



To: Port Authority Commissioners
Andrew Bremseth
Rolf Nycklemoe
Bill Sonmor
Mayor Anthony Hicks
News Media

Date: March 13, 2025

A Port Authority meeting will be held on Monday, March 17, 2025 in the Council Chambers of City Hall starting at 5:00 PM.

The Agenda is as follows:

- 1) Call to Order
- 2) Approval of Minutes & Agenda
- 3) Old Business
 - a) Balanced Rock Power LOI/ Lease Option
 - b) Otter Tail Power Lease and Purchase Options
- 4) New Business
- 5) Adjourn

If you have special needs for accommodations, please call (218) 332-5436 or TDD 1-800-627- 3529 (Minnesota Relay Service).

Port Authority Minutes
February 18, 2025

The Fergus Falls Port Authority held a meeting on February 18, 2025, in the City Council Chambers. Port Authority President Laura Job called the meeting to order at 5:00 pm and the following members were in attendance: Kilde, Job, Kvamme, Leighton, Kremeier and Mortenson. Fish was absent.

Minutes

A motion and second were made by Kilde and Kremeier to approve the open and closed Port Authority meeting minutes from February 3, 2025, and the motion carried.

Approval of the Agenda

There was a consensus to approve the addition of a Letter of Intent from Otter Tail Power to tonight's agenda.

Dairy Property Purchase Transfer

The Port Authority owns 11.68 acres of land (PID 71003400004015) along the Otter Tail River. The former dairy plant was demolished, and the site was cleaned up using funding from various state loan programs. In 2023 the state legislature allocated \$4 million to support the redevelopment of the site. The funds were used to acquire 11.68 acres of land for a buffer and trail along the river and for the design, engineering and construction of a trail. A purchase agreement to transfer the property from the Port Authority (seller) and the City as a buyer has been proposed. Once the sale is completed, the City will be able to seek reimbursement of \$1.2 million from the state in realized project costs. The property will be retained for public recreational uses and trails. A motion and second were made by Kvamme and Kilde to authorize the sale of 11.68 acres along the Otter Tail River to the City of Fergus Falls utilizing \$1.2 million from the State of Minnesota, and the motion carried.

Land Appraisal

On January 21, 2025, the Port authorized Executive Director Klara Beck to seek an appraisal from John Burns Appraisal Services for Port Authority owned land (Parcel 71003500176010). There is interest in this land for a possible land sale for industrial development and Otter Tail Power has agreed to fund the appraisal services. The appraisal work has been completed, and land discussions can be continued with Otter Tail Power Company. A motion and second were made by Kilde and Kvamme to accept the appraisal from John Burns Appraisal Services and the motion carried.

New Business-Letter of Intent

Otter Tail Power has provided a Letter of Intent for approximately 24 acres of Port Authority owned land near International Drive for a distributed solar project. The Port members were asked if they are willing to engage in a discussion to sell the property. No sale is being proposed tonight. A motion and second were made by Kvamme and Kilde to direct the Port Authority Executive Director to continue conversations with Otter Tail Power.

Randy Synstelien and Nate Kunde were present to represent Otter Tail Power. Otter Tail Power is subject to Public Utilities Commission standards through carbon free legislation that a certain amount of retail energy must come from a distributed solar sources. This transaction, the land, obligation to state regulations and this land fit their model in the least costly manner to their benefit rate payers.

Otter Tail Power is open to either a 35-year lease or land purchase. Otter Tail Power must participate in a RFP selection process and securing the land is an initial step they need to take. If they are selected, Otter Tail Power would come back with an option agreement that spells out the terms.

This property is within the municipal boundary so 20% of the tax (an estimated \$1800-\$2000 per year) would go to the city with the other 80% going to the county. The Port members asked various questions about depreciation, adjacent properties, and lease vs. purchase. The owners of the racetrack are aware of Otter Tail Power's interest, and they may be interested in the portion of land that abuts their property. Beck confirmed the property can be split to accommodate both groups and leasing the property also makes the land taxable. A motion and second were made by Kilde and Kvamme to accept the letter of intent from Otter Tail Power and direction was given to Beck to continue conversations with both parties and return with information for lease and purchase options from OTP at a future session. The motion carried.

The meeting adjourned at 5:23 pm

Lynne Olson



Port Authority Memo

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Meeting Date:

March 17, 2025- Port Authority

Subject:

Battery Project

Background/Key Points:

The following are responses from Balanced Rock Power posed by the Port Authority for follow up:

- The Port may be interested in moving directly to a lease rather than receiving option payments. Could the lease be structured so that if the project does not move forward, the lease would terminate, essentially covering the "option" period within the lease term?
 - Unfortunately, we cannot move forward directly to the lease. Option agreements are standard in our industry and necessary for us to complete interconnection, environmental, real estate and other due diligence studies prior to entering into a long-term lease.
- A question was raised about what structures would be placed in the ground and how the land itself would be affected. Could you clarify? Please also clarify- is it you or the ultimate project owner who places the infrastructure?
 - The entire BESS site would be graded and all vegetation removed. Trenching and excavation for foundations, underground electrical components, drainage improvements, etc. would be performed using appropriate equipment. Construction could include trenching cable runs, placing or pouring concrete vaults or foundations, and moving the BESS enclosures with a crane or forklift to their final location on top of the concrete foundation.
 - The ultimate project owner would acquire building permits and do all of the construction.
- We assume Balanced Rock Power would be responsible for all property taxes and any taxes generated from the project. Please confirm.
 - The owner and operator of the project would be responsible for all property taxes and any taxes generated from the project.
- Could you provide insight into the percentage of your projects that have successfully moved from agreement to completion?
 - Out of our current project portfolio of 29 projects, 3 of them have been successfully sold and are on track to start construction in the next few months – so about 10%. It is important to remember that our company was founded in 2021 and project development, when done right, can take years. We are projected to sell 4-5 more projects this year – which will increase that percentage.
 - One of our BESS projects in Texas is expected to be completed and operation this year. If interested, you can read a little bit about that one here

- The Port would like to review a lease agreement draft to better understand the terms and obligations.
 - Absolutely, please see attached
- The Port is considering requesting an escrow deposit in the range of \$10,000–\$15,000 to cover legal fees associated with finalizing the lease. Would Balanced Rock Power be amenable to this?
 - Unfortunately, we do not do escrow agreements during negotiations. We are open to adding language in the lease agreement to include reimbursement of attorney fees up to \$5,000. Reimbursement would occur within a few days of executing the lease agreement.
- Can you share any tax valuation data from other municipalities where similar projects have been developed?
 - As you know, every municipality and city is different, but a project in Texas that we are currently working on of similar size would be paying \$40M in property taxes over 20 years. During the development process, we work with tax consultants to do a property tax valuation.

Balanced Rock also shared contact information for individual landowners with whom they've worked. Staff connected with two landowners. As a reminder, staff also spoke with two other references, including a municipality in Colorado, during earlier discussions with Balanced Rock. All references have indicated satisfaction with Balanced Rock's approach and follow-through.

Balanced Rock is willing to offer the following terms:

- 55 acre option
- 25 acre minimum on the lease
- \$5,000/acre
- 2% esc

\$5,000 per acre payments would begin once the Option to Lease Agreement is exercised. During the option period/due diligence period, the Port would receive the following annual payments (please note that this money is non-refundable, meaning that even if we decide not to exercise the Option, the Port would keep the funds):

- Year 1: \$10,000
- Year 2: \$12,500
- Year 3: \$15,000
- Year 4: \$25,000

Respectfully Submitted:

Klara Beck

Port Authority Executive Director

Attachments:

Draft lease from BRP

ENERGY STORAGE OPTION TO LEASE AND LEASE AGREEMENT

This **ENERGY STORAGE OPTION TO LEASE AND LEASE AGREEMENT** (this “Agreement”) is made, dated and effective as of the Effective Date (defined below), by and between Landowner (defined below) and [], a Delaware limited liability company (“Lessee”) (Landowner and Lessee are sometimes referred to herein individually as a “Party” and collectively as the “Parties”).

1. **Basic Provisions.** The following terms used in this Agreement have the meanings set forth below:

1.1	“Landowner”	[]
1.2	“Property”	The real property consisting of approximately [] acres located in [] County, [], which is described in <u>Exhibit A</u> attached hereto and incorporated herein by this reference, together with all with all easements, rights-of-way, benefits, privileges, water rights, air rights, tenements, hereditaments, rights and interests appurtenant pertaining to such real property.
1.3	“Effective Date”	_____, 202_
1.4	“Term”	The term of this Agreement commencing on the Effective Date and expiring on the expiration of the Operations Period or the earlier termination of this Agreement, consisting of the Feasibility Period, the Option Period, and the Operations Period.
1.5	“Feasibility Period”	The period commencing on the Effective Date and expiring on the date that is ninety (90) days after the Effective Date.
1.6	“Feasibility Period Payment”	A one-time payment of One Hundred Dollars [\$100] to be paid to Landowner within thirty (30) days after the Effective Date.
1.7	“Construction Commencement Date”	The earliest date on which construction of the Improvements will begin.

1.8	“Operations Period”	The period commencing upon the day following the date of delivery of the Exercise Notice from Lessee to Landowner and expiring on the day that is thirty-five (35) years after such date or upon the earlier termination of this Agreement, as may be extended by Lessee for three (3) additional five (5) year periods (each, an “ <u>Extended Term</u> ”) pursuant to <u>Section 5</u> .
1.9	“Operations Period Rent”	The annual payment during the Operations Period in the amounts set forth and calculated pursuant to <u>Section 6.1</u> .
1.10	“First Option Period”	The period commencing upon the expiration of the Feasibility Period and expiring on the date that is three (3) months thereafter (as will automatically extend by up to nineteen (19) additional three (3) month periods pursuant to <u>Section 2.1</u> below (each, an “ <u>Extended Option Period</u> ”)) unless Lessee delivers the Exercise Notice (as defined below) to Landowner, or this Agreement is earlier terminated pursuant to the terms of this Agreement
1.11	“Option Period Payments”	Lessee shall pay Landowner each quarterly option payment when due in the amount provided in <u>Schedule 1</u> . Lessee shall pay to Landowner the first Option Period Payment on or prior to the expiration of the Feasibility Period and each subsequent Option Period Payment on or prior to the commencement of each Extended Option Period unless this Agreement is earlier terminated as provided herein.
1.12	“Improvements”	All facilities, structures, equipment, machinery, materials and property of every kind and character that is constructed, installed, and/or placed on, above, or under the Property by or on behalf of Lessee in connection with a Project, including Energy Storage Facilities.
1.13	“Energy Storage Facilities”	Any method, equipment, facility, or improvement used to capture and store energy from any source and convert it and dispatch it as electrical power at a later time, including but not limited to battery, battery-like technology, or flywheel for storing any kind of energy and providing regulation, frequency response, load following capacity, or other storage benefit.
1.14	“Project(s)”	The larger integrated renewable energy project that may be constructed by Lessee on the Property and on other adjacent or nearby property. The Project may include any and all Improvements, including Energy Storage Facilities, that are developed, constructed and/or operated on the

		Property and/or on other property to generate (only on other property), store and deliver electrical power to purchasers of such power.
1.15	“Energy Storage Operations”	Storage of energy produced at one time for utilization at a later time and transmission of such stored energy; and any and all activities related to the foregoing.

