

# Item #4

**PROCLAMATION**  
**A Day of Thanksgiving**

**WHEREAS**, our forefathers established a day of Thanksgiving – a special day set aside to acknowledge their blessings; and

**WHEREAS**, it has become traditional for the people of the United States to celebrate a day of Thanksgiving as a way of reflecting on their many blessings and giving thanks for all they have been given; and

**WHEREAS**, the people of this country, and more specifically, the people of Smithville, are truly blessed with much for which to be thankful; and

**WHEREAS**, as we count our blessings, let us not forget the freedoms we so often take for granted, freedoms that were hard-fought by earlier generations and current servicemen and women who have given their lives so that we might be free; and

**WHEREAS**, with these freedoms come a responsibility – it is up to each of us to find a way to participate in the community, by working through the churches, the schools, local service organizations, and the City to help improve the quality of life for those who are less fortunate.

**NOW, THEREFORE**, I, Sharon Foerster, Mayor of the City of Smithville, do hereby proclaim Thursday, November 24, 2022, as:

***A Day of Thanksgiving***

and urge all citizens to join with the churches of our City to reinforce the ties of family and community and to express gratitude for the many blessings we enjoy.

**PROCLAIMED** this 14th day of November 2022.



**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Smithville to be affixed this 14<sup>th</sup> day of November 2022.

\_\_\_\_\_  
Sharon Foerster, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Lynch, City Secretary

## **Proclamation**

### **Honor Our Veterans Day**

**WHEREAS**, our community has a continuing sense of gratitude to those who have given so much in the defense of the freedoms which we all continue to enjoy; and

**WHEREAS**, the freedoms we enjoy as Americans have been purchased and maintained at a high price throughout our history; and

**WHEREAS**, since the establishment of the original 13 states, Americans have been willing to fight and die to preserve their individual rights guaranteed in the United States Constitution and the Bill of Rights; and

**WHEREAS**, we owe a great debt to those who have served in defense of this nation; and

**WHEREAS**, throughout the generations, their sacrifices have preserved our unique form of government dedicated to human rights and respect for the individual; and,

**WHEREAS**, for many, that sacrifice has ended in permanent injury or death, yet their spirit remains in the continued preservation of our freedoms and the promise of liberty established as an example for all the oppressed persons of the world; and,

**WHEREAS**, in honor of these dedicated men and women, we pledge our continued defense of our nation so that their sacrifice will stand before the entire world as a tribute to the spirit and determination of a people dedicated to the principles of freedom and democracy;

**NOW, THEREFORE, I**, Sharon Foerster, Mayor of the City of Smithville, on behalf of the entire City Council, do hereby proclaim November 11<sup>th</sup> as

#### **HONOR OUR VETERAN'S DAY**

and urge all citizens to honor our veterans and rededicate themselves to the preservation of our liberties under the Constitution.

Passed and approved on this 14<sup>th</sup> day of November 2022.



**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Smithville to be affixed this 14<sup>th</sup> day of November 2022.

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Sharon Foerster, Mayor

ATTEST:

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Jennifer Lynch, City Secretary



**NATIONAL SOCIETY DAUGHTERS OF THE AMERICAN REVOLUTION  
AMERICAN INDIANS COMMITTEE**

# **Proclamation**

## **National American Indian Heritage Month**

**WHEREAS**, the history and culture of our great nation have been significantly influenced by American Indians and indigenous peoples; and

**WHEREAS**, the contributions of American Indians have enhanced the freedom, prosperity, and greatness of America today, and

**WHEREAS**, their customs and traditions are respected and celebrated as part of a rich legacy throughout the United States; and

**WHEREAS**, Native American Awareness Week began in 1976 and recognition was expanded by Congress and approved by President George Bush in August 1990, designating the month of November, as National American Indian Heritage Month; and

**WHEREAS**, in honor of National American Indian Heritage Month, community celebrations, as well as numerous cultural, artistic, educational, and historical activities, have been planned;

**NOW, THEREFORE** be it resolved by the City Council of the City of Smithville, Texas that the month of November 2022 is hereby recognized as the National American Indian Heritage Month and urge all our citizens to observe this month with appropriate programs, ceremonies, and activities.

### **"National American Indian Heritage Month"**

Passed and approved on this the 14<sup>th</sup> day of November 2022.



**IN WITNESS WHEREOF**, I have hereunto set my hand and caused the Seal of the City of Smithville to be affixed this 14<sup>th</sup> day of November 2022.

\_\_\_\_\_  
Sharon Foerster, Mayor

ATTEST:

\_\_\_\_\_  
Jennifer Lynch, City Secretary





## General Land Office Resilient Community Program

The application was submitted November 7<sup>th</sup>, 2022. There were “glitches” in the application portal that the General Land Office (GLO) had to correct so it took a bit longer than anticipated. LCMS submitted on the City’s behalf for the maximum amount available, \$300,000. Next steps will be waiting for a possible request for information from GLO if any additional information is required. At that point, we wait for approval, award, and contract. Upon award, the schedule below will begin.

### Schedule

The review will launch and continue for approximately 18-24 months. It will conclude with the City Council’s adoption of the Comprehensive Development Plan.

To facilitate the process, the Planning Committee will oversee the process of bringing together a diverse range of stakeholders to prepare a comprehensive and integrated plan. The Key Stakeholders Group will include representatives of the community at large including the school system, local businesses, non-profit organizations, local churches and the development community.

Event	Description	Date	
City Council Meeting	Approval of Scope, Schedule & Planning Committee oversight	Regular monthly council meeting	Staff & Project Team
Staff & Project Team Meeting	First meeting with Staff & Project Team	Kick-off	Staff & Project Team
Planning Committee	First meeting with Planning Committee	Bimonthly meetings	Staff, Project Team & Committee
Virtual Public Workshop/ Planning Committee Meeting. *	Meeting # 1: Overview. Community Profile. Vision.	Bimonthly meetings	Staff, Project Team & Committee

Planning Committee Meeting. *	Meeting # 2: Public Utilities/ Infrastructure. Environmental Quality. Parks and Recreation.	Bimonthly meetings	Staff, Project Team & Committee
Planning Committee Meeting. *	Meeting # 3: Housing. Economic Development. Implementation	Bimonthly meetings	Staff, Project Team & Committee
Planning Committee Meeting*	Meeting # 4: Transportation Chapter Land Use Annexation	Bimonthly meetings	Staff, Project Team & Committee
Planning Committee Public Workshop*	Open Public “Walk-In” Workshop(s) of Committee.	Bimonthly meetings	Open to public
Planning Committee Meeting. *	Meeting # 5: Overall review to discuss comments from Public Workshop.	Bimonthly meetings	Staff, Project Team & Committee
City Council Public Hearing.	Comprehensive Development Plan Update Review and Adoption.	TBD	Open to public

\*Planning Committee meetings will be followed up with a progress report to the City Council at their regularly scheduled meetings.

To achieve its goal of providing opportunities and encouragement to City residents and stakeholders to participate in the planning process, the project team will use a variety of approaches to inform the public and invite participation.

### **Develop a Link on the City's Website**

The Project Team will post information regarding the Comprehensive Development Plan Review progress and dates of upcoming public participation sessions. This information may include agendas, minutes, draft plan elements and reports, maps, photographs, and survey results, as well as provide an opportunity for the public to provide input.

### **News Releases and Mass Media**

Throughout the planning process, the Planning Committee will make efforts to keep the public informed through media outlets such as the *local newspaper* and local radio, as well as City administered media such as the City website and the City's social media accounts.

## **Public Workshops and Meetings**

The Planning Committee will hold a series of public workshops and meetings to gather information relevant to the development. Through public comment residents and other stakeholders will be able to participate and become instrumental in the planning process.

## **Targeted Community Outreach**

The Planning Committee will reach out to community groups such as non-profits and related organizations to attain stakeholder diversity in the project team and public participation.

## **Provisions for Open Discussion**

To ensure that public meetings allow for an open discussion of the relevant issues, the City will make every effort to ensure those who choose to participate have the opportunity to have their opinions heard. To accomplish this, the following actions will be implemented:

- An agenda will be established for each public hearing or meeting outlining the purpose, items to be discussed, and any actions that may be taken.
- A variety of days and times will be scheduled to encourage maximum participation by city residents and other stakeholders.
- A clearly identifiable facilitator or chair will conduct the meeting or hearing in an orderly fashion to ensure that all attendees have an opportunity to offer comments, discuss issues, or provide testimony.
- The facilitator or chair will provide opening remarks that clearly outline the purpose of the meeting or hearing, describe procedures attendees shall use during the meeting or hearing when offering input, and describe how the public input will be used.
- All people attending the meeting or hearing that desire to participate should be allowed to do so. However, specific factors, such as the meeting or hearing purpose, number in attendance, time considerations, and future opportunities to participate may require that appropriate constraints be applied, to be outlined by the facilitator or chair if the need arises.
- All attendees will be encouraged to sign in using a provided sign-in sheet.
- Special arrangements will be made under the provisions of the American with Disabilities Act (ADA) with sufficient advance notice.

# Item #5



**CITY OF SMITHVILLE  
COUNCIL MEETING MINUTES  
OCTOBER 17, 2022**

Present: Mayor Sharon Foerster, Councilmembers Janice Bruno, Bill Gordon, Tom Etheredge, Joanna Morgan, Cassie Barrientos, and City Manager Robert Tamble.

**Open Meeting:** Call to order: Mayor Foerster called the meeting to order at 6:00 p.m. Councilman Gordon led the Invocation and Pledge.

Recognition/Awards/Proclamations/Announcements/Presentations:

- a) Proclamation for " Municipal Court Week " Mayor read the proclamation
- b) Proclamation for " Breast Cancer Awareness Month" Councilwoman Bruno read the proclamation
- c) Proclamation from Tom Etheredge on an SBA. A group of downtown business owners spoke on this topic. They all voiced their concerns and hopes concerning downtown and what they would like to see. Some explained they would like to see the lights across Main street extended to include 2<sup>nd</sup> street and further down main toward City Hall. They would like to see banners across the bridge coming into town. Would like to bring back the town known for "Hope Floats" and the sign coming into town that says "Home of Hope Floats". They would like to see a park at the end of Main to utilize the river access. They would like the City to support these ideas and be open to discussion to make these ideas a reality.

Citizen Comments: None

Approval of the minutes from the September 12, 2022, City Council Meeting. Councilman Ethedgede made a motion to approve the minutes as presented. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on Certificate of Appropriateness for 200 Main Street: Monica Poss (Historic Preservation Design Standards Advisory Committee (HPDSAC) presented recommendations for approval of two requests from the Certificate of Appropriateness (COA) to allow Alfred and Laurie Beck (owners of "The Main Gallery of Smithville) to replace the tiles and sign at 200 Main. The other two requests will be researched and brought back to the council. Councilwoman Morgan made a motion to approve the replacement of the tiles and the sign and recognize that the Becks are further researching items and will come back to the Council. Councilman Gordon seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on an Ordinance changing the City's contributions to TMRS matching ratio from 1.5:1 to 2:1: Approving this ordinance will increase the Texas Municipal Retirement System (TMRS) multiplier from 1.5x to 2.0x to better align with what other municipalities of similar size

offer. Councilman Etheredge made a motion to approve the Ordinance. Councilwoman Bruno seconded and the motion passed unanimously.

Citizen Comments: None

Discussion and Action on approving the Budget Amendment(s) amending the 2021-2022 Fiscal Year Budget: Cynthia has finalized our 2021/22 budget amendments. Revenues exceeded expenditures by approximately \$295k on a \$13.7M budget. Councilwoman Morgan made a motion to approve the Ordinance amending the budget for 2021/2022. Councilwoman Bruno seconded and the motion passed unanimously.

Citizen Comments: None

Discussion on future Council Workshops: Councilmember Bruno wants the Council to have a message board and more meetings. She would like to see a workshop added or agenda items added to each Council meeting so that we can discuss important topics. No action was taken only discussion.

