BILL NO. S-22-06-10

SPECIAL ORDINANCE NO. S-_____

AN ORDINANCE approving CONSTRUCTION CONTRACT – FORT WAYNE CITY UTILITIES TREATMENT FACILITIES MICROGRID ENERGY PROJECT - WORK ORDER #76846 - $23,719,598.00 - between GM DEVELOPMENT COMPANIES LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the CONSTRUCTION CONTRACT - FORT WAYNE CITY UTILITIES TREATMENT FACILITIES MICROGRID ENERGY PROJECT - WORK ORDER #76846 - between GM DEVELOPMENT COMPANIES LLC and the City of Fort Wayne, Indiana, in connection with the Board of Public Works, is hereby ratified, and affirmed and approved in all respects, respectfully for:

> All labor, insurance, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for: FINAL DESIGN AND CONSTRUCTION OF EMERGENCY POWER GENERATING FACILITIES AND SUSTAINABLE ENERGY GENERATION FACILITIES INCLUDING NATURAL GAS GENERATORS, FLOATING SOLAR PHOTOVOLTAICS, BATTERY STORAGE, AND ANCILLARY EQUIPMENT;

involving a total cost of TWENTY THREE MILLION SEVEN HUNDRED NINETEEN THOUSAND FIVE HUNDRED NINETY-EIGHT AND 00/100 DOLLARS – ($23,719,598.00). A copy of said Contract is on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 2. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

____

Council Member

APPROVED AS TO FORM AND LEGALITY

____

Malak Heiny, City Attorney

CU 6-7-22

OWNER-CONTRACTOR AGREEMENT
Fort Wayne City Utilities Treatment Facilities Microgrid Energy Project

This Build-Operate-Transfer Agreement (Ft. Wayne) (the "Agreement") is executed and effective this 7 day of June, 2022 ("Effective Date"), by FWCU Solar Project 2021 LLC (the "Developer") and Ft. Wayne City Utilities, acting by and through the Fort Wayne Board of Public Works ("FWCU"), on the terms and conditions set forth herein.

RECITALS

WHEREAS, on or about the 14th day of January, 2021, FWCU issued a Request for Proposals ("RFP") under Ind. Code § 5-23 pursuant to which FWCU sought offers to develop, design, build, finance, maintain, manage, operate and transfer the Project (as defined herein);

WHEREAS, after receipt of best and final proposals from offerors in response to the RFP, FWCU made a recommendation to the Fort Wayne Board of Public Works ("Board") to award the Project to the Developer;

WHEREAS, pursuant to Ind. Code §§ 5-23-5-9 and 5-3-1, the Board provided public notice and held a hearing on the recommendation to award the Project to the Developer on May 17, 2022;

WHEREAS, following the public hearing, the Board awarded the Project to the Developer;

WHEREAS, FWCU and the Developer now desire to enter into this Agreement to finalize the terms pursuant to which the Developer will complete the Project.

AGREEMENT

NOW THEREFORE, for and in consideration of the mutual promises and undertakings set forth herein, the parties hereby agree as follows:

1. Defined Terms.

30% Design Documents shall mean the initial design documents for the Project, which include, without limitation, the initial Construction Drawings, initial Plan Schedule, and initial cost summary for the Project.

Agency shall mean any applicable: (a) governmental agency, board, commission, or department; or (b) other judicial, administrative, or regulatory body.

Books and Records shall mean all of the books and records pertaining to the acquisition of materials to construct, and the construction of, the Project in accordance with this Agreement.

Certified Cost Statement shall mean an invoice with an attached schedule of values executed by Developer affirming the Project Costs actually incurred (inclusive of fees and overhead) to complete the Project through the date of the Certified Cost Statement.

Change Order shall mean a change order executed by Developer and FWCU finalizing the inclusion into the Final Plans of a change proposed in a Change Order Request, which change has been approved.

Change Order Request shall mean a written request for a change to the Final Plans.

Claims shall mean claims, judgments, damages, liabilities, injuries, losses, costs, and expenses (including, without limitation, attorneys' fees).

Closing shall mean the date following completion of the Plan Refinement Process on which all conditions to Closing set forth in Section 7 of this Agreement have been satisfied and/or waived.

Closing Date shall mean the date of the Closing.

