

Drafted by and upon recording return to:
Otter Tail Power Company
Attention: Land Rights Manager _____
215 S. Cascade Street
Fergus Falls, MN 56537

OPTION FOR SOLAR EASEMENT AGREEMENT

THIS OPTION FOR SOLAR EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 2025 (the “**Effective Date**”) by and between the Fergus Falls Port Authority, part of the City of Fergus Falls, a corporate body politic, (“**Grantor**”), and Otter Tail Power Company, a Minnesota corporation (“**Grantee**”).

RECITALS

A. Grantor is the fee owner of that certain real property located in the County of Otter Tail, State of Minnesota, as more particularly described in the attached Exhibit A (the “**Land**”).

B. Grantor wishes to grant to Grantee, and Grantee wishes to obtain from Grantor, the exclusive right and option to acquire certain exclusive easements over, under, through, and across all or a portion of the Land from Grantor, together with all rights, privileges, easements, and appurtenances belonging thereto (hereinafter referred to as the “**Property**”), subject to the terms, conditions, and other provisions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree that the Recitals set forth above is true and correct in all material respects, and further agree as follows:

1. **Option to Purchase; Exclusivity; Option Consideration; Miscellaneous.**

(a) **Grant of Option.** Grantor hereby grants to Grantee the exclusive right and option (the “**Option**”) to enter into a Solar Easement Agreement using the form attached hereto as Exhibit C (“**Solar Easement Agreement**”) relating to the Property or a portion thereof, as determined by Grantee, in its sole discretion (the “**Option Parcel Area**”) on the terms and other provisions set forth below. The Option may be exercised by Grantee delivering written notice of its election to exercise the Option to Grantor (the “**Option Notice**”) during the Term hereof, which notice shall identify the actual location and dimensions of the Option Parcel Area. If the Option Parcel Area is less than the entire Property, Grantee shall have the obligation to plat, file and record a legal description separating the Option Parcel Area from the remaining Property (the “**Property Removed from this Agreement**”) in the official real property records of the county in which the Property is located to give notice thereof.

(b) **Exclusivity.** Grantor acknowledges and agrees that this Option is an exclusive grant to Grantee and that, during the Term, Grantor shall not, without the prior written consent of Grantee, which consent Grantee may withhold in its sole discretion, own energy facilities or any

related and/or associated facilities, equipment, infrastructure, or other improvements, or lease, license or otherwise grant any rights or interest to any person or entity other than Grantee.

(c) **Consideration.** As consideration for the Option, Grantee shall make a one-time payment to Grantor during the Term, as set forth in the attached **Exhibit B**.

(d) **Solar Easement Agreement.** If Grantee exercises the Option, Grantee and Grantor shall each promptly execute and deliver to the other party a Solar Easement Agreement using the form attached hereto as **Exhibit C**. In the event of any conflict or inconsistency between the terms and other provisions of this Agreement and the Solar Easement Agreement, the Solar Easement Agreement shall control, govern over, and supersede any such conflicting or inconsistent terms or other provisions hereof.

(f) **Condemnation; Damage.** The Option shall not survive any taking under the power of eminent domain or damage to the Property or any portion thereof, and after exercise of the Option, the rights of the parties shall not be affected by such taking or damage to the Option Parcel Area. If Grantee exercises the Option, whether before or after such damage, it shall be entitled to the net insurance proceeds paid by reason of such damage, after deducting the expenses of collecting such insurance proceeds or award and the amount of any such insurance proceeds or award expended in repairing or restoring the Option Parcel.

2. **Term.** The Term of this Agreement shall commence on the date hereof and shall terminate on the earlier of: (a) five (5) years from the date hereof; or (b) the date that Grantor receives written notice from Grantee of its election to terminate this Agreement; or (c) the effective date of the Solar Easement Agreement, if any (the “**Term**”).

3. **Testing.** During the Term, Grantee and its agents shall have the rights to ingress and egress to, from, and across the Property to conduct any feasibility or other tests, studies, borings or investigations that Grantee deems necessary or desirable in connection with Grantee’s determination, in its sole and absolute discretion, whether or not the Option Parcel Area is suitable for energy project development. Notwithstanding the foregoing, Grantor reserves all other rights related to the Property, including but not limited to the right to use the Property for agricultural purposes, so long as said activities do not unreasonably interfere with Grantee’s tests and studies. In the event that the Option lapses without exercise, Grantee shall restore any disturbed portions of the Property to substantially the prior condition. Grantee will undertake commercially reasonable efforts to avoid damaging any growing crops. Grantee agrees to indemnify and hold Grantor, its agents, officers, and employees, harmless from all liability, loss, claim, damage, costs, and expense caused by or resulting from the exercise of Grantee’s or Grantee’s agents access to the Property, including but not limited to any losses relating to crop damage (for which Grantee will compensate Grantor at the current market rate). The foregoing indemnity provision shall survive the exercise of the Option or the termination of this Agreement.

4. **Mutual Representations and Warranties.** Each party hereto represents and warrants to the other that such party (i) has and, to the extent applicable, the person executing this Agreement has received all requisite power and authority to execute this Agreement and consummate the transaction contemplated hereby, without the joinder or consent of any other person or party; (ii) has not been represented by a real estate broker or agent; and (iii) has had the opportunity to be represented by counsel of their own choosing.

5. **Representations, Warranties, and Covenants of Grantor.** Grantor makes the following representations, warranties, and covenants to Grantee, which representations, warranties, and covenants shall be effective as of the execution of this Agreement:

(a) The execution, delivery, and performance of this Agreement by Grantor will not result in a breach of or under any instrument, agreement, contract (including, without limitation, the Contract for Deed), or other document to which Grantor is a party or by which the Property is bound. No third party consents (including, but not limited to, Contract for Deed Vendor consent) are necessary for Grantor to sell and convey the Property to Grantee pursuant to this Agreement. Grantor has the full power, authority, and legal right under all applicable laws and its organizational documents, if any, to enter into this Agreement and to complete the transaction contemplated hereunder. The person(s) who has/have executed this Agreement on behalf of Grantor has/have the appropriate authority to bind Grantor to the terms, provisions, and condition of this Agreement

(b) Grantor knows of no facts which would prevent or impair legal and physical access to and from the Property.

(c) The Property is not subject to the federal Conservation Reserve Program administered by the U.S. Department of Agriculture Farm Service Agency under the Food Security Act of 1985 (“CRP”), except as may be disclosed in writing to Grantee on or prior to the date of execution of this Agreement and the Effective Date. Grantor shall not place any portion of the Property into CRP after the Effective Date.

(d) Grantor has not received any written notice of, and to the best of Grantor’s knowledge and belief, there is no, violation of any ordinance, regulation, law, or statute of any governmental authority or agency pertaining to the Property.

(e) No litigation is pending and, to the best of Grantor’s knowledge, no litigation or administrative actions are proposed, threatened or anticipated with respect to any matter affecting the Property. If Grantor learns of any litigation or administrative action proposed, threatened or instituted with respect to the Property, Grantor shall promptly deliver notice thereof to Grantee.

(f) To the best of Grantor’s knowledge, no wells, storage tanks for oil or gasoline, toxic materials or any other hazardous materials are or were located on the Property nor have any toxic materials or any other hazardous materials been present, dumped or otherwise used on the Property at any time during or prior to Grantor’s ownership of the Property.