2. **Grant of Option.**

2.1. Grant of Option; Feasibility Period; Option Period. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Landowner, Landowner hereby grants to Lessee an exclusive and irrevocable option to lease all or a portion of the Property, exercisable during the Option Period (as defined below) (the “Option”). During the Feasibility Period, Landowner shall permit Lessee and its representatives, employees, agents, and invitees, to enter upon the Property to inspect the feasibility of the Property for the purpose of Energy Storage Operations. The First Option Period shall automatically extend for up to nineteen (19) additional three (3) month Extended Option Periods unless Lessee delivers the Exercise Notice (as defined below) to Landowner or this Agreement is earlier terminated pursuant to the terms of this Agreement. The First Option Period and each Extended Option Period shall collectively be known as the “Option Period.”

2.2. Lessee's Rights During the Feasibility Period and Option Period. During the Feasibility Period and the Option Period, Lessee shall not hold any leasehold interest in the Property or be deemed to be a lessee of the Property, but Lessee, through its representatives, invitees, employees and agents, shall have the right to enter the Property (but not the right to occupy or possess the Property) to investigate and determine the feasibility of obtaining entitlements, utility meters, interconnection points, and agreements for Lessee’s proposed Energy Storage Operations. Within five (5) days following the Effective Date, Landowner shall make available to Lessee copies of all environmental, geotechnical and other site assessments, surveys, plans, permits and entitlements, and other such records of Landowner which relate to the Property and to the extent reasonably requested by Lessee, including all of Landowner’s books and records, preliminary title reports, title policies and leases or use agreements (including oil and gas, wind, farming, ranching, and hunting), service contracts, and biological studies. During the Option Period, Lessee shall be permitted to inspect the Property and take such measurements, recordings and photographs, and conduct such surveys and environmental, engineering, mechanical, structural, biological, cultural, geotechnical, archaeological and other similar tests and studies, all as Lessee shall reasonably require to assess the suitability of the Property for the Energy Storage Operations. Such investigation may include review of permits, reports and other documentation maintained by Landowner with respect to the Property, interviews of employees or other representatives of Landowner, and an environmental and safety review and assessment of the Property, including sampling of soil, groundwater and other materials as reasonably necessary to assess the presence of hazardous substances. In addition, Lessee shall be permitted to perform pre-construction site preparation during the Option Period, including the plowing and disking of the Property from time to time to control the growth of weeds, the removal of trees and other vegetation, and the temporary storage of materials and equipment on the Property that do not materially interfere with Landowner’s operations on the Property as existing on the Effective Date.

Lessee shall have the right to contact governmental and regulatory entities in connection with Lessee's due diligence and development activities, and to apply to such governmental and regulatory entities for all permits and approvals necessary or appropriate to construct and operate the Improvements. Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Improvements, including, within five (5) business days after request therefore from Lessee, execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval; provided that Lessee carries out the activities set forth in this Section 2.2 in accordance with all applicable laws, rules, codes, and ordinances and in such a manner as will not unreasonably interfere with Landowner's operation or maintenance of the Property during the Option Period. Lessee shall indemnify, defend and hold Landowner harmless from any and all losses, damages, claims, expenses and other liabilities, including reasonable attorneys' fees, for physical damage to property and for physical injuries or death to persons that result from the acts or omissions of Lessee or its agents in performing any inspection and/or testing activity on or about the Property; provided, this indemnity shall not apply to conditions existing at the Property that are merely discovered by Lessee or to the extent caused by or arising out of any act or omission of Landowner, its employees, representatives or agents.

2.3. Feasibility Period Payment; Option Period Payments. Lessee shall pay the Feasibility Period Payment to Landowner within thirty (30) days after the Effective Date and first Option Period Payment on or prior to the expiration of the Feasibility Period and each subsequent Option Period Payment on or prior to the commencement of each Extended Option Period in the amount provided in Schedule 1 unless this Agreement is earlier terminated as provided herein. The Feasibility Period Payment and the Option Period Payments shall be non-refundable once paid to Landowner, except in the event of default by Landowner under this Agreement; provided, however, Lessee shall set off the Option Period Payment made immediately prior to exercising the Option (prorated per day of the First Option Period or the then-current Extended Option Period, as applicable, prior to delivery by Lessee to Landowner of the Exercise Option), against Operations Period Rent. If the Agreement is terminated, Lessee shall have no further obligation to pay any Option Period Payment that has a due date that is on or following the date of such termination.

2.4. Exercise of Option. Lessee shall exercise the Option, if at all, by written notice (the "Exercise Notice") delivered to Landowner prior to the end of the Option Period; provided, that if Lessee fails to deliver the Exercise Notice prior to the end of the Option Period, Landowner shall provide Lessee with written notice of such failure and if Lessee does not deliver the Exercise Notice within thirty (30) days after Lessee's receipt of such written notice, this Agreement shall automatically terminate and the Parties shall have no further obligations to each other except for obligations that survive termination of this Agreement as specifically provided herein. If the Option is exercised as to a portion of the Property, Lessee shall specify which portion of the Property Lessee is exercising the Option for ("Leased Property" and the remainder of the Property, the "Remainder Property") and the Parties shall replace the legal description in Exhibit A with the legal description of the Leased Property and the Leased Property shall become the Property for purposes of this Agreement. Upon request of Lessee at the time of delivery of the Exercise Notice, the Parties shall, for no additional consideration, enter into a new energy storage

option to lease and lease agreement for the Remainder Property (“New Agreement”) containing the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee or any other person or entity prior to the execution of the New Agreement, and except for any modifications that may be required to ensure that each Party’s combined obligations under the New Agreement do not exceed such Party’s obligations under this Agreement), including the Term. The New Agreement shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Remainder Property. Further, the New Agreement shall provide that default under this Agreement or the New Agreement shall not cause a cross default of the other agreement.

3. Lease and Confirmation; Location of Improvements; Separate Leases.

3.1. **Lease and Confirmation.** If Lessee delivers the Exercise Notice to Landowner, then immediately upon such delivery and without the need for any further notice or written instruments, Landowner hereby leases the Property to Lessee pursuant to the terms of this Agreement. [The Property shall not include any tracts of land reserved to Landowner and not subject to this Agreement, if any, which are depicted and described as the “Reserved Acreage” on Exhibit B attached hereto and incorporated herein by this reference (“Reserved Acreage”).][**Note to Landowner: Will Landowner be reserving any property?**]

3.2. **Division Into Separate Leases.** Lessee may use the Property for a Project or Lessee may divide the Property between two or more separate Projects. If Lessee elects to so divide the Property into two or more Projects or elects to develop a Project in stages, then Landowner shall, within thirty (30) days after written request from Lessee, and without demanding any additional consideration, bifurcate this Agreement by entering into and delivering to Lessee two or more stand-alone new leases (which shall supersede and replace this Agreement) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each new lease shall: (a) specify the portion(s) of the Property to be covered thereby; (b) contain the same terms and conditions as this Agreement, including the per acre Option Period Payments and per acre Operations Period Rent (except for any requirements that have been fulfilled by Lessee or any other person or entity prior to the execution of such new lease, and except for any modifications that may be required to ensure that each Party’s combined obligations under such new leases do not exceed such Party’s obligations under this Agreement); (c) be for a term equal to the remaining Term; (d) contain a grant of access, transmission, communications and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Lessee may designate; and (e) enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Further, each new lease shall provide that default under such new lease shall not cause a cross default of the other new lease.

4. Purposes of Lease; Permitted Uses.

4.1. **Purpose of Lease for Energy Storage Operations.** The lease created by this Agreement is for Energy Storage Operations. Throughout the Term, Lessee shall have the sole and exclusive right to use the Property for Energy Storage Operations; provided, however, until the Construction Commencement Date, Landowner shall have the right to use the Property for agricultural or other purposes in accordance with applicable law so long as such use doesn’t interfere with Lessee’s use and rights hereunder.

4.2. **Layout Plan.** Simultaneously with the delivery of the Exercise Notice, Lessee shall provide to Landowner a site plan indicating the proposed location of the Improvements (“Layout Plan”). Lessee shall consult with Landowner on Lessee’s Layout Plan prior to construction of any Improvements, showing Landowner the proposed location of the Energy Storage Facilities, roads, electric power lines and other improvements, before making Lessee’s final decision in its sole discretion as to the location of Improvements on the Property.

4.3. **Permitted Uses of Property by Lessee for Energy Storage Operations.** Upon the commencement of the Operations Period, the rights granted to Lessee in this Agreement, shall permit Lessee, without limitation, to do the following:

4.3.1 [Reserved];

4.3.2 construct, erect, install, reinstall, relocate, and remove from time to time the following, on the Property, on adjacent property or elsewhere: (a) Improvements; (b) electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground, and one or more substations or interconnection facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights-of-way on, along, in and under the Property; (c) laydown yards, maintenance yards, control buildings, junction boxes, control boxes and computer monitoring hardware; (d) safety protection facilities, including but not limited to fencing and other security measures designed to restrict and control access, and (e) any other improvements, including roads, fixtures, facilities, machinery and equipment useful or appropriate to accomplish any of the foregoing;

4.3.3 excavate, grade, level and otherwise modify the land included within the Property in connection with Lessee’s use of the Property for Energy Storage Operations;

4.3.4 use, maintain, repair, replace, monitor, operate, and repower the Improvements on the Property;

4.3.5 produce and use any groundwater located under the Property, including producing water from any existing wells on the Property, constructing new wells on the Property, and installing, owning and maintaining water storage equipment on the Property; and

4.3.6 undertake any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, in connection with or to accomplish any of the foregoing purposes.

4.4. **Construction Notice.** Lessee shall provide a written notice to Landowner at least thirty (30) days prior to commencement of construction of the Improvements (the “Construction Notice”) setting forth the Construction Commencement Date.

