



DATE: JUNE 24, 2020
TO: ATN BOARD OF DIRECTORS
FROM: JIM APPLEBY, PROJECT CONTROL MANAGER
RE: AGENDA ITEM 22

RECOMMENDATION:

Receive and file presentation relating to Anaheim Transportation Network Energy Strategy and #ElectrifyAnaheim initiative. Authorize Executive Director and legal counsel to proceed with Intent to Award exclusive negotiations for Power Purchase Agreement (PPA) with Amply Energy in response to ATN RFP #2020-024. Authorize Executive Director to enter into a design agreement for photovoltaic energy system with Amply Energy in the amount not to exceed \$35,000.

DISCUSSION:

As part of Anaheim Transportation Network's (ATN) *#ElectrifyAnaheim* initiative, the ATN is currently developing a new Operations & Maintenance facility located in Anaheim, California. The new facility will become the base of operations for ATN and will house staff, maintenance and charging infrastructure to support a future fleet of 82 battery electric buses. The new facility will be located across two sites. The charging infrastructure with bus parking will be at 1213 Claudina Street and the operations base with maintenance facility will be near Manchester and Lincoln streets. Both properties will have solar canopies and possible energy storage. The charging infrastructure for the battery electric buses will employ a Charging Management System (CMS) to ensure "smart charging" of the assets. The CMS along with solar energy will ensure ATN can avoid charges for peak demands of energy.

ATN is seeking an Energy Partner who will own the Solar + Storage assets, and sell energy to ATN via a long term (up to 25 years) energy Power Purchase Agreement (PPA), as well as the provision and operations of CMS which can serve as the interface between base operational personnel and the transfer of electrical energy to ATN buses and regulate power delivery to the base bus charging fleet in a manner that minimizes ATN expenditure on electrical energy while also meeting bus services requirements.

To identify the Energy Partner, ATN issued RFP 2020-024 on March 16, 2020. The solicitation was initiated through PlanetBids and advertised on the ATN website. Twenty-six (26) firms downloaded the RFP package and twelve (12) firms participated in a pre-proposal conference on April 7, 2020.

From this process, only two firms submitted qualified proposals to ATN

- Amply Power, Inc.
- ViriCiti LLC



In order to provide technical assistance on the evaluation of the proposals, ATN engaged the services of energy consultant Ray Gorski along with the ATN owner's representative for the construction project, Anser Advisory. Through the evaluation process, it was determined the most complete and responsive proposer was Amply Power.

ATN intends to enter into exclusive negotiations with Amply Power for the long term PPA and CMS with the assistance of a team consisting of Sage Energy Consultants, Anser Advisory Services, and legal counsel. It is expected that agreement will be brought to the ATN Board of Directors for approval at the August Board of Directors meeting.

ATN is awarding the photovoltaic energy system design portion of this procurement with a separate Engineering Services Agreement with Amply Power for the amount not to exceed \$35,000. This agreement will allow Amply to provide the necessary design for ATN's current construction partners to ensure proper engineering design and foundation for the future solar canopy on the site of the charging infrastructure.

IMPACT ON BUDGET:

Fees for service included in Fiscal Year 2020/2021 capital improvement budget and are reimbursable through existing grant funding agreements



Anaheim Transportation Network

CHARGING EQUIPMENT SERVICES

I. SELLER'S SCOPE

1.1 Scope. During the Term, Seller shall be responsible for (i) installing the Charging Equipment (as defined herein); (ii) configuring and operating the Seller Software; and (iii) performing certain operation and maintenance services for the Charging Equipment and Seller Software (the "*Operation and Maintenance Services*"), each as further described herein and in Exhibit B.

II. CHARGING FACILITY AREA PREPARATION

2.1 Charging Facility Area. In furtherance of the purposes of the Agreement, Purchaser agrees, at its own expense, to complete all preparation requirements for the Premises with respect to the Charging Equipment set forth in Exhibit B (such requirements, the "*Charging Facility Area Preparation*"). Unless otherwise expressly set forth in the Agreement, Purchaser shall be responsible for all Approvals required for the Charging Facility Area Preparation.

III. PROVISION OF CHARGING EQUIPMENT

3.1 Generally. Following Purchaser's completion of the Charging Facility Area Preparation, the sufficiency of which shall be determined in Seller's reasonable discretion, Seller shall perform installation of the Charging Equipment in accordance with Good Industry Practice.

3.2 Unforeseen Scope of Work. Customer will be responsible for any unforeseen scope of work and costs beyond those delineated for the scope of work and Amply shall be entitled to a day-for-day extension of any milestone(s) impacted by unforeseen scope of work. Permits and Approvals. Purchaser agrees to reasonably and timely assist Seller in obtaining Approvals necessary for installing the Charging Equipment.

IV. MAINTENANCE OF CHARGING EQUIPMENT AND AMPLY SOFTWARE

4.1 General. Purchaser shall be responsible for charging its electric vehicles with the Charging Equipment. All use of the Charging Equipment and Seller Software by Purchaser, its employees and agents shall comply with the Agreement. All Seller Software account details, passwords, keys, and like information are granted to Purchaser solely for Purchaser's own use (and the use of its authorized grantees), and Purchaser shall keep all such items secure and confidential. Purchaser shall use reasonable efforts to prevent and shall be liable for any unauthorized access to or use of the Charging Equipment, Seller Software and/or the Premises. Purchaser shall immediately notify Seller upon becoming aware of any such unauthorized use.

4.2 Maintenance. During the Term, Seller shall be responsible for routine maintenance of the Charging Equipment and Seller Software in accordance with Good Industry Practice. If Purchaser knows of or becomes aware of any malfunctioning Charging Equipment, Purchaser shall promptly notify Seller of such malfunction. Purchaser shall not directly or indirectly service, repair, modify or adjust the Charging Equipment or Seller Software without prior written consent of Seller.

4.3 Planned Outages. Seller shall be entitled to two (2) Planned Outages per year. Within fifteen (15) days after the Commercial Operation Date, and on or before each anniversary of the Commercial Operation Date during the Term, Seller shall provide Purchaser with a schedule of such proposed Planned Outages. Purchaser shall promptly review Seller's proposed schedule and may request modifications within thirty (30) days of Purchaser's receipt of such schedule. Seller will use commercially reasonable efforts to accommodate Purchaser's requests. Changes to the schedule may be requested by either Party, and each Party shall make commercially reasonable efforts to accommodate such changes.

4.4 Unplanned Outages. In the event of any Unplanned Outage, the Party becoming aware of the Unplanned Outage shall promptly notify the other Party of the same. If the Unplanned Outage is a result of Charging Equipment failure, Seller shall use reasonable commercial efforts to process a warranty claim on behalf of Purchaser for the Charging Equipment, *provided that* Seller does not warrant or guaranty operation of the Charging Equipment, and

Purchaser shall look solely to the applicable Charging Equipment manufacturer's warranty for recourse for Charging Equipment failure. Seller shall not be responsible for any breach of any warranty provided by the Charging Equipment manufacturer and shall not be required to litigate against any equipment manufacturer regarding any warranty claim or failure of the Charging Equipment. Seller shall assist Purchaser in estimating the expected duration of any Unplanned Outage and any other pertinent information that will assist Purchaser in planning for the decreased availability of the Charging Equipment as a result of the Unplanned Outage.

4.5 Program Participation. Seller shall have the right to enroll the Local Utility meter connected to the Charging Equipment in any present or future demand response program, or other Local Utility or government program, provided that such enrollment does not materially impair Seller's ability to provide the Operation and Maintenance Services according to the terms set forth in the Agreement.

V. LIMITATION OF OPERATION AND MAINTENANCE SERVICES

5.1 Limitations of Operation and Maintenance Services. Purchaser shall not:

(a) sell, resell, license, rent, lease or otherwise transfer the Operation and Maintenance Services, the Seller Software, or any data collected or maintained by Seller in connection with the operation of Charging Equipment to any third party;

(b) interfere with or disrupt the Operation and Maintenance Services, the Charging Equipment, the Seller Software, servers, or networks connected to the same, or disobey any requirements, procedures, policies, or regulations of networks connected to the Charging Equipment;

(c) attempt to gain unauthorized access to the wireless networks connected to the Charging Equipment or related systems or networks or any data contained therein, or access or use the Operation and Maintenance Services or Seller Software through any technology or means other than those provided or expressly authorized by Seller;

(d) reverse engineer, decompile or otherwise attempt to extract the source code of any Seller Software or other software not provided by Purchaser and related to the Operation and Maintenance Services, including, without limitation, the Charging Equipment and related cloud services, or any part thereof, except to the extent expressly permitted or required by Applicable Law;

(e) create derivative works based on the Operation and Maintenance Services, Seller Software, or any of Seller's various trademarks, service marks, trade names, logos, domain names, and other distinctive brand features and designations used in connection with the Charging Equipment (the "***Seller Marks***");

(f) remove, conceal or cover the Seller Marks or any other markings, labels, legends, trademarks, or trade names installed or placed on the Charging Equipment or any peripheral equipment for use in connection therewith;

(g) except as otherwise expressly permitted by the Agreement or in any applicable data sheet relating to the Operation and Maintenance Services, copy, frame or mirror any part of the Operation and Maintenance Services or Seller Software other than copying or framing on Purchaser's own intranets or otherwise solely for Purchaser's own internal business use and purposes;

(h) access Seller networks, or any part of the Operation and Maintenance Services or Seller Software, for any competitive purpose, or for any improper purpose whatsoever, including, without limitation, in order to build a competitive product or service or copy any features, functions, interface, graphics or look and feel;

(i) use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of the Operation and Maintenance Services or Seller Software, or collect information about Seller users for any unauthorized purpose;

- (j) upload, transmit or introduce any malicious code to the Seller Software;
- (k) use any of the Operation and Maintenance Services or Seller Software if Purchaser is a person barred from such use under the laws of any applicable governmental authority of the United States;
- (l) use the Operation and Maintenance Services or Seller Software to upload, post, display, transmit or otherwise make available (i) any inappropriate, defamatory, obscene, or unlawful content; (ii) any content that infringes any patent, trademark, copyright, trade secret or other proprietary right of any party; (iii) any messages, communication or other content that promotes pyramid schemes, chain letters, constitutes disruptive commercial messages or advertisements, or is prohibited by applicable law, or the Agreement; or
- (m) utilize the Operation and Maintenance Services or Seller Software for any other purpose other than Purchaser's internal business purpose.

5.2 Ownership of Content. Seller shall own and hold all right, title and interest in and to the following:

- (a) all data and content collected or maintained by Seller in the operation of the Charging Equipment, use of the Seller Software and the provision of the Operation and Maintenance Services; and
- (b) Seller property, including: the Seller Marks.

VI. CHARGING CONTRACT PRICE

See Exhibit A

VII. INTELLECTUAL PROPERTY

7.1 Acknowledgement of Ownership. All intellectual property rights, including (i) the Seller Software; and (ii) any intellectual property created by Seller for the Agreement relating to software, copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, "*Intellectual Property Rights*") in and to all documents, reports, work product and other materials that are delivered to Purchaser under the Agreement or prepared by or on behalf of Seller in the course of providing the Operation and Maintenance Services or Seller Software (collectively, the "*Deliverables*") shall be owned by Seller.

7.2 License Grant. Subject to and conditioned on Purchaser's compliance with all other terms and conditions of the Agreement, Seller hereby grants to Purchaser a non-exclusive, non-sublicensable, and non-transferable license to use the Intellectual Property Rights in the Deliverables, solely for the purposes of the Agreement, during the Term.

