

SOLAR LEASE AND EASEMENT AGREEMENT

THIS SOLAR LEASE AND EASEMENT AGREEMENT (the “**Agreement**”) is made, dated and effective as of _____, 2020 (the “**Effective Date**”), by and between SCHERTZ/SEGUIN LOCAL GOVERNMENT CORPORATION, a Texas non-profit corporation wholly owned by the Cities of Schertz and Seguin, Texas (together with its successors and assigns hereunder, “**Owner**”), and ELM CREEK ENERGY, LLC, a Delaware limited liability company (together with its successors and assigns hereunder, “**Tenant**”).

Section 1. Definitions. Unless otherwise defined, all capitalized terms used in this Agreement shall have the meanings given in **Exhibit A** (attached to and made a part of this Agreement).

Section 2. Lease of Property. In consideration of the payments to be paid pursuant to Section 4 of this Agreement and the covenants and other obligations to be performed by Tenant, Owner leases to Tenant the surface only of approximately _____ acres with the demised real property referred to herein as the “**Property**”, which is described on **Exhibit B**, with the Property being leased for Solar Energy Purposes, together with such rights, privileges, and appurtenances benefitting the Property that are reasonably necessary for the utilization of the Property for Solar Energy Purposes.

2.1 Term of Agreement. The “**Term**” of this Agreement and the easements contained herein shall consist of a Development Term plus, if it becomes effective, an Operations Term.

(a) **Development Term.** The “**Development Term**” shall commence on the Effective Date and shall continue until the earliest to occur of the following: (i) the Generation Commencement Date, or (ii) the fifth anniversary of the Effective Date. The Generation Commencement Date shall be the date identified in written notice provided by Tenant to Owner in the Generation Commencement Notice. Tenant shall deliver the Generation Commencement Notice at least one hundred fifty (150) days prior to the Generation Commencement Date. If the Generation Commencement Date does not occur before the fifth anniversary of the Effective Date, then this Agreement shall terminate in its entirety. Tenant shall have the right to terminate this Agreement at any time during the Development Term and no additional amounts shall accrue after the date of termination.

(b) **Operations Term.** The “**Operations Term**”, if it occurs, shall commence on the Generation Commencement Date and shall continue thereafter until the date that is 40 years from and after the Generation Commencement Date.

(c) **Generation Commencement Date.** The “**Generation Commencement Date**”, if it occurs, is the date that the Project Facilities are capable of reliably generating solar electricity and providing it to the sale point on the electric utility grid for commercial sale. The Generation Commencement Date will not commence as a result of generating and delivering solar electricity as test energy.

Section 3. Grant of Easements. Notwithstanding any limitation imposed by Section 2, Owner grants the easements, described below, to Tenant, on, over, and across the Property. It is expressly

agreed and understood that the easements granted by Owner shall constitute easements in gross, and, therefore, shall not be appurtenant to the Property. It is further expressly agreed and understood that the easements granted hereunder shall not survive the termination of this Agreement.

3.1 Non-Obstruction Easement. Owner hereby grants to Tenant an exclusive easement to capture, use, convert, and maintain the free and unobstructed sunlight over and across the Property, subject to any and all existing leases, including wind leases, encumbering the Property as of the Effective Date. Except on the areas of approximately [] acres shown in **Exhibit B** and described as a “Well”, Owner shall not construct or plant, or permit to be constructed or planted, any improvements or foliage on the Property that would interfere with the flow of free and unobstructed sunlight over and across the Property. Owner hereby grants to Tenant an easement and right on the Property to prevent measurable diminishment in output due to obstruction of the sunlight across the Property including but not limited to an easement right to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Project Facilities, Transmission Facilities and/or Related Facilities or Tenant’s operations, as determined by Tenant.

3.2 Transmission and Related Facilities Easement. In the event that additional acreage out of the Property is necessary for additional Transmission Facilities or Related Facilities, the Owner at no cost to Tenant, will grant Tenant a commercially reasonable non-exclusive easement for the installation, use, repair, replacement and removal of Transmission and/or Related Facilities.

3.3 Access Easement. If needed or applicable, the parties will execute a non-exclusive easement over the Property for ingress to and egress from the Project Facilities, Transmission Facilities and Related Facilities by means of the existing roads located on the Property or by such other roads as Tenant may construct on the Property pursuant to Section 5.3 of this Agreement. If additional access easements are needed in the future, the Owner will negotiate in good faith with respect to the granting of such additional access easements across the Property.

Section 4. Payments. In addition to any other consideration, Tenant shall pay Owner the amounts set forth in **Exhibit C** (attached to and made a part of this Agreement).

Section 5. Tenants' Rights, Covenants, & Obligations.

5.1 Build-out & Partial Release. Nothing contained in this Agreement shall be construed as requiring Tenant to undertake construction or installation of any Project Facilities, Transmission Facilities or Related Facilities. If Tenant elects to undertake construction then on or before the Commencement of Construction, Tenant shall deliver to Owner a Final Site Plan that designates where on the Property the Project Facilities and Transmission Facilities are to be located and the exact number of acres to be utilized. Such Final Site Plan shall not include any area described as a “Well”, which is reserved by Owner for future water well use, as described in **Exhibit B**. Tenant shall have the right to partially release acreage consistent with the Final Site Plan. If any acreage is partially released, Tenant shall file a formal release of any portion of the Property not included within the Final Site Plan or released after the Commencement of

Construction as set forth herein in the Official Public Records of Guadalupe County, Texas and Gonzales County, Texas, within 90 calendar days of delivery of the Final Site Plan and such partially released property shall no longer be subject to the terms of this Agreement.

5.2 Permitted Use. Tenant shall have the exclusive right to use the Property for Solar Energy Purposes. “**Solar Energy Purposes**” means converting solar energy into electrical energy, and collecting, transmitting and distributing the electrical energy so converted, together with any and all other activities ancillary or related thereto, including (i) determining the feasibility of solar energy conversion, including studies on solar irradiance, light direction and other meteorological data and extracting soil samples, and all other testing, studies or sampling desired by Tenant; (ii) constructing, installing, using, replacing, relocating, controlling and removing from time to time, and maintaining and operating Project Facilities, Transmission Facilities and Related Facilities; (iii) undertaking any other activities, whether accomplished by Tenant or a third party authorized by Tenant, that are reasonably necessary, useful, or appropriate to accomplish any of the foregoing, including the right to erect, construct, reconstruct, replace, relocate, remove, control, maintain and use Project Facilities, Transmission Facilities and/or Related Facilities; and (iv) subject to Tenant's reasonable demonstration to Owner's satisfaction of adequate containment in accordance with good utility practice to protect the underground water supply, constructing, installing, using, replacing, relocating, controlling and removing from time to time, and maintaining and operating energy storage facilities, which may include battery modules, supporting structures, enclosures in the form of purpose-built containers or buildings, foundations, power conversion and high-voltage interconnection equipment, wiring, cabling, metering equipment, and other related equipment (collectively, “**Permitted Energy Storage Facilities**”), and to store energy at the Permitted Energy Storage Facilities on the Property.

5.3 Use of Roads. Pursuant to the access easement granted by Section 3.3 of this Agreement, Tenant shall have the right of ingress and egress to and from the Property, the Project Facilities, Transmission Facilities and Related Facilities by means of the roads identified in the easement described in Section 3.3 and Tenant shall also have the right to construct roads that are reasonably necessary to provide Tenant with ingress and egress to and from the Property and the Project Facilities, Transmission Facilities and Related Facilities, which will be added to the access easement. If new roads are constructed pursuant to this Section, then Tenant shall compensate Owner in the amount specified in **Exhibit C**. Tenant shall maintain any roads used by Tenant, whether existing or newly constructed, in accordance with Owner's specifications as set forth on **Exhibit D** and Tenant shall promptly repair any such road to the extent damaged by Tenant or by Tenant's operations. Tenant will ensure that the posted speed limit is respected and that no trash is left by its owners, employees, agents, contractors, subcontractors, invitees and/or licensees. Tenant will also ensure that all rules set forth on **Exhibit E** are respected by its owners, employees, agents, contractors, sub-contractors, invitees and licensees.

5.4 Excavation Rights. In the construction of the Project Facilities, Transmission Facilities and Related Facilities, Tenant shall have the right to excavate using commercially reasonable means, including, but not limited to, using excavators, backhoes, bulldozers, and jackhammers on the Property for the construction and installation of Project Facilities, Transmission Facilities and Related Facilities. Tenant shall remove the waste material, overburden and strippings taken from the Property and if such material is not used for fill, shall dispose of the

same either off the Property or at such location on the Property as Owner shall designate. Tenant shall carry on all operations permitted by this Agreement in a workmanlike manner and will confine said activities to the Property. All such work shall not adversely impact the above-ground or underground water of the Property.

5.5 Fences and Gates. Tenant shall repair or replace any fences, gates or cattle guards on the Property damaged or removed in connection with Tenant's activities on the the Property to Owner's reasonable satisfaction, as further specified in **Exhibit D**. Fences, gates, and cattle guards removed from the Property by Tenant or a third party for Tenant's benefit or at Tenant's direction shall be rebuilt by Tenant at its expense. Tenant shall install fences surrounding the Property capable of turning livestock as well as game animals (excepting birds). Tenant acknowledges that the Property may currently be used as a cattle area and as such, Tenant shall consult with Owner prior to cutting any exterior or boundary fence on the Property and is prohibited from cutting any exterior or boundary fence outside of the Property without Owner's written consent.

5.6 Care, Appearance and Erosion Control. Tenant shall use commercially reasonable methods to minimize erosion, including erecting silt fences and terraces at such locations on the affected area after completion of construction or removal as may be reasonably determined by Tenant, in consultation with Owner, to prevent or minimize erosion. The constructing of roads and the burying of lines shall be done in accordance with good engineering and standard construction practices. Tenant shall keep the Property clean and free of debris created by Tenant, its contractors, or others brought onto the Property by Lessee. After completion of construction, maintenance, restoration, or removal operations in connection with this Agreement, Tenant shall maintain good stewardship of the Property by restoring and re-seeding all surfaces in accordance with the provisions set forth below. Tenant shall maintain a visual barrier between the Project Facilities and Transmission Facilities on the Property and all residential structures adjacent to the Property that were in existence prior to the Effective Date. Such visual barrier shall include not cutting existing trees and vegetation in such adjacent buffer area, and planting trees and vegetation native to the area as reasonably necessary to create such visual barrier.

5.7 Caliche. Tenant shall have no right to any caliche located on or beneath the Property. Tenant may obtain these rights, however, by entering a separate agreement with Owner.

5.8 Ownership of Improvements. All improvements constructed or installed on the Property, including, the Project Facilities, Transmission Facilities and Related Facilities, are, and shall remain, the sole property of Tenant and may be removed in whole or in part by Tenant in its sole discretion, at any time, and Owner shall have no right, title or interest therein. Tenant shall be entitled to all depreciation or amortization deductions attributable to such improvements. The Parties agree that all improvements constructed or installed on the Property by or for Tenant, whether prior to the Effective Date or after same, are hereby severed by agreement and intention of the parties and shall remain severed from the Property, shall be considered with respect to the interests of the Parties hereto as the property of Tenant or other party designated by Tenant, and, even though attached to or affixed to or installed upon the Property, shall not be considered to be fixtures or a part of the Property and shall not be or become subject to any security interest or lien in favor of Owner or any holder of any mortgage or deed of trust heretofore or hereafter placed on the Property by Owner to the extent permitted by this Agreement.

5.9 Removal and Restoration.

(a) Removal. Within nine (9) months after termination, surrender, or expiration of this Agreement, Tenant shall remove, raze and/or demolish and remove all Project Facilities, Transmission Facilities, and all other above-ground improvements located on the Property to a depth required by applicable law, but not less than four feet (4') below grade, and shall restore the surface of the Property as required by Section 5.9(b), all at Tenant's sole cost and expense. If Tenant is required to obtain any permits prior to commencing the removal, razing, and/or demolition process and Tenant diligently commences the application process within the nine (9) month period provided herein, then the nine (9) month removal period shall begin to run after Tenant receives all such required permits or approvals but shall in no event be longer than eighteen (18) months after termination, surrender, or expiration of this Agreement. Failure to remove, raze, and/or demolish any Project Facilities, Transmission Facilities, or other improvements within said period and restore the surface of the Property as required by Section 5.9(b) shall be deemed an abandonment of such facilities and/or improvements. Notwithstanding anything to the contrary anywhere in this Agreement, Owner shall have the right to take possession of such facilities and/or improvements or to remove, raze, and/or demolish any such facilities and/or improvements deemed to be abandoned by Tenant and to receive payment from Tenant for the cost of such removal, razing, demolition and restoration of the surface of the Property, as well as any additional amounts related to the Tenants failure to remove the facilities from the Property.

(b) Restoration. After termination, surrender, or expiration of this Agreement, Tenant will restore the surface of any of the Property used by Tenant or its agents, contractors and employees, to substantially the same condition existing on the Effective Date and seed the disturbed areas with five (5) pounds per acre buffet, or native grass seed, as designated by Owner; provided, however, such obligation shall not require Tenant to restore the surface with mature trees. Tenant shall have the nonexclusive right to occupy the Property for a period of no longer than 365 days after termination or expiration as reasonably required to promptly complete such restoration activities and for no other purpose.