4.5. **[Parties in Possession.** ***[Note to Landowner: Do any third parties hold any agricultural, timber, or other third-party rights in the Property?]*** The Parties acknowledge and agree that Landowner has entered into the agreements listed on Exhibit C, copies of which are attached to this Agreement (“Prior Agreements”). Landowner represents and warrants to Lessee

that the Prior Agreements will not interfere with Lessee's rights hereunder. Landowner represents and warrants to Lessee that all rights of the counterparties to the Prior Agreements in the Property will expire or be terminated on or before the Construction Commencement Date. Landowner agrees not to extend or replace the Prior Agreements unless such Agreements are terminable by Landowner on thirty (30) days' prior written notice. Landowner shall deliver possession of the Property to Lessee on the Construction Commencement Date free and clear of all tenants, occupants, or parties in possession.

4.6. **Crop Loss.**

4.6.1 **During Option Period.** Landowner agrees that, during the Option Period, Lessee shall have the right to conduct site investigations and testing activities that may damage on-site crops so long as Lessee pays Landowner a Crop Loss Reimbursement on a per acre basis (prorated for fractional acres) as calculated pursuant to Section 4.6.3 below.

4.6.2 **Crop Loss During the Operations Period.** If Landowner [or any farm tenant under a Prior Agreement] is unable to complete the harvest of crops (not including timber) from the Property prior to the Construction Commencement Date, and such crops were planted prior to Landowner's receipt of the Construction Notice, then Lessee shall pay Landowner a Crop Loss Reimbursement on a per acre basis (prorated for fractional acres) as described in Section 4.6.3 below, for any and all crops located on the Property that are removed or damaged as a direct result of Lessee's construction of Improvements. ***[NTD: If Section 4.5 – Parties in Possession is not used, Prior Agreement will need to be removed.]***

4.6.3 **Calculation.** Any compensation to be paid by Lessee for damage to crops will be in an amount equal to the Amount of Damaged Acres multiplied by Average Yield multiplied by Price (the "Crop Loss Reimbursement"). For purposes of this Agreement, the terms used in this Section 4.6 shall be defined as follows: (a) "Amount of Damaged Acres" shall be the Landowner's reasonable estimate as reasonably reviewed and agreed to by Lessee's representative (b) "Average Yield" shall be the greater of (i) the average yield for the same crops on the Property based on Landowner's Records for the latest three (3) years, or (ii) the average yield for the latest three (3) years of the applicable crop in the County in which the Property is situated, as published by the National Agricultural Statistical Service through the website (www.nass.usda.gov), or if unavailable, another publicly available information source for average yields in such County; (c) "Landowner's Records" shall include, but are not limited to, warehouse/elevator receipts, applications for crop insurance, crop insurance reports, FSA reported yields, elevator scale tickets and from grain card records or yield monitors on combines; and (d) "Price" shall be the future price per unit of the actual crop damaged for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the fifteenth (15th) of the month in which the damages occur as posted by the Chicago Board of Trade, or if unavailable another publicly available information source approved by Lessee. For the avoidance of doubt, (x) any Crop Loss Reimbursement due will be the sole amount payable by Lessee with respect to terminating any farm lease, (y) Lessee shall not compensate Landowner for any crops planted on the Property after Landowner's receipt of Construction Notice, and (z) Landowner will be solely responsible for any payment due to any other user of the Property with respect to any crops or timber located on the Property.

4.7. **Access and Transmission Easements.** Upon the request of Lessee, Landowner shall grant, for the Term, for no additional consideration, except as set forth herein, an exclusive easement for rights for installing, operating and maintaining transmission and communication facilities to be used in connection with the Project and/or an exclusive easement for the purpose of providing ingress and egress to public roads, over and across such reasonable portions of other real property interests (whether leasehold, fee or easement rights) owned by Landowner that are contiguous to the Property as may be reasonably required to access the Project located on the Property (collectively, the “Easement”). Any Easement shall be prepared in a document in recordable and financeable form, shall include the right to construct new roads and/or improve existing roads, shall be appurtenant to the Property, and shall inure to the benefit of Lessee and be binding upon Landowner and its respective transferees, successors, and assigns, and all persons claiming under them. Notwithstanding the foregoing, Lessee shall pay to Landowner a one-time payment for any Easement for transmission or communications facilities equal to: (i) One Dollar (\$1.00) per linear foot of electrical circuit installed underground; and/or (ii) Ten Dollars (\$10.00) per linear foot of electrical circuit to be installed on above ground poles, which poles are not currently existing at the time the Easement is fully executed. If any Easement for transmission or communications facilities, or any portion thereof, uses existing above ground poles, such Easement or portion thereof, shall be granted to Lessee for no additional consideration.

4.8. **Effects Easement.** Landowner hereby grants Lessee an easement and right for any noise, visual, vibration, glare or electromagnetic or other effect of the Project and the right of subjacent and lateral support on the Property for the Energy Storage Facilities.

4.9. **Substation and Transmission Fee Transfer.** In the event that the purchasers or transmitters of power to be generated by the Project on adjacent property or stored on the Property (“Power Purchasers”) require that a portion or portions of the Property on which portions of the Project, such as transmission lines, communication lines or substations are located, be owned in fee by such Power Purchasers or if such Power Purchasers require a perpetual easement in or to such portion or portions of the Property, Landowner and Lessee will cooperate in good faith to identify the portions of the Property on which such facilities are located (“Power Purchaser Parcels”) and Landowner agrees to grant such fee or easement interest to the Power Purchasers in the Power Purchaser Parcels and using the form reasonably requested by the applicable Power Purchasers.

4.10. **Acknowledgments of Uses Related to Energy Storage Operations.** The Parties acknowledge and agree that:

4.10.1 energy storage technologies are improving at a rapid rate and that it is likely that Lessee may (although Lessee shall not be required to) replace from time to time existing Energy Storage Facilities on the Property with new model or design Energy Storage Facilities that have increased energy storage, capture and efficiency; and

4.10.2 the rights granted to Lessee in this Agreement include the right to conduct any and all Energy Storage Operations on the Property, for the benefit of and for purposes incidental to Energy Storage Operations, activities and Projects on lands other than the Property, including, the right to (i) install and maintain on the Property transmission lines and facilities, both overhead and underground, which carry electricity to and/or from lands other than the Property,

and (ii) install and maintain on the Property communication lines and facilities, both overhead and underground, which carry communications to and/or from lands other than the Property.

4.11. **Timber.** Landowner shall be entitled to enter onto the Property from time to time during the Option Period to cut and remove for Landowner's account and use, all marketable timber from the Property, at Landowner's expense, to the extent that such entry does not materially interfere with or delay Lessee's allowed uses under this Agreement. If marketable timber remains on the Property at the commencement of the Operations Period, Lessee may cause the removal of any such timber from the Property interfering with Lessee's development, construction, operation, and maintenance of the Project, including any timber shading the Project; provided, however, Lessee shall be responsible for, and shall bear all costs relating to, clearing the Property of timber, including any costs associated with the removal of stumps, and other debris. Landowner shall receive all proceeds from the sale of said timber harvested or cleared by or at the direction of Lessee, net of all costs and expenses actually incurred by Lessee in connection with the removal, storage and/or sale of such timber.

5. **Operations Period.** The Operations Period shall automatically commence upon the day after Lessee delivers the Exercise Notice to Landowner and expire on the date that is thirty-five (35) years after such date or upon the earlier termination of this Agreement, as may be extended by Lessee for three (3) additional five (5) year Extended Terms by providing written notice of such extension to Landowner prior to the expiration of then-existing expiration date of the Operations Period.

6. **Payments.** Lessee will pay Landowner the amounts provided for in the following subparagraphs. Notwithstanding the deadlines set forth below for payment of the Operations Period Rent or in Section 2.3 for the payment of any Feasibility Period Payment or Option Period Payments, Lessee shall not be required to make any payment under this Agreement until such time as Landowner has returned to Lessee a completed and executed Internal Revenue Service Form W-9, a payment instruction form signed by each person or entity holding record or equitable title to the Property, documentation evidencing signing authority reasonably satisfactory to Lessee if applicable, and any other documentation reasonably requested by Lessee.

6.1. **Operations Period Rent.** Commencing on the first day of the Operations Period and on or before the same day of each year thereafter until the expiration or earlier termination of this Agreement, Lessee shall pay to Landowner the Operations Period Rent. The initial Operations Period Rent annual payment shall equal [\$ ____] per acre of the Property on which the Improvements are located or, if prior to commercial operation of the Project, are to be located according to the Layout Plan. On each anniversary of the Operations Period thereafter, the per acre Operations Period Rent shall equal the previous year's per acre Operations Period Rent increased by two percent (2%) ("Annual Increases").

6.2. **Conservation Reserve Program Penalties Reimbursement.** The Parties acknowledge and agree that portions of the Property [are/are not] enrolled in the Conservation Reserve Program or the Conservation Reserve Enhancement Program or similar program (collectively, the "CRP") pursuant to one or more contracts (each a "CRP Contract") with the U.S. Department of Agriculture or similar federal, state or local governmental authority. Landowner has provided Lessee with copies of any applicable such CRP Contract in Landowner's possession,

together with any amendments or extensions thereto. Additionally, Landowner agrees to deliver to Lessee a copy of any written communication from any government agency with respect to an existing or potential CRP Contract within ten (10) business days following receipt, and Landowner will not enter into or extend any CRP Contract with respect to the Property without the express written consent of Lessee. Lessee shall promptly reimburse Landowner for any penalties, costs, damages, interest, expenses and reimbursement obligations owed by Landowner to a government agency administering a CRP Contract as a consequence of the termination or modification of a CRP Contract affecting the Property or any adjoining property owned by Landowner arising directly from the existence of this Agreement or the exercise of Lessee's rights under this Agreement.

6.3. **Payments to Landowner.** *[Note to Landowner: Please confirm there is only one person/entity that owns the property and that will be receiving payments. If so, we will delete this provision.]* Each of the parties comprising Landowner acknowledge and agree to receive all payments and reimbursements due to Landowner under this Agreement pursuant to the instructions and percentages shown on the attached Exhibit D. Any such party may provide different instructions for its payments to Lessee in writing, but absent written instructions signed by all parties comprising Landowner, all payments will be made in the percentages shown on Exhibit D. In the event of any actual or threatened dispute as to the right to receive payments, Lessee shall be authorized to make any payment due to the Landowner by check to all parties comprising Landowner sent to the first notice address of Landowner set forth in Exhibit D, and any such payment by check shall constitute a payment to Landowner as required in this Agreement. Lessee may rely on any written communication appearing to come from any party comprising Landowner without further investigation, but may require any notices to be signed by all parties comprising Landowner if, in Lessee's sole discretion, any action to be taken pursuant to any notice might affect other parties comprising Landowner. Each of the parties comprising Landowner agrees to be jointly and severally bound by any payment instructions provided by any such party and any payment in accordance with such instructions or in accordance with Exhibit D.