Code shall mean the Internal Revenue Code of 1986, as amended, and the Regulations.

Completion Addendum shall mean an addendum in the form attached hereto as Exhibit I, which addendum shall be executed on a date mutually agreed upon by both Developer and FWCU after Final Completion.

Construction Drawings shall mean drawings that graphically show the scope, extent, and character of the work to be performed by Developer in connection with the Project.

Construction Permits shall mean all permits, licenses, approvals, and consents required by any Laws for construction of the Project, including, without limitation, improvement location permit(s), building permit(s) right-of-way permit(s), floodway permits, and temporary fence and/or sign permits.

Construction Schedule shall mean a reasonably detailed schedule for construction of the Project.

Construction Trade shall mean any trade or other discrete aspect of construction of the Project.

Conveyance Closing shall mean the closing with respect to the conveyance of the completed Project to FWCU.

Conveyance Closing Date shall mean the date of the Conveyance Closing, which, in no event, shall be earlier than Final Completion.

Cure Period shall mean a period of 30 days after a party failing to perform or observe any term or condition of this Agreement to be performed or observed by it receives notice specifying the nature of the failure; provided that, if the failure is of such a nature that it cannot be remedied within 30 days, despite the exercise of reasonably diligent efforts, then the 30-day period shall be extended as reasonably may be necessary for the defaulting party to remedy the failure, so long as the defaulting party: (a) commences to remedy the failure within the 30-day period; and (b) diligently pursues such remedy to completion.

Design Costs shall mean all fees, costs, and expenses incurred by Developer in connection with design and planning services in connection with the Project.

Developer Transfer shall mean, prior to delivering possession of the completed Project to FWCU: (a) any sale, transfer, conveyance, assignment, pledge, or other disposition of, or any encumbrance upon, the Project or the materials to construct the Project, or any interest in the foregoing; or (b) any granting of a security interest in the Project or the materials to construct the Project. Notwithstanding the foregoing, encumbrances required by this Agreement shall not constitute a Developer Transfer.

Documentation Costs shall mean all fees, costs, and expenses incurred by Developer in connection with drafting and negotiating this Agreement and any other documents contemplated by this Agreement to be executed in connection with the Project.

Easement Agreement shall mean an agreement pursuant to which FWCU grants to Developer a temporary easement to construct the Project on the Project Site in accordance with the terms and conditions of this Agreement in the form attached hereto as Exhibit J.

Engineer shall mean Wessler Engineering, Inc.

Event of Default shall have the meaning set forth in Section 19 below.

Final Completion shall mean completion of the Project following correction or deemed acceptance of any Material Defects identified during the Final Inspection.

Final Documents and Drawings shall mean final exhibits to this Agreement, final Construction Drawings, and the final Construction Schedule, as each is finalized and approved or reviewed by FWCU pursuant to Section 5.

Final Inspection shall mean an inspection of the Project by FWCU after all punch-list items identified during the Substantial Completion Inspection and all remaining obligations under this Agreement have been completed.

Final Plans shall mean the aggregated Final Documents and Drawings.

Force Majeure shall mean acts of God including, floods, storms, earthquakes, explosions, and fires, labor disputes, strikes, insurrections, riots, wars, acts of terrorism, federal, state or local laws, orders, rules, or regulations, epidemics, pandemics, utility or energy shortages, and other events that (a) are beyond the reasonable control of the parties to this Agreement, (b) are unforeseeable, and (c) cannot, with the exercise of due diligence, be overcome.

Guaranteed Maximum Price shall mean the total maximum contract price, inclusive of all Project Costs, in the amount of Twenty-Three Million, Seven Hundred and Nineteen Thousand, Five Hundred and Ninety-Eight Dollars ($23,719,598.00), subject to any approved Change Orders.

Inspection shall mean a Permitted Inspection or the Final Inspection, as applicable.

Insurance Proceeds shall mean, in the case of damage to, or total or partial destruction of, the Project by fire or other casualty, the proceeds of the insurance carried by Developer.

Latent Defect shall mean those material defects in the construction of the Project that: (a) are not discovered; and (b) reasonably are not discoverable; by FWCU during a Permitted Inspection or the Final Inspection.

Laws shall mean all applicable: (a) laws, statutes, and/or ordinances; (b) governmental rules, regulations, and/or guidelines; and (c) judicial orders, consents, and/or decrees.