7.3 License Restrictions. Purchaser shall not, and shall not permit any other Person to:

- (a) copy any Intellectual Property Rights in the Deliverables;
- (b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of any Intellectual Property Rights in the Deliverables;
- (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Intellectual Property Rights in the Deliverables to any third party;
- (d) reverse engineer, disassemble, decompile, decode, or adapt the Intellectual Property Rights in the Deliverables, or otherwise attempt to derive or gain access to the source code of any related software, in whole or in part;

(e) bypass or breach any security device or protection used for or contained in any Intellectual Property Rights in the Deliverables;

(f) remove, delete, efface, alter, obscure, translate, combine, supplement, or otherwise change any trademarks, terms, warranties, disclaimers, or proprietary rights or other symbols, notices, marks, or serial numbers on or relating to any copy of Intellectual Property Rights in the Deliverables;

(g) use the Intellectual Property Rights in the Deliverables in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property rights or other right of any Person, or that violates any Applicable Law;

(h) use any Intellectual Property Rights in the Deliverables for purposes of: (i) benchmarking or competitive analysis; (ii) developing, using or providing a competing software product or service; or (iii) any other purpose that is to Seller's detriment or commercial disadvantage;

(i) use any Intellectual Property Rights in the Deliverables in or in connection with the design, construction, maintenance, operation, or use of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of any Intellectual Property Rights in the Deliverables could lead to personal injury or severe physical or property damage; or

(j) use the Intellectual Property Rights in the Deliverables in any manner or for any purpose or application not expressly permitted by the Agreement.

VIII. MISCELLANEOUS

8.1 Definitions.

“*Charging Contract Price*” has the meaning set forth in Section 6.1.

“*Charging Equipment*” means the electric vehicle charging equipment to be purchased by Purchaser as further described in Exhibit B.

“*Charging Equipment Fee*” means the amount set forth in Exhibit A.

“*Charging Facility Area Preparation*” has the meaning set forth in Section 2.1.

“*Deliverables*” has the meaning set forth in Section 7.1.

“*Delivered Power*” means the total quantity of electrical power (alternating current) generated by the Charging Equipment and received by Purchaser at the Delivery Point as measured by Meters at the Delivery Point.

“*Good Industry Practice*” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric power industry, including those that would be followed by a prudent operator of electric vehicle charging equipment similar to the Charging Equipment, or a prudent provider of software similar to the Seller Software, during the relevant time period. Good Industry Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the region and industry.

“*Intellectual Property Rights*” has the meaning set forth in Section 7.1.

“*kW-h*” means kilowatt hour.

“*Local Utility*” means the local electric utility providing electrical service to the Premises.

“Operation and Maintenance Services” has the meaning set forth in Section 1.1.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“Planned Outages” means periods during which the Charging Equipment is taken offline for scheduled maintenance, on those dates determined by Seller and Purchaser pursuant to Section 4.4.

“Seller Marks” has the meaning set forth in Section 5.3(e).

“Seller Software” means any software provided by Seller for use in connection with Seller’ performance under the Agreement, including without limitation the software described in Exhibit B.

“Unplanned Outages” means unexpected periods during which a portion or all of the Charging Equipment is unavailable through no fault of Purchaser, the Premises, the Local Utility or a Force Majeure.

EXHIBIT A

Charging Contract Price and Payment Terms

I. CHARGING CONTRACT PRICE

- A. Charging Services Fees. The cost Charging Operation and Maintenance Services shall be an amount equal to [_____] (\$___) per kW-h, multiplied by the greater of: (x) [_____] kW-h per month, or (y) the Delivered Power.

II. PAYMENT TERMS

- A. Charging Services. Seller shall invoice Purchaser for the Charging Operation and Maintenance Services fee and Purchaser shall pay such invoice in accordance with Section 3(a) of Exhibit 3 of the Agreement.

EXHIBIT B

Charging Equipment Description; Charging Facility Area Preparation Requirements

I. CHARGING EQUIPMENT DESCRIPTION

[To be inserted]

II. OPERATION AND MAINTENANCE SERVICES

[To be inserted]

III. CHARGING FACILITY AREA PREPARATION REQUIREMENTS

Purchaser shall allocate [_____] () parking spaces for the installation of the Charging Equipment and the parking/charging of the electric vehicles. Purchaser shall use best efforts to ensure that the Charging Facility Area spaces shall be contiguous to minimize cable runs and installation costs, and to facilitate maintenance and repair access.

Power Purchase Agreement

This Power Purchase Agreement (this “**Agreement**”) is entered into by the parties listed below (each a “**Party**” and collectively the “**Parties**”) as of the date signed by Seller below (the “**Effective Date**”).

Purchaser:		Seller:	
Name and Address	Purchaser Name [_____] Street Name City, State 00000-000 Attention: Customer Contact	Name and Address	Seller Name [_____] Street Name City, State 00000-0000 Attention: Seller Contact
Phone	()____-____	Phone	()____-____
Fax	None	Fax	()____-____
E-mail	____@_____	E-mail	____@_____
Premises Ownership	Purchaser [] owns [] leases the Premises. List Premises Owner, if different from Purchaser: _____	Additional Seller Information	
Tax Status			
Project Name			

This Agreement sets forth the terms and conditions of the purchase and sale of electricity from the solar panel system and battery energy storage system and charge management services with respect to related electric vehicle charging infrastructure, all as further described in **Exhibit 2** (collectively, the “**System**”) and installed on the real property comprising Purchaser’s premises described or depicted in Schedule A to **Exhibit 2** (the “**Premises**”), including any buildings and other improvements on the Premises other than the System (the “**Improvements**”).

The exhibits listed below are incorporated by reference and made part of this Agreement.

- Exhibit 1** Solar & Storage Pricing
- Exhibit 2** System Description, Delivery Point and Premises; Description of Seller Services
- Exhibit 3** General Terms and Conditions
- Exhibit 4** Charging Addendum
- Exhibit 5** Form of Site Lease Agreement
- Exhibit 6** Form of Purchaser Credit Support
- Exhibit 7** Additional Terms and Conditions

Purchaser: [Purchaser Name]

Seller: [Seller Name]

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Signature: _____
 Printed Name: _____
 Title: _____
 Date: _____

Exhibit 1

Solar & Storage Pricing

1. **Initial Term:** [Twenty (20) years], beginning on the Commercial Operation Date (the “**Initial Term**”).
2. **Additional Terms:** Up to [three (3)] terms of [five (5)] years each beginning on the expiration of the Initial Term (each an “**Additional Term**”).
3. Contract Price:

Contract Year	\$/kWh
1	[\$_____]
2	[\$_____]
3	[\$_____]
4	[\$_____]
5	[\$_____]
6	[\$_____]
7	[\$_____]
8	[\$_____]
9	[\$_____]
10	[\$_____]
11	[\$_____]
12	[\$_____]
13	[\$_____]
14	[\$_____]
15	[\$_____]
16	[\$_____]
17	[\$_____]
18	[\$_____]
19	[\$_____]
20	[\$_____]

The first Contract Year shall commence on the Commercial Operation Date, and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

4. **Energy Storage & Grid Services:** Seller may from time to time utilize the energy storage system portion of the System to provide grid services, demand response and other ancillary services available under any applicable tariff, including with respect to energy arbitrage opportunities under Anaheim Public Utilities’ D-EV-2 Option A tariff. Seller will administer the operation of the System with respect to any such grid services, demand response and other ancillary services and agrees to credit or pay to Purchaser fifty percent (50%) of any revenues that Seller actually receives with respect to such services provided by the energy storage system portion of the System.
5. **Contract Price Assumptions.** The Contract Price is based on the following assumptions:
 - a. [To be inserted]
6. **Contract Price Exclusions.** Unless Seller and Purchaser have agreed otherwise in writing, and except as otherwise provided in Section 2(c) of Exhibit 3, the Contract Price excludes the following:
 - a. [To be inserted]
7. Termination Payment Schedule (Exhibit 3, Section 11(b)):

Contract Year	Termination Payment (\$)
1	[\$_____]
2	[\$_____]
3	[\$_____]
4	[\$_____]
5	[\$_____]

6	[\$_____]
7	[\$_____]
8	[\$_____]
9	[\$_____]
10	[\$_____]
11	[\$_____]
12	[\$_____]
13	[\$_____]
14	[\$_____]
15	[\$_____]
16	[\$_____]
17	[\$_____]
18	[\$_____]
19	[\$_____]
20	[\$_____]

Exhibit 2

**System Description, Delivery Point and
Premises; Description of Seller Services**

1. System Location:
2. Solar System Size (DC kW):
3. Battery Energy Storage System Size (kW/KWh):
4. System Description (Expected Structure, Etc.):
5. **Delivery Point and Premises:** Schedule A to this **Exhibit 2** contains one or more drawings or images depicting:
 - a. Premises, including the Improvements (as applicable);
 - b. Proposed System location;
 - c. Delivery point for electricity generated by the **System** (the “**Delivery Point**”);
 - d. Access points needed for Seller to install and service the System (building. access, electrical room, stairs etc.); and
 - e. Construction assumptions (if any).
6. [Insert description of energy storage services to be provided by Seller]

Schedule A

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Exhibit 3

General Terms and Conditions

1. **Purchase and Sale of Electricity.** Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the electricity generated by the System during the Term (as defined in Section 2(a)). Electricity generated by the System shall be delivered to Purchaser at the Delivery Point. Title to and risk of loss for the electricity generated by the System passes to Purchaser from Seller at the Delivery Point. Purchaser may purchase electricity for the Premises from other sources to the extent Purchaser's electricity consumption requirements at the Premises exceed the output or capacity of the System.
 - a. **Charge Management Services.** Seller shall provide, and Purchaser shall utilize, the charge management services on the terms and conditions set forth in Exhibit 4.

2. **Term and Termination.**
 - a. **Effective Date; Term.** This Agreement is effective as of the Effective Date. The electricity supply period under this Agreement commences on the Commercial Operation Date (as defined in Section 6) and continues for the duration of the Initial Term and any Additional Terms, unless earlier terminated as provided for in this Agreement (collectively, the "Term").
 - b. **Additional Terms.** The Parties may agree in writing to extend this Agreement for one or more Additional Term(s) at a Contract Price to be agreed.
 - c. **Termination Due to Contract Price Adjustments or Lack of Project Viability.** If, at any time after the Effective Date and prior to Commencement of Installation (as defined in Section 5), (i) circumstances arise which have been excluded from Contract Price calculations pursuant to Section 6 of Exhibit 1, or Seller determines that the installation of the System will not be technically or economically viable for any other reason or the creditworthiness of Purchaser or any credit support provided by Purchaser hereunder has an adverse impact on Seller's ability to obtain financing for the System, and (ii) the Parties have negotiated a Contract Price adjustment for thirty (30) days following written notice from Seller without reaching agreement, either Party may terminate this Agreement by providing ten (10) days' prior written notice to the other Party. Neither Party shall be liable for any damages in connection with such termination. After Commencement of Installation, the Contract Price shall not be subject to further adjustment pursuant to Section 6 of Exhibit 1 or otherwise.
 - d. **Termination by Purchaser for Delay.** If Commencement of Installation has not occurred [] days after the Effective Date, Purchaser may terminate this Agreement by providing thirty (30) days' prior written notice to Seller; provided that this Agreement will not terminate pursuant to this Section 2(d) if Seller achieves Commencement of Installation on or before the end of such thirty (30) day notice period. Purchaser shall not be liable for any damages in connection with such termination.