Citizen Comments: None

Discussion and Action on the approval of the Financial Report. Councilwoman Bruno made a motion to accept the Financial Report. Councilman Gordon seconded and the motion passed unanimously.

Adjourn 7:45 p.m.

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Sharon Foerster, Mayor

Attest:

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Jennifer Lynch, City Secretary

# Item #7



# CITY OF SMITHVILLE

## PLANNING & ZONING APPLICATION

### APPLICATION TYPE

Zoning Change  
Request:

- ☐ Change in Zoning Class  
☐ Change in Ordinance  
☐ Variance  
☐ Special Use Permit  
☒ Minor Plat/Subdivision  
☐ Other \_\_\_\_\_

Number of  
Requests:

- ☒ Single  
☐ Multiple

### PROPERTY IDENTIFICATION

Street Address 1607 E. Loop 230 Smithville, TX 78945

\*\*\* Applicant must submit an accurate location map and site plan for application to be considered \*\*\*

Legal description

- ☒ Platted Land (please provide subdivision, block and lot information below)  
☐ Unplatted Land (please submit the metes and bounds description from deed)

Subdivision Name: McMahan Addition

Property Tax Code: 8717857 Block Number: n/a Lot Number: 1

Property Owner  
(as listed on Deed):

George McMahan

Property Owner  
Mailing Address:

7703 Lasalle Ave. Lubbock, TX 78924

Owner's Phone No: (806)790-8007 Owner's Email: georgehmcman@me.com

Agent's Name  
(if applicable):

Tim Sanders

Agent's Mailing  
Address:

P.O. Box 615 La Grange, TX 78945

Agent's Phone No: (979)968-6474 Agent's Email: tim@befcoengineering.com



## DESCRIPTION OF VARIANCE / EXCEPTION REQUEST

Current Zone Class:	SF-1	<input type="checkbox"/>	SF-2	<input type="checkbox"/>	Proposed Zone Class:	SF-1	<input type="checkbox"/>	SF-2	<input type="checkbox"/>
	MR	<input type="checkbox"/>	C-1	<input type="checkbox"/>		MR	<input type="checkbox"/>	C-1	<input type="checkbox"/>
	C-2	<input type="checkbox"/>	C-3	<input checked="" type="checkbox"/>		C-2	<input type="checkbox"/>	C-3	<input checked="" type="checkbox"/>
	MHS	<input type="checkbox"/>	MF	<input type="checkbox"/>		MHS	<input type="checkbox"/>	MF	<input type="checkbox"/>
	CF	<input type="checkbox"/>	PD	<input type="checkbox"/>		CF	<input type="checkbox"/>	PD	<input type="checkbox"/>
	PD-Z	<input type="checkbox"/>	I	<input type="checkbox"/>		PD-Z	<input type="checkbox"/>	I	<input type="checkbox"/>
	CBD	<input type="checkbox"/>	PD-Z	<input type="checkbox"/>		CBD	<input type="checkbox"/>	PD-Z	<input type="checkbox"/>

Describe variance requested:

Owner proposes to Replat Lot 1 of McMahan Addition

Describe special use requested:

Reason for Request:  
(explain why special exception is sought or why a variance has been requested)

## PETITION

As Owner/Agent, I hereby petition the City of Smithville for approval of the above described request as provided by the laws of the State of Texas and Ordinances of the City. I understand and agree that the Petition fee is non-refundable and that I must attend the Planning & Zoning meeting and subsequent City Council meeting in order for my application to be considered for approval.

Signature: \_\_\_\_\_

Date: 10-3-22

### OFFICE USE ONLY:

Fee Amount: 675<sup>00</sup>

Fee Payment: 675-

P&Z Date: Nov. 1, 2022

Council Date: Nov. 14 2022

Accepted By: A. Lenowski

Date Submitted: 10-4-2022

☒ Notice sent to property owners within 200 feet of proposed property



**COPIES OF NOTICES  
SENT TO NEWSPAPER  
AND 200' NEIGHBORS.**



MAYOR  
SHARON FOERSTER  
MAYOR PROTEM  
WILLIAM GORDON  
COUNCIL MEMBERS  
JANICE BRUNO  
CASSIE BARRIENTOS  
TOM ETHEREDGE  
JOANNA MORGAN  
CITY MANAGER  
ROBERT TAMBLE



317 MAIN STREET  
P.O. BOX 449  
SMITHVILLE, TEXAS  
78957  
(512) 237-3282  
FAX (512) 237-4549

10/11/2022

Dear Property Owner/Current Resident,

Your address is within 200' of one or more of the following proposed agenda items. This notice is to inform you that The City of Smithville Planning and Zoning Commission will hold a Public Hearing on November 1, 2022, at 6:00 p.m. in the Council Chambers located at 317 Main Street, Smithville, TX for:

**Discussion and Action on a replat for 1607 E. Loop 230, Smithville, TX 78957, R8717857, McMahan Addition Lot 1, Property Owner George McMahan, agent Tim Sanders.**

The Commission will hear all citizens' concerns for or against the replat. A recommendation will be given at the City Council meeting by the Planning and Zoning Commission. The City Council will hold a public hearing and Council meeting to discuss and seek action on November 14, 2022, at 6:00 p.m. Please check the city website for any updates about this meeting.

**Please follow us on our YouTube Page:** ([www.youtube.com/channel/UCN7rJz0wVKS4zWV9EvKcH5w](https://www.youtube.com/channel/UCN7rJz0wVKS4zWV9EvKcH5w)). You can also go to the City's website and click the link on the Planning & Zoning page to access our YouTube page. We will go live at 6:00 p.m. so that you can view the live meeting. **If you have any questions or concerns, please reach out to Tracie Dzenowski at 512-237-3282 ext. 2101 and check the City's website for any updates about this meeting.**

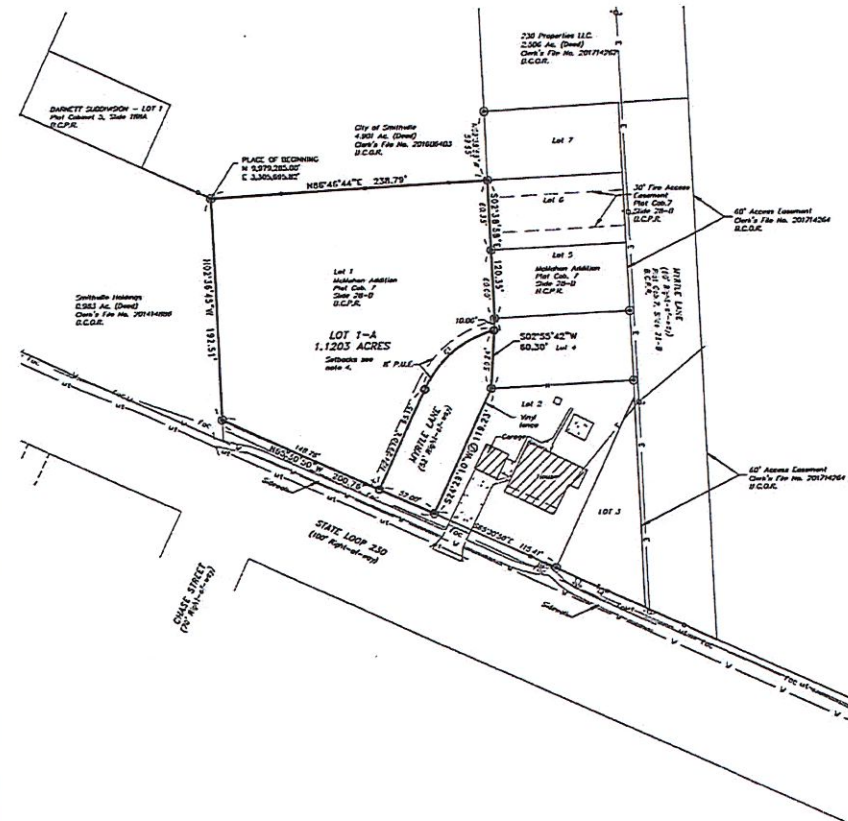
Thank You,

*Tracie Dzenowski*

*Planning and Zoning Commission: Brian Riewe, Caroline Noya, Nancy Catherman, Garrett Gutierrez & Monica Poss.*



# REPLAT OF LOT 1 OF "MCMAHAN ADDITION" FINAL SUBDIVISION PLAT LEWIS LOMAS SURVEY, A-46



Curve #	ARC Length	Radius	Betta	Chord
C1	80.96	9150	65°41'47"	N49° 50' 04"E, 78.35'

LOT NO.	AREA (ACRES)
1-A	1.1203
STREETS	0.1716
TOTAL	1.2920 ACRES

TOTAL LOTS	= 1.1203 ACRES
TOTAL STREETS	= 0.1716 ACRES
TOTAL	= 1.2920 ACRES

1. PRIOR TO ISSUANCE OF BUILDING PERMIT, CITY OF SMITHVILLE APPROVAL OF THIS REPLATMENT PLAN IS REQUIRED. SEE DEVELOPMENT PLAN MUST INCLUDE DRAINAGE CONSIDERATION IN COMPLIANCE WITH CITY CODE.
2. SUBJECT TRACT IS RECORDED UNDEVELOPED ZONE "Y" ACCORDING TO T.E.M.A. FLOOD INSURANCE RATE MAP NO. 45502C032C DATED JANUARY 15, 2008.
3. OWNER OF PLATED LOTS SHALL BE RESPONSIBLE FOR THE DESIGN AND CONSTRUCTION OF PUBLIC INFRASTRUCTURE (E.G. STREETS, DRAINAGE, WATER, WASTEWATER, ETC.) TO SERVE SAID LOTS PRIOR TO ISSUANCE OF CITY PERMITS AND DEVELOPMENT UPON THE LOTS.
4. CURRENT ZONING FOR THE SUBJECT TRACT IS "C-3" (BUSINESS COMMERCIAL) ALL LOTS UNDER THE ZONING CLASSIFICATION ARE SUBJECT TO CITY OF SMITHVILLE MINIMUM BUILDING SETBACK REQUIREMENTS AS FOLLOWS:  
FRONT = 25'  
REAR = 10'  
SIDE = 10'

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That I, GEORGE MCMAHAN, of 7702 Lassalle Ave., Lubbock, Texas 79424, owner of a tract described 1.2920 acres being Lot 1 of McMahon Addition, plat of which is recorded in Plat Book 7, Page 28-B of the Plat Records of Bastrop County, Texas, and within the Corporate Limits of the City of Smithville, Bastrop County, Texas, as conveyed to me by deed recorded in Clerk's File No. 201608463 of the Bastrop County Office Records, DO HEREBY subdivide 1.2920 acres out of said property to be known as "REPLAT OF LOT 1 OF 'MCMAHAN ADDITION', in accordance with the plat shown herein, subject to any and all easements or restrictions heretofore granted, and do hereby dedicate to the public the use of the streets and easements shown herein.

IN WITNESS WHEREOF, said GEORGE MCMAHAN has caused these presents to be executed this \_\_\_\_ day of \_\_\_\_\_ A.D., at \_\_\_\_\_.

OWNER: \_\_\_\_\_ ATTEST: \_\_\_\_\_

GEORGE MCMAHAN

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared GEORGE MCMAHAN, known to me to be the person whose name is subscribed to the foregoing instrument, has acknowledged to me that he executed the same for the purposes and consideration therein stated.

ONCE UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_ A.D.,

NOTARY PUBLIC, State of Texas

I hereby certify that the above and foregoing plat of "REPLAT OF LOT 1 OF 'MCMAHAN ADDITION'" was approved by the City Council of the City of Smithville on the \_\_\_\_ day of \_\_\_\_\_, 2022. This approval shall be valid until the date of the next meeting of the City Council of the City of Smithville, and shall be subject to all requirements of the Planning Ordinance of the City of Smithville.