7. **Ownership of Improvements.** Landowner acknowledges and agrees that Lessee is the sole and exclusive owner of the Improvements, all equipment comprising the Improvements, and all other equipment owned by Lessee shall remain the personal property of Lessee and shall not become fixtures despite the manner in which the Improvements may be affixed to the real property. Landowner hereby waives any rights it may have under the laws of the state in which the Property is located arising under this Agreement or otherwise to any lien upon, or any right to distraint or attach upon, or any other interest in, any item constituting any part of the Improvements. Landowner shall have no ownership or other interest in any Improvements installed on the Property or any environmental attributes produced therefrom, including without limitation any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Improvements or the electric energy, capacity or other energy storage-based products produced therefrom. The manner of operation and removal of the Improvements, including but not limited to decisions on when to conduct maintenance, is within the sole discretion of Lessee.

8. **Taxes.** Lessee shall pay when due (a) all personal property taxes assessed against its Improvements, (b) any increase in the real property taxes levied against the Property directly attributable to the installation of Improvements on the Property and/or this Agreement, and (c) any

property tax increases or tax penalties pertaining to a change in use of the Property due to this Agreement that results in the reassessment of the Property for tax purposes; provided, that Lessee shall have no obligation to pay any inheritance, estate, succession, transfer, gift, franchise, corporation, income, sale, net profit or other similar tax or capital levy that is or may be imposed on Landowner, nor shall Lessee be obligated to pay any increase in taxes resulting from any conveyance of the Property by Landowner or its successors and assigns including any leasehold transfer taxes. Landowner shall pay when due all other real and personal property taxes and assessments levied against the Property. It is a condition to Landowner's right to payment of any such increased taxes hereunder that Landowner submit: (i) a copy of the real property tax assessment and any related notices, e.g. protest hearing, to Lessee within a reasonable time after Landowner receives the assessment from the taxing authority, but not later than thirty (30) days prior to the deadline for protesting the assessment, and immediately upon receipt of notice for a protest hearing, and (ii) a copy of the real property tax bill to Lessee within a reasonable time after Landowner receives the tax bill from the taxing authority, but not later than thirty (30) days prior to the date the tax payments are due. Lessee shall have the right to pay its portion of the real property taxes directly to the taxing authority, and, if tax bills are not separately invoiced to each Party, then Lessee shall promptly provide evidence of such payment to Landowner. Each Party shall pay its portion of the property taxes prior to delinquency, and if either Party fails to do so, the non-delinquent Party shall be entitled (but not obligated) to make payments in fulfillment of the delinquent Party's obligations to the taxing authority and may offset the amount of such payments from amounts due to the other Party under this Agreement. Lessee shall have the right, at its own expense, to appeal or contest any taxes it could be responsible to pay under this Agreement and to compromise and settle the same and Landowner agrees to reasonably cooperate with Lessee and to execute such petitions and agreements to the extent reasonably necessary for Lessee to do so.

9. **Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants, covenants and acknowledges to Landowner as follows:

9.1. **Insurance.** Lessee shall, at its expense, maintain a commercial general liability insurance policy insuring Lessee and Landowner against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) per occurrence and not less than Two Million Dollars (\$2,000,000) in the annual aggregate, which has a commercially reasonable deductible. Limits can be achieved through a combination of primary and excess limits and Lessee shall have the right to use a program of self-insurance to meet these requirements. Such insurance shall provide that such insurance may not be canceled or terminated in any manner upon less than ten (10) days' written notice to Landowner. Certificates of such insurance evidencing the coverage required by this Agreement shall be provided to Landowner at Landowner's reasonable request.

9.2. **Indemnity.** Lessee will indemnify, defend and hold harmless Landowner from and against any losses, damages, expenses, claims and liability (including reasonable attorney's fees) for physical damage to property and for physical injuries or death to persons caused by the negligent or intentional acts or omissions of Lessee or any of its employees, agents or contractors (collectively "Lessee Parties") in its occupancy, operation or use of the Property (including the Easements), except to the extent caused by or arising out of the negligent or intentional acts or omissions of any Landowner Parties (defined below). The reference to property

damage in the preceding sentence does not include any damages to crops, or any losses of rent, business opportunities, profits and the like that result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Improvements pursuant to this Agreement. The Parties agree this indemnity shall survive the termination or earlier expiration of this Agreement.

9.3. **Requirement of Governmental Agencies.** Lessee shall comply in all material respects with laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Project. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee or in the names of both Lessee and Landowner where appropriate or required, Lessee shall have the right to contest the validity or applicability to the Property or Project 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. Landowner shall cooperate in every reasonable way in such contest. Any such contest or proceeding, including any maintained in the name of Landowner, shall be controlled and directed by Lessee, but Lessee shall observe and comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

9.4. **Construction Liens.** Lessee 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 Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee desires to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond around such lien pursuant to applicable law.

9.5. **Hazardous Materials.** Lessee shall not violate, and shall indemnify, defend and hold Landowner harmless from and against, any violation by Lessee or Lessee Parties of 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 except for any such violation which is imposed or occurs by reason of the existence on or under the Property of hazardous or toxic substances on or prior to the Effective Date of this Agreement and except for a violation that is covered by Landowner's indemnity under Section 10.7.

9.6. **Lessee's Right to Terminate.** At any time during the Term, subject to Section 14, but notwithstanding any other provision of this Agreement, Lessee shall have the right to terminate this Agreement, and Assignees and Tenants shall have the right to terminate their respective interests in or under this Agreement, as to all or any part of the Property at any time, for any reason whatsoever and without penalty effective upon thirty (30) days' prior written notice to Landowner ("Lease Termination Date"). Lessee shall promptly thereafter execute and deliver to Landowner, or record in the real property records of the county in which the Property is located, a release with respect to the part of the Property Lessee is terminating. The Parties hereby agree to amend Exhibit A to this Agreement as and if necessary, to modify the legal description of the Property following Lessee's partial termination. Lessee shall not be entitled to any refund of any payment, fees or rent already paid or due and payable hereunder on or prior to the Lease

Termination Date unless such termination is due to a Landowner default beyond any applicable cure period described in Section 13. If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property. The location, total acreage and legal description of the land constituting the Property are subject to adjustment in Lessee's sole determination and discretion, or if and as required or desired in order to obtain a permit for the Project. The per acre Option Period Payments or the per acre Operations Period Rent, as applicable, shall be adjusted after any partial termination of this Agreement.

10. **Landowner's Representations, Warranties and Covenants.** Landowner hereby represents, warrants and covenants to Lessee as follows:

10.1. **Landowner's Authority.** Except for interests arising under the Prior Agreements, Landowner has sole and exclusive fee ownership and possession of the Property, and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder, subject only to any Permitted Liens (defined below). No rights to use the Property for energy storage purposes have been granted to or are held by any party other than Lessee. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms.

10.2. **No Interference.** Landowner shall not, nor shall Landowner grant any rights hereafter to any person or entity, whether located on the Property or on adjacent property, in the future, which impede or interfere with: (i) the siting, permitting, construction, installation, maintenance, operation, replacement, or removal of Improvements, located on the Property; (ii) access over the Property to the Improvements; (iii) the undertaking of any other activities of Lessee permitted under this Agreement; or (iv) the transmission of electric, electromagnetic or other forms of energy to or from the Property. In no event during the Term shall Landowner construct, build or locate or allow others to construct, build or locate any Energy Storage Facilities or similar project on the Property. Lessee shall have the right to (y) remove any structures and improvements on the Property that could adversely impact the Energy Storage Operations, and (z) remove, trim, prune or otherwise control the growth of any tree or other vegetation on the Property that could adversely impact the Energy Storage Operations.

10.3. **Water for Project; Cooperation and Reimbursement of Costs.** During the Term, Landowner shall work in good faith to make available to Lessee, to the extent available to Landowner in excess of Landowner's own needs and to the extent allowed under applicable law and permits, water in such quantities as may be needed and available for sanitary and drinking purposes, as well as operational purposes during the Operations Period. Landowner shall cooperate with Lessee to study the availability of water on or to the Property and to assist in obtaining water rights or a contract for the delivery of water to the Property for use by Lessee in its Energy Storage Operations, but Landowner shall have no obligation to incur any out-of-pocket cost in connection with such study or assistance. Lessee shall pay all administrative, operation and utility costs incurred by Lessee or Landowner in connection with obtaining water for Lessee's Energy Storage Operations, and, to the extent Landowner incurs any out-of-pocket costs in connection with obtaining water for Lessee's Energy Storage Operations, Lessee shall promptly reimburse Landowner for such costs. In the event Lessee obtains any water rights in conjunction

with any well drilled on the Property, Lessee shall convey all such water rights to Landowner upon termination of this Agreement.

10.4. **Warranty of Title to Property; Title Insurance.** Landowner hereby warrants with respect to the Property (and any Easement areas) that (a) Landowner has good, indefeasible and insurable fee simple title, and (b) the leasehold estate created hereby with respect to the Property is free from encumbrances done, made, or suffered by Landowner, or any person claiming under Landowner, except for such encumbrances that are of record ("**Permitted Liens**"). Lessee may obtain a current preliminary title report or leasehold title insurance for the Property at its expense showing all liens and other exceptions to title to the Property. Landowner shall cooperate with Lessee and the title insurance company ("**Title Company**"), if any, selected by Lessee to issue title insurance insuring (a) Lessee's leasehold and easement interests in the Property, and/or (b) any mortgage encumbering such leasehold and easement interest and shall promptly (1) take such actions with respect to Prior Agreements as may be required pursuant to **Section 4.5**, (2) execute and deliver or cooperate in Lessee's pursuit to obtain non-disturbance agreements and other title curatives, and (3) execute and deliver such title affidavits and such other documents otherwise required by the Title Company.

10.5. **Requirements of Governmental Agencies.** Landowner shall assist and fully cooperate with Lessee in complying with or obtaining any land use permits and approvals, tax-incentive or tax-abatement program approvals, building permits, environmental impact reviews or any other approvals required or deemed desirable by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of Improvements, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Landowner shall make available to Lessee copies of all field tiling surveys, environmental, geotechnical and other site assessments, title policies, deeds, surveys, plans and other such records in the possession of Landowner to the extent such information relates directly to the proposed Improvements.

