

ENERGY SERVICES AGREEMENT – SOLAR

Apple Valley Animal Shelter

This Energy Services Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2023 (or, if later, the latest date of a Party’s execution and delivery to the other Party of this Agreement, the “Effective Date”), between FFP BTM SOLAR, LLC, a Delaware limited liability company (“Provider”), and The City of Palm Desert, a California charter city (“Purchaser”; and, together with Provider, each, a “Party” and together, the “Parties”).

RECITALS

- A. Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Energy Services (as hereafter defined), and Provider is willing to have the Installation Work performed by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed;
- B. Provider is in the business of designing, constructing, owning, financing, and operating solar photovoltaic systems for the purpose of selling power generated by the systems to its purchasers;
- C. California Government Code sections 4217.10 et seq. authorizes a public entity to enter into energy service contracts, facility financing contracts, and related agreements to implement the State’s conservation and alternative energy supply source policy;
- D. Purchaser’s governing body has made those findings required by Government Code section 4217.12 that the anticipated cost to the Purchaser for Energy Services provided by the System under this Agreement is expected to be less than the anticipated marginal cost to the Purchaser of electrical energy that would have been consumed by Purchaser in the absence of its purchase of the Energy Services;
- E. Provider and Purchaser acknowledged those certain General Terms and Conditions of Energy Services Agreement between FFP BTM Solar, LLC and Purchaser of even date herewith (“General Terms and Conditions”), which are incorporated by reference as set forth herein; and
- F. The terms and conditions of this Energy Services Agreement, excluding the General Terms and Conditions incorporated herein, constitute the “Special Conditions” referred to in the General Terms and Conditions.

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

- 1. Incorporation of General Terms and Conditions. The General Terms and Conditions are incorporated herein as if set forth in their entirety.
- 2. Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for Twenty (20) years from the Commercial Operation Date (as defined in the General Terms and Conditions), unless and until extended or terminated earlier pursuant to the provisions of this Agreement (the “Initial Term”). After the Initial Term, this Agreement may be renewed for an additional five (5) year term (a “Renewal Term”). At least one hundred and eighty (180) days, but no more than three hundred and sixty-five (365) days, prior to the expiration of the Initial Term, Provider shall give written notice to Purchaser of the availability of the Renewal Term. Purchaser shall have sixty (60) days to agree to continuation of this Agreement for the Renewal Term. Absent agreement to the Renewal Term this Agreement shall expire on the Expiration Date. The Initial Term and the subsequent Renewal Term, if any, are referred to collectively as the “Term”.
- 3. Schedules. The following Schedules hereto are hereby incorporated into this Agreement:

Schedule 1	Description of the Premises, System and Subsidy
Schedule 2	Energy Services Payment
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information
Schedule 6	Reserved
Schedule 7	Specific Items for Scope of Work
Schedule 8	Acknowledgment of Upgrades, Schedule or Scope Change
Schedule 9	Site Diagram

4. Privacy. Purchaser acknowledges that the System may collect certain information about Purchaser’s electricity usage and the System performance and that such information may be used by Provider: (i) as necessary to carry out its obligations under this Agreement; and (ii) may be used and shared with third parties in connection with Provider’s other business activities, provided, however, that such information shall be anonymized so as to delete all information which would identify such information to Purchaser. All such information that is identifiable to Purchaser will be stored and processed in the United States.

5. Milestone Dates.

5.1 The Guaranteed Construction Start Date is 730 days from Effective Date provided that the Local Electric Utility is prepared to begin its construction on any required utility, (distribution or transmission), upgrades, if any, and the City has completed construction on all improvement work, if any, within the area of solar development (as indicted in Schedule 9). In the event that the Local Electric Utility is not prepared to commence construction on required upgrades, if any are required, or the City has not completed construction within the area of solar development, Provider will be allowed a day for day extension to the Guaranteed Construction Start Date, as defined in the Definitions section of the General Terms and Conditions Agreement between the Parties.

5.2 The Guaranteed Commercial Operation Date is April 14, 2026, subject to delay if the Local Electric Utility does not complete any required upgrades or inspections in accordance with the project schedule and such delay is not the result of Provider delay in making any applications or completing any required work.