(c) Security for Removal & Restoration. On or before the ninth (9th) anniversary of the Generation Commencement Date, Tenant shall provide security to cover the estimated removal and restoration costs associated with removing the Project Facilities, Transmission Facilities, and all other improvements as well as the cost of restoring the surface of the Property in accordance with this Agreement, less the reasonably estimated salvage value of the Project Facilities, Transmission Facilities, Related Facilities and all other improvements. The security shall be, at Tenant's option, either a surety bond from an issuer reasonably acceptable to Owner, a corporate guarantee (from a financially responsible entity whose credit rating is investment grade) in form and substance reasonably acceptable to Owner, a letter of credit issued by a financial institution reasonably acceptable to Owner, a cash deposit, or other security reasonably acceptable to Owner (the selected security being herein referred to as the "**Removal Bond**"). The amount of the Removal Bond shall be the estimated actual cost of removing the foregoing facilities and improvements and restoring the surface, less the reasonably estimated salvage value of the Project Facilities, Transmission Facilities, Related Facilities and all other improvements. The amount of the Removal Bond shall be updated every five (5) years after the

initial estimate based on a new estimate by a construction company selected by Tenant and reasonably acceptable to Owner.

5.10 Compliance with Law. In conducting its Operations on the Property, Tenant shall comply in all material respects with all Laws; however, Tenant may contest the validity or applicability of any Law (including any property tax) related to the Property, the Tenant, or Tenant's Operations, by appropriate legal proceedings brought in the name of Tenant or in the names of both Tenant and Owner where appropriate or required. Any such contest or proceeding, including any initiated by Tenant and maintained in the name of Owner, shall be at Tenant's sole cost and expense and shall be controlled and directed by Tenant. Tenant shall reimburse Owner for all reasonable costs and expenses incurred, including attorney fees, associated with Owner's compliance with this Section.

5.11 Taxes.

(a) General Responsibilities for Taxes. Owner is tax-exempt from real property taxes in Texas. Because Owner is tax-exempt from such taxes, during the Development Term, Tenant will pay all real estate taxes and assessments, both general and special, levied and assessed against the Property for a given year arising solely to the extent such increase is as a result of entering into and/or performing this Agreement. Beginning on the date that is six (6) months following the Commencement of Construction and for so long thereafter as this Agreement remains in effect, Tenant shall pay all real estate taxes and assessments, both general and special, levied and assessed against the Property. Notwithstanding any other provision of this Section 5.11, Tenant shall not be obligated to pay for (i) any income taxes attributable to Owner; (ii) any increase in the assessed value of the Property for tax purposes caused by Owner other than as a result of entering into and/or performing this Agreement; or (iii) taxes or assessments arising from or related to operations on any adjacent land owned by Owner. Tenant shall likewise pay or reimburse Owner for any rollback or other tax penalty assessed as a result of Tenant's use of the Property. Owner and Tenant agree to reasonably cooperate with each other to cause the taxing authority to separately bill Tenant for any real estate taxes and assessments for which it will be responsible. Owner agrees to exercise commercially reasonable efforts to submit to Tenant a copy of all notices, tax bills and other correspondence Owner receives from any taxing authorities regarding any taxes Tenant is required to pay hereunder within thirty (30) days after Owner receives same, and it is a condition to Tenant's obligations to timely make payment or reimbursement of taxes that Tenant is obligated to pay hereunder that Tenant receives the real property tax bill no later than ten (10) business days prior to the delinquency date for such taxes. If Tenant receives any real property tax bill less than ten (10) business days prior to the delinquency date for such taxes, Tenant shall exercise commercially reasonable efforts to pay such tax bill prior to the delinquency date.

(b) Right to Contest. Tenant, at its expense, shall have the right to contest or review by legal, administrative or other proceedings the amount or validity of any such tax or assessment imposed against the Property. Nothing contained herein shall imply any right on the part of Tenant to postpone such payment unless such proceedings or security given shall stay the collection thereof and the sale of the Property to satisfy the same. Owner agrees to render all assistance to Tenant that Owner in its sole discretion determines is reasonable in contesting any taxes or assessments, including joining in the signing of any reasonable protests or pleading which

Tenant may deem advisable to file, in which case Tenant agrees to promptly reimburse Owner for its actual out-of-pocket costs and expenses, including attorneys' fees incurred in connection with providing such assistance.

(c) *Tax Credits*. All tax credits, tax incentives or tax related grants or benefits relating to the Project Facilities are, and shall remain, the property of Tenant.

5.12 The Mineral Estate.

(a) Owner makes no warranty or representation regarding the ownership of oil gas or other surface or subsurface minerals or of the mineral estate (as that term is commonly understood pursuant to Texas law) (the “*Minerals*”). However, to the extent permitted by applicable Law, and to the extent Owner owns any of the Minerals as of the Effective Date, or subsequently acquires any interest in the Minerals, Owner does hereby expressly release and waive, on behalf of itself and its successors and assigns (and agrees that all future owners and lessees of any rights, titles or interests in or to the Minerals shall be subject to and burdened by the waivers contained herein), all rights to use, enter upon, or occupy any portion of the surface of the Property, and the area located between the surface of the Property and 500 feet beneath the surface of the Property or place any fixtures, equipment, buildings, roadways, structures or pipelines thereon or thereunder in conducting operations of whatsoever nature in connection with the Minerals including, without limitation, the exploration, exploitation, mining, production, processing, transporting, and marketing of oil, gas, and other minerals from the Property, or in conducting other activities associated with the Minerals; provided, however, nothing herein contained shall be construed as waiving, releasing, or relinquishing any right, title, or interest of Owner in and to the oil, gas, and other minerals in and under, or that may be produced from, the Property, or as a waiver by Owner of the right to develop or produce such oil, gas, and other minerals by pooling the Minerals of Owner with land adjoining the Property in accordance with the laws and regulations of the State of Texas. The foregoing waiver shall constitute a covenant running with the land and shall be binding upon and shall inure to the benefit of Owner, Tenant and their respective heirs, legal representatives, successors and assigns.

(b) Prior to the Commencement of Construction, Tenant may obtain an opinion regarding such aspects of the ownership of the Minerals as Tenant may elect. If such title opinion reveals that Owner owns less than 100% of the Minerals, Tenant may seek to obtain surface waivers (similar to the waiver by Owner above) or other agreements from the persons (other than Owner) owning any portion of the Minerals.

(c) TENANT SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS, OWNER, ITS SUCCESSORS AND ASSIGNS FROM AND AGAINST ALL LAWSUITS, CAUSES OF ACTION, DAMAGES OR DEMANDS BROUGHT BY A MINERAL OWNER OR MINERAL LESSEE AGAINST OWNER RESULTING FROM TENANT'S USE AND OPERATIONS ON THE PROPERTY, TO THE EXTENT SUCH MINERAL OWNER OR MINERAL LESSEE ACQUIRED SUCH RIGHTS PRIOR TO THE EFFECTIVE DATE. Owner represents to Tenant that Owner may not be the owner of the mineral estate. The Tenant acknowledges Owner's representation that the Owner may not be the owner of the mineral estate and agrees that Owner will not be held liable for any actions of the owner of the mineral estate (other than Owner, if Owner acquires ownership of Minerals) or any lessee, assignee or

transferee from the owner of the mineral estate (other than Owner, if Owner acquires ownership of Minerals). No action by the owner of the mineral estate or any lessee, assignee or transferee of any or all of such ownership rights or lessee, assignee or transferee of any right arising from the owner of the mineral estate (other than Owner, if Owner acquires ownership of Minerals) or the mineral estate itself or any lease or other agreement arising from the mineral estate will constitute a breach of this Agreement by the Owner. Owner agrees, however, to utilize commercially reasonable efforts to work with Tenant to obtain a mineral release from the owner of the mineral estate, if requested by Tenant.

5.12.1 Representations and Warranties of Tenant. Tenant hereby represents and warrants to Owner that, as of the Effective Date: (i) each person or entity signing this Agreement on behalf of Tenant is authorized to do so, (ii) Tenant has the full and unrestricted legal power, right and authority to enter into this Agreement, and to perform its obligations hereunder, (iii) no other person or entity is required to join in this Agreement in order for the same to be fully enforceable by Owner against Tenant, (iv) this Agreement constitutes the valid and binding obligation of Tenant, and its successors and assigns and is enforceable in accordance with its terms, and (v) Tenant is not the subject of any bankruptcy, insolvency or probate proceeding.

5.13 Site Rules. Tenant shall abide by the site rules as attached hereto as **Exhibit E** and incorporated herein for all purposes.

5.14 Final Site Plan. Prior to installing any Project Facilities and/or Transmission Facilities on the Property, Tenant shall deliver to Owner a proposed development plan showing the contemplated locations and routes of the Project Facilities and/or Transmission Facilities on the Property and shall coordinate the location of the Project Facilities and/or Transmission Facilities with Owner to minimize any disruption or inconvenience to Owner and the uses of the Property reserved to Owner in Section 6.1 below. During the final development and construction of the Project Facilities and Transmission Facilities, such locations and routes may need to be amended and following construction, the Project Facilities and/or Transmission Facilities may need to be relocated or rerouted by Tenant, at times during the Term, in all of which cases Tenant shall coordinate the relocation of the Project Facilities and/or Transmission Facilities with Owner to minimize any disruption or inconvenience to Owner and the uses of the Property reserved to Owner herein below.

5.15 Notification of Construction Meeting. Tenant agrees to schedule a meeting on the Property with Owner or Owner's designated representative to discuss points of entry, road access and Tenant's placement of the Project Facilities and Transmission Facilities on the Property prior to commencement of any construction operations on the Property in order that Owner or Owner's designated representative will have an opportunity to discuss with Tenant any existing improvements of Owner in the area of proposed construction that might be impacted by Tenant's development and construction plans.

5.16 Water Wells. Subject to any rights held by the owners of the mineral estate, or lessees of such estate, Tenant may drill water wells on the Property and utilize water from such wells during the construction and operation of the Project Facilities, Transmission Facilities, Related Facilities and other improvements. Tenant shall use commercially reasonable steps to accommodate mineral estate owner's use of operable wells on the Property and will indemnify

Owner from all claims arising from such drilling or use of the subsurface water in accordance with the indemnity provisions set forth herein. Owner does not warrant any water rights. Owner agrees to utilize commercially reasonable efforts to work with Tenant to minimize the effect of any water wells on Tenant's rights under this Agreement.

Section 6. Owner's Rights, Covenants, & Obligations.

6.1 Uses Reserved by Owner. Prior to the Generation Commencement Date, Owner reserves the right to use and occupy all of the Property for all purposes, other than Solar Energy Purposes, which has been granted to Tenant, including, without limitation, farming, ranching, agriculture, hunting, water extraction, storage, transportation, and related activities in the areas described in **Exhibit B**, and recreation, but specifically excluding oil, gas and mineral exploration and development. Following the Generation Commencement Date, Tenant shall have exclusive use and possession of the surface of the Property. All hunting leases affecting the Property shall be terminated by Owner prior to the Generation Commencement Date.

6.2 No Ownership Right. Subject to Section 5.9, Owner shall have no ownership or other interest in any Project Facilities or Transmission Facilities installed by Tenant on the Property, and Tenant may remove any or all Project Facilities or Transmission Facilities at any time or from time to time. Without limiting the generality of the foregoing, to the extent permitted by applicable Law, Owner hereby waives any statutory or common law lien that it might otherwise have in or to the Project Facilities, Transmission Facilities or Related Facilities or any part thereof. Tenant will provide copies to Owner (a) annually on or before each anniversary of the Effective Date of this Agreement; all solar resource data collected by or on behalf of Tenant and (b) upon request by Owner, reasonable information and documentation to regarding Tenant's interconnection process in the ERCOT system during the Development Term; provided, however, after the Effective Date, Owner agrees to keep such data confidential and to not disclose such data to a third party not affiliated with Owner or Tenant only to the extent permitted by applicable Law. Notwithstanding any other provision in this Agreement, Tenant's use of the Property under this Agreement will not convey any ownership rights in the Property.

6.3 Cooperation. To the extent permitted by applicable Law, Owner shall cooperate and sign and file all applications and related documents reasonably requested by Tenant so that Tenant may obtain land use permits, building permits, drainage easements, environmental impact reviews, or any other approvals necessary for the construction, operation, or financing of the Project Facilities, Transmission Facilities and Related Facilities. Owner shall fully support and cooperate with Tenant in the conduct of its construction and operations and in otherwise giving effect to the purpose and intent of this Agreement, including in Tenant's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, easement, permit, entitlement, approval, authorization, or other rights necessary or convenient in connection with construction and Operations, and Owner shall promptly, upon request, execute and, if appropriate, cause to be acknowledged and recorded, any map, application, permit or document that is reasonably requested by Tenant in connection therewith. Tenant shall promptly reimburse Owner for all reasonable costs and expenses associated with Owner's compliance with this Section.