10.6. **Indemnity.** Landowner will indemnify, defend and hold harmless Lessee from and against any losses, damages, expenses, claims and liability (including reasonable attorney's fees) for physical damage to property (including, without limitation, Lessee's roads) and for physical injuries or death to persons caused by the negligent or intentional acts or omissions of Landowner or any of its employees, agents, contractors and guests (collectively "**Landowner Parties**") except to the extent caused by or arising out of the negligent or intentional acts or omissions of any Lessee Parties. The Parties agree this indemnity shall survive the termination or earlier expiration of this Agreement.

10.7. **Hazardous Materials.** Landowner represents and warrants that, to the best of Landowner's knowledge: (i) the Property is in compliance with all federal, state or local law, ordinances or regulations 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 and (ii) there are no such hazardous or toxic substances, materials or waste in, on, or under the Property. No liability shall arise in Lessee from the mere discovery of facts or conditions existing or pertaining

to the Property including, without limitation, facts or conditions existing or pertaining to the Property on or prior to the Effective Date. Landowner shall not violate, and shall indemnify, defend, and hold Lessee harmless for, from and against any claims, costs, damages, fees or penalties arising from a violation (past, present or future) by Landowner or Landowner Parties of all federal, state or local law, ordinances or regulations 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 except for a violation that is covered by Lessee's indemnity under Section 9.5. The Parties agree this indemnity shall survive the expiration or earlier termination of this Agreement.

10.8. **Quiet Enjoyment**. Landowner covenants and warrants that for so long as there is no Lessee Monetary Default under this Agreement beyond any applicable notice and cure period, Lessee shall peacefully hold and enjoy all of the rights granted by this Agreement for its entire Term without hindrance or interruption by Landowner or any person lawfully or equitably claiming by, through, under or superior to Landowner subject to the terms of this Agreement and any Permitted Liens.

10.9. **Condition of Property**. To Landowner's knowledge, there are no physical conditions of the Property, nor any other material adverse facts or conditions relating to the Property or any portion thereof, that could delay, interfere with or impair Lessee's operations or the exercise of any of Lessee's other rights under this Agreement, or which could, with the passage of time, the giving of notice or both, have such an effect. Landowner has disclosed to Lessee in writing any and all improvements existing on, under or over the Property, and no improvements currently exist on, under or over the Property that have been constructed or installed without all necessary and proper permits, licenses and approvals.

10.10. **No Litigation**. No litigation is pending, and, to Landowner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder. Landowner agrees to provide Lessee prompt written notice if it becomes aware of any such litigation, actions, claims, or other legal or administrative proceedings after the Effective Date throughout the Term of this Agreement.

11. **Assignment; Subleases; Cure**

11.1. **Assignees of Lessee and Tenants**. Subject to Section 3.2 above, Lessee and any Assignee (as defined below) shall have the right, without need for Landowner's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Property: finance Improvements; finance the Project; grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more Assignees or Tenants (as defined below); or sell, convey, lease, assign, mortgage, encumber or transfer to one or more Assignees or Tenants this Agreement, or any right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Improvements that Lessee or any other party may now or hereafter install on the Property. An "Assignee" is any of the following: (i) any one or more parties involved in financing or refinancing of any Improvements,

including, without limitation, any lender to or investor in Lessee or in any Energy Storage Facilities; (ii) any purchaser or lessee of any of the Improvements, or any purchaser of all or substantially all of the membership interests in Lessee or of all or any portion of Lessee's interest in this Agreement; (iii) a corporation, limited liability company, partnership or other entity now existing or hereafter organized in which Lessee, or any affiliate, owns (directly or indirectly) at least fifty-one percent (51%) of all outstanding shares of voting stock or ownership interests; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation or limited liability company; or (v) a corporation, limited liability company, partnership or other entity that acquires all or substantially all of Lessee's or Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means. A "Tenant" is any person who succeeds to the leasehold interest of Lessee as an Assignee or to whom a sublease is conveyed by Lessee or an Assignee. Lessee or an Assignee that has assigned an interest under this Section, or that has conveyed a sublease, will give written notice of such assignment or sublease (including the address of the assignee or sublessee thereof for notice purposes) to Landowner, provided that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Landowner with respect to such assignment or sublease until such notice shall have been given.

11.2. **Assignee/Tenant Obligations.** No Assignee or Tenant that does not directly hold an interest in this Agreement, and no Assignee or Tenant that holds an interest in or lien on or security interest in this Agreement for security purposes, shall have any obligation or liability under this Agreement prior to the time that such Assignee or Tenant directly holds an interest in this Agreement or, in the case of an interest, lien or security interest for security purposes, the holder thereof succeeds to absolute title to such interest, in this Agreement. Any such Assignee or Tenant shall be liable to perform obligations under this Agreement only for and during the period such Assignee or Tenant directly holds such interest or absolute title. Any assignment permitted hereunder shall release the assignor from obligations accruing after the date that liability is assumed in writing by the Assignee or Tenant.

11.3. **Right to Cure Defaults/Notice of Defaults/Right to New Lease.** To prevent termination of this Agreement or any partial interest therein, Lessee, or any Assignee or Tenant, shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee, Tenant or Lessee hereunder or necessary to cure any default and to prevent the termination of this Agreement. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, an Assignee or a Tenant, Landowner shall give written notice of the default to each Assignee and each Tenant, concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. Each such Assignee and each such Tenant shall have the same amount of time to cure said default as is given to Lessee pursuant to this Agreement, which cure period for each Assignee and each Tenant shall commence to run with the end of the cure period given to Lessee in this Agreement. If Lessee or an Assignee or Tenant holds an interest in less than all the rights and interests under this Agreement, the Property or the Improvements, any default under this Agreement shall be deemed remedied, as to Lessee's or such Assignee's or Tenant's partial interest, and Landowner shall not disturb such partial interest, if Lessee or the Assignee or Tenant, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Improvements in which Lessee or the Assignee or Tenant, as the case may be, holds an interest. In the event of an uncured default by Lessee, or by an Assignee of

Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, each Assignee of a partial interest in this Agreement, and each Tenant who is a sublessee of Lessee or of an Assignee of Lessee, shall have the right to demand, and the Landowner shall grant and enter into, a new lease, substantially identical to this Agreement, by which such Assignee of a partial interest in the rights and interests under this Agreement, or such Tenant by a sublease, shall be entitled to, and Landowner shall not disturb, the continued use and enjoyment by such Tenant or Assignee of the Property, or portion of the Property, for the full Term, or such shorter term as said Assignee or Tenant may otherwise be entitled pursuant to its assignment or sublease. Further, in the event of an uncured default by Lessee or by an Assignee of Lessee's entire interest in this Agreement, or in the event of a termination of this Agreement by agreement, by operation of law or otherwise, Landowner hereby agrees that, if and for so long as (i) a Tenant who is a sublessee of Lessee or of an Assignee is not in default under the sublease (beyond any period given Lessee, an Assignee or a Tenant under this Agreement to cure such default), (ii) such Tenant attorns to the Landowner, and (iii) the terms and conditions of the Tenant's sublease do not contravene the terms and conditions of this Agreement, Landowner shall (a) recognize such sublease, (b) not diminish nor interfere with such Tenant's possession of the portion of the Property covered by the sublease or with any term extension or renewal rights in the sublease, and (c) not disturb such Tenant's occupancy of such portion of the Property for the full Term or such shorter term to which such Tenant may be entitled under the sublease. A Tenant that is, or in the future becomes, a sublessee of Lessee, or a sublessee of an Assignee, is an intended third-party beneficiary of the provisions of this Section 11.3 and entitled to enforce this provision.

11.4. **Acquisition of Interest.** Except as otherwise provided in Section 11.1 above, the acquisition of all or any portion of Lessee's or an Assignee's or Tenant's interest in the Property or the Improvements or this Agreement by another Assignee or Tenant or any other person through foreclosure or other judicial or nonjudicial proceedings in the nature thereof or any conveyance in lieu thereof, shall not require the consent of Landowner or constitute a breach of any provision or a default under this Agreement, and upon such acquisition or conveyance Landowner shall recognize the Assignee or Tenant, or such other party, as Lessee's or such other Assignee's or Tenant's proper successor.

11.5. **New Lease.** If this Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding or this Agreement is terminated as result of any incurable Lessee Monetary Default, and within sixty (60) days after such rejection or termination Lessee or any Assignee or Tenant shall have arranged to the reasonable satisfaction of Landowner for the payment of all fees or other charges due and payable by Lessee or other Assignees or Tenants as of the date of such rejection or termination, then Landowner shall execute and deliver to Lessee or such Assignee or Tenant, as the case may be, a new lease to the Property which (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination, (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Lessee or any Assignee or Tenant prior to rejection or termination of this Agreement), and (iii) shall include that portion of the Property containing Improvements in which Lessee or such other Assignee or Tenant had an interest on the date of rejection or termination.

11.6. **Extended Cure Period.** If any default by Lessee or an Assignee or Tenant under this Agreement cannot be cured without obtaining possession of all or part of the Property and/or all or part of the Project and/or all or part of Lessee's or another Assignee's or Tenant's interest in this Agreement, then any such default shall be deemed remedied if (i) within sixty (60) days after receiving notice from Landowner as set forth in Section 13.2 hereof, either Lessee or an Assignee or Tenant shall have acquired possession of all or part of the Property and/or all or part of the Project and/or all or part of such interest in this Agreement, or shall have commenced appropriate judicial or nonjudicial proceedings to obtain the same; and (ii) Lessee or the Assignee or Tenant, as the case may be, shall be in the process of diligently prosecuting any such proceedings to completion; and (iii) after gaining possession of all or part of the Property and/or all or part of the Project and/or all or part of such interest in this Agreement, Lessee or the Assignee or Tenant performs all other obligations as and when the same are due in accordance with the terms of this Agreement. If Lessee or an Assignee or Tenant is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee or any defaulting Assignee or Tenant, as the case may be, from commencing or prosecuting the proceedings described above, the 60-day period specified above for commencing such proceeding shall be extended for the period of such prohibition provided that all monetary obligations of Lessee as to which Lessee is in a Lessee Monetary Default shall have been cured and no additional Lessee Monetary Defaults arise during such prohibition or subsequent 60-day period.

