added to the Contract Price through a Change Order, so long as and to the extent the suspension did not arise due to any act, safety violation, negligence, omission or default on the part of Provider.

19. TAXES.

19.1 Employment Taxes. Neither Owner nor any of its Affiliates nor its or their officers, employees, agents, consultants or other representatives shall have any liability for any payroll or employment compensation taxes, for Social Security taxes, or for labor-related withholding taxes, for Provider and its Subcontractors (including manufacturers); or any of their employees; and Provider agrees that it shall be solely liable for all payroll or employment compensation taxes, for Social Security taxes, and for labor-related withholding taxes and shall hold Owner and its Affiliates and their respective consultants and other contractors harmless against any claim or liability therefor.

19.2 Sales and Use Taxes on Provider Tools. Provider shall pay all taxes on Provider's purchases of goods, tools, equipment, supplies and other consumables which are not permanently incorporated into the Project and which remain the property of Provider. Provider shall also pay all required taxes attributable to Provider's construction equipment, temporary buildings and other property used by Provider in its performance of this Agreement.

19.3 Sales and Use Tax on Equipment and Materials. Notwithstanding the above, the Contract Price excludes monies for the payment of all sales, use, privilege and other taxes on Equipment incorporated into or purchased in connection with the Project,

except for the Owner Furnished Equipment. Provider will ensure all vendors of Equipment and materials invoice Owner directly for such items. Owner is responsible for making payment directly to vendors supplying equipment and materials for incorporation into the Project upon delivery to the Site though the materials will still be the responsibility of the Provider to store, maintain, protect, and insure until installed. Notwithstanding the terms and conditions of the respective vendor invoice, Owner shall pay all invoices directly to vendors within 15 days, provided however, to the extent there is a delay in payment (not to exceed 2 days), Owner shall communicate said delay to Provider.

19.4 Excise Taxes. Provider shall be solely responsible for the payment of all excise taxes, including, without limitation, relating to items procured by Provider for the Project, except OFE, and the Work and all such excise taxes are included in the Contract Price.

19.5 Other Provider Taxes. Provider shall be solely responsible for the reporting, filing and payment of any and all taxes associated with payments received for the Work, Provider's income taxes in respect of this Agreement, and all payroll taxes, income tax withholding, social security contributions and any payroll-related tax, fees or similar charges on wages or fees paid to its employees and agents for services. Provider and Owner agree to cooperation on all reporting, payment, and other requirements and for obtaining the benefit of any provision of any law that exempts any portion of the payments received for the Work from any tax.

19.6 Owner Taxes. Owner shall pay all applicable real estate taxes related to the Site that are not included in the scope of this Agreement (including any applicable property taxes). In the event that Owner and Provider enter into an agreement for the performance of services by Provider outside of the scope of this Agreement, then such agreement shall specify the taxes for which each of Owner and Provider shall be responsible for in connection with said services.

20. REPRESENTATIONS AND WARRANTIES.

20.1 Representations and Warranties of Provider. Provider represents and warrants to Owner that:

20.1.1 Provider is a Kansas limited liability company duly formed, validly existing, and in good standing under the laws of the State of Kansas, and has full power to engage in the business it presently conducts and contemplates conducting, and is duly licensed or qualified and in good standing under the laws of the State of Kansas and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

20.1.2 Provider has all the required licenses, permits, consents, approvals, authority, ability, skills, experience and capacity necessary in compliance with Applicable Law to perform and diligently perform the Work in a timely and professional manner utilizing sound principles, project management procedures, construction procedures and supervisory procedures, all in accordance

with Industry Standards.

20.1.3 The execution, delivery and performance by Provider of this Agreement have been duly authorized by all requisite action of its governing bodies;

20.1.4 The execution, delivery and performance by Provider of this Agreement will not (a) violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents, or (b) subject the Project or any component part thereof to any Lien other than as contemplated or permitted by this Agreement.

20.1.5 The individual executing this Agreement on behalf of Provider has been duly authorized to do so and this Agreement constitutes a legal, valid and binding obligation of Provider, enforceable against it in accordance with its terms, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors rights generally and general principles of equity.

20.1.6 There are no actions, suits, proceedings, patent or license infringements or investigations pending or, to Provider's knowledge, threatened against it before any court or arbitrator.

20.1.7 There are no strikes, lockouts or other labor disputes pending, or, to the best of Provider's knowledge, threatened or scheduled to occur, with respect to any of the factories, offices or other facilities of Provider. To the best of Provider's knowledge, there are no strikes, lockouts or other labor disputes pending, or threatened or scheduled to occur, with respect to any of the factories, offices or other facilities of any of its Subcontractors.

20.1.8 Provider is not aware of any reasons or conditions that would materially or adversely affect its ability to complete the Work.

20.1.9 Provider has read this Agreement, including and Schedules and Exhibits, is fully aware of the requirements of this Agreement and is capable of complying with this Agreement and performing all tasks necessary for the completion of the Work.

20.2 Representations and Warranties of Owner. Owner represents and warrants to Provider that:

20.2.1 NUA is a public trust under laws of the State of Oklahoma, having the City of Norman as its sole beneficiary. The City of Norman is a municipal corporation under the laws of the State of Oklahoma.

20.2.2 The individual executing this Agreement on behalf of Owner has been duly authorized to do so and this Agreement constitutes a legal, valid and

binding obligation of Owner, enforceable against it in accordance with its terms, subject as to enforceability of remedies to limitations imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the enforcement of creditors rights generally and general principles of equity.

20.2.3 The execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite action of its governing bodies.

20.2.4 To Owner's knowledge, the execution, delivery and performance by Owner of this Agreement will not violate or conflict with any covenant, agreement or understanding to which it is a party or by which it or any of its properties or assets is bound or affected, or its organizational documents.

20.2.5 To Owner's knowledge, there are no actions, suits, proceedings, or investigations pending or threatened against it before any court or arbitrator that individually or in the aggregate could impair Owner's ability to perform its obligations under this Agreement.

20.3 Cooperation. Upon the receipt by a Party of a written request from the other Party, each Party shall in good faith execute such additional documents, estoppels, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof, all on terms and conditions negotiated by the Parties in good faith.

21. WORKMANSHIP WARRANTY.

21.1 Provider's sole warranties hereunder for the EPC Services for the Project shall be as set forth in **Section 11.4** of this Agreement and, except as set forth in such **Schedule 13**, Provider does not make (and hereby expressly disclaims) any other warranties of any kind whatsoever. This warranty shall remain in effect as set forth in

Section 11.4. Provider may not claim that a warranty of Provider hereunder is not in effect because of the Project design or engineering of any third party engineer for which Provider had the opportunity to review, suggest modifications to and/or approve said design and/or engineering work. Notwithstanding the language contained in this **Section 21.1**, and with Provider acknowledging and agreeing that the third party action described in this sentence shall not in any manner or respect reduce or otherwise affect its obligations, covenants and agreements under this **Section 21.1**, either Provider shall have the right to pursue separate third party claims against any third party engineer or its consultants with regard to any professional liability claims that may be available to it. Owner shall also have the right to pursue any such professional liability claims.

22. O&M SERVICES.

22.1 Provider shall, at its sole cost and expense, following the O&M Services Commencement Date, provide certain monitoring, maintenance and reporting services to

City pursuant to the terms and conditions in the agreement set forth as Exhibit 7 (collectively, the “O&M Services”).

22.2 The date of the commencement of Provider’s obligations for the O&M Services (the “O&M Services Commencement Date”) shall be the date that Satisfaction of Performance Test as set forth in Section 10.2 has been achieved for the EPC Work. Provider’s obligations for the O&M Services shall thereafter continue until the conclusion of the Term (as defined in Exhibit 7).

22.3 Owner shall properly maintain and pay for the necessary phone, computer, or other communication lines to the extent necessary for the DAS and system operations to permit Provider to perform its O&M Services for the entire Term.

23. PERFORMANCE GUARANTY.

23.1 Provider agrees to provide to Owner a performance guaranty of the projected energy output to be achieved as a result of the installation and operation of the Project, on the terms and conditions as set forth in the Performance Guaranty attached hereto as Schedule 13.

24. INSURANCE AND BONDING

24.1 Provider Provided Coverages. Provider shall, at its expense, procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times commencing on the Effective Date and continuing until 2 years following Final Completion, the Provider insurance coverages specified in Schedule 12 and the bonding specified in Schedule 12. Provider shall require its Subcontractors, at their expense, to procure or cause to be procured and maintain or cause to be maintained in full force and effect at all times the insurance coverages specified in Schedule 12. All such insurance coverages shall be in accordance with the terms of this Section 24 and Schedule 12.

24.2 Owner Provided Coverage. Notwithstanding the foregoing, the Owner may self-insure, in whole or in part, the insurance requirements described above; provided, that such Party continues to be investment grade determined by reputable and accepted financial rating agencies. In furtherance of the foregoing, Owner is self-insured and Owner’s liability is governed and subject to the Oklahoma Governmental Tort Claims Act, 51 Okla. Stat 151 et. Seq. The limits are set forth in 51 Okla. Stat. 154 - \$25,000 for property loss; \$125,000 for any other loss; \$1,000,000 for any number of claims arising out of a single occurrence or accident.

24.3 Additional Coverages. Subject to the execution of an appropriate Change Order, additional insurance coverage can be included, at Owner’s cost and responsibility, under Provider’s insurance policies required to be procured and maintained pursuant to this Section 24.

24.4 Policy Requirements. The insurance required of Provider and its Subcontractors hereunder shall (a) be primary coverage without the right of contribution from Owner, and (b) include contractual liability in said amount for an insured contract to

specifically cover Provider's obligations under this Agreement and Subcontractors' obligations, if any, and (b) name Owner as an additional insured (except with respect to Workers' Compensation), all as set forth in Schedule 12. All such insurance policies shall be with financially sound and reputable insurance companies that have an (i) A.M. Best rating of A- and a financial strength category of "XII" or higher, (ii) a Standard & Poor's financial strength rating of A- or higher, or (iii) are otherwise reasonably satisfactory to Owner; and all such policies shall be on terms that are reasonably satisfactory to Owner. In addition, all such insurance policies shall provide for a waiver of subrogation rights against Owner and its Affiliates and its and their respective directors, officers and employees, and of any right of the insurers under Provider's Commercial General Liability policy. To the extent the consent of any insurance carriers or underwriters under Provider's insurance policies is required to waive subrogation rights in accordance with this Section 24.4 Provider shall obtain and provide the same to Owner within ten (10) Business Days from the Effective Date. Provider releases and waives any and all rights of recovery against Owner and its Affiliates, together with Owner's and its Affiliates' respective directors, officers, employees, successors, and permitted assigns for claims covered and fully paid for by the insurance required under this Section.

24.5 Certificates and Notice. Within ten (10) Business Days following the Effective Date, Provider shall deliver to Owner certificates of insurance evidencing the coverages required under this Section 24 which shall specify that Provider's and Subcontractors' insurers shall provide Owner at least thirty (30) days' prior written notice in the event of any material modification, cancellation or termination of coverage, except ten (10) days' notice shall be required for non-payment of premium. If at any time prior to Final Completion the insurance to be provided by Provider hereunder shall be reduced or cease to be maintained, then (without limiting the rights of the Owner in respect of any default that arises as a result of such failure) Owner may at its option obtain and maintain the insurance required hereby and, in such event, Owner may withhold the cost of insurance premiums expended for such replacement insurance from any payments required to be made to Provider hereunder in accordance with Section 17.5.

24.6 No Limitation. The insurance policy limits set forth in this Section 24 shall in no way be construed as limits on Provider's liability under this Agreement. Neither approval nor failure to disapprove insurance furnished by Provider or any Subcontractor shall relieve Provider from responsibility to provide, or cause to be provided, insurance as required by this Agreement.

25. INDEMNITY.

25.1 Provider Indemnity. Provider shall indemnify, save harmless and defend Owner and its Affiliates and their respective directors, officers, shareholders, members, managers, employees, agents, representatives, successors and assigns (each, an "Owner Indemnitee") from and against, and pay, any and all damages, liabilities, losses, costs, claims and expenses associated therewith (including court costs and attorneys' fees and other professionals' fees) (collectively, the "Losses") incurred by any Owner Indemnitee in connection with or arising from any claim, demand or cause of action of every kind and character by any third party (including, without limitation, any Governmental Authority) for: (a) physical damage to or physical destruction of property, or death of or bodily injury to any person (including any of Provider's or any of its Subcontractors' employees or

agents) caused by or arising out of or related to Provider's negligent conduct, willful misconduct, or performance under this Agreement, (b) a breach by Provider of its obligations under this Agreement; or (c) any violation or alleged violation of Applicable Law by Provider, any Subcontractor or any of their respective employees, agents or third parties over which either has reasonable control, but, in either case, not to the extent caused by or arising out of or related to (i) the negligence or willful misconduct of Owner or its agents or employees or other third parties under Owner's reasonable control, or (ii) a breach by Owner of its obligations hereunder.

25.2 Environmental Indemnity. Provider shall indemnify, save harmless and defend the Owner Indemnitees from and against, and pay, any and all Losses incurred by any Owner Indemnitee in connection with or arising from any claim, demand or cause of action of every kind and character for or by reason of:

25.2.1 any presence of a Hazardous Material caused by Provider, any Subcontractor or any of their respective agents, representatives or third parties over which either has reasonable control;

25.2.2 any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Law by Provider, any Subcontractor or any of their respective agents, representatives or third parties over which either has reasonable control;

25.2.3 any action reasonably necessary to abate, remediate or prevent a violation or threatened violation of any Applicable Law by Provider, any Subcontractor or any of their respective agents, representatives or third parties over which either has reasonable control; and

25.3 Proprietary Rights Indemnity. Provider shall indemnify, save harmless and defend the Owner Indemnitees from and against, and pay, any and all Losses incurred by any Owner Indemnitee in connection with or arising from (a) actual or alleged infringement or misappropriation by Provider (or any Subcontractor) of any patent, copyright, trade secret, trademark, service mark, trade name, invention, proprietary information, other intellectual property right, or other rights of any third party (collectively "Infringement Claims") in connection with the Project or any Work, including any Documentation, or (b) Provider's (or any Subcontractor's) violation of any third-party license to use intellectual property in connection with the Project or any Work, including any Documentation. Owner agrees that if the operation or use of the Project, any Equipment or any Documentation becomes the subject of an Infringement Claim, Owner will permit Provider, at Provider's option and expense for all associated costs, either (A) to procure the right for such Owner Indemnitees to continue to use the Project, Equipment or Documentation, or part thereof, or (B) to replace or modify the Project, Equipment or Documentation with another Project, Equipment, Documentation, or any part thereof, of comparable quality and performance capabilities which is non-infringing, provided such replacement or modification does not cause the Project, Equipment, Documentation, or any part thereof, to fail to comply with any of the requirements of this Agreement, including all functionality, technical specifications and warranties herein. If Provider is obligated, and fails, to perform (A) or (B) of the preceding sentence within forty-five (45) days of the date of the written notice

of an Infringement Claim(s) from Owner or any third party, Owner shall have the right to take such remedial acts it determines to be reasonable to mitigate any impairment of its use of the Project or any Equipment (each a "Remedial Act"). Provider shall indemnify the Owner Indemnitees for all reasonable amounts paid and reasonable direct and indirect costs associated with Remedial Acts.

25.4 Owner Indemnity. Owner shall indemnify, save harmless and defend Provider and its Affiliates and Subcontractors, including its and their respective directors, officers, shareholders, members, managers, employees, agents, representatives, successors and assigns (each, a "Provider Indemnitee") from and against, and pay, any and all Losses incurred by any Provider Indemnitee in connection with or arising from any claim, demand or cause of action of every kind and character by any third party (including any Governmental Authority) for: (a) physical damage to or physical destruction of property, or death of or bodily injury to any person (including any of Owner's employees or agents) caused by Owner or its employees, agents or third parties over which it has reasonable control, and (b) any violation of Applicable Law by Owner or its employees, agents or third parties over which it has reasonable control, but, in either case, not to the extent caused by (i) the negligence or willful misconduct of Provider, any Subcontractor or any of their respective agents, representatives or third parties over which either has reasonable control or (ii) a breach by Provider of its obligations hereunder.

25.5 Indemnity Procedures. If any claim is brought against a Party with respect to which such Party has a right to claim for indemnification under this **Section 25** (in such capacity, the "Indemnified Party"), then the Indemnified Party must notify the other party (in such capacity, the "Indemnifying Party") thereof in writing in accordance with **Section 30** of the existence of such claim and must deliver copies of any documents served on the Indemnified Party with respect to such claim; provided, however, that any failure to notify the Indemnifying Party or deliver such copies will not relieve the Indemnifying Party from any obligation hereunder unless (and then solely to the extent that) the Indemnifying Party is materially prejudiced by such failure. The Indemnifying Party shall be entitled to participate in, and, unless in the opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim, assume the defense of such claim, with counsel reasonably acceptable to the Indemnified Party. If the Indemnifying Party does not assume the defense of the Indemnified Party, or if a conflict precludes the Indemnifying Party from assuming the defense, then the Indemnifying Party shall reimburse the Indemnified Party on a monthly basis for the Indemnified Party's reasonable defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assumes the defense of the Indemnified Party with acceptable counsel, the Indemnified Party, at its sole option, may participate in the defense, at its own expense, with counsel of its own choice without relieving the Indemnifying Party of any of its obligations hereunder. No Party shall settle or agree to settle any claim without the prior written consent of the other Party (not to be unreasonably withheld or delayed).