(g) To the best of Grantor’s knowledge, the Property is currently in full and complete compliance with all governmental laws, ordinances, orders, rules and regulations applicable to the Property.

(h) Grantor has the full power and authority to enter into this Agreement and the Solar Easement Agreement in accordance with the terms of this Agreement.

(i) There are no contracts that will continue to affect the Option Parcel Area after the effective date of the Solar Easement Agreement other than those, if any, that may have been put

into effect by Grantee that have been disclosed and consented to in writing by Grantor, or disclosed by Grantor to Grantee.

(j) Grantor does not have knowledge of any condemnation, environmental, zoning or other land-use regulation proceedings, either instituted or planned to be instituted (other than any such proceedings that Grantee may elect to commence), which would affect the use and operation of the Property or the value of the Property, nor has Grantor received notice of any special assessment proceedings affecting the Property.

(k) There are no outstanding leases or outstanding contracts made by Grantor for any improvements to the Property for which payment has not been fully made and no mechanic's or materialmen's liens arising from any labor or materials furnished to the Property.

(l) Grantor will not, without the prior written consent of Grantee:

(i) Construct or enter into any agreement or commitment to construct any improvement to the Property; or

(ii) Enter into or consent to any lease easement, covenant or other obligation affecting the Property during the Term of this Agreement.

(n) Any legal action by any governmental authority or third party affecting the Property shall result in the immediate termination of this Agreement. During the Option Term, Grantor shall deliver to Grantee a written notice of the commencement of any legal action(s) by any governmental authority or third party affecting the Property, and will further provide Grantee with notice of settlements or resolution of said legal action(s). In the event that the settlement or resolution of legal action(s) negatively impacts Grantee's intended land use, Grantee has the right to terminate the agreement without penalty.

(o) Grantor has not used or stored hazardous or regulated substances on the Property nor has Grantor discharged or released any such substances upon the Property, including, but not limited to, underground injection of such substances, in violation of any federal, state or local environmental law, ordinance, rule or regulation. To the best of Grantor's actual knowledge, no other party has engaged in any such use, storage, discharge or release.

(p) There **IS/IS NOT** a drain tile system or other underground infrastructure existing under the surface of the Property. Grantor shall provide to Grantee any as-built drawings, plans, maps, GPS coordinates or other documentation in Grantor's possession or reasonable control with respect to such drain tile or other underground infrastructure, if any, within thirty (30) days following the date of execution of this Agreement and following the Effective Date.

(q) Grantor **IS/IS NOT** aware of any other person or persons having drainage rights (whether recorder or unrecorded) over, under, or through the Property. Grantor shall disclose to Grantee all known drainage rights affecting the Property within thirty (30) days following the date of execution of this Agreement and following the Effective Date.

6. **Zoning; Administrative Lot Split or Subdivision Approval.** Grantor hereby agrees that Grantee may, if it so elects and immediately following execution of this Agreement, commence

taking any and all actions as may be necessary or proper for effectuating change of zoning and such other land use regulation of the Option Parcel Area to allow the construction of Facilities on the Option Parcel Area; provided, however, all costs and expenses that may be incurred or assessed directly or indirectly with respect to effectuating the said change and/or approval shall be borne by Grantee.

7. **Construction Liens.** Grantee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Grantee's use of the Property pursuant to this Agreement; provided, however, that if Grantee wishes to contest any such lien, Grantee may, within sixty (60) days after it receives notice of the filing of such lien, remove such lien from the Property pursuant to applicable law.

8. **Hazardous Materials.** Grantor shall not violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local laws or regulations, on or under the Property.

Grantor shall, at Grantor's sole cost and expense, remove or take remedial action with regard to any hazardous materials on to the Property for which any removal or remedial action is required pursuant to any applicable statute, law, ordinance, code, regulation, rule, license, permit or governmental action provided that any such removal or remedial action shall be undertaken in a manner so as to minimize any impact on Grantee's business conducted at the Property. Grantee shall cooperate with Grantor with regard to any scheduling or access to the Property in connection with any action required from or by Grantor under this Paragraph. If Grantor fails or refuses to take promptly any action required from or by it under this Paragraph after Grantee's requests therefor, Grantee may, but shall have no obligation to, perform or arrange for the performance of such action and Grantor shall, promptly upon demand therefor, reimburse Grantee for all costs thereof.

9. **Assignment.** This Agreement shall not be assignable by either party.

11. **Notice.** Notices or other communications required or permitted by this Agreement, including payments to Grantor, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified; or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering party. Any notice shall be addressed as follows:

Grantor: Klara Beck, Executive Director
Fergus Falls Port Authority
112 W. Washington Avenue
Fergus Falls, MN 56537

With a copy to:

Grantee: Otter Tail Power Company
Attention: _ Vice President, Energy Supply _____
215 S. Cascade Street
Fergus Falls, MN 56537

With a copy to: Otter Tail Power Company
Attention: Land Rights Manager
215 S. Cascade Street
Fergus Falls, MN 56537

Any party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this Section 11.

12. **Miscellaneous.**

(a) This Agreement shall be governed by and interpreted under the laws of the State of Minnesota.

(b) If any term or condition of this Agreement shall be deemed to be invalid or held to be unenforceable by any court of competent jurisdiction or otherwise, then such invalidity or unenforceability shall not affect the validity and enforceability of the remainder of the terms and conditions of this Agreement, which terms shall survive such determination.

(c) This Agreement may be amended only by a written instrument executed by the parties hereto.

(d) In the event of any controversy, claim or dispute between the parties hereto which arises out of, or relates to, this Agreement or the breach hereof, the prevailing party shall be entitled to recover reasonable attorneys' fees, expenses or litigation and court costs.

(e) This Agreement may be executed in multiple counterparts, each of which shall constitute an original.

[Signature pages follow.]

The parties have executed this Agreement as of the day and year set forth above.

GRANTOR
FERGUS FALLS PORT AUTHORITY

By: _____

Name: Klara Beck

Its: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF OTTER TAIL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, as _____ of _____.

Notary Public

[Grantee signature page follows.]

GRANTEE SIGNATURE PAGE

GRANTEE
Otter Tail Power Company

By: _____

Name: Brad Tollerson

Its: _____ VP Energy Supply_____

[illegible]

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, as _____ of Otter Tail Power Company, a Minnesota corporation, on behalf of the company.

Notary Public

**EXHIBIT A TO
OPTION AGREEMENT**

Legal Description of the Land

71003500176010 County Tax Parcel ID No(s):

NEED LEGAL DESCRIPTION

[See attached.]

**EXHIBIT B TO
OPTION AGREEMENT**

Consideration

[Note – to be removed prior to recording.]

Option Payment

A one-time payment in the amount of One Thousand and 00/100 (\$1,000.00) due within sixty (60) days of execution of this Agreement (collectively, the “**Option Payment**”). The Option Payment will not be applied to the Lease Price if Grantee exercises the Option and completes the transaction contemplated under this Agreement.

**EXHIBIT C TO
OPTION AGREEMENT**

Form of Solar Easement Agreement

[See attached.]