Material Defect shall mean any item or component of the Project that: (a) contains a material defect in workmanship or materials; (b) deviates materially from the Final Plans; or (c) has not been constructed materially in accordance with the terms and conditions of this Agreement.

Non-Compliance Notice shall mean a written notice from FWCU that identifies Material Defects with respect to the Project discovered by FWCU during a Permitted Inspection, the Substantial Completion Inspection, or the Final Inspection.

Operating Agreement shall mean an agreement between FWCU and Operator under which the Operator provides operating services during the Operating Period, as described in the Operating Agreement attached as Exhibit K to this Agreement and executed on or before the Closing.

Operating Period shall mean the period defined in Exhibit K to this Agreement.

Operator shall mean MacAllister Machinery CO INC.

Payment Due Date shall mean the date that is 30 days after FWCU receives an approved Certified Cost Statement from Developer, which shall be paid monthly.

Permitted Inspection shall mean an inspection by FWCU of any item or component of the Project when reasonably deemed to be necessary or appropriate by FWCU, provided that Developer shall provide safe access to the Project Site and FWCU shall follow the procedures and rules of the safety program.

Plan Refinement Process shall mean the process set forth in Section 5 for completion of the Final Plans and the Project Budget.

Plan Schedule shall mean the schedule in accordance with which Developer shall prepare and provide to FWCU the Construction Schedule, which schedule is attached hereto as Exhibit G.

Project shall mean the construction of a solar and engine generator project as described in Exhibit A, subject to modifications during (a) the Plan Refinement Process (as defined herein) and (b) approved Change Order Requests that provide for additional scope to the Final Plans.

Project Budget shall mean the budget for the Project Costs.

Project Costs shall mean the fees, costs, and expenses to be incurred in connection with the Project, including: (a) the Documentation Costs; (b) the Design Costs; (c) the costs incurred in connection with determining that all of the conditions set forth in Section 6 have been satisfied and/or will be waived by Developer and/or FWCU; (d) the cost to develop, design, and construct the Project in accordance with the terms and conditions of this Agreement; (e) a reasonable and customary amount for contingencies; and (f) the development and construction fees and overhead.

Project Site shall mean those portions of the Fort Wayne Water Pollution Control Plant, the Wet Weather Pumping Station, and the Three Rivers Filtration Plant where the Project will be constructed, inclusive of laydown areas for equipment, materials, and other temporary facilities and permitted working areas, all of which will be definitively established in the Final Plans and incorporated into the Easement Agreement attached hereto as Exhibit J.

Purchase Price shall mean the total of all Project Costs, subject to the Guaranteed Maximum Price. If the total of all Project Costs is less than the Guaranteed Maximum Price, FWCU shall pay only the actual Project Costs and not the Guaranteed Maximum Price.

Regulations shall mean the United States Treasury Regulations in effect with respect to the Internal Revenue Code of 1986, as amended.

Regulatory Permits shall mean all permits, licenses, approvals, and consents required by the Laws for operation of the Project following completion of construction, including without limitation, air permit(s) and other environmental permits.

Sales Tax Exemption Form shall mean Indiana Department of Revenue Form ST-105 (General Sales Tax Exemption Certificate), pursuant to which FWCU shall represent that the acquisition of the materials to construct the Project is exempt from Indiana sales and use tax.

Substantial Completion shall mean the sufficient completion of the Project (or a specified part thereof) that allows for the Project to be utilized for its intended use, all in accordance with the Final Plans and to be affirmed by an executed certificate of substantial completion to be delivered by Developer and approved by FWCU on the Substantial Completion Date.

Substantial Completion Date shall mean the date on which Developer delivers to FWCU a copy of a certificate of substantial completion indicating that the Project has been completed substantially in accordance with the Final Plans, subject to punch-list items to be completed prior to the Final Inspection, which punch-list items do not materially affect the use of the Project for its intended use. The date shall follow Operator's successful completion of the 60-day commissioning reliability test defined in Exhibit M to this Agreement.

Substantial Completion Inspection shall mean an inspection performed on or after the final date of the commissioning and reliability test described in Section 12 to determine if the Project can be utilized for its intended use.

Term shall mean the period commencing on the Effective Date and expiring on the Conveyance Closing Date.