3. **Billing and Payment; Taxes.**
 - a. **Monthly Charges.** Purchaser shall pay Seller monthly for all electricity generated by the System and delivered to the Delivery Point at the \$/kWh rate shown in Exhibit 1 (the "Contract Price"). The monthly payment for such energy will be equal to the applicable \$/kWh rate multiplied by the number of kWh of electricity generated during the applicable month, as measured by the Meter (as defined in Section 11). Additional costs for items differing from the assumptions in Exhibit 1, Item 5 are Purchaser's responsibility.
 - b. **Monthly Invoices.** Seller shall invoice Purchaser monthly. Such monthly invoices shall state (i) the amount of electricity produced by the System and delivered to the Delivery Point, (ii) the rates applicable to, and charges incurred by, Purchaser under this Agreement, (iii) any energy storage and grid services savings under Exhibit 1, Item 4 and (iv) the total amount due from Purchaser.
 - c. **Payment Terms.** All amounts due under this Agreement are due and payable net thirty (30) days following receipt of invoice. Any undisputed portion of the invoice amount not paid within such thirty (30) day period shall accrue interest at the annual rate of two and one-half percent (2.5%) above the Prime Rate (but not to exceed the maximum rate permitted by law). All payments shall be made in U.S. dollars.
 - d. **Taxes.**

- i. **Purchaser's Taxes.** Purchaser is responsible for: (1) payment of, or reimbursement of Seller, for all taxes assessed on the generation, sale, delivery or consumption of electricity produced by the System or the interconnection of the System to the utility's electricity distribution system; and (2) real property taxes.
- ii. **Seller's Taxes.** Seller is responsible for: (1) payment of income taxes or similar taxes imposed on Seller's revenues due to the sale of electricity under this Agreement; and (2) personal property taxes imposed on the System ("**Seller's Taxes**").

4. **RECs and Incentives.** Seller is entitled to the benefit of, and will retain all ownership interests in the Incentives, and Purchaser is entitled to the benefit of, and will retain ownership interests in the RECs and the Low Carbon Fuel Standard ("LCFS") credits under a cap-and-trade program administered by the California Air and Resources Board. Each Party shall cooperate with the other Party in obtaining, securing and transferring any and all RECs and Incentives to which such Party is entitled to receive under this Agreement. Neither Party is obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by the other Party. Neither Party shall not make any filing or statements inconsistent with the other Party's ownership interests in the RECs and Incentives to which such Party is entitled to receive under this Agreement. If any RECs or Incentives to which a Party is entitled to receive under this Agreement are paid or delivered directly to the other Party, the other Party shall immediately pay or deliver such items or amounts to the Party which is entitled to receive such RECs or Incentives under this Agreement.

"**Governmental Authority**" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority having jurisdiction or effective control over a Party. For all purposes of this Agreement, Governmental Authority shall exclude Purchaser and the City of Anaheim (and any agency, court, commission, department, board, or other governmental subdivision thereof).

"**Incentives**" means (i) a payment paid by a utility or state or local Governmental Authority based in whole or in part on the cost or size of the System such as a rebate, (ii) a performance-based incentive paid as a stream of periodic payments by a utility, state or Governmental Authority based on the production of the System, (iii) investment tax credits, production tax credits, and similar tax credits, grants or other tax benefits under federal, state or local law, and (iv) any other attributes, commodity, revenue stream or payment in connection with the System (such as ancillary or capacity revenue), in each case of (i) through (iv) relating to the construction, ownership, use or production of energy from the System, provided that Incentives shall not include RECs.

"**REC**" means a renewable energy credit or certificate under any state renewable portfolio, standard or federal renewable energy standard, voluntary renewable energy credit certified by a non-governmental organization, pollution allowance, carbon credit and any similar environmental allowance or credit and green tag or other reporting right under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program, in each case relating to the construction, ownership, use or production of energy from the System, provided that RECs shall not include Incentives.

5. **Project Completion.**

- a. **Project Development.** Seller shall diligently pursue the development and installation of the System, subject to Section 2(c), Section 11 and the remaining provisions of this Section 5.
- b. **Permits and Approvals.** Seller shall use commercially reasonable efforts to obtain the following at its sole cost and expense (each an "**Approval**"):
 - i. any zoning, land use and building permits required for Seller to construct, install and operate the System; and
 - ii. any agreements and approvals from the utility necessary in order to interconnect the System to the utility's electric distribution system.

Purchaser shall cooperate with Seller's reasonable requests to assist Seller in obtaining such Approvals, including, without limitation the execution of documents required to be provided by Purchaser to the local utility.

- c. **Commencement of Installation.** Seller shall exercise commercially reasonable efforts to achieve Commencement of Installation of the System within [] days after the Effective Date. "**Commencement of Installation**" means the date that Seller or its installation contractor has begun physical installation of the System on the Premises.

d. **Force Majeure.**

- i. **Force Majeure Event.** If either Party is unable to timely perform any of its obligations (other than payment obligations) under this Agreement in whole or in part due to a Force Majeure Event, that Party will be excused from performing such obligations for the duration of the time that such Party remains affected by the Force Majeure Event; provided, that such Party uses commercially reasonable efforts to mitigate the impact of the Force Majeure Event and resumes performance of its affected obligations as soon as reasonably practical. The Party affected by the Force Majeure Event shall notify the other Party as soon as reasonably practical after the affected Party becomes aware that it is or will be affected by a Force Majeure Event. If the Force Majeure Event occurs during the Term and impacts the ability of the System to deliver electricity to the Delivery Point, the Term will be extended day for day for each day delivery is suspended due to the Force Majeure Event.
 - ii. **Extended Force Majeure.** If a Force Majeure Event notified by either Party under paragraph (i) above continues for a consecutive period of one hundred eighty (180) days or more within a twelve (12) month period, then either Party may terminate this Agreement without either Party having further liability under this Agreement except: (a) liabilities accrued prior to termination, (b) Seller shall remove the System as required under Section 9 (but Purchaser shall reimburse Seller for Seller's removal costs if the Force Majeure Event affects Purchaser and Purchaser elects to terminate the Agreement) and (b) if Purchaser elects to terminate the Agreement in accordance with this Section, Purchaser shall pay the applicable Termination Payment. Notwithstanding the foregoing, if the Force Majeure Event can be corrected through repair or restoration of the System or other actions by Seller and, prior to expiration of the initial one hundred eighty (180)-day period, Seller provides written evidence to Purchaser that it is diligently pursuing such actions, then Purchaser shall not have the right to terminate this Agreement so long as Seller continues to diligently pursue such actions.
 - iii. **"Force Majeure Event"** means any event or circumstance beyond the reasonable control of and without the fault or negligence of Seller, including, without limitation, failure or interruption of the production, delivery or acceptance of electricity due to: an act of god; war (declared or undeclared); sabotage; piracy; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; pandemic, epidemic, plague; quarantine; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; animals; the binding order of any Governmental Authority; the failure to act on the part of any Governmental Authority (including, without limitation delays in permitting not caused by actions or omissions of the Party seeking such permit); unavailability of electricity from the utility grid; and failure or unavailability of equipment, supplies or products outside of Seller's control or due to a Force Majeure Event. The term **"Force Majeure Event"** shall not include (A) change in financial condition, (B) lack of money, or (C) changes in market conditions.
- e. **Extension of Time.** If Seller is delayed in achieving Commencement of Installation due to a Force Majeure Event, delays of the local utility or any Purchaser delay, the time for achievement of Commencement of Installation will be automatically extended to account for the impact of the delay.
- f. **Commercial Operation.** Seller shall notify Purchaser in writing when it has achieved Commercial Operation (the date of such notice, the **"Commercial Operation Date"**). **"Commercial Operation"** means that the System is mechanically complete, capable of providing electricity to the Delivery Point at the nameplate capacity specified in Exhibit 2 and has permission to operate from the relevant Governmental Authority and Seller is able to perform the other services with respect to the System described in Exhibit 2. Seller shall provide Purchaser with documentation to evidence that the System is ready to begin Commercial Operation upon Purchaser's reasonable request.

6. **Installation, Operation and Maintenance.**

- a. **Seller's General Obligations Regarding the System.** Subject to the terms and conditions of this Agreement, Seller shall design, engineer, install, commission, monitor, operate and maintain the System, in each case in a good and workmanlike manner, materially in accordance with the description set forth in Exhibit 2, and in accordance with applicable law and prudent solar, battery energy storage and electric vehicle charging industry practices, as applicable, in the state in which the Premises are located. The System shall comply with all applicable rules, regulation and local building codes.
- b. **System Design Approval.** Seller shall provide Purchaser with a copy of the System design for approval prior to commencement of construction. Purchaser shall have ten (10) days after receipt to approve or disapprove the design.

Failure by Purchaser to respond within such ten (10) day period shall be deemed approval of the design. If Purchaser disapproves the design, Seller shall modify the design and resubmit it for Purchaser's approval. If the System design modifications requested by Purchaser render the System non-viable, Seller may terminate this Agreement under Section 2(c) above.

- c. **System Repair and Maintenance.** Seller may suspend delivery of electricity from the System to the Delivery Point for the purpose of maintaining and repairing the System; provided that Seller shall use commercially reasonable efforts to (i) minimize any interruption in service to the Purchaser, and (ii) limit any such suspension of service to weekend or off-peak hours. Scheduled and unscheduled maintenance and repairs shall be undertaken at Seller's sole cost and expense, except that Purchaser shall reimburse Seller for the reasonable cost of any repairs or maintenance resulting from damage caused by Purchaser, its agents, employees or contractors.
- d. **Outages.** Upon Purchaser's written request, Seller shall take the System off-line for a total of [_____] () hours during each Contract Year (each event an "**Outage**" and the [_____] () hour period the "**Outage Allowance**"). The Outage Allowance includes all Outage hours undertaken by Seller for maintenance or repairs for which Purchaser is responsible pursuant to Section 6(b) or requested by Purchaser under this Section 6(d) (other than due to the fault or negligence of Seller). Purchaser's request shall be delivered at least forty-eight (48) hours in advance. Purchaser is not obligated to accept or pay for electricity from the System for Outages up to the annual Outage Allowance. If the aggregate hours for Outages exceed the Outage Allowance in a given Contract Year, Seller shall reasonably estimate the amount of electricity that would have been delivered to Purchaser during such excess Outages and Purchaser shall pay Seller for such amount in accordance with this Agreement.
- e. **Maintenance of Premises.** Purchaser shall, at its sole cost and expense, maintain the Premises and Improvements in good condition and repair. Purchaser, to the extent within its reasonable control, (i) shall ensure that the Premises remains interconnected to the local utility grid at all times; and (ii) shall not permit cessation of electric service to the Premises from the local utility. Purchaser is fully responsible for, and shall properly maintain in full working order and good repair, the electrical infrastructure on the Purchaser's side of the Delivery Point, including all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall use commercially reasonable efforts to cooperate with Seller to comply with any technical standard of the utility providing electrical power to the Purchaser, and does not need to receive permission to operate from the utility.
- f. **No Alteration of Premises.** Not less than thirty (30) days prior to making any alterations or repairs to the Premises (except for emergency repairs) or any Improvement which may adversely affect the operation and maintenance of the System, Purchaser shall inform Seller in writing and, thereafter, shall use commercially reasonable efforts to conduct such repairs, alterations or Improvements in compliance with any reasonable request made by Seller within ten (10) days after having received such written request to mitigate any adverse effect. If any repair, alteration or Improvement result in a permanent and material adverse economic impact on the System, Purchaser may request relocation of the System under Section 8 hereof. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, Seller shall perform such work, and any re-connection or re-installation of the System, at Purchaser's cost, subject to Sections 6(b) and 6(c). Seller shall make any alterations and repairs in a good and workmanlike manner, in compliance with all applicable laws, codes and permits.
- g. **Records Retention.** Seller will retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to this Agreement, including, but not limited to, data, documents, reports, statistics, sub-agreements, leases, subcontracts, arrangements, other third party agreements of any type, and supporting materials related to those records. Seller agrees to comply with the record retention requirements in accordance with 2 C.F.R. § 200.333. Seller shall maintain all books, records, accounts and reports required under this Agreement for a period of at not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case records shall be maintained until the disposition of all such litigation, appeals, claims or exceptions related thereto. Seller agrees to provide sufficient access to Purchaser and its contractors to inspect and audit records and information related to performance of this Agreement as reasonably may be required. Seller agrees to permit Purchaser and its contractors access to the Premises as reasonably may be required in connection with this Section 6(g).