6.4 Estoppel Certificates. Owner shall, within ten (10) days after request by Tenant, any Lender, or any proposed or actual Assignee, execute and deliver an estoppel certificate (i)

certifying (if true) that, to the best of Owner's actual knowledge, this Agreement is in full force and effect and has not been modified, (ii) certifying (if true) that to the best of Owner's actual knowledge there are no uncured Events of Default hereunder, and no condition or event exists which, with the passage of time, would become an Event of Default (or, if any uncured Events of Default or any such conditions or events exist, stating with particularity the nature thereof), (iii) certifying the status of any conditions subsequent provided in this Agreement, (iv) confirming the rights of Lenders or Assignee, as the case may be, hereunder and providing addresses for notices required hereunder, and (v) containing any other certifications as may reasonably be requested by Tenant, Lender, any title company or Assignee. Any such statements may be conclusively relied upon by Tenant and any existing or proposed Lender, title company or Assignee. Tenant shall promptly reimburse all reasonable costs and expenses associated with Owner's compliance with this Section.

6.5 Representations and Warranties. Owner hereby represents and warrants to Tenant that as of the Effective Date:

(a) Subject only to encumbrances, if any, arising from the mineral estate, the surface of the Property is not subject to any Encumbrances that could materially and adversely affect Tenant's Operations on the Property except those filed in the Real Property Records of Guadalupe County, Texas or Gonzales County, Texas, and is not in violation of any Laws;

(b) Each person or entity signing this Agreement on behalf of Owner is authorized to do so;

(c) Owner has the full and unrestricted legal power, right and authority to enter this Agreement and to perform its obligations hereunder;

(d) No other person or entity is required to join in this Agreement in order for the same to be fully enforceable by Tenant and for Tenant to enjoy all the rights and benefits accorded to it hereunder;

(e) This Agreement constitutes the valid and binding obligation of Owner, and is enforceable in accordance with its terms;

(f) There are no pending or threatened actions, suits, claims, legal proceedings or any other proceedings affecting the Property that could materially and adversely affect the use of the Property for Operations.

(g) There are no other materially adverse facts or conditions relating to the Property that could unreasonably delay, materially interfere with, materially impair or prevent Operations or the financing Operations.

(h) Neither the execution and delivery of this Agreement by Owner nor the consummation by Owner of the transactions contemplated in this Agreement, nor compliance by Owner with the terms and provisions of this Agreement will: (i) violate any provision of the instruments or agreements by which the Owner is formed and/or governed or (ii) violate any of the terms or provisions of any instrument or obligation encumbering the Property and/or by which Owner or any Affiliate of Owner is bound.

(i) Except for consents and approvals, the failure of which to obtain will not have and would not reasonably be expected to have a material adverse effect on Tenant, no consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Owner are necessary in connection with the execution, delivery and performance of this Agreement by Owner.

(j) Neither Owner nor any Affiliate of Owner nor any of their respective officers, directors or employees has employed any broker or finder or incurred any liability for any brokers' fees, commissions or finders' fees as a result of the execution of this Agreement.

6.6 Waiver of Warranty. The parties acknowledge and stipulate that Tenant has fully inspected and investigated the Property and has independently determined the condition of such premises and the suitability of the same for its purposes. EXCEPT AS EXPRESSLY PROVIDED HEREIN, OWNER HAS MADE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OR QUALITY OF THE PROPERTY AND TENANT IS RELYING SOLELY UPON ITS OWN DETERMINATIONS AND CONCLUSIONS ABOUT SUCH CONDITION, QUALITY AND/OR SUITABILITY. TENANT ACKNOWLEDGES THAT IT HAS BEEN INFORMED AND IS AWARE THAT THE PROPERTY IS HOME TO WILDLIFE, INCLUDING WITHOUT LIMITATION RATTLESNAKES, FERAL HOGS, KILLER BEES, GRAZING AND HUNTING ACTIVITIES ON THE LAND, AND EXOTIC ANIMALS, WHICH MAY BE DANGEROUS TO TENANT, ITS EMPLOYEES, INVITEES, AND CONTRACTORS. LESSEE ACKNOWLEDGES THAT OWNER HAS MADE NO REPRESENTATION OR WARRANTY AS TO THE LOCATION OR NATURE OF THE WILDLIFE ON THE PROPERTY. WITHOUT LIMITING THE HOLD HARMLESS PROVISIONS SET FORTH ABOVE, LESSEE EXPRESSLY AGREES TO indemnify, defend, protect and hold Owner HARMLESS FOR ANY INJURY OR DEATH TO TENANT OR TENANT'S agents, assigns, invitees, GUESTS, heirs, legal representatives, devisees, employees, partners, limited partners, members, contractors, subcontractors, agents, and/or family members CAUSED BY WILDLIFE ON THE PROPERTY OR THE LAND, provided that such indemnity and other obligations shall not extend to injury or death caused solely by any hunting activities conducted on the Property.

Section 7. Default & Remedies.

7.1 Tenant Payment Default. If Tenant fails to pay any rental payment or installation fee or any other amount due under this Agreement when due, and such failure or omission has continued for thirty (30) days after written notice from Owner ("***Tenant Payment Default***" or "***Tenant Monetary Default***"), Owner shall have the following remedies:

(a) Collection of Payments. With or without terminating this Agreement (provided that any termination shall require notice to Tenant and in conformity with procedures required hereby and by applicable Law), Owner may file a lawsuit against Tenant to collect any unpaid rental payments or installation fees, together with interest thereon that accrues during the continuance of the Tenant Payment Default. All amounts not paid when due shall bear interest at a rate equal to the then current rate of interest published by the Wall Street Journal from time to time as the U.S. "Prime Rate" [REDACTED]

_____ from the due date until the date of payment. Owner shall also be entitled to recover all court costs and reasonable attorneys' fees that may be incurred by Owner in collecting such amounts.

(b) *Terminate Agreement.* Owner may not terminate this Agreement because of any Tenant Payment Default without first giving Tenant written notice of its intention to terminate this Agreement (such notice, the “**Payment Default Notice**”). The Payment Default Notice must state that if Tenant does not cure the Tenant Payment Default within 75 days after the date such notice is sent then this Agreement shall terminate. For the purpose of the Notice, “days” shall mean calendar days (including holidays) and “date such notice is sent” shall mean the date upon which the Payment Default Notice is sent by Owner to Tenant. If Tenant fails to pay the amount required to cure the Tenant Payment Default (including interest thereon measured pursuant to Section 7.1(a), above) within 75 days of the date the Notice is sent, then this Agreement shall automatically terminate in its entirety, and Owner shall be entitled to file an Affidavit of Termination. Upon such termination, the Parties shall be relieved of all further duties and obligations under this Agreement, other than (i) the payment of any accrued and unpaid obligations owed by either Party as of the date of termination (including the amount owed by Tenant with respect to the Tenant Payment Default and interest payable with respect thereto); (ii) the removal of Project Facilities, Transmission Facilities, and other improvements, and the restoration of the Property by Tenant pursuant to Sections 5.9(a), and 5.9(b); and (iii) any other obligations and liabilities that are expressly stated in this Agreement to survive such termination. Owner's right to terminate this Agreement pursuant to this Section is subject to any rights expressly given to any Lender under this Agreement.

7.2 Tenant Nonmonetary Default. Any breach by Tenant of any provision of this Agreement which continues for sixty (60) days after written notice from Owner, other than a Tenant Payment Default as set forth in Section 7.1, shall constitute a nonmonetary default (“**Tenant Nonmonetary Default**”) and Owner shall have the right to bring a cause of action against Tenant or to terminate this Agreement for such breach; provided, however, that Owner complies with the requirements of this Section. As a precondition to bringing a cause of action and/or terminating this Agreement because of a Tenant Nonmonetary Default, Owner shall give Tenant written notice of the Tenant Nonmonetary Default (“**Notice of Default**”). The Notice of Default shall state that should the Tenant Nonmonetary Default not be cured within 60 days after the date the Notice of Default is sent (or if such default cannot be cured through the exercise of reasonable diligence within such sixty (60) day period, if Tenant fails to commence corrective action within such sixty (60) day period and promptly thereafter completes such corrective action) then Owner may (i) bring the appropriate causes of action to cure such breach and, if appropriate, pursue any and all other actions and remedies that may be available to Owner at law or in equity, including, but not limited to, all losses or damages which Owner may suffer by reason of breach of the Agreement, (ii) terminate this Agreement, or (iii) do both. For the purpose of the Notice of Default, “days” shall mean calendar days (including holidays) and “the date the Notice of Default is sent” shall mean the date upon which the Notice of Default is sent by Owner to Tenant. Owner's right to terminate this Agreement pursuant to this Section is subject to any rights expressly given to any Lender under this Agreement.

7.3 Owner Default. Owner shall be in default of this Agreement if it shall fail to meet any of its material obligations under the terms of this Agreement and shall not cure such default

within forty-five (45) days after receiving written notice thereof from Tenant (or if such default cannot be cured through the exercise of reasonable diligence within such forty-five (45) day period, if Owner fails to commence corrective action within such forty-five (45) day period and thereafter diligently prosecutes same to completion) (“**Owner Default**”). Upon the occurrence of an Owner Default, Tenant shall have the option to pursue any one or more of the following remedies without any further notice or demand whatsoever: (i) terminate this Agreement; and (ii) pursue any and all other action or remedies that may be available to Tenant at law or in equity, including but not limited to all losses or damages which Tenant may suffer by reason of a termination of this Agreement and the loss of the value of the Project Facilities and Transmission Facilities.

Section 8. Tenant's Right to Mortgagee and Lender Rights.

8.1 Right to Mortgage. Tenant may, upon notice to Owner, but without Owner's consent or approval, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its surface leasehold interest in the Property. These various security interests in all or a part of the Property, the Project Facilities, Transmission Facilities and Related Facilities are collectively referred to as a “**Mortgage**” and each holder of the Mortgage, is referred to as “**Lender**”. Any such Lender shall use the Property only for the uses permitted under this Agreement and shall be subject to the terms of this Agreement. Whenever Tenant has mortgaged an interest under this Section, it will give notice of the Mortgage (including the address of the Lender for notice purposes) to Owner; provided, however, that failure to give this notice within ninety (90) days after the Tenant has mortgaged an interest to a Lender shall not constitute a default under this Agreement, but rather shall only have the effect of not binding Owner with respect to such Mortgage until notice is given. Any Lender shall not acquire any rights greater than those granted to Tenant under this Agreement. At Tenant's request and sole expense including reimbursement to Owner of Owner's attorney's fees, Owner shall use its commercially reasonable efforts to cooperate in a prompt manner with Tenant in Tenant's efforts to obtain financing from a Lender, including the amendment of this Agreement to include any provision that may reasonably be requested by an existing or proposed Lender, and shall execute such additional documents as may reasonably be required to evidence such Lender's rights hereunder; provided that Owner shall have no obligation to grant a lien on or security interest in the fee title to the Property in favor of any Lender and shall not be obligated to enter into any modification of this Agreement which has an material adverse economic effect on Owner. Further, Owner shall, within ten (10) business days after written notice is received by Owner from Tenant or any existing or proposed Lender, execute and deliver thereto a certificate to the effect that (i) Owner recognizes such entity as a Lender under this Agreement and (ii) will accord to such entity all the rights and privileges of a Lender hereunder.

8.2 Notice of Default and Opportunity to Cure. As a precondition to exercising any rights or remedies related to any alleged default by Tenant under this Agreement, Owner shall give written notice of the default to each Lender, to which Owner has been notified of, concurrently with notice to Tenant. Each Lender shall have the same right to cure any default as Tenant, and/or the same right to remove any Project Facilities, Transmission Facilities, or other improvements owned by Tenant located on the Property, plus an additional period of time equal to the greater of thirty (30) days following expiration of Tenant's deadline for curing default, and the deadline

provided in Section 8.3. Failure by Owner to give a Lender notice of default shall not diminish Owner's rights against Tenant, but shall preserve all rights of the Lender to cure any default and to remove any Project Facilities, Transmission Facilities, or other improvements owned by Tenant located on the Property.

8.3 Extended Cure Period.

(a) Following acquisition of all or a portion of Tenant's interest in the Project Facilities or Transmission Facilities and the rights of Tenant under this Agreement by the Lender, or its assignee or designee, as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect, and the party acquiring title to the Tenant's interest in the Project Facilities or Transmission Facilities and the rights of Tenant under this Agreement shall, as promptly as reasonably possible commence the cure of all other Tenant Nonmonetary Defaults, and thereafter diligently prosecute the cure to completion, whereupon Owner's right to terminate this Agreement based upon the Events of Defaults shall be deemed waived, provided that the party acquiring title to Tenant's interest in the Project Facilities or Transmission Facilities and the rights of Tenant under this Agreement shall (i) have no liability for Tenant Monetary Defaults that are due and owing to Owner as of the assumption date unless those Tenant Monetary Defaults were the subject of a timely notice of Event of Default delivered to Tenant and Lender pursuant to Section 8.2 (but this provision shall not be interpreted to limit Owner's rights to proceed against Tenant) and (ii) shall not be required to cure those Events of Defaults ("**Non-Curable Defaults**") that are not reasonably susceptible of being cured or performed by the party acquiring title. Non-Curable Defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Tenant's interest in the Project Facilities or Transmission Facilities and the rights of Tenant under this Agreement by the party acquiring title.