SOLAR EASEMENT AGREEMENT

THIS SOLAR EASEMENT AGREEMENT (this “**Agreement**”) is made, dated and effective as of _____, 202__ (the “**Effective Date**”), by and between the Fergus Falls Port Authority, a Minnesota corporate body politic, (together with its successors, assigns and heirs, collectively, “**Grantor**”) whose address is 112 W. Washington Avenue Fergus Falls, MN 56537, and **Otter Tail Power Company**, a Minnesota corporation, with its principal offices at 215 South Cascade Street, Fergus Falls, MN 56537 (together with its transferees, successors and assigns, “**Grantee**”), and in connection herewith, Grantor and Grantee agree, covenant and contract as set forth in this Agreement. Grantor and Grantee are sometimes referred to in this Agreement as a “**Party**” or collectively as the “**Parties**”.

1. Exclusive Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Grantor and Grantee, upon the terms and conditions set forth in this Agreement, Grantor hereby grants and conveys to Grantee an exclusive easement to convert, maintain and capture the flux of solar energy over, across and through that certain real property, including, without limitation, the surface estate, subsurface, and air space thereon, located in Otter Tail County, (the “**County**”), State of Minnesota, consisting of approximately twenty (20) acres, as more particularly described in Exhibit A attached hereto and incorporated herein (the “**Property**”), throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a “**Site**”) and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property, for the purposes set forth below. Grantee shall have the right to have a surveyor licensed in the State of Minnesota survey the Property, in which event, upon request from Grantee, the Parties shall execute an amendment to this Agreement updating Exhibit A hereto.

1.1. Purposes of the Easement. This Agreement is solely and exclusively for solar energy purposes, as such term is broadly defined, including ancillary rights related thereto and necessary for the development and operation of Solar Facilities (as defined below which includes energy storage and battery technology facilities), and not for any other purpose. For purposes of this Agreement, “solar energy purposes” means converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto. Grantee shall have the exclusive right to develop and use the Property for solar energy purposes and to derive all profits therefrom, including, without limitation, the following activities: (a) converting solar energy into electrical energy, and

collecting and transmitting the electrical energy so converted; (b) determining the feasibility of solar energy conversion and other power generation on the Property or on adjacent lands, including studies of solar energy emitted upon, over and across the Property and other meteorological data, environmental, biological and cultural studies, surveys and extracting soil samples; (c) constructing, laying down, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, maintaining, repairing and operating the following only for the benefit of the Project or Projects (as defined below) (i) solar energy generating equipment of any kind (including, without limitation, any other associated equipment or structures); (ii) overhead and underground electrical distribution, collection, transmission and communications lines, electric combiners, inverters, transformers and substations, energy storage and battery technology facilities, and telecommunications equipment; (iii) new and existing roads and crane pads; (iv) meteorological measurement equipment; (v) control buildings, maintenance yards, laydown yards, operations and maintenance facilities and buildings; and (vi) any other improvements that Grantee reasonably determines are necessary, useful or appropriate for the Project (collectively, the “**Solar Facilities**”). The term “**Project**”, for the purposes of this Agreement, means an integrated solar energy generation system, consisting of Solar Facilities, that is constructed and operated on the Property, and/or adjacent lands, by Grantee, or a third party authorized by Grantee. Grantee may determine whether any particular group of Solar Facilities constitutes a single Project or multiple Projects for purposes of this Agreement, and in the case of multiple Projects, which portion of the Property shall be included within each Project; (d) dismantling, demolishing, and removing any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or could intrude) onto the Property that could obstruct, interfere with or impair the Project, as Grantee determines in its sole discretion; (e) excavating, grading, leveling or otherwise modifying portions of the Property as necessary or desirable in connection with the Project, including without limitation trimming or cutting down trees, shrubs or any other landscaping and vegetation on the Property; (f) gating or otherwise securing any access roads on or to the Property, provided that Grantee shall work with Grantor to ensure Grantor’s commercially reasonable access to same consistent with industry standard practices; and (g) undertaking any other activities, whether accomplished by Grantee or a third party authorized by Grantee, that Grantee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

1.2. Other Uses. During the Term, Grantor agrees to provide Grantee with current information concerning the status and location of all other land uses occurring on the Property (including, without limitation, agricultural use, industrial use, and mineral (including, but not limited to, coal, oil and/or gas) exploration and production activities). Grantor represents and warrants that there are no existing unrecorded third party use rights encumbering the Property. Any new leases or renewals and or extensions of existing leases, options to lease, seismic operations, or any other agreement made by Grantor with a third party regarding the Property (including any of the foregoing related to water, oil, gas or other minerals) shall contain language that states that such third party shall not disturb, interfere with, preclude, or destroy Grantee’s rights hereunder.

2. Grant of Additional Easements.

2.1. Grantor hereby grants, conveys and warrants to Grantee the following additional easements upon, over, across and under the Property and all other property that is adjacent to, or relatively nearby, the Property, and is owned or controlled by Grantor, as of the Effective Date:

(a) Non-Obstruct. An exclusive easement to capture, use and convert the unobstructed flux of solar energy over and across the Property from all angles and from sunrise to sunset at the Property during each day of the Term, throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any Site and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property;

(b) Interference. An exclusive easement for electromagnetic, audio, visual, view, light, glare, noise, vibration, electrical, radio interference, or other effects attributable to the Solar Facilities, the Project, or any activities by Grantee on the Property;

(c) Access Easement. A non-exclusive easement for ingress to and egress from the Solar Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads and lanes thereon if existing or later constructed by Grantor, or otherwise by such route or routes as Grantee may construct from time to time;

(d) Other Easements. All other easements reasonably necessary to accomplish the activities permitted by this Agreement, including without limitation those activities described in Section 1.1 and third party utility easements (such as gas, electricity, water, and telephone).

3. Term. The term of this Agreement shall commence on the Effective Date and continue for the following described periods (collectively, the “**Term**”):

3.1. Development Term. This Agreement shall be for an initial term (the “**Development Term**”) commencing on the Effective Date and continuing until the earlier to occur of: (a) the commencement of construction of permanent facilities on the Property, or (b) the fifth (5th) anniversary of the Effective Date.

3.2. Construction Term. Upon the expiration of the Development Term, the term of the Agreement shall automatically extend for an additional period (the “**Construction Term**”) continuing until the earlier of: (a) the date on which Grantee begins selling electrical energy generated by substantially all of the Solar Facilities to be included in the Project to a

third-party power purchaser (as declared by Grantee, the “**Operations Date**”); or (b) three (3) years thereafter.

Grantee may record a notice of the commencement of the Construction Term against the Property in the official public records of the County to give notice of such date, and upon request from Grantee, Grantor shall execute, acknowledge, and deliver to Grantee any such notice, but a failure to record any such notice shall in no event affect the validity of this Agreement.

3.3. Operations Term. Upon the expiration of the Construction Term, the term of this Agreement shall automatically extend for an additional period of time that shall begin upon such expiration of the Construction Term and end on the date immediately preceding the thirty-fifth_____ (35th) anniversary of the Effective Date (the “**Operations Term**”). Grantee may record a notice of the Operations Date against the Property in the official public records of the County to give notice of such date, and upon request from Grantee, Grantor shall execute, acknowledge, and deliver to Grantee any such notice, but a failure to record any such notice shall in no event affect the validity of this Agreement.