6. Purchase Requirement; Energy Services Payment. “Energy Services” means the supply of electrical energy output from the System. Purchaser agrees to purchase one hundred percent (100%) of the Energy Services generated by the System and made available by Provider to Purchaser during each relevant month of the Term, up to a maximum of one hundred and ten percent (110%) of Estimated Annual Production, as defined in Schedule 4. While the Energy Services are calculated and billed on a per kWh basis as set forth in Schedule 2 of these Special Conditions, they represent a package of services and benefits.

7. Net Energy Metering.

7.1 The Parties acknowledge that the pricing assumes Net Energy Metering (NEM) 2.0 for the Initial Term. Provider filed an interconnection application on behalf of Purchaser prior to April 14, 2023 and received confirmation that the application was grandfathered for NEM 2.0. If, prior to the Commercial Operation Date, (A) Provider fails to keep such interconnection applications in good standing such that the System would not be eligible for NEM 2.0, or (B) the CPUC issues a decision such that the System would not be eligible for NEM 2.0 grandfathering for at least twenty (20) years, Purchaser may terminate this Agreement with no liability whatsoever, including, but not limited to the Early Termination Fee. The foregoing shall not apply to the extent Provider’s failure is caused by an act or omission by Purchaser in connection with Provider’s submittal of interconnection applications.

Provided, however, that in the event of a change in Applicable Law that occurs after the Commercial

Operation Date and results in a loss of NEM 2.0 grandfathering, Purchaser shall have no such termination right. Provided further that Purchaser shall ensure any correspondence with the Local Electric Utility regarding the tariff and changes to the interconnection agreement are promptly shared with Provider.

8. Estimated Annual Production. The annual estimate of electricity generated by the system for each year of the initial term is set as forth in Schedule 4 of the Special Conditions (“Estimated Annual Production”). Within sixty (60) days of each annual anniversary of the Commercial Operation Date, Provider will provide a statement to Purchaser that shows the actual annual kWh production from the System for the Term Year, the Estimated Annual Production, and the Minimum Guaranteed Output (defined below).
9. Minimum Guaranteed Output. If the System fails to generate at least ninety-five percent (95%) of the Estimated Annual Production for a full Term Year (such amount, the “Minimum Guaranteed Output”), other than as a result of the acts or omissions of Purchaser or the Local Electric Utility (including a Disruption Period), or an Event of Force Majeure, Provider shall credit Purchaser an amount equal to Purchaser’s Lost Savings on the next invoice or invoices during the following Term Year. If the credit is due in the Term Year of the Term, then Provider shall pay the face value of the credit to Purchaser. The formula for calculating Lost Savings for the applicable Term Year is as follows:

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

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

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

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

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

ATP = Average tariff price, measured in \$/kWh, for the Term Year paid by Purchaser with respect to the Premises. This price is determined by dividing the total cost for delivered electricity, including all charges associated with such electricity howsoever named, including, without limitation, charges for distribution, transmission, demand, and systems benefits, paid to the Local Electric Utility during the applicable Term Year by the total amount of delivered electricity by the electric utility during such Term Year.

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

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

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

11. Distribution Upgrades, Scope and Schedule Changes.

- a. For any distribution upgrades required or changes to the scope of Installation Work made pursuant to Schedule 2 of the Special Conditions, the Parties may execute an acknowledgment in the form attached hereto as Schedule 8 detailing (i) the description of the distribution upgrades or change in scope of the Installation Work (ii) the amount of the adjustment in the kWh Rate and Early Termination Fee that corresponds to such costs, if any (iii) changes to the Estimated Annual Production in Schedule IV, if any, and (iv) any change to the Guaranteed Construction Start Date and Guaranteed Commercial Operation Date resulting from such upgrades or scope changes;
- b. For any day for day extensions made pursuant to Section 2.2(b) of the General Conditions, the Parties may execute an acknowledgment in the form attached hereto as Schedule 8 detailing (i) the circumstances that warrant such day for day extension and (ii) the updated Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date;
- c. For any extensions that are not made pursuant to Section 2.2(b) of the General Conditions, Provider may request extensions to the Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date to the extent that Provider can demonstrate to Purchaser that Provider is seeking such extension for good cause. Purchaser in its sole discretion may approve such extension(s) by executing an acknowledgment in the form attached hereto as Schedule 8 on which Provider details (i) the circumstances for which Provider deems good cause for such extension(s), (ii) the actions that Provider is taking to complete the System on a schedule agreeable to the Purchaser and (iii) the updated Guaranteed Construction Start Date and/or Guaranteed Commercial Operation Date.