7. **Miscellaneous Rights and Obligations of the Parties.**

- a. **Lease to Area; Facility Access Rights.** The parties acknowledge that pursuant to a separate lease agreement (the "**Site Lease Agreement**"), Seller has leased area of the Premises and granted or is concurrently granting to Seller and to Seller's approved agents, employees, contractors and assignees an irrevocable non-exclusive license running with the Premises (the "**License**") for access to, on, over, under and across the Premises for, among others, the purposes of

(i) installing, constructing, operating, owning, maintaining, accessing, removing and replacing the System; (ii) performing all of Seller's obligations and enforcing all of Seller's rights set forth in this Agreement; and (iii) installing, using and maintaining electric lines and equipment, including inverters and meters necessary to interconnect the System to Purchaser's electric system at the Improvements, to the Utility's electric distribution system, if any, or for any other purpose that may from time to time be useful or necessary in connection with the construction, installation, operation, maintenance or repair of the System. Purchaser hereby confirms the grant of the License. Without limiting or otherwise affecting the terms of the Site Lease Agreement, Seller and Purchaser hereby confirms the following with respect to the License: (A) Seller shall notify Purchaser prior to entering the Facility except in situations where there is imminent risk of damage to persons or property in which case, Seller shall provide Purchaser with reasonable notification by telephone, email or other electronic means before entering onto the Facility if possible or as soon as possible thereafter if advance notice is not reasonable; (B) the term of the License shall continue until the date that is one hundred and eighty (180) days following the date of expiration or termination of this Agreement (the "**License Term**"); (C) during the License Term, Purchaser shall ensure that Seller's rights under the License and Seller's access to the Premises and the Improvements are preserved and protected, and Purchaser shall not interfere with nor shall permit any third parties to interfere with such rights or access; and (D) without limiting Purchaser's rights under this Agreement in the case of a Default Event by Seller, Seller shall have quiet and peaceful possession and enjoyment of the licensed portion of the Premises, including access rights, free from any claim, disturbance or interference from or by Purchaser or any person or entity claiming through or under it, or any other entity or person that has superior rights or title to the Premises, including any mortgagee or encumbrancer of Purchaser's (or its landlords') interests in the Premises. The grant of the License shall survive termination of this Agreement by either Party, subject to the below provision. Seller may, at its sole cost and expense, record the Site Lease Agreement or a memorandum thereof, which memorandum Seller may prepare consistent with the terms and conditions of the Site Lease Agreement in the appropriate land registry or recorder's office. In addition, Purchaser and Seller shall execute a termination of the Site Lease Agreement, in recordable form, which shall be duly recorded upon the earlier of (i) the complete removal of the System in accordance with the terms of this Agreement following expiration or termination hereof or (ii) upon mutual agreement of the Parties. Seller shall not unreasonably interfere with the operation of Purchaser's business conducted in the Facility.

- b. OSHA Compliance.** Each Party shall comply with all Occupational Safety and Health Act (OSHA) requirements and other similar applicable safety laws and codes with respect to such Party's performance under this Agreement.
- c. Safeguarding the Premises.** Purchaser shall maintain the physical security of the Premises and Improvements in a manner to be expected of a reasonable and prudent owner or lessee of premises and improvements similar to the Premises and Improvements in nature and location. Purchaser shall not conduct or permit activities on, in or about the Premises or the Improvements that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Purchaser shall indemnify Seller for any loss or damage to the System to the extent caused by or arising out of (i) Purchaser's breach of its obligations under this Section or (ii) the acts or omissions of Purchaser or its employees, agents, invitees or separate contractors.
- d. Insolation.** Purchaser acknowledges that unobstructed access to sunlight ("**Insolation**") is essential to Seller's performance of its obligations and a material term of this Agreement. Purchaser shall not, to the extent within its reasonable control, cause or permit any interference with the System's Insolation, and shall ensure that vegetation on the Premises adjacent to the System is regularly pruned or otherwise maintained to prevent interference with the System's Insolation. If Purchaser discovers any activity or condition that could diminish the Insolation of the System, Purchaser shall immediately notify Seller and cooperate with Seller in preserving and restoring the System's Insolation levels as they existed on the Effective Date.
- e. Use and Payment of Contractors and Subcontractors.** Seller shall use suitably qualified, experienced and licensed contractors and subcontractors to perform its obligations under this Agreement. However, Seller shall be responsible for the quality of the work performed by its contractors and subcontractors. Seller shall pay when due all valid charges from all contractors, subcontractors and suppliers supplying goods or services to Seller under this Agreement.
- f. Liens.**
- i. Lien Obligations.** Purchaser shall not directly or indirectly cause, create, incur, assume or allow to exist any mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature, except such encumbrances as may be required to allow Seller access to the Premises, (each a "**Lien**") on or with respect to the System. Seller shall not directly or indirectly cause, create, incur, assume or allow to exist any Lien on or with respect to the Premises or the Improvements, other than those Liens which Seller is permitted by law to place on the Premises due to non-payment by Purchaser of amounts due under this Agreement. Each Party shall

immediately notify the other Party in writing of the existence of any such Lien following discovery of same, and shall promptly (and in all events within thirty (30) days) cause the same to be discharged and released of record without cost to the other Party; provided, however, that each indemnifying Party has the right to contest any such Lien, so long as it provides a statutory bond or other reasonable assurances of payment that either removes such Lien from title to the affected property, or that assures that any adverse judgment with respect to such Lien shall be paid without affecting title to such property.

- ii. **Lien Indemnity**. Each Party shall indemnify the other Party from and against all claims, losses, damages, liabilities and expenses resulting from any Liens filed against such other Party's property as a result of the indemnifying Party's breach of its obligations under Section 7(f)(i).

8. **Relocation of System**.

If, during the Term, Purchaser ceases to conduct business operations at the Premises or vacates the Premises; the Premises have been destroyed; or the Purchaser is otherwise unable to continue to host the System or accept the electricity delivered by the System for any other reason (other than a Default Event by Seller), Purchaser may propose in writing the relocation of the System, at Purchaser's cost, in lieu of termination of the Agreement by Seller for a Default Event by Purchaser. If such proposal is practically feasible and preserves the economic value of the agreement for Seller, the Parties shall seek to negotiate in good faith an agreement for the relocation of the System. If the Parties are unable to reach agreement on relocation of the System within sixty (60) days after the date of receipt of Purchaser's proposal, Seller may terminate this Agreement pursuant to Section 11(b)(ii).

9. **Removal of System upon Termination or Expiration**.

Upon the expiration or earlier termination of this Agreement (provided Purchaser does not exercise its purchase option under Section 14(b)), Seller shall, at its expense (unless expressly provided otherwise in this Agreement), remove all of the tangible property comprising the System from the Premises with a targeted completion date that is no later than ninety (90) days after the expiration of the Term. The portion of the Premises where the System is located shall be returned to substantially its original condition (excluding ordinary wear and tear), including the removal of System mounting pads or other support structures, and repair and restoration of the roof and the roof membrane. If the System is installed on the roof of an Improvement, Seller's warranties under Section 12(c)(i) shall apply, as applicable. Purchaser must provide sufficient access, space and cooperation as reasonably necessary to facilitate System removal. If Seller fails to remove or commence substantial efforts to remove the System by such agreed upon date, Purchaser may, at its option, to remove the System to a public warehouse and restore the Premises to its original condition (other than ordinary wear and tear) at Seller's cost.

10. **Measurement**.

- a. **Meter**. The System's electricity output during the Term shall be measured by Seller's meter, which shall be a revenue grade meter that meets ANSI-C12.20 standards for accuracy (the "**Meter**"). Purchaser shall have access to the metered energy output data via the [] monitoring system installed and maintained by Seller as part of the System.
- b. **Meter Calibration**. Seller shall calibrate the Meter in accordance with manufacturer's recommendations. Notwithstanding the foregoing, Purchaser may install, or cause to be installed, its own revenue-grade meter at the same location as the Meter. If there is a discrepancy between the data from Purchaser's meter and the data from the Meter of greater than two percent (2%) over the course of a Contract Year, then Purchaser may request that Seller calibrate the Meter at Purchaser's cost.

11. **Default, Remedies and Damages**.

- a. **Default**. Any Party that fails to perform its responsibilities as listed below or experiences any of the circumstances listed below is deemed a "**Defaulting Party**", the other Party is the "**Non-Defaulting Party**" and each of the following is a "**Default Event**":
 - i. failure of a Party to pay any amount due and payable under this Agreement, other than an amount that is subject to a good faith dispute, within ten (10) days following receipt of written notice from the Non-Defaulting Party of such failure to pay ("**Payment Default**");
 - ii. failure of a Party to perform any material obligation under this Agreement not addressed elsewhere in this Section

- 11(a) within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure; provided, that if the Default Event cannot reasonably be cured within thirty (30) days and the Defaulting Party has demonstrated prior to the end of that period that it is diligently pursuing such cure, the cure period will be extended for a further reasonable period of time, not to exceed ninety (90) days;
- iii. any representation or warranty given by a Party under this Agreement was incorrect in any material respect when made and is not cured within thirty (30) days following receipt of written notice from the Non-Defaulting Party demanding such cure;
 - iv. a Party becomes insolvent or is a party to a bankruptcy, reorganization, insolvency, liquidation, receivership, dissolution, winding-up or relief of debtors, or any general assignment for the benefit of creditors or other similar arrangement or any event occurs or proceedings are taken in any jurisdiction with respect to the Party which has a similar effect (or, if any such actions are initiated by a third party, such action(s) is(are) not dismissed within sixty (60) days); or,
 - v. in the case of Purchaser as the Defaulting Party only, Purchaser (A) loses its rights to occupy and enjoy the Premises, unless (I) the Parties agree upon a relocation under Section 8 above, or (II) Purchaser pays the Termination Payment determined under Section 7 of **Exhibit 1** within thirty (30) days after written request by Seller; or (B) prevents Seller from performing any material obligation under this Agreement unless such action by Purchaser is (I) is permitted under this Agreement, or (II) is cured within ten (10) days after written notice thereof from Seller.

b. Remedies.

- i. **Suspension.** Upon the occurrence and during the continuation of a Default Event by Purchaser, including a Payment Default, Seller may suspend performance of its obligations under this Agreement until the earlier to occur of the date (a) that Purchaser cures the Default Event in full, or (b) of termination of this Agreement. Seller's rights under this Section 11(b)(i) are in addition to any other remedies available to it under this Agreement, at law or in equity.
- ii. **Termination.** Upon the occurrence and during the continuation of a Default Event, the Non-Defaulting Party may terminate this Agreement, by providing five (5) days prior written notice to the Defaulting Party; provided, that, in the case of a Default Event under Section 11(a)(iv), the Non-Defaulting Party may terminate this Agreement immediately.
- iii. **Damages Upon Termination by Default.** Upon a termination of this Agreement pursuant to Section 11(b)(ii), the Defaulting Party shall pay a termination payment to the Non-Defaulting Party determined as follows (the "Termination Payment"):
 - (1) **Termination by Seller.** If Seller terminates this Agreement for a Default Event by Purchaser, the Termination Payment payable to Seller shall be equal to the sum of (i) the applicable amount set forth in the Termination Payment Schedule set forth as Item 7 of **Exhibit 1**, and (ii) any other amounts previously accrued under this Agreement and then owned by Purchaser to Seller.
 - (2) **Termination by Purchaser.** If Seller is the Defaulting Party and Purchaser terminates this Agreement, the Termination Payment to Purchaser will be equal to the sum of (i) the present value of the excess, if any, of the reasonably expected cost of electricity from the utility over the Contract Price for the reasonably expected production of the System for the remainder of the Initial Term or the then current Additional Term, as applicable; (ii) all direct costs reasonably incurred by Purchaser by reason of the termination; and (iii) any and all other amounts previously accrued under this Agreement and then owed by Seller to Purchaser. The Termination Payment determined under this Section 11(b)(iii)(2) cannot be less than zero.
- iv. **Liquidated Damages.** The Parties agree that, if Seller terminates this Agreement prior to the expiration of the Term pursuant to Section 11(b)(ii), actual damages would be difficult to ascertain, and the Termination Payment determined in accordance with Section 11(b)(iii)(1) is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement and is not a penalty.