Utility Services shall mean gas, electricity, telephone, water, storm and sanitary sewer, and other utility services.

Warranty Agreements shall mean (1) a one-year general construction warranty provided by Operator and (2) the agreements between (a) FWCU and Operator; and/or (b) FWCU and any other contractor, under which the Operator and/or contractors provides warranty services during the Warranty Periods, as described in the Warranty Agreements attached as Exhibit L to this Agreement.

Warranty Periods shall mean (1) a one-year general construction warranty period beginning on the Substantial Completion Date and (2) the periods defined in the Warranty Agreements.

2. General Obligations.

(a) Project. Subject to the terms and conditions of this Agreement: (i) FWCU has acquired fee simple title to the Project Site; (ii) Developer shall construct the Project on the Project Site in accordance with the signed and sealed Final Plans completed by the designer of record and approved by FWCU; (iii) FWCU shall pay monthly installments to Developer per the Certified Cost Statements presented by Developer to FWCU; (iv) the sum total of the aggregated monthly payments by FWCU shall equal the Purchase Price to Developer, the last payment of which shall be paid by FWCU to Developer on or before the final Payment Due Date; (v) the final payment shall be in an amount of at least 5% of the total Purchase Price and shall not be presented by Developer to FWCU for payment until after Final Completion , and (vi) upon final payment of the Purchase Price, Developer shall transfer ownership of the Project to FWCU and FWCU shall accept such transfer.

(b) Utility Availability. FWCU, at its cost and expense, shall ensure that there are Utility Services in adjoining public rights-of-way or properly granted and recorded utility easements that serve the Project Site at adequate pressures, and in sufficient quantities and volumes, for the construction and use of the Project in accordance with the terms and conditions of this Agreement, including, without limitation, that FWCU, at its cost and expense, shall make any improvements outside the Project Site that are necessary for FWCU to satisfy the foregoing obligation with respect to Utility Services.

3. Project Ownership & Operation.

(a) Ownership. Consistent with Indiana Code § 5-23-3-2, ownership of the Project shall be vested in Developer during the Term of this Agreement.

(b) Operating Period. Operator shall operate the Project during the Operating Period; provided that FWCU shall be responsible for payment of costs incurred in connection with such operation as described in Exhibit K.

(c) Possession. On the Conveyance Closing Date, Developer shall deliver possession of the Project and transfer its title to the Project to FWCU.

4. Purchase Price.

(a) Calculation of Purchase Price. The Purchase Price for the Project is the total of all Project Costs, subject to the Guaranteed Maximum Price determined from the 30% Design Documents, as more specifically described in Exhibit C attached hereto. Compensation for services provided by Developer is comprised of the following components:

(i) Hours actually spent and expenses actually incurred ("Time and Materials") with a not-to-exceed fee; and

(ii) Work performed on a lump sum basis.

(b) Payments to Developer.

(i) For work performed on a Time and Materials basis, compensation for services performed will be based on hours actually spent and expenses actually incurred with a not-to-exceed cap. Time will be reimbursed based on the hours incurred in completion of the Project multiplied by the hourly rates of the various personnel performing the work, as outlined on Exhibit D. All reimbursable costs incurred for the Project will be invoiced at cost.

(ii) Lump sum work items listed in Exhibit C will be paid to Developer in full regardless of the actual cost of the work.

(c) Progress Payments.

(i) For work performed on a Time and Materials basis, Certified Cost Statements shall be submitted to FWCU on a monthly basis and shall include the actual hours and reimbursable expenses incurred during the applicable payment period.

(ii) Payment for any lump sum work will be made as follows:

a. A portion of the lump sum work reflecting Developer's Documentation Costs and Design Costs, as described in Exhibit C will be due in full on the Effective Date.

b. All remaining lump sum work will be paid based on the estimated percentage of completion of each item of work listed in Exhibit C, and not based on the Plan Schedule.

(d) Allowance and Contingency. The Guaranteed Maximum Price includes an allowance and contingency as described in Exhibit C. Developer will not be entitled to any payments for profit, overhead, or other expenses in excess of the allowance. The contingency is intended to account for possible fluctuations in the cost of equipment and other variable items. The contingency represents costs that, if incurred, are properly reimbursable to Developer but not subject to an adjustment to the Purchase Price. FWCU shall control the contingency until the date of Closing as defined herein, and payments out of the contingency will only be made by or at the express direction of FWCU.