26. LIMITATION OF LIABILITY. EXCEPT (A) IN CASES OF NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF A PARTY OR (B) TO THE EXTENT THE PAYMENT OF AMOUNTS BY A PARTY PURSUANT TO SUCH PARTY'S INDEMNITY OBLIGATION UNDER **SECTION 25** COULD OTHERWISE BE DEEMED TO BE SUCH DAMAGES, IN NO EVENT SHALL EITHER PARTY BE

LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE TERMS OF THIS AGREEMENT.

27. GOVERNING LAW. The formation, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, without regard to its conflicts of laws principles.

28. LIENS.

28.1 Liens. Provider shall keep the Project, the Site, the Equipment and all other structures and equipment at the Site free from all Liens (unless such Lien is due to the non-payment by Owner of an invoice not subject to a good faith dispute), and shall promptly notify Owner of any in writing in accordance with Section 30 at least five (5) calendar days prior to filing such Liens. In addition, Provider shall be required to submit to Owner a waiver of liens, satisfactory in form and content to Owner in its reasonable judgment, from Owner prior to the receipt of any payment from Owner hereunder or when and if required under the Draw Procedures.

29. DISPUTE RESOLUTION.

29.1 Good Faith Negotiations. In the event that a bona fide good faith dispute, arises out of or is in connection with this Agreement, including any dispute regarding the existence or validity of this Agreement, performance or termination (a "Dispute"), which either Party has notified to the other in writing in accordance with Section 30, senior management personnel from both Provider and Owner shall meet and diligently attempt in good faith to resolve the Dispute for a period not to exceed twenty (20) days, unless otherwise mutually agreed upon by the Parties, following one Party's written request in accordance with Section 30 to the other Party for such a meeting. If, however, either Party refuses or fails to so meet, or the Dispute is not resolved by negotiation, the provisions of Section 29.2 shall apply.

29.2 Litigation. Any Dispute that is not settled to the mutual satisfaction of the Parties within the applicable notice or cure periods provided in this Agreement or settled pursuant to Section 29.1 shall be settled in a court of competent jurisdiction in Cleveland County, State of Oklahoma. The parties unconditionally submit to the jurisdiction of the Courts in Cleveland County, State of Oklahoma. Any award shall include interest from the date of any damages incurred for breach or other violation of this Agreement, and from the date of the award until paid in full, at the Default Rate.

29.3 Equitable Remedies. The procedures specified in this Section 29 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a complaint in a court of competent jurisdiction on issues of statute of limitations or repose or to seek injunctive relief, specific performance, sequestration, garnishment, attachment, or an appointment of a receiver.

29.4 Continued Performance. Subject to any other provisions herein expressly permitting Provider to suspend performance as described therein, the commencement of

any dispute resolution procedures specified in this **Section 29** shall not excuse Provider from continuing to perform its obligations under this Agreement. Provider shall continue to perform its obligations hereunder in good faith during any ongoing dispute resolution procedure until final resolution of such dispute is achieved.

30. **NOTICES.** Except as otherwise expressly provided herein, any notice, request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) delivered in person to the address below, (b) mailed, postage prepaid, either by registered or certified mail, return receipt requested, or (c) sent by reputable overnight express courier, addressed in each case to the addresses set forth below (or to any other address either of the Parties shall designate by like a written notice to the other Party):

Owner: City of Norman, Oklahoma
Attn: Director of Utilities
201. W. Gray
Norman, Oklahoma 73069
Phone: (405) 366-5443
E-mail: chris.mattingly@normanok.gov

Provider: BioStar E Light JV, LLC
9400 Reeds Rd, Ste 150
Overland Park, KS 66207
Phone: 913-369-4100
E-mail: astancati@biostarrenewables.com

31. **APPROPRIATION OF FUNDS.** Owner agrees that it shall seek appropriation for utility services and all payments under this Agreement during the term of this Agreement.
32. **TIME OF ESSENCE.** Time is expressly agreed to be of the essence of this Agreement and each, every and all of the terms, conditions and provisions herein.

The failure of either Party to insist upon or enforce, in any instance, strict performance by the other Party of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such terms or rights on any future occasion. No waiver shall be valid unless stated in writing and executed by the Party so waiving.

33. **VALIDITY.** The invalidity, in whole or in part, of any provisions hereof shall not affect the validity of any other provisions hereof.
34. **SURVIVAL.** All representation, warranties and covenants of the parties shall survive termination of this Agreement,
35. **BINDING EFFECT.** This Agreement shall be binding on the Parties and on their respective

permitted successors, heirs and assigns.

36. NO ORAL MODIFICATIONS. No oral or written amendment or modification of this Agreement by any officer, director, agent, employee or representative of Provider or Owner, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by an authorized officer or representative of the Party to be bound thereby with all pages initialed.
37. HEADINGS. The headings in this Agreement are for convenience of reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.
38. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Any counterpart may be delivered by electronic communication in portable document format (.pdf), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures. Upon receipt of all counterparts, Provider shall circulate a final combined copy of the Agreement including all counterparts.
39. ANNOUNCEMENTS. With the prior written consent of Owner, Provider shall be entitled until Final Completion to place signs on the Site and the Site's perimeter advertising the Provider's performance of the Work. If approved by Owner, the type, size and location of the sign shall be subject to Owner's approval.
40. ENTIRE AGREEMENT. This Agreement, including the Schedules and Exhibits hereto, constitutes the entire Agreement between the Parties and supersedes any previous communications, representations or Agreements, whether oral or written, with respect to the subject matter hereof. There are no additions to, or deletions from, or changes in, any of the provisions hereof, and no understandings, representations or Agreements concerning any of the same, which are not expressed herein, unless stated below.
41. NO AGENCY. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as, or be an agent or representative of, or otherwise bind, the other Party.
42. PRIORITY OF DOCUMENTS. In the event of conflicting provisions between any of the Contract Documents, the provisions shall govern in the following priority: first, duly executed Change Orders and amendments to this Agreement (to the extent not superseded by a subsequent Change Order or amendment); second, this Agreement and third, the other Contract Documents.
43. ASSIGNMENT.

43.1 Generally. Owner may assign this Agreement with at least five (5) days written notice to, but without requiring the consent of, Provider to any Party that can establish that it can meet the same obligations to the Provider required in this Agreement,

in which event Owner shall be relieved of its obligations hereunder. Owner may assign this Agreement to any party with at least five (5) days written notice to Provider without requiring the consent of Provider. Provider shall not assign this Agreement or any of its rights hereunder without the prior written consent of Owner, which consent may be withheld by Owner in its sole and exclusive discretion. Any assignment made in contravention of this Section shall be void and unenforceable. Nothing in this **Section 43.1** shall prevent Provider from subcontracting all or a portion of the Work as permitted by this Agreement.

43.2 Owner's consent to any Assignment shall not be unreasonably withheld if Owner has been provided with reasonable proof that the proposed assignee: (x) has comparable experience in constructing and maintaining photovoltaic solar systems comparable to the System and providing services comparable to the Solar Services; and (y) has the financial capability to maintain the System and provide the EPC Services or O&M Services in the manner required by this Agreement. A direct assignee from Provider of this Agreement shall assume in writing, in form and content reasonably satisfactory to Owner, the due performance of all Provider's obligations under this Agreement. A copy of such Assignment agreement, fully executed and acknowledged by the assignee, shall be sent to Owner not less than ten (10) days before the Contract Date of such Assignment.

44. **INCOMPLETE OR REVISED EXHIBITS.** In the event any exhibits to this Agreement remain uncompleted at the time of execution, the parties shall execute of any such exhibit upon completion and mutual acceptance. The parties shall execute any exhibit that has been revised as mutually accepted and update this Agreement with the new exhibit.
45. **SCHEDULES AND EXHIBITS.** The following schedules attached to and incorporated as part of this Agreement are to be adhered to and complied with:

Schedules

Schedule 1	-	Scope of Work and Technical Specifications
Schedule 2	-	Project Schedule
Schedule 3	-	Milestone Payments Schedule
Schedule 4	-	Construction Plans
Schedule 5	-	Project Safety Standards
Schedule 6	-	Product Data Sheet and Bill of Materials
Schedule 7	-	List of Required Permits
Schedule 8	-	Owner Deliverables & Services
Schedule 9	-	Schedule of Values
Schedule 10	-	Site List
Schedule 11	-	Commissioning Procedures
Schedule 12	-	Insurance and Bonding Requirements
Schedule 13	-	Performance Guaranty

Exhibits

Exhibit 1	Form of Certificate of Mechanical Completion
Exhibit 2	Form of Certificate of Substantial Completion
Exhibit 3	Form of Certificate of Final Completion
Exhibit 4	Form of Affidavit of Payment and Final Release

Exhibit 5 Form of Job Site Readiness Release Letter
Exhibit 6 Environmental Report
Exhibit 7 O&M Services Agreement

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed and delivered this Energy Services Contract as of the Effective Date.

Owner:

CITY OF NORMAN , OKLAHOMA

By: _____

Name:

Title:

NORMAN UTILITIES AUTHORITY

By: _____

Name:

Title:

ATTEST:

City Clerk/Secretary

Approved as to form and legality this ____ day of _____, 2021.

Kathryn Walker, City Attorney/General Counsel

Provider:

BIOSTAR E LIGHT JV, LLC

By: 

Name: WILLIAM P. LOVE

Title: MANAGER

BioStar E Light JV / City of Norman

ENERGY SERVICES CONTRACT

SCHEDULES AND EXHIBITS

Schedules

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Exhibit 7	O&M Services Agreement

Schedule 1
Scope of Work and Technical Specifications

[See attached]

SCHEDULE 1

SCOPE OF WORK AND TECHNICAL SPECIFICATIONS

1 Contents

1	Contents	2
2	Introduction.....	4
3	Definitions for the Scope of Work and Technical Specifications	5
4	General Requirements	8
4.1	Scope of Work.....	8
4.2	Safety	10
4.3	Permits.....	10
4.4	Schedule.....	10
4.5	Project Management.....	10
4.6	Engineering	11
4.7	Procurement	12
4.8	Construction	12
4.9	Quality Control.....	13
4.10	Commissioning.....	14
4.11	Operations and Maintenance Manuals	14
4.12	Training	14
4.13	Community Relations.....	14
5	Electrical Requirements.....	15
5.1	General.....	15
5.2	PV Array Design	15
5.3	DC Collection System	16
5.4	AC Collection System	17
5.5	Project Wiring Losses.....	17
5.6	Conduit.....	17
5.7	Protection and Isolation Devices	17
5.8	Electrical Grounding.....	18
5.9	Equipment Marking and Labeling.....	18
6	Civil and Structural Requirements.....	19
6.1	General.....	19
6.2	Structural Steel and Fasteners.....	19
6.3	Aluminum.....	20
6.4	Structural Design Requirements.....	20
6.5	Solar Array Foundation	21
6.6	Concrete Equipment Foundations	21
6.7	Trenches.....	21
7	DAS, Communications and Metering Requirements	23
7.1	General.....	23
7.2	DAS Equipment	23
7.3	Utility and Operator Requirements	23

7.4	Communication System	23
7.5	Metering	23
7.6	Monitored Data Points	23
7.7	Weather Stations	24
7.8	Delivery & Identification	24
8	Equipment Specifications	26
8.1	General.....	26
8.2	PV Modules	26
8.3	PV Module Mounting Structures	26
8.4	Inverters.....	27
8.5	Low Voltage Cable and Terminations (1,500 V or less)	28
8.6	Meters.....	29
9	Operating Spare Parts and Tools	30
9.1	Operating Spare Parts Priced List	30

2 Introduction

This Schedule 1 defines the Scope of Work and Technical Specifications required for engineering, procurement and construction of the Project located in Norman, Oklahoma.

The Project shall have an approximate installed DC capacity of 2.27 MWdc (based on the nameplate rating of the PV modules).

Subject to the specifications herein, the Project scope includes the following facilities:

- All equipment (including PV modules, mounting structures, inverters and related/ancillary equipment) to comprise a 2.27MWdc photovoltaic system
- AC collection equipment to combine the output of each inverter up to the Point of Interconnection for each system.

Provider shall also comply with the scope and technical requirements contained in other Exhibits to the Agreement.

3 Definitions for the Scope of Work and Technical Specifications

All defined terms shall have the meaning prescribed to them in the Agreement, or as defined below:

Term	Definition
AHJ	Authority Having Jurisdiction
Applicable Standards	Governmental and industry codes, standards and requirements to which the Work shall comply
Array	May describe the entire PV system or a portion of it, representative of all equipment necessary to facilitate PV power generation and delivery of electricity including but not limited to Modules, Racking and wiring.
Conditions of Approval	Conditions provided as part of the approved permitting process that must be complied with by the Owner and Provider.
CT	Current transformer
Design Life	25 years
DWG	Electronic data file format for AutoCAD drawings developed by Autodesk, Inc.
EPC	Engineer, procure, and construct
Final Geotechnical Report	The Provider-supplied subsurface investigation in sufficient detail to identify all required design-related parameters related to the soil and subsurface conditions.
Hz	Hertz
kV	Kilovolts
kW	Kilowatts
kWh	Kilowatt hours
LOTO	Lock-out, tag-out
LV	Low voltage, defined as less than 1,500 volts
Weather Station	Meteorological station, consisting of multiple sensors to record environmental conditions
Mounting Structure, Racking	A mechanical assembly of racking members used to support the PV modules and string wiring.
MPPT	Maximum power point tracking
MV	Medium Voltage, defined as between 1,500 V and 35kV
OCPD	Overcurrent Protection Device
O&M	Operations and Maintenance
PDF	Portable document format, an electronic data file format developed by Adobe Systems Inc.
Point of Interconnection	The Point of Interconnection is the location at which the Project's power system is interconnected with the Facilities. The Point of Interconnection is the physical termination point between the Provider and the Utility.
PPE	Personal protective equipment
PV	Photovoltaic

Term	Definition
STC	Standard test conditions (1000 W/m ² , 25°C module temperature and AM1.5 spectrum)
String	Circuit of PV Modules connected in series
Test, Testing	Any visual, mechanical, electrical or functional inspection or examination required to confirm Project Equipment and/or systems have been installed in accordance with this Agreement, Good Industry Practices, Applicable Laws, Applicable Standards and manufacturer recommendations.
UL	Underwriters Laboratories
UL Listed	A product listing issued by a Nationally Recognized Testing Laboratory certified by OSHA to perform product testing to the relevant UL standard
Wp	DC capacity measured as the sum of the nameplate rating of each PV Module
50% Design Documents	<p>Design Documents intended to represent a reasonably complete design package. Many of the design submittals may be preliminary or conceptual in nature, without having all exact details defined. 50% Design Documents shall be provided as a single comprehensive submittal. To the extent possible, all PDF's shall be combined into a single file. 50% Design Documents shall include (at minimum):</p> <p><u>Design Basis:</u></p> <ul style="list-style-type: none"> • Design criteria for each engineering discipline • Provider's equipment and system designation methods • List of systems and system designations <p><u>Electrical Package:</u></p> <ul style="list-style-type: none"> • Schematics and single line drawings detailing: array and DC Collection System Circuits, AC collection system, Weather stations, DAS and communications systems, grounding design Wiring details including: specifications for all conductor types, conduit, protective devices and relays; ampacity calculations for all directly buried conductors; voltage drop calculations for all conductor runs; trench details, CB wiring details, minimum bend radii, conductor termination details, conduit fittings, etc. • Equipment pad layout design including conduit entry • Supporting documentation for all components including: specification of all requirements for all components, manufacturer's datasheets, installation manuals, operations and maintenance manuals <p><u>Structural Package:</u></p> <ul style="list-style-type: none"> • Calculations in accordance with Section 6.4.2. • Elevations depicting mounting configurations for all equipment • Foundation designs for all equipment pads and Mounting Structures, etc. • Pile foundations test plan, results and pile design report.