3.4. Extended Term. Provided that Grantee has not fully surrendered or terminated this Agreement, then on or before the expiration of the Operations Term, Grantee may, at its option, extend the term of this Agreement for two (2) additional ten (10) year periods (collectively, the “**Extended Term**”). Grantee may exercise its option to extend this Agreement for an Extended Term by giving Grantor written notice thereof on or before the date that is one hundred and eighty (180) days prior to the expiration of the Operations Term or Extended Term, as the case may be. Grantee may record a notice of the commencement of an Extended Term, if any, against the Property in the official public records of the County to give notice of such date, and upon request from Grantee, Grantor shall execute, acknowledge, and deliver to Grantee any such notice, but a failure to record such notice shall not affect the validity of this Agreement.

4. Payments to Grantor. In consideration of the rights and interest granted by Grantor to Grantee under this Agreement, Grantee shall pay Grantor the amounts set forth in Exhibit B attached hereto. Exhibit B shall not be recorded in the official public records of the County.

5. Taxes, Assessments, and Utilities.

5.1. Grantor shall pay, when due, all real property taxes and assessments levied against the Property and all personal property taxes and assessments levied against any property and improvements owned by Grantor and located on the Property. Subject to Section 5(c), if Grantor shall fail to pay any such taxes or assessments when due, Grantee may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any amounts otherwise due to Grantor from Grantee under this Agreement.

5.2. Grantee shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Property experiences any increase in the amount of real property taxes assessed as a result of the installation of the Solar Facilities on the Property, including any reclassification of the Property, Grantee shall pay or reimburse Grantor an amount equal to the increase no later than ten (10) days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Grantor provides Grantee with copies of the applicable current and past statements of real estate taxes payable for the Property and any related information demonstrating the reasons for any increase in real estate taxes.

5.3. Either party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and the party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

5.4. Grantee shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Grantee on the Property.

6. Insurance. Grantee shall obtain and maintain in force policies of insurance covering the Solar Facilities and Grantee's activities on the Property during the Term, including comprehensive general liability insurance with a minimum combined occurrence and annual limitation of One Million Dollars (\$1,000,000.00) for the period prior to commencement of construction of any Solar Facilities other than meteorological measuring devices, and Three Million Dollars (\$3,000,000.00) commencing on the Construction Date and thereafter during the Term. Such insurance coverage for the Solar Facilities and Property may be provided as part of a blanket policy that covers other solar facilities or properties as well. Any such policies shall name Grantor as an additional insured. Grantee shall provide copies of certificates of insurance evidencing this coverage upon request by Grantor no more often than once per year during the Term. Policies shall provide coverage for any costs of defense or related fees incurred by Grantor.

7. Ownership of Solar Facilities. All Solar Facilities constructed, installed or placed on the Property by Grantee pursuant to this Agreement shall be and remain the sole property of Grantee and Lessor shall have no ownership or other interest in any Solar Facilities on the Property. If under applicable federal, state and local laws, statutes, ordinances, rules, regulations, judgments, permits, licenses and orders, Grantee becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal governmental authority by virtue of the form of this Agreement, then Grantee and Grantor shall amend this Agreement or replace it with a different instrument so as to convert Grantee's interest in the Property to a substantially similar interest that makes Grantee eligible for such tax credit, benefit or incentive.

8. Indemnity/Liability.

8.1. Each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and such other Party's Related Persons (as defined below)(each, an "**Indemnified Party**") from and against any and all third party (excluding Related Persons) claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses suffered or incurred by such Indemnified Party, arising from the negligence or intentional misconduct of the Indemnifying Party. Notwithstanding the foregoing to the contrary, Grantee may elect, upon written notice, to control any or all aspects of the defense of any legal action covered by the prior sentence.

8.2. In no event shall either Party be liable to the other Party to the extent any claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses are caused by, arising from or contributed by the negligence or intentional misconduct of such other Party or any Related Person thereof.

8.3. In no event, whether as a result of breach of contract, warranty, indemnity, tort (including negligence), strict liability or otherwise, shall either Party be liable to the other Party for loss of profit or revenues, loss of business opportunities or for any other special, consequential, incidental, indirect or exemplary damages.

8.4. In no event shall Grantee or its Related Persons be liable to Grantor for property damage or personal injuries to Grantor or its Related Persons attributable to risks of known and unknown dangers associated with normal day-to-day operation of electrical generating facilities, such as noise, electromagnetic fields, and glare.

8.5. To the fullest extent permitted by Law, Grantor shall indemnify, defend (with counsel reasonably acceptable to Grantee) and hold harmless Grantee and Grantee's directors, lenders, officers, employees and agents against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses, to the extent resulting from or arising out of (a) any Hazardous Material existing on the Property as of the Effective Date, or (b) any violation of Section 10.5 below, which obligation shall not be subject to the limitation of liability set forth in Section 8.3 above.

8.6. As used herein the term "Related Person" shall mean any affiliates, contractors, lessees, and sublessees of a Party, and each of their respective, principals, officers, employees, servants, agents, representatives, subcontractors, licensees, invitees, and/or guests.

This Section 8 shall survive the expiration or earlier termination of this Agreement.

9. Grantee's Representations, Warranties, and Covenants.

Grantee hereby represents, warrants, and covenants to Grantor the following:

9.1. Grantee's Authority. Grantee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Grantee is authorized to do so. Upon execution by all Parties hereto, this Agreement shall constitute a valid and binding agreement enforceable against Grantee in accordance with its terms.

9.2. Requirements of Governmental Agencies. Grantee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, and regulations of any governmental agency applicable to the Solar Facilities. Grantee shall have the right, in its sole discretion, to contest by appropriate legal or administrative proceedings, the validity or applicability to Grantee, the Property or Solar Facilities of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, County, local or other governmental agency or entity. Any such contest or proceeding shall be controlled and directed by Grantee.

9.3. Mechanic's Liens. Grantee shall keep the Property free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed for or furnished to Grantee or, at the request of Grantee, any Solar Facilities on the Property in connection with Grantee's use of the Property. Grantee may contest any such lien if Grantee provides Grantor with a bond or other reasonable security to protect Grantor's interest in the Property against any such lien, in which case Grantee shall not be required to remove the lien during the period of the contested proceeding but will be required to remove the lien prior to Grantor's interest in the Property being forfeited or foreclosed upon.

9.4. Hazardous Materials. Grantee shall not violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of asbestos-containing materials, petroleum, explosives or any other substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations, on or under the Property (each, a "**Hazardous Material**"). Grantee shall promptly notify Grantor if any such violation by Grantee occurs.

10. Grantor's Representations, Warranties, and Covenants. Grantor hereby represents, warrants, and covenants as follows:

10.1. Grantor's Authority. Grantor is the sole fee simple owner of the Property including the subsurface estate thereof, and has the unrestricted right and authority to execute this Agreement and to grant to Grantee the rights granted hereunder. Each person signing this Agreement on behalf of Grantor is authorized to do so. Upon execution by all Parties hereto, this Agreement shall constitute a valid and binding agreement enforceable against Grantor in accordance with its terms.