5. Plan Refinement Process. Beginning on the Effective Date of this Agreement and continuing until Closing, the parties will undertake the Plan Refinement Process in accordance with the following terms:

(a) Construction Drawings. In accordance with the Plan Schedule, Developer shall submit to FWCU for its review the Construction Drawings with respect to each Construction Trade. Upon approval by FWCU and Developer, such Construction Drawings shall be final construction drawings with respect to the applicable Construction Trade, subject to modifications by Change Orders.

(b) Re-submissions. If, at any stage of the Plan Refinement Process, FWCU or Developer rejects any drawings, documents, or schedules, then, within ten (10) days after receiving notice of such rejection, the Engineer shall revise, and submit to FWCU and Developer, the applicable drawings, documents, or schedules. Within ten (10) days after receiving the resubmitted drawings, documents, or schedules, FWCU and Developer shall execute written notice of approval or rejection; provided that, in the case of a rejection, such notice shall: (i) specify the part or parts being rejected; and (ii) include the specific basis for such rejection. Upon approval of the resubmitted drawings, documents, or schedules, the resubmitted drawings, documents, or schedules shall become part of the Final Plans, subject to modifications by Change Orders.

(c) Final Plans. Upon completion of the Final Documents and Drawings through the Plan Refinement Process, the aggregated Final Documents and Drawings shall constitute the complete Final Plans, subject to modification by Change Orders. All references herein to the Final Plans shall be deemed to be references to the Final Documents and Drawings, until such time as all of the Final Documents and Drawings are completed; provided that, when all of the Final Documents and Drawings are completed, all references herein to the Final Plans shall be deemed to be references to the Final Plans, as modified by Change Orders.

(d) Budget/Costs. At the appropriate points during the Plan Refinement Process, as determined by Developer and FWCU, Developer shall: (i) deliver the Project Budget to FWCU for its review and approval; and (ii) make such adjustments to the Project Budget as are determined by Developer and FWCU to be necessary or appropriate in connection with the finalization of the drawings, documents, and schedules pursuant to the Plan Refinement Process; provided that Developer shall not be obligated to incur Project Costs for discretionary changes requested by FWCU in excess of an amount equal to the Guaranteed Maximum Price. Accordingly, if FWCU requests changes to the Project during the Plan Refinement Process that will cause the Project Costs to exceed the Guaranteed Maximum Price, then FWCU shall (A) issue a Change Order adjusting the Guaranteed Maximum Price by the amount of the increase in Project Costs as a result of the changes requested by FWCU and (B) agree in writing to pay the additional Project Costs as such amounts are incurred.

(e) Sales Tax.

(i) FWCU shall deliver the Sales Tax Exemption Form to Developer at the notice address set forth in the Construction Contract and Developer shall deliver the Sales Tax Exemption Form to the Operator and contractors.

(ii) Developer, Operator, and contractors shall utilize the Sales Tax Exemption Form only for Project Costs.

(iii) Upon any assessment, or threatened assessment, of Indiana sales and/or use tax in connection with the purchase of any materials to construct, install, and/or complete the Project, Developer, Operator, or contractors promptly shall notify FWCU in writing. From and after receipt of the foregoing notice, FWCU shall provide such cooperation, information, and assistance as Developer, Operator, and/or the contractors reasonably shall request.

(iv) FWCU shall indemnify and hold harmless Developer, the Operator, and the members, directors, officers, and employees of Developer and the Operator, from and against any and all Claims arising from, or connected with: (A) the charging of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; and/or (B) any interest and penalties assessed by the Indiana Department of Revenue with respect to the non-payment or late payment of Indiana sales and/or use tax in connection with the purchase of all or any portion of the materials to construct, install, and/or complete the Project; including, without limitation, reasonable attorneys' fees and court costs. The obligations of FWCU under this clause shall survive the termination of this Agreement.

6. Closing. Subject to the terms and conditions of this Agreement, the parties intend for the Closing to occur on or before September 1, 2022. The Closing Date shall be established mutually by Developer and FWCU, and the Closing shall take place in such format as Developer and FWCU mutually agree.