Term	Definition
90% Design Documents	<p>Design Documents intended to represent a nearly complete design package for final approvals prior to being issued for permit approval. The 90% Design Documents shall be provided as a single comprehensive submittal. 90% Design Documents shall include (at minimum):</p> <ul style="list-style-type: none"> • An updated version of the 50% Design Documents with revisions and additional detail where applicable. • Shall include equipment ratings for all power systems equipment, bus work, enclosures, protective devices, etc. • Include all detailed information required to obtain all necessary construction permits from the AHJ
IFC Design Documents	<p>Design Documents intended to provide all required information for subcontractors to construct the Project. IFC Design Documents shall be provided as a single comprehensive submittal. IFC Design Documents shall include, at minimum, complete and fully detailed submittals (all applicable drawings and calculations) for the following:</p> <ul style="list-style-type: none"> • An updated version of the 90% Design Documents with revisions and additional detail where applicable. • Shall include all completed test results such as pile uplift and lateral resistance testing • Shall be approved by the AHJ and address any responses/comments from the AHJ
As-Built Design Documents	<p>Design Documents intended to reflect design changes after the release of the IFC Design Documents.</p>

4 General Requirements

4.1 Scope of Work

- 4.1.1 Provider shall engineer, design and construct the Project in accordance with the Agreement and the Technical Specifications.
- 4.1.2 Provider's Scope of Work is to engineer, design, procure, permit, construct, interconnect, commission, startup and test a turnkey photovoltaic system which is built to the nameplate capacity as indicated in Section 2. of the Technical Specifications and meets commissioning and testing requirements identified in Schedule 11.
- 4.1.3 Provider shall design all aspects of the Project to meet the minimum Design Life.
- 4.1.4 It is the Provider's sole responsibility to ensure that all aspects of Project design and construction comply with all federal, state, and local code requirements and all industry codes and standards.
- 4.1.5 All design and engineering Work shall be performed under the responsible charge of an electrical, civil and geotechnical engineer registered or licensed in the state where the Project will be constructed.
- 4.1.6 Professional engineers registered or licensed in the state where the Project will be constructed shall sign and seal all documents required for submittal to any applicable legal authority. Provider shall provide a complete and functional Project up to the Point of Interconnection.
- 4.1.7 Provider shall perform, supply or cause to be supplied all Equipment, materials, labor, services, supervision, testing devices, drawings, calculations, specifications, manuals required for the Project.
- 4.1.8 Major components of the Work include:
 - 4.1.8.1 Project management including, but not limited to:
 - 4.1.8.1.1 Project administration
 - 4.1.8.1.2 Scheduling
 - 4.1.8.1.3 Quality control
 - 4.1.8.1.4 Weekly and monthly progress reporting
 - 4.1.8.1.5 Coordination of Provider's personnel and subcontractors
 - 4.1.8.1.6 Compliance with Applicable Permits
 - 4.1.8.2 Engineering including, but not limited to, detailed design of:
 - 4.1.8.2.1 Electrical systems
 - 4.1.8.2.2 Structural systems
 - 4.1.8.2.3 Calculations, analyses and third-party review, where required, of all engineering documents
 - 4.1.8.2.4 Comprehensive design manual including all engineering drawings, calculations and analyses performed
 - 4.1.8.2.5 Comprehensive operation and maintenance manuals for the Project

Schedule 1

4.1.8.2.6 Certification by a professional engineer licensed in the State of Oklahoma

4.1.8.3 Procurement of all Equipment, materials and services, including but not limited to:

- 4.1.8.3.1 Procurement of all materials, including but not limited to, PV Modules, PV Module mounting structures, inverters, disconnect switches, current transducers, potential transducers, fuses, meters, Weather stations, DAS equipment, foundations and foundation materials, hardware and fasteners, conduits and raceways, conductors, junction boxes, bonding and grounding equipment, and all related materials
- 4.1.8.3.2 Procurement of all services including, but not limited to, subcontracted services required to prepare, install, construct, connect and test Equipment at the Site
- 4.1.8.3.3 Development of specifications and bid packages for subcontracted Work
- 4.1.8.3.4 Obtaining all datasheets, relevant technical notes, installation, operations and maintenance manuals for all Project Equipment
- 4.1.8.3.5 Priced list of recommended Operating Spare Parts with manufacturer-recommended quantities based on the quantity installed at the Project in accordance with Section 9.

4.1.8.4 Construction of all Project facilities including, but not limited to:

- 4.1.8.4.1 Construction management and supervision
- 4.1.8.4.2 Construction labor
- 4.1.8.4.3 Construction and installation of all Project Equipment
- 4.1.8.4.4 Construction equipment
- 4.1.8.4.5 Construction utilities such as electrical power, water and telecommunications
- 4.1.8.4.6 Parking for construction crews
- 4.1.8.4.7 Construction, maintenance, removal and restoration of all temporary construction needs such as material laydown and staging areas
- 4.1.8.4.8 Construction lighting
- 4.1.8.4.9 Construction sanitary facilities
- 4.1.8.4.10 Surveying
- 4.1.8.4.11 All consumables
- 4.1.8.4.12 Site clean-up

4.1.8.5 Inspection, testing and commissioning activities including, but not

Schedule 1

limited to:

- 4.1.8.5.1 Commissioning as required by Schedule 11
- 4.1.8.5.2 Performance testing required by Schedule 11
- 4.1.8.5.3 All personnel and test equipment required to perform the inspection, testing and commissioning activities

4.1.9 Provider shall be responsible for disposal of all waste material from the Work.

4.2 Safety

4.2.1 Within Sixty (60) days following the Effective Date, Provider shall provide to Owner a Site-specific safety plan for the Work to ensure that appropriate measures are taken to support safe construction.

4.2.2 Provider's Site-specific safety plan shall comply with Occupational Health and Safety Administration (OSHA) directives as well as any federal, state and local regulations.

4.2.3 Provider shall provide safety supervision to maintain safe working conditions.

4.3 Permits

4.3.1 Provider shall be responsible for obtaining all building and construction permits, including floodplain permits, necessary to complete the Work including, but not limited to the permits listed in Schedule 7

4.3.2 Provider shall comply with all Conditions of Approval and all mitigation measures required by the Permits listed in Schedule 7

4.3.3 Provider shall provide all necessary drawings and permit documentation to comply with local ordinances to secure zoning, planning, building and electrical permits.

4.4 Schedule

4.4.1 Provider shall develop a Project Schedule of the Work to include all milestone dates identified in Schedule 3 no later than thirty (30) days following the Effective Date.

4.4.2 Provider shall provide immediate written notice to Owner at any time that Provider becomes aware of a change to the Project Schedule that is expected to impact any of the milestone dates identified in Schedule 3. Provider shall have five (5) Business Days to provide Owner with a mitigation plan and revised Project Schedule. No relief to liquidated damages will be given if not properly communicated and approved by Owner prior to the milestone deadline.

4.5 Project Management

4.5.1 Provider shall identify a single point of contact (project manager) within Provider's organization for Owner to communicate with regarding the Work.

4.5.2 The project manager shall convene weekly conference calls with the Owner and agents designated by the Owner to communicate status of the Work.

4.5.3 WEEKLY REPORT

4.5.4 The project manager shall maintain and issue the following documents on a monthly basis to communicate the status of the Work. The progress reports shall include:

4.5.4.1 Safety report

4.5.4.2 Report on construction progress

- 4.5.4.3 Updated schedule of values
- 4.5.4.4 Updated schedule for the Work
- 4.5.4.5 Action item list
- 4.5.4.6 Construction progress photographs

4.6 Engineering

- 4.6.1 Provider is responsible for all electrical, structural engineering and design. All drawings, studies and documentation submitted to any authority having jurisdiction shall be signed and sealed by a professional engineer registered in the State of Oklahoma.
- 4.6.2 Provider shall include in the Design Documents a general arrangement drawing, to scale, indicating the location of all major Project Equipment including dimensions of key Site features to existing survey monuments. The general arrangement drawing shall include, at minimum:
 - 4.6.2.1 PV arrays
 - 4.6.2.2 Inverters
 - 4.6.2.3 Weather stations
 - 4.6.2.4 Point(s) of Interconnection
 - 4.6.2.5 Staging and laydown areas
 - 4.6.2.6 Site access roads and adjacent public roads
- 4.6.3 Provider shall perform all engineering and design Work within the scope defined and in accordance with all applicable building, electrical, safety and fire codes.
- 4.6.4 Provider shall provide full turnkey engineering design for all PV systems, with exception to civil engineering.
- 4.6.5 Provider shall apply for and obtain all required construction permits in order to construct the Project. Permit costs are to be paid for by Owner.
- 4.6.6 Engineering submittals shall be provided at intervals sufficient for Owner to review and comment on design decisions. Submittal milestones include:
 - 4.6.6.1 50% Design Documents
 - 4.6.6.2 90% Design Documents
 - 4.6.6.3 IFC Design Documents
 - 4.6.6.4 As-Built Design Documents
- 4.6.7 Power generated by the Project shall be compatible with the electric power system to which the Project is interconnected.
- 4.6.8 All engineering and design calculations prepared by Provider during the design of the Project shall be available for Owner to review electronically. Such calculations shall include structural, electrical, and instrumentation details. Provider shall make calculations available for Owner review no later than the dates permit submittals are made to the AHJ.
- 4.6.9 All vendor documents received by Provider shall be maintained by Provider and available to Owner at all times.

4.6.10 Provider shall make all engineering documentation available in PDF format.

4.6.11 Provider shall make all drawings available in DWG and PDF formats.

4.7 Procurement

4.7.1 Provider shall be responsible for the procurement, handling, shipping costs and delivery of all equipment, materials and services, including, without limitation, locating, negotiating, inspecting, expediting, shipping, shipping permits, unloading, receiving, verifying, customs clearance and claims.

4.7.2 All freight costs for all Equipment shall be the responsibility of the Provider.

4.7.3 All customs documentation and fees shall be the responsibility of the Provider.

4.7.4 All Equipment stored at the Site shall be in accordance with Good Industry Practices and manufacturer's recommendations. Provider shall use all reasonable measures to keep the Equipment free from dirt and debris.

4.7.5 Provider shall perform all inspection and pre-installation maintenance activities to ensure compliance with manufacturer's recommendations. Provider shall maintain a log of such maintenance activities, such log to include the date of such activities and the names and signatures of the personnel performing such activities. Such log shall be available to Owner for review.

4.7.6 Provider shall obtain all warranty information for all Project Equipment. All Key Equipment warranties shall permit assignment to Owner without consent of the Manufacturer.

4.7.7 Provider shall obtain all installation, operations and maintenance manuals for all Project Equipment, either in physical form or electronic PDF.

4.7.8 Provider shall secure all Equipment located at the Site prior to the Substantial Completion Date.

4.8 Construction

4.8.1 Prior to any Work at the Site, Provider shall demonstrate or provide to Owner:

4.8.1.1 All engineering and design requirements of this Exhibit have been met.

4.8.1.2 Provider has obtained all required permits necessary to conduct the Work at the Site.

4.8.2 All workmanship shall comply with Good Industry Practices, Applicable Laws and Applicable Standards

4.8.3 Provider shall provide all required temporary construction utilities such as electric power, water for concrete and dust control and telecommunication service.

4.8.4 Provider shall provide all fuels required for construction activities.

4.8.5 Provider shall provide adequate lavatory facilities for the maximum quantity of people at the Site. Provider is responsible for all service and waste removal.

4.8.6 Provider is responsible for properly containerizing, removal and disposal of all solid waste, including any Hazardous Materials waste generated during the Work.

4.9 Quality Control

4.9.1 Provider shall provide QA/QC supervision to maintain quality control in line with industry standards for similar work.

- 4.9.2 Provider shall perform inspections and field quality control testing throughout the construction process including:
 - 4.9.2.1 Assessing existing conditions
 - 4.9.2.2 Construction installation placement and qualification measurements
 - 4.9.2.3 Final inspections and tests
- 4.9.3 Testing shall comply with Good Industry Practices, Applicable Laws and Applicable Standards.
- 4.9.4 Testing shall include, but is not limited to:
 - 4.9.4.1 Commissioning and testing requirements of Schedule 11.
 - 4.9.4.2 Underground cabling for burial depth, spacing, tape placement and insulation resistance.
 - 4.9.4.3 Any other tolerance requirements as outlined in the approved engineering drawings and/or manufacturer's recommendations.
- 4.9.5 Torque
 - 4.9.5.1 Provider shall ensure all fasteners are torqued properly according to the manufacturer's instructions.
 - 4.9.5.2 Torque marks shall be provided on all structural fasteners and electrical terminations to indicate torque has been verified.
 - 4.9.5.3 Proper torque shall be achieved through the use of non-powered, calibrated torque wrenches. Electric and air-driven tools shall not be relied upon to provide final torque without Owner approval.
- 4.9.6 Provider shall compile a torque chart for the Project that includes the required torque settings for all fasteners and electrical terminations of similar type. Provider shall coordinate and document all QA/QC requirements and inspection and test results.
- 4.10 Commissioning
 - 4.10.1 Commissioning shall be performed in accordance with the manufacturer's installation, commission and O&M manuals, in accordance with Schedule 11.
- 4.11 Operations and Maintenance Manuals
 - 4.11.1 Provider shall provide comprehensive O&M Manual.
 - 4.11.2 O&M Manual shall be submitted to Owner no event later than Final Completion.
- 4.12 Training
 - 4.12.1 Provider shall provide operation and maintenance training for Owner. Such training is expected to include printed materials and electronic copies of documentation, field training, all in sufficient detail to train the Owner sufficiently to perform operations and maintenance of the Project. Minimum training requirements are as follows:
 - 4.12.1.1 Training shall be comprised of 1 day of training.
 - 4.12.1.2 Training shall be provided for up to 3 representatives of the Owner.
 - 4.12.1.3 Training shall include field training.

- 4.12.1.4 Training shall include sufficient coverage of points of contact, safety procedures, start-up/shutdown procedures and viewing of the DAS such that Owner representatives can safely start-up and shut-down the plant.
- 4.12.1.5 Training shall include a field introduction to the key equipment and recommended maintenance schedule required or recommended by the manufacturers.
- 4.12.1.6 Provider shall provide electronic copies of O&M Manual for all attendees.
- 4.12.1.7 Owner shall have the right to record any and all training sessions at their sole discretion for future staff training purposes, provided however reasonable advanced notice is provided to Provider.

4.13 Community Relations

- 4.13.1 Provider shall maintain positive relations with the community and neighbors during the Work.
- 4.13.2 Provider shall take appropriate steps to minimize disturbance to local residents.

5 Electrical Requirements

5.1 General

- 5.1.1 It is the Provider's sole responsibility to ensure that all aspects of electrical design for the Project comply with all federal, state, and local code requirements, the Interconnection Agreement and Applicable Standards.
- 5.1.2 All electrical design including conductors and equipment design attributes shall comply with the NEC including, but not limited to, ampacity rating, jacket type, conditions of use, conductor color conventions, labeling, terminations, conduit fill, protection and isolation, disconnecting means, signage and labeling requirements.
- 5.1.3 Equipment specifications shall comply with Section 8.
- 5.1.4 Provider shall comply with the requirements of the Interconnection Agreement and associated studies.
- 5.1.5 Provider is responsible to engineer and install all aspects necessary for a fully functional Project, including but not limited to, the following items
 - 5.1.5.1 PV array & DC Collection System Circuit: Modules, dc cabling, protection and isolation devices, complete grounding design, and inverters.
 - 5.1.5.2 AC collection system: AC cabling, interconnection circuit breakers, protection and isolation devices, as applicable.
 - 5.1.5.3 Operations and Maintenance (O&M): Fully operational DAS, protection and isolation devices, as applicable.

5.2 PV Array Design

5.2.1 Project Layout

- 5.2.1.1 Provider shall provide a design layout of the PV Module configuration in compliance with this Agreement and with all applicable floodplain regulations.
- 5.2.1.2 Provider shall provide minimum row spacing with 10 feet of clear area between rows of PV Module mounting structures for vehicle access.
- 5.2.1.3 Provider shall provide a minimum height of 1 feet above grade to the lowest point of the PV Modules in regions unaffected by storm water runoff.
- 5.2.1.4 PV Modules shall be oriented in portrait or landscape orientation based on manufacturer's recommendations and installation instructions to minimize energy losses due to row-to-row shading.

5.2.2 Modules

- 5.2.2.1 If PV Modules with multiple nameplate ratings are used, the PV Modules shall be grouped such that all PV Modules connected to an inverter have the same nameplate rating.
- 5.2.2.2 All PV Modules shall utilize the same brand and model connector even if different types of PV Modules are used.
- 5.2.2.3 All PV modules supplied for the Project shall have nominal factory power output range of its bin class rating -0 watt / +5.0 watt as measured at

Standard Test Conditions (STC). Provider shall provide Module manufacturer flash test data results to Owner 30 days prior to Module installation in the field, or as soon as it is available thereafter.

5.3 DC Collection System

5.3.1 General DC requirements

5.3.1.1 The maximum voltage of the dc collection system shall be 1,500 Vdc, unless otherwise approved by Owner. All components utilized in the dc collection system shall be rated for a minimum of 1,500 Vdc.

5.3.1.2 The DC Collection System Circuits shall be designed to limit electrical losses at STC conditions to no more than 2%.

5.3.2 DC Cabling

5.3.2.1 Wiring located above ground and secured to the PV Module mounting structures shall be secured to the mounting structures utilizing UV-resistant devices and secured in a manner such that no exposed wiring is in direct contact with unfinished metal edges.

5.3.2.1.1 Plastic zip ties shall be allowed for the purpose of securing cabling to racking only for 1 or 2 individual conductors. Plastic zip ties shall not be used to secure cabling to racking, for groups of more than 2 individual conductors.

5.3.2.1.2 Stainless steel zip ties with protective backing or stainless steel wire clips may be used, but shall be installed in a manner not to deform or compress the cable insulation.

5.3.2.2 DC cabling shall not be located above grade except along the PV Module mounting structures. Row to row dc cable runs shall be underground unless restricted by topography or easements.

5.3.2.3 All directly buried conductors shall be protected by conduit from the trench up to the electrical enclosure termination point or three (3) feet above grade, whichever is lower.

5.3.2.3.1 Conduit shall be UL Listed and comply with NEC requirements.

5.3.2.3.2 Conduit shall include a 90° conduit sweep in the trench to protect the cable as it enters the trench.

5.3.2.4 No splices shall be permitted.

5.3.2.5 For the purposes of establishing cable ampacity, direct buried dc circuits shall be modeled with a simulation program such as ETAP using the fully-dry thermal resistivity value recommended in the Final Geotechnical Report and a conductor load factor of 75% or greater.