- c. Obligations Following Termination.** If a Party terminates this Agreement pursuant to Section 11(b)(ii), then following such termination, Seller shall remove the equipment constituting the System in compliance with Section 9 above at the sole cost and expense of the Defaulting Party, *provided, however* that Seller shall not be required to

remove the System following the occurrence of a Default Event by Purchaser pursuant to Section 11(a)(i), unless Purchaser pre-pays the cost of restoration reasonably estimated by Seller.

- i. **Reservation of Rights.** Except in the case of a termination under Section 11(b)(ii) and payment of a Termination Payment, if any, determined pursuant to Section 11(b)(ii), nothing in this Section 11 limits either Party's right to pursue any remedy under this Agreement, at law or in equity, including with respect to the pursuit of an action for damages by reason of a breach or Default Event under this Agreement.
- ii. **Mitigation Obligation.** Regardless of whether this Agreement is terminated for a Default Event, the Non-Defaulting Party must make commercially reasonable efforts to mitigate its damages as the result of such Default Event; provided that such obligation shall not reduce Purchaser's obligation to pay the full Termination Payment set forth in Section 7 of **Exhibit 1** following a Default Event by Purchaser.
- iii. **No Limitation on Payments.** Nothing in this Section 11 excuses a Party's obligation to make any payment when due under this Agreement, including with respect to payments for electricity that would have been delivered to Purchaser but for a Purchaser breach or Default Event.

12. **Representations and Warranties.**

a. **General Representations and Warranties.** Each Party represents and warrants to the other the following:

- i. Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; the execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not and will not violate any law; and this Agreement is the valid obligation of such Party, enforceable against such Party in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws now or hereafter in effect relating to creditors' rights generally).
- ii. Such Party has obtained all licenses, authorizations, consents and approvals required by any Governmental Authority or other third party and necessary for such Party to own its assets, carry on its business and to execute and deliver this Agreement; and such Party is in compliance with all laws that relate to this Agreement in all material respects.

b. **Purchaser's Representations and Warranties.** Purchaser represents and warrants to Seller the following:

- i. **Licenses.** (a) Purchaser has title to or a leasehold or other valid property interest in the Premises such that Purchaser has the full right, power and authority to grant the License in the Site Lease Agreement and Section 7(a), (b) such grant of the License does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Premises and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Premises, and (c) if Purchaser does not own the Premises or any Improvement on which the System is to be installed, Purchaser has obtained all required consents from the owner of the Premises and/or Improvements, as the case may be, to grant the License to Seller so that Seller may perform its obligations under this Agreement.
- ii. **Other Agreements.** Neither the execution and delivery of this Agreement by Purchaser nor the performance by Purchaser of any of its obligations under this Agreement conflicts with or will result in a breach or default under any agreement or obligation to which Purchaser is a party or by which Purchaser is bound.
- iii. **Accuracy of Information.** All information provided by Purchaser to Seller, as it pertains to (a) the Premises, (b) the Improvements on which the System is to be installed, if applicable, (c) Purchaser's planned use of the Premises and any applicable Improvements, and (d) Purchaser's estimated electricity requirements, is accurate in all material respects.
- iv. **Purchaser Status.** Purchaser is not a public utility or a public utility holding company and is not subject to regulation as a public utility or a public utility holding company.

v. **Limit on Use.** No portion of the electricity generated by the System shall be used to heat a swimming pool.¹

c. **Seller's Warranties.**

- i. If Seller penetrates the roof of any Improvement on which the System is installed, during System installation or any System repair, Seller shall warrant roof damage it causes as a direct result of these roof penetrations. This roof warranty shall terminate upon the later of (a) one (1) year following the completion of the System installation or repair, as the case may be, and (b) the length of any then-effective installer warranty on the applicable roof.
- ii. If Seller damages any other part of the Premises or any Improvement (including roof damages not covered under Section 12(c)(i) above), Seller shall repair or reimburse Purchaser for such damage, as agreed by the Parties.

d. **NO OTHER WARRANTY.** THE WARRANTIES SET FORTH IN SECTIONS 12(a) AND 12(c) OF THIS AGREEMENT ARE PURCHASER'S SOLE AND EXCLUSIVE BASIS FOR ANY CLAIM OR LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS SECTION 12, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. OTHER THAN AS EXPRESSLY SET FORTH IN SECTIONS 12(a) AND 12(c), NO WARRANTY, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, APPLIES UNDER THIS AGREEMENT.

13. **Insurance.**

a. **Insurance Coverage.** At all times during the Term, the Parties shall maintain the following insurance, as applicable:

- i. **Seller's Insurance.** Seller shall maintain or ensure the following is maintained (a) property insurance on the System for the replacement cost thereof, (b) commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (c) employer's liability insurance with coverage of at least \$1,000,000 and (iv) workers' compensation insurance as required by law. Seller's coverage may be provided as part of an enterprise insurance program.
- ii. **Purchaser's Insurance.** Purchaser shall maintain commercial general liability insurance with coverage of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

b. **Policy Provisions.** Each Party's insurance policies shall (i) contain a provision whereby the insurer agrees to give the other Party at least thirty (30) days (ten (10) days for non-payment of premiums) written notice before the insurance is cancelled, or terminated, (ii) be written on an occurrence basis, and (iii) be maintained with companies either rated no less than A-VII as to Policy Holder's Rating in the current edition of A.M. Best's Insurance Guide or otherwise reasonably acceptable to the other Party.

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

d. **Deductibles.** Each Party shall pay its own insurance deductibles, except in the case of claims (i) resulting from a breach of this Agreement, in which case the breaching Party is responsible for payment of the non-breaching Party's deductible for any responding insurance, and (ii) covered by an indemnity set forth in this Agreement.

14. **Ownership; Option to Purchase.**

a. **Ownership of System.**

¹ This limitation reflects the requirements to qualify for the Federal Energy Tax Credit under §48 of the Internal Revenue Code. Individual states or localities may have further restrictions on the use of electricity from the System. Purchasers and Sellers are encouraged to consult local law to ensure that no such restrictions are being violated.

- i. **Ownership; Personal Property.** Throughout the Term, Seller shall be the legal and beneficial owner of the System, and any RECs and Incentives which it is entitled to receive under Section 4, and the System will remain the personal property of Seller and will not attach to or be deemed a part of, or fixture to, the Premises or any Improvement on which the System is installed. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports shall be filed in a manner consistent with this Agreement. The System will at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code.
- ii. **Notice to Purchaser Lienholders.** Purchaser shall use commercially reasonable efforts to place all parties having a Lien on the Premises or any Improvement on which the System is installed on notice of the ownership of the System and the legal status or classification of the System as personal property. If any mortgage or fixture filing against the Premises could reasonably be construed as prospectively attaching to the System as a fixture of the Premises, Purchaser shall provide a disclaimer or release from such lienholder.
- iii. **Fixture Disclaimer.** If Purchaser is the fee owner of the Premises, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction where the Premises are located. If Purchaser is not the fee owner, Purchaser shall obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller has the right to file such disclaimer.
- iv. **SNDA.** Upon request, Purchaser shall deliver to Seller a subordination and non-disturbance agreement in a form mutually acceptable to Seller and the provider of the subordination and non-disturbance agreement from the owner of the Premises (if the Premises are leased by Purchaser), any mortgagee with a Lien on the Premises, and other Persons holding a similar interest in the Premises.
- v. **Eviction Notice.** To the extent that Purchaser does not own the Premises or any Improvement on which the System is installed, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Premises or applicable Improvement or termination of Purchaser's lease of the Premises and/or Improvement.

b. Option to Purchase.

- i. **Exercise of Option.** At the end of the sixth (6th) and tenth (10th) Contract Years and at the end of the Initial Term and each Additional Term, so long as Purchaser is not in default under this Agreement, Purchaser may purchase the System from Seller on any such date for a purchase price equal to the greater of the Fair Market Value of the System or the Termination Payment set forth in Section 7 of **Exhibit 1** applicable as of the date of the transfer of title to the System. Purchaser shall notify Seller of its intent to purchase at least ninety (90) days and not more than one hundred eighty (180) days prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable, and the purchase shall be completed prior to the end of the applicable Contract Year or the Initial Term or Additional Term, as applicable.
- ii. **Fair Market Value.** The "**Fair Market Value**" of the System shall be determined by mutual agreement of the Parties; provided, however, if the Parties cannot agree to a Fair Market Value within thirty (30) days after Purchaser has delivered to Seller a notice of its intent to purchase the System, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic, battery energy storage and electric vehicle charging infrastructure industry to determine the Fair Market Value of the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the System on an installed basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.
- iii. **Title Transfer; Warranties; Manuals.** Seller shall transfer good title to the System to Purchaser upon Seller's receipt of the purchase price and execution by the Parties of a written instrument or agreement to effect such transfer. The System will be sold "as is, where is, with all faults". Seller will assign to Purchaser any manufacturer's warranties that are in effect as of the date of purchase and which are then assignable pursuant to their terms, but Seller otherwise disclaims all warranties of any kind, express or implied, concerning the System (other than as to title). Seller shall also provide Purchaser all System operation and maintenance manuals and logs in Seller's possession and provide Purchaser basic training on the operation and maintenance of the System upon Purchaser's reasonable request. Upon purchase of the System, Purchaser shall assume complete

responsibility for the operation and maintenance of the System and liability for the performance of (and risk of loss for) the System, and, except for any Seller obligations that survive termination under Section 19(d), Seller will have no further liabilities or obligations hereunder for the System.

15. Indemnification and Limitations of Liability.

- a. **General.** Each Party (the “**Indemnifying Party**”) shall defend, indemnify and hold harmless the other Party, its affiliates and the other Party’s and its affiliates’ respective directors, officers, shareholders, partners, members, agents and employees (collectively, the “**Indemnified Parties**”), from and against any loss, damage, expense, liability and other claims, including court costs and reasonable attorneys’ fees (collectively, “**Liabilities**”) resulting from (1) any Claim (as defined in Section 15(b) relating to the Indemnifying Party’s breach of any representation or warranty set forth in Section 12 and (2) injury to or death of persons, and damage to or loss of property to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, the Indemnifying Party (or its contractors, agents or employees) in connection with this Agreement; provided, however, that nothing herein will require the Indemnifying Party to indemnify the Indemnified Parties for any Liabilities to the extent caused by or arising out of the negligent acts or omissions of, or the willful misconduct of, an Indemnified Party. This Section 15(a) does not apply to Liabilities arising out of or relating to any form of Hazardous Substances or other environmental contamination, such matters being addressed exclusively by Section 15(c).
- b. **Notice and Participation in Third Party Claims.** The Indemnified Party shall give the Indemnifying Party written notice with respect to any Liability asserted by a third party (a “**Claim**”), as soon as possible upon the receipt of information of any possible Claim or of the commencement of such Claim. The Indemnifying Party may assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. The Indemnified Party may, however, select separate counsel if both Parties are defendants in the Claim and such defense or other form of participation is not reasonably available to the Indemnifying Party. The Indemnifying Party shall pay the reasonable attorneys’ fees incurred by such separate counsel until such time as the need for separate counsel expires. The Indemnified Party may also, at the sole cost and expense of the Indemnifying Party, assume the defense of any Claim if the Indemnifying Party fails to assume the defense of the Claim within a reasonable time. Neither Party may settle any Claim covered by this Section 15(b) unless it has obtained the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Indemnifying Party has no liability under this Section 15(b) for any Claim for which such notice is not provided if the failure to give notice prejudices the Indemnifying Party.
- c. **Environmental Indemnification.**
- i. **Seller Indemnity.** Seller shall indemnify, defend and hold harmless all of Purchaser’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance (as defined in Section 15(c)(iv)) to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- ii. **Purchaser Indemnity.** Purchaser shall indemnify, defend and hold harmless all of Seller’s Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Premises of any Hazardous Substance, except to the extent deposited, spilled or otherwise caused by Seller or any of its contractors, agents or employees.
- iii. **Notice.** Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Premises generally or any deposit, spill or release of any Hazardous Substance. “**Hazardous Substance**” means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollution,” “pollutants,” “regulated substances,” or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.
- d. **Limitations on Liability.**