11.7. **Certificates, etc.** Landowner shall execute such estoppel certificates (certifying as to such matters as Lessee or any Assignee or Tenant may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or non-disturbance agreements as Lessee or any Assignee or Tenant may reasonably request from time to time within ten (10) days of receipt of such request. Landowner and Lessee shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee, Landowner or any Assignee or Tenant for the purpose of implementing the provisions contained in this Agreement or of preserving an Assignee's security interest so long as such request does not materially and adversely affect Landowner's rights hereunder.

12. **Lender Protection.** Notwithstanding anything to the contrary herein, Lessee and any Assignee or Tenant may, at any time and without the consent of Landowner, grant to any person or entity (herein, together with that person's or entity's successors and assigns, a "Lender") one or more mortgages, security deeds, trust deeds or similar security interests in all or any part of its interests under this Agreement (a "Mortgage"), which may be recorded. In the event any such Mortgage is granted, the Lender thereunder shall, for so long as its Mortgage remains in effect, be entitled to the protections described in the following provisions of this Section 12, upon delivery to Landowner of notice of its name and address.

12.1. **Consent to Modification, Termination or Surrender.** So long as any Mortgage remains in effect, this Agreement shall not be modified, and Landowner shall not accept a surrender of any of the Property or a termination or release of this Agreement prior to expiration of all periods described in Section 5, without the prior written consent of all Lenders.

12.2. **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies for any alleged default under this Agreement, Landowner shall give written notice of the default to each Lender concurrently with delivery of such notice to Lessee, an Assignee or a Tenant, as applicable, specifying in detail the alleged default and the required remedy. In the event Landowner gives any such notice, the following provisions shall apply:

12.2.1. The Lender shall have the same period after receipt of the default notice as is given to Lessee, the Assignee or Tenant to remedy or cause to be remedied the default plus, in each instance, (i) an additional thirty (30) days after receipt of the default notice in the event of any Lessee Monetary Default; and (ii) an additional thirty (30) days after receipt of the default notice in the event of any other type of default, provided that such 30-day period shall be extended for the time reasonably required to complete such cure, including the time required for the Lender to perfect its right to cure such default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Lender acts with reasonable and continuous diligence. Lenders shall have the absolute right to do any act or thing required to be performed by Lessee, an Assignee or any Tenant under this Agreement, and any such act or thing performed by a Lender shall be as effective to prevent a default under this Agreement and/or a forfeiture of any rights under this Agreement as if done by Lessee, the Assignee or Tenant itself.

12.2.2. During any period of possession of the Property by a Lender (or a receiver requested by such Lender) and/or during the pendency of any foreclosure proceedings instituted by a Lender, the Lender shall pay or cause to be paid the rent and all other monetary charges payable by Lessee, an Assignee or any Tenant which have accrued and are unpaid at the commencement of such period and those which accrue thereafter during such period. Following acquisition of Lessee's, an Assignee's or any Tenant's leasehold estate by the Lender or its assignee or designee as a result of foreclosure or assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Lender or other party acquiring title to the leasehold estate shall, as promptly as reasonably possible, commence the cure of all other defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Lender or other party acquiring title to the leasehold estate shall not be required to cure those defaults which are not reasonably susceptible of being cured or performed by such party ("Non-Curable Defaults"). Non-curable defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee's, Assignee's or Tenant's interest in this Agreement by such party.

12.2.3. Upon the sale or other transfer of the leasehold interests acquired pursuant to foreclosure or assignment in lieu of foreclosure, the Lender or other acquiring party shall have no further duties or obligations hereunder.

12.2.4. Neither the bankruptcy nor the insolvency of Lessee, an Assignee or any Tenant shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by such Lessee, Assignee or Tenant hereunder are paid by the Lender in accordance with the terms of this Agreement.

12.2.5. Nothing herein shall be construed to extend this Agreement beyond periods contemplated in Section 5 or to require a Lender to continue foreclosure proceedings after the default has been cured. If the default is cured and the Lender discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

12.3. **New Lease to Lender.** If this Agreement terminates as a result of any Lessee Monetary Default, foreclosure or assignment in lieu of foreclosure, or bankruptcy, insolvency or appointment of a receiver in bankruptcy, Landowner shall give prompt written notice to the Lenders. Landowner shall, upon written request of the first priority Lender that is made within ninety (90) days after notice to such Lender, enter into a new lease of the Property with such Lender, or its designee, within thirty (30) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Agreement, shall be upon the same terms, covenants, conditions and agreements as contained in this Agreement, and shall be subject to all existing subleases entered into pursuant to this Agreement; provided, that the subtenants are not then in a Lessee Monetary Default. Upon the execution of any such new lease, the Lender shall (i) pay Landowner any amounts which are due Landowner from Lessee, the Assignee or Tenant, (ii) pay Landowner any and all amounts which would have been due under this Agreement (had this Agreement not been terminated) from the date of termination to the date of the new lease, (iii) perform all other obligations of Lessee and/or the Assignee or Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Lender, and (iv) agree in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee, the Assignee or Tenant that would have accrued under this Agreement up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults. Any new lease granted to the Lender shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Landowner. The provisions of this Section 12 shall survive termination of this Agreement and shall continue in effect thereafter and, from the effective date of termination to the date of execution and delivery of such new lease, such Lender may use and enjoy said Property without hindrance by Landowner or any person claiming by, through or under Landowner, provided that all of the conditions for a new lease as set forth in this Section are complied with.

12.4. **Subleases.** During any periods following termination of this Agreement thereafter in which any Lender is entitled to enter into a new lease of the Property pursuant to Section 12.3, Landowner will not terminate any sublease or the rights of any sublessee thereunder unless the sublessee is in a Lessee Monetary Default under such sublease. During such period, if the Landowner receives any rent and other payments due from sublessees, including any sublessees whose attornment Landowner has agreed to accept, Landowner will do so as agent of such Lender and shall deposit such rents and payments in a separate and segregated account in trust subject to a right of setoff against amounts due to Landowner. Upon the execution and delivery of a new lease with Lender, Landowner shall account to its counterparty under such new lease for the rent and other payments made under such subleases, and the counterparty shall then assign the rent and other payments due under such subleases to any Lenders under this Agreement. The collection of rent by Landowner acting as an agent pursuant to this Section 12.4 shall not be deemed an acceptance by Landowner for its own account of the attornment of any sublessee unless Landowner shall have agreed in writing with such sublessee that its subtenancy shall be continued following the expiration of any period during which a Lender may be granted a new lease, in which

case such attornment shall take place upon the expiration of such period but not before. Landowner shall not be under any obligation to enforce any subleases.

12.5. **No Waiver.** No payment made to Landowner by any Lender shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement or a waiver of the Lender's rights with respect to any wrongful, improper or mistaken notice or demand with respect to such payment.

12.6. **No Merger.** There shall be no merger of this Agreement, or of the leasehold estate or other interests created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or any such interests 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 Lenders) having an interest in or under this Agreement and any portion of the fee estate shall join in a written instrument effecting such merger and shall duly record the same.

12.7. **Further Amendments.** Upon request, Landowner shall (1) amend this Agreement to include any provision reasonably requested by a proposed Lender, provided such amendment does not materially impair Landowner's rights or substantially increase the burdens or obligations of Landowner under this Agreement, and (2) execute such estoppel certificates (certifying as to such matters as Lender may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case) and other additional instruments reasonably requested by any Lender to evidence the status of this Agreement and Lender's rights under this Agreement.

12.8. **Taking for Public Use.** If the Property, in whole or in part, is taken or condemned for public use (an agreed sale to a public or quasi-public corporation or utility after threat of condemnation constitutes a taking for public use), all compensation awarded upon such condemnation or taking for the Property or any improvements of Landowner on the Property shall be paid directly to Landowner and all compensation relating to the Energy Storage Operations and the Project shall be paid directly to Lessee. Upon any such taking by condemnation, the title to the Property so taken shall vest in the condemnor, free and clear of this Agreement, subject to the Parties' rights to compensation as set forth in the preceding sentence, and except for said rights to compensation, this Agreement shall terminate as to the Property so taken, and the rent shall be reduced in accordance with the per-acre rates set forth in Sections 1.9 and 1.11 above for the remainder of the Term. This paragraph shall not be deemed a waiver or modification of any right which either Party may have to recover directly from such condemnor any claim for business interruption or moving or relocation expenses.

13. **Default and Remedies.**

13.1. **Default.** Subject to any applicable notice and cure rights set forth in this Agreement, the occurrence of any of the following events shall constitute a default under of this Agreement:

(a) Either Landowner or Lessee materially breaches or fails to perform any representation, warranty, covenant, term or condition of this Agreement, not including any obligation to make any payment hereunder (“Non-Monetary Default”); or

(b) Lessee fails to make any payments required by this Agreement when due (“Lessee Monetary Default”).

13.2. **Lessee Default.** Except as qualified by Section 11 and by Section 12, Landowner shall have the right to terminate this Agreement if (i) a Lessee Monetary Default shall have occurred, (ii) Landowner notifies Lessee (and if applicable all Lenders, Assignees and Tenants) in writing of the Lessee Monetary Default, which notice sets forth in reasonable detail the facts pertaining to the Lessee Monetary Default and specifies the method of cure, and (iii) the Lessee Monetary Default is not remedied within thirty (30) days after receipt of the written notice. If (A) a Non-Monetary Default has occurred due to a breach or failure to perform by Lessee, (B) Landowner notifies Lessee in writing of the Non-Monetary Default, which notice sets forth in reasonable detail the facts pertaining to the Non-Monetary Default and specifies the method of cure, and (C) the Non-Monetary Default is not remedied within ninety (90) days after receipt of the written notice, or, if the cure will take longer than ninety (90) days, Lessee has not begun diligently undertaking the cure within the relevant time period and thereafter diligently prosecuting the cure to completion, then Landowner reserves all rights and remedies available under applicable law or in equity (excluding any right to terminate this Agreement). Other than as set forth in this Section 13.2, Landowner hereby waives all other rights it may have, in law or in equity, to terminate this Agreement prior to the expiration of the Term.

13.3. **Landowner Default.** Lessee shall have the right to terminate this Agreement if (i) a Non-Monetary Default has occurred due to a breach or failure to perform by Landowner, (ii) Lessee notifies Landowner in writing of the Non-Monetary Default, which notice sets forth in reasonable detail the facts pertaining to the Non-Monetary Default and specifies the method of cure, and (iii) the Non-Monetary Default shall not have been remedied within ninety (90) days after receipt of the written notice, or, if the cure will take longer than ninety (90) days, Landowner has not begun diligently undertaking the cure within the relevant time period and thereafter diligently prosecuting the cure to completion. If this Agreement is terminated by Lessee pursuant to this Section 13.3 prior to the Operations Period, then Landowner shall immediately pay to Lessee (A) the aggregate amount of the Feasibility Period Payment and the Option Period Payments previously paid to Landowner and (B) any of the reasonable costs and expenses actually incurred by Lessee in investigating the Property during the Option Period. Subject to the other terms and conditions of this Agreement, Lessee shall have all rights and remedies available at law and in equity for any Non-Monetary Default by Landowner. Landowner further acknowledges and agrees that should Landowner breach any of its obligations hereunder or otherwise fail to permit Lessee to exercise any of the rights and privileges granted herein, Lessee shall have the right to seek specific enforcement of this Agreement.