5.3.3 Disconnect Switches

5.3.3.1 Disconnect switches shall have visible blades and be rated for full load disconnect.

5.4 AC Collection System

5.4.1 General ac requirements

- 5.4.1.1 The ac collection system shall encompass all equipment from the inverter output to the Point of Interconnection.
- 5.4.1.2 The ac collection system shall be designed to limit electrical losses at STC conditions to no more than 5%.
- 5.4.1.3 AC collection system cabling shall be installed in conduit or duct-bank when crossing under all vehicle roadways.
- 5.4.1.4 For the purposes of establishing cable ampacity, direct buried ac circuits shall be modeled with a simulation program such as ETAP using the fully-dry thermal resistivity value recommended in the Final Geotechnical Report and a load factor of 75% or greater.
- 5.4.1.5 No splices shall be permitted, except with Owner approval.
- 5.4.1.6 Minimum electrical clearances from energized parts shall be in accordance with ANSI C2.
- 5.4.1.7 Buried conductors shall be aluminum or copper with a copper tape shield or concentric neutral wires, and be suitable for direct burial in wet or dry locations.
- 5.4.1.8 All switchgear shall be rated for the environment and conditions of use, and shall meet all Applicable Standards.
- 5.4.1.9 The ac collection system shall be equipped with all appropriate protective relays and isolation mechanisms, including but not limited to: overcurrent protection, overvoltage and undervoltage relays, breakers, and surge arrestors.

5.5 Project Wiring Losses

- 5.5.1 To calculate total array wiring, each run (Modules to inverters, inverters to ac collection system, etc.) will be individually calculated. Conductor type, current at maximum power, voltage at maximum power, estimated length of line (one-way) and associated voltage drop will be shown in a table.

5.6 Conduit

- 5.6.1 Conduit shall be UL listed for the conditions of use.
- 5.6.2 Where required, PVC conduit shall be a minimum schedule 40 PVC for individual conduits direct-buried in the ground and schedule 80 where exposed to physical damage.

5.7 Protection and Isolation Devices

- 5.7.1 Overcurrent protection devices shall be appropriately rated for the voltage and current as specified in NEC.
- 5.7.2 Overcurrent protection devices shall be rated for reverse flow.

5.8 Electrical Grounding

- 5.8.1 Provider shall provide an overall electrical grounding schematic of the Project. The grounding schematic shall indicate the primary connections to earth and the manner in which all components are grounded.
- 5.8.2 Grounding design shall comply with all requirements of the NEC. All metal objects, likely to be energized, including but is not limited to: module frames, all racking structure

members, metal conduit, metal enclosures, etc.

5.8.2.1 Should owner choose to install fencing, additional scope will be required to include the cost to ground the fence into the design.

- 5.8.3 All grounding and bonding conductors shall be stranded copper.
 - 5.8.4 Hardware utilized in grounding design shall avoid risk of galvanic corrosion from contact of dissimilar metals.
 - 5.8.5 All ground lugs and ground terminations shall be UL Listed for use in the environment installed. Grounding connections terminated below grade shall be UL Listed specifically for direct burial applications.
 - 5.8.6 Equipment grounding conductors shall be routed with the associated phase conductors.
- 5.9 Equipment Marking and Labeling
- 5.9.1 Signage shall be provided on all electrical equipment in accordance with NEC requirements.
 - 5.9.2 Signage shall be weather-proof, corrosion-proof, UV-stabilized and fade-resistant and shall be capable to last the duration of the minimum Design Life.
 - 5.9.3 Signs shall be attached using non-corrosive materials suitable to meet the Design Life.
 - 5.9.4 All inverters, disconnect switches and circuit breakers shall have permanent identification label visible and readable from distance of 48" that provides the unique identification number as indicated on the electrical drawings.
 - 5.9.5 All conductors, including dc conductors utilized in the PV Module string circuits shall bear permanent cable labels at each end that uniquely identify the cables and are traceable to the electrical drawings.
 - 5.9.6 Permanent labels shall be suitable for wet locations and rated for UV resistance if exposed.

6 Civil and Structural Requirements

6.1 General

- 6.1.1 It is the Provider's sole responsibility to ensure the Project structural facilities comply with all federal, state, and local code requirements and all industry codes and standards.
- 6.1.2 Provider is responsible to determine all Site data necessary for the design and construction of the Project. This includes, but is not limited to, determination of local design wind speed, ground snow load, seismic design coefficients, flood design criteria, and any areas restricted from construction.
- 6.1.3 Provider shall perform all necessary subsurface investigations (Final Geotechnical Report) to establish all soil parameters for design of the Project.
 - 6.1.3.1 The Final Geotechnical Report shall address the following:
 - 6.1.3.1.1 Proposed foundations for PV Module mounting structures, equipment pads.
 - 6.1.3.1.2 Corrosion potential (soil resistivity, pH, soluble sulfates, soluble chlorides).
 - 6.1.3.1.3 Soil electrical resistivity and thermal resistivity tests.
- 6.1.4 Provider shall comply with the recommendations of all Site studies performed including but not limited to the Final Geotechnical Report.
- 6.1.5 The Provider shall provide all structural calculations and drawings to the Owner, with the 90% Design Documents.
- 6.1.6 The drawings and calculations to support the design of all Structural elements shall include, but are not limited to:
 - 6.1.6.1 Array rack mounting structures and array foundations.
- 6.1.7 The Owner and Owner's agent will review documents and submit comments. The Provider shall address in writing any and all comments received from Owner.

6.2 Structural Steel and Fasteners

- 6.2.1 Steel members of any structural system shall be Grade 50 and meet the requirements of the applicable ASTM standard based on the application.
- 6.2.2 Stainless steel hardware shall conform to ASTM F593.
- 6.2.3 Mechanical fasteners used in any structural or support system shall meet the requirements of ASTM A325 or A490 for bolts nominally ½" diameter and larger, or ASTM A449 for bolts smaller than ½" diameter.
- 6.2.4 Anchor bolts used to secure any structural member to the ground or a foundation shall be galvanized and specifically identified by the structural engineer and include installation requirements, minimum projection, material grade, appropriate ASTM standard and torque specification. Anchor bolts shall conform to ASTM A449, ASTM F1554, Grade 36, or A307. Anchor bolt sleeves shall conform to ASTM A501.

6.3 All structural welding shall conform to the requirements of AWS D1.1. Aluminum

- 6.3.1 Design of structural and miscellaneous aluminum shall be in accordance with the latest edition of the Aluminum Association – "Aluminum Design Manual" and "Aluminum

Standards and Data.”

- 6.3.2 Materials for structural and miscellaneous aluminum, including structural shapes and plate, shall conform to ASTM B209 and ASTM B308.

6.4 Structural Design Requirements

6.4.1 Structural Design Loads

- 6.4.1.1 The design loads and other information pertinent to the structural design – including, but not limited to, wind design data, earthquake design data, and snow load data (if applicable) – shall be indicated on the construction documents.
- 6.4.1.2 Load combinations shall be determined in accordance with ASCE 7, Design Loads for Buildings and Other Structures, and from appropriate material codes. Load combinations found in the International Building Code that differ from those found in ASCE 7 and material codes shall govern over those found in ASCE 7 and material codes.
- 6.4.1.3 Dead loads shall include all gravity loads due to self-weight of permanent structural and nonstructural components, including permanent hung loads.
- 6.4.1.4 Snow loads shall be in accordance with the International Building Code as modified by any locally adopted code.
- 6.4.1.5 Wind loads shall be in accordance with the International Building Code as modified by any locally adopted code. The Module rack shall be designed in such a way that deflections due to wind will not damage the Modules.
- 6.4.1.6 Seismic loads shall be in accordance with the International Building Code as modified by any locally adopted code. The Site classification of soil shall be determined by the Provider based on the results of a subsurface investigation, which shall be performed by the Provider.
- 6.4.1.7 Structural design shall account for thermal loads including thermal expansion, contraction and cycling.

6.4.2 Structural Design Calculations

- 6.4.2.1 The structural analysis shall conform to Applicable Standards
- 6.4.2.2 Structural systems and members thereof shall be designed to have adequate stiffness to limit deflections and lateral drift.
- 6.4.2.3 Structural analysis shall consider the static and dynamic effects of wind. Structural design shall not result in dynamic excitation of the structural system during wind events. The Project must resist wind loading without damage due to resonance or fatigue.
- 6.4.2.4 Provider shall provide computer modal analysis or physical testing identifying critical mode shapes and natural frequencies of critical mode shapes.

6.5 Solar Array Foundation

- 6.5.1 Type of foundations required and allowable bearing values for soil and rock shall be as recommended by Provider’s Geotechnical Engineer based on the subsurface

conditions found in the Final Geotechnical Report.

- 6.5.2 Provider shall use a Mounting Structure, in accordance with the recommendations of the Final Geotechnical Report, to mount the PV Modules. Racking design shall be capable of adapting to the Site topography to minimize required earth movement.
- 6.5.3 The PV Module mounting structure supplier shall approve Provider's design and installation to ensure that the mounting structure warranty remains in effect.
- 6.5.4 For ground-mounted projects to be constructed in locations with expansive soil, consideration shall be given to uplift pressures during the wet season as well as increased neglected depth owing to possible loss of soil/foundation contact during the dry season.
- 6.5.5 For ground-mounted projects to be constructed in locations with potential for frost heave, full adfreeze uplift loads shall be used in the design unless alternative systems are used to reduce adfreeze uplift pressures. Any reduction in adfreeze uplift pressures shall be substantiated with a detailed engineering analysis.

6.6 Concrete Equipment Foundations

- 6.6.1 Design of structural concrete shall be in accordance with the latest version of the American Concrete Institute (ACI) 318. All concrete formwork shall conform to ACI347.
- 6.6.2 Construction of the concrete shall be in accordance with ACI 301.
- 6.6.3 Steel reinforcement shall be grade 60 minimum and conform to ASTM A615. Welded steel mesh shall conform to ASTM A185. Plain wire shall conform to ASTM A82. Placement shall be in accordance with Chapters 7 and 12 of ACI 318 and the Manual of Standard Practice of The Concrete Reinforcing Steel Institute.
- 6.6.4 Aggregates for normal weight concrete shall conform to ASTM C33.
- 6.6.5 Water used for concrete shall be clean and potable, or as otherwise specified in the Final Geotechnical Report.

6.7 Trenches

- 6.7.1 Cables and conduits installed in trenches shall comply NEC requirements and any local or state standards that apply.
- 6.7.2 Directly buried cables shall not directly cross, rest or touch adjacent cables, except in a single circuit tri-foil arrangement.
- 6.7.3 Directly buried cables shall have a minimum of 4" of soil or approved backfill material between layers.
- 6.7.4 All buried cables and conduits shall include a marker tape 12" below grade continuously over the conductors.
- 6.7.5 Trench backfill shall comply with the recommendations of the Final Geotechnical Report and Hydrology Report.
- 6.7.6 Trench shall be backfilled with clean fill material free from aggregate, debris, organic material and stones. An engineered fill shall be used if required based on the cable ampacity calculations.
- 6.7.7 Trenches shall be backfilled in layers of no more than 6" each and mechanically compacted to 90% of maximum density at optimum moisture content per ASTM D698, or as recommended by the geotechnical engineer.

- 6.7.8 Provider shall take appropriate measures to minimize the time that trenches are left open.
- 6.7.9 Open conduit ends shall be equipped with bushings and approved sealant to reduce intrusion of water, rodents and insects.
- 6.7.10 Trenches shall be designed and constructed, to the extent possible, in straight lines and not routed below Project Equipment.

7 DAS, Communications and Metering Requirements

7.1 General

- 7.1.1 Data Acquisition System (DAS) requirements include design, engineering, labor, material, products, guarantee, training and services for, and incidental to, the complete installation of a new and fully functional DAS for the Project.
- 7.1.2 The DAS shall include all instrumentation, hardware and capability to support the required data acquisition of the Project.

7.2 DAS Equipment

- 7.2.1 Devices shall be UL listed and labeled by a Nationally Recognized Testing Laboratory (NRTL).
- 7.2.2 Enclosures located outdoors shall be NEMA 4X.
- 7.2.3 Fuse holders shall be finger safe.
- 7.2.4 Equipment shall be rated for continuous operation at 50°C ambient temperature unless located in a controlled environment building.

7.3 Utility and Operator Requirements

- 7.3.1 The DAS shall comply with all requirements set forth by the utility Interconnection Agreement including, but not limited to:
 - 7.3.1.1 Monitoring and reporting requirements
 - 7.3.1.2 Security requirements
- 7.3.2 Provider shall configure and test DAS equipment to verify that all aspects of required technical specifications in the Interconnection Agreement are satisfied.

7.4 Communication System

- 7.4.1 The communication system shall consist of the following:
 - 7.4.1.1 A dedicated cellular modem for each site. One (1) at the Water Treatment Facility and one (1) at the Water Reclamation Facility
- 7.4.2 The communication protocol between the primary DAS location and inverter pads shall be Ethernet TCP/IP with MODBUS TCP.
- 7.4.3 The use of an Owner provided fiber optic line connection in lieu of a cellular modem meeting the communication requirements for the system shall also be acceptable.

7.5 Metering

- 7.5.1 AC Metering shall be provided by Provider.
 - 7.5.1.1 Multiple meters or meters with independent outputs may be required based on Utility and/or ISO requirements.

7.6 Monitored Data Points

- 7.6.1 Weather Stations
 - 7.6.1.1 Irradiance (plane of array)
 - 7.6.1.2 Ambient air temperature

- 7.6.1.3 Back of module temperature
 - 7.6.1.4 Wind speed
 - 7.6.1.5 Wind direction
 - 7.6.2 Inverter Enclosure
 - 7.6.2.1 Enclosure alerts and alarms
 - 7.6.2.2 Enclosure temperature
 - 7.6.2.3 Enclosure fan(s) status
 - 7.6.3 Inverter Performance
 - 7.6.3.1 Real time ac and dc electrical characteristics, including power, energy, voltage, current, frequency, power factor, inverter status, fault codes and diagnostics, and all data available from inverter system.
 - 7.6.3.2 DC circuit monitoring at the inverter input
- 7.7 Weather Stations
 - 7.7.1 At a minimum, one (1) Weather station shall be provided for each Site.
 - 7.7.2 Each Weather station shall be compatible with the DAS.
 - 7.7.3 Each Weather station shall include, at minimum, the following:
 - 7.7.3.1 Corrosion-resistant tower or tripod for mounting sensors and other station equipment
 - 7.7.3.2 One (1) auxiliary panel that includes one measurement and communication data logger and power supply unit.
 - 7.7.3.3 One (1) global horizontal (GHI) pyranometer
 - 7.7.3.4 One (1) plane of array (POA) pyranometer
 - 7.7.3.5 One (1) back of module temperature sensors
 - 7.7.3.6 One (1) Ambient air temperature sensor housed in a solar shield, with an accuracy of $\pm 1^{\circ}\text{C}$
 - 7.7.3.7 One (1) Wind speed sensor, with an accuracy of 1 m/s, installed at or above 3 meter height
 - 7.7.3.8 One (1) Wind direction sensor with an accuracy of $\pm 5^{\circ}$
- 7.8 Delivery & Identification
 - 7.8.1 Provider shall provide an identification nameplate for each device and enclosure with the designated tag number. The enclosure nameplate shall be UV resistant material and attached to the front cover. Device nameplates shall be adhesive labels with ¼" lettering that are moisture resistant.
 - 7.8.2 Shipment and handling of materials shall be in a manner that avoids damage.
 - 7.8.3 Equipment shall be inspected for damage prior to installation. Damaged equipment shall be repaired or replaced.

8 Equipment Specifications

8.1 General

- 8.1.1 All equipment shall be UL Listed to the UL product safety standard appropriate for the equipment.
- 8.1.2 All equipment located outdoors shall have enclosures complying with NEC and NEMA requirements for wet locations.
- 8.1.3 All equipment shall be new.
- 8.1.4 Enclosures shall have a minimum rating of NEMA 4X.
- 8.1.5 All equipment shall be specified with the Project specific design conditions stated herein.

8.2 PV Modules

- 8.2.1 PV Modules shall be UL Listed to UL 1703.
- 8.2.2 PV Modules shall be certified to IEC 61215.
- 8.2.3 PV Modules shall be installed according to the manufacturer's installation instructions and in compliance with the NEC.
- 8.2.4 PV Modules shall have a minimum 10-year manufacturer's warranty covering defects and workmanship that provides for all shipping costs and parts and labor required to replace or repair warranty-eligible failures.
- 8.2.5 PV Modules shall have a minimum 25-year manufacturer's warranty covering product performance that incorporates a linear degradation guarantee with peak power rating at year 25 not less than 80% of the original peak power rating identified on the product nameplate.
- 8.2.6 PV Modules shall be marked with a unique serial number.
- 8.2.7 PV Modules shall be supplied with original factory flash test data including, at minimum, serial number, model number, manufacture date, Isc, Voc, Imp, Vmp and Pmp.
- 8.2.8 PV Modules shall be supplied with a copy of UL and IEC certification reports indicating compliance for the model numbers used and indicating the certification is in force as of the dates of module manufacture.
- 8.2.9 PV modules shall be supplied with documentation confirming that the PV modules have been manufactured in accordance with the manufacturer's specifications.