For the avoidance of doubt, Purchaser designates Director of Municipal Services as authorized to execute the acknowledgment form attached hereto as Schedule 8 provided the terms of such acknowledgment comply with this Section 11.

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

[signature page follows]

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

“PURCHASER”:

TOWN OF APPLE VALLEY

By: _____
Name:
Title:
Date:

“PROVIDER”:

FFP BTM SOLAR, LLC

By: _____
Name:
Title:
Date:

SCHEDULES

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

<u>A. Premises</u>	22131 Powhatan Rd, Apple Valley, CA 92308
Site diagram attached:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<u>B. Description of Solar System</u>	Behind the meter, grid interconnected, canopy mounted solar.
Solar System Size:	131.04kW (DC) (this is an estimate (and not a guarantee) of the System size; Provider may update the System Size prior to the Commercial Operation Date.)
<u>C. Anticipated Subsidy or Rebate</u>	\$0
<u>D. Interconnection Baseline Cost</u>	\$0
<u>E. Anticipated Investment Tax Credit Rate for Provider</u>	30%

II. Schedule 2 – Energy Services Payment

Purchaser shall pay to Provider a monthly payment (the “Energy Services Payment”) for the Energy Services provided by the System during each calendar month of the Term equal to the product of (x) Actual Monthly Production for the System for the relevant month multiplied by (y) the kWh Rate.

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

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

PPA Rate Table

Term Year	kWh Rate (\$/kWh)	Term Year	\$/kWh Rate (\$/kWh)
1	\$0.2013	11	\$0.2013
2	\$0.2013	12	\$0.2013
3	\$0.2013	13	\$0.2013
4	\$0.2013	14	\$0.2013
5	\$0.2013	15	\$0.2013
6	\$0.2013	16	\$0.2013
7	\$0.2013	17	\$0.2013
8	\$0.2013	18	\$0.2013
9	\$0.2013	19	\$0.2013
10	\$0.2013	20	\$0.2013

Potential Price Adjustment for Cost Savings. Provider and Purchaser acknowledge that there may be an opportunity for additional cost savings with respect to the construction and interconnection of the System as a result of changes in the Investment Tax Credit pursuant to the Inflation Reduction Act of 2022 and that a decrease in the kWh Rate may be appropriate to allow Purchaser to share in such savings once the scope and nature of the changes have been fully analyzed. To the extent that Provider is able to achieve such savings, Provider and Purchaser will meet and confer in good faith to discuss an equitable adjustment in the kWh Rate, provided, however, that any change in the kWh Rate will be subject to a written amendment to this Agreement.

Distribution Upgrades. The pricing set forth in this Agreement is based on the assumption that the total cost of Local Electric Utility upgrade costs in connection with the interconnection of the System with the Local Electrical Utility will not exceed the Interconnection Baseline Cost. In the event that distribution upgrade costs required by the Local Electric Utility exceed the Interconnection Baseline Cost, then Provider will give written notice of the additional cost to Purchaser and within sixty (60) days of Purchaser's receipt of such notice, Purchaser will provide written notice (email is acceptable) to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all the distribution upgrade costs in excess of the Interconnection Baseline Cost, and the kWh Rates stated in the PPA Rate Table will remain unchanged. Purchaser shall make payments directly to the Local Electric Utility in accordance with the requirements of the Local Electric Utility; or
- b. Purchaser may elect to have Provider finance such costs, in which case for every \$0.01 per watt DC of such distribution upgrade costs incurred by Provider, the kWh rate in the PPA Rate Table will increase (i) \$0.00065 per kWh if the cost of the upgrades are not ITC eligible; or (ii) \$.00041 per kWh if the costs are ITC eligible.