13.4. **Landowner’s Duty.** Notwithstanding anything contained in this Agreement to the contrary, Landowner shall use commercially reasonable efforts to mitigate its damages in the event that a Non-Monetary Default has occurred due to a breach or failure to perform by Lessee hereunder.

14. **Removal Obligations.** Upon expiration or the earlier termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee's right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) as soon as reasonably practicable thereafter, remove all Improvements (except for roads and the below ground distribution and collection lines) to the extent reasonably practicable from the Property or portion as to which this Agreement was terminated, exclusive of any continuing right established pursuant to this Agreement to survive the Term, and restore the Property to a condition reasonably similar to its original condition prior to the Operations Period. Notwithstanding any of the foregoing, in no event shall Lessee have the obligation to modify the grade of the Property as established by Lessee for its uses or to restore any vegetation. Lessee's restoration obligation under this Section 14 is expressly conditioned upon Landowner granting to Lessee such access to the Property as Lessee may reasonably require to comply with such restoration obligation. Lessee shall have no obligation to pay Option Period Payments or Operations Period Rent during such period of restoration. If Lessee fails to remove such Improvements within eighteen (18) months of expiration or earlier termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner.

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. 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 or accident; strikes or labor disputes; pandemic, epidemic, war, civil strife or other violence, any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility, or any other act or condition beyond the reasonable control of a Party hereto.

15.2. **Minerals.** Landowner expressly covenants that Landowner will not excavate so near the sides of or underneath the Property as to undermine or otherwise adversely affect the stability of Improvements. Lessee shall have the right of subjacent and lateral support for the Improvements to whatever extent is necessary for the safe construction, operation and maintenance of the Improvements. Neither Landowner nor its successors or assigns will be entitled to use, or authorize the use of, any portion of the surface of the Property or other property owned by Landowner located within five hundred (500) feet of the Property or of the subsurface of the Property within five hundred (500) feet below the surface of the Property, of an existing or proposed Improvement (or any other portion of the Property or other property owned by Landowner that would interfere with the use by Lessee of the Property) for the purpose of exploring, drilling, or mining for or producing oil, gas, other minerals, or other subsurface materials or substances without the prior written consent of Lessee. Landowner agrees that it will not enter into any agreement affecting the mineral estate of the Property, nor will it transfer any portion of the mineral estate without the prior written consent of Lessee. Provided that Landowner

owns any oil, gas or mineral interests associated with the Property, within ten (10) days after receipt of such request from Lessee, Landowner shall execute and deliver to Lessee a Surrender and Release of Surface Rights substantially in the form of Exhibit E attached hereto. From and after the Effective Date, Landowner shall notify Lessee of any third parties whom Landowner knows hold any oil, gas, and mineral rights associated with the Property and Landowner shall cooperate with Lessee's search to find such third parties and obtain an executed Surrender and Release of Surface Rights from each such third party.

15.3. **Confidentiality**. Landowner shall maintain in the strictest confidence, for the benefit of Lessee, any Assignee or Tenant, Lessee's site or product design, methods of operation, methods of construction or availability of the Energy Storage Facilities, and the like and all information pertaining to this Agreement, including the financial terms of or payments under this Agreement, whether disclosed by Lessee, any Assignee or Tenant, or discovered by Landowner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents; or (ii) was already known to Landowner at the time of disclosure and which Landowner is free to use or disclose without breach of any obligation to any person or entity. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for the benefit of any other person or to the detriment of Lessee, any Assignee or Tenant. Notwithstanding the foregoing, the Parties may disclose such information (a) to their respective lenders, potential lenders, attorneys, accountants, consultants, financial advisors, potential investors, investors, potential purchasers of a Party, the Project, or such Party's rights herein (collectively, "Representatives"), solely for use in connection with this Agreement (in which case, such party shall be responsible for disclosures by its Representatives in violation of the foregoing restrictions), (b) as may be required by applicable law, subpoena or court order, or (c) to any utility, independent system operator, potential project off-takers or governmental agency as may be necessary for the development of the Property. The provisions of this Section 15.3 shall survive the termination or expiration of this Agreement.

15.4. **Setback Waiver**. Landowner hereby consents to Lessee's location of the Improvements at any location upon the Property, including any encroachments or overhangs at or near any of the boundary lines of the Property. Furthermore, in the event that the location of any Improvements to be installed or constructed on the Property along or near boundary lines of the Property is limited or restricted by any private agreements or restrictions or any law, Landowner hereby waives such limitations and restrictions. To the extent that any applicable law, ordinance, regulation or permit establishes, or has established, minimum setbacks from the exterior boundaries of the Property, from any property contiguous to the Property in which Landowner has an interest, from any structures on the Property (occupied or otherwise) or from any other point of measurement for Improvements constructed on the Property or otherwise within the Project, Landowner hereby waives any and all such setbacks and setback requirements (the "Setback Waiver"). The Setback Waiver is for the benefit of Lessee, the owner(s) of adjacent properties within the Project, and their respective successors and assigns, and shall run with the land. Further, if requested by Lessee, Landowner shall execute and deliver to Lessee one or more separate setback waivers and/or easements in a form provided by Lessee, which Lessee may then record at its expense. This waiver shall survive the termination of this Agreement for so long as Improvements exist on real property adjacent to the Property.

15.5. **Successors and Assigns.** This Agreement shall burden the Property and shall run with the land. This Agreement shall inure to the benefit of and be binding upon Landowner and Lessee and, to the extent provided in any assignment or other transfer under Section 11 hereof, any Assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to “Lessee” in this Agreement shall be deemed to include Assignees and Tenants that hold a direct ownership interest in this Agreement and actually are exercising rights under this Agreement to the extent consistent with such interest.

15.6. **Memorandum of Lease.** Landowner and Lessee shall execute in recordable form and Lessee shall at its expense then record a memorandum of this Agreement substantially in the form of Exhibit F. Landowner hereby consents to the recordation of the interest of an Assignee in the Property. Upon the termination or earlier expiration of this Agreement, Lessee and Landowner agree to promptly execute a release or termination of this Agreement in a form reasonably satisfactory to the Parties. Lessee shall promptly record such release or termination at Lessee’s sole cost and expense. Landowner hereby agrees to execute, and consents to Lessee recording at Landowner’s expense, any amendment to this Agreement or memorandum thereof or assignment of this Agreement by Lessee.

15.7. **Notices.** All notices or other communications required or permitted by this Agreement, including payments to Landowner, 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:

If to Landowner:

[]

With a copy to:

[]

If to Lessee:

[]

310 E 100 S

Moab, UT 84532

Attn: John Knight

Email:

notices@balancedrockpower.com

With a copy to:

3300 East 1st Avenue, Suite 675

Denver, Colorado 80206

Attn: Victoria Chenault, General Counsel

Email:

vchenault@balancedrockpower.com

For Electronic Funds:

Information to be provided to Lessee separately and Lessee shall hold the same strictly confidential.

If to any Assignee or Tenant:

At the address indicated in the notice to Landowner provided under Section 11.1 hereof.

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 paragraph.

Furthermore, by providing appropriate account information above, Landowner consents to Lessee making any and all necessary payments due under this Agreement by electronic payment. All amounts paid into the account listed above shall be deemed received by Landowner upon the execution of the electronic payment by Lessee.

15.8. **Entire Agreement; Amendments.** This Agreement and all attached exhibits constitute the entire agreement between Landowner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, or any other matter referenced herein not expressly set forth in this Agreement, or in a subsequent writing signed by both Parties, is null and void. This Agreement shall not be modified or amended except in a writing signed by both Parties. 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.

15.9. **Legal Matters.**

15.9.1 This Agreement shall be governed by and interpreted in accordance with the laws of the state in which the Property is located without regard to the choice of law principles of such state or any other state.

15.9.2 The Parties agree to first attempt to settle any dispute or claim of whatever nature arising out of or in connection with this Agreement by good-faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, such dispute shall be resolved by binding arbitration before a single arbitrator mutually selected by the Parties and located in Salt Lake City, Utah under the Commercial Arbitration Rules of the American Arbitration Association. The cure period for any default under this Agreement disputed in good faith by a Party shall be tolled until arbitration of the dispute is completed and the period for any appeal has lapsed. The arbitrator shall be authorized to award any remedy allowed by the applicable law, including damages, pre or post judgment interest and attorneys' fees and expenses, and to grant final or interlocutory relief, including temporary, preliminary or permanent injunctive relief. Notwithstanding this authority, the arbitrator may not award consequential, incidental, and punitive or exemplary damages as described in Section 15.9.4 of this Agreement. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding anything herein to the contrary, any attempt by either Party to seek equitable relief (including specific performance and/or injunctive relief) and any grant of equitable relief shall be exempt from the provisions of this Section 15.9.2. The non-prevailing Party shall pay the costs of any

arbitration or other legal proceedings related to this Agreement, including the fees and costs of the arbitrator and the legal fees and other out-of-pocket costs of the prevailing Party.

15.9.3 WAIVER OF RIGHT TO JURY TRIAL. WITHOUT PREJUDICE TO THE FOREGOING AND TO THE EXTENT PERMITTED BY LAW, 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

15.9.4 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NEITHER PARTY SHALL BE ENTITLED TO, AND EACH OF LANDOWNER AND LESSEE HEREBY WAIVES ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

15.10. 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 and unimpaired by the court's holding. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the Term be longer than the longest period permitted by applicable law.

15.11. Tax Credits. If under applicable law the holder of a leasehold interest in the nature of that held by Lessee, an Assignee or a Tenant under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Landowner and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive. Landowner hereby acknowledges and agrees that Lessee has the exclusive right to harness and store the energy resources on, around, about or at the Property and Lessee is the exclusive owner of all energy and related economic benefits generated by the Energy Storage Facilities, including, but not limited to, any and all federal, state and/or local benefits and credits (including tax credits, investment credits, carbon credits, renewable energy credits), rebates, incentives, benefits, grants, emissions reductions, entitlements, reporting rights, deductions, depreciation, offsets and allowances of any kind, howsoever entitled, attributable to the Energy Storage Facilities or the electric energy, capacity or other storage-based products related thereto, whether in effect as of the

date of this Agreement or as may come into effect in the future (collectively, “Credits”). Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all Credits. To the extent Landowner becomes the beneficiary of any Credits, Landowner shall assign the same to Lessee.