10.2. No Interference. Grantor's activities and any grant of rights Grantor makes to any person or entity, shall not, currently or prospectively, disturb or interfere with: the construction, installation, maintenance, or operation of the Solar Facilities, whether located on the Property or elsewhere; access over the Property to such Solar Facilities; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Grantor shall not erect any structures, plants or other equipment, or enter into any third party agreements or amend or extend any existing agreements or undertake any other activities that may: (i) interfere with Grantee's right to install Solar Facilities on any portion of the Property, (ii) potentially cast a shadow onto the Solar Facilities, (iii) cause a decrease in the output or efficiency of any Solar Facilities, (iv) interrupt the flow of solar energy upon, across and over any portion of the Property used or to be used by the Solar Facilities, or (v) otherwise interfere with Grantee's operations on the Property. If, at any time during the Term, Grantor would like a variance of the preceding requirements, Grantor may submit a letter of request to Grantee for approval, and approval or denial of such request shall be in Grantee's sole discretion. Grantee shall have the right to remove all trees from the Property and to trim trees to maintain approximately their same height and width as exists as of the Effective Date for the purpose of not interfering with the flux of solar energy from any angle upon, across, over, and throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from each Site and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property.

10.3. Liens and Third Party Agreements. Grantor represents there are no encumbrances, restrictions, leases, easements, licenses, rights of way, mortgages, deeds of trust, liens, or security interests (each an "Encumbrance") encumbering all or any portion of the Property that could interfere with Grantee's operations on the Property, including without limitation mechanic's liens, except for those disclosed in the real property records of the County, or as otherwise disclosed by Grantor in writing to Grantee on or prior to the Effective Date. Grantor shall fully cooperate and assist Grantee in removing or limiting any Encumbrances, whether recorded or unrecorded, including without limitation obtaining documentation from such third party to protect Grantee's rights as Grantee may deem necessary. Such documentation includes without limitation subordination and non-disturbance agreements for liens, and non-interference agreement for other third party rights on the property, and in any case with each document to contain those terms and conditions reasonably required by Grantee to protect its rights hereunder. In addition, Grantor agrees to discharge or bond over any monetary liens that arise against the Property, such as mechanic's liens, that are not caused by Grantee, within thirty (30) days of receipt of written notice of the same, such bond to be in an amount reasonably requested by Grantee. Grantor's obligations set forth in this Section 10.3 shall not limit Grantor's other obligations hereunder with respect to third party agreements.

10.4. Governmental Requirements; Setback Waiver. Grantor shall assist and cooperate with Grantee, at no out-of-pocket expense to Grantor, in complying with or obtaining any land use permits and approvals, building permits, environmental reviews, or any other permits and approvals with respect to the Solar Facilities, including, without limitation, execution of applications and documents reasonably necessary for such approvals and permits, and participating in any appeals or regulatory proceedings respecting the Solar Facilities. In connection with the issuance of any permits or approvals for the Solar Facilities, and to the extent allowed by (and subject to) applicable law, Grantor hereby waives any and all setback requirements and enforcement thereof, including any setback requirements described in the zoning ordinance of the County or in any governmental entitlement or permit hereafter issued to Grantee, with respect to the locations of any Solar Facilities to be installed or constructed on the Property or on adjacent real property that is a part of the Project.

10.5. Hazardous Materials. Grantor shall not violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Material. Grantor shall promptly notify Grantee if any such violation occurs. To the best of Grantor's knowledge, (i) no underground tanks are now located or at any time in the past have been located on the Property or any portion thereof, (ii) no Hazardous Material has been generated, manufactured, transported, produced, used, treated, stored, released, disposed of or otherwise deposited in or on or allowed to emanate from the Property or any portion thereof other than as permitted by applicable law and (iii) there are no Hazardous Materials in, on or emanating from the Property or any portion thereof which may support a claim or cause of action under any applicable law. Grantor certifies it has never received any notice or other communication from any governmental authority alleging that the Property is or was in violation of any applicable law. Grantor hereby agrees that, when Grantee takes an action that is contemplated by this Agreement, including the easements granted herein and the installation of the Solar Facilities, such actions will not associate Grantee with any existing release or threatened release of existing contamination on the Property as of the Effective Date, so long as Grantee takes such actions in accordance with the terms and conditions of this Agreement.

10.6. Litigation. No litigation is pending, and, to the best of Grantor's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or which could affect, the Property. If Grantor learns that any such litigation, action, claim or proceeding is threatened or has been instituted, Grantor shall promptly deliver notice thereof to Grantee and provide Grantee with periodic updates of the status of said litigation, action, claim or proceeding that is ongoing.

10.7. Title Insurance and Financing. Grantor agrees that Grantor shall execute and deliver to Grantee any documents reasonably required by the title insurance company and/or a financing party within five (5) business days after presentation of said documents by Grantee; provided, however, in no event shall such documents materially increase any obligation or materially decrease any right of Grantor hereunder. Grantor shall have no obligation to initiate the process to obtain title insurance on behalf of the Grantee.

11. Assignment.

11.1. Collateral Assignments. Grantee shall have the right in its sole and absolute discretion, without obtaining the consent of Grantor, to finance, mortgage, encumber, hypothecate, pledge or transfer to one or more Mortgagees any and all of the rights granted hereunder, including the easements granted in this Agreement, and/or any or all rights or interests of Grantee in the Property or in any or all of the Solar Facilities.

11.2. Other Assignments. With prior written consent from the Grantor, which consent shall not be unreasonably withheld, Grantee shall have the right to sell, convey, assign or transfer (including granting co-easements, separate easements, and subeasements) any or all of its rights hereunder in and to any or all of the Property provided such transfer is related to a Project. Grantee shall be relieved of all of its obligations arising under this Agreement, as to all or such portion of its interests in the Property transferred, from and after the effective date of such transfer, provided such rights and obligations have been assumed by such transferee.

11.3. Acquisition of Interest. The acquisition of all interests, or any portion of interest, in Grantee by another person shall not require the consent of Grantor or constitute a breach of any provision of this Agreement and Grantor shall recognize the person as Grantee's proper successor.

11.4. Transfer by Grantor. Grantor may transfer Grantor's interest in the Property, in part or in whole to any third party; provided, however, as a condition to such transfer, such transferee must assume the obligations of Grantor hereunder with respect to the interest so transferred. Grantor shall give Grantee at least thirty (30) days written notice prior to any transfer of all or any portion of the Property, identifying the transferee, the portion of Grantor's property to be transferred and the proposed date of transfer. Grantor acknowledges and agrees that it shall not be permitted to sever the payments under the Agreement and shall not be permitted to assign payments due to Grantor under the Agreement to a third party without the consent of Grantee. Upon the transfer of an interest in the Property to an heir, legal representative, successor or permitted assign, the payments hereunder (or the proportionate share thereof) shall inure to the benefit of such party.

12. Default and Remedies.

12.1. Each of the following shall constitute an event of default that shall permit the non-defaulting party to terminate this Agreement or pursue other remedies available at law or equity, subject to the terms and conditions of Article 11.

(a) any failure by Grantee to pay any undisputed amounts due under this Agreement if the failure to pay continues for thirty (30) days after written notice from Grantor;

(b) any other breach of this Agreement by either party which continues

for thirty (30) days after written notice of default from the nondefaulting party or, if the cure will take longer than thirty (30) days, the length of time reasonably necessary to effect cure as long as the defaulting party is making diligent efforts to cure during that time.