Scope Changes (ITC Eligible). If changes in project scope occur that are eligible for the Federal Investment Tax Credit (including but not limited to adverse geotechnical conditions or the inclusion of spare conduit) and the costs directly related to such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, then Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such increase in costs to Purchaser. Within sixty (60) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all of the reasonably documented scope change costs, and the kWh rate as stated in Table 1 will remain unchanged; or
- b. Purchaser may elect to have Provider finance such costs, in which case for every \$0.01 per watt DC of such costs, the kWh rate in Table 1 will increase \$0.00041 per kWh.

Scope Changes (Non-ITC Eligible). If changes in project scope occur that are not eligible for the Federal Investment Tax Credit (including but not limited to ADA compliance costs not related to System configuration or construction) and the costs directly related to such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, then Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within sixty (60) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will pay the entire amount of such associated costs, and the kWh rate as stated in the PPA Rate Table will remain unchanged.; or
- b. Purchaser may elect to have Provider finance such costs, in which case for every \$0.01 per watt DC of such associated costs, the kWh rate in the PPA Rate Table will increase \$0.00054 per kWh.

Purchaser Additional Cost Limitation; Termination Rights. Notwithstanding the election by Purchaser to pay for excess costs associated with Distribution Upgrades and/or Scope Changes pursuant to this Schedule 2 via incremental increases in the kWh Rate, in no event will Purchaser be responsible for an incremental rate increase in excess of \$0.0465 per kWh in the aggregate, nor shall Purchaser be required to pay any lump sum amount for excess costs that are not covered as a result of such limitation. Provider will have the option, but not the obligation, to absorb excess cost which exceed the obligation of Purchaser pursuant to this Schedule 2. If Provider notifies Purchaser that it does not intend to absorb such costs and the System is no longer financially viable, then either party will have the right to terminate this Agreement and Provider will remove the System pursuant to Section 2.4 of the General Conditions.

III. Schedule 3 – Early Termination Fee

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

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91st day following: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)
1*	\$5.31		--
2	\$4.91		--
3	\$4.64		--
4	\$4.45		--
5	\$4.29		--
6	\$4.14	5 th Anniversary	\$3.64
7	\$4.08	6 th Anniversary	\$3.58
8	\$4.02	7 th Anniversary	\$3.52
9	\$3.95	8 th Anniversary	\$3.45
10	\$3.89	9 th Anniversary	\$3.39
11	\$3.82	10 th Anniversary	\$3.32
12	\$3.75	11 th Anniversary	\$3.25
13	\$3.68	12 th Anniversary	\$3.18
14	\$3.60	13 th Anniversary	\$3.10
15	\$3.52	14 th Anniversary	\$3.02
16	\$3.44	15 th Anniversary	\$2.94
17	\$3.36	16 th Anniversary	\$2.86
18	\$3.27	17 th Anniversary	\$2.77
19	\$3.18	18 th Anniversary	\$2.68
20	\$3.09	19 th Anniversary	\$2.59

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

*Includes Early Termination prior to the Commercial Operation Date.

Upon the payment of the Early Termination Fee in Column 2, Provider will transfer title to the System to Purchaser, free and clear of any encumbrances.

IV. Schedule 4 – Estimated Annual Production

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

Term Year	Estimated Production (kWh)	Term Year	Estimated Production (kWh)
1	242,817	11	230,946
2	241,603	12	229,791
3	240,395	13	228,642
4	239,193	14	227,499

5	237,997	15	226,361
6	236,807	16	225,230
7	235,623	17	224,103
8	234,445	18	222,983
9	233,273	19	221,868
10	232,106	20	220,759

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

V. Schedule 5 – Notice Information

Purchaser:

Town of Apple Valley
c/o Director of Municipal Services
14955 Dale Evans Pkwy
Apple Valley, CA 92307

Provider:

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

With a copy to

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

Financing Party:

[To be provided by Provider when known]