Witness my hand this \_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Mayor Lynch  
City Secretary

STATE OF TEXAS  
COUNTY OF BASTROP

I, Krista Barlow, COUNTY CLERK OF BASTROP COUNTY, TEXAS, do hereby certify that the foregoing instrument with the certificate of authentication filed on the date and at the time stated herein by me was duly RECORDED in Plat Book \_\_\_\_ Page \_\_\_\_ of the PLAT RECORDS of Bastrop County, Texas as stamped herein by me.

WITNESS MY HAND AND SEAL OF OFFICE this \_\_\_\_ day of \_\_\_\_\_ A.D.

\_\_\_\_\_  
Krista Barlow, County Clerk  
BASTROP COUNTY, TEXAS

By: \_\_\_\_\_

Prepared for: GEORGE MCMAHAN  
7702 Lassalle Ave.  
Lubbock, Texas 79424

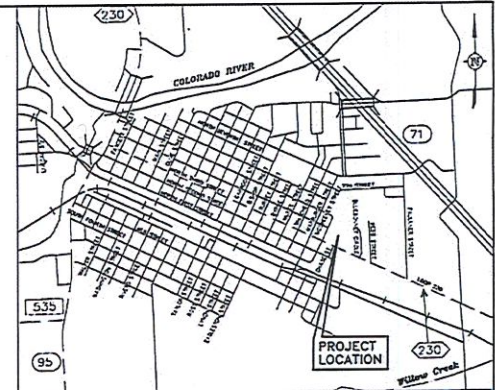
Prepared by: BEFCO ENGINEERING, INC.  
P.O. Box 615  
La Grange, Texas 78945

John Page  
Approved Building Inspector

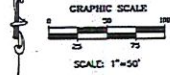
Robert Tinsley  
City Manager, City of Smithville

I, Charles Tait, am authorized under the laws of the State of Texas to practice the profession of surveying and hereby certify that this plat was prepared substantially within cooperation with the professional assistance of the City of Smithville, Bastrop County, Texas from an actual and accurate survey of the ground survey of the property made under my supervision and at certain measurements were properly placed.

Charles Tait, R.P.S.S.  
Registration No. 6233  
2003 ENGINEERING, INC.  
La Grange, Texas  
179-0846-674  
Date of survey: September 22, 2022  
Date of signature: October 2, 2022



VICINITY MAP  
DRAWING NOT TO SCALE



- Survey, distance and coordinates shown herein are "AS SHOWN" based on the Texas State Plane Coordinate System - Central Zone - NAD 83 (GCS 83).
- Convergence = 0.1735"
- Combined Factor = 1.000022
- NOTE: Location of underground utilities shown is approximate. Survey safety on public easements and easements obtained by utility company personnel.
- THIS SURVEY WAS COMPLETED WITHOUT BENEFIT OF A CURRENT TITLE COMMITMENT. SUBJECT TRACT MAY BE SUBJECT TO ANY CONSIDERING EASEMENTS, RECORDING OF EASEMENTS, THAT A CURRENT TITLE COMMITMENT MIGHT DISCLOSE.
- LEGEND
- 1/2" from red line
  - 1/2" from red line
  - Dashed electric line
  - Underground telephone cable
  - Flour optic line
  - Water line
  - Water meter
  - Utility Pole
  - Telephone pedestal
  - Fire hydrant
  - Septic
  - Wood fence
  - Chain line fence
  - Vine fence
  - Public Utility Easement

PLAT SHOWING THE SURVEY & SUBDIVISION OF 1.2920 ACRES SITUATED IN THE LEWIS LOMAS SURVEY, A-46, IN BASTROP COUNTY, TEXAS, AND BEING WITHIN THE CORPORATE LIMITS OF THE CITY OF SMITHVILLE, AND BEING THE REPLAT OF LOT 1 OF "MCMAHAN ADDITION" RECORDED IN PLAT BOOK NO. 7, PAGE 28-B OF THE PLAT RECORDS OF BASTROP COUNTY.

## REPLAT OF LOT 1 OF "MCMAHAN ADDITION" GEORGE MCMAHAN

BEFCO ENGINEERING, INC.  
P.O. Box 615  
La Grange, Texas 78945  
(979) 565-6474  
Engineering Firm #F-2011  
Surveying Firm #10001700

DRAWN BY: CRT DATE: 09/15/22 DRAWING NO.  
CHECKED BY: CRT DATE: 9/30/22  
APPROVED BY: CRT DATE: 10/3/22

S:\PROJECTS\18-7542 GEORGE MCMAHAN LP, 230 PLAT\DWG\18-7542 LOT1 REPLAT.DWG  
18700 Job No. 18-7542

## **Notices Ran in the Newspaper**

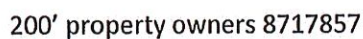
The City of Smithville Planning and Zoning Commission will hold a Public Hearing on November 1, 2022 at 6:00 p.m. in the Council Chambers of City Hall located at 317 Main St. Smithville TX for Discussion and Action on following items. Special Use Permit for a guest house at 127 Old Upton Road, Smithville, TX 78957, Property ID 112004, Robert G. Anstey Subdivision, Lot 3, ACRES 1.146, property owner Christopher and Cindy Miller & a Special Use Permit for a guest house at 500 Short Street, Smithville, TX 78957, Property ID 22128, BURLESON, BLOCK 19, LOT 4 property owners Ramon and Denise San Luis. A recommendation will be given at the City Council meeting by the Planning and Zoning Commission. The City Council will hold a public hearing and Council meeting to discuss and seek action on December 12, 2022, at 6:00 p.m. Please check the City's website for any updates about this meeting.

**Please run the following dates and provide a sworn affidavit October 12, 2022 in the Smithville Times.**

The City of Smithville Planning and Zoning Commission will hold a Public Hearing on November 1, 2022 at 6:00 p.m. in the Council Chambers of City Hall located at 317 Main St. Smithville TX for Discussion and Action on a replat for 1607 E. Loop 230, Smithville, TX 78957, R8717857, McMahan Addition Lot 1, Property Owner George McMahan, agent Tim Sanders. A recommendation will be given at the City Council meeting by the Planning and Zoning Commission. The City Council will hold a public hearing and Council meeting to discuss and seek action on November 14, 2022, at 6:00 p.m. Please check the City's website for any updates about this meeting.

**Please run the following dates and provide a sworn affidavit October 12, 2022 in the Smithville Times.**





prop_id	file_as_name	legal_desc	situs_num	situs_stre	situs_abor	situs_street	situs_city	situs_state	situs_zip	addr_line1	addr_line2	addr_city	addr_state
134058	BARNETT, BARRY GEORGE	Barnett Subdivision Lot 1, Lot 1, ACRES 0.1581	300	NCSWEET ST		SAN ANTONIO TX	78957				300 NCSWEET ST	SAN ANTONIO TX	78957
150647	CITY OF SANANTONIO	A661omas, L, ACRES 4.315	1607 E	LOOP 330		SAN ANTONIO TX	78957				P O BOX 49	LUBBOCK TX	79597
165166	KACHAUAI, GEORGE H	Kachauai Addition LOT 2, 0.3935 ACRES	1614 HIE	LOOP 330		SAN ANTONIO TX	78957				7203 LASALLE AVE	LUBBOCK TX	79424
166671	HILL, WILFRED	A661omas, L, ACRES 0.9720	1614 HIE	LOOP 330		SAN ANTONIO TX	78957				902 HUDGINS ST	SAN ANTONIO TX	78957
16670	SANANTONIO SELF STORAGE LLC	A661omas, L, ACRES 2.5000	1623 HIE	LOOP 330		SAN ANTONIO TX	78957				P O BOX 30	SAN ANTONIO TX	78957
16343	CITY OF SANANTONIO	Byrne, BLOCK 115, Lot 1-FR, 4 & S, ACRES 0.5666	403	NCSWEET ST		SAN ANTONIO TX	78957				P O BOX 49	SAN ANTONIO TX	78957
16941	230 PROPERTIES LLC	A661omas, L, ACRES 2.505									P O BOX 10	ROSAINE TX	79553
16930	HILL REVOCABLE TRUST THOMAS P &	A661omas, L, ACRES 1.456	1609 HIE	LOOP 330		SAN ANTONIO TX	78957	THOMAS P & WILLIAM MEEHLICH TRUSTEES			30 RATTLESNAKE RD	LIVINGSTON MI	59047
16951	SANANTONIO HOLDINGS INC	Byrne, BLOCK 115, Lot 1 THURS & 8-10 FRS, ACRES 0.933	1501 HIE	LOOP 230		SAN ANTONIO TX	78957				1501 TERESA LOOP 230	SAN ANTONIO TX	78957
17017	SALLY GILSON TRUST	BYRNE, BLOCK 110, Lot 1	1500 E	3RD		SAN ANTONIO TX	78957	SALLY GILSON TRUSTEE			2026 EVANES STREET	WINTERHURST CA	91301
17062	HOFFMAN, BARBARA E	BYRNE BLK 120LOT 6	209	CHASE ST		SAN ANTONIO TX	78957				209 CHASE ST	SAN ANTONIO TX	78957
17065	FRIEDL, ALIHI F	BYRNE BLK 120LOT 7 THRU 10	205	CHASE ST		SAN ANTONIO TX	78957				205 CHASE ST	SAN ANTONIO TX	78957
17123	HILL REVOCABLE TRUST	Byrne, BLOCK 127, Lot 3(FR) 4-S, ACRES 0.352						THOMAS P & WILLIAM MEEHLICH TRUSTEES			30 RATTLESNAKE RD	LIVINGSTON MI	59047
61025	SANANTONIO HOUSING AUTHORITY	A661omas, L, ACRES 2.4570	100	BLUEBONNET CIR		SAN ANTONIO TX	78957				100 ELI BLANCHARD DR	SAN ANTONIO TX	78957
871757	KACHAUAI, GEORGE H	Kachauai Addition LOT 1, 1.29ACRES									7203 LASALLE AVE	LUBBOCK TX	79424
871758	KACHAUAI, GEORGE H	Kachauai Addition LOT 3, 0.1561 ACRES									7203 LASALLE AVE	LUBBOCK TX	79424
871759	KACHAUAI, GEORGE H	Kachauai Addition LOT 4, 0.1616 ACRES									7203 LASALLE AVE	LUBBOCK TX	79424
871760	KACHAUAI, GEORGE H	Kachauai Addition LOT 5, 0.1021 ACRES									7203 LASALLE AVE	LUBBOCK TX	79424
871761	KACHAUAI, GEORGE H	Kachauai Addition LOT 6, 0.1610 ACRES									7203 LASALLE AVE	LUBBOCK TX	79424
871762	KACHAUAI, GEORGE H	Kachauai Addition LOT 7, 0.1602 ACRES									7203 LASALLE AVE	LUBBOCK TX	79424

# Item #12



## FIRST AMENDMENT TO SOLAR POWER PURCHASE AGREEMENT

This First Amendment to the Solar Power Purchase Agreement dated December 9, 2019 (the “PPA”), is made as of the [ ] day of [ ], 2022 by and between Smithville Solar One, LLC, a Texas limited Liability Company (the “Provider”), and the City of Smithville (the “Purchaser”), a municipality organized and existing under the laws of the State of Texas, as evidenced by their signature on the last page of this document. Purchaser and Provider are referred to herein individually as a “Party” and collectively as the “Parties”.