(b) Each Lender shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant hereunder or with respect to the leasehold estate for purposes of curing such default or Event of Default. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes each Lender (and its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all of the rights and privileges of Tenant hereunder. Owner shall not terminate this Agreement prior to expiration of the cure periods available to each Lender as set forth above. Further, neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Agreement as long as all amounts payable by Tenant hereunder are paid by a Lender in accordance with the terms thereof.

8.4 Lender Liability. Subject to the obligation not to violate any term of the Agreement, any Lender that does not directly hold an interest in the Project Facilities or Transmission Facilities, or whose interest is held solely for security purposes, shall have no obligation or liability under this Agreement prior to the time the Lender succeeds to absolute title to Tenant's interest in the Project Facilities or Transmission Facilities and the rights of Tenant under this Agreement. A Lender shall be liable to perform obligations under this Agreement only for and during the period it directly holds such absolute title to the leasehold interest in accordance with the terms hereof. Lender will not violate any of the terms of the Agreement even after acquiring absolute title to the leasehold interest.

8.5 Lender's Right to Enforce Mortgage and Assign Project Facilities and Transmission Facilities. A Lender shall have the absolute right: (i) to assign its Mortgage; (ii) to enforce its lien and acquire title to all or any portion of the Project Facilities and Transmission Facilities by any lawful means; (iii) to take possession of and operate all or any portion of the Project Facilities and Transmission Facilities and to perform all obligations to be performed by Tenant under this Agreement, or to cause a receiver to be appointed to do so; (iv) acquire title to the leasehold interest (whether by foreclosure, assignment in lieu of foreclosure or other means) granted under this Agreement; (v) exercise any rights of Tenant hereunder or with respect to this Agreement; and (vi) cause a receiver to be appointed to do any of the foregoing things, without Owner's consent, to assign or transfer all or any portion of the Project Facilities and Transmission Facilities to a third party who acquires the same from or on behalf of the Lender or via foreclosure or assignment in lieu of foreclosure, Owner shall recognize the Lender or such other party (as the case may be) as Tenant's proper successor, and this Agreement shall remain in full force and effect. Any Lender or other party who acquires Tenant's interest in the Project Facilities and Transmission Facilities pursuant to foreclosure or assignment in lieu of foreclosure will be obligated to perform all of the Tenant's obligations. Any Lender or other party who acquires Tenant's interest in Project Facilities and Transmission Facilities pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Tenant by this Agreement which are incurred or accrue after such Lender or other party no longer has ownership or possession of the Project Facilities and Transmission Facilities.

8.6 New Agreement. If the Project Facilities or Transmission Facilities are foreclosed upon or there is an assignment in lieu of foreclosure, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditor's rights, then, so long as a Lender has cured any Tenant Monetary Defaults and is making commercially reasonable efforts to cure any Tenant Nonmonetary Defaults (other than the bankruptcy of Tenant) as provided herein, Owner shall, immediately upon written request from such Lender received within ninety (90) days after any such termination, rejection or disaffirmance, without demanding additional consideration therefor, then Owner shall execute and deliver to Tenant or such Lender or other purchaser at a foreclosure sale, or to a designee of one of these parties, as the case may be, a new agreement ("**New Agreement**") which (i) shall be for a term equal to the remainder of the Term of this Agreement before giving effect to such rejection or termination; (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Tenant or any Lender or other purchaser at a foreclosure sale prior to rejection or termination of this Agreement); (iii) shall include that portion of the Project Facilities or Transmission Facilities in which Tenant or such other Lender or other purchaser at a foreclosure sale had an interest on the date of rejection or termination; and (iv) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner. If more than one Lender makes a written request for a New Agreement pursuant to this provision, the New Agreement shall be delivered to the Lender requesting such New Agreement whose mortgage has lien priority, and the written request of any other Lender whose lien is subordinate shall be void and of no further force or effect. The provisions of this Section shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Tenant and each Lender, and, from the effective date of such termination, rejection or disaffirmation of this Agreement to the

date of execution and delivery of such New Agreement, such Lender or other purchaser at a foreclosure sale may use and enjoy the Project Facilities and Transmission Facilities without hindrance by Owner or any person claiming by, through or under Owner; provided that all of the conditions for the New Agreement as set forth above are complied with. Tenant shall reimburse Owner for its reasonable out-of-pocket expenses, including reasonable attorneys' fees incurred in connection with Owner's compliance with this Section.

8.7 Mortgagee's Consent to Amendment, Termination or Surrender. Except as otherwise provided in Section 5.1, the Parties agree that so long as there exists an unpaid Lender, this Agreement shall not be modified or amended, and Owner shall not accept a surrender, cancellation or release of all or any part of the Property from Tenant, prior to expiration of the term of this Agreement, without the prior written consent of the Lender, with such consent not to be unreasonably withheld or delayed.

8.8 No Merger. There shall be no merger of this Agreement, or of the leasehold estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including Lender) having an interest in this Agreement or in the estate of Owner or Assignee shall join in a written instrument effecting such merger and shall duly record the same.

8.9 Third Party Beneficiary. Each Lender is and shall be an express third party beneficiary of the provisions of this Section, and shall be entitled to compel the performance of the obligations of Owner under this Agreement to the extent the Tenant possesses such right.

Section 9. Assignment & Subletting.

9.1 Right to Assign or Sublet. Provided no uncured Event of Default exists in any Tenant obligations under this Agreement, Owner hereby provides its consent to Tenant and provides Tenant with the right, without any additional consent from Owner required, on an exclusive or non-exclusive basis, to grant, sell, lease, convey, or assign (including without limitation changing the ownership of Tenant) all or a portion of Tenant's interest in this Agreement, the Project Facilities or the Transmission Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, licenses or similar rights to Tenant's interest in the Agreement or the Project Facilities (collectively "**Assignment**") to any one or more persons or entities (collectively "**Assignee**"). All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Tenant under this Agreement. Upon Tenant's Assignment of an interest under this Agreement as to all or any portion of the Property, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Tenant shall promptly notify Owner in writing of any Assignment and shall provide Owner with the identity and contact information of the Assignee. Owner shall recognize the Assignee as Tenant's proper successor and the Assignee shall have all of the assigned rights, benefits and obligations of Tenant under and pursuant to this Agreement. In the event of an Assignment, Tenant shall not be released of its obligations under this Agreement unless the Assignment is to a Qualified Transferee. "**Qualified Transferee**" means any Assignee

that has a net worth at the time of Assignment that is greater than or equal to the net worth of its transferor at the time of such Assignment, with net worth being defined as the value of all assets owned minus the value of all outstanding liabilities.

9.2 Assignments by Owner. Owner shall have the right to devise, convey, gift, assign, transfer and/or sell Owner's interest in all or a portion of the fee title to the Property (along with any rights associated with the fee title) to any person or entity. Owner shall notify Tenant in writing of any sale, assignment or transfer of any of Owner's interest in all or a portion of the fee title to the Property, or any part thereof along with any evidence of such sale, assignment or transfer (including but not limited to, probate records, deed transfers, etc.). Until the date occurring thirty (30) days after Tenant receives such notice and the supporting documentation that Tenant requires, (1) Tenant shall have no duty to any successor Owner, and (2) Tenant shall not be in default under this Agreement if it continues to make all payments to the prior Owner.

9.3 Division of Property by Owner. In the event that ownership of the Property is divided after the Effective Date of this Agreement, such that different parties comprising the Owner hereunder own different portions of the Property (as opposed to undivided interests in the Property), the payments and fees described herein shall be payable to the owner of the portion of the Property on which the particular Project Facilities for which payments are calculated are physically located, and acreage based payments shall be calculated based on the amount of acreage owned by the then owner. In the event that the Owner's percentage of ownership (as an undivided interest in the Property) changes after the Effective Date of this Agreement, the payments and fees will be payable to the Owner based on the Owner's legal ownership interest percentages. If after the Effective Date, the Property is divided such that there is a new owner or if such undivided interest ownership percentages shall change, Tenant shall not be liable or obligated to a new owner or a change in ownership percentages until the date occurring thirty (30) days after the date (1) Tenant is notified in writing of such change and the existing owner or new owner has provided to Tenant evidence of such change (including but not limited to, probate records, deed transfers, etc.) that is reasonably satisfactory to Tenant, and (2) the new owner has signed a joinder and ratification of this Agreement acceptable to Tenant.

9.4 If subsequent review of the title history shows that the ownership percentages are incorrect, Owner shall cooperate with Tenant in amending the ownership percentages.

Section 10. General Provisions.

10.1 Environmental Matters. Owner represents that, to the best of Owner's actual knowledge and without undertaking a duty to inspect or investigate (i) the Property is in compliance with Environmental Laws; and (ii) there are no Hazardous Materials in, on, or under the Property, other than herbicides, pesticides and fertilizers that have been stored, mixed and applied on the Property in compliance with normal agricultural practices and in compliance with Environmental Laws. This representation does not apply to any environmental issues arising from the exploration, production or transmission of oil, gas, water or any other mineral.

(a) Subject to Section 10.5 and Owner's representation in Section 10.1, Tenant assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Tenant's use of the Property, and (ii) all remediation and other requirements of (as well as all

consequences of the existence of) Hazardous Materials located on or released on, from or onto, the Property arising from this Agreement.

(b) Owner assumes responsibility for and agrees to comply with (i) all Environmental Laws applicable to Owner's use of the Property, and (ii) all remediation and other requirements of (as well as all consequences of the existence of) Hazardous Materials located on or released on, from or onto, the Property other than by Tenant or its contractors, representatives, or invitees including without limitation any Hazardous Materials located on the Property prior to the Effective Date.

10.2 Hold Harmless and Insurance.

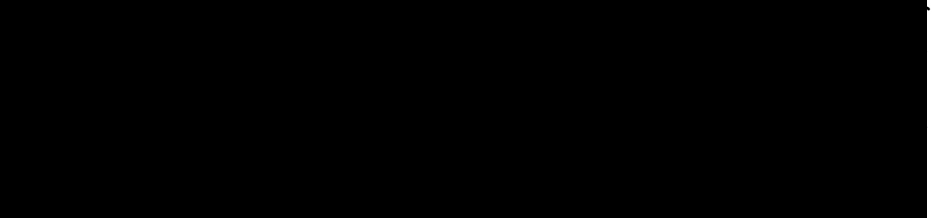
(a) Each party (the "**Holding Harmless Party**") agrees to hold harmless the other party and such other party's mortgagees, Affiliates, officers, employees and agents (the "**Held Harmless Party**") against any and all losses, damages (excluding consequential damages unless required to be paid by any Held Harmless Party pursuant to a legal judgment obtained by a third party against such Held Harmless Party for a claim for which an Holding Harmless Party is required to hold harmless the Held Harmless Party hereunder), expenses and other liabilities, including without limitation reasonable attorneys' fees and any third party claims, to the extent pertaining to a third party claim for physical damage to property or physical injury to any person, to the extent resulting from or arising out of (i) any operations of the Holding Harmless Party on the Property, (ii) in the case of losses, damages, expenses and other liabilities incurred by Owner as the "Held Harmless Party," any environmental mitigation or conservation activities conducted by or on behalf of Tenant, its employees, Affiliates, agents or invitees or any other third parties with access to the Property, (iii) any negligent act or negligent failure to act or willful misconduct on the part of the Holding Harmless Party or anyone else engaged in doing work for the Holding Harmless Party, (iv) any breach or inaccuracy of any representations or warranties made by the Holding Harmless Party under this Agreement, (v) any breach of this Agreement by the Holding Harmless Party, or (vi) with respect to Owner's hold harmless of Tenant, any claims arising out of Owner's exercise of its rights of inspection. This hold harmless provision (Section 10.2) shall survive the termination of this Agreement. This hold harmless provision (Section 10.2) shall not apply to losses, damages, claims, expenses and other liabilities to the extent (i) caused by any negligent or deliberate act or omission on the part of the Held Harmless Party or its Affiliates, officers, employees and agents, or (ii) covered by insurance to the extent such proceeds are offered to or received by the Held Harmless Party from such insurance carrier or its authorized representative.


(b) Subject to the terms of this Agreement and upon obtaining knowledge of a claim for which it is entitled to hold harmless under this Section 10.2, the Held Harmless Party shall, within thirty (30) days of obtaining such knowledge, deliver a notice of such claim ("**Notice of Claim**") to the Holding Harmless Party. The failure to provide (or timely provide) a Notice of Claim will not affect the Held Harmless Party's rights to being held harmless; provided, however, the Holding Harmless Party is not obligated to hold harmless the Held Harmless Party for the increased amount of any loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

(c) The Holding Harmless Party shall cooperate with the Held Harmless Party's defense, in good faith and at its own expense, any claim or demand pursuant to Section 10.2(a) as set forth in a Notice of Claim relating to a third party claim, and the Held Harmless Party, at its expense, may participate in the defense. The Held Harmless Party shall have a right to notice of any settlement, and the Holding Harmless Party shall not execute or otherwise agree to any consent decree which provides for other than monetary payment within such Holding Harmless Party's sole ability to pay without the Held Harmless Party's prior written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Held Harmless Party shall have the right to pay or settle any such claim, provided that in such event it shall waive any right to being held harmless therefor by the Holding Harmless Party. If the Holding Harmless Party elects not to defend or settle such proceeding, claim or demand and the Held Harmless Party defends, settles or otherwise deals with any such proceeding, claim or demand, the Held Harmless Party shall provide thirty (30) days' advance written notice of any property settlement, which settlement may be without the consent of the Holding Harmless Party, to the Holding Harmless Party and will act reasonably and in accordance with its good faith business judgment. The Held Harmless Party and the Holding Harmless Party shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such legal proceeding, claim or demand.