VI. Schedule 6 – Reserved

VII. Schedule 7 – Specific Items for Scope of Work

- 1.1. All System structures shall be permitted through the Town of Apple Valley Department of Building and Safety as carports or shade structures, as applicable. Provider shall complete all work necessary for permits to be issued on behalf of the project(s).
- 1.2. Provider and Purchaser are operating under the assumption that the premises will be eligible for a CEQA Notice of Exemption (NOE), and that a special use, conditional use, or zoning permit will not be required. Provider assumes that Purchaser, as lead agency, will issue a Notice of Exemption for CEQA. Upon request, Provider shall provide such limited support as necessary to Purchaser to obtain the NOE, including, if necessary, biological study and associated consultant statement and summary citing exemptions applicable. Provider shall not be responsible for costs or delays associated with any unforeseen required CEQA studies, special use, conditional use, or zoning permits, or mitigations that may result from a CEQA submittal and public comment.

- 1.3. Purchaser shall, in the event that any pre-existing permits relating to other construction at the Premises need to be closed out in order to proceed and/or complete the installation of the Systems, be responsible for engaging the relevant resources at its sole expense to close out any open permit(s).
- 1.4. Purchaser will provide comprehensive review by all necessary stakeholders of all designs and submittals as requested by Provider in no more than 10 business days. Purchaser shall be responsible for cost and timeline impacts for any comments submitted after 10 business days. If Purchaser does not deliver any comments within 10 days, Provider shall construe this as acceptance and approval.
- 1.5. Purchaser shall deliver to Provider all as-built drawings of the facility and underground utilities as required to fully develop the solar plan sets and designs. Provider shall not be responsible for unforeseen conditions that are not evident from surveys or as-built drawings.
- 1.6. Provider assumes no title and/or real estate risks, encumbrances or other limitations exist that would otherwise limit Provider's ability to access the site, install, own and operate the system. Provider assumes that all parcels encompassed by the site area recommended by Purchaser will be owned by Purchaser at time of development.
- 1.7. Solar canopy arrays will have a minimum overhead clearance height of 10'-0" and a painted or Hot-Dip Galvanized finish at discretion of Provider.
- 1.8. Provider shall be responsible for all tree trimming and tree removal in order to facilitate the installation of the Systems. Provider will remove tree such that area is flush with grade. Purchaser shall acknowledge and approve removal of trees identified by Provider, in order to install the system and such approval shall not be unreasonably withheld. Where tree removal will occur, Provider shall grind tree stumps to a maximum of 4 inches below grade. Provider has not included budget for tree studies, arborist surveys, tree removal permits, or replanting or reforestation for any trees removed. Purchaser shall be responsible for the costs associated with that additional scope if needed. Purchaser can elect to address that additional scope itself or require that Provider address it through the change order process described in Schedule 2.
- 1.9. Provider intends to interconnect the System to Purchaser-owned 208V service conductors or service equipment at a mutually agreeable location. Provider assumes that the existing conductors and service equipment are sufficiently capable of accepting the additional electrical load of the System and that any existing relay schema or protection settings are configurable to allow backfeed from generation sources. Provider shall not bear responsibility for any required upgrades to the pre-existing electrical system. Purchaser shall provide sufficient space for an interconnection transformer in a mutually-acceptable location.
- 1.10. Provider excludes generator backup of Purchaser's electrical service during temporary service outage during interconnection of the System (up to 8 hours of shutdown, which can be planned to take place during off-hours).
- 1.11. Provider shall be responsible for all fees associated with the interconnection application, except that Provider shall not be responsible for transmission, distribution, network, or telecommunications upgrades determined necessary by the Local Electric Utility.
- 1.12. Provider shall be responsible for verifying and understanding existing ADA parking, striping, and paths of travel and what code-required upgrades may be necessary as a result of the System and any pre-existing non-compliance. Provider shall be responsible for all required ADA striping, signage within the solar canopy footprint and connecting to existing ADA-compliant path of travel. Provider's scope excludes any demolition, grading, paving, curb cuts, or truncated domes throughout the Premises to achieve ADA compliance, or any required ADA

striping and signage outside of the solar canopy footprint and connecting to the existing ADA-compliant path of travel. Should any excluded items for ADA-compliance be required, Provider will work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay the costs associated with such upgrades, including potentially an increase in the kWh rate in Schedule 2.