### RECITALS

- A. **WHEREAS** Provider and Purchaser are parties to the PPA;
- B. **WHEREAS** the Parties desire to clarify that the Effective Date of the PPA is December 9, 2019;
- C. **WHEREAS** the Parties desire to amend the PPA to remove references to the Purchase Option and Early Termination;

**NOW THEREFORE**, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which is hereby acknowledged, the Parties agree to the following:

### AGREEMENT

1. Defined Terms. Capitalized terms used but not defined herein shall have the meanings set forth in the PPA.
2. The preamble to the PPA is hereby amended by inserting the date December 9, 2019 before the words “Effective Date”.
3. Section 1.1 of the PPA is hereby amended by deleting the definitions for “Early Termination Date”, for “Early Termination Fee”, and for “Option Price”.
4. Section 2.1 of the PPA is hereby amended by deleting the words “and Early Termination, Schedule 2.2”, and the words “, subject to Section 2.2,”.
5. Section 2.2 of the PPA is hereby amended by deleting the section in its entirety and replacing it with [Intentionally left blank].
6. Section 2.3 of the PPA is hereby amended by deleting the section in its entirety and replacing it with [Intentionally left blank].
7. Section 2.4 of the PPA is hereby amended by deleting the words “If the Option Price indicated by Provider in accordance with Section 2.3 is equal to the Fair Market Value (as determined by an independent appraiser with experience and expertise in the commercial-scale photovoltaic industry) and Purchaser disputes such stated Fair Market Value within thirty (30) days of receipt of such notice from Provider, then the Parties shall mutually select an alternative independent appraiser with experience and expertise in the commercial-scale photovoltaic industry.” and replaced with “The Parties shall mutually select an independent appraiser with experience and expertise in the commercial photovoltaic industry.”

8. Section 2.5 of the PPA is hereby amended by deleting the words "Subject to Purchaser's exercise of its purchase option under Section 2.3, upon" and replaced with "Upon".
9. Section 5.5 of the PPA is hereby amended by deleting the words "Subject to Purchaser's exercise of its purchase option under Section 2.3, throughout the Term", and replaced with the words "Throughout the Term".
10. Section 6.1 is hereby amended by deleting the words "In the event that Purchaser is a municipality or other Governmental Authority, if sufficient funds to provide for payment(s) owed by Purchaser under this Agreement are not appropriated, the Purchaser shall terminate this Agreement upon notice in writing to Provider in accordance with the terms of Section 2.2., including, without limitation, the payment to Provider of the Early Termination Fee."
11. Section 10.3 of the PPA is hereby amended by deleting ", and the provisions of Section 2.2 (Early Termination)" and replaced with ".".
12. Section 11.1 of the PPA is hereby amended by deleting the words "(c) No Early Termination Fee. Section 2.2 of the Agreement shall not apply to any termination of the Agreement by Purchaser pursuant to this Section 11.1".
13. Section 11.2 of the PPA is hereby amended by deleting the words "(i) the Early Termination Fee pursuant to Section 2.2" and replacing with the words "(i) INTENTIONALLY OMMITTED".
14. Section 18.6 is hereby amended by deleting the words "Sections 2.2 (Early Termination),"
15. Section 18.11 is hereby amended by deleting the words "The payment of the Termination Amount of Early Termination Fee made or to be made by one Party of the other Party under this Agreement constitutes a "settlement payment" and/or a "transfer" under the United States Bankruptcy Code.
16. Schedule 3 is hereby amended by deleting it in its entirety and replacing with [INTENTIONALLY OMMITTED]"
17. Counterparts. This First Amendment may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.
18. No Other Amendment. Except as changed hereby, all other terms and conditions in the PPA remain in full force and effect.

**[SIGNATURE PAGE FOLLOWS]**

**IN WITNESS WHEREOF**, the undersigned, by their respective officers, representatives or other authorized persons thereunto duly authorized, have duly executed this Amendment as of the date first written above.

**PROVIDER:** Smithville Solar One, LLC

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**PURCHASER:** City of Smithville

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Smithville Solar One, LLC

# Solar Power Purchase Agreement

*for the City of Smithville*

By Go Big Solar, LLC

11-14-2022

Confidential Document





## SOLAR POWER PURCHASE AGREEMENT

This Agreement ("Agreement" as further defined in Section 1.1) is made and entered into as of this **December 9, 2019** ("Effective Date") and is witnessed and acknowledged by Smithville Solar One, LLC, a Texas Limited Liability Company, with its principal office at 1727 Ben Crenshaw Way, Austin, TX 78746 ("Provider") and the City of Smithville, a municipality organized and existing under the laws of the State of Texas and having its principal place of business at P.O. Box 449, Smithville, TX 78957 (the "Purchaser"), as evidenced by their signature on the last page of this document. Purchaser and Provider or Project Entity are referred to herein individually as a "Party" and collectively as the "Parties."

### WITNESSETH:

WHEREAS, Purchaser desires that Provider install, own and operate a solar photovoltaic system and the ancillary equipment associated therewith (as hereafter defined, "System") for the purpose of providing Services (as hereafter defined) for the production and supply of solar energy;

WHEREAS, Provider has agreed to provide the System and has submitted a Proposal dated March 11, 2019 (the "Proposal") which is attached hereto and made a part hereof as Exhibit A.

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

### 1. DEFINITIONS.

1.1 Definitions. In addition to other terms specifically defined elsewhere in the Agreement, where capitalized, the following words and phrases shall be defined as follows:

"Actual Monthly Production" means the amount of Energy recorded by Provider's metering equipment during each calendar month of the Term, pursuant to Section 4.2.

"Affiliate" means, with respect to any specified Person, any other Person directly or indirectly controlling, controlled by or under common control with such specified Person.

"Agreement" means this Power Purchase Agreement, including the General Conditions and the Exhibits and Schedules attached hereto.

"Applicable Law" means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

"Assignment" has the meaning set forth in Section 13.1.

"Bankruptcy Event" means with respect to a Party, that either: (i) such Party has (A) applied for or consented to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (B) admitted in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) made a general assignment for the benefit of its creditors; (D) commenced a voluntary case under any bankruptcy law; (E) filed a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) failed to controvert in a timely and appropriate manner, or acquiesced in writing to, any petition filed against such Party in an involuntary case under any bankruptcy law; or (G) taken any corporate or other action for the purpose of effecting any of the foregoing; or (ii) a proceeding or case has been commenced without the application or consent of such Party in any court of competent jurisdiction seeking (A) its liquidation, reorganization, dissolution or winding-up or the composition or readjustment of debts or, (B) the appointment of a trustee, receiver, custodian, liquidator or the like of such Party under any bankruptcy law, and such proceeding or case has continued undefended, or any order, judgment or decree approving or ordering any of the foregoing shall be entered and continue unstayed and in effect for a period of sixty (60) days.

"Business Day" means any day other than Saturday, Sunday or a Federal Reserve Bank holiday.

"Commercial Operation Date" has the meaning set forth in Section 3.3(b).

"Confidential Information" has the meaning set forth in Section 15.1.

"Covenants, Conditions and Restrictions" or "CCR" means those requirements or limitations related to the Premises as may be set forth in a lease, if applicable, or by any association or other organization, having the authority to impose restrictions.

"Disruption Period" has the meaning set forth in Section 4.3(b).

"Energy" means electric energy measured in kilowatt-hours ("kWh") or in megawatt-hours ("MWh").

"Energy Storage" means batteries or other forms of energy stored for use when energy costs are higher, and/or to improve the economics of the solar offering.

"Environmental Attributes" means, an aspect, claim, characteristic or benefit associated with the generation of a quantity of electricity by an electricity generation facility that is capable of being measured, verified or calculated, including any and all credits, benefits, emissions reductions, offsets and allowances, howsoever entitled, attributable to the generation of such quantity of electricity by an electricity generation facility and its displacement of conventional, nonrenewable electricity generation together with the right(s) to report ownership of such attributes to any agency, authority, or third party. Environmental Attributes shall not include (i) any energy, capacity, reliability or other power attributes from the electricity generation facility; (ii) production tax credits associated with the construction or operation of the electricity generation facility and other financial incentives in the form of credits, reductions or allowances associated with the electricity generation facility that are applicable to a state, provincial or federal income taxation obligation; or (iii) fuel-related subsidies, "tipping fees", or other local subsidies received by the electricity generation facility for the destruction of particular preexisting pollutants or the promotion of local environmental benefits



"Estimated Annual Production" has the meaning set forth in Section 5.2.

"Expiration Date" means the date on which the Agreement terminates by reason of expiration of the Term.

"Fair Market Value" means, with respect to any tangible asset or service, the price that would be negotiated in an arm's-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the System will be determined pursuant to Section 2.4.

"Financing Party" means, as applicable (i) any Person (or its agent) from whom Provider (or an Affiliate of Provider) leases the System, or (ii) any Person (or its agent) who has made or will make a loan to or otherwise provider financing to Provider (or an Affiliate of Provider) with respect to the System.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"General Conditions" means this Power Purchase Agreement, excluding the Exhibits and Schedules hereto.

"Governmental Approval" means any approval, consent, franchise, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority.

"Governmental Authority" means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

"Indemnified Persons" means the Purchaser Indemnified Parties or the Provider Indemnified Parties, as the context requires.

"Initial Term" has the meaning set forth in Section 2.1.

"Installation Work" means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Provider at the Premises.

"Invoice Date" has the meaning set forth in Section 6.2.

"kWh Rate" means the price per kWh set forth in Schedule 2 payable for the services to be provided hereunder including Energy, and heat.

"Liens" has the meaning set forth in Section 7.1(e).

"Letter(s) of Credit" means one or more irrevocable, non-transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank (which is not an Affiliate of either Party) with such bank having a credit rating of at least A- from Standard & Poor's Rating Group and A3 from Moody's Investor Service, and otherwise being in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.



"Local Electric Utility" means the local electric distribution owner and operator providing electric distribution and interconnection services to Purchaser at the Premises.

"Losses" means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all reasonable attorneys' fees and other reasonable costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

"Party" or "Parties" has the meaning set forth in the preamble hereof.

"Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

"Premises" means the premises described in Schedule 1 of the Special Conditions. For the avoidance of doubt, the Premises includes the entirety of any structures and underlying real property located at the address described in Schedule 1.

"Provider" has the meaning set forth in the Special Conditions.

"Provider Default" has the meaning set forth in Section 11.1(a).

"Provider Indemnified Parties" has the meaning set forth in Section 16.2.

"Purchase Date" means the day that occurs on the date that is the sixth (6<sup>th</sup>) anniversary, the tenth (10<sup>th</sup>) anniversary, and the fifteenth (15<sup>th</sup>) anniversary of the Commercial Operation Date, provided that if such day is not a Business Day, the Purchase Date shall be the next Business Day to occur after such day.

"Purchaser" has the meaning set forth in the Special Conditions.

"Purchaser Default" has the meaning set forth in Section 11.2(a).

"Purchaser Indemnified Parties" has the meaning set forth in Section 16.1.

"Renewal Term" has the meaning set forth in Section 2.1.

"Representative" has the meaning set forth in Section 15.1.

"Security Agreement" has the meaning set forth in Section 8.2.

"Stated Rate" means a rate per annum equal to the lesser of (a) the "prime rate" (as reported in The Wall Street Journal) plus two percent (2%) and (b) the maximum rate allowed by Applicable Law.

"System Operations" means the Provider's operation, maintenance and repair of the System performed in accordance with the requirements herein.

"Term" has the meaning set forth in Section 2.1.

"Transfer Time" has the meaning set forth in Section 4.3(a).

1.2 Interpretation. The captions or headings in these General Conditions are strictly for convenience and shall not be considered in interpreting the Agreement. Words in the Agreement that impart the singular connotation shall be interpreted as plural, and words that impart the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require. The words "include", "includes", and "including" mean include, includes, and including "without limitation" and "without limitation by specification." The words "hereof", "herein", and "hereunder" and words of similar import refer to the Agreement as a whole and not to any particular provision of the Agreement. Except as the context otherwise indicates, all references to "Articles" and "Sections" refer to Articles and Sections of these General Conditions.

1.3 Entire Agreement and Order of Precedence. This Agreement forms the entire agreement between the parties and supersedes all written or oral, prior or contemporaneous communications between the parties relating to the subject matter of this Agreement.

In case of a conflict or discrepancy among the elements of this Agreement, such conflict or inconsistency shall be resolved by giving precedence to the document elements in the following order: (1) Exhibit A, (2) the Schedules, (3) the General Conditions, and (4) Exhibit B.