7. Conditions to Closing.

(a) Mutual. Except to the extent waived by proceeding to the Closing, the obligation of each of Developer and FWCU to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has obtained, or Developer and FWCU are satisfied that Developer will be able to obtain, the Construction Permits, and FWCU has obtained, or Developer and FWCU are satisfied that FWCU will be able to obtain, the Regulatory Permits.

(ii) The Final Plans and the Project Budget will be completed pursuant to the Plan Refinement Process. Pursuant to the 30% Design Documents completed prior to the Effective Date, Developer and FWCU are satisfied that the Project Budget will not exceed the Guaranteed Maximum Price. If (1) the Project Budget exceeds the Guaranteed Maximum Price upon completion of the Plan Refinement Process due to discretionary changes by FWCU, and (2) FWCU has agreed, in an approved Change Order, that the Project Budget exceeds the Guaranteed Maximum Price, then FWCU will pay all Project Costs in excess of the Guaranteed Maximum Price as such amounts are identified and approved.

(iii) Developer and FWCU have agreed to the form and substance of the Easement Agreement to be executed at Closing.

(iv) FWCU and Operator have executed the Operating Agreement in substantially the form attached hereto as Exhibit K.

(b) Developer. In addition to the conditions set forth in Subsection 7(a), the obligation of Developer to proceed to the Closing is subject to the satisfaction, as of the Closing Date, of the conditions set forth in this Subsection.

(i) Developer has determined that no test, inspection, examination, study, investigation, or title search of or with respect to the Project Site establishes that there are conditions that would interfere with, or prohibit, the construction of the Project in accordance with the terms and conditions of this Agreement.

(ii) There is no continuing breach by FWCU of this Agreement, and all of the representations and warranties of FWCU set forth in Section 8 are true and accurate in all respects.

(c) FWCU. In addition to the conditions set forth in Subsection 7(a), the obligation of FWCU to proceed to the Closing is subject to the condition that: (i) there is no continuing breach by Developer of this Agreement; and (ii) all of the representations and warranties of Developer set forth in Section 8 are true and accurate in all respects.

(d) Condition Failure. If one or more of the conditions set forth in this Section is not, or cannot be, timely and completely satisfied, then, as its sole and exclusive remedy, the applicable party either may elect to: (a) waive satisfaction of the conditions and proceed to Closing; or (b) terminate this Agreement by a written notice to the other party; provided that, with respect to breaches of this Agreement by a party, the other party shall have the rights and remedies set forth in Section 20. Notwithstanding anything to the contrary set forth herein, Developer and FWCU shall work diligently and in good faith to satisfy the conditions set forth in this Section.

8. Representations; Warranties.

(a) Mutual. Each of Developer and FWCU represents and warrants to the other that:

(i) it shall not enter into any contracts or undertakings that would limit, conflict with, or constitute a breach of this Agreement;

(ii) it has the power to enter into this Agreement and to perform its obligations hereunder;

(iii) it has received all authorizations necessary to authorize the execution and delivery of, and its performance under, this Agreement, including that it properly has authorized the execution of this Agreement by the person whose signature appears in its signature block;

(iv) neither the execution and delivery of this Agreement by it, nor the performance by it of its obligations hereunder: (A) violates any Law or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (B) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (C) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets; and

(v) this Agreement, once executed, is its legal, valid, and binding obligation.

(b) Entity Type. In addition to the representations and warranties made by it in Subsection 8(a): (i) Developer represents and warrants to FWCU that it is a limited liability company organized and existing under the laws of the State of Indiana; and (ii) FWCU represents and warrants to Developer that it is a public body organized and existing under the laws of the State of Indiana.

(c) Environmental. FWCU represents and warrants to Developer that, to the best of its knowledge, there is not now, and there has not been, any contamination or pollution of the Project Site or any groundwater thereunder by any hazardous waste, material, or substance in violation of any Laws, except as may be disclosed in any property information provided by FWCU to Developer.