8.3 PV Module Mounting Structures

- 8.3.1 PV Module mounting structures shall be UL Listed to UL 2703.
- 8.3.2 PV Module mounting structures shall be designed in accordance with applicable building code requirements.
- 8.3.3 PV Module mounting structures shall be aluminum or galvanized steel in accordance with ASTM A123.
- 8.3.4 For any components where the galvanization is disturbed due to factory processing after the galvanization, those surfaces shall be repaired in accordance with ASTM A780 and A780M-09.

- 8.3.5 PV Module mounting structures shall be supplied with installation manuals, list of required fasteners and a torque chart for all fasteners providing structural support.
 - 8.3.6 The PV Module mounting structures shall have a minimum 5-year manufacturer's warranty covering defects and workmanship that provides for all parts and labor required to replace or repair warranty-eligible failures.
- 8.4 Inverters
- 8.4.1 Inverters shall be utility-interactive (not standalone).
 - 8.4.2 Inverters shall be UL Listed to UL 1741.
 - 8.4.3 Inverters shall comply with NEC 2014
 - 8.4.4 Inverters shall meet the requirements of IEEE 1547.
 - 8.4.5 Inverters shall meet the requirements of IEEE 929.
 - 8.4.6 Inverters shall meet the requirements of IEEE 519.
 - 8.4.7 Inverters shall meet the requirements of IEC 61000-6-2:2005.
 - 8.4.8 Inverters shall meet the requirements of IEC 61000-6-4:2006.
 - 8.4.9 Inverters shall meet the requirements of IEC 62103:2003.
 - 8.4.10 Inverters shall meet the requirements of IEC 61727.
 - 8.4.11 Inverters shall meet the requirements of IEC 62109.
 - 8.4.12 Inverters shall have a minimum CEC-rated efficiency of 98% at rated AC voltage (1PU).
 - 8.4.13 Inverters shall have a 3-phase AC output.
 - 8.4.14 Inverters shall generate AC output at a frequency of 60 Hz nominal, subject to IEEE 1547 set points for over and under frequency.
 - 8.4.15 Inverters shall not include an integrated transformer and shall be designed for operation with an external medium voltage transformer.
 - 8.4.16 Inverters shall be rated at 1,500 Vdc max.
 - 8.4.17 Inverters shall have an operating temperature range of -20°C to +50°C at full rated power.
 - 8.4.18 Inverter shall be capable of operating with a power factor of 0.95 leading to 0.95 lagging, unless the Interconnection Agreement requires a different power factor range.
 - 8.4.19 Inverters shall comply with the requirements of the Interconnection Agreement including, but not limited to, reactive power controls, ramp rates and fault/low voltage ride-through.
 - 8.4.20 Inverters shall be capable of completely automatic unattended operation, including wake up, sleep mode, synchronization and disconnect.
 - 8.4.21 Inverters shall have an AC disconnect capable of electronic operation by a remote ground fault relay.
 - 8.4.22 Inverters shall be equipped with AC/DC disconnects per NEC 2014 requirements.
 - 8.4.23 Inverters shall be capable of communicating with the DAS and allow for monitoring and control of set points.

- 8.4.24 Inverter electrical terminations for the AC and DC cabling shall allow for the use of compression or mechanical lugs.
- 8.4.25 The inverter shall not generate audible noise exceeding 65 db (A) at 1 meter during operation at full-rated power. Inverter noise shall comply with applicable local ordinances.
- 8.4.26 Inverters shall be supplied with installation, operations and maintenance manuals in hard copy or PDF formats.
- 8.4.27 Inverters shall be supplied with a complete points list that provides sufficient information for a DAS engineer to communicate with the inverter and interpret all data points, including read/write status and data type.
- 8.4.28 All inverters shall be of identical manufacturer and model number unless approved by Owner.
- 8.4.29 Inverters shall be completely factory-built, assembled, wired and tested as a complete unit. If it is necessary to disassemble the units for ease of transportation, all materials and instructions shall be provided for field re-assembly.
- 8.4.30 Inverter shall have a minimum 10-year manufacturer's warranty covering defects and workmanship that provides for all shipping costs, parts and labor required to replace or repair warranty-eligible failures.
 - 8.4.30.1 Inverter warranty shall allow for unlimited usage at full rated power during the term of the warranty.
- 8.5 Low Voltage Cable and Terminations (1,500 V or less)
 - 8.5.1 All conductors shall be stranded, single conductor cables.
 - 8.5.2 All conductors shall be rated for 90°C in wet locations.
 - 8.5.3 All conductors utilized in PV circuits and exposed to free air or directly buried shall be UL Listed to UL 854 and classified as USE-2 or UL Listed to UL 4703 and classified as PV Wire.
 - 8.5.4 When in conduit, conductors shall be USE-2 or THWN-2 (Thermoplastic Heat and Water Resistant Nylon Coated wire is permitted) or of a higher standard.
 - 8.5.5 Ungrounded conductors utilized in PV circuits shall have black insulation or jacketing.
 - 8.5.6 Grounded conductors utilized in PV circuits shall have white insulation or jacketing, or permanently marked as white at each termination.
 - 8.5.7 All conductors between PV Modules and inverters shall be copper or aluminum.
 - 8.5.8 Terminations for all conductors shall be rated for 90°C and for the conductor material (copper or aluminum).
 - 8.5.9 Aluminum terminations shall be made with UL Listed ring lug compression fittings. Aluminum terminations shall not be made with mechanical lug terminations.
- 8.6 Meters
 - 8.6.1 Meters shall be ANSI C12.2 revenue grade meters.
 - 8.6.2 Meters shall support the Modbus communication protocols.

9 Operating Spare Parts and Tools

9.1 Operating Spare Parts Priced List

9.1.1 Provider shall submit to Owner, not later than 90 days prior to Substantial Completion, a priced list of recommended Operating Spare Parts for the operation of the Project.

9.1.1.1 The recommended Operating Spare Parts list shall incorporate manufacturer-recommended components for all Project equipment.

9.1.1.2 The recommended Operating Spare Parts list shall incorporate consumable items required to perform the manufacturer-recommended preventative maintenance for Project equipment.

9.1.1.3 If Operating Spare Parts require special storage requirements, special tools, vehicles or other non-standard equipment in order to replace such Operating Spare Parts, these conditions shall be noted on the Operating Spare Parts list.

9.1.1.4 If Operating Spare Parts require calibration while in storage, the calibration requirements shall be noted on the Operating Spare Parts list.

9.1.1.5 Operating Spare Parts quantities shall be based on the quantity required for the first 1 year of operation, and based on the quantity of associated equipment installed at the Project.

Schedule 2
Project Schedule

Provider to provide no later than thirty (30) days following the Effective Date

Schedule 3
Milestone Payments Schedule

Milestone	Tasks	Expected Duration	% of Contract
Contract Signing	-Start engineering -Site surveys -Environmental permitting -Owner Prepares Site for Provider	60 Days	10%
Equipment Deposits	- Submit for Permit/Interconnection - Place Equipment POs for Racking, Modules, Inverters, Monitoring	90 Days	25%
Construction Mobilization	-Permits Approved -Site Mobilization -Commencement of Construction Letter Signed and Accepted	10 Days	10%
25% Mechanical Completion	-50% of Racking Installed	30 Days	15%
50% Mechanical Completion	-All Racking Installed	45 Days	15%
Mechanical Completion	-As defined in Contract	75 Days	10%
Substantial Completion	-As defined in Contract	30 Days	10%
Final Completion	-As defined in Contract	30 Days	5%
	Totals	370 Days	100%

Schedule 4
Construction Plans

(to be inserted after contract signing and milestone completion)

Schedule 5
Project Safety Standards

(to be inserted after contract signing)

Schedule 6
Product Data Sheet and Bill of Materials

(to be inserted after contract signing and engineering completed)

Schedule 7
List of Required Permits

Task #	Name of Document	Responsible Party
1	Environmental Permit/Approval	Owner
2	Zoning Approval	Provider
3	Planning Approval	Provider
4	Building Permit, including Floodplain Permit, if necessary	Provider
5	Electrical Permit	Provider

Schedule 8
Owner Deliverables & Services

Owner is responsible for the cost and task of accomplishing the following items necessary for the Job Site Readiness Letter to be signed:

1. Acquire at its sole cost and expense all land necessary to install Project as outlined in the drawing documents and provide unrestricted access to Provider.
2. Obtain at its sole cost and expense any and all permits necessary that are not related to zoning, planning, building and electrical. Including but not limited to environmental reports or permits such as those outlined by NEPA, Conditional Use Permits (if necessary).
 - a. Provider is responsible for obtaining zoning, planning, building and electrical permits but shall not be responsible for the cost of these permits.
 - b. Since Owner is the Authority Having Jurisdiction, they agree to use best efforts to assist in obtaining permits in a timely manner to help.
3. Remove all vegetation from the sites, with exception to grass under 6", and compact all disturbed earth to Engineer provided specifications as provided by Provider.
4. Provide areas for Provider to park and stage materials necessary for construction.

Schedule 9
Schedule of Values

A	B	C
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE
1	Contract Execution	\$477,500
2	Equipment Deposits	\$1,193,750
3	Construction Mobilization	\$477,500
4	25% Mechanical Completion	\$716,250
5	50% Mechanical Completion	\$716,250
6	Mechanical Completion	\$477,500
7	Substantial Completion	\$477,500
8	Final Completion	\$238,750
	Total	\$ 4,775,000

Schedule 10
Site List

[To be finalized upon completion of Engineering and Survey]

Water Treatment Plant

- 3000 E Robinson St, Norman, OK 73071
 - o Account # 128899922
 - Meter# 41070632G
 - o Account # 128899957
 - Meter# 41070630G

Water Reclamation Facility

- 3500 Jenkins Ave, Norman, OK 73072
 - o Account # 130607728
 - Meter# 68743480G
 - o Account # 129326032
 - Meter# 52304056G
 - o Account # 130267248
 - Meter# 56965632G
 - o Account # 4118202500
 - Meter# 11998945
 - o Account # 1842192
 - Meter# 56966409G

Commissioning Procedures

The commissioning process outlines a quality-oriented methodology for verifying and documenting the functionality, testing and performance of the PV Power Plant. The commissioning process is intended to help ensure that all system components meet defined objectives and criteria, as established in the Agreement.

The commissioning process consists of the following phases: 1. Planning Phase; 2. Construction Phase; and 3. Functional and Operational Test Phase. The phases and key activities are described below.

1.1 Planning Phase

The planning phase addresses upfront documentation requirements for the Project.

1.1.2 Test Procedures: Project-specific test procedures shall be written to describe the methodology for required operational and capacity testing.

1.1.3 Commissioning Log: A commissioning log will be developed and issued by Provider for tracking commissioning issues, observations, and deficiencies. The commissioning log will enable current status and resolution tracking of any open items. The commissioning log will be made available to Owner on a regular basis for review. Commissioning logs will be included in the turnover documentation provided to the Owner.

1.2 Construction Phase

The construction phase includes commissioning activities to support Subcontractors during construction of the PV Power Plant.

1.2.1 Meetings: Commissioning meetings will be held on-Site on a periodic basis. A commissioning kick-off meeting will be held with the project team after commencement of Project construction.

1.2.2 Pre-Functional Checks: PV Power Plant and equipment-specific pre-functional checklists will be developed and issued by Provider to installing Subcontractors. The pre-functional checklists shall address installation, testing and functional proving of various components, methods, vendors' requirements, applicable codes and standards, and good engineering practice requirements. Owner shall be permitted to witness pre-functional testing and review associated documentation.

1.2.3 Inspections: Select Site inspections will be carried out by Provider during the course of construction. Relevant reports and documentation will be issued following such inspections.

1.3 Pre-Functional Checks

1.3.1 Provider will develop pre-functional checklists which are to be completed by the subcontractors. Supplemental details on the pre-functional checklists are included in the commissioning plan. A commissioning log tracks observed deficiencies, issues and deviations from the installation design, manufacturer's recommendations, code requirements, and good engineering practices. Provider performs select audits of subcontractor processes and records to facilitate

compliance to commissioning plan and design requirements.

Subcontractors are instructed to carry out the following checks and tests per Provider developed checklists (pre-functional checks). The typical tests are:

- 13.1.1 Array:** Provider or its subcontractor shall check open circuit voltage measurement at each string. Measurements are subject to irradiance conditions (which need to be taken into consideration). All measured data is recorded on commissioning issued documentation and completed by the subcontractor.
- 13.1.2 Grounding:** Ground resistance tests shall be performed by subcontractor at each ground loop and test reports shall be provided by the subcontractor to Provider. In addition a ground continuity check shall be performed by the subcontractor/Provider.
- 13.1.4 Electrical:** Provider requires Megger testing after underground burial of all DC and AC cable. Subcontractors are instructed to take efforts to protect cable ends from moisture, debris and adverse environmental conditions during construction. Provider or its Subcontractor shall verify correct operation and sequencing. The following electrical tests and checks are performed by certified electricians:
 - (i) Megger testing AC wire and cable.
 - (ii) Megger testing buried DC wire and cable. Megger testing of DC buried cable is done post burial.
 - (iii) Electrical connections torque to recommended settings.
 - (iv) All Megger data is recorded on commissioning issued documentation and submitted to Owner upon request.
- 13.1.5 DAS:** Point to point checks of all communications and power wiring are performed to ensure proper operation of DAS equipment. Point to point checks are comprised of:
 - (i) Module surface temperature.
 - (ii) Reference module data.
 - (iii) Meteorological stations
 - (iv) DC current transmitters.

1.4 Functional Test Phase

The functional test phase addresses testing activity required to start-up the sub-systems and components of the PV Power Plant

- 1.4.1** Provider commissions the System after completion of construction, energizing the system, loading the system, certifying that it is operating at expected capacity. Functional checks include:

1.4.1.2 Inverters are tested before startup per supplier's manuals. Training is provided by the supplier to Provider and Owner's team as agreed. Commissioning activities may include supplier's team or third-party Subcontractors.

1.4.2 Functional Testing: System and equipment-specific functional testing protocols will be developed by Provider to address functionality and safe operation of components and systems. Functional testing protocols shall be detailed so as to address all facets of operation and shall include the following operable equipment:

1421 Inverters

1422 DAS

1423 Protective Relays

1424 Meteorological Stations

1425 Any applicable mechanical systems

1.5 Operational Testing Phase

1.5.1 Operational Test

15.1.1 Objective

The objective of the Operational Test is to help ensure the System/PV Power Plant is capable of normal and safe operation throughout its intended cycle for a predetermined duration. The test will demonstrate the following:

- (i) **Subsystem Performance:** proper coordination of subsystems; and
- (ii) **Sequence of Operations:** proper execution of integrated system sequences of operation, when applicable.

15.1.2 Operational Test Elements

The Operational Test will help ensure that a System/PV Power Plant is properly functioning, including confirmation of the following:

- (i) **Pre-Functional Checks:** completion of the pre-functional checks of all AC and DC subsystems;
- (ii) **Functional Tests:** completion of all functional testing;

PV field operational tests shall include current testing of string home runs. Each home run should be tested with a clamp on meter. Due to current variations due to operating conditions, a simple acceptance criteria shall be established.

- (iii) **Inverters:** proper installation and operation of the power conversion station, including the inverters;

The operational test of the inverter shall be to measure the DC input voltage of each inverter. The DC input voltage shall be compared with inverter power output and documenting the DC to AC efficiency.

(iv) **DAS:** proper operation of the DAS.

15.13 Test Procedure

Provider shall develop an Operational Test procedure. The Operational Test procedure shall define and record the pre-test start condition of the System/PV Power Plant, automatic start-up and shut-down of the inverters, auxiliary systems or devices, or any other automatic operation of the System/PV Power Plant. The Operational Test procedure shall be submitted to the Owner for review no later than fifteen (15) days prior to the start of the first Operational Test.

15.14 Test Duration

The Operational Test shall be carried out for forty-eight 48 hours without any system failures under normal operating conditions. Apparent operational issues encountered during the Operational Test will be recorded as non-compliance items. If the Operational Test is not successful, the Test will be conducted again and under the same conditions once any system failures are remedied.

1.6 Commissioning Documents and Records: Subject to the requirements of the Agreement, the following documentation is normally provided by the subcontractor:

- 1.6.1** Warranties of parts and services as applicable;
- 1.6.2** Required O&M documentation;
- 1.6.3** Test reports as required per the specification;
- 1.6.4** Completed commissioning documentation by array; and
- 1.6.5** Equipment instrumentation calibration certificates.

Schedule 12
Insurance and Bonding Requirements

Provider shall maintain the following insurance types in the following amounts:

- (1) comprehensive general liability insurance, covering bodily injury and property damage, operations, contractual and personal injury liability, with limits of not less than one million dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) General Aggregate ;
- (2) all forms and types of insurance required by applicable law with respect to employees, including workers compensation and disability benefits insurance and employers liability insurance, in amounts equal to the greater of one million dollars (\$1,000,000), or the amount required by applicable law;
- (3) automobile liability insurance including, but not limited to, coverage for owned automobiles with a minimum of one million dollars (\$1,000,000) combined single limit coverage for any occurrence, covering automobiles used by Provider in connection with the operation and maintenance of the sites;
- (4) excess/umbrella liability insurance or equivalent form with a minimum of five million dollars (\$5,000,000) combined single limit coverage for any occurrence following the terms of the primary insurance set forth in (1) and (3) above;
- (5) professional liability insurance with a limit of not less than Two Million Dollars (\$2,000,000) per claim and Two Million Dollars (\$2,000,000) in the aggregate.