## 2. TERM AND TERMINATION.

2.1 Term. The term of the Agreement shall commence on the Effective Date and shall continue for ten (10) years from the Commercial Operations Date ("Initial Term"), unless and until terminated earlier pursuant to the provisions of the Agreement. After the Initial Term, the Agreement shall be renewed automatically by the parties for three (3) additional five (5) year terms ("Renewal Term") unless terminated in writing by either Party. The Initial Term and the subsequent Renewal Terms, if any, are referred to collectively as the "Term," and are renewed automatically. During any Renewal Term, either Party may terminate the Agreement upon one hundred and eighty (180) days' prior written notice to the other Party.

2.2 Intentionally left blank.

2.3 Intentionally left blank.

2.4 Determination of Fair Market Value. The Parties shall mutually select an independent appraiser with experience and expertise in the commercial-scale photovoltaic industry. Such appraisers shall be subject to applicable Internal Revenue Service processes and requirements and act in a commercially reasonable manner and in good faith to determine the Fair Market Value of the System as of the applicable Purchase Date and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser(s) shall be binding upon the Parties in the absence of fraud or manifest error. The final appraised value shall be determined by the average of the two independent appraisals. The costs of the initial appraisal shall be borne by Provider. The cost of the alternative appraisal shall be borne by the Purchaser.



2.5 Removal of System at Expiration. Upon the expiration or earlier termination of the Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the System from the Premises on a mutually convenient date but in no case later than one hundred and twenty (120) days after the Expiration Date. The Premises shall be returned to its original condition, except for System mounting pads or other support structures and ordinary wear and tear. If the System is to be located on a roof, then in no case shall Provider's removal of the System affect the integrity of Purchaser's roof, which shall be as leak-proof and structurally sound as it was prior to removal of the System (other than ordinary wear and tear). For purposes of Provider's removal of the System, Purchaser's covenants pursuant to Section 7.2 shall remain in effect until the date of actual removal of the System.

2.6 Conditions of the Agreement Prior to Installation. In the event that any of the following events or circumstances occur prior to the Commercial Operation Date, Provider or Purchaser may (at its sole discretion) terminate the Agreement, in which case neither Party shall have any liability to the other: (a) the Provider determines that the Premises, as is, is insufficient to accommodate the System; (b) there exist site conditions (including environmental conditions) or construction requirements that were not known as of the Effective Date and that could reasonably be expected to materially increase the cost of Installation Work or would adversely affect the electricity production from the System as designed; (c) there is a material adverse change in the regulatory environment, incentive program or federal or state tax code (including the expiration of any incentive program or tax incentives in effect as of the Effective Date) that could reasonably be expected to adversely affect the economics of the installation for Provider and its investors; (d) Provider is unable to obtain financing for the System on terms and conditions satisfactory to it; (e) Provider has not received a fully executed (i) license substantially in the form of Exhibit A from the owner of the Premises, and (ii) a release or acknowledgement from any mortgagee of the Premise, if required by Provider's Financing Party, to establish the priority of its security interest in the System; (f) there has been a material adverse change in the rights of Purchaser to occupy the Premises or Provider to construct the System on the Premises; (g) Purchaser has not received evidence reasonably satisfactory to it that interconnection services will be available with respect to Energy generated by the System under a net-metering arrangement mutually agreeable to the Parties, subject to applicable law and the utility's requirements; (h) Provider or Purchaser has determined that there are easements, CCRs or other liens or encumbrances that would materially impair or prevent the installation, operation, maintenance or removal of the System; (i) verification is withheld from FAA regarding the approval of the Solar Glare Hazard Analysis Plot (SGHAT) and Form 7460 "FAA Notice of Proposed Construction"; (j) confirmation approval is withheld from LCRA regarding metering and exemption from QSE review and/or compliance with their distributive generation policy; (k) Tax Relief Rebate Agreement between Purchaser and Provider is not reached in a mutually agreed manner that is satisfactory to both Parties; (l) Bluebonnet Electric Cooperative does not approve of the installation and operation of a direct-tie distribution line across their service territory from the project facility to the Smithville Substation.

### **3. PURCHASER RIGHT TO REVIEW CONSTRUCTION, INSTALLATION AND TESTING OF SYSTEM.**

3.1 Installation Work. Provider will cause the System to be designed, engineered, installed and constructed substantially in accordance with Schedule 1, Applicable Law, and consistent with generally accepted utility practices. Upon request, Purchaser shall have the right to review

all construction plans and designs, including engineering evaluations of the impact of the System.

3.2 Interconnection Approval; Permits. Provider shall be responsible for all Approvals and Permits including but not limited to those related to interconnection of system to the utility grid with the City of Smithville, and any permits required by Bastrop County or the City of Smithville, and any waivers, approvals or releases required. An Interconnection Agreement (Exhibit C) with the City of Smithville will be provided prior to construction Date, and a copy shall be delivered to the Purchaser and made a part of this Agreement in Exhibit C. The Interconnection Agreement will require the installation of a direct-tie distribution circuit that extends from the project facility to the Smithville Substation. This distribution circuit will cross the service territory of Bluebonnet Electric Cooperative, and therefore will require Bluebonnet's approval. The direct-tie distribution line shall be constructed with the cooperation of the Purchaser and the expense shall be shared between the Purchaser and Provider. The Provider will be responsible for seeking easement and access agreements with the landowners. Purchaser will have the option to own and operate the distribution line at its sole discretion.

3.3 Details of the construction and payment of the distribution line installation shall be addressed in the Interconnection Agreement (Exhibit C) and will also be part of a mutually beneficial 380 Economic Development Agreement as described in Section 5.8.

3.4 System Acceptance Testing. (a) Provider shall conduct testing of the System in accordance with such methods, acts, guidelines, standards and criteria reasonably accepted or followed by commercial solar photovoltaic energy system integrators and operators in the United States. (b) If the results of such testing indicate that the System is capable of generating Energy for at least four (4) consecutive hours, using such instruments and meters as have been installed for such purposes, and the System has been approved for interconnected operation by the City of Smithville, then Provider shall send a written notice to Purchaser to that effect, and the date of such notice shall be the "Commercial Operation Date."

#### 4. SYSTEM OPERATIONS.

4.1 Provider as Owner and Operator. The System will be owned by Provider or Provider's Financing Party and will be operated and maintained and, as necessary, repaired by Provider at its sole cost and expense.

4.2 Metering. Provider shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy produced by the System. Provider shall pay for the installation and maintenance of advanced metering system and the meter(s) shall be capable of measuring output in 15-minute intervals. Purchaser (and/or its designee) shall have direct access to the meter data. At its own discretion, the City of Smithville and LCRA may have a separate meter or meters, and Provider will facilitate the installation and operation if requested. In addition, LCRA will settle with Smithville by reducing their purchases from LCRA by the amount generated at the solar facility. If the solar generation is more than 15% of their total adjusted metered load in any 15-min interval, the excess generation will be credited at ERCOT's real time settlement point price. With ERCOT's current rules, this solar facility will be sized at



less than 1 MW of capacity and does not require additional settlement allocations. However, if ERCOT changes the registration threshold, LCRA will follow the same cost allocations and the Provider will comply with all rules at its own expense and shall be solely responsible for such compliance. Provider to be responsible for any filings with ERCOT should current requirements change or production exceeds 1 MW.

4.3 System Disruptions. Substitution of Premises. If, for reasons other than Provider's negligence, willful misconduct, or breach of its obligations hereunder or as otherwise provided for in this Agreement, Provider ceases to have access rights to the Premises as necessary to operate the System prior to the Expiration Date, then Provider shall either (i) provide a mutually agreeable substitute premises in a location with similar capability to accommodate the System, or (ii) terminate the Agreement pursuant to Section 2.2. In connection with such substitution, Purchaser and Provider shall amend this Agreement to specify the substitute premises. Provider shall pay all reasonable costs associated with relocation of the System including all costs and expenses incurred in connection with removal of the System from the existing Premises and repair or maintenance of the Premises, if applicable, and installation and testing of the System at such substitute premises and all applicable interconnection fees and expenses at the substitute premises, as well as costs of new title search and other out of pocket expenses connected to preserving and re-filing the security interest of Provider's Financing Party in the System.

## 5. DELIVERY OF SERVICES.

5.1 Purchase Requirement. Purchaser agrees to purchase one hundred percent (100 %) of the Energy generated by the System during each relevant month of the Term at the kWh Rate specified in Schedule 2. The Energy delivered by Provider to Purchaser hereunder shall be referred to as "Services".

5.2 Estimated Annual Production. The annual estimate of Energy generation with respect to the System for any given year as determined pursuant to this Section shall be the "Estimated Annual Production." The Estimated Annual Production for each year of the Term is set forth in Schedule 4 and is subject to periodic fluctuations.

5.3 Production Guarantee. Provider guarantees kWhr production output of (eighty-five percent) 85% of the stated values set forth in Schedule 4. The Provider shall perform monthly system tests to determine the energy production values in order to ensure optimum performance of the system and monthly statements shall be provided to Purchaser that calculate the total energy production values. Through its operations and maintenance measures, equipment warranties and solar monitoring, Provider shall immediately remedy any system deficiencies in order to ensure optimum performance of the system output. At the end of each two (2) year period, the Provider shall report to the Purchaser the overall system performance data regarding kWhr production values during the two (2) year period. In the event the actual production output falls below 85% of the stated estimated values in Schedule 4, the "shortfall," Provider shall pay to the Purchaser a shortfall amount, which is calculated as the difference between the current PPA Rate at the time and the wholesale energy cost at the node multiplied by the total kWhr under-production value based on the Schedule 4 estimated values.

The payment shall be made as a credit on the Invoice or in the form of a check or money order within 60 days of the end of the second (2<sup>nd</sup>) year of each two (2) year period.

5.4 Environmental Attributes. Purchaser's purchase of energy generation and Services shall include all Environmental Attributes associated with the Energy generated by the System, which shall be retained by the Purchaser for the duration of the Term. Provider disclaims any right to such Environmental Attributes based upon the installation of the System at the Premises, and shall, at the request of Purchaser, execute any document or agreement reasonably necessary to fulfill the intent of this Section.

5.5 Title to System. Throughout the Term, Provider or Provider's Financing Party shall be the legal and beneficial owner of the System at all times, and the System shall remain the personal property of Provider or Provider's Financing Party and shall not attach to or be deemed a part of, or fixture to, the Premises. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use reasonable commercial efforts to place all parties having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as attaching to the System as a fixture of the Premises, Purchaser shall provide, at Provider's request, a disclaimer or release from such lien holder. If Purchaser is the fee owner of the Premises, Purchaser agrees to file, at the request of Provider and at Provider's sole expense, a disclaimer of the System as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Purchaser is not the fee owner, Purchaser will, at Provider's request, use commercially reasonable efforts to obtain such agreement to file from such owner or consent of such owner to have Provider make such filing on its behalf; provided that such filing will be made at Provider's request and at Provider's sole expense.

5.6 First Right of Refusal for Additional Energy. Purchaser has the Option to enter into one additional Power Purchase Agreement with Provider for the purchase of energy generated exclusively for the Purchaser, provided that Purchaser exercises its Option within two (2) years from the Commercial Operation Date (COD) of the System or within one (1) year from the Notice to Proceed (NTP) with the construction of a second (2<sup>nd</sup>) system at the same project site. The Option will be delivered by Provider under the same terms and rates as this Power Purchase Agreement, unless changes are agreed to by both Parties, and must be exercised by Purchaser within a One Year Period.

5.7 Energy Storage. Provider and Purchaser agree to jointly explore the feasibility and potential deployment of a battery energy storage system (BESS) for the benefit of the Purchaser and Provider. The BESS will be designed with the intent of the Provider delivering additional energy to the Purchaser in order to improve the economics of the solar power purchase agreement and/or to supply an alternative source of energy to the Purchaser during times when energy costs are higher than normal. Neither Party is obligated to perform BESS services unless agreed to by both Parties and details of a business relationship are to be negotiated.



5.8 Voluntary Annexation. Within one year from the date of signing this Solar Power Purchase Agreement, Provider agrees to execute with the Purchaser a 380 Economic Development Agreement for the Voluntary Annexation into the City of Smithville, the property identified in Schedule 1 as the System Premises. The Annexation will be filed as a Petition with the City of Smithville, and shall include a metes and bounds survey that identifies the property. The Annexation requires Public Notice and approval by the Smithville Planning and Zoning Committee as well Smithville's City Council. The Purchaser agrees to waive the filing fee for the Voluntary Annexation Petition.

5.9 Property Tax Relief. As part of the 380 Economic Development Agreement described in Section 5.8, the Provider and the Purchaser agree to explore means in which the Provider may reduce its overall property tax burden in the form of rebates or other relief which may include the installation of a direct-tie distribution line from the project site to the Smithville Substation and/or Interconnection fees with the City of Smithville, in exchange for mutually accepted value-added, performance-based incentives and/or milestones not. Any such Agreements shall not exceed a period of five (5) years.

## **6. PRICE AND PAYMENT.**

6.1 Consideration. Purchaser shall pay to Provider a monthly payment for the Services provided during each month in an amount equal to the Energy generated by the System and delivered to Purchaser in such month, multiplied by the kWh Rate stated in Schedule 2 for the applicable contract year in which such month occurs ("Services Payment").

6.2 Invoice. Provider shall invoice Purchaser on or about the first day of each month (each, an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date, for the Services Payment in respect of the immediately preceding month. The last invoice shall include production only through the Expiration Date of this Agreement.

6.3 Time of Payment. Purchaser shall pay all undisputed amounts due hereunder within thirty (30) days after the date of the applicable Invoice Date.

6.4 Method of Payment. Purchaser shall make all payments under the Agreement by electronic funds transfer in immediately available funds to the account designated by Provider from time to time. Interest for any unpaid balance will accrue pursuant to Texas State Finance Law that is 30 days past due. All payments made hereunder shall be non-refundable, be made free and clear of any tax, levy, assessment, duties or other charges and not subject to reduction, withholding, set-off, or adjustment of any kind.

6.5 Disputed Payments. If a bona fide dispute arises with respect to any invoice, Purchaser shall not be deemed in default under the Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, provided that Purchaser shall not be required to pay the disputed amounts owed hereunder until such dispute has been resolved by the Parties. If an amount disputed by Purchaser is subsequently deemed to have been due

pursuant to the applicable invoice, interest shall accrue on such amount pursuant to Texas State Finance Law from the date becoming past due under such invoice until the date paid.

## 7. GENERAL COVENANTS.

### 7.1 Provider's Covenants. Provider covenants and agrees to the following:

- (a) Notice of Damage or Emergency. Provider shall (i) promptly notify Purchaser if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System, (ii) immediately notify Purchaser if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.
- (b) System Condition. Provider shall take all actions reasonably necessary to ensure that the System is capable of providing Services at a commercially reasonable continuous rate.
- (c) Governmental Approvals. While providing the Installation Work, Services, and System Operations, Provider shall obtain and maintain and secure all Governmental Approvals required to be obtained and maintained and secured by Provider and to enable Provider to perform such obligations.
- (d) Health and Safety. Provider shall take all necessary and reasonable safety precautions with respect to providing the Installation Work, Services, and System Operations and shall comply with all Applicable Laws pertaining to the health and safety of persons and real and personal property.
- (e) Liens. Other than a Financing Party's security interest in or ownership of the System, Provider shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to the Premises or any interest therein, in each case to the extent such Lien arises from or is related to Provider's performance or non-performance of its obligations hereunder. If Provider breaches its obligations under this Section, it shall (i) immediately notify Purchaser in writing, (ii) promptly cause such Lien to be discharged and released of record without cost to Purchaser, and (iii) defend and indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such Lien.

### 7.2 Purchaser's Covenants. Purchaser covenants and agrees as follows:

- (a) Notice of Damage or Emergency. Purchaser shall (i) promptly notify Provider if it becomes aware of any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System; (ii) immediately notify Provider if it becomes aware of any event or circumstance that poses an imminent risk to human health, the environment, the System or the Premises in connection with this Agreement.
- (b) Liens. Other than as provided for in this Agreement, Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any Liens on or with respect



to the System or any interest therein. If Purchaser breaches its obligations under this Section, it shall immediately notify Provider in writing, shall promptly cause such Lien to be discharged and released of record without cost to Provider, and subject to the availability of lawful appropriations and consistent with the laws of the State of Texas, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the Purchaser or of its officers or employees when acting within the course and scope of their employment.

(c) Consents and Approvals. Purchaser or Provider shall ensure that any authorizations required of Purchaser or Provider under this Agreement are provided in a timely manner. To the extent that only Purchaser is authorized to request, obtain or issue any necessary approvals, permits, rebates or other financial incentives, Purchaser shall reasonably cooperate with Provider, at Provider's request, to obtain such approvals, permits, rebates or other financial incentives.

(d) Access to Premises. Provider shall have access to the Premises and System during the Term of this Agreement and for so long as needed after termination to remove the System pursuant to the applicable provisions herein, and Purchaser will not interfere or handle any Provider equipment or the System without written authorization from Provider; provided, however, that Purchaser shall at all times have access to and the right to observe the Installation Work or System removal.

(e) Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Provider immediately and shall cooperate with Provider in preserving the System's existing Insolation levels.

## **8. REPRESENTATIONS & WARRANTIES.**

8.1 Representations and Warranties Relating to Agreement Validity. In addition to any other representations and warranties contained in the Agreement, each Party represents and warrants to the other as of the Effective Date that:

- (a) it is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- (b) it has the full right and authority to enter into, execute, deliver, and perform its obligations under the Agreement and shall maintain such right and authority throughout the Term;
- (c) it has taken all requisite corporate or other action to approve the execution, delivery, and performance of the Agreement;
- (d) the Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;
- (e) there is no litigation, action, proceeding or investigation pending or, to the best of its knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that could reasonably be

expected to materially adversely affect its ability to perform its obligations hereunder or carry out the transactions contemplated herein; and

(f) its execution and performance of the Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or, in the case of Provider, any of its Affiliates is a party or by which it or, in the case of Provider, any of its Affiliates or its or their property is bound, (ii) its organizational documents, or (iii) any Applicable Laws.

8.2 Representations Regarding Security Interest. Purchaser has been advised that part of the collateral securing the financial arrangements for the System may be the granting of a first priority perfected security interest (the "Security Interest") in the System to a Financing Party. In connection therewith, Purchaser represents and warrants as follows:

- (a) to Purchaser's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises;
- (b) Purchaser is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the System as an interest adverse to Provider's Financing Party's Security Interest therein;
- (c) to Purchaser's knowledge, there exists no event or condition which constitutes a default, or would, with the giving of notice or lapse of time, constitute a default under this Agreement. Any Financing Party shall be an intended third party of this Section 8.2.

8.3 EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

## 9. TAXES AND GOVERNMENTAL FEES.

Provider shall be responsible for any and all taxes assessed on the generation, sale or delivery of electric energy produced by the System or the interconnection of the System to the Utility's electric distribution system, including property taxes on the System. For purposes of this Section, "Taxes" means any federal, state and local ad valorem, property, occupation, generation, privilege, sales, use, consumption, excise, transaction, and other taxes, regulatory fees, surcharges or other similar charges, but shall not include any income taxes or similar taxes imposed on Provider's revenues due to the sale of energy under this Agreement, which shall be Provider's responsibility.

## 10. FORCE MAJEURE.

10.1 Definition. "Force Majeure Event" means includes, but is not limited to any act or event that prevents the affected Party from performing its obligations in accordance with the Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (provided that the claiming Party shall not be required to suffer prejudice or use commercially unreasonable measures to remedy a Force Majeure



event). A Force Majeure Event shall not be based on the economic hardship or financial condition of either Party. Force Majeure shall not be based on (i) Purchaser's inability economically to use or resell the Services purchased hereunder; or (ii) the loss or failure of Provider's supply.

10.2 Excused Performance. Except as otherwise specifically provided in the Agreement, neither Party shall be considered in breach of the Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall: (i) promptly notify the other Party in writing of the existence of, and details regarding, the Force Majeure Event; (ii) exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation or termination of said Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

10.3 Termination in Consequence of Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a continuous period of one hundred eighty (180) days, then the Party not affected by Force Majeure shall be entitled to terminate the Agreement upon ninety (90) days' prior written notice to the affected Party. If at the end of such ninety (90) day period such Force Majeure Event shall continue, and the Agreement shall automatically terminate. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination).

## 11. DEFAULT.

11.1 Provider Defaults and Purchaser Remedies. (a) Provider Defaults. The following events shall be defaults with respect to Provider (each, a "Provider Default"): (i) A Bankruptcy Event shall have occurred with respect to Provider; (ii) Provider fails to pay Purchaser any undisputed amount owed under the Agreement within ten (10) Business Days from receipt of notice from Purchaser of such past due amount; (iii) Provider breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.1 as a separate Provider Default) and such breach or failure is not cured within thirty (30) days after Purchaser's written notice of such breach or failure; (iv) any representation or warranty made in this Agreement by Provider is not true and complete in any material respect when given or at any time during the Term; (v) INTENTIONALLY OMITTED; and (vi) Provider consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Provider under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Purchaser.

(b) Purchaser's Remedies. If a Provider Default described in Section 11.1(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Purchaser may terminate the Agreement and shall be entitled to liquidated damages in an amount equal to the positive difference, if any, of the Fair Market Value of the Services anticipated to be provided over the remaining Term, as determined by Purchaser in a



commercially reasonable manner, and the Services Payments associated with such Services ("Termination Amount"). Upon termination of this Agreement in accordance with this Section, Purchaser shall promptly calculate the Termination Amount, if any, owed by Provider and submit an invoice to Provider for such amount. Provider shall pay such Termination Amount within ten (10) Business Days after receipt of such invoice in accordance with the payment directions specified by Purchaser ("Termination Amount Payment Date"). In the event Provider, in good faith, disputes Purchaser's calculation of the Termination Amount, the Parties shall then act in good faith to resolve any such dispute, including but not limited to utilizing a procedure substantially similar to that provided for in Section 2.4 in the event that the Parties are unable to resolve such dispute; provided however that if through such procedures the Termination Amount is determined to be equal to or greater than that calculated by Purchaser, Provider shall pay all costs associated with such procedure, or otherwise the Parties shall share such costs equally.

11.2 Purchaser Defaults and Provider's Remedies. (a) Purchaser Default. The following events shall be defaults with respect to Purchaser (each, a "Purchaser Default"): (i) A Bankruptcy Event shall have occurred with respect to Purchaser; (ii) Purchaser breaches or fails to perform any material term of the Agreement (other than events that are otherwise specifically covered in this Section 11.2 as a separate Purchaser Default) and such breach or failure is not cured within thirty (30) days after Provider's written notice of such breach or failure; (iii) Purchaser fails to pay Provider any undisputed amount due Provider under the Agreement within thirty (30) days from receipt of notice from Provider of such past due amount; (iv) any representation or warranty made in this Agreement by Purchaser is not true and complete in any material respect when given or at any time during the Term; and (v) Purchaser consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Purchaser under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Provider. (b) Provider's Remedies. If a Purchaser Default described in Sections 11.2(a) has occurred and is continuing, in addition to other remedies expressly provided herein, and subject to Section 12, Provider may terminate this Agreement and upon such termination, and Provider shall be entitled to receive from Purchaser, as liquidated damages, an amount equal to the sum of (i) Intentionally omitted. (ii) any and all other amounts previously accrued under this Agreement and then owed by Purchaser to Provider, and (iii) removal costs as provided in Section 11.3.

11.3 Removal of System. Upon any termination of the Agreement pursuant to this Section 11, Provider will remove the System pursuant to Section 2.5 hereof at the expense of the defaulting Party.

## 12. LIMITATIONS OF LIABILITY.

12.1 THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY

PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE DAMAGES. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

NOTWITHSTANDING THE FOREGOING, PROVIDER SHALL REMAIN LIABLE, WITHOUT MONETARY LIMITATION, FOR DIRECT DAMAGES FOR PERSONAL INJURY, DEATH OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY ATTRIBUTABLE TO THE NEGLIGENCE OR OTHER TORT OF THE PROVIDER, ITS OFFICERS, EMPLOYEES OR AGENTS.

### **13. ASSIGNMENT.**

- 13.1 Assignment by Provider. Provider may assign or transfer this Agreement to any other legal entity with the Purchaser's prior consent, provided that (a) Provider shall promptly notify Purchaser of any such assignment in writing, (b) such assignee shall assume all of Provider's obligations under the Agreement in writing; and (c) such assignment shall in no event compromise the tax treatment of this Agreement of the Provider. Any assignment that does not comply with the foregoing shall be invalid.

### **14. NOTICES.**

- 14.1 Notice Addresses. Unless otherwise provided in the Agreement, all notices and communications concerning the Agreement shall be in writing and addressed to the other Party (or Financing Party, as the case may be) at the addresses set forth in Schedule 6, or at such other address as may be designated in writing to the other Party from time to time.
- 14.2 Notice. Unless otherwise provided herein, any notice provided for in the Agreement shall be hand delivered, sent by registered or certified U.S. Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile and shall be deemed delivered to the addressee or its office when received at the address for notice specified above if received during normal business hours on a Business Day or otherwise such notice shall be deemed delivered on the next Business Day.



- 14.3 Address for Invoices. All invoices under the Agreement shall be sent to the address provided by Purchaser. Invoices shall be sent by regular first class mail postage prepaid.

## 15. CONFIDENTIALITY.

- 15.1 Confidentiality Obligation. If either Party provides confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the financing, design, operation and maintenance of the System or of Purchaser's business ("Confidential Information") to the other or, if in the course of its performance of this Agreement, or if in the course of negotiating this Agreement a Party learns Confidential Information regarding the facilities or plans of the other, the receiving Party shall (a) protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, and (b) refrain from using such Confidential Information, except in the negotiation and performance of the Agreement. Notwithstanding the above, a Party may with the consent of the other Party (such consent not to be unreasonably conditioned, delayed or withheld, provide such Confidential Information to its officers, directors, members, managers, employees, agents, attorneys, accountants and consultants, Affiliates, lenders, and potential assignees of the Agreement or acquirers of Provider or its Affiliates (provided and on condition that such potential assignees be bound by a written agreement restricting use and disclosure of Confidential Information) (collectively, "Representatives"), in each case whose access is reasonably necessary. Each such recipient of Confidential Information shall be informed by the Party disclosing Confidential Information of its confidential nature and shall be directed to treat such information confidentially and shall agree to abide by these provisions. In any event, each Party shall be liable (with respect to the other Party) for any breach of this provision by its Representatives. All Confidential Information shall remain the property of the disclosing Party and shall be returned to the disclosing Party or destroyed after the receiving Party's need for it has expired or upon the request of the disclosing Party.
- 15.2 Permitted Disclosures. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (a) becomes publicly available other than through the receiving Party or its Representatives; (b) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena or required filing, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (c) is independently developed by the receiving Party; or (d) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. The Parties acknowledge that this Agreement is subject to the State of Texas Freedom of Information Laws, and that only Provider's proprietary information shall be excepted from disclosure thereunder.



- 15.3 Goodwill and Publicity. Neither Party shall use the name, trade name, service mark, or trademark of the other Party in any promotional or advertising material without the prior written consent of such other Party. The Parties shall coordinate and cooperate with each other when making public announcements related to the execution and existence of the Agreement, and each Party shall have the right to promptly review, comment upon, and approve any publicity materials, press releases, or other public statements by the other Party that refer to, or that describe any aspect of, the Agreement; provided that no such publicity releases or other public statements (except for filings or other statements or releases as may be required by Applicable Law) shall be made by either Party without the prior written consent of the other Party. At no time will either Party acquire any rights whatsoever to any trademark, trade name, service mark, logo or other intellectual property right belonging to the other Party. Notwithstanding the foregoing, Purchaser agrees that Provider may, at its sole discretion, take photographs of the installation process of the System and/or the completed System, and Provider shall be permitted to use such images (regardless of media) in its marketing efforts, including but not limited to use in brochures, advertisements, websites and news outlet or press release articles. The images shall not include any identifying information without Purchaser's prior written authorization.

## 16. INDEMNITY.

- 16.1 Provider's Indemnity. Subject to Section 12, to the extent allowed by law, Provider agrees that it shall indemnify and hold harmless Purchaser, its permitted successors and assigns and their respective directors, officers, members, shareholders and employees (collectively, the "Purchaser Indemnified Parties") from and against any and all Losses incurred by the Purchaser Indemnified Parties to the extent arising from or out of the following: (a) any claim by a third party for or arising out of any injury to or death of any Person or loss or damage to property of any Person to the extent arising out of Provider's negligence or willful misconduct or (b) any claim by a third party regarding any infringement of patents or the improper use of other proprietary rights by Provider or its employees or representatives that may occur in connection with the performance of the Installation Work, System Operations, and the ownership and use of the System. Provider shall not, however, be required to reimburse or indemnify any Purchaser Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of any Purchaser Indemnified Party.
- 16.2 Purchaser's Indemnity. To the extent allowed by law, Purchaser shall hold Provider harmless from and indemnify it for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Purchaser or of its officers or employees when acting within the course and scope of their employment. In accordance with Texas Law, this Agreement shall be deemed executory only to the extent monies are appropriated and available for the purpose of the contract, and

no liability on account thereof shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract.

## **17. INSURANCE.**

- 17.1 Generally. Provider shall each maintain the following insurance coverages in full force and effect throughout the Term either through insurance policies or acceptable self-insured retentions: Commercial General Liability Insurance with limits of not less than \$1,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Provider shall carry adequate property loss insurance on the System. The amount and terms of insurance coverage will be determined at Provider's sole discretion.
- 17.2 Certificates of Insurance. Upon Purchaser's request, Provider shall furnish current certificates evidencing that the insurance required under Section 17.1 is being maintained. The insurance policy provided hereunder shall contain a provision whereby the insured agrees to give the Purchaser thirty (30) days' written notice before the insurance is cancelled or materially altered, ten (10) days' notice in case of a termination or cancellation due to non-payment of premium. Purchaser is self-insured for its general liability exposure, workers compensation and automobile liability.
- 17.3 Additional Insureds. Provider's Commercial General Liability insurance policy shall be written on an occurrence basis and shall include the Purchaser as an additional insured as its interest may appear.

## **18. MISCELLANEOUS.**

- 18.1 Intentionally Omitted.
- 18.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Purchaser and approved by the State of Texas Attorney General and Office of Comptroller.
- 18.3 Industry Standards. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.
- 18.4 Intentionally Omitted
- 18.5 Limited Effect of Waiver. The failure of Provider or Purchaser to enforce any of the provisions of the Agreement, or the waiver thereof, shall not be construed as a



general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

- 18.6 Survival. The obligations under 2.5 (Removal of System), Section 7 (General Covenant), Sections 7.2(d), (e), (f) and (g) (Purchaser Covenants), Section 8.3 (Exclusion of Warranties), Article 9 (Taxes and Governmental Fees), Article 12 (Limitation of Liability), Article 14 (Notices), Article 15 (Confidentiality), Article 16 (Indemnity), Article 17 (Insurance), Article 18 (Miscellaneous), or pursuant to other provisions of this Agreement that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement for any reason.
- 18.7 Governing Law. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of Bastrop County and the State of Texas, without regard to principles of conflicts of law other than Texas law. The Parties agree that any dispute hereunder will be litigated in a court of competent jurisdiction in Bastrop County, Texas.
- 18.8 Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Purchase and Provider, or between either or both of them and any other Party.
- 18.9 Third-Party Beneficiaries. Except as expressly provided herein to the contrary, this Agreement is intended solely for the benefit of the Parties thereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a Party thereto.
- 18.10 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- 18.11 Forward Contract; Service Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code. This agreement constitutes a "master netting agreement" and each party is a "master netting agreement participant" within the meaning of the United States Bankruptcy Code. The Parties intend this Agreement to be a "service contract" within the meaning of Section 7701(e)(3) of the Internal Revenue Code of 1986. Purchaser will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of electricity from the System.



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

PROVIDER: **Smithville Solar One, LLC**

By: \_\_\_\_\_

Name: David M. Cox

Title: Manager

Date: \_\_\_\_\_

PURCHASER: **City of Smithville**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Financing

Purchaser acknowledges that Provider will be financing the installation of the System either through a lessor, lender or with financing accommodations from one or more financial institutions and that the Provider may sell or assign the System and/or may secure the Provider's obligations by, among other collateral, a pledge or collateral assignment of this Agreement and a first security interest in the System. Any such financing shall be conducted in accordance with the terms and conditions of the Agreement. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any such financial institutions of which Provider has notified Purchaser in writing Purchaser agrees as follows:

- (a) Consent to Collateral Assignment. Purchaser consents to either the sale or conveyance to a lessor or the collateral assignment by Provider to the a lender that has provided financing of the System, of the Provider's right, title and interest in and to this Agreement, with such sale or conveyance to be conducted in accordance with Section 13.1 of the Agreement.
- (b) Notices of Default. Purchaser will deliver to the Financing Party, concurrently with delivery thereof to Provider, a copy of each notice of default given by Purchaser under the Agreement, inclusive of a reasonable description of Provider default.
- (c) Rights Upon Event of Default. Notwithstanding any contrary term of this Agreement:
  - (i) the Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under the Agreement in accordance with the terms of the Agreement as if the Financing Party were the Provider and only in the event of a Provider Default. The Financing Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to the System;
  - (ii) the Financing Party shall have the right, but not the obligation, to pay all sums due under the Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of the Agreement as if such Financing Party were Provider; and
  - (iii) upon the exercise of remedies under its security interest in the System, including any sale thereof by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party) in lieu thereof, the  
Financing Party shall give notice to Purchaser of the transferee or assignee of the Agreement, which shall be conducted in accordance with Section 13.1 of the Agreement as if the Financing Party were the Provider. Any such exercise of remedies shall not constitute a default under this Agreement.

(d) Right to Cure.

- (i) Purchaser will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice by sending notice to the Financing Party (at the address provided by Provider) of its intent to terminate or suspend this Agreement, specifying the condition giving rise to such right. As provided for in Section (c) of this Exhibit A, the Financing Party shall have the right to cure any Provider Default within the time periods specified within the Agreement as if the Financing Party were the Provider.
- (ii) If the Financing Party (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Sub-section (c)(i) of this Exhibit A above, cure all defaults under the Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under the Agreement, and the Agreement shall continue in full force and effect.



## Exhibit B





## EXHIBIT C

### AGREEMENT FOR INTERCONNECTION AND PARALLEL OPERATION: RENEWABLE PRODUCER

THIS AGREEMENT made this 29<sup>th</sup> day of DEC, 2020, by and between Smithville Solar One, LLC (hereinafter referred to as the "Producer") and the City of Smithville (hereinafter referred to as the "City") is as follows:

1. Purpose. Producer owns or intends to own, install, and/or operate a Distributed Generation ("DG") facility and desires to interconnect and operate such installation in parallel with the City's electric distribution system. This Agreement defines the relationship between the City and the Producer with regard to the Producer's DG, including terms affecting the purchase and sale of electricity as well as reasonable conditions for interconnection and parallel operation.
2. Producer's Certification. The Producer certifies that Producer is using renewable resources with an aggregate design capacity equal to or greater than 50 kilowatts DC but less than 1 MW DC.
3. Producer's Distributed Generation. The DG to which this Agreement applies is described below: 996 kW AC Distributed Generation solar energy delivered to the City on their distribution line via a dedicated solar circuit to be built by Producer on behalf of the City. The solar circuit will tie directly to Smithville's existing distribution circuit defined as SL-20, Point "E" as shown on the Schneider Engineering Drawing 20SE7301-d201. A reclosure will be installed by the producer at this location to protect the circuit from point "E" back to the Primary meter pole #13.

#### Emergency Contact:

Name: David M. Cox

Address: 1727 Ben Crenshaw Way, Austin, TX 78746

Phone: 512-296-5040

4. Terms. The City agrees to use reasonable diligence to provide simultaneous electric service. Interconnection, parallel operation, and sales and purchases of electricity shall be governed by the City's Power Purchase Agreement with Producer, including any and all amendments that may hereafter be approved or ordered. SAID TARIFF INCLUDING ALL SERVICE RULES, REGULATIONS AND RATES IS A PART OF THIS AGREEMENT TO THE SAME EXTENT AS IF FULLY SET OUT HEREIN AND IS ON FILE AND AVAILABLE AT THE CITY'S OFFICE IN SMITHVILLE, TEXAS.
5. Interconnection. Prior to interconnection, the Producer shall have (a) fulfilled all requisites for the provision of electric service contained in engineering plans; (b) provided an interconnection plan and other information; (c) complied with the conditions for any facility extension; (d) provided satisfactory liability insurance; (e) signed and delivered this Agreement; (f) completed construction; (g) complied with laws; (h) given notice of intent to energize; and (i) eliminated any conditions preventing interconnection. The Producer warrants to the City that the Producer's DG is constructed, shall be maintained in a safe and reliable condition, and shall comply with the latest applicable codes.



6. Parallel Operation. The Producer is responsible for installation, safe operation, protection, and maintenance of all equipment and wiring at and beyond the point where the Producer's conductors contact the City's conductors. The electrical power generated shall be compatible with the City's standard distribution system at the point of delivery and of such quality that the City's system is not adversely affected. The Producer shall install and pay for a visible break disconnect switch on pole 13. The City shall have access to the disconnect switch and the meter at all times. A reclosure shall be installed and paid for by the producer, made operational by the producer and located at Pole "E". Pole locations are shown on the Schneider Engineering Drawing 20SE7301-d201.

7. Upon completion of the DG Interconnection, defined as the date the DG is energized, the City shall own, operate and maintain the dedicated solar circuit which is defined as an extension from the solar site at the Point of Interconnection to the City's distribution circuit. The Producer shall own, operate and maintain all equipment and facilities behind the meter at the Point of Interconnection. The Point of Interconnection is defined as Pole 13, where the Primary Meter is located. The City will own pole 13, the primary meter and primary metering equipment. Equipment on the producer side of the Primary meter, including pole 14 where a 3-phase gang operated disconnect switch is to be located, pole 15, and the step-up transformer will be owned by the solar producer.

8. Purchases of Electricity from Producer.

The City will pay on a monthly basis for the energy supplied by Producer to the City as specified in the PPA. The rate chosen and paid by the City to the Producer shall be an agreed upon purchase rate between the City and the Producer that will be updated annually. The City agrees to pay for the metered kWh output supplied to the solar circuit and distribution grid at the solar site (Point of Interconnection). The Producer shall install and maintain a utility grade kilowatt-hour (kWh) meter for the measurement of electrical energy produced by the System. The producer shall pay for the installation and maintenance of advanced metering system and the meter(s) shall be capable of measuring output in 15-minute intervals. The meter shall be installed and maintained to be read remotely via an MV-90 meter reading format/system. Purchaser (and/or its designee) shall have direct access to the meter data. At its own discretion, the City of Smithville and LCRA may have a separate meter or meters, and Provider will facilitate the installation and operation if requested. Provider to be responsible for any filings with ERCOT should current requirements change or production exceeds 1 MW.

9. Term. The acceptance of this instrument by the City shall constitute an agreement between the Producer and the City which shall continue in force from the date service is made available by the Producer and shall continue until terminated by either party.

10. Breach. The failure or refusal to perform any obligation contained in this Agreement by either Party shall constitute a breach of this Agreement. The Parties shall have such remedies for breach as may be provided for by law or in equity. Notwithstanding any other provision of this Agreement, the Producer and/or the City may discontinue service if either Party has breached any portion of this Agreement by failure to make timely payment or otherwise.

11. Entire Agreement. This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements between the Producer and the City for the service herein described. The City, its agents and employees have made no representations, promises, or made any inducements, written or verbal, which are not contained herein. The Producer agrees that it is not relying on any statements not herein contained.

12. Assignment. This Agreement shall not be assigned by the Producer except in accordance with the articles, bylaws, and rules and regulations of the City or as specified in the PPA.

13. Applicable Law. This Agreement is deemed executed in the State of Texas and will be construed under the laws of the State of Texas, without regard to its conflict of laws principles. Any legal action for enforcement of or related to this Agreement will be commenced and heard in a District Court of Bastrop County, Texas, and Producer and the City consent and submit to the jurisdiction and venue of that Court.

City of Smithville

Smithville Solar One, LLC

By:



By:





## Schedule 1: Description of Premises and System

**System Premises:** Vacant land in or near Smithville, in Bastrop, County, Texas described as 24.4 Acres located at 665 NW Loop 230. The site plan is provided in Proposal, Schedule 2. System will connect to Bluebonnet Electric Cooperative's distribution utility line adjacent to or on property.

### Anticipated Rebate or Subsidy:

- Incentive Amount = 30% U.S. Investment Tax Credit
- Property Tax Exemptions. Any exemptions are the responsibility of the Provider and are strictly subject to Provider's efforts. Purchaser cannot grant tax exemptions on behalf of other taxing entities.

**System Size:** 996 KW AC; 1.432 MW DC

### Equipment:

- Racking: Sun Action Trackers, single axis tracking
- Modules: ET Solar 340W or other
- Inverter: Solectria Solar, XG 1500-166, Yaskawa or other
- Monitoring: TBD
- Metering: TBD
- Transformer: TBD

### Scope:

#### Provider Responsibilities

- a) **Design Preparation:** Design, Engineer, Install and Inspect the proposed System mounting site to assure long-term safety and stability.
- b) **Rebate:** Prepare all rebate documentation and communicate with all relevant agencies, if applicable.
- c) **Design:** Produce and provide CAD single-line electrical and layout drawings of the System. Drawings will consist of a complete site plan showing the location of the array, inverters, and routing of conduits, an elevation showing panel visibility from the street, and any details necessary for the plan check and permitting.
- d) **Pre-installation Conference:** Before System installation, conduct a pre-installation conference at the project site to review procedures, schedules, safety, and coordination of the installation. Several conferences may be needed if the complexities and construction schedules so require.

- e) **Procurement, Installation:** Furnish all necessary mounting hardware, photovoltaic modules, electrical equipment, and labor for installation of the System up to the utility grid interconnection point[s] as indicated in this Agreement.
- f) **Permits:** Obtain all permits required to perform the Work.
- g) **Inspections:** Serve as the owner's representative for applicable System inspections.
- h) **Site Safety:** Jobsite safety meetings once per week during Installation Work, or upon addition of new personnel to the jobsite.
- i) **Site Access:** During construction, Provider will be responsible for the security of the system, equipment, tools and other materials related to the Provider's Work.
- j) **Acceptance Testing and System Commissioning**

**Provider shall:**

- i. Execute an Interconnection Agreement approved by and implemented with the utility grid operator (City of Smithville).
  - ii. Conduct an inspection, test and commissioning procedure to ensure that the System is installed in a professional manner and consistent with prudent industry practices. A record of the installation and the major components including modules, inverters, transformers, and source circuit combiners will be documented in a test and commissioning report.
  - iii. Test and verify that all non-current-carrying metal parts are solidly grounded and all equipment and System grounding is installed and functional per NEC 2008.
  - iv. Test and verify that phase sequencing, fuse continuity, and open circuit voltage are within the manufacturers recommended range at the DC disconnect. Test and verify that the inverter is operating effectively within the typical start up time and record the DC operating voltage, phase currents, and inverter power.
  - v. Provide a complete operation and maintenance manual for the System (two printed copies and one electronic copy). The manual will include: (i) as-built drawings, (ii) as-built shop drawings, (iii) a copy of any required submittals or filing, (iv) product cut sheets, (v) product operation manuals, (vi) a copy of the photo record, (vii) written Utility approval, (viii) product warranties; and (ix) supplier and installer contact information.
- k) **Solar Monitoring System:** The System will include a solar monitoring service. The monitoring service will continuously monitor the key performance variables of the System and transmit this data to Provider and Purchaser servers through the Internet and will be accessible through a single data access including system-level and aggregated system data. Purchaser shall have access to all data and all third-party monitoring will be at the Provider's cost.

## 2. Purchaser Responsibilities

**Interconnection:** Purchaser to provide an Interconnection Agreement for the delivery of energy services with the Provider.

**System Management:** Provide a single point of contact for the project. Report any safety issues, security issues or any noticeable problems with regard to the System's overall performance.

## 3. Clarifications

- a) **Work Hours:** Provider's standard work hours are Monday through Friday 7am to 5:30pm unless approved by Provider's System Manager.
- b) **Included in pricing:** Performance Guarantee as provided by Provider's financing entity and to be determined. Installation of solar energy system (includes: design, engineering, permitting, installation, monitoring, rebate application and paperwork processing for solar energy system). Payment of prevailing wage labor. All system repairs and ongoing maintenance.



## Schedule 2 -- kWh Rate

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

Year	Escalator	kWhr Price
1	0	\$0.056
2	2%	\$0.057
3	2%	\$0.058
4	2%	\$0.059
5	2%	\$0.061
6	2%	\$0.062
7	2%	\$0.063
8	2%	\$0.064
9	2%	\$0.066
10	2%	\$0.067
11	0%	\$0.067
12	0%	\$0.067
13	0%	\$0.067
14	0%	\$0.067
15	0%	\$0. 067
16	0%	\$0. 067
17	0%	\$0.067
18	0%	\$0.067
19	0%	\$0.067
20	0%	\$0.067
21	0%	\$0.067
22	0%	\$0.067
23	0%	\$0.067
24	0%	\$0.067
25	0%	\$0.067

### Schedule 3 –Intentionally Omitted

### Schedule 4 – Estimated Annual Production

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

<b>Year</b>	<b>Estimated Annual Production in kWhr</b>
1	2,590,000
2	2,577,050
3	2,564,165
4	2,551,344
5	2,538,587
6	2,525,894
7	2,513,265
8	2,500,698
9	2,488,195
10	2,475,754
11	2,463,375
12	2,451,058
13	2,438,803
14	2,426,609
15	2,414,476
16	2,402,404
17	2,390,392
18	2,378,440
19	2,366,547
20	2,354,715
21	2,342,941
22	2,331,226
23	2,319,570
24	2,307,972
25	2,296,433

The values set forth in this table are estimates (and not guarantees), of approximately how many kWhs are expected to be generated annually by the System.

## Schedule 5 – Identification of Provider’s Financing Party

Provider shall provide Purchaser with notice information for any Financing Party within a reasonable time after such Financing Party assumes any interest in the System.



## Schedule 6 – Notice Information

### **Purchaser:**

COMPANY: City of Smithville

ADDRESS: 317 Main Street

CITY STATE ZIP CODE: Smithville, TX 78957

PHONE: 512-237-3282

FAX

EMAIL: citymanager@ci.smithville.tx.us

*With a copy to:*

### **Provider:**

COMPANY: Smithville Solar One, LLC

ADDRESS : 1727 Ben Crenshaw Way

CITY STATE ZIP CODE : Austin, TX 78746

PHONE : 512-296-5040

FAX :

EMAIL : davidcox@gobigsolar.com

*With a copy to:*

### **Financing Party:**

[To be provided by Provider if applicable and when known]

COMPANY

ADDRESS

CITY STATE ZIP CODE

PHONE

FAX

EMAIL