(d) If any claim is made by a third party against a Held Harmless Party, the Held Harmless Party shall use its best efforts to make available to the Holding Harmless Party those partners, directors, officers and employees whose assistance, testimony or presence is necessary to assist the Holding Harmless Party in evaluating and in defending such claims; provided, however, that any such access shall be conducted in such a manner as not to interfere unreasonably with the operations of the business of the Held Harmless Party but failure to use commercially reasonable efforts to provide necessary witnesses or access to information will excuse Holding Harmless Party's performance under this Section 10.2.

(e) The hold harmless provisions set forth in Section 10.2(a) above shall be without regard to whether Held Harmless Party may also have a claim against a third party for any of the losses. The gross amount which a Holding Harmless Party is liable to, for, or on behalf of any Held Harmless Party shall be reduced by any insurance proceeds, payments received in respect of a judgment or settlement or other amounts actually recovered by or on behalf of the Held Harmless Party related to the loss. If a Held Harmless Party shall have received or shall have had paid on its behalf a payment in respect of a loss and shall subsequently receive directly or indirectly insurance proceeds, payments in respect of a judgment or settlement or other amounts in respect of such loss, then the Held Harmless Party shall pay to the Holding Harmless Party all such amounts received or, if less, the amount of the payment.

(f) Insurance. Tenant, its agents, contractors and subcontractors, shall procure and maintain at its sole cost and expense throughout the construction and operation phases of the Agreement, a policy 



10.3 Safety Measures; Waiver and Recognition. Owner authorizes Tenant to take reasonable safety measures to reduce the risk of damage to the Project Facilities or Transmission Facilities or the risk that such facilities will cause damage, injury or death to people, livestock, other animals or property, and Tenant may construct fencing in compliance with **Exhibit D**, or if said section is in conflict with applicable National Electric Safety Code regulations then such electrical regulations shall control, around one or more of the solar panels and take other reasonable security precautions if Tenant determines, in its sole discretion, that such fencing and/or security measures will reduce such risks of damage, death or injury. The cost of any fencing constructed by Tenant, or of any other such security measures taken by Tenant, shall be borne solely by Tenant. **OWNER ADDITIONALLY RECOGNIZES THE NEED TO EXERCISE CAUTION WHEN IN PROXIMITY TO ANY OF THE PROJECT FACILITIES AND TRANSMISSION FACILITIES AND THE IMPORTANCE OF RESPECTING GATES, FENCES, SIGNAGE, RULES AND OTHER SAFETY MEASURES UTILIZED BY TENANT, AND OWNER AGREES TO EXERCISE SUCH CAUTION AND RESPECT SUCH MEASURES AT ALL TIMES AND TO CAUSE ITS PRINCIPALS, MEMBERS, OFFICERS, EMPLOYEES, AGENTS, INVITEES, REPRESENTATIVES AND CONTRACTORS TO DO THE SAME. OWNER ACKNOWLEDGES THAT THERE MAY BE RISKS ASSOCIATED WITH SOLAR POWER ENERGY GENERATION, INCLUDING BUT NOT LIMITED TO ELECTROMAGNETIC FIELDS, AND HEALTH EFFECTS POTENTIALLY ASSOCIATED WITH NOISE, SHADOW, AND GLARE, AND OWNER KNOWINGLY WAIVES ALL CLAIMS RELATED TO SUCH RISKS.**

10.4 Condemnation. If all or part of the Property is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a “**Taking**”), Owner shall provide Tenant with reasonably prompt notice of any written notice that Owner has received of any impending proceeding or meeting related to such Taking and shall not in the absence of Tenant settle with the Taking authority or agree on compensation for such Taking, and should a partial Taking render the remaining portion of the Property unsuitable for Tenant's use, then, at Tenant's written election, this Agreement shall terminate upon the vesting of title or taking of possession. Any award or other compensation (“**Award**”) payable as a consequence of such Taking shall be apportioned between the valuation given to the Tenant's interest in its leasehold estate and the Project Facilities and Transmission Facilities (collectively “**Tenant's Interest**”) and the valuation given to Owner's interest in this Agreement and its reversionary interest in the Property, valued as unimproved and unentitled land (collectively, “**Owner's Interest**”), and Tenant shall not be required to pursue a separate award from the condemning authority unless so directed by such condemning authority, nor shall Tenant's right to condemnation proceeds under this Section 10.4 be affected by the refusal of the condemning authority to make a separate award in favor of Tenant, unless otherwise ordered by such condemning authority.

10.5 Hazardous Materials. Tenant will not release or generate, on the Property any Hazardous Materials, except to the extent permitted by Applicable Law, but in no event to the extent Owner determines such release or generation would conflict with Owner's requirements previously delivered to Tenant for the collection, storage, processing, transportation, or sale of water. If there is any violation by Tenant, its Affiliates, directors, employees, contractors, agents or invitees, Tenant shall promptly cease such violation and remove, remediate, clean up and dispose of any Hazardous Materials in full compliance with applicable Laws and Owner's requirements regarding water. In no event will Tenant be responsible to remove, remediate, clean up or dispose of any Hazardous Materials which existed at the Property as of the date of this Agreement. Tenant shall defend, protect, indemnify, and hold harmless Owner against all claims arising out of or related to any Hazardous Materials brought to the Property or permitted to be brought to the Property by Tenant, its Affiliates, directors, employees, contractors, agents or invitees. Notwithstanding the foregoing, normal quantities and use of those Hazardous Materials customarily used in the development, construction, operation, and management of a solar energy project that is situated on land with low profile above-ground water storage drums or underground sources of water intended for public consumption are expressly permitted, provided that such quantities and activities of Tenant shall comply with all applicable Laws and shall be at Tenant's sole risk and responsibility.

10.6 Notices. Any notices, statements, requests, demands, consents, correspondence or other communications required or permitted to be given hereunder shall be in writing and shall be given personally, by certified or registered mail, postage prepaid, return receipt requested, or by overnight or other courier or delivery service, freight prepaid, to the address of the Party to be notified indicated below.

<p>If to Owner:</p> <p>Schertz/Seguin Local Government Corporation 108 W. Mountain Street Seguin, TX 78155 Attn: Amber Briggs Beard, General Manager, Shertz Seguin Local Government Corporation Phone: (830) 386-2567 Fax: E-mail Notice: Abeard@seguintexas.gov</p>	<p>If to Tenant:</p> <p>Elm Creek Energy, LLC 3000 El Camino Real 5 Palo Alto Square, Suite 700 Palo Alto, CA 94306-2122 Attn: Daniel R. King Phone: [REDACTED] Fax: [REDACTED] E-mail Notice: [REDACTED]</p>
<p>With Copy to:</p> <p>Davidson Troilo Ream & Garza PC Capitol Center 919 Congress Ave., Suite 810 Austin, Texas 78701-2444 Phone: 512.469.6006 Fax: 512.473.2159 E-mail Notice: SSmyth@dtrglaw.com</p>	<p>With Copy to:</p> <p>Reed Smith, LLP Attn: J. Todd Culwell 811 Main Street, Suite 1700 Houston, Texas 77002 Phone: (713) 469-3653 Fax: (713) 469-3899 E-mail Notice: tculwell@reedsmith.com</p>

Notices delivered by hand shall be deemed delivered when received, and notices sent by certified or registered mail or by overnight or other courier or delivery service shall be deemed delivered and received on the first to occur of (i) three (3) days after deposit in the United States mail or with such overnight or other courier or delivery service, addressed to such address, or (ii) written acceptance of delivery by the recipient. Each Party and any Lender may change its address for receipt of notices by sending written notice hereunder of such change to the other Party (in the case of a Lender, both Parties) in the manner specified in this Section. Notwithstanding the foregoing, any amounts payable to Owner under this Agreement shall be deemed tendered if in the form of a paper check three (3) days after a check for the same, addressed to Owner's address above, is deposited in the United States mail, first-class postage prepaid. The Owner and Tenant agree to work in good faith to arrange a mutually satisfactory payment process that may include, among other things, direct wire transfers.

10.7 Force Majeure. If either party's performance of its non-monetary obligations under this Agreement is prevented or delayed, despite such party's best efforts to perform, by an Event of Force Majeure, upon such claiming party providing notice in reasonable detail to the other party the requirement of performing such obligation shall be postponed by a period equal to the period of time such party's performance under this Agreement is reasonably prevented or delayed by such Event of Force Majeure.

10.8 Meetings with Third Persons. During the Term, Tenant and its representatives, agents and contractors shall have the right to meet with governmental agencies and with any other Persons with whom Owner has contractual arrangements in connection with or relating to the Property or any portion thereof, and to discuss with any such Persons the terms of this Agreement, the terms of any contractual arrangements between Owner and any such Person, and any other matters relating to the Property or Tenant's intended use of the Property.

10.9 Third Party Beneficiaries. Except with respect to the rights of Lenders (which Lenders are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the agreements and covenants contained herein are made solely for the benefit of the Parties, their respective successors and assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement, nor otherwise give rise to any cause of action in any person or entity who is not a Party hereto.

10.10 Attorneys' Fees. In the event of any litigation related to the interpretation or enforcement hereof, or which in any other manner relates to this Agreement, the Easements, this Agreement or the Property, the prevailing Party shall be entitled to recover from the other Party its reasonable attorneys' fees and court costs. If a voluntary or involuntary bankruptcy proceeding is commenced by or against Tenant, Owner shall be entitled to recover from Tenant its attorney's fees and court and other costs incurred as a result of the bankruptcy.

10.11 Covenants Running With the Land. The Property shall be held, conveyed, assigned, hypothecated, encumbered, leased, used and occupied subject to the provisions of this Agreement, which provisions shall run with the Property, and shall be binding upon and inure to the benefit of the Parties and each other Person having any interest therein during their ownership thereof, and their respective tenants, heirs, executors, administrators, successors and assigns. It is expressly agreed and understood that the easements granted by Owner shall constitute easements in gross, and, therefore, shall not be appurtenant to the Property. It is further expressly agreed and understood that the easements granted hereunder shall not survive the termination of this Agreement.

10.12 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the State courts of Guadalupe County, or the United States District Court for the Southern District of Texas shall have exclusive venue.

10.13 Memorandum. Concurrently with execution hereof, the Parties shall execute a "Memorandum of Agreement, Lease and Easements," a sample of which is attached as **Exhibit F** hereto, and cause it to be acknowledged and recorded in the Real Property Records.

10.14 Binding on Partial Interests. If this Agreement is not executed by one or more of the persons or entities comprising the Owner herein, or by one or more persons or entities holding an interest in the Property, then this Agreement shall nonetheless be effective, and shall bind all those persons and entities who have signed this Agreement.

10.15 Savings Clause. If any term or provision hereof is held to be invalid, void or otherwise unenforceable by any court of competent jurisdiction, then the same shall not affect the

validity or enforceability of any other term or provision hereof, the terms and provisions hereof being severable.

10.16 No Waiver. The waiver of any covenant, condition or agreement contained herein shall not constitute a waiver of any other covenant, condition or agreement herein or of the future performance thereof.

10.17 Entire Agreement; Modifications. This Agreement, including any Exhibits attached hereto, contains the entire agreement between the Parties in connection with any matter mentioned or contemplated herein, and all prior or contemporaneous proposals, agreements, understandings and representations, whether oral or written, are merged herein and superseded hereby. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against whom the enforcement thereof is sought.

10.18 Multiple Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

10.19 Provision of Copy of Lease. If Owner so requests in writing, Tenant shall provide, within thirty (30) days of receipt of written request of Owner, one (1) complete copy of this Agreement.

10.20 Survival. The provisions of the Agreement relating to indemnification or hold harmless from one Party to the other Party, and Tenant's reclamation obligations, shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

10.21 Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of this Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement. Unless expressly provided otherwise in this Agreement, wherever this Agreement gives a Party a right to determine, require, specify, or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

10.22 Construction. In this Agreement, unless the context otherwise requires, the singular shall include the plural, the masculine shall include the feminine and neuter, and vice versa. The terms "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." Both Parties acknowledge that each was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor of or against either Party because one is deemed to be the author thereof. Captions or titles used herein are for convenience of reference only and do not affect the meaning or intent hereof.

[Signatures on following page.]

IN WITNESS, WHEREOF, Owner and Tenant have caused this Agreement to be executed and delivered by their duly authorized representatives as of the Effective Date.

OWNER:

SCHERTZ-SEGUIN LOCAL GOVERNMENT CORPORATION,

A Texas non-profit corporation

By: _____

Name: _____

Title: _____

TENANT:

ELM CREEK ENERGY, LLC,

a Delaware limited liability company

By: _____

Name: Daniel R. King

Title: Manager

ACKNOWLEDGEMENTS

(Owner)

STATE OF _____ §

§

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of _____
2020, by _____.