9. Change Orders.

(a) Developer Changes. If Developer desires to make any changes to the Final Plans after Closing, then Developer shall submit a Change Order Request to FWCU for review and approval, together with an estimate of any increases or decreases to the approved Project Budget that would result from the change proposed in the Change Order Request. Within ten (10) days after FWCU receives the Change Order Request, FWCU shall deliver to Developer written notice that it approves or rejects the Change Order Request; provided that: (i) FWCU shall not withhold its approval unreasonably; (ii) it shall not be unreasonable for FWCU to reject a Change Order Request if the change proposed in the Change Order Request would result in an increase in the Guaranteed Maximum Price; and (iii) if FWCU approves a Change Order Request for a change that would result in an increase in the Purchase Price, then the amount of such increase shall be paid by FWCU as such costs are incurred. If FWCU rejects all or any part of the Change Order Request, then such notice shall: (i) specify the part or parts that FWCU is rejecting; and (ii) include the specific basis for such rejection.

If FWCU approves a Change Order Request, then Developer and FWCU shall execute a Change Order.

(b) FWCU Changes.

(i) If FWCU desires to make any changes to the Final Plans, then FWCU shall submit a Change Order Request to Developer for review and approval. Within five (5) business days after Developer receives the Change Order Request, Developer shall deliver to FWCU written notice stating whether the change proposed in the Change Order Request would result in an increase in the Purchase Price; provided that, if the proposed change would result in an increase, then such notice also shall include an estimate of the amount of the increase.

(ii) If the foregoing notice states that the change proposed in the Change Order Request would not result in an increase in the Purchase Price, then, within five (5) business days after delivery of such notice, Developer shall deliver to FWCU written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iii) If the foregoing notice states that the change proposed in the Change Order Request would result in an increase in the Purchase Price, then: (A) such notice also shall include an estimate of the amount of the increase; (B) within five (5) business days after receipt of such notice, FWCU shall provide written notice to Developer as to whether FWCU would like to withdraw the Change Order Request. If FWCU does not elect to withdraw the Change Order Request, then, within five (5) additional business days, Developer shall deliver to FWCU written notice that it approves or rejects the Change Order Request; provided that Developer shall not withhold its approval unreasonably.

(iv) If Developer approves a Change Order Request, then Developer and FWCU shall execute a Change Order. If the approved Change Order Request is for a change that will result in an increase in the Purchase Price, then, notwithstanding anything to the contrary set forth herein, the increase in the Purchase Price shall be paid by FWCU as such costs are incurred; provided that, in no event shall Developer have any obligations with respect to the payment of the amount of such increase.

(v) If Developer rejects all or any part of the Change Order Request, then such notice shall: (A) specify the part or parts that Developer is rejecting; and (B) include the specific basis for such rejection.

10. Construction.

(a) Construction Permits. Prior to commencing construction of the Project, Developer, at its cost and expense, shall obtain and submit to FWCU for its review the Construction Permits.

(b) Construction. Developer shall construct the Project: (i) in a good and workmanlike manner; (ii) in accordance with the Final Plans (as modified by any Change Orders) and the terms and conditions of this Agreement; (iii) in a manner that meets or exceeds all FWCU and industry standards including the City of Fort Wayne Design Standards and Master Specifications attached hereto as Exhibit F; and (iv) in compliance with the Laws and the Construction Permits.

(c) Bonds. In accordance with Ind. Code § 5-23-3-2, Developer shall provide to FWCU payment and performance bonds in the following amounts:

(i) For the payment bond, an amount not less than one hundred percent (100%) of the cost to design and construct the Project; and

(ii) For the performance bond, an amount not less than fifty percent (50%) of the cost to design and construct the Project.

(d) Records. Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. FWCU and its attorneys, accountants, representatives, architects, Engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records.

(e) Inspections.

(i) Permitted Inspections. During construction of the Project, FWCU shall have continuous access to perform a Permitted Inspection. If applicable after a Permitted Inspection, FWCU shall deliver a Non-Compliance Notice to Developer.

(ii) Non-Compliance. If FWCU delivers to Developer a Non-Compliance Notice following an Inspection in accordance with this Section, then Developer shall correct, as soon as is practicable, all Material Defects identified in the Non-Compliance Notice, except and to the extent that any such Material Defects previously have been accepted, or have been deemed to have been accepted, by FWCU. All items or components of the Project with respect to which: (i) a Permitted Inspection is conducted; and (ii) no Material Defects are identified in a timely Non-Compliance Notice; shall be deemed to be accepted by FWCU.

(iii) Latent Defects. Notwithstanding anything to the contrary set forth herein, no acceptance, or deemed acceptance, by FWCU pursuant to this Section shall be applicable with respect to any Latent Defects.