13. Mortgagee Protection. In the event that any mortgage, deed of trust, financing statement, or other security interest in this Agreement or in any Solar Facilities, or any portion thereof (a “**Mortgage**”), is entered into by Grantee then any person who is the mortgagee, grantee or beneficiary of a Mortgage (a “**Mortgagee**”) shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 13. Grantee shall send written notice to Grantor of the name and address of any such Mortgagee; provided that failure of Grantee to give notice of any such Mortgagee shall not constitute a default under this Agreement and shall not invalidate such Mortgage.

13.1. Mortgagee’s Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the easement estate by any lawful means; (iii) to take possession of and operate the Solar Facilities or any portion thereof, to exercise all of Grantee’s rights hereunder, and to perform all obligations to be performed by Grantee hereunder, or to cause a receiver to be appointed to do so; and (iv) to acquire the easement estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the easement estate to a third party. Grantor’s consent shall not be required for the acquisition of the encumbered easement or subeasement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

13.2. Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any default of Grantee, Grantor shall give a Notice of Default to each Mortgagee of which it has notice, concurrently with delivery of such notice to Grantee. In the event Grantor gives a Notice of Default, the following provisions shall apply:

(a) A “Monetary Default” means Grantee’s failure to pay when due any undisputed fee, payment or other monetary obligation of Grantee under this Agreement. Any other default by Grantee of its obligations hereunder is referred to herein as a “Non-Monetary Default.”

(b) The Mortgagee shall have the same period after receipt of the Notice of Default to remedy the default, or cause the same to be remedied, as is given to Grantee, plus, in each instance, the following additional time periods: (i) thirty (30) days, for a total of sixty (60) days after receipt of the Notice of Default in the event of any Monetary Default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the Notice of Default in the event of any Non-Monetary Default, provided that such 120-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such Non-Monetary Default by obtaining possession of Grantee’s easement estates in and to the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Mortgagee acts with reasonable and continuous

diligence. The Mortgagee shall have the absolute right to substitute itself for Grantee and perform the duties of Grantee hereunder for purposes of curing such default. Grantor expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Grantee hereunder. Grantor shall not take any action to terminate this Agreement in law or equity prior to the expiration of the cure periods available to a Mortgagee as set forth above.

(c) During any period of possession of Grantee's easement estate in and to the Property by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid all monetary charges payable by Grantee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Grantee's easement estate in and to the Property by the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment and/or deed in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to Grantee's easement estate shall, as promptly as reasonably possible, commence the cure of all of Grantee's defaults which are reasonably susceptible of being cured by the Mortgagee or party acquiring title, hereunder and thereafter diligently process such cure to completion, whereupon such defaults shall be deemed cured without incurring any default hereunder.

(d) Any Mortgagee or other party who acquires Grantee's easement interest in and to the Property pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Grantee by this Agreement for such interest so long as such Mortgagee or other party has ownership of the easement estate or possession of the Property. Neither the bankruptcy nor the insolvency of Grantee shall be grounds for terminating this Agreement as long as all material obligations of Grantee under the terms of this Agreement are performed by the Mortgagee in accordance with the terms hereunder. Nothing herein shall be construed to extend this Agreement beyond the Term or to require a Mortgagee to continue foreclosure proceedings after a default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

13.3. New Agreement to Mortgagee. If this Agreement terminates as a result of Grantee's default or if Grantee's easement estate is foreclosed upon, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Grantor shall, upon written request from any Mortgagee within ninety (90) days after such event, enter into a new agreement for the Property on the following terms and conditions:

(a) The terms of the new agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term, at the same rent and subject to the same terms and conditions set forth in this Agreement.

(b) The new agreement shall be executed within thirty (30) days after receipt by Grantor of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Grantor all monetary amounts payable by Grantee under the terms of this Agreement to the effective date of the new agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all other obligations of Grantee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Grantee and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute non-curable defaults. Any new agreement granted to the Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Grantor.

(c) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the obligations of Grantee thereunder.

(d) If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new agreement whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(e) The provisions of this Section 13 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 13 were a separate and independent contract made by Grantor, Grantee and such Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new agreement, such Mortgagee may use and enjoy said Property without hindrance by Grantor or any person claiming by, through or under Grantor, provided that all of the conditions for a new agreement as set forth herein are complied with.

13.4. Mortgagee's Consent. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists a Mortgage, this Agreement shall not be modified or amended and Grantor shall not accept a surrender of the Property or any part thereof or accept a cancellation, termination or release of this Agreement from Grantee prior to

expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

13.5. No Waiver. No payment made by a Mortgagee to Grantor shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee, having made any payment to Grantor pursuant to Grantor's wrongful, improper or mistaken notice or demand, shall be entitled to the return of any such payment.

13.6. No Merger. There shall be no merger of this Agreement, or of the easement estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the easement 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 Mortgagee) having an interest in this Agreement or in the estate of Grantor and Grantee shall join in a written instrument effecting such merger and shall duly record the same.

13.7. Estoppel Certificates. Grantor shall provide Grantee with such further assurances and shall execute any estoppel certificates, consents to assignments, non-disturbance and subordination agreements, or additional documents that may be reasonably necessary for recording purposes or requested by Grantee or any of its lenders. The failure of Grantor to execute and deliver any estoppel certificate within fifteen (15) days of written request from Grantee shall constitute Grantor's agreement that all of the statements included in any such estoppel certificate are true and correct, without exception. Grantee shall reimburse Grantor for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation.

14. Termination.

14.1. Grantee's Right to Terminate. Grantee shall have the right to terminate this Agreement as to all or any part of the Property at any time and without cause, effective upon written notice to Grantor from Grantee.

14.2. Effect of Termination.

(a) Removal. Upon expiration of the Term or earlier termination of this Agreement, Grantee shall, within twelve (12) months after such expiration or termination, remove the Solar Facilities from the surface of the Property and, with respect to underground facilities installed by Grantee, to the depth required under applicable state decommissioning regulations. Any portions of the Property disturbed by Grantee shall be restored to a substantially similar condition as existed prior to Grantee's construction of the Solar Facilities. If Grantee fails to remove such Solar Facilities within twelve (12) months of termination of this Agreement, or such longer period as Grantor may provide by extension, Grantor, if allowed under applicable governmental rules, approvals, laws, and the permits for the Solar Facilities,

shall have the right to restore the Property and remove, or to cause removal of, any property owned by Grantee to the extent required by Grantee under this Section 14.2, and the right to receive reimbursement, less the salvage value of the Solar Facilities, from Grantee for any remaining amounts reasonably incurred for removal and restoration of the Property; provided, however, that the foregoing provisions shall not apply in the event that the Solar Facilities are decommissioned by a governmental authority.

(b) Security for Removal.