- 1.13. Provider assumes a balanced site. Any spoils that result from the installation of the System are assumed to be spread on site. Provider shall not be responsible for exporting soils. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay any such additional costs including potentially an increase in the kWh rate by exercising the Scope Changes (Non-ITC Eligible) rates in Schedule 2.
- 1.14. Provider assumes that soil conditions are not such soils that are rocky, sandy, contaminated, ground water, caving, or otherwise have problematic construction limitations. Specifically, Provider assumes no required shoring or de-watering for piers or trenches, and a maximum required pier depth of 10' and diameter of 30". If soil conditions prove to be more adverse than these assumptions, Provider shall not be responsible for such additional expenses. Provider shall work with Purchaser in good faith to determine a mutually acceptable solution for Purchaser to pay such additional costs, including potentially an increase in the kWh rate in Schedule 2.
- 1.15. Purchaser is responsible for unforeseen underground conditions including utilities not discoverable by industry standard methodologies.
- 1.16. Provider assumes that existing grade is level and that no grading is required in support of System installation.
- 1.17. Provider assumes that there is a water source on site, and available for Provider's use.
- 1.18. Provider assumes Risk Level I Best Management Practices as it relates to relevant Stormwater Protection Plan assumptions for the installation of the System.
- 1.19. Purchaser shall be responsible for any irrigation re-routing or repair.
- 1.20. Purchaser acknowledges that the System has not yet been assessed by the FAA. Should mitigations arise as a result of excessive glare, the Parties will work together to find a mutually acceptable solution.
- 1.21. Provider agrees to construct the System in no more than 1 construction phase, and that Provider will be allowed ample space, to the extent that it is available, to store material on site. Provider assumes free access to the entire mobilized portion of the parking lot area for the full scope of work.
- 1.22. Provider shall be responsible for all inspection and inspector costs associated with the installation of the system.

VIII. Schedule 8 –Acknowledgment of Upgrades, Schedule or Scope Change
Upgrades, Scope and/or Schedule Change Acknowledgment

This Acknowledgment is made in accordance with Section 10 of the Special Conditions, as defined in that Energy Service Agreement – [Solar], between [PURCHASER] (“Purchaser”) and FFP BTM Solar, LLC (“Provider”), dated [_____, 20__] (the “Agreement”). Upon execution by both Purchaser and Provider, this Acknowledgment shall be effective as of [INSERT DATE] (the “Acknowledgment Effective Date”).

1. Type of Change:

- Distribution Upgrades
- Scope Changes (ITC Eligible)
- Scope Changes (Non-ITC Eligible)
- Day for Day Extension
- Extension for Good Cause

2. Description of Change

[INSERT DESCRIPTION AND IF PROVIDER SEEKING EXTENSION FOR GOOD CAUSE, PROVIDER TO DETAIL CIRCUMSTANCES AND ACTIONS PROVIDER IS TAKING TO COMPLETE SYSTEM ON AGREED UPON SCHEDULE]

3. kWh Rate and Early Termination Fee [IF NO IMPACT TO RATE OR ETF THEN DELETE]

[INSERT UPDATED KWH RATE AND EARLY TERMINATION FEE TABLE]

4. Estimated Annual Production [IF NO IMPACT TO ESTIMATED ANNUAL PRODUCTION THEN DELETE]

[INSERT UPDATED SCHEDULE 4 ESTIMATED ANNUAL PRODUCTION TABLE]

5. Updated Guaranteed Construction Start Date and Guaranteed Commercial Operation Date [IF NO IMPACT TO CLIFF DATES THEN DELETE]

The Parties hereby agree that the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date as defined in the Agreement are updated as follows:

Guaranteed Construction Start Date: [_____]

Guaranteed Commercial Operation Date: [_____]

The Parties hereby acknowledge and confirm the terms set forth herein as of the Acknowledgment Effective Date.

[PURCHASER] _____ FFP BTM Solar, LLC

By: _____ By: _____

Name: _____ Name: _____

Title: _____ Title: _____

IX. Schedule 9 – Site Diagram