All insurance policies required to be maintained hereunder shall be procured from insurance companies rated at least (A-VU) or better by A.M. Best Co. and provide that they shall not be canceled or materially changed without at least providing 30 days' prior written notice to Owner. Upon request by Owner, Provider shall provide Owner with evidence reasonably acceptable to Owner, demonstrating that the required coverages are in full force and effect.

Provider shall provide surety bonds prior to commencing any EPC Services at the Site, as follows:

<u>Type</u>	<u>Amount</u>
Payment or Statutory Bond	100% of Contract Sum
Performance Bond	100% of Contract Sum
1-Year Workmanship Warranty Bond	100% of Contract Sum

Bonds shall be executed by a responsible surety licensed in the state where the Project is located.

Schedule 13
Performance Guaranty

[See attached Energy Savings and Production Output Guaranty Agreement]

Exhibit 1
Form of Certificate of Mechanical Completion

Date: _____

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Energy Services Contract by and between BioStar E Light JV, LLC and the Norman Utilities Authority and the City of Norman, Oklahoma dated _____, 2021 (the "Agreement").
2. Mechanical Completion of the EPC Work occurs when all of the conditions set forth in Section 8.1 of the Agreement have been achieved or such conditions which have not been achieved have been waived by Owner.
3. Provider certifies and represents that the EPC Work under the Agreement has been reviewed and Provider hereby certifies that all of the conditions set forth in Section 8.1 for Mechanical Completion have been satisfied.
4. The Mechanical Completion Date is _____.
5. The person signing below is authorized to submit this form to Owner for and on behalf of Provider.

BioStar E Light JV, LLC

By: _____
Name: _____
Title: _____

By its signature below, Owner acknowledges that Mechanical Completion has occurred as of the date set forth above.

Norman Utilities Authority/City of Norman, Oklahoma

By: _____
Name: _____
Title: _____

Exhibit 2
Form of Certificate of Substantial Completion

Date: _____

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Energy Services Contract by and between BioStar E Light JV, LLC and the Norman Utilities Authority and the City of Norman, Oklahoma dated _____, 2021 (the "Agreement").
2. Substantial Completion of the EPC Work occurs when all of the conditions set forth in Section 9.1 of the Agreement have been achieved or such conditions which have not been achieved have been waived by Owner.
3. Provider certifies and represents the following to Owner:
 - a. The EPC Work under the Agreement has been reviewed and Provider hereby certifies that all of the conditions set forth in Section 9.1 for Substantial Completion have been satisfied.
 - b. All Applicable Permits have been obtained and maintained as required by Applicable Law and, to the extent applicable to achieve Final Completion, are in full force and effect.
4. Agreed Punch List Items not completed to date are listed below or on the attached sheet:

5. The person signing below is authorized to submit this form to Owner for and on behalf of Provider.

BioStar E Light JV, LLC

By: _____
Name: _____
Title: _____

By its signature below, Owner accepts the EPC Work or designated portion thereof as substantially complete in accordance with the Agreement and accepts the Punch List set forth above.

Norman Utilities Authority/City of Norman, Oklahoma

By: _____
Name: _____
Title: _____

Exhibit 3
Form of Certificate of Final Completion

DATE: _____

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Energy Services Contract by and between BioStar E Light JV, LLC and Norman Utilities Authority and the City of Norman, Oklahoma dated _____, 2021 (the "Agreement").
2. Final Completion of the EPC Work occurs when all of the conditions set forth in Section 11.1 of the Agreement have been achieved or such conditions which have not been achieved have been waived by Owner.
3. Provider certifies and represents that Provider has satisfied all of the requirements for the achievement of Final Completion in accordance with the Agreement.
4. The person signing below is authorized to submit this form to Owner for and on behalf of Provider.

BioStar E Light JV, LLC

By: _____

Name: _____

Title: _____

By its signature below, Owner accepts the EPC Work as finally complete in accordance with the Agreement.

Norman Utilities Authority and the City of Norman, Oklahoma

By: _____

Name: _____

Title: _____

Exhibit 4
Affidavit of Payment and Final Release

STATE OF _____)
)
COUNTY OF _____)

1. Unless otherwise defined herein, the capitalized terms used throughout this certificate shall have the meanings ascribed to same in the Energy Services Contract by and between BioStar E Light JV, LLC and the Norman Utilities Authority and the City of Norman, Oklahoma dated _____, 2021 (the "Agreement").
2. The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor and services performed, and for all known indebtedness and claims against the Provider for damages arising in any manner in connection with the performance of the Agreement for which Owner or Owner's property might in any way be held responsible for encumbered.
3. The undersigned hereby certifies that, except as listed below, to the best of the undersigned's knowledge and belief, the Releases or Waivers of Lien attached hereto include the Provider, all Subcontractors, all suppliers of materials and equipment, and all performers of EPC Work, labor or services who have or may have liens or encumbrances or the right to assert liens or encumbrances against any property of the Owner arising in any manner out of the performance of the Agreement.
4. EXCEPTIONS:

BioStar E Light JV, LLC

By: _____
Name: _____
Title: _____

Subscribed and sworn to before me on this date:

Notary Public:

My Commission Expires:

Attached hereto:

1. Provider's Release or Waiver of Liens, conditional upon receipt of final payment.
2. Separate Release or Waiver of Liens from Subcontractors / suppliers to the extent required by Owner, accompanied by a list thereof.

Exhibit 5
Form of Job Site Readiness Release Letter

[Provider Letterhead]

Date: _____

BioStar E Light JV, LLC
9400 Reeds Rd., Ste 150
Overland Park, KS 66207

Re: Energy Services Contract by and between BioStar E Light JV, LLC and the City of Norman, Oklahoma dated _____, 2021 (the "Agreement"); Job Site Readiness Release Letter

Dear _____:

Pursuant to the Agreement, the provisions of Section 7.2 have been satisfied. (Capitalized terms not defined herein shall have the same meaning as in the Agreement.)

Owner confirms that the conditions set forth in Sections 5.1, 5.2 and 5.3 of the Agreement have been satisfied in full.

We look forward to a cooperative and expeditious completion of the Project.

Sincerely,

City of Norman

Acknowledged and Agreed on behalf of BioStar E Light JV, LLC:

Name: _____
Title: _____
Date: _____

Exhibit 6
Environmental Report

[To be inserted after Owner obtains report]

Exhibit 7
O&M Services Agreement

[Attached]

O&M SERVICES AGREEMENT

This O&M SERVICES AGREEMENT (this "Agreement"), is entered into as of the _____ day of _____, 2021 by and between the City of Norman, Oklahoma and the Norman Utilities Authority (together the "Owner") and BioStar E Light JV, LLC, a Kansas limited liability company ("Service Provider").

RECITALS

WHEREAS, Owner and Service Provider have entered into an Energy Services Contract of even date herewith (the "EPC Agreement") under which Owner is engaging BioStar E Light JV, LLC, an affiliate of Service Provider, to design and construct a solar photovoltaic electric generating facility system; and

WHEREAS, Service Provider and Owner desire to enter into this Agreement as required under the EPC Agreement and pursuant to which Service Provider will maintain and monitor the solar energy generation Systems and provide specified asset management services on behalf of Owner; and

WHEREAS, capitalized term used and not otherwise defined herein shall have the meanings set forth in Exhibit A attached hereto; and

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration the receipt and sufficiency of where are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I. System Services

Section 1.1. System(s). Exhibit D details each System location where Owner desires that the Service Provider provide System Services described in the Statement of Work attached as Exhibit B (the "Statement of Work"). Each System identified on Exhibit D is hereinafter referred to in this Agreement as a "System" and the location of such System is hereinafter referred to in this Agreement as the "Site".

Section 1.2. Services.

(a) System Services. Service Provider is hereby engaged to provide the System Services, as of the O&M Services Commencement Date (as defined in the EPC Agreement), and as set forth in Statement of Work attached as Exhibit B.

(i) Unless otherwise indicated in Exhibit B, Service Provider shall, at its sole cost and expense, supply all labor, supervision, materials, tools and equipment that may be necessary for the proper performance of the System Services.

(ii) Service Provider shall perform the Services in accordance with (i) Applicable Law; without limiting the foregoing, Service Provider shall have, and shall cause all of its subcontractors to have, all license and registrations required to perform the Services, (ii) all warranties and guarantees provided to Owner by manufacturers or suppliers of components of the System that have been provided to Service Provider by Owner in writing prior to the Effective Date, (iii) all manufacturers' maintenance instructions and specifications that have been provided to Service Provider by Owner in writing, (iv) any other applicable Permit and Project Document Requirement that have been provided to Service Provider by Owner in writing, and (v) in a manner consistent with Prudent Industry Practice.

(b) **Non-Standard System Services.** If Owner desires that the Service Provider provide any Non-Standard System Services with estimated costs to exceed \$2,500 in any year, then Owner shall submit to the Service Provider a written request for such Services. For all Non-Standard System Services with estimated costs not exceeding \$2,500 in any year, Owner hereby authorizes Service Provider to perform the Non-Standard System Services upon receiving written approval from Owner. If the Service Provider is capable of providing such Non-Standard System Services for such Site the Parties shall enter into an amendment to Exhibit D for such Site reflecting (i) the addition of the Non-Standard System Services and (ii) the applicability of the time and materials portion of the Pricing Schedule attached as Exhibit C with respect to the Non-Standard System Services to be provided by Service Provider, including any defined dispatch and mobilization fees in connection with such Non-Standard System Services for the System.

(c) **Title.** Title to all items, parts, materials and equipment supplied under or pursuant to this Agreement shall transfer to Owner upon payment by Owner to Service Provider for such items, parts, material and equipment.

(d) **Subcontractors.** Service Provider may utilize subcontractors in connection with the System Services provided under Agreement.

Section 1.3. **Record-Keeping.** Service Provider shall keep and maintain a separate Maintenance Specification Log for each System in electronic format. The Maintenance Specification Log shall be made available for Owner's inspection, and provided to Owner upon the termination of the Agreement. Service Provider shall retain a copy of all records related to the System for a period of seven years following the term of this Agreement.

Section 1.4. **Charges and Expenses.**

(a) **Payment of Fees.** As compensation for provision of the System Services by Service Provider, Owner shall pay Service Provider the annual Service fee as described in the Pricing Schedule (the "Service Fees") and any other applicable charges and fees, including those on a time and materials basis, set forth in the Statement of Work, the Pricing Schedule. Service Provider will submit invoice monthly unless otherwise specified in the applicable Exhibit D. All undisputed sums due hereunder shall be payable by ACH within thirty (30) days of Owner's receipt of an accurate invoice therefor, and payments shall be subject to the provisions of this Agreement. If Owner disputes any portion of an invoice, Owner shall provide written notice to Service Provider, on or before the original due date of an invoice, indicating the reason Owner is withholding any amount and shall pay the undisputed portion of the invoice. Neither the payments made to Service Provider, nor the method of such payments, shall relieve Service Provider of its obligation to perform the System Services in compliance with the requirements herein. However, any portion of an invoice amount questioned or disputed in good faith shall be paid within Seven (7) days of resolution of the question or dispute in the amount agreed. Owner may withhold any payment or, because of subsequently discovered evidence nullify in whole or in part a payment previously issued, in an amount that is sufficient to pay the direct costs that Owner reasonably expects in good faith (and with written documentation provided to Service Provider) to incur to protect Owner from liabilities for which Service Provider is responsible and that result from: (i) errors, omissions, defects, or deficiencies in the System Services which are not corrected by Service Provider in accordance with the provisions of this Agreement; (ii) Service Provider's failure to comply with other material provisions of this Agreement, after notice of such failure and expiration of any applicable cure period; (iii) third party claims filed or reasonable written evidence that a claim will be filed due to actions or omissions of the Service Provider in the performance of the System Services hereunder; (iv) failure of Service Provider to make payments properly to consultants, subcontractors, or other third parties performing System Services on Service Provider's behalf, only after consultation with Service Provider regarding nature of dispute; or (v) liens against or written notice of liens

against the Site or the System.

(b) **Costs and Expenses of Service Provider.** Where permitted by the Statement of Work, Owner shall reimburse Service Provider for reasonable expenses incurred by Service Provider in performance of the Work at actual cost. Actual costs are amounts actually disbursed, excluding overhead and any other mark-ups. Service Provider shall demonstrate to Owner that such expenses are necessary for the performance of the Work or that Owner specifically authorized such expenses, as provided herein.

(c) **Force Majeure Costs.** Service Provider shall be entitled to recover from Owner any reasonable and documented out-of-pocket costs that Service Provider actually incurs in connection with any Force Majeure event (i.e. demobilization costs, travel costs, equipment costs), provided Service Provider shall have obtained approval from Owner for and mitigated any such costs.

(d) **Taxes.** The parties recognize that Owner is a tax exempt entity under Oklahoma law. Provider will ensure all vendors or suppliers of equipment and materials bill Owner directly for such items. Owner shall be responsible for making payment directly to vendors supplying such equipment and materials for use on the Project upon delivery to the site.

(e) **Prevailing Wage.** The Parties acknowledge that the System Services charged under this Agreement do not reflect the application of prevailing wage rates, and Owner agrees that if the Services require payment of prevailing wage for all or a portion of the Services, Owner will provide written notice of such requirement and the Service Fees will be adjusted to reflect the application of such prevailing wage.

Section 1.5. **No Liens or Encumbrances.** Service Provider agrees and acknowledges that it shall not and shall have no right to place any lien or other encumbrance (including, without limitation, any mechanics' lien mechanics' lien affidavit or other claim or encumbrance in the nature of a lien) upon the System or the Site and shall otherwise use reasonable efforts to keep and maintain the System and the Site free and clear of Liens and encumbrances. However, Service Provider shall maintain the right to place a lien or other encumbrance on the System in the event Owner is in default of its payment obligations pursuant to this Agreement and such lien or encumbrance is not prohibited by law. Service Provider shall require each subcontractor retained by Service Provider hereunder to similarly acknowledge and agree that it shall not and shall have no right to place a lien or any other encumbrance (including, without limitation any mechanics' lien, mechanics' lien affidavit or other claim or encumbrance in the nature of a lien) on the site. However, each subcontractor retained by Service Provider shall maintain the right to place a lien or other encumbrance on the System in the event Owner is in default of its payment obligation pursuant to this Agreement and such lien or encumbrance is not prohibited by law.

Section 1.6. **Insurance.** Throughout the term of this Agreement, Service Provider shall maintain the following insurance types in the following amounts and manner: (i) comprehensive general liability insurance, covering bodily injury and property damage, operations, contractual and personal injury liability, with limits of not less than one million dollars (\$1,000,000) per occurrence; (ii) all forms and types of insurance required by applicable law with respect to employees, including workers compensation and disability benefits insurance and employers liability insurance, in amounts equal to the greater of onemillion dollars (\$1,000,000), or the amount required by applicable law; (iii) automobile liability insurance including, but not limited to, coverage for owned automobiles with a minimum of one million dollars (\$1,000,000) combined single limit coverage for any occurrence, covering automobiles used by Service Provider in connection with the operation and maintenance of the sites; (iv) excess/umbrella liability insurance or equivalent form with a minimum of five million dollars (\$5,000,000) combined single limit coverage for any occurrence following the terms of the primary insurance set forth in (i) and (iii) above. All insurance policies required to be maintained hereunder shall be procured from insurance companies rated at least (A-VU) or better by A.M. Best Co. and provide that they shall not be canceled or

materially changed without at least providing 30 days' prior written notice to Owner. Upon request by Owner, Service Provider shall provide Owner with evidence reasonably acceptable to Owner, demonstrating that the required coverages are in full force and effect.

Section 1.7. **General Obligations of Owner and Service Provider.**

(a) **Right to Access.** The Service Provider, or its authorized agents, employees or Subcontractors, shall have the right to access the Site, subject to any Site restrictions as set forth on the Exhibit D, in order to provide scheduled or unscheduled maintenance activities, maintenance of the grounds, monitoring, or emergency Services, or to conduct other System Services, in all cases, to the extent that such activities and/or Services are within the scope of this Agreement. The Service Provider shall have the right to grant access to the site to any agent or employee of Service Provider for performance of the System Services and additionally to Subcontractors for matters reasonably related to the System Services. Service Provider, its agents, employees or Subcontractors shall comply with the Site Agreement for the System entered into between Owner and the owner of the Site (Owner to provide Service Provider of such Site Agreement upon request) and all reasonable requirements of Owner when on Site and shall indemnify Owner for any claims losses, damages, liability and costs (including, without limitation reasonable attorneys' fees) arising out of or in connection with a failure by the Service Provider it agents, employee or Subcontractor to comply with their obligations hereunder.

(b) **Applicable Permits.** Service Provider shall not be responsible for procuring, obtaining, maintaining and complying with all applicable permit and licenses required to operate the System under this Agreement. Any permits required to operate the System shall be obtained by OwnerProvider at Owner's expense.

(c) **Duty to Cooperate.** Owner shall use reasonable effort to cooperate with the Service Provider in taking all action reasonably requested by the Service Provider to ensure that persons with whom Owner has agreements or relationships that are essential to the System Services are available and able to perform as contemplated in this Agreement.