(i) If security for performance of Grantee's obligations to remove and decommission the Solar Facilities is not required by the County or other applicable governmental authority, Grantee shall provide security to cover the estimated costs associated with removal of the Solar Facilities on the Property in accordance with Section 14.2(a). The security shall be, at Grantee's option, either a surety bond, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to Grantor), a letter of credit, a cash deposit, or other security reasonably acceptable to Grantor (the selected security being herein referred to as the "Decommissioning Security"). The amount of the Decommissioning Security shall be the estimated cost of (i) removing the foregoing Solar Facilities, net of their estimated salvage value, as estimated by a licensed professional engineer selected by Grantee, and (ii) restoration of the Property in accordance with Section 14.2(a). The amount of the Decommissioning Security shall be updated every five (5) years after the initial estimate based on a new estimate by a licensed professional engineer selected by Grantee.

(ii) In the event the County or other governmental authority requires Grantee to provide security for removal or decommissioning of a Project, the provisions of this Section 14.2(b)(ii) shall apply and shall supersede the provisions of Section 14.2(b)(i) above. Grantee shall only be obligated to provide a single Decommissioning Security consistent with the requirements of the governmental authority regarding removal or decommissioning of the Solar Facilities from the Property, and the governmental authority shall have access to the Property pursuant to reasonable notice to effect or complete the required removal or decommissioning to the extent the governmental authority is responsible for such removal and decommissioning

15. Miscellaneous.

15.1. Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of

Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference, and the Term or any other time periods herein shall be extended for such period of time. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. “**Force Majeure**” means fire, earthquake, flood, or other casualty, condemnation or accident; strikes or labor disputes; war, acts of terrorism, civil strife or other violence; pandemic or epidemic; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; unavailability or equipment or materials; failure of carriers to transport or furnish facilities for transportation; or any other act or condition beyond the reasonable control of a Party hereto.

15.2. Condemnation. If eminent domain proceedings are commenced against all or any portion of the Property, and the taking and proposed use of such property would prevent or adversely affect Grantee’s construction, installation or operation of Solar Facilities on the Property, at Grantee’s option, the parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Grantee, together with any corresponding payments, or this Agreement shall terminate in which event neither party shall have any further obligations. All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Grantor, except that Grantee shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Property pursuant to the Agreement. Grantee shall have the right to participate in any condemnation proceedings. No termination of this Agreement under this Section 14.2 shall affect Grantee’s right to receive any award to which Lessee is entitled hereunder.

15.3. Confidentiality. After the Effective Date, both parties shall maintain in confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Agreement. Neither party will use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of the other party. Notwithstanding the foregoing, each party may disclose such information to such party’s lenders, attorneys, accountants, beneficiaries and other advisors; any prospective purchaser or lessee of such party’s interests in the Property, or pursuant to lawful process, subpoena or court order requiring such disclosure, provided the party making such disclosure advises the party receiving the information of the confidentiality of the information. The provisions of this Section 14.3 shall survive the termination or expiration of this Agreement.

15.4. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Grantor and Grantee and, to the extent provided in any assignment or other transfer under Section 11, any transferee, and their respective heirs, transferees, successors and permitted assigns, and all persons claiming under them. References to Grantee in this Agreement shall be deemed to include transferees of Grantee that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

15.5. Memorandum; Recording. Upon request from Grantee, Grantor shall execute in recordable form, and Grantee may then record, a memorandum of this Agreement substantially in the form of Exhibit C attached hereto, incorporating only those non-substantive changes to the form as may be required by the applicable jurisdiction in which recording is sought and to reflect the terms of this Agreement, which memorandum shall include, without limitation, a reference to the solar easement granted by Grantor to Grantee under this Agreement. Grantor hereby consents to the recordation of the interest of a transferee of Grantee in the Property.

15.6. Notices. All notices or other communications required or permitted by this Agreement, including payments to Grantor, shall be in writing and shall be deemed given when personally delivered to Grantor or Grantee, or in lieu of such personal delivery services, the same day if sent via facsimile or email with confirmation, the next business day if sent via overnight delivery or four (4) days after deposit in the United States mail, first class, postage prepaid, certified, addressed as follows:

If to Grantor:

Klara Beck, Executive Director
Fergus Falls Port Authority
112 W. Washington Avenue
Fergus Falls, MN 56537
Fax: _____

If to Grantee:

Otter Tail Power Company
Attn: Vice President, Energy Supply
215 S. Cascade Street
Fergus Falls, MN 56537
Fax: _____

Either Party may change its address for purposes of this paragraph by giving written notice of such change to the other Parties in the manner provided in this paragraph.

15.7. Entire Agreement; Amendments. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between Grantor (and its respective successors, heirs, affiliates and assigns) and Grantee (and its respective successors, heirs, affiliates and assigns) respecting its subject matter, and supersedes any and all oral or written agreements. All of the provisions of the Exhibits shall be treated as if such provisions were set forth in the body of this Agreement and shall represent binding obligations of each of the Parties as part of this Agreement. Any agreement, understanding or representation respecting the Property, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both Parties is null and void. No purported modifications or amendments, including without limitation any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party unless in a writing signed by both Parties. Provided that no material default in the performance of Grantee's obligations under this Agreement shall have occurred and remain uncured, Grantor shall cooperate with Grantee in amending this Agreement from time to time to include any provision that may be reasonably requested by Grantee for the purpose of implementing the provisions contained in this Agreement or for the purpose of preserving the security interest of any transferee of Grantee or Mortgagee.

15.8. Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Minnesota. If the Parties are unable to resolve any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in a federal court located in Minnesota, provided such federal court has jurisdiction over such dispute, and if federal jurisdiction is not proper for such dispute, then the dispute shall be resolved in a state court located outside of the County. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. The prevailing Party in any action or proceeding for the enforcement, protection or establishment of any right or remedy under this Agreement shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding from the non-prevailing Party.

15.9. Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the Term, or the term of any easement granted herein be longer than, respectively, the longest period permitted by applicable law.

15.10. 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.

15.11 No Partnership. Nothing contained in this Agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more Parties in this Agreement.

15.12. Waiver of Right to Jury Trial. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

[Signatures on Following Page.]

IN WITNESS WHEREOF, Grantor and Grantee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

GRANTOR

GRANTEE

Fergus Falls Port Authority,
part of the City of Fergus Falls,
a municipality in Minnesota

Otter Tail Power Company,
a Minnesota corporation

By:_____

By:_____

Name:_____

Name:___Brad Tollerson_____

Title:_____

Title:___VP Energy Supply_____

EXHIBIT A
Description of the Property

[See attached.]

EXHIBIT B
Payment Terms

In consideration for the rights provided to Grantee under the Agreement, Grantee agrees to make payments to Grantor as follows:

Construction Fees. Beginning on the Construction Term commencement date and ending on the Operations Date, Grantee shall pay to Grantor the following amounts (collectively “**Construction Fees**”): (a) \$ 500 per acre of the Property for the first year of the Construction Term, and (b) \$ 500 per acre of the Property for the second and third year of the Construction Term, if applicable. For the first payment of Construction Fees, Grantee shall receive a credit for any Development Term Fees paid equal to the proportion of such Development Term Fee that is applicable for time periods occurring after the commencement of the Construction Term. Each payment shall be made within sixty (60) days of the commencement of each Construction Term year, as applicable.

Operating Fees. Beginning on the Operations Date and ending on the date on which Grantee ceases to operate the Solar Facilities on the Property, Grantee shall pay to Grantor \$ 500 per Net Acre of the Property per year for property inside the Project fence, which payments shall escalate by 2% per year on a compounded and cumulative basis. For the first payment of Operating Fees, Grantee shall receive a credit for any Construction Fees paid equal to the proportion of such Construction Fee that is applicable for time periods occurring after the Operations Date. The payment of the Operating Fees shall be made in advance with the first payment to be made within sixty (60) days of the Operations Date, and each subsequent payment being due and payable on each anniversary of the Operations Date.

For purposes of this Agreement “**Net Acre**” or “**Net Acreage**” means the gross area of the portion of the Property being referred to, including all internal easements and rights-of-way but excluding any and all perimeter easements and dedicated rights-of-way. Net Acreage shall be determined by a survey prepared by a surveyor licensed in the state in which the Property exists. Within ninety (90) days of the Operations Date, Grantee shall have a licensed surveyor complete a survey of the Property and calculate the total acreage of such Property as of such date.

Crop Damages.

The parties anticipate and acknowledge that Grantor or its renters may suffer damage to crops, tile, fences, and other property or improvements on the Property during Grantee’s construction, installation and maintenance of Solar Facilities on the Property. Grantee shall reimburse Grantor for any such damages within thirty (30) days after determining the extent of damage. Notwithstanding any provision to the contrary, Grantor acknowledges and agrees that it shall not be allowed to rent, lease, or otherwise allow crop tenants to grow crops on the Property during a calendar year if, by December 31 prior to such calendar year when crop

tenants are disallowed, Grantee provides Grantor with written notice stating that Grantee intends to construct the Project in the following year (the “**Development Notice**”).

Crop damages will be calculated by the following formula: Price x Yield x Percentage of Damage x Acreage = Crop Damages. Prices for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop. Yield will be the average of the next previous two (2) years’ yields of the same crop as the damaged crop, according to Grantor’s records or those of Grantor’s crop tenant, as received from and certified by Grantor, for the smallest parcel of land that includes the damaged area. For purposes of the foregoing, “Grantor’s records” shall include, but not be limited to, warehouse/elevator receipts, applications for crop insurance and scale tickets from grain cart or yield monitors on combines. If Grantor does not have yield records available, Grantor will use FSA records for the County (or other commonly used yield information available for the area) for the smallest parcel of land which includes the damaged area. The Parties shall try in good faith to agree to the extent of damage and acreage affected. If the parties hereto cannot agree, they shall have the area measured and extent of damage assessed by an impartial party such as a crop insurance adjuster or extension agent.

After such payment for any Crop Damages, Grantee shall not be responsible to pay Grantor or its renters any loss of income, rent, business opportunities, profits or other losses arising out of Grantor’s inability to grow crops or otherwise use the portion of the Property occupied by Solar Facilities.

EXHIBIT C
Form of Memorandum

[See attached.]

This instrument was drafted by
and after recording return to:
Otter Tail Power Company
Attention:
Land Rights Manager

215 South Cascade Street
Fergus Falls, MN 56538

MEMORANDUM OF SOLAR EASEMENT AGREEMENT

THIS MEMORANDUM OF SOLAR EASEMENT AGREEMENT (this "**Memorandum**"), is made, dated and effective as of _____, 20__ (the "**Effective Date**"), between the Fergus Falls Port Authority, part of the City of Fergus Falls, a municipality in Minnesota, (together with its successors, assigns and heirs, "**Grantor**"), whose address 112 W. Washington Avenue, Fergus Falls, MN 56537, and **Otter Tail Power Company**, a Minnesota corporation (together with its transferees, successors and assigns, "**Grantee**"), whose address is 215 South Cascade Street, Fergus Falls, MN 56537, with regards to the following:

1. Grantor and Grantee did enter into that certain Solar Easement Agreement dated _____, 20__ (the "**Agreement**"), which encumbers the real property located in Otter Tail County, Minnesota, as more particularly described in Exhibit A attached hereto (the "**Property**"). Capitalized terms used and not defined herein have the meaning given the same in the Agreement.

2. The Agreement grants, and Grantor hereby grants, Grantee, among other things, (a) the exclusive right to develop and use the Property, including, without limitation, (i) for the determining the feasibility of a solar project, (ii) constructing, laying down, installing, using, replacing, relocating, reconstructing and removing from time to time, and monitoring, maintaining, repairing and operating Solar Facilities (as such term is defined in the Agreement), and (iii) converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted; (b) an exclusive easement to capture, use and convert the unobstructed solar flux over and across the Property from all angles and from sunrise to sunset at the Property during each day of the Term, throughout the entire Property to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any solar panel is or may be located at any time from time to time (each such point referred to as a "**Site**") and for a distance from each Site to the boundaries of the Property, together vertically through all space located above the surface of the Property, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Property through each Site to each point and on and along such line to the opposite exterior boundary of the Property; and (c) an exclusive easement for electromagnetic, audio, visual, glare,

electrical or radio interference attributable to the Solar Facilities. The Agreement contains, among other things, certain Grantor and third party use and development restrictions on the Property.

3. The Agreement shall be for an initial term of five (5) years, a construction term of up to three (3) years, and an operations term for a period of time beginning upon the expiration of the construction term and ending on the date immediately preceding the thirty-fifth (35th) anniversary of the Effective Date of the Agreement..

4. Grantor has waived any and all setback requirements and enforcement thereof, including any setback requirements described in any applicable statute, rules, regulations, and local zoning ordinance or regulations or in any of the Authorizations hereafter issued to Grantee, with respect to the locations of any Solar Facilities to be installed or constructed on the Property or on adjacent real property that is a part of the Project.

5. This Memorandum does not supersede, modify, amend or otherwise change the terms, conditions or covenants of the Agreement, and Grantor and Grantee executed and are recording this Memorandum for the purpose of providing constructive notice of the Agreement and Grantee's rights thereunder. The terms, conditions and covenants of the Agreement are set forth at length in the Agreement and are incorporated herein by reference as though fully set forth herein. This Memorandum shall not, in any manner or form whatsoever, alter, modify or vary the terms, covenants and conditions of the Agreement.

6. This Memorandum shall also bind and benefit, as the case may be, the heirs, legal representatives, assigns and successors of the respective parties hereto, and all easements, covenants, conditions and agreements contained herein shall be construed as covenants running with the land.

7. Except as otherwise set forth in the Agreement, Grantor shall have no ownership, lien, security or other interest in any Solar Facilities installed on the Property, or any profits derived therefrom, and Grantee may remove any or all Solar Facilities at any time.

8. This Memorandum 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.

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the Effective Date first written above.

GRANTOR

Fergus Falls Port Authority
part of the City of Fergus Falls,
a municipality in Minnesota

By: _____

Name: _____

Title: _____

GRANTEE

Otter Tail Power Company,
a Minnesota corporation

By: _____

Name: Brad Tollerson

Title: VP Energy Supply

STATE OF MINNESOTA)
) ss.
COUNTY OF OTTER TAIL)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, as _____ of _____.

[SEAL]

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF OTTER TAIL)

The foregoing instrument was acknowledged and sworn before me this _____ of _____, 20____, by _____, the _____ of Otter Tail Power Company, a Minnesota corporation.

[SEAL]

Notary Public

EXHIBIT A
Description of the Property

[See attached.]