(iv) General. In connection with any Permitted Inspection pursuant to this Section, FWCU shall: (A) comply with all health and safety rules of which FWCU has been informed that have been established for personnel present on the Project Site; and (B) coordinate the inspections so that the inspections do not interfere with the performance of construction. Developer shall have the right to accompany, and/or have its construction manager accompany, FWCU during any Permitted Inspection.

(v) Effect of Acceptance. An acceptance, or deemed acceptance, by FWCU pursuant to this Section shall not mean that FWCU has accepted, or Developer has been relieved of, responsibility for: (A) compliance with the Laws; (B) the proper application of construction means or methods; or (C) correcting any portion of the Project if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of the Project.

11. Commissioning of the Project. Upon completion of construction, Developer shall commence a sixty (60) day commissioning reliability test to verify performance of the Project.

The parameters for the commissioning phase and successful completion thereof are described in Exhibit M attached hereto.

12. Substantial Completion.

(a) Substantial Completion Inspection. Developer shall deliver to FWCU a written request for the Substantial Completion Inspection no more than five (5) business days prior to the end of the commissioning reliability test. On or before the later of the date that is five business days after: (i) receipt by FWCU of such request; or (ii) the final date of the commissioning reliability test; FWCU shall: (i) conduct the Substantial Completion Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 10(e)(ii); the Project will be deemed Substantially Complete.

(b) Within five (5) business days after the Substantial Completion Inspection, Developer and FWCU shall identify the "punch-list" items. Developer shall complete all "punch-list" items within sixty (60) days after the "punch-list" items are identified. Notwithstanding the foregoing, the Warranty Agreements shall apply during the Warranty Period with respect to defective conditions identified by Inspections during the Warranty Periods.

13. Conveyance Closing.

(a) Final Inspection. Developer shall deliver to FWCU a written request for the Final Inspection of the Project when all punch-list items have been completed and all remaining obligations of the Agreement have been completed. On or before five (5) business days after receipt by FWCU of such request, FWCU shall: (i) conduct the Final Inspection; and (ii) deliver to Developer, if applicable, a Non-Compliance Notice. Upon: (i) correction of all Material Defects identified in the Non-Compliance Notice; or (ii) deemed acceptance pursuant to Subsection 10(e)(ii); the Project will be deemed complete. The parties agree to execute the Completion Addendum in the form attached hereto as Exhibit I after the acceptance of the project.

(b) Conveyance Closing Date. Following the Final Inspection and completion of any items identified pursuant to Section 13(a), Developer shall convey the completed Project to FWCU, and FWCU shall pay Developer the balance of the Purchase Price, on the Conveyance Closing Date, subject to any liquidated damages, credits or offsets applicable under this Agreement.

(c) Costs. FWCU shall be responsible for all costs and expenses in connection with its acquisition of the completed Project, including, without limitation: (i) costs to obtain all surveys, title searches, abstracts, and/or title policies deemed by FWCU to be necessary or appropriate; and (ii) attorneys' fees and closing costs.

14. Liquidated Damages. Developer and FWCU recognize that time is of the essence in this Agreement and FWCU will suffer financial and other losses if the Project is not completed by the date designated in the Final Plans for Substantial Completion. The parties also recognize the delays, expense, and difficulties involved in proving, in a legal or arbitration proceeding, the actual loss suffered by FWCU if the Project is not completed on time. Accordingly, instead of requiring any such proof, FWCU and Developer agree that as liquidated damages for delay (but not as a penalty):

(a) Substantial Completion: Developer shall pay FWCU **$1,000 for each day** that expires after the time specified in the Final Plans for Substantial Completion, until the Project is substantially complete.

(b) Completion of Remaining Punch-List Work: After Substantial Completion, if Developer shall neglect, refuse, or fail to complete the remaining "punch-list" items identified in connection with the Final Inspection by the date specified in the Final Plans for Final Completion, Developer shall pay Owner **$500 for each day** that expires after such time until the "punch-list" work is completed and ready for final payment.

15. Insurance.

(a) Developer. During the Term of this Agreement, Developer shall maintain in full force and effect the following policies of insurance: equipment insurance and builder's risk insurance. During the Term of this Agreement, and for a period of two (2) years thereafter (unