

ENERGY SERVICES AGREEMENT – SOLAR

Fisher Middle School

This Energy Services Agreement (“Agreement”) is made and entered into as of this ____ day of _____, 2020 (or, if later, the latest date of a Party’s execution and delivery to the other Party of this Agreement, the “Effective Date”), between FFP BTM SOLAR, LLC, a Delaware limited liability company (“Provider”), and *Los Gatos Union School District, a public school district organized and existing under the laws of the state of California* (“Purchaser”); and, together with Provider, each, a “Party” and together, the “Parties”).

RECITALS

- A. Purchaser desires that Provider install and operate a solar photovoltaic system at the Premises (as hereafter defined) for the purpose of providing Energy Services (as hereafter defined), and Provider is willing to have the Installation Work performed by using one or more qualified contractors holding the appropriate licenses required in the jurisdiction where the System will be installed;
- B. Provider is in the business of designing, constructing, owning, financing, and operating solar photovoltaic systems for the purpose of selling power generated by the systems to its purchasers;
- C. California Government Code sections 4217.10 et seq. authorizes a public entity to enter into energy service contracts, facility financing contracts, and related agreements to implement the State’s conservation and alternative energy supply source policy;
- D. Purchaser’s governing body has made those findings required by Government Code section 4217.12 that the anticipated cost to the Purchaser for Energy Services provided by the System under this Agreement is expected to be less than the anticipated marginal cost to the Purchaser of electrical energy that would have been consumed by Purchaser in the absence of its purchase of the Energy Services;
- E. Provider and Purchaser acknowledged those certain General Terms and Conditions of Energy Services Agreement between FFP BTM Solar, LLC and Purchaser dated as of _____, 2020 (“General Terms and Conditions”), which are incorporated by reference as set forth herein; and
- F. The terms and conditions of this Energy Services Agreement, excluding the General Terms and Conditions incorporated herein, constitute the “Special Conditions” referred to in the General Terms and Conditions.

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

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

Schedule 1	Description of the Premises, System and Subsidy
------------	---

Schedule 2	Energy Services Payment
Schedule 3	Early Termination Fee
Schedule 4	Estimated Annual Production
Schedule 5	Notice Information
Schedule 6	Reserved
Schedule 7	Specific Items for Scope of Work
Schedule 8	School Curriculum Component
Schedule 9	System Design

4. Privacy. Purchaser acknowledges that the System may collect certain information about Purchaser’s electricity usage and the System performance. Such information may be stored and processed in the United States or any other country in which Provider or its third-party service providers, or its or their respective affiliates, subsidiaries, or service providers, maintain facilities. Purchaser consents to any such transfer of information outside of Purchaser’s country.

5. Milestone Dates.
 - 5.1 The Guaranteed Construction Start Date is 517 days from Effective Date.
 - 5.2 The Guaranteed Commercial Operation Date is 180 days from Guaranteed Construction Start Date.

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

7. Estimated Annual Production. The annual estimate of electricity generated by the system for each year of the initial term is set as forth in Schedule 4 of the Special Conditions (“Estimated Annual Production”). Within sixty (60) days of each annual anniversary of the Commercial Operation Date, Provider will provide a statement to Purchaser that shows the actual annual kWh production from the System for the Term Year, the Estimated Annual Production, and the Minimum Guaranteed Output (defined below).

8. Minimum Guaranteed Output. If the System fails to generate at least ninety-five percent (95%) of the Estimated Annual Production for a full Term Year (such amount, the “Minimum Guaranteed Output”), other than as a result of the acts or omissions of Purchaser or the Local Electric Utility (including a Disruption Period), or an Event of Force Majeure, Provider shall credit Purchaser an amount equal to Purchaser’s Lost Savings on the next invoice or invoices during the following Term Year. The formula for calculating Lost Savings for the applicable Term Year is as follows:

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

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

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

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

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

CONFIDENTIAL AND PROPRIETARY

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

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

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

- 9. Allowed Disruption Time. Notwithstanding the provisions in Section 4.3 of the General Terms and Conditions to the contrary, during years 4 through 20 (but not years 1 through 3) of the Term, Purchaser shall be afforded a one-time allocation of fifteen (15) days which may be used consecutively or in separate periods of at least twenty-four (24) hours each (“Allowed Disruption Time”) during which the System shall be rendered non-operational. Purchaser shall not be obligated to make payments to Provider for electricity not received during the Allowed Disruption Time, nor shall Purchaser be required to reimburse Provider for any other lost revenue during the Allowed Disruption Time, including any lost revenue associated with any reduced sales of Environmental Attributes, and Provider shall be credited for the estimated lost production the System would have produced during such Allowed Disruption Time toward satisfaction of its Minimum Guaranteed Output, as set forth in Section 8 of the Special Conditions, such estimated lost production to be calculated in the same manner as set forth in Section 4.3 of the General Conditions.
- 10. Sunlight Access. Purchaser will take all reasonable actions as necessary to prevent other buildings, structures or flora from overshadowing or otherwise blocking access of sunlight to the System.
- 11. Use of System. Purchaser will not use electrical energy generated by the System for the purposes of heating a swimming pool within the meaning of Section 48 of the Internal Revenue Code.

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

PROVIDER:
FFP BTM SOLAR, LLC

PURCHASER:
LOS GATOS UNION SCHOOL DISTRICT

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

SCHEDULES

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

<u>A. Premises</u>	Physical Address: Fisher Middle School 19195 Fisher Ave Los Gatos CA 95032
Site diagram attached:	X Yes <input type="checkbox"/> No
<u>B. Description of Solar System</u>	Behind the Meter
Solar System Size:	375.84 kW (DC) (this is an estimate (and not a guarantee) of the System size; Provider may update the System Size prior to the Commercial Operation Date.)
<u>C. Anticipated Subsidy or Rebate</u>	\$0

II. Schedule 2 – Energy Services Payment

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

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

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

PPA Rate Table

Term Year	kWh Rate (\$/kWh)	Term Year	\$/kWh Rate (\$/kWh)
1	0.1500	11	0.1500
2	0.1500	12	0.1500
3	0.1500	13	0.1500
4	0.1500	14	0.1500
5	0.1500	15	0.1500
6	0.1500	16	0.1500
7	0.1500	17	0.1500
8	0.1500	18	0.1500
9	0.1500	19	0.1500
10	0.1500	20	0.1500

Distribution Upgrades. Within thirty (30) days of receipt of notice from the Local Electric Utility of distribution upgrade costs required by the Local Electric Utility, Purchaser will provide written notice (email is acceptable) to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all the distribution upgrade costs, and the kWh Rates stated in the PPA Rate Table will remain unchanged. Purchaser shall make payments directly to the Local Electric Utility in accordance with the requirements of the Local Electric Utility.
- b. For every \$0.01 per watt DC of such distribution upgrade costs, the kWh rate in the PPA Rate Table will increase \$0.000719 per kWh, with a maximum kWh rate increase of \$0.0167 per kWh. Provider shall then be responsible for all associated costs and payments.
- c. If distribution upgrades are required and exceed the maximum kWh increase of \$0.0167 per kWh, then ForeFront Power has the option to terminate this Agreement.

Scope Changes (ITC Eligible). If changes in project scope occur that are eligible for the Federal Investment Tax Credit (including but not limited to adverse geotechnical conditions or the inclusion of spare conduit) and the costs directly related such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within thirty (30) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will bear all of the reasonably documented scope change costs, and the kWh rate as stated in Table 1 will remain unchanged.
- b. For every \$0.01 per watt DC of such costs, the kWh rate in Table 1 will increase \$0.000450 per kWh, with an additional maximum kWh rate increase of \$0.0108 per kWh. Provider shall then be responsible for all associated costs and payments.

Scope Changes (Non-ITC Eligible). If changes in project scope occur that are not eligible for the Federal Investment Tax Credit (including but not limited to ADA compliance costs not related to System configuration or construction) and the costs directly related such changes go beyond those contemplated as part of the development and implementation of the System in this Agreement, Provider will provide reasonable documentation demonstrating the direct and actual time and materials costs relating to such costs to Purchaser. Within thirty (30) days after Purchaser receives such documentation, Purchaser will provide written notice to Provider of Purchaser's election of one of the following options:

- a. Purchaser will pay the entire amount of such associated costs, and the kWh rate as stated in the PPA Rate Table will remain unchanged.
- b. For every \$0.01 per watt DC of such associated costs, the kWh rate in the PPA Rate Table will increase \$0.000600 per kWh, with an additional maximum kWh rate increase of \$0.0144 per kWh. Provider shall then be responsible for all associated costs and payments.

III. Schedule 3 – Early Termination Fee

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

Early Termination Occurs in Year:	Column 1 Early Termination Fee where Purchaser does <u>not</u> take Title to the System (\$/Wdc including costs of removal)	Purchase Date Occurs on the 91st day following: (Each “Anniversary” below shall refer to the anniversary of the Commercial Operation Date)	Column 2 Early Termination Fee where Purchaser takes Title to the System (\$/Wdc, does <u>not</u> include costs of removal)
1*	\$4.60		--
2	\$3.81		--
3	\$3.61		--
4	\$3.40		--
5	\$3.20		--
6	\$2.99		--
7	\$2.96	5 th Anniversary	\$2.49
8	\$2.92	6 th Anniversary	\$2.46
9	\$2.89	7 th Anniversary	\$2.42
10	\$2.85	8 th Anniversary	\$2.39
11	\$2.82	9 th Anniversary	\$2.35
12	\$2.78	10 th Anniversary	\$2.32
13	\$2.74	11 th Anniversary	\$2.28
14	\$2.70	12 th Anniversary	\$2.24
15	\$2.66	13 th Anniversary	\$2.20
16	\$2.61	14 th Anniversary	\$2.16
17	\$2.57	15 th Anniversary	\$2.11
18	\$2.52	16 th Anniversary	\$2.07
19	\$2.47	17 th Anniversary	\$2.02
20	\$2.42	18 th Anniversary	\$1.97
		19 th Anniversary	\$1.92

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

*Includes Early Termination prior to the Commercial Operation Date.

IV. Schedule 4 – Estimated Annual Production

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

Term Year	Estimated Production (kWh)	Term Year	Estimated Production (kWh)
1	620,400	11	590,069
2	617,298	12	587,118
3	614,212	13	584,183
4	611,140	14	581,262
5	608,085	15	578,356
6	605,044	16	575,464
7	602,019	17	572,586
8	599,009	18	569,724
9	596,014	19	566,875
10	593,034	20	564,041

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

V. Schedule 5 – Notice Information

Purchaser:

Los Gatos Union School District
17010 Roberts Road
Los Gatos, CA 95032

Provider:

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

With a copy to

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

Financing Party:

[To be provided by Provider when known]

VI. Schedule 6 – Reserved

VII. Schedule 7 – Specific Items for Scope of Work

1. Provider Responsibilities:

- 1.1. All System structures shall be permitted through DSA as carports or shade structures, as applicable. Provider shall cause to DSA permits to be issued on behalf of the project(s).
- 1.2. Solar arrays will be canopy height of 11' minimum clearance.
- 1.3. Provider shall be responsible for all tree trimming and tree removal in order to facilitate the installation of the Systems. Purchaser shall acknowledge and approve removal of trees identified by Provider, in order to install the system and such approval shall not be unreasonably withheld. Irrigation re-routing shall not be the responsibility of the Provider.
- 1.4. Provider shall be responsible for costs associated with ADA upgrades required including all signage and striping and new path of travel as a result of the Systems being installed. If additional ADA upgrades are required as a result of the premises not being code compliant prior to the start of construction, Purchaser shall be responsible for the costs of such additional upgrades, provided, Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional costs, including potentially an increase in the kWh rate in Schedule 2.

- 1.5. Provider intends to interconnect the System to Purchaser-owned 480 V service conductors at a mutually agreeable location. Provider assumes that the existing conductors and service equipment are sufficiently capable of accepting the additional electrical load of the System. Provider shall not bear responsibility for any required upgrades to the pre-existing electrical system.
 - 1.6. Provider shall be responsible for all fees associated with the interconnection application, except that Provider shall not be responsible for transmission and distribution upgrades determined necessary by the Local Electric Utility.
 - 1.7. Provider assumes that soil conditions are class 3 soils, and not such soils that are rocky, sandy, contaminated, ground water, caving, or otherwise have problematic construction limitations. If soil conditions prove to be other than class 3 soils, Provider shall not be responsible for such additional expenses as a result of additional subterranean geotechnical work including boring and trenching. Provider shall work with Purchaser in good faith to determine a mutually-acceptable solution for Purchaser to pay such additional costs, including potentially an increase in the kWh rate in Schedule 2.
 - 1.8. Provider agrees to construct the System in no more than 1 construction phases.
2. Purchaser Responsibilities:
- 2.1. Purchaser shall enter into contract with a DSA Inspector and any and all Special Inspectors required in order to fully inspect the project. Purchaser shall coordinate with Provider in order to facilitate and deliver all DSA forms required in order to schedule and complete the DSA permit appointment. Purchaser shall be responsible for all Inspector of Record Fees and Special Test Fees.
 - 2.2. Purchaser shall cause the DSA Inspector to issue a DSA Form 6 upon completion of the System in a timely manner in order to allow Provider to facilitate interconnection and financing activities as required for the System.
 - 2.3. Purchaser shall, in the event that any pre-existing, open A-Numbers with DSA relating to the Premises need to be closed out in order to proceed with the installation of the Systems, be responsible for engaging architect and engineering resources at its sole expense to close out open A-Numbers. Provider shall provide support for such actions as reasonably required.
 - 2.4. Purchaser shall deliver to Provider all as-built drawings with DSA A-Numbers listed, in order to fully develop the solar plan sets and designs.
 - 2.5. Any irrigation re-routing shall be the responsibility of the Purchaser.

VIII. Schedule 8 – School Curriculum Component

Provider shall provide a solar energy curriculum to Purchaser such as Strategic Energy Innovations or similar. Provider is only required to provide such a curriculum once, which shall be at the commencement of the Term. The cost for providing such curriculum is included in the kWh Rate, and therefore shall be at no additional cost to Purchaser.