(d) **Taxes.** Service Provider shall not be liable for any real property taxes, personal property taxes, sales taxes, use taxes, excise taxes and other similar taxes, if any, due in connection with each System, provided, however, that Service Provider has ensured that vendors of equipment and materials bill Owner directly for such items, and that Service Provider shall be liable for any taxes based on or measured by, Service Provider's income or property.

(f) **Further Obligations of Owner.** Throughout the term of this Agreement, Owner agrees to review and approve or reject in a timely fashion all reasonably recommended repairs permitted under this Agreement in accordance with any schedule agreed to in relation to such repairs.

(g) **Warranty.** Service Provider warrants that the System Services and Non-Standard System Services will be performed with good workmanship and in accordance with (a) Prudent Industry Practice, (b) the applicable Provider, subcontractor and vendor warranties as provided by Owner to Service Provider, (c) Applicable Law, (d) the terms and condition set forth in this Agreement, and (e) the requirements of the insurance policies procured by Service Provider covering in any respect the System Services or the System. The warranty period for such warranty shall be one (1) year from the date of performance of any such System Services or Non-Standard System Services and shall survive any termination of this Agreement during such period; provided, that any claim for breach of warranty made during such one year period shall survive indefinitely until such claim is finally resolved.

(i) To the extent reasonable, Service Provider will secure from vendors, suppliers and

subcontractors a warranty that all work, equipment and parts will be new and free of material defects and ensure that such warranties may be enforced directly by Owner.

(ii) As Owner's sole and exclusive remedy for any breach of the foregoing warranty, Service Provider will re-perform any non-conforming System Service or Non-Standard System Service at Service Provider's expense.

(iii) All equipment and materials, including but not limited to any spare parts, furnished in connection with the System Services shall be new or used, not defective and undamaged at the time of delivery to the Site, undamaged when incorporated into the System and covered by standard manufacturer warranties reasonably acceptable to Owner. If previously used or refurbished parts are required to keep the System operational, even for a short period of time, at Service Provider's shall request permission from Owner prior to installation. Service Provider may replace equipment only with the prior written consent of the Owner.

(iv) Service provider shall not be responsible for any breach of warranty to the extent caused by any (i) modifications, repairs or operations to a System undertaken by persons other than Service Provider or its affiliates or Subcontractors; (ii) failure of the Owner to respond to or cooperate in the event of a reasonable request by Service Provider which is necessary for Service Provider to perform the System Services; (iii) failure of remote detection by reason of problem deriving from the connection of a third party System, not attributable to Service Provider or its affiliates, (iv) unavailability or disturbances in the public grid that prevent the System from generating electricity or feeding it into the public grid, not attributable to Service Provider or its affiliates, or (v) Force Majeure, which will include without limitation denial suspension or loss of permits necessary for the operation of the Systems for reasons not attributable to Service Provider or its affiliates, any event or damage resulting from theft and vandalism, absence of appropriate and timely access to the Systems for reasons not attributable to Service Provider or causes to the extent attributable to third parties (excluding affiliates of Service Provider).

(h) **Maintenance Data and Records.** Service Provider shall prepare and maintain in electronic format, the following reports relating to System maintenance (the "**System Reports**"), and Service Provider shall make such System Reports with respect to each System available to Owner at the frequency or within the periods set forth below, as applicable:

(i) annually, at least 30 days before the anniversary date of the O&M Services Commencement Date a projected Service plan setting forth time periods for performance of System Services for the System;

(ii) on an ongoing basis, an equipment and spare parts inventory (which shall indicate any spare parts used and the purpose of such use); and

(iii) within 15 business days following the end of each period, monthly and annual performance reports, reports of the annual preventative maintenance actions, and reports detailing actions taken for corrective maintenance activities (corrective maintenance activities themselves are not included in the Statement of Work), and production variance analysis, including expected performance vs. actual performance in such format as approved by Owner.

Section 1.8. **Party Representatives.**

(a) **Owner Representative.** Owner designates, and Service Provider agrees to accept, the party named in Section 3.9 as the Owner Representative for all matters relating to Owner's performance under this Agreement. The actions taken by the Owner Representative regarding such performance shall be deemed the acts of Owner and shall be fully binding on the Owner. Owner may change the designated

Owner Representative by written notice to Service Provider in accordance with Section 3.9.

(b) **Service Provider Representative.** Service Provider designates and Owner agrees to accept, Andy Stancati as the Service Provider Representative for all matters relating to Service Provider's performance under this Agreement. The actions taken by the Service Provider Representative shall be deemed the acts of Service Provider and shall be fully binding on the Service Provider. Service Provider may change the designated Service Provider Representative by written notice to Owner in accordance with Section 3.9.

ARTICLE 2. TERM; TERMINATION; INDEMNIFICATION.

Section 2.1. Term.

(a) **Initial Term.** The initial Term of this Agreement shall commence upon the O&M Services Commencement Date and shall remain in effect for a period of five (5) years thereafter unless and until either extended in accordance with Section 2.1 (b) or the earlier date of termination of this Agreement under Section 2.2.

(b) **Extended Term.** The initial Term of this Agreement shall be automatically extended for up to four (4) successive five (5) year periods at the end of the initial or any extended Term, unless Owner provides written notice of termination to the Service Provider at least 120 days prior to the expiration of the initial or extended term respectively. In no event will the Term of this Agreement, including all extensions, exceed twenty-five (25) years.

Section 2.2. Termination.

(a) **Termination Without Cause.** Without prejudice to any other rights under this Agreement, the Owner shall be entitled to terminate this Agreement upon sixty (60) days prior written notice to the Service Provider.

(b) **Termination for Cause.** Either Party may immediately terminate this Agreement in the event of any of the following:

- (i) the other Party becomes Insolvent;
- (ii) a material breach by the other Party to perform any of its material obligation under this Agreement which breach is not remedied within fifteen (15) days of written notice of such breach to the breaching Party; provided that if (a) such default is of such a nature that it cannot reasonably be cured within such fifteen (15) day period, and (b) the breaching Party diligently and continuously prosecutes such cure, then such fifteen (15) day period shall be extended for such reasonable period of time as is necessary to cure the default, not to exceed forty-five (45) days.

(c) **Effect of Termination.** Except as otherwise expressly provided herein, termination of this Agreement shall not affect any rights or obligations as between the Parties which may have accrued prior

to such termination or, which expressly or by implication are intended to survive termination whether resulting from the event giving rise to termination or otherwise. Notwithstanding anything to the contrary contained in this Agreement, termination of this Agreement, other than a termination by Owner for cause, shall be without prejudice to the Service Provider's right to receive a proportional amount of the Annual Service Fees that have accrued up to the date of termination.

Section 2.3 **Liability Limits.**

(a) **Consequential Damages, Statute of Limitations.** In no event shall either party or any affiliate be liable for consequential special, indirect, incidental or punitive losses damages or expenses of the other party arising under or in connection with this Agreement, regardless of how such losses, damages or expenses arise and irrespective of whether or not it has been advised of the possibility of such losses, damages or expenses; provided that the following damages shall not be considered consequential, special, indirect, incidental or punitive losses, damages or expenses for such purposes: (i) damages arising from a Party's gross negligence, intentional or willful misconduct or fraud, (ii) damages to any third party to be indemnified hereunder and (iii) damages covered by insurance.

(b) **Limitation on Recovery.** Service Provider's and Owner's respective maximum liability to each other concerning Service Provider's System Services for each System, or in any other manner related to this Agreement, for any and all claims arising hereunder, shall not in the aggregate exceed (i) in the case of Owner liability, the System Service charges and other fees and expenses payable by Owner to Service Provider with respect to the particular System that is or are the subject matter of the claimed damage or loss, or (ii) in the case of Service Provider liability, the amount of other fees and expenses paid to Service Provider with respect to the Services or deliverables that is or are the subject matter of the claimed damage or loss; provided such liability limits shall not apply to (i) claim for gross negligence, intentional or willful misconduct or fraud (ii) indemnity obligations with respect to third party claims or (iii) claim or liabilities covered by Service Provider's insurance.

Section 2.4. **Indemnities; Disclaimers**

(a) **Service Provider Indemnification.** Service Provider shall indemnify, defend and hold Owner, and its present and future direct and indirect owners, subsidiaries and affiliates and their directors, officers shareholders, employees agents and representatives harmless from and against any and all claims, actions suits, proceedings, losses liabilities penalties, damages, costs or expenses (including reasonable attorneys' fees and disbursements) in connection with or arising from any claim by a third party (which, for purposes of this subsection, shall include Service Provider's agents, employees and Subcontractors) for physical damage to or physical destruction of property, or death of or bodily injury to any person, or other liability caused by the negligence or willful misconduct of Service Provider, its agents, employees or Subcontractors or the negligence of any of them in connection with the performance under this Agreement, specifically excluding, without limitation, any such damage, destruction or injury directly or solely caused by or arising out of or related to Owner's performance under this Agreement or Owner's negligence. Service Provider shall be responsible for the cost of repairing any damage to the System caused by Service Provider's breach of this Agreement or the gross negligence or willful misconduct of its agents, employees or Subcontractors.

(i) Owner is not responsible for and Service Provider shall indemnify, defend and hold harmless Owner Indemnified Parties from and against all liabilities incurred by them arising out of or resulting from any violation hereof by Service Provider or parties under Service Provider's control, including, without limitation: (i) the use of Hazardous Materials by Service Provider or its subcontractors in connection with the performance of the Services which include the storage, transportation, processing or disposal of such Hazardous Materials by Service Provider or its subcontractors; (ii) any unauthorized

Release of a Hazardous Material in connection with the performance of the Services by Service Provider or a subcontractor; (iii) any enforcement or compliance proceeding commenced by or in the name of any Governmental Authority because of an alleged, threatened or actual violation of any Applicable Laws by Service Provider or a Subcontractor with respect to Hazardous Materials in connection with the performance of the Services; and (iv) the presence or existence of Hazardous Materials brought onto the Site by Service Provider or its Subcontractors.

(b) **Owner Indemnification.** Owner shall fully indemnify hold harmless and defend Service Provider from and against any and all costs, claims, and expenses incurred by Service Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Owner or its agent or employees or other under Owner's control or (b) a breach by Owner of its obligations hereunder.

(c) **Intellectual Property Indemnification.** Each Party shall indemnify, defend and hold the other Party and its present and future direct and indirect parents subsidiaries and affiliates and their directors officers, shareholders employees, agents, Subcontractors and representatives, harmless from and against any and all claims, actions suits, proceedings losses, liabilities, penalties damages costs or expenses (including reasonable attorneys' fees and disbursements) of any kind whatsoever arising from (a) actual or alleged infringement or misappropriation by such Party (or in the case of Service Provider, any Subcontractor) of any patent, copyright, trade secret trademark, Service mark, trade name, or other Intellectual Property right in connection with the System or the System Services, as applicable, and (b) such Party's (or in the case of Service Provider, any subcontractor's) violation of any third-party license to use Intellectual Property in connection with the System Services including, without limitation any deliverable.

(d) **Indemnification Procedures.** If any claim is brought against a Party entitled to indemnification hereunder (the "Indemnified Party"), then the other Party (the "Indemnifying Party") shall assume the defense of such claim with counsel reasonably acceptable to the Indemnified Party, unless in the reasonable opinion of counsel for the Indemnified Party a conflict of interest between the Parties may exist with respect to such claim. If the Indemnifying Party does not assume the defense of the indemnified Party, or if a conflict precludes the indemnifying Party from assuming the defense pursuant to the preceding sentence, then the indemnifying Party shall reimburse the indemnified Party on a monthly basis for the reasonable costs (including reasonable attorney's fees and disbursements) of the Indemnified Party's defense through separate counsel of the Indemnified Party's choice. Even if the Indemnifying Party assume the defense of the Indemnified Party with counsel acceptable to the Indemnified Party, the Indemnified Party at its sole option, may participate in the defense at its own expense, with counsel of its own choice without relieving the indemnifying Party of any of its obligations hereunder.

(e) **Disclaimer of Warranties.**

(i) Service Provider does not warrant and assumes no legal liability or responsibility that the Services provided hereunder will be accurate complete, reliable, current or error-free and Service Provider makes no warranty as to results that may be obtained from Services provided hereunder. Except as expressly set forth in this Agreement, Service Provider disclaims all warranties, express and implied, including the implied warranties of merchantability and fitness for a particular purpose. SERVICE PROVIDER DOES NOT MAKE ANY IMPLIED WARRANTY OR REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE SERVICES OR DELIVERABLES PROVIDED HEREUNDER.

(ii) Service Provider shall not be responsible for any breach of warranty incurred by any (i) modifications, repairs or operations to a System undertaken by person other than Service Provider

or its Subcontractors; (ii) failure of the Owner to respond to or cooperate in the event of a reasonable request by Service Provider, which is necessary for Service Provider to perform the System Services or any other obligations under this Agreement; (iii) failure of remote detection by reason of problems deriving from the connection of a System, not attributable to Service Provider, (iv) unavailability or disturbances in the public grid that prevent the System from generating electricity or feeding it into the public grid, or (v) Force Majeure, which will include without limitation denial, suspension or loss of Permits necessary for the operation of the Solar Facilities for reasons not attributable to Service Provider, any event or damage resulting from theft and vandalism, absence of appropriate and timely access to the Solar Facilities for reasons not attributable to Service Provider or causes to the extent attributable to third parties.

Section 2.5. **Force Majeure Event.** Neither Party shall be considered to be in default of its obligations under this Agreement when and to the extent that performance of such obligations is prevented by any Force Majeure event which arises after the date of this Agreement. If either Party shall rely on the occurrence of a Force Majeure event as a basis for its obligations being suspended from performance under this Agreement, then the Party relying on the event or condition shall (i) provide prompt written notice, in any event within forty-eight (48) hours from the occurrence of the Force Majeure event, to the other Party of the occurrence of the Force Majeure event giving an estimation of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) exercise all commercially reasonable efforts to continue to perform its obligations hereunder; (iii) expeditiously take any action within its reasonable control to correct or cure the Force Majeure event excusing performance; (iv) exercise all reasonable efforts to mitigate or limit damage to the other Party to the extent such action will not adversely affect its own interest; and (v) provide periodic notices to the other Party with respect to its action and plans for actions in accordance with (ii), (iii) and (iv) above and promptly notify to the other Party of the cessation of the event or condition giving rise to it being excused from performance. Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended during any Force Majeure event if and to the extent that such Party is prevented or delayed from performing by reason of such Force Majeure event; provided, however, that (a) the suspension of performance shall be of no greater scope and of no longer duration than is necessarily caused by the Force Majeure event and required by any remedial measures; and (b) no obligations of any Party that arose before the occurrence of such causes shall be excused as the result of the occurrence; provided, further, that Service Provider shall not have any liability to Owner under this Agreement for failure to perform System Services hereunder if and to the extent the Owner's operation of the System is excused by a Force Majeure event or the System cannot operate and deliver energy as a result of such Force Majeure event.

ARTICLE 3. MISCELLANEOUS

Section 3.1. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Oklahoma. The parties agree that in the event of a dispute or alleged breach they will work together in good faith to resolve the matter internally by escalating it to higher levels of management.

Section 3.2. **Amendments.** No amendment to this Agreement shall be binding on the Parties unless set out in writing expressed to vary this Agreement, and signed by authorized representatives of each of the Parties.

Section 3.3. **No Waiver.** No provision of this Agreement shall be considered waived by either Party except when such waiver is made in writing executed by the Party so waiving. The failure of either Party to insist, on one or more occasions upon strict performance of any of the provisions of this Agreement or to take advantage of its rights hereunder or the delay or failure in exercising totally or partially any right or remedy under this Agreement, shall not be construed as a waiver of any such provisions or the

relinquishment of any such rights or any other rights for the future, but the same shall continue and remain in full force and effect.

Section 3.4. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Service Provider shall not be able to assign without Owner prior written consent. Consent from Owner shall not be unreasonably withheld.

Section 3.5. **Nondisclosure.** In connection with each System, each Party may have access to proprietary information, trade secrets, and/or other confidential information made available by the other, and each Party agrees to protect that confidential information in the same manner as we would protect its own confidential information of like kind, and in any case with no less than a commercially reasonable degree of care. Each Party understands that confidential information of the other includes designs, creations, improvements, works of authorship, processes know-how, techniques ideas, discoveries, and/or developments previously created and utilized by such Party, whether or not copyright-able, trademark-able or patentable (hereinafter referred to as "Intellectual Property"). All rights, title and interest in such Intellectual Property, including the right to reproduce copies, to prepare derivative works and to distribute copies to the public by sale or other transfer of ownership shall remain with the originating Party, and the other Party shall not hold any right, title or interest in such Intellectual Property.

Section 3.6. **Additional Documents and Acts.** Each Party agrees to execute and deliver such additional documents and instruments as may be reasonably necessary or appropriate to effectuate, carry out and perform all of the terms, provisions, and conditions of this Agreement and the transactions contemplated by this Agreement.

Section 3.7. **Independent Contractors.** The Parties acknowledge that Owner is engaging Service Provider as an independent Provider and nothing in this Agreement shall be interpreted or applied so as to make the relationship of the Parties that of partners, joint ventures or anything other than an independent Provider relationship.