- i. **No Consequential Damages.** Except with respect to indemnification of third-party claims pursuant to Section 16, neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers will be liable for any indirect, special, incidental, exemplary, or consequential loss or damage of any nature (including, without limitation, lost revenues, lost profits, lost business opportunity or any business interruption) arising out of their performance or non-performance hereunder even if advised of such. Notwithstanding the previous sentence, the Termination Payment set forth in Section 7 of **Exhibit 1** shall be deemed to be direct, and not indirect or consequential damages for purpose of this Section 15(d)(i)
- ii. **Actual Damages.** Except with respect to indemnification of Claims pursuant to this Section 15, and except as otherwise limited in Section 13(c), Seller's aggregate liability under this Agreement arising out of or in connection with the performance or non-performance of this Agreement cannot exceed the total payments made (and, as applicable, projected to be made) by Purchaser under this Agreement. The provisions of this Section 15(d)(ii) will apply whether such liability arises in contract, tort, strict liability or otherwise.
- e. **EXCLUSIVE REMEDIES.** TO THE EXTENT THAT THIS AGREEMENT SETS FORTH SPECIFIC REMEDIES FOR ANY CLAIM OR LIABILITY, SUCH REMEDIES ARE THE AFFECTED PARTY'S SOLE AND EXCLUSIVE REMEDIES FOR SUCH CLAIM OR LIABILITY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.
- f. **Comparative Negligence.** Where negligence is determined to have been joint, contributory or concurrent, each Party shall bear the proportionate cost of any Liability.

16. Change in Law.

- a. **Impacts of Change in Law.** If Seller determines that a Change in Law has occurred or will occur that has or will have a material adverse effect on Seller's rights, entitlement, obligations or costs under this Agreement, then Seller may so notify the Purchaser in writing of such Change in Law. Within thirty (30) days following receipt by the Purchaser of such notice, the Parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both Parties. If the Parties are unable to agree upon such amendments within such thirty (30) day period, then Seller may terminate this Agreement and remove the System and restore the Premises in accordance with Section 9 without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- b. **Illegality or Impossibility.** If a Change in Law renders this Agreement, or Seller's performance of this Agreement, either illegal or impossible, then Seller may terminate this Agreement immediately upon notice to Purchaser without either Party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination.
- c. **"Change in Law"** means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any applicable law or regulation, (ii) the imposition of any material conditions on the issuance or renewal of any applicable permit after the Effective Date (notwithstanding the general requirements contained in any applicable Permit at the time of application or issue to comply with future laws, ordinances, codes, rules, regulations or similar legislation), or (iii) a change in any utility rate schedule or tariff approved by any Governmental Authority.

17. Assignment and Financing.

a. Assignment.

- i. **Restrictions on Assignment.** Subject to the remainder of this Section 17(a), this Agreement may not be assigned in whole or in part by either Party without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. Purchaser may not withhold its consent to an assignment proposed by Seller where the proposed assignee has the financial capability and experience necessary to operate and maintain systems such as the System.
- ii. **Permitted Assignments.** Notwithstanding Section 17(a)(i):
 - 1. Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to (A) any Financing Party (as defined in Section 17(b)),

(B) any entity through which Seller is obtaining financing from a Financing Party, or (C) any affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller; provided, that, Seller is not released from liability hereunder as a result of any assignment to an affiliate unless the assignee assumes Seller's obligations hereunder by binding written instrument; and

2. Purchaser may, by providing prior notice to Seller, assign this Agreement:

a. to an affiliate of Purchaser or a purchaser of the Premises; provided, that, Purchaser is not released from liability hereunder by reason of the assignment unless the assignee assumes Purchaser's obligations hereunder by binding written instrument; and

b. to an assignee that has an Investment Grade credit rating at the time of the assignment. "**Investment Grade**" means the assignee has a long-term unsecured debt rating from Moody's or S&P of at least Baa3 from Moody's and/or at least BBB- from S&P.

iii. Successors and Permitted Assignees. This Agreement is binding on and inures to the benefit of successors and permitted assignees. The restrictions on assignment contained herein do not prohibit or otherwise limit changes in control of Seller.

b. Financing. The Parties acknowledge that Seller may obtain debt or equity financing or other credit support from lenders, investors or other third parties (each a "**Financing Party**") in connection with the installation, construction, ownership, operation and maintenance of the System. In furtherance of Seller's financing arrangements and in addition to any other rights or entitlements of Seller under this Agreement, Purchaser shall timely execute any consents to assignment (which may include notice, cure, attornment and step-in rights) or estoppels and negotiate any amendments to this Agreement that may be reasonably requested by Seller or the Financing Parties; provided, that such estoppels, consents to assignment or amendments do not alter the fundamental economic terms of this Agreement.

c. Termination Requires Consent. Seller and Purchaser agree that any right of Seller to terminate this Agreement is subject to the prior written consent of any Financing Party.

18. Confidentiality.

a. Confidential Information. To the maximum extent permitted by applicable law, if either Party provides confidential information ("**Confidential Information**") to the other or, if in the course of performing under this Agreement or negotiating this Agreement a Party learns Confidential Information of the other Party, the receiving or learning Party shall (i) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (ii) refrain from using such Confidential Information, except in the negotiation, performance, enforcement and, in the case of Seller, financing, of this Agreement. The terms of this Agreement (but not the fact of its execution or existence) are considered Confidential Information of each Party for purposes of this Section 18(a).

b. Permitted Disclosures. Notwithstanding Section 18(a):

i. a Party may provide such Confidential Information to its affiliates and to its and its affiliates' respective officers, directors, members, managers, employees, agents, contractors, consultants and Financing Parties (collectively, "Representatives"), and potential direct or indirect assignees of this Agreement if such potential assignees are first bound by a written agreement or legal obligation restricting use and disclosure of Confidential Information. Each Party is liable for breaches of this provision by any person to whom that Party discloses Confidential Information.

ii. Confidential Information does not include any information that (a) becomes publicly available other than through breach of this Agreement, (b) is required to be disclosed to a Governmental Authority under applicable law or pursuant to a validly issued subpoena, (c) is independently developed by the receiving Party, or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. If disclosure of information is required by a Governmental Authority, the disclosing Party shall, to the extent permitted by applicable law, notify the other Party of such required disclosure promptly upon becoming aware of such required disclosure and shall reasonably cooperate with the other Party's efforts to limit the disclosure to the extent permitted by applicable law.

- c. **Miscellaneous.** All Confidential Information remains the property of the disclosing Party and will be returned to the disclosing Party or destroyed (at the receiving Party's option) after the receiving Party's need for it has expired or upon the request of the disclosing Party. Each Party acknowledges that the disclosing Party would be irreparably injured by a breach of this Section 18 by the receiving Party or its Representatives or other person to whom the receiving Party discloses Confidential Information of the disclosing Party and that the disclosing Party may be entitled to equitable relief, including injunctive relief and specific performance, for breaches of this Section 18. To the fullest extent permitted by applicable law, such remedies shall not be deemed to be the exclusive remedies for a breach of this Section 18, but will be in addition to all other remedies available at law or in equity. The obligation of confidentiality will survive termination of this Agreement for a period of two (2) years.
- d. **Goodwill and Publicity.** Neither Party may (a) make any press release or public announcement of the specific terms of this Agreement or the use of solar or renewable energy involving this Agreement (except for filings or other statements or releases as may be required by applicable law), or (b) use any name, trade name, service mark or trademark of the other Party in any promotional or advertising material without the prior written consent of the other Party. The Parties shall coordinate and cooperate with each other when making public announcements regarding this Agreement, the System and its use, and each Party may promptly review, comment upon and approve any publicity materials, press releases or other public statements before they are made. Notwithstanding the above, Seller is entitled to place signage on the Premises reflecting its association with the System.

19. **General Provisions**

- a. **Definitions and Interpretation.** Unless otherwise defined or required by the context in which any term appears: (i) the singular includes the plural and vice versa, (ii) the words "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement, (iii) references to any agreement, document or instrument mean such agreement, document or instrument as amended, restated, modified, supplemented or replaced from time to time, and (iv) the words "include," "includes" and "including" mean include, includes and including "without limitation." The captions or headings in this Agreement are strictly for convenience and will not be considered in interpreting this Agreement. As used in this Agreement, "dollar" and the "\$" sign refer to United States dollars.
- b. **Choice of Law; Dispute Resolution.** The law of the state where the System is located governs all matters arising out of this Agreement without giving effect to conflict of laws principles. Any dispute arising from or relating to this Agreement shall be settled by arbitration in [____]. The arbitration shall be administered by [_____] in accordance with its [arbitration rules], and judgment on any award rendered in such arbitration may be entered in any court of competent jurisdiction. If the Parties agree in writing, a mediator may be consulted prior to arbitration. The prevailing Party in any dispute arising out of this Agreement is entitled to reasonable attorneys' fees and costs.
- c. **Notices.** All notices under this Agreement shall be in writing and delivered by hand, electronic mail, overnight courier, or regular, certified, or registered mail, return receipt requested, and will be deemed received upon personal delivery, acknowledgment of receipt of electronic transmission, the promised delivery date after deposit with overnight courier, or five (5) days after deposit in the mail. Notices must be sent to the person identified in this Agreement at the addresses set forth in this Agreement or such other address as either Party may specify in writing.
- d. **Survival.** Provisions of this Agreement that should reasonably be considered to survive termination of this Agreement, including, without limitation provisions related to billing and payment and indemnification, will survive termination of this Agreement.
- e. **Further Assurances.** Each Party shall provide such information, execute and deliver any instruments and documents and to take such other actions as may be reasonably requested by the other Party to give full effect to this Agreement and to carry out the intent of this Agreement.
- f. **Waivers.** No provision or right or entitlement under this Agreement may be waived or varied except in writing signed by the Party to be bound. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, nor will such waiver constitute a continuing waiver unless otherwise expressly provided.
- g. **Non-Dedication of Facilities.** Nothing in this Agreement may be construed as the dedication by either Party of its facilities or equipment to the public or any part thereof. Neither Party may knowingly take any action that would subject the other Party, or other Party's facilities or equipment, to the jurisdiction of any Governmental Authority as a public utility or similar entity. Neither Party may assert in any proceeding before a court or regulatory body that the

other Party is a public utility by virtue of such other Party's performance under this Agreement. If Seller is reasonably likely to become subject to regulation as a public utility, then the Parties shall use commercially reasonable efforts to restructure their relationship under this Agreement in a manner that preserves their relative economic interests while ensuring that Seller does not become subject to any such regulation. If the Parties are unable to agree upon such restructuring, Seller may terminate this Agreement without further liability under this Agreement except with respect to liabilities accrued prior to the date of termination and remove the System in accordance with Section 9 of this Agreement.