(SEAL)

Notary Public

My Commission Expires:_____

STATE OF _____ §

§

COUNTY OF _____ §

The foregoing instrument was acknowledged before me this _____ day of _____
2020, by _____.

(SEAL)

Notary Public

My Commission Expires:_____

ACKNOWLEDGEMENTS

(Elm Creek Energy, LLC)

STATE OF _____ §
COUNTY OF _____ §

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by Daniel R. King, the Manager of Elm Creek Energy, LLC, a Delaware limited liability company, on behalf of said company.

Notary Public

(SEAL) My Commission Expires:_____

EXHIBITS

Exhibit A	Definitions
Exhibit B	Property Description
Exhibit C	Payments
Exhibit D	Fences & Gate Specifications
Exhibit E	Site Rules
Exhibit F	Memorandum of Agreement, Lease and Easements

EXHIBIT A

Definitions

“Affiliate” shall mean any person that controls, is controlled by, or is under common control with the person in question.

“Agreement” shall mean the Solar Lease and Easement Agreement to which this Exhibit is attached.

“Assignees” shall mean all references to assignees will also be to transferees and lessees.

“Award” shall have the meaning given in Section 10.4 of this Agreement.

“Commencement of Construction” shall mean the date upon which Tenant commences the grading or groundwork for any permanent road, Project Facilities, or Transmission Facilities or when equipment (aside from solar measurement equipment or equipment used to measure sun/sunlight or test soil) is moved onto the Property. Commencement of Construction shall exclude any groundwork done for the purpose of conducting a ground survey, geotechnical work, environmental studies, solar measurement work, transporting materials or installing solar measurement equipment.

“Effective Date” shall mean the date upon which this Agreement becomes effective.

“Encumbrances” shall mean any liens, covenants, conditions, reservations, restrictions, easements, leases, licenses, occupancies, tenancies, or other matters affecting, relating to, or encumbering the Property.

“Environmental Laws” shall mean all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials. Environmental Laws includes, but is not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (“CERCLA”), all federal, state and local laws pertaining to the protection, collection, transportation, storage, treatment and sale of water, and the common law.

“Event of Default” shall mean, collectively, any Tenant Payment Default, Tenant Monetary Default or Tenant Nonmonetary Default as those terms are defined in Sections 7.1 and 7.2 of this Agreement.

“Event of Force Majeure” shall mean strikes, lockouts or other labor disturbances; delays in transportation; inability to secure labor or materials in the open market; acts of God or the elements, including fire, flood, washout, perils at sea, lightning, earthquake or accidents; conditions arising out of or attributable to pandemics, acts of war, civil disturbances or riots; the effect of any Law; the failure of any governmental authority to issue any permit, entitlement, approval or authorization within a reasonable period of time

after an application for the same has been submitted; the inability to sell electricity at commercially reasonable prices in the open market during a period when a force majeure clause under Tenant's power purchase contracts, if any is in effect; or any other matter or condition beyond the reasonable anticipation and control of the Party in question, whether or not similar to the matters or conditions herein specifically enumerated; and (in the case of Tenant) while litigation contesting all or any portion of the right, title and interest of Owner in the Property and/or of Tenant under this Agreement shall be pending and not finally determined. A Force Majeure event shall not excuse performance of a parties' monetary obligations hereunder.

“Generation Commencement Date” shall have the meaning given in Section 2.1(c) of this Agreement.

“Hazardous Materials” shall mean: (a) any substance which is or contains any “hazardous substance” as now or hereafter defined in §101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”) (42 U.S.C. § 9601 et seq.) or any regulations promulgated under CERCLA; (b) oil, gas, gasoline, diesel fuel, or other petroleum hydrocarbons, or additives or by-products associated with such petroleum products or with oil, gas, and other mineral exploration, production, and transmission; (c) any other substance or material that could reasonably be expected to adversely impact above-ground or underground water; and (d) any additional substances or materials which are now or hereafter classified or considered to be hazardous or toxic under Environmental Requirements or the common law, or any other applicable laws relating to the Property.

“Holding Harmless Party” shall have the meaning given in Section 10.2(a) of this Agreement.

“Held Harmless Party” shall have the meaning given in Section 10.2(a) of this Agreement.

“Laws” shall mean all valid and applicable laws, statutes, ordinances, regulations, orders and assessments of any federal, state, county or local governmental authority with jurisdiction over the parties, the Project Facilities, Transmission Facilities, or the Property.

“Lender” shall mean any financial institution, equity investor, tax equity investor, or other individual or entity that from time to time provides secured financing or equity investment or tax equity investment for some or all of the Project Facilities, Transmission Facilities, Related Facilities or Operations, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns.

“Notice of Claim” shall have the meaning given in Section 10.2(b) of this Agreement.

“Operations” shall mean those activities undertaken by Tenant or by a third party at Tenant's direction or for Tenant's in connection with the utilization of the Property for Solar Energy Purposes.

“Owner's Interest” shall have the meaning given in Section 10.4 of this Agreement.

“Permitted Energy Storage Facilities” shall have the meaning in Section 5.2 of this Agreement.

“Project Facilities” shall mean any photovoltaic energy system, facility, structure, or equipment designed for the purpose of generating and storing electricity converted from sunlight or solar energy, including modules, inverters, cables, foundations, mounting units, supportive structure and all necessary ancillary improvements and equipment providing support or otherwise associated therewith.

“Property” shall mean the approximately [_____] acres of real property (or less, as applicable) leased by Owner to Tenant and that is legally described in **Exhibit B**. Property shall not include any adjoining real property or other real property owned by Owner but not described in **Exhibit B**. This definition shall be amended to exclude any real property released pursuant to Section 5.1 of this Agreement.

“Reclamation Estimate” shall have the meaning given in Section 5.9(c) of this Agreement.

“Related Facilities” shall refer to one or more substations; interconnection and switching stations; and transformers facilities from which Tenant or others that generate energy may store, direct, disburse or measure electricity or interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy.

“Removal Bond” shall have the meaning given in Section 5.9(c) of this Agreement.

“Solar Energy Purposes” shall have the meaning given in Section 5.2 of this Agreement.

“Transferees” shall mean all references to transferees will also be a reference to assignees and lessees.

“Taking” shall have the meaning given in Section 10.4 of this Agreement.

“Tenant's Interest” shall have the meaning given in Section 10.4 of this Agreement.

“Transmission Facilities” shall mean and include, collectively, any: (i) underground and above ground wires and cables for the transmission of electrical energy and/or for communication purposes, substations, Permitted Energy Storage Facilities, operations and maintenance buildings and yards, together with any and all necessary and proper foundations, towers, footings, cross arms and other appliances and fixtures for use in connection with said wires and cables on, along and in the Property.

EXHIBIT B
Property Description

Approximately [] acres of land, more or less, in Guadalupe and Gonzales Counties, Texas being described as the following:

This shall exclude approximately [] acres reserved for future water well use by Owner. A map depicting these areas is attached hereto. The Owner agrees to work in good faith to seek to provide a metes and bounds description of such specific tracts to Tenant within 6 months after the Effective Date.

EXHIBIT C
Payments

(1) Development Term Payment. Tenant agrees to pay Owner the following annual amounts (each, a “*Development Term Payment*”):

Development Term Year	Development Term Payment
Year 1	per acre of Applicable Acreage
Year 2	per acre of Applicable Acreage
Year 3	per acre of Applicable Acreage
Year 4	per acre of Applicable Acreage
Year 5	per acre of Applicable Acreage

The first Development Term Payment shall be concurrently with the Effective Date and any subsequent Development Term Payments shall be made on or before each anniversary of the Effective Date during the Development Term.

(2) Operations Term Payment. Tenant shall pay annually to Owner an amount equal to



(3) Payment Allocation Schedule. All payments to Owner shall be made 100% to Schertz-Seguin Local Government Corporation.

(4) Gross Revenues. For the purpose of calculating the Operations Term Payment, the following provisions relating to “Gross Revenues” shall be applicable:

4(a) Amounts Included. Gross Revenues shall mean and include the following payments to the extent related to the generation of electricity by the Project Facilities located on the Property:

- i. All revenues actually received by Tenant from the sale of electricity generated from Tenant's Operations on the Property; plus

- ii. All payments received by or on behalf of Tenant from any person or entity resulting from any contract or transaction between Tenant and such person or entity for the sale of production, energy, electricity, power, capacity, and/or renewable energy credits, pollution credits or other associated credits; plus
- iii. All payments received by or on behalf of Tenant from any person or entity as settlement or judgment amounts to buy out or buy down, in whole or in part, any take or pay contracts, or to resolve any breach of such contracts; plus
- iv. All proceeds from any lump sum payment or payments to cancel or modify any obligation under any energy or electricity or capacity purchase contract or other contract related to the Project Facilities, or payment of liquidated or other damages under any energy or electricity or capacity purchase contract or another contract related to the Project Facilities; plus
- v. All payments to Tenant by an insurer which are made specifically in lieu of revenues as defined in the foregoing paragraphs (i) and (ii).
- vi. To the extent that they caused a reduction of the amount of electricity generated on the Property, the Owner's percentage of any proceeds from any power curve or availability warranty claims redeemed from solar panel suppliers or equipment manufacturers with respect to Project Facilities or the Transmission Facilities; plus
- vii. Any penalties, fines, or amounts actually paid by Tenant in settlement of asserted violations by the Public Utility Commission of Texas, the Electric Reliability Council of Texas, or other applicable entity; provided, however, that such amounts shall not include any true-ups, netting amounts or other similar amounts generally paid in connection with the sale of production, energy, electricity, power, capacity, and/or renewable energy credits, pollution credits or other associated credits.

4(b) Amounts Excluded. Gross Revenues shall not include the following:

- i. any proceeds received from the sale, lease or other disposition of the Tenant's property (or any interest therein);
- ii. any rental or lump sum payment received by Tenant in exchange for Tenant's assigning, subleasing, mortgaging or otherwise transferring all or any interest of Tenant in the Property or improvements thereon;
- iii. any Federal Investment Tax Credits available pursuant to §48 of the United States Tax Code or its successor, or any other current or future State, Federal or other governmental tax credit, cash grant, subsidy, benefit or incentive of any kind whatsoever accruing to Tenant related to the Project Facilities;
- iv. any proceeds received from the sale, lease or other disposition of any of the Project Facilities or Transmission Facilities (or any interest therein), or from the disposition of any of the equity interests in Tenant;

- v. proceeds from any governmental subsidies; and
- vi. any proceeds from any power curve or availability warranty claims redeemed from solar panel suppliers or equipment manufacturers with respect to Project Facilities or the Transmission Facilities; and
- vii. proceeds of any debt, equity, tax equity or any other financing transaction of any kind whatsoever.

4(c) Gross Revenues - Covenants.

- i. Free Royalty. Except as otherwise provided herein, all Gross Revenues from the sale of energy, electricity or capacity related to Tenant's Operations on the Property shall be "free royalty" as commonly understood, bearing no deduction for costs unless specifically set out herein. Without limiting the generality of the foregoing, Gross Revenues shall not include any deduction for net of all sales and use taxes and wheeling, integration, transmission, and/or congestion charges (if any) imposed thereon or attributable thereto. Owner acknowledges, however, that all electricity production from the Property may have losses, directly or indirectly, for producing, gathering, transforming, transporting and otherwise making electricity produced ready for sale or use and delivered at the closest common transmission carrier. Such losses are calculated by the purchaser of the electricity and equal to the amount of deduction imposed by the purchaser of the electricity.
- ii. Loss of Production. To the extent there is a loss of production between each solar panel on the Property and the point of delivery to a common transmission carrier, measurement of kWh production at each solar panel shall only be reduced by a factor calculated based on variances between the aggregate of all solar panel production measurements and the total measured kWh production at the point of delivery to a common transmission carrier.
- iii. Audit of Records. Owner or its designated representative shall have the right, upon three (3) business days' notice to inspect and audit all records and documents related to the determination of Gross Revenues, including any records of readings of meters maintained to measure electrical generation by the Project Facilities located on the Property. Such audit shall be performed during Tenant's normal business operations and hours. If any Operations Term Payment made to Owner by Tenant shall be found to be less than ninety-eight percent (98%) of the amount payable as shown by the audit (unless justifiably disputed by Tenant), then Tenant shall pay the reasonable cost of such audit as well as the additional Operations Term Payment shown to be payable by Tenant to Owner; otherwise the cost of such audit shall be paid by Owner. Tenant shall promptly pay Owner any unpaid amounts.
- iv. Arm's Length Contracts. Tenant shall not enter into any contract or transaction providing for the sale of production, energy, electricity, power, capacity and/or renewable energy credits, pollution credits or other associated credits from the Project Facilities located on the Property to a person or entity affiliated with or in any way related to Tenant, unless Tenant demonstrates to Owner's reasonable

satisfaction that such contract is an arms-length bona fide transaction or is the result of bona fide good faith and commercially reasonable efforts to obtain a fair market value price for the sale of production, energy, electricity, power, capacity and/or renewable energy credits, pollution credits or other associated from the Project Facilities and/or Transmission Facilities located on the Property.

(5)

(6) **Representatives and Access Protocols.**

(7) **Non-Delegation.** Tenant's obligation to pay any sum owed pursuant to this Agreement is absolute and otherwise non-delegable. Tenant is unconditionally obligated to Owner to make, and shall be liable for, payment of any sum owed under this Agreement irrespective of the failure or bankruptcy of any third-party purchaser of electricity, and irrespective of the execution by Owner of a division order or any similar agreement in favor of any such third-party purchaser. Except for the identification of a non-owner as a recipient of payments under this Agreement and the amount thereof, this Agreement shall not be altered, amended, extended or ratified by any division order or other payment confirmation statement executed by Owner. Any division order or similar instrument executed by Owner shall be respected by Tenant without recourse until revoked by Owner; provided, however, that Owner shall never be required to execute any division order or similar instrument as a condition to receiving any payment provided for in this Agreement.

(8)

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

EXHIBIT D
Fencing, Gate and Road Specifications

[To come.]

EXHIBIT E

Site Rules Areas inside of the Property

Tenant shall allow only authorized personnel onto the Property. Tenant and all Tenant personnel, Tenant's employees, agents, contractors and the contractor's employees and agents, and all other personnel of third parties authorized to enter the Property by Tenant, shall follow the following rules while on the Property.

1. In no event shall Tenant construct or otherwise locate any improvements designed for purposes of housing individuals on the Property; however, Tenant may (i) work on the Property twenty-four (24) hours per day as necessary; (ii) install temporary portable structures onto the Property for use as construction office(s) throughout the duration of construction activities. Any portable toilets brought onto the Property shall be entirely sealed and incapable of leakage onto the ground, even if knocked over.

2. Prior to the Commencement of Construction and while traveling on the easements leading to the Property, all personnel shall be respectful towards grazing animals on the Property, shall not chase any animal and shall avoid any contact with any animals or wildlife on the Property. Tenant shall have the right to permanently remove Owner's interior fences, gates and cattle guards, but only on the Property and only as reasonably necessary to accommodate the Project Facilities and Transmission Facilities. In the event New Roads of Tenant require the location of any Improvements of any Owner corral, fence, cattle guard, water trough or other Owner Improvement on the Property be moved from its original location, Tenant shall move such Owner improvement (or a replacement thereof, as necessary), to a location as near as practicable to the existing location on the Property and as designated by Owner (if such location is consistent with all applicable rules, regulations and restrictions). If a replacement is necessary, the replacement will be of a quality reasonably equivalent to that of the original improvement. Owner fences and gates that are removed from locations within the Property where Tenant has determined removal is necessary to avoid interference with its activities, shall, following expiration or termination of this Agreement, be rebuilt or replaced by Tenant at its expense and sufficient to withstand both Owner and Tenant's uses of the Property and shall be of the same style and quality installed by Owner elsewhere on the Property per Owner's specifications (if any) in Exhibit D. Once completed, all replacement fences, gates and cattle guards shall be owned and maintained by Owner. Except to the extent proximately caused by an act or omission of a Tenant Party (defined as an agent, employee, invitee, or contractor of Tenant), Tenant shall not be responsible for any acts or omissions of a third person who is not a Tenant Party (including without limitation any Owner Party, defined as an agent, employee, or contractor of Owner), which proximately causes any removal of fences, roads and other improvements, any damage to the Property, any improvements or other property placed thereon, or any nuisance caused by such third person.

3. All personnel shall minimize, to the extent reasonably possible, the creation of dust, and shall water roads and other surface as necessary to minimize the creation and spread of dust. Tenant shall keep the Property free from debris and waste arising from its construction operations on the Property. Within 30 days following the completion of construction of the Project Facilities, Tenant shall remove from the Property all refuse, litter and debris created by

Tenant or any Tenant Party. Tenant shall use commercially reasonable efforts to eliminate noxious weeds on the Property during and after completion of construction in locations where construction took place.

4. Tenant shall use standard construction practices to preserve existing topsoil layers to the extent practical. Owner agrees that Tenant may deposit such topsoil on the Property or adjacent property owned by Owner at a location mutually agreed upon.

5. Tenant shall use commercially reasonable efforts to minimize erosion caused by Tenant's activities, including erecting silt fences. The constructing of roads and the burying of lines shall be done in accordance with good engineering and standard construction practices.

6. Tenant shall avoid unnecessary disturbance of areas adjacent to its lay-down and construction areas.

7. Subject to the below requirements, Tenant shall be entitled to construct roads, culverts, bridges and related improvements on the Property, and to improve and upgrade any roads, culverts, bridges and related improvements from time to time existing on the Property.

a. Tenant shall maintain any roads constructed by Tenant at its sole expense. In the event Tenant uses existing roads on the Property, Tenant shall maintain such roads as follows: (i) during construction, Tenant shall, at its sole cost and expense, maintain such roads to the extent commercially practicable to keep them in the same condition as present prior to construction; and (ii) after the completion of construction, Tenant shall, at its sole cost and expense, leave such roads in substantially the same condition that they were in prior to the use of such roads by Tenant.

b. Tenant shall keep all gates on the Property and leading to the Property closed at all times when such gates are not in use. If requested by Owner, Tenant agrees to install cattle guards at any fence crossing over any new road constructed by Tenant. Tenant shall ensure all cattle guards on the Property that it installs are properly attached to prevent livestock from passing between the cattle guard and fence. In addition, if requested by Owner prior to the Generation Commencement Date, Tenant agrees to install good quality steel gates on any access ways utilized by Tenant, per Owner's specifications (if any) set out on Exhibit D. All access gates installed and/or utilized by Tenant shall remain padlocked always, with keys to each lock provided to Owner for each gate. In the event the Tenant opens a gate and needs to keep such gate open for an extended period to enable construction activities to proceed in a given area, Tenant shall station personnel at the open gate for the duration of the work day and close the gate at the end of the day.

8. Smoking is prohibited. Tenant will employ prudent precautions to prevent fires, including avoiding the build-up of plant material under vehicles. In the event a grass fire is started, Owner shall be promptly notified. Tenant agrees to pay to Owner for all damages resulting from fires (whether located on the Property or adjacent lands owned by Owner) that are caused by Tenant, its employees, contractors, agents or any individual allowed onto the

Property by Tenant. Such payment shall be due and payable within one hundred and twenty days from the date the cost of the damages are agreed to by the Parties.

9. With respect to drainage tiles located on the Property as of the Effective Date, if any, Owner agrees that Tenant may reroute, at Tenant's sole expense, any drainage tiles which may conflict with the locations of solar arrays and/or underground cabling for the solar arrays. Tenant shall bear the cost of having a responsible, insured and experienced field tile contractor repair or rebuild the tiles damaged by Tenant's Operations.

10. Tenant is prohibited from engaging in any of the following activities on the Property: (a) hunting and/or fishing, (b) transportation onto the Property of any domestic animals, regardless of whether such domestic animals are kept in Tenant's vehicles, (c) possession or consumption of alcohol or illegal drugs, (d) Smoking of any sort (cigarettes, cigars, etc.), with the exception that smoking shall be permitted at specially designated smoking locations, and (e) possession of fishing equipment and/or firearms of any kind or nature, and (f) cameras other than those used to inspect the solar arrays.. Tenant shall notify all contractors that such activities are prohibited and use commercially reasonable efforts to require contractors to avoid such activities. If Owner becomes aware of any of the above occurring activities occurring on the Property, Owner has the right to exclude the offending individuals from the Property. Neither Tenant nor its agents, employees, representatives, contractors, subcontractors, invitees or licensees or any other person allowed to come upon the Property by Tenant shall remove firewood trees, shrubs, plants, flowers, fruit, herbs, stone, or archeological artifacts (including, but not limited to arrowheads, petrified rocks, stones and gems) from the Property. Any trees, shrubs or other plants removed for the purpose of the construction or installation of Solar Facilities shall, be chipped or removed in a safe manner and will only be burned with written permission by Owner. If any of Tenant's agents, employees, representatives, contractors, subcontractors, invitees or licensees or any other person allowed to come upon the Property by Tenant, violate this provision, Owner may give notice thereof to Tenant, and Tenant agrees to remove or permanently exclude such offender from the Property. Additionally, if any of Tenant's agents, employees, representatives or contractors, or any other person allowed to come upon the Property by Tenant, remove an archeological artifact, from the Property, Owner shall be entitled to fine Tenant up to [REDACTED]

[REDACTED]. In addition to any other remedies available to Owner, if any of Tenant's employees, representatives, agents, contractors, subcontractors, invitees or licensees violate any of the provisions contained in this paragraph, Owner may give notice thereof to Tenant and, if Tenant does not voluntarily remove or prematurely exclude any such individual from the Property, Owner shall have the right to eject such individual from the Property and thereafter prematurely prohibit such individual from entering the Property. If a deer is killed under circumstances in which a reasonably prudent person would assume it was killed by those entering the Property under authority of this Agreement, then Tenant shall notify Owner immediately (or the Owner may likewise notify Tenant) and Tenant shall pay Owner an amount set forth herein.

11. Tenant shall follow construction specifications that dictate the following minimum standards:

- a. Roadways. The causeway of any road installed or improved by shall not be wider than is reasonably necessary to facilitate Tenant's operations upon the Property.
 - b. Trees. Trees removed in clearing for the installation of underground or overhead cable lines shall be grubbed with the surface graded upon the completion of installation.
 - c. Cabling. Tenant shall provide As-Built drawings indicating the location of buried cables on the Property to Owner following the completion of construction. Tenant shall install Markers at all road crossings for any buried cables on the Property. With respect to underground lines and cables, Tenant will follow the latest edition of the NEC code, incorporating 18" minimum burial depth for underground PV string wiring, 24" minimum burial depth for underground DC and low voltage AC feeders, and 30" minimum burial depth for all underground MV AC cables.
 - d. Fence Corner, Line Brace, Cattle Guard and Gate Specifications. In the event Tenant crosses or cuts an existing fence line, Tenant shall install a permanent brace during construction and as appropriate a fence corner, line brace, cattle guard, and/or gate thereafter which meets industry standards, as required in Exhibit D.
12. If unwanted or noxious weeds or grasses grow on or along the roads built or used by Tenant, or Tenant's facilities, Tenant agrees to pay for the application of an approved herbicide to the affected areas which meets the reasonable requirements of Owner.
13. Tenant or its contractors shall provide its employees with portable toilet facilities during construction of the Project Facilities.
14. Upon completion of the initial construction, Tenant shall restore and clean any areas it disturbs on the surface of Property to similar or better condition in which the same was found before such work was begun. At any time, upon the request of Owner, Tenant shall reseed and contour any areas it disturbs on the Property in accordance with the Soil Conservation Service Field Office Technical Guides (standards and specifications).
15. Owner has all rights to install fencing, gates and cattle guards on the Property during the Term of the Agreement; provided, however, such fencing shall not materially interfere with Tenant's rights under the Agreement.
16. Tenant shall not cut nor create any opening in any present or future fence or fences on the land outside of the Property without first adequately bracing same. All openings in fences shall be H braced with dead-man bracing as follows: All metal pipe shall be not less than 4" in diameter, 1/4" thick walls, 10' in length, 5' being in the ground, cemented and tamped top to bottom, 5' above the ground, cross-braced with two 10' long 2 7/8" pipes for the H brace and one 2 7/8" pipe from the H diagonally to kicker brace, all pipe welded solidly with complete welds to posts. All pipe to be wire brushed, coated with OSPHO rust inhibitor, and one coat of aluminum paint. All concrete will be allowed to set for a minimum of 36 hours before attaching wire to the posts. All pipe openings shall be capped with metal caps. Cattle guards shall be attached to the H brace with five feet high, 4 gauge, galvanized welded wire with 4" x 4" openings.

17. At each point where Tenant installs a cattle guard, the same shall be constructed by Tenant as a raised cattle guard not less than 9' x 16' as follows: The top of the cattle guard shall be 3 feet above the ground level after caliche is placed under the cattle guard. Each cattle guard shall rest on concrete supports which are adequate for heavy truck traffic. All such cattle guards shall meet Owner specifications.

18. Tenant shall maintain all cattle guards it installs in good condition with fences properly attached so as to prevent livestock from passing between the cattle guard and fence. Tenant shall keep the area beneath the cattle guard cleaned out to maintain the 3-foot space between the ground level and cattle guard and it shall be maintained free of vegetation. In the event, any cattle guard installed by Tenant is damaged by Tenant, falls into disrepair, or for any other reason does not meet the Owner's standards and specifications, Tenant will either repair the same or replace the same in such a manner as to meet Owner's standards and specifications within thirty (30) days of Owner's notification to Tenant of the need for the same.

19. Any roads installed or improved by Tenant shall be caliched up to the cattle guard.

20. The parties agree that Tenant will employ a professional fencing company, agreeable to both parties, to install all such braces, stretch all such fences, and install all cattle guards. If the parties cannot agree on a fencing or cattle guard contractor then Tenant shall solicit offers from [] and Tenant shall have the right to choose which of these companies to employ. Owner may request that Tenant utilize a different fencing company; provided, however, Owner shall be responsible for any additional costs above the cost of the company chosen by Tenant. At Owner's option, any such additional costs may be deducted from payments due to Owner from Tenant under this Agreement.

21. On any roads installed or improved by Tenant, a 6" compacted caliche base shall be added to the dirt crown of the road and the compacted caliche base shall be maintained at 6" by Tenant.