15.12. **Further Assurances.** Each Party hereby agrees that it shall, upon request of the other, execute and deliver such further documents (in form and substance reasonably acceptable to the Party to be charged) and do such other acts and things as are reasonably necessary and appropriate to effectuate the terms and conditions of this Agreement, including (without limitation) the execution and delivery of such documents and the doing of such acts or things as may be required to satisfy the requirements of the Title Company to issue title insurance in accordance with this Agreement.

15.13. **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 of the Parties to this Agreement.

15.14. **No Broker.** Landowner and Lessee each represent and warrant to the other that no broker or finder is entitled to any commission or finder’s fee resulting from any action on its part in connection with this Agreement. Each Party agrees to indemnify, defend and hold the other harmless against any claim, loss, damage, cost or liability for any broker’s commission or finder’s fee asserted as a result of its own act or omission in connection with this Agreement. The Parties agree that these indemnity obligations shall survive the termination or earlier expiration of this Agreement.

15.15. **Joint and Several.** The obligations of Landowner under this Agreement are joint and several.

15.16. **Counterparts.** This Agreement may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

[Signature Pages Follow]

IN WITNESS WHEREOF, Landowner and Lessee have caused this Agreement to be executed as of the Effective Date.

LESSEE:

[_____]

By: _____
John Knight, Chief Executive Officer

LANDOWNER:

[_____]

By: _____

Printed Name:

Title:

**[NOTE – IF LANDOWNER IS A
MARRIED INDIVIDUAL, THEIR
SPOUSE WILL NEED TO SIGN AS
WELL]**

EXHIBIT A

Description of Property

[Insert Legal Description]

EXHIBIT B

Depiction of Property and Reserved Acreage

[TBD]

EXHIBIT B (continued)

Depiction of Property and Reserved Acreage

[TBD]

EXHIBIT C

Prior Agreements

[attached]

EXHIBIT D

Landowner Payments

[TBD]

EXHIBIT E

Form of Surrender and Release of Surface Rights[To be inserted]

EXHIBIT F

Form of Memorandum of Option to Lease and Lease Agreement

[To be inserted]

SCHEDULE 1

Option Period Payments

TBD



Port Authority Memo

Page 1 of 1

Meeting Date:

March 17, 2025- Port Authority

Subject:

Otter Tail Power- Lease and Purchase Options

Background/Key Points:

At its February meeting, the Port Authority reviewed Otter Tail Power's Letter of Intent regarding the potential acquisition of approximately 24 acres near International Drive for inclusion in a solar project RFP. Port requested that Otter Tail Power also provide a lease option for consideration.

Both the lease and purchase options (as previously submitted) are attached for review.

Respectfully Submitted:

Klara Beck

Port Authority Executive Director

Attachments:

Lease Option

Purchase Option

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpc.com (web site)



February 28, 2025

Klara Beck
Executive Director
Fergus Falls Port Authority

Re: ***Distributed Solar – Option for Solar Easement Agreement***

Dear Klara:

This letter agreement (this “Letter Agreement”) sets forth the understanding of Otter Tail Power Company (“OTP”) and the Fergus Falls Port Authority, a Corporate Body Politic (“Landowner”) with respect to the terms, conditions, and other provisions of an option for solar easement agreement that OTP and Landowner intend to enter into (the “Option Agreement”) in connection with a proposed distributed solar generation project on certain real property owned by Landowner, as more particularly described below (the “Premises”).

OTP and Landowner hereby agree to use good faith efforts to enter into an Option Agreement in commercially reasonable form including, without limitation, the following terms, conditions, and provisions:

Option for Solar Easement Agreement

Location and acreage of the Premises:	<p>Otter Tail County Parcel No(s): 71003500176010</p> <p>Approximately 20 acres</p>
Option Term:	Commencing March 24, 2025 and expiring February 28, 2030.
Option Payment:	One-time payment of \$1000
Title Clearing:	Landowner shall use best efforts to assist with removing or otherwise curing any title defects or other title matters that OTP determines, in its sole discretion, could interfere with the proposed use of the Premises for OTP's solar energy generation project and/or energy storage facilities ("Project"). Landowner's financial obligation in this regard will not exceed \$1,000.
Access and Inspection Rights:	<p>OTP may access and enter upon the Premises at all reasonable hours to conduct studies, surveys, testing, and other investigations of the Premises that OTP determines are necessary, appropriate, or useful in connection with the proposed Project, including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Title commitment review • ALTA/NSPS survey review • Cultural surveys Phase I ESA review • Structural engineering report (if applicable) • Geotechnical report review (if applicable)
If Option is exercised:	
Nature of Interest:	Exclusive easement for solar energy purposes, including a grant of solar easement in accordance with Minn. Stat. Sec. 500.30.
Title Clearing:	Same as noted above.
Access and Inspection Rights:	Same as noted above.
Construction Term:	[Three (3)] years.
Construction Term Rent:	\$300 per acre of the Premises
Operations Term:	[Thirty-five (35)] years.

Operations Term Rent:	\$300 per acre of the Premises.
Extended Term:	Two (2) options to extend for an additional ten (10) years each.
Extended Term Rent:	As negotiated.
Annual Escalator:	[2.0] % Applied beginning of year 2 of the Operations Term.
Restrictions:	Solar easement; exclusivity for solar energy purposes.
Other provisions:	<ul style="list-style-type: none"> • Landowner will cooperate with OTP's efforts to obtain any applicable governmental approvals for the proposed use of the Premises. • OTP will carry sufficient insurance and will assume risk for OTP's use of the Premises. • OTP will have sole ownership of all solar equipment, facilities, fixtures, and other personal property installed by or on behalf of OTP on the Premises and shall be entitled to all tax credits, depreciation, environmental attributes, and renewable energy certificates in connection with all such equipment, facilities, fixtures, and other personal property. • OTP will have standard decommissioning and restoration obligations in accordance with Minnesota law and regulations. • With prior written consent from the Landowner, which consent shall not be unreasonably withheld, OTP will have the right to assign, sublease, and grant mortgages and other security interests in and to its leasehold interest and any equipment, facilities, infrastructure, fixtures, and other personal property of OTP on the Premises to any person or entity.

The terms, conditions, and other provisions set forth in this Letter Agreement are non-binding unless and until, and this Letter Agreement shall automatically terminate upon, the date, if any, that OTP and Landowner execute and deliver to the other party an Option Agreement relating to the Premises. Please feel free to contact me with any questions at dsnyder@otpc.com or (218) 556-4904. Please indicate your agreement to this Letter Agreement by countersigning below and returning your signature page to me at your earliest convenience.

Sincerely,

Derek Snyder

Derek Snyder
Senior Project Engineer – DEC – Energy Supply
Otter Tail Power Company

Accepted and Agreed:

Landowner

By: _____

Name: _____

Its: _____

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpc.com (web site)



February 13, 2025

Klara Beck
Executive Director
Fergus Falls Port Authority

Re: *Distributed Solar – Purchase Option Agreement*

Dear Klara:

This letter agreement (this “Letter Agreement”) sets forth the understanding of Otter Tail Power Company (“OTP”) and Fergus Falls Port Authority, a Corporate Body Politic, (“Landowner”) with respect to the terms, conditions, and other provisions of a purchase option agreement that OTP and Landowner intend to enter into (the “Option Agreement”) in connection with OTP’s proposed purchase of certain real property owned by Landowner, as more particularly described below (the “Property”).

OTP and Landowner hereby agree to use good faith efforts to enter into an Option Agreement in commercially reasonable form including, without limitation, the following terms, conditions, and provisions:

Purchase Option

Location and acreage of the Property:	Otter Tail County Parcel No(s).: 71003500176001, 71003500176010 Approximately 24 acres.
Option Term:	Commencing February 28, 2025 and expiring February 28, 2030.
Option Payment:	\$1200

Title Clearing:	Landowner shall use best efforts to assist with removing or otherwise curing any title defects or other title matters that OTP determines, in its sole discretion, could interfere with the proposed use of the Property for OTP's solar energy generation project and/or energy storage facilities ("Project").
Access and Inspection Rights:	<p>OTP may access and enter upon the Property at all reasonable hours to conduct studies, surveys, testing, and other investigations of the Property that OTP determines are necessary, appropriate, or useful in connection with the proposed Project, including, but not limited to, the following:</p> <ul style="list-style-type: none"> • Title commitment review • ALTA/NSPS survey review • Cultural surveys Phase I ESA review • Structural engineering report (if applicable) • Geotechnical report review (if applicable)
If Option is exercised:	
Down Payment:	As negotiated, not to exceed 10%.
Title Clearing:	Same as noted above.
Access and Inspection Rights:	Same as noted above.
Closing Conditions:	<p>OTP's obligation to purchase the Property shall be subject to certain conditions, including, but not limited to:</p> <ul style="list-style-type: none"> • Surveys, studies, testing, and other investigations of the land satisfactory to OTP, in its sole discretion. • Review of a title commitment and ALTA survey satisfactory to OTP, in its sole discretion. • Review of other surveys, studies, testing, and investigations of the Property to OTP's satisfaction, in its sole discretion.

	<ul style="list-style-type: none"> • Governmental approvals required for the proposed use of the Property for a solar energy generation project. • Subdivision or lot split, if needed.
Closing Costs:	As negotiated.
Closing Deliverables:	As negotiated.
Closing Date:	TBD
Purchase Price:	\$4,900 per acre
Other Provisions:	<ul style="list-style-type: none"> • Grant of access easement to be negotiated. • Grant for utility easement(s) from Landowner to OTP, if reasonably requested by OTP.

The terms, conditions, and other provisions set forth in this Letter Agreement are non-binding unless and until, and this Letter Agreement shall automatically terminate upon, the date, if any, that OTP and Landowner execute and deliver to the other party an Option Agreement relating to the Property. Please feel free to contact me with any questions at dsnyder@otpc.com or (218) 556-4904. Please indicate your agreement to this Letter Agreement by countersigning below and returning your signature page to me at your earliest convenience.

Sincerely,

Derek Snyder

Derek Snyder
Senior Project Engineer – DEC – Energy Supply
Otter Tail Power Company

Accepted and Agreed:

Landowner

By: _____

Name: _____

Its: _____