- h. Service Contract.** The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser shall not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.
- i. No Partnership.** No provision of this Agreement may be construed or represented as creating a partnership, trust, joint venture, fiduciary or any similar relationship between the Parties. No Party is authorized to act on behalf of the other Party, and neither may be considered the agent of the other.
- j. Entire Agreement, Modification, Invalidity, Captions.** This Agreement constitutes the entire agreement of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such provision shall not be read to render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be rectified or interpreted so as to best accomplish its objectives within the limits of applicable law.
- k. Forward Contract.** The transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.
- l. No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all rights hereunder are intended for the sole benefit of the Parties hereto, and the Financing Parties to the extent provided herein or in any other agreement between a Financing Party and Seller or Purchaser, and do not imply or create any rights on the part of, or obligations to, any other Person.
- m. Counterparts.** This Agreement may be executed in any number of separate counterparts and each counterpart will be considered an original and together comprise the same Agreement.
- n. Piggybacking.** Other transit authorities, public agencies, and school districts within the State California may desire to award a contract in response to this Agreement. If authorized Purchaser under its request for proposal documents, Purchaser shall provide this Agreement to any such transit authorities, public agencies, and school districts at the same terms and conditions. Minor changes in terms and conditions may be negotiated by participating agencies following execution of this Agreement.

End of Exhibit 3

Exhibit 4
Charging Addendum

[To be inserted]

DRAFT

Exhibit 5
Form of Site Lease
Agreement

See attached.

Exhibit 6
Form of Purchaser
Credit Support

See attached.

Exhibit 7
Additional Terms and
Conditions

[Note: any additional requirements to be inserted here.]

ENGINEERING SERVICES AGREEMENT

This Engineering Services Agreement (this "Agreement") is entered into as of June __, 2020 (the "Effective Date"), between Anaheim Transportation Network, a [____] ("Client") and Amply Power, Inc., a Delaware corporation ("Contractor").

Client desires to engage Contractor to provide engineering services on a task basis upon the terms and conditions hereinafter set forth, and Contractor is prepared to perform such services in consideration of such terms and conditions. In consideration of the mutual covenants hereinafter set forth, Client and Contractor agree as follows:

1. Scope. Contractor will perform the engineering services (the "Services") set forth in Exhibit A to this Agreement. All Services provided by Contractor shall be provided in accordance and consistent with prudent industry practices for the engineering of similar facilities. Contractor shall obtain all permits necessary for the performance of the Services.

2. Compensation. As compensation for the Services completed hereunder, Contractor shall be compensated in accordance with the Rate Sheet set forth in Exhibit B.

3. Term. Unless sooner terminated in accordance with the terms of this Agreement, this Agreement shall begin on the Effective Date and continue until Contractor's completion of the Services.

4. Personnel. Contractor shall furnish the staff required to perform the Services including engaging other professional parties if it determines are necessary. Contract may, at its sole discretion, engage subcontractors for the performance of all or portions of the Services. Contractor shall retain responsibility for all Services performed by a third party as if such Services were performed by Contractor.

5. Information. Client shall provide to Contractor in a timely manner any information Contractor indicates is needed to perform the Services. Contractor shall be entitled to rely on the accuracy and completeness of all information, reports and data furnished by Client and its representatives regarding the applicable project. It is agreed that the accuracy of such information is not within Contractor's control and Contractor shall not be liable for its accuracy, nor for its verification.

6. Equipment and Materials. If the Services include providing equipment or material specifications or other procurement services, Contractor shall not be liable for any defects in the equipment or material procured on Client's behalf. If the Services involve a technical review of work performed by Client's contractors or consultants, Client agrees that its exclusive remedy for defective work reviewed by Contractor shall be from Client's contractors and consultants who performed the work. Client agrees to indemnify, defend and hold harmless Contractor from and against any liability and claims arising out of or resulting from any defect in the work the Contractor reviews, including payment of attorneys' fees.

7. Work Product. Drawings, specifications, plans, reports, and other data or information prepared, obtained or reviewed by Contractor in performance of the Services (collectively, "Work Product") are the property of Client, whether the relevant Services are completed or not, and shall not infringe on any patent, copyright, or other proprietary right of a third party.

8. Standards of Performance. Contractor shall perform the Services in accordance with (a) a professional and workmanlike manner, (b) those prudent and good practices and standards of care and diligence normally practiced by contractors in performing services of a similar nature, under similar circumstances in the United States and (c) all applicable law. If, during the six-month period following the earlier of completion or termination of the Services under the applicable Scope of Services, it is shown there is an error or defect in the Services caused by Contractor's failure to meet the standards set forth in the preceding sentence, and Client has promptly notified Contractor in writing of any such error or defect within

that period, Contractor shall perform, at Contractor's cost, such corrective engineering services within the original Scope of Services as may be necessary to remedy such error or defect. The warranty set forth in this Section shall remain in effect for any replaced or corrected Services for six (6) months after the date that such error(s) or defect(s) were replaced or corrected.

9. Intended Use. Client agrees not to use deliverables developed by Contractor on any project or application other than intended project or application. Client shall defend, indemnify and hold harmless Contractor from all claims, losses, liabilities, damages, expenses, and costs arising out of the unauthorized and/or improper use of such deliverables, including payment of attorneys' fees, expenses and costs.

10. Payment Terms; Taxes. Unless otherwise arranged under the applicable Scope of Services, invoices will be issued by Contractor every calendar month and shall be payable thirty (30) days from Client's receipt thereof. Contractor shall deliver to Client with each invoice: (a) a statement in reasonable detail of the Services performed and time devoted thereto by Contractor during the invoice period and (b) if expense reimbursement is expressly permitted pursuant to this Agreement or the applicable Scope of Services, reasonable documentation of such expenses with respect to which Contractor requests reimbursement. Invoices not paid within thirty (30) days of the invoice date may be carried forward to the next invoice date and shall be subject to a carrying charge of one and a half percent (1.5%) per month or the highest rate permitted by law. If Client fails to pay any invoice within thirty (30) days of the invoice date and such failure continues ten (10) days after Contractor gives Client written notice of such failure, Contractor shall have the right to terminate this Agreement immediately. The right to terminate under the terms of this Section shall be in addition to all other legal, equitable, or contractual remedies available to Contractor. Client shall pay for all taxes in connection to this Agreement including, but not limited to, sales, use, excise, value added, goods and services, consumption, and other similar taxes or duties. Client shall pay any such sales and use taxes directly to the relevant government authority, and if requested in writing, provide written evidence of payment of such sales and use taxes to Contractor. Client agrees to reimburse and hold Contractor harmless from deficiency (including penalties and interest), if any, relating to taxes that are the responsibility of Client under this Section. Each party shall be responsible for taxes based on its own net income, employment taxes of its own employees, and for taxes on any property it owns or leases.

11. Invoice Disputes. In the event Client disputes any invoice item, Client shall give Contractor written notice of such disputed item within thirty (30) days after receipt of such invoice and shall pay to Contractor the undisputed portion of the invoice according to the provisions hereof. Interest shall not be charged on any disputed invoice item which is finally resolved in Client's favor. Payment of interest shall not excuse or cure any default or delay in payment of amounts due.

12. Changes. Contractor shall be entitled to an increase in compensation and/or time for performance for any changes to the scope of the Services agreed to by the parties in writing. Contractor shall not be required to perform any services connected with a change unless the parties have agreed in writing on the amount of or the basis for calculating the time and/or compensation associated with the change.

13. Acceptance. In performance of Services, Contractor agrees to provide deliverables to Client. Client shall advise Contractor in writing of its acceptance or rejection of the deliverables within ten (10) business days of receipt of each deliverable. In the event that Client does not provide written acceptance or rejection of the deliverable to Contractor within ten (10) business days after delivery then the deliverable will be deemed accepted by Client.

14. Delays. Contractor shall be entitled to prompt written notice by Client and additional time and/or compensation for delays caused by or resulting from acts of Client or other third parties under Client's control, so long as the delay(s) are not caused by Contractor's acts or omissions.

15. Insurance. Each party shall maintain in force, during the period that Services are performed, workers' compensation insurance in accordance with the laws of the state of California. Each party also shall maintain commercial general liability insurance with a limit of one million dollars (\$1,000,000) per occurrence and in the aggregate; and professional liability insurance with per claim and annual aggregate limits of one million dollars (\$1,000,000).

16. Limitation of Liability. EACH PARTY WILL NOT BE LIABLE TO THE OTHER PARTY, OR ANY THIRD PARTY, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER FORESEEABLE OR UNFORESEEABLE, IN BREACH OF CONTRACT OR BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, INDEMNITY, IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, USE, GOODWILL, PROFITS, REVENUES OR INVESTMENTS, COST OF SUBSTITUTE SERVICES OR FOR ANY OTHER TYPES OF ECONOMIC LOSS), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Each party expressly agrees that the total aggregate liability for any and all claims against the other party, including but not limited to claims alleging negligence or breach of contract, including economic loss, shall not exceed the compensation received by Contractor under the applicable Scope of Services. The recourse of Client or its successors or assigns against Contractor with respect to the alleged breach by or on the part of Contractor of any representation, warranty, covenant, undertaking or agreement contained in this Agreement shall extend only to Contractor and no personal liability or personal responsibility of any sort with respect to any alleged breach thereof is assumed by, or shall at any time be asserted or enforceable against Contractor's directors, officers, managers, members, employees, agents, constituent partners, beneficiaries, trustees or representatives.

17. Indemnity. Client shall indemnify and hold harmless Contractor and its officers, directors, managers, members, employees and subcontractors from and against all third-party losses, damages, expenses, and costs, including but not limited to reasonable legal fees and expenses (if and to the extent recoverable under applicable law) suffered by Contractor, where such loss or damage arises out of personal injury, death or property damage and is caused by a wrongful action, negligence, or willful misconduct by Client or its employees. Contractor shall indemnify and hold harmless Client and any of its officers, directors, managers, members, employees and subcontractors from and against all third-party losses, damages, expenses and costs, including but not limited to reasonable legal fees and expenses (if and to the extent recoverable under applicable law) suffered by Client, where such loss or damage arises out of personal injury, death or property damage and is caused by a wrongful action, negligence or willful misconduct by Contractor or its employees or agents.

18. Litigation Expenses. Client shall be responsible for paying for all Contractor's reasonable legal fees and expenses associated with Contractor's compliance with any dispute resolution or legal proceeding, including subpoena or Client request to produce documents, data or testimony related to the Client's project and/or to the work performed by Contractor under this Agreement, regardless of the demanding party, except where Contractor is party thereto. Contractor shall notify Client prior to responding to any request covered by this Section.

19. Termination Without Cause / Expiration. Client and Contractor have the right at any time to terminate this Agreement by giving fourteen (14) days' written notice to the other party. If Contractor is terminated for any reason other than a Contractor Default (defined below), Client shall be responsible for payment of all Services performed by Contractor through the date of termination, including the proportionate share of any Contractor fee applicable to the Services performed through the date of termination, all reasonable demobilization costs, and all expenses properly incurred or obligated pursuant to the applicable Scope of Services at the date of termination. If no Services are outstanding, or Services have been suspended or idled for a period of six (6) consecutive months due to no fault of Contractor, Contractor may in its sole discretion consider this Agreement to have expired and will notify Client in writing of such determination.

20. Termination for Cause by Client. Without prejudice to any other remedy Client may have, if an event of Contractor Default (defined below) has occurred and has not been cured within thirty (30) days after receipt by Contractor of a written

notice of default, Client may terminate this Agreement and any Scope of Services and complete the Services by whatever method Client may deem expedient. If the losses incurred by Client in completing the Contractor's Services exceed the unpaid balance of the price under the applicable Scope of Services, Contractor shall pay the difference to Client or Client may otherwise offset such losses against any other amounts owed to Contractor hereunder. The following acts or omissions by Contractor shall constitute events of default (each a "Contractor Default") under this Agreement: (a) failure to perform the Services in compliance with the Agreement or applicable Scope of Services; (b) failure to promptly and diligently correct any defective Services; (c) failure to maintain the insurance coverages required herein; and (d) insolvency, inability to pay its current obligations or filing of any action seeking the protection of a bankruptcy court.