Section 3.8. **Notices.** Any notice request, demand or other communication required or permitted under this Agreement, shall be deemed to be properly given by the sender and received by the addressee if made in writing and (a) if personally delivered; (b) three (3) days after deposit in the mail if mailed by certified or registered air mail, post prepaid with a return receipt requested; or (c) if sent by electronic message, on the date delivered provided the delivering Party receives electronic confirmation of delivery. Notices shall be addressed as follows to:

Owner: City of Norman, Oklahoma
Attn: Director of Utilities
Address: 201 W Gray St.
Norman, OK 73069
Email: chris.mattingly@normanok.gov

Service Provider: BioStar E Light JV LLC
Attn: Andy Stancati
Address: 9400 Reeds Rd., Ste 150
Overland Park, KS 66207
Email: astancati@biostarrenewables.com

Section 3.10. **Construction.** The following rules of construction and interpretation shall govern the construction and interpretation of this Agreement:

(a) **Complete Agreement.** This Agreement and the EPC Agreement, including all exhibit and schedules attached hereto and incorporated herein by this reference, contains the whole agreement between the Parties relating to the transaction contemplated by this Agreement and supersedes all previous agreement between the Parties relating to these transactions. Each Party acknowledges that, in agreeing to enter into this Agreement, it has not relied on any representation, warranty, collateral contract or other assurance (except those repeated in this Agreement) made by or on behalf of any other Party at any time before the signature of this Agreement. Each Party waives all right and remedies which, but for this clause (ii), might otherwise be available to it in respect of any such representation warranty, collateral contract or other assurance.

(b) **Severability.** The provisions contained in each section, subsection and clause of this Agreement shall be enforceable independently of each of the others and their validity shall not be affected if any of the others are invalid. If any of those provisions is void but would be valid if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid.

(c) **Multiple Counterparts.** This Agreement and any amendments of this Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

[Remainder of page left blank; signature page follows]

IN WITNESS WHERE OF, the Parties have executed this Agreement as of the date first above written.

Owner:

City of Norman, Oklahoma

By: _____

Print Name:

Title:

Norman Utilities Authority

By: _____

Print Name:

Title:

Attest: _____

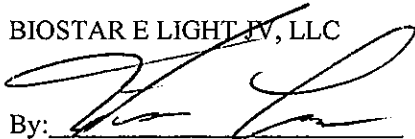
City Clerk/Secretary

Approved as to form and legality this ____ day of _____, 2021.

City Attorney/General Counsel

Service Provider:

BIOSTAR E LIGHT IV, LLC

By: 

William Love
Manager

EXHIBIT A
TO
O&M SERVICES AGREEMENT
GLOSSARY OF DEFINED TERMS

As used in the Agreement to which this Exhibit A is attached, the following terms shall have the meanings set forth below:

Agreement means this O&M Services Agreement.

Alarms includes any of the following categories of Alarms:

Emergency Alarm mean any event that results in an immediate hazardous situation that create unsafe conditions.

High Priority Alarm means any event that results in 100% power degradation.

Medium Priority Alarm means any event that results in power degradation $\geq 20\%$ of the expected power output of the PV System or an event that hinders data collection from the DAS or inaccurate meteorological data from the DAS.

Low Priority Alarm means any event that does not (i) pose an immediate hazard, (ii) create unsafe conditions, (iii) result in System downtime greater than two consecutive hours, (iv) result in power degradation $\geq 20\%$, or (v) affect data collecting and reporting by the DAS.

Applicable Law means, with respect to any applicable law, statute, rule, regulation, ordinance, treaty, order, decree, judgment decision, certificate, injunction, registration, license, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority.

DAS means the data acquisition System utilized with respect to a System.

Emergency has the same meaning given to Emergency Alarm.

Force Majeure has the meaning set forth in the EPC Agreement.

Hazardous Conditions means any waste, chemical, or other substance or material (or any combination of them) at, on, above or below the Site that may impair the natural environment, injure or damage property or plant or animal life or harm or impair the health of any individual and includes any contaminant, waste, substance or material that is defined in or regulated pursuant to Environmental Law.

Indemnified Party has the meaning given in Section 2.4.

Indemnifying Party has the meaning given in Section 2.4.

Insolvent means (i) a Party shall have filed a voluntary petition in bankruptcy or shall be adjudicated a bankrupt or insolvent, or shall have filed any petition or answer or consent seeking any reorganization, arrangement, composition readjustment, liquidation dissolution or similar relief for itself under the present or future applicable Federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors or shall seek or consent to or acquiesce in the appointment of any trustee, receiver,

conservator or liquidator of such Party or of all or any substantial part of its assets; (ii) a Party becomes the subject of any involuntary reorganization arrangement, composition, readjustment liquidation, dissolution or similar relief under the present or future applicable Federal, state or other statute or law relative to bankruptcy, insolvency or other relief for debtors remain which remains unvacated for more than sixty (60) days, or (iii) a court of competent jurisdiction shall have entered an order, judgment or decree approving a petition filed against a Party seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy act, or any other present or future applicable Federal, state or other statute or law relating to bankruptcy, insolvency or other relief for debtors, and such Party shall acquiesce, and such decree shall remain unvacated and stayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereat or a trustee, receiver, conservator or liquidator of such Party shall be appointed with the consent or acquiescence of such Party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days, whether or not consecutive; (iv) a Party shall admit in writing its inability to pay its debts as they mature; (v) a Party shall give notice to any governmental body of insolvency or pending insolvency, or suspension or pending suspension of operations; or (vi) a Party shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefits of creditors.

Intellectual Property has the meaning given in Section 3.5.

Known Hazardous Conditions means those Hazardous Conditions (a) identified as existing at, on, above, below or near the Site from the Project Document Requirement or other Owner supplied information, or (b) reasonably apparent to or caused by any of Service Provider's affiliates in collection with prior ownership of an interest in the Site or performance of any obligations under any project document relating to construction or construction management of the Site or System at any time prior to the Execution Date.

Lien means any mortgage, attachment, claim charge, pledge, lien option, right to acquire, right of pre-emption, assignment by way of security or trust agreement for the purpose of providing Lien of any kind or any other encumbrances having similar effect, or any agreement to create any of the foregoing.

Maintenance Specification Log mean all monitoring report and a listing of all required maintenance, indication of the performance of the required maintenance, indication of the performance of other maintenance and a record of all repairs and replacements made to the System and equipment including serial numbers for all serialized parts in failed, maintained or replaced.

Monitoring Equipment means the minimum instrumentation necessary to monitor the System, including the following equipment: (1) weather station, (2) irradiance sensor; (3) module temperature sensor; and (4) individual inverter monitoring.

Non-Standard System Services means any Service other than the System Service.

Owner has the meaning given in the preamble of this Agreement.

Owner Representative means the representative of Service Provider appointed pursuant to Section 1.8(a).

Parties means each of Service Provider and Owner.

Party means either Service Provider or Owner.

Permit and Project Document Requirements means the permits and project contracts relating to any System or Site held by Owner or its affiliates.

Price Schedule has the meaning given in Exhibit C.

Prudent Industry Practice means the practices method and acts engaged in or approved by a significant portion of the solar energy industry that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, reliability safety, environmental protection economy and expedition. If disputed, then the Parties shall consult with a firm to be agreed upon by the Parties, which shall make the final determination as to whether the particular practice, method or act in question constitutes "Prudent Industry Practice".

Service Fees has the meaning given in Section 1.4(a).

Service Provider has the meaning given in the preamble to this Agreement.

Service Provider Representative means the representative of Service Provider appointed pursuant to Section 1.8(b).

Site has the meaning given in Section 1.1.

Site Agreement means those agreements between Owner and the host granting Owner use and access rights to the Site.

Site Personnel means personnel on site under the employ of the Site owner or lessor, as applicable, that will assist in site access as well as verify any applicable basic system operational status such as non-System maintenance that could impact the performance of the System, or other System related questions.

Statement of Work has the meaning given in Section 1.1.

Subcontractor means any agent, Provider or other person to whom the Service Provider subcontracts any of its obligations under this Agreement, including the suppliers and any person to whom such obligations are further subcontracted.

System means each System identified on Exhibit D.

System Services means collectively, the Services described in the Statement of Work with respect to a System.

**EXHIBIT B
TO
O&M SERVICES AGREEMENT**

STATEMENT OF WORK

The System Services for each Site are described in this Statement of Work. Such Services shall be performed for each Site in accordance with this Statement of Work, except as may be modified by a written amendment.

MAINTENANCE SERVICES

1. Preventive Maintenance

a. Data Acquisition System - DAS Alarm Response and Performance Monitoring -
Upon the occurrence of an Alarm:

i. Service Provider will log all new Alarm related to the System. The list of all Alarms available from the DAS will be maintained by Service Provider including a determination of which Alarms must be responded to. For those that require response, notice of alarm will be provided to Owner.

ii. Service Provider will also monitor Systems for performance issues. For degradation of estimated performance greater than 20% of a System or for downward performance trend or trends which may indicate developing performance problems Service Provider will promptly notify Owner. In cases where the System monitoring is not showing performance, Service Provider will notify Owner and contact the Site Personnel to determine if the issue is caused by communication issue or needs to be investigated by Service Provider. Service Provider will notify Owner in writing if there is a need for Service Provider to investigate.

iii. Service Provider shall research and make a determination of the impact of the alarm and any requirements for intervention to resolve the alarm. This determination and any planned intervention should be logged in the Maintenance specification Log.

iv. Service Provider shall develop a solution to resolve the issue and take all commercially reasonable measure to deploy such solution as soon as possible. Any action which requires on-site investigation or maintenance will be at Service Provider's cost and expense. In such cases, Service Provider will notify Owner of the issue when identified, the estimated completion date, activity/progress, change to schedule, actual completion activity, and estimated cost or remediation.

v. Service Provider will file the warranty claim after identifying the problem and will also notify Owner when the warranty claim is filed, the expected date for the receipt of warranty parts and the actual date for the receipt of warranty parts.

vi. The final step taken by the Service Provider and the effect thereof should be recorded in the Maintenance Specification Log.

vii. Alarm severity rankings shall be defined into four categories. On Site Response activities will be defined as Non-Standard System Service under Section 1

- .2(b)Emergency Alarm (automatically respond (on-site if needed) within 24 hour)
 1. High Priority Alarms (automatically respond (on-site if needed) within 72 hours),
 2. Medium Priority Alarm (upon approval, respond (on-site if needed) within 1 week)
 3. Low Priority Alarm (upon approval, add to the list for the next on-site visit).

b. Service Provider will provide the following preventative maintenance activities on an annual basis:

- i. Equipment inventory management/onsite spare parts
 1. Visual inspection
 - a. Check equipment inventory against required inventory list provided by Owner. In the event Owner fails to provide a required inventory list, Service Provider is not required to perform these services.
 2. Documentation - Maintenance Specification Log
 - a. Provide list of additional equipment required for purchase by Owner.
 - b. Track failed and/or replaced equipment.
 - c. Make recommendations on pursuing warranty claims
- ii. Modules
 1. Visual inspection
 - a. As required by module manufacturer
 - b. Grounding
 - c. Connectors
 2. Maintenance
 - a. 5% sample of module fastener check.
 3. Documentation - Maintenance Specification Log
 - a. Documentation of deficiencies and recommendations to correct items noted from visual inspection and maintenance activities.
- iii. Inverter
 1. Visual inspection
 - a. Per manufacturer specifications
 2. Maintenance
 - a. Clean or replace air filters (if applicable)
 - b. Check for loose conductors and conduit
 - c. Check and counting of spare fuses
 - d. Check functionality of locks
 - e. Torque check (100%)
 - f. Record and clear all faults at HMI screen
 - g. Inspect inverter penetrations

- h. Inspect inverter fan
 - i. Verify ground fault monitor
 - j. Check surge suppressors
 - k. Check and replace fuses if needed
 - l. If necessary, measure and record phase to phase voltages and currents
 - 3. Documentation - Maintenance Specification Log
 - a. Per manufacturer specifications
 - b. All faults found on HMI screen
 - c. If necessary, phase to phase voltages and currents
 - iv. AC Combiners
 - 1. Visual Inspection
 - a. Per manufacturer specifications
 - 2. Maintenance
 - a. Torque Check (100%)
 - b. Check Surge suppressors
 - c. Check and replace fuses, if needed
 - 3. Documentation – Maintenance Specification Log
 - a. Per manufacturers specifications
 - v. Weather station/DAS
 - 1. Visual inspection
 - a. Per manufacturer specifications
 - 2. Maintenance
 - a. Clean pyranometer
 - b. Lubricate wind sensor
 - c. Verify sensor calibration
 - d. Update firmware if needed
 - e. Recalibration of weather station
 - 3. Documentation - Maintenance Specification Log
 - a. Per manufacturer specifications
 - vi. Other
 - 1. Visual inspection of DC conduit entry points
 - 2. Visual inspection of foundation
 - 3. Visual inspection of ground erosion
 - 4. Visual inspect DC wires for sign of fraying and proper wire management
 - 5. Visual inspection of vegetation for growth that affects production and/or regular operations and maintenance at the Site.
 - 6. Meter verification
 - a. Meter calibration will be provided every 5 years
- 2. Corrective Maintenance**
- a. Corrective Maintenance (including any and all repair and replacement of broken equipment and materials in connection with the System or site visit not performed during Scheduled Maintenance) is not included in the base System Services price. At Owners written request, Service Provider can provide Non-Standard System Service in accordance with Section 1.2(b) of the Agreement.
- 3. Warranty Claims.**
- a. Service Provider shall submit and manage all third-party warranty claim on behalf of Owner, but Owner shall reasonably cooperate with Service Provider in it making such claims. The Parties expressly agree that Service Provider does not guaranty or warrant in

any way the validity of any third- party equipment warranties or the success of any claims or actions brought under such warranties

4. Service Provider shall provide the following documentation:

- a. All preventive, corrective, and cleaning maintenance as well as correspondence will be documented in the Maintenance specification Log. Maintenance specification Log will be provided to the Owner within 30 working days after the conclusion of each annual maintenance period.

5. Assumptions & Exclusions for Maintenance Services.

- a. The performance of the above described Maintenance Services are subject to the following assumptions and exclusions:
 - i. Owner will grant the Service Provider unlimited access to each Site for all scheduled and unscheduled maintenance.
 - ii. Any medium or high voltage work is excluded.
 - iii. Any and all permits are not part of this Statement of Work.
 - iv. Replacement of any System equipment is not part of this statement of Work.
 - v. Owner will provide all equipment, subscriptions and communications for the DAS.
 - vi. Owner will provide Service Provider unlimited, administrative level access to the DAS.
 - vii. All DAS alarm and alert are already configured and calibrated.
 - viii. Owner will be provided all necessary and appropriate Monitoring Equipment for the System.
 - ix. Owner will provide and maintain internet service on Site for operation of the DAS System.
 - x. Module washing on a Site are Non-Standard Services.
 - xi. Initial O&M pricing is based on System knowledge at the time of the execution of this Agreement. Any unforeseen circumstances identified post signing may be cause for a System Services change order.
 - xii. Owner must cause Site to remain clear of vegetation that interferes with Provider's work and/or regular operations and maintenance at the Site or any negative impact on production; any vegetation management services provided by Service Provider are Non-Standard Services.

**EXHIBIT C
TO
O&M SERVICES AGREEMENT**

SERVICE FEES AND TIME AND MATERIAL RATES

Owner shall pay to Service Provider for performance of the System Services in accordance with the Schedule for a specific System. Non-Standard System Services described and covered in 1.2(b) will be paid in accordance with the rates detailed below, and standard hourly rates may be changed by Service Provider upon 90 days advance written notice to Owner. Specialty wage and Service categories will be handled as cost plus as summarized in the table below.

Service Provider shall invoice Owner for Non-Standard System Services performed on the last day of the month for the Non-Standard System Service performed during such month and such invoice (less reasonably disputed amounts) shall be payable by Owner within 30 days of Owner's receipt of such invoice.

COST + RATES

TRAVEL	COST + 20%
MILEAGE	IRS STANDARD RATES PER MILE
PER DIEM	GSA STANDARD RATES
MATERIALS & SHIPPING	COST + 20%
TOOLS & EQUIPMENT RENTAL	COST + 20%
SUBCONTRACTING	COST + 20%

Hourly Rates

PROJECT MANGER / ENGINEER	\$195 per HOUR
TECHNICIAN	\$150 per HOUR

**EXHIBIT D
TO
O&M SERVICES AGREEMENT
SYSTEM AND SITE INFORMATION**

Recurring Fees:

Annual Service Fee: **\$40,000**

Service Fee Escalation: **1% annually**

Time and Materials Rate for Non-Standard System Services: See Exhibit C to O&M Services Agreement.

Site Information:

Water Treatment Plant – 600 kW DC Total

- 3000 E Robinson St, Norman, OK 73071
 - o Account # 128899922
 - Meter# 41070632G
 - o Account # 128899957
 - Meter# 41070630G

Water Reclamation Facility – 1,670 kW DC Total

- 3500 Jenkins Ave, Norman, OK 73072
 - o Account # 130607728
 - Meter# 68743480G
 - o Account # 129326032
 - Meter# 52304056G
 - o Account # 130267248
 - Meter# 56965632G
 - o Account # 4118202500
 - Meter# 11998945
 - o Account # 1842192
 - Meter#56966409G