22. Any existing ranch roads, spreader dams, diversion dams or other such structures crossed or disturbed by Tenant's operations hereunder shall be repaired and restored by Tenant to their condition as before Tenant's Operations hereunder. Temporary openings in all fences made by Tenant shall be kept closed by Tenant with temporary fencing adequately installed and maintained by Tenant to prevent entry or escape by all livestock and shall be coyote proof All cattle guards shall be equipped with gates.

23. The entrance to Owner's property shall be kept locked at all times except when traffic is passing through the same. At Owner's request, Tenant shall install a commercial sliding electric gate capable of heavy commercial use and pay for all repairs and upkeep to said gate. Owner shall have the right to review and approve specifications for all gates installed on Owner's lands. All gates that are repaired must be constructed to Owners reasonable specifications-

24. Upon completion of initial installation, Tenant shall restore all fencing it disturbs to its condition as before construction, unless said fencing was relocated pursuant to provisions elsewhere in this Agreement.

25. Upon termination of this agreement, all cattle guards and gates shall become the property of Owner.
26. Any roads installed or improved by Tenant shall be kept clear for 10 feet on either side of the crowned roadway at all times. All mesquite, cedar, grease wood, or other brush shall be grubbed and raked into piles.
27. Any caliche and/or water purchased from Owner shall be obtained from the locations designated by Owner within a reasonable distance from the place of use.
28. Tenant shall be liable for the reasonable and necessary costs incurred in the control and eradication of bitterweed, broom snake weed, buffalo bur, African rue, and other noxious weeds, which may appear within the confines of any roads installed or improved by Tenant and in the areas, immediately adjacent to any roads installed or improved by Tenant in a manner consistent with Owner's requirements so long as this Agreement continues in force.
29. Tenant further agrees and obligates itself as follows:
- a. Where Tenant's equipment may cause ruts or tracks either in laying or removal operations, Tenant shall construct terraces and turnouts sufficient to prevent erosion to Owner's reasonable satisfaction.
 - b. Tenant shall have and hereby assumes liability for damage to water wells, water tables, natural springs and running water courses, tanks and waterings on Owner's property caused by Tenant in the exercise of any rights herein granted; provided however, that Tenant shall not assume any liability for damage resulting from Owner's negligence or willful misconduct. In this connection, no blasting shall be done in order to prevent damage to surrounding area. Provided further it is understood and agreed that no water well shall be drilled upon the Property without the consent of Owner, which such consent may be withheld for any reason.
 - c. No motorcycles, domestic animals, traps, poisons, weapons or firearms shall be brought on Owner's property by Tenant or its contractors.
 - d. Tenant agrees to rake and pile all brush cleared from the Property during Tenant's activities, which shall be hauled to a place on Tenant's property reasonably designated by Tenant without interruption of the topsoil. The mesquite cleared from the Property shall be grubbed.
 - e. Use reasonable efforts to prevent excessive noises, dust and noxious odors arising from or in any manner connected with its use of the roadway including watering the roadway during drilling operations and other periods of heavy traffic by Tenant and periodically even though Tenant is not conducting drilling operations. Tenant must comply with Owner's reasonable requirements regarding the time and duration of such noise, dust, and noxious odors. At no time shall such noise, dust or noxious odors be permitted or authorized to exceed or violate any applicable local, state, or federal standard.

- f. Prevent all employees, contractors and agents of Tenant from traveling in excessive rates of over 15 miles per hour on any roads. Tenant shall erect speed limit signs as may be reasonably necessary to help accomplish this.

30. Tenant shall keep all roads it utilizes or installs in a good, level, compacted condition, with a good crown to prevent water from running down the road. Tenant shall keep all such roads reasonably free of potholes and damage resulting from wind, water, and traffic erosion. Tenant shall create diversions or terraces in all roads it installs or utilizes, reasonably requested by Tenant where needed to prevent erosion of the road and where water drains off of the road. All brush shall be grubbed and kept clear of such roadway for 10 feet on either side of the road. The parties agree that Tenant will employ a professional dirt contracting company, agreeable to both parties, to build any new roads and maintain existing roads utilized by Tenant. If the parties cannot agree on a dirt contractor then Tenant shall solicit offers from and Tenant shall have the right to choose which of these companies to employ. Owner may request that Tenant utilize a different professional dirt contracting company; provided, however, Owner shall be responsible for any additional costs above the costs of the company chosen by Tenant. At Owner's option, any such additional costs may be deducted from payments due to Owner from Tenant under this Agreement.

Pipelines and related Easements [Are there any pipelines or easements as of the Effective Date?]

Owner uses these guidelines to govern all activities within the Owner's easement or area around its pipelines.

31. Utility Crossings

- a. All utilities require 12" of padding around any buried conduit.
- b. A minimum of 24" of vertical separation are required between all utilities and Owner's pipeline.
- c. All crossings must be as close to 90 degrees as possible. Parallel occupation within Owner's easements is not allowed.
- d. A cathodic bond may be needed to maintain the integrity of Owner's pipeline. Additional cathodic protection equipment will be at your expense.
- e. All underground electric crossings must be encased in non-metallic conduit. Conduit must be covered with a minimum of 3" of red colored concrete and be at least 30" wide centered on each conduit. Both conduit and concrete must extend across the full limits of the pipeline right-of-way. All buried conductor crossings shall be clearly and permanently marked with signs showing the location of buried conductor.
- f. SSLGC must be notified a minimum of 48 hours prior to any proposed excavation within 20 feet of its pipelines.
- g. All crossing by water or wastewater pipelines shall be made in accordance with applicable requirements of Texas Commission on Environmental Quality (TCEQ)

32. Landscaping

- a. Landscaping can directly impact our pipelines' safety, so SSLGC restricts most landscaping in easement. Roots can damage pipeline coating, which can lead to

- corrosion. Growth obstructs our ability to monitor for leaks, erosion, and third-party activities. Plants can also restrict our ability to respond in an emergency.
 - b. No trees will be allowed within the easement. The easement must have open and clear visibility with the unobstructed ability to access our easement.
 - c. Remember, Tenant must notify your local one call center by contacting 811 two or three days prior to any excavation, as dictated by state law.
- 33. Fences
 - a. Fences are allowed to cross the easement as long as they cross as close to 90 degrees as possible and have a minimum of a 16-foot gate at entrance and exit of the property. No fence posts may be installed within 5 feet of pipeline. Parallel fencing is not allowed within easement.
- 34. Roads, Driveways, Parking Lots
 - a. SSLGC pipeline was designed according to the land's original use. If Tenant want to change the surface's use, Tenant may be responsible for all the costs required for your proposed improvement, depending on the specific language in your easement agreement.
 - b. No fill or change in existing ground contours may occur without written permission from SSLGC.
 - c. All roads and driveways must cross as close to 90 degrees as possible.
 - d. All roads and driveways must have a minimum of 3 feet of cover in bar ditch and a minimum of 4 feet of cover at a road crossing.
 - e. Parking lots must have at least 4 feet of cover from top of pipe.
 - f. All plans must identify the required cover. Cover cannot exceed 9 feet from the top of the pipe.
 - g. Test holes (pot holing) are required to determine depth of cover at all proposed road and driveway crossings. They must be installed at your expense. Both the local one call center (811) and our office must be notified prior to any test-hole excavation. A SSLGC representative will stand by when work occurs within the easement.
 - h. All roads, driveways, and parking lots may be required to be re-bedded at your expense. This will be determined when Tenant examine the existing back-fill material around the pipeline. This re-bedding will accommodate the new loads placed upon the pipeline by crossing vehicles.
 - i. If the pipeline design has to be adjusted to accommodate new crossing loads from cars and trucks, it will be done at developer's expense.
 - j. Longitudinal excavation around the pipeline can only be done by a contractor who meets TxDOT operator qualifications.
- 35. Drain Tiles
 - a. All drain tiles must cross as close to 90 degrees as possible. SSLGC will not allow parallel drain tiles within the easement area. All drain tiles must maintain at least 24" of vertical separation between any crossing and the pipeline.
- 36. Erosion
 - a. All soil erosion must be stabilized immediately.
 - b. Regrade any erosion areas cause by construction activity to satisfaction of SSLGC
- 37. Deep Plowing
 - a. Deep plowing (greater than 12" in depth) can cause severe pipeline damage. Please contact SSLGC local office so Tenant can meet with Tenant on site to review your

plowing needs.

38. Cover

- a. No cover or soil may be removed from the easement area without written permission from SSLGC. If encroachment will impact the easement or pipeline, please include this information in a detailed plan that will be submitted for SSLGC review. Plans for roads and driveways must include a cross-section showing the existing and proposed grades based upon our existing pipeline. Test holes (pot holing) will be required to determine this information. These test holes will be completed at developer's expense and can only be done while SSLGC representative is on site. SSLGC will review your proposal based upon detailed plans, SSLGC engineering standards, and the pipeline design.
- b. Maximum cover will also be evaluated when Tenant review your proposal. Tenant will not allow more than 9 feet of cover above the top of the pipe. Extra cover increases the load on the pipe. It also impacts our work area and the ability to maintain safe Occupational Health and Safety Administration (OHSA) standards.

39. Heavy Equipment Crossing

- a. Crossing the pipeline with heavy equipment can compromise our pipeline's safety. Depending on the equipment's size and type of tracks or wheels, the weight load on the surface can place extra stress on the pipeline. Contact SSLGC local office before crossing any pipeline with heavy equipment. SSLGC will meet on site to determine the best crossing location, taking into account soil stability and rock composition. Once SSLGC determines a suitable crossing location, do not cross elsewhere. SSLGC will then require additional padding over the pipeline (or pipelines) extending at least 15 feet outside each pipeline. This padding material must be maintained throughout the job.

40. Burning

- a. Please do not burn within the easement area. If Tenant need to discuss this further, contact your local office.

41. Overhead Electric Lines

- a. The parties will work together in good faith to ensure full cooperation between the pipelines and pipeline easements and overhead electric lines to ensure clearances and spacing requirements are met for all. For example, Owner seeks to have all new poles be located off the pipeline easement at least 15 feet from the pipeline and not between multiple pipelines, at least 25 feet of clearance is required from the top of the ground to the overhead crossing, and no guy-wires, appurtenances, above-ground cable towers or telephone cabinets within the pipeline easement.

42. Blasting

- a. Blasting can profoundly impact our pipelines. Please forward any proposed blasting activities within 1,000 feet of our pipeline, allowing 2 weeks for review and approval. If the blasting will occur within 100 feet, Tenant will be required to hire a blasting inspector with seismograph equipment on site during your blasting activities. The inspector will confirm that your blasting plan is being followed and that proper seismic readings are being taken and meet our standards and your approved blasting plan. All blasting must be done by licensed blasting contractors who conform to all state and local regulations. A Certificate of Insurance, Blasting Indemnification Agreement and Emergency plan will be required.
- b. Seismic activity must be approved within 300 feet of the pipeline. Please submit a

- seismic plan for our review and approval.
- c. Vibrator activity must be approved within 300 feet of the pipeline. Please submit a plan covering all vibrator activities within 300 feet of the pipeline.
43. Excavation Activity
- a. Excavation damage is one of the leading causes of damage to buried pipelines. That's why Tenant provide the following specific excavation guidelines to help protect Tenant and our pipelines.
 - b. Before Excavating, if necessary, SSLGC on-site personnel will consult with our Engineer to determine the length of pipe that may be safely excavated.
 - c. A qualified representative from SSLGC must be on site whenever an excavation is underway or equipment is being used within 25 feet of our pipeline or as determined by SSLGC personnel and procedures.
 - d. Before any excavation can take place within State defined distances or offsets, the pipeline must be positively located, under SSLGC supervision, using methods such as hydro-vac, hand digging or pot-holing.
 - e. After a pipeline has been exposed, Tenant can continue to use machine excavation as defined by SSLGC representative, with the assistance of an observer. The pipeline should remain exposed and clearly visible to the observer at all times during machine excavation.
 - f. For excavations near a buried pipeline, as State regulations dictate, Tenant must ensure the hoe bucket teeth are barred and that side cutters are removed or that Tenant is using approved paddle/flared teeth. If soil conditions require the removal of the bar or the use of the side cutters for excavation, Tenant will need to make a request in writing to SSLGC, outlining the locations for the exception, and the reasons the equipment is needed. Excavations involving removal of the bar or the use of side cutters should be done with an observer and under the direct supervision of the onsite SSLGC representative or their designee.
 - g. Tenant will need to provide adequate support or protection for all exposed pipelines as determined by SSLGC's on site representative.
 - h. If during excavation flowable fill is discovered, work should be stopped. SSLGC's on site representatives will consult with our Engineer to develop a plan for managing the situation to minimize any damage to SSLGC's pipelines.
 - i. If the excavation requires entrance into a confined space, Tenant must follow the OSHA standards.
 - j. g. If the excavation requires the use of ladders or other temporary structures for ingress and egress, Tenant must follow the OSHA standards.
44. If the Unexpected Occurs
- a. If damage occurs to a pipeline, Tenant will immediately notify SSLGC.

EXHIBIT F
Memorandum of Agreement, Lease and Easements

[To come.]