21. Termination for Cause by Contractor. Without prejudice to any other remedy Contractor may have, if an event of Client Default (defined below) has occurred and has not been cured within thirty (30) days after receipt by Client of a written notice of default, Contractor may terminate this Agreement and seek any damages at law or in equity. The following acts or omissions by Client shall constitute events of default (each a "Client Default") under this Agreement: (a) failure to pay any amounts owing under this Agreement as and when due (b) failure to materially and timely perform any other obligation under this Agreement maintain the insurance coverages required herein; and (c) insolvency, inability to pay its current obligations or filing of any action seeking the protection of a bankruptcy court.

22. Further Assurances Upon Termination. Upon a termination of this Agreement for any reason, Contractor shall promptly (a) cease the performance of all Services and demobilize any active personnel; (b) transfer title to all Services performed prior to such date of termination including all Work Product; and (c) assign to Client, as Client directs, any subcontract rights that it has to any and all the Services, including, without limitation, contracts with subcontractors and vendors, and Contractor shall execute such documents as may be reasonably requested by Client to evidence such assignment.

23. Confidentiality. Each party shall not disclose to any person or use for any purpose not related to the performance under this Agreement hereunder any confidential information, document, or material supplied by a party or its employees, agents, partners or contractors and designated as confidential (collectively, the "Confidential Information"). Contractor shall further require its officers, directors, subcontractors, vendors, suppliers, employees and agents to acknowledge the terms of this Section or enter into similar nondisclosure agreements relative to any Confidential Information prior to providing the same. Notwithstanding the foregoing, if a party is required by law, rule, regulation or order, or in the course of administrative or judicial proceedings, to disclose any Confidential Information, a party may make disclosure notwithstanding the provisions of the Section; provided, however, that such disclosing party shall prior to making such disclosure notify the other party of the requirement and the terms thereof and shall cooperate to the maximum extent practicable to minimize the extent of the items disclosed and the scope of the recipients. The disclosing party shall use all reasonable efforts to obtain proprietary or confidential treatment of any Confidential Information and, to the extent such remedies are available, shall seek protective orders limiting the extent if the items disclosed and the scope of the recipients. Moreover, this Agreement does not alter the rights of either party to object to the rule, regulation, order or proceedings requiring the disclosure. A party's obligation to maintain the confidentiality of the Confidential Information shall not include information that (a) was or becomes generally publicly available other than as a result of disclosure by such in violation of this Agreement, and (b) was or becomes available to a party on a non-confidential basis.

24. Third-Party Beneficiaries. Nothing in this Agreement shall be interpreted or construed as giving any rights or benefits to anyone other than Contractor and Client unless such third party has been expressly designated as a third-party beneficiary in this Agreement. Client shall not use, or distribute to others, any Contractor statement or opinion for the purposes of a prospectus, other investment memorandum or financing decision, except with Contractor's prior written consent, which shall not be unreasonably withheld.

25. Independent Contractor. In connection with this Agreement, each party is an independent contractor and as such will not have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, fiduciary or agency relationship between the parties for any purpose.

26. Notices. Any notice or other communication given pursuant to this Agreement shall be in writing to notice address set forth below and shall be effective (a) when delivered personally to the party for whom intended, (b) five (5) days following deposit of the same into the United States mail (certified mail, return receipt requested), (c) on the same day of delivery via electronic mail (with confirmation of delivery) or facsimile (with confirmation of delivery) or (d) one (1) day following deposit with an overnight delivery service (with confirmation of delivery). Either party may designate a different address by notice to the other given in accordance herewith.

27. Non-Assignment. This Agreement may not be assigned by either party in whole or in part without the express written permission of the other party. Any attempt to assign in contravention of this Section shall be null and void.

28. Survival of Terms. Regardless of the circumstances of termination or expiration of this Agreement, the obligations of the parties under this Agreement that by their nature continue beyond the expiration of this Agreement shall survive any termination or cancellation of this Agreement.

29. Dispute Resolution. The parties agree that either party may request that any disputes between them be submitted to mediation. The parties agree that any suit, action or other legal proceeding by or against any party with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in Los Angeles. Each party hereby irrevocably and unconditionally agrees that any such action may be heard and determined in such state court or such federal court.

30. Governing Law and Severability. This Agreement shall be governed and construed according to the laws of the State of California without regard to its conflict of laws principles. If any term, condition or provision of this Agreement or the application thereof to any circumstances is determined to be invalid or unenforceable to any extent, the remaining provisions of this Agreement shall not be affected and shall remain fully enforceable and valid.

31. Miscellaneous. No waiver by either party of any default by the other will operate as, or be construed as, a waiver of any future default, whether like or different in character. There shall be modifications or changes to this agreement without the express written consent of both parties. The headings used in this Agreement are for convenience and reference purposes only and are not to be used in interpreting or construing the substantive provisions of the Agreement. Facsimile and electronically transmitted signatures shall be deemed to be originals and such facsimile signatures shall be given the same effect as would an original signature.

32. Entire Agreement. This Agreement sets forth the entire understanding between the parties hereto and supersedes all prior agreements, arrangements and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties or other matters, whether oral or written, shall be deemed to bind the parties hereto with respect to the subject matter hereof.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date and year set forth above.

Amly Power, Inc.

By _____

Printed Name:

Notice address:

Anaheim Transportation Network

By _____

Printed Name:

Notice address:

EXHIBIT A-1
SCOPE OF SERVICES

A. Scope of Services: “Claudina St” depot, located at 1213 and 1237 Claudina Street, Anaheim CA, 92805

1. Construction Documents. An engineered drawing package suitable for pre- construction planning and collaboration with ATN’s determined contractors including but not limited to Stantec, Uprite and Anser Advisory. The coordinated engineering package shall include the following:

a. Electrical System Design for Photovoltaic (PV) and Battery Energy Storage System (BESS)

i. Equipment specification.

ii. One line diagram.

iii. Feeder and branch circuit routing.

iv. Underground conduit and electrical conductor plan including sizing, underground paths and connection points into equipment

v. Data conduit and conductor incorporation for communication function of EVSE

v. 30% - 75% construction drawings completed in package

b. Structural System Design for Photovoltaic (PV) and Battery Energy Storage System (BESS)

i. Equipment location

ii. Layout designs with determined PV canopy and BESS locations, dimensions and distance from property setbacks.

iii. PV canopy footing details including dimensions, materials necessary

iv. Plans to collaborated and incorporated into EVSE plans

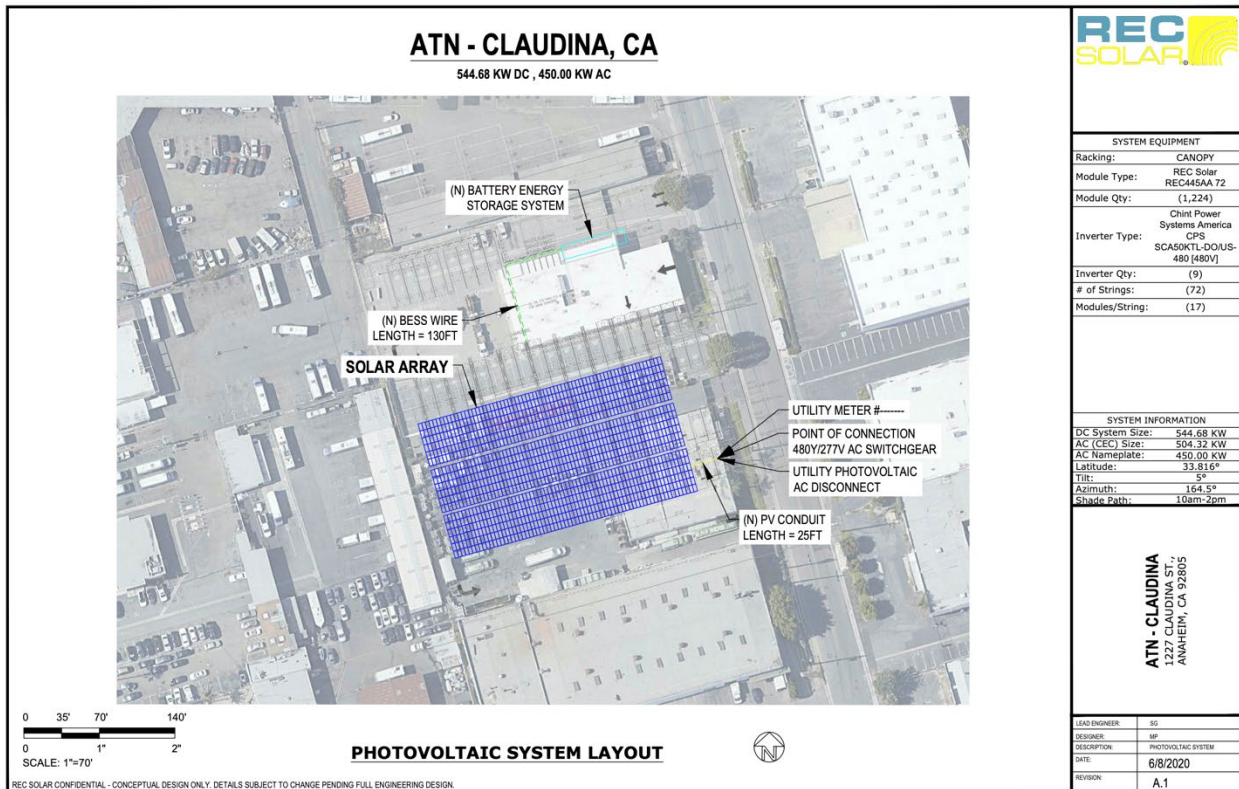
v. 30% - 75% construction drawings completed in package

c. PV, BESS and EVSE project schedule development

d. Project management services including kick- off meeting, weekly meetings and reports

e. Deliverables shall be a high-resolution PDF. If necessary, **hard copies provided** at the rates will be in the fee summary. One round of revisions for customer comments, including value engineering, are included at 30% and 75% deliverables.

- i. Conceptual Design (30% complete) – AMPLY will create conceptual plans showing the proposed layout of the PV array and BESS, along with a One line diagram indicating the major equipment components and interconnection method.
- ii. Design Development (75% complete) – Based on the approved Conceptual Design drawings, AMPLY will generate the Design Development drawing set. These drawings will substantially design and detail the PV array, BESS and electrical systems.



B. Schedule:

All tasks included in section A. Scope of Services are expected to be completed within 45 days of the Effective Date of this agreement, and started immediately upon full execution of this agreement.

C. Compensation: See Exhibit B, FEES

EXHIBIT A-2
SCOPE OF SERVICES

A. Scope of Service: “Manchester Site” property, located at 100 South Manchester Street, Anaheim, CA, 92802 is out of scope and will be addressed at a later date with ATN.

EXHIBIT B
RATE SCHEDULE

FEES

One-time Sum: \$35,000

EXPENSES

Any services provided by AMPLY defined as Time and Expense, or which are not specifically included in a lump sum scope of work, will be compensated on a time and expense basis at the following rates:

Hard Copies of Drawings or Calculations

- Large format plotting (drawings) \$0.50 per sq.ft. (\$3 per 24" x 36" sheet)
- Shipping Cost plus 25%

Standard Hourly Billing Rates

- Senior Engineer \$250.00
- Project Manager \$225.00
- Assistant Project Manager \$200.00
- Project Engineer \$175.00
- Administrative \$100.00

Reimbursable Expenses

- Consultants and Subcontractors Cost plus 25%
- Equipment Rental (man lift, etc.) Cost plus 25%
- All out of pocket expenses (travel) Cost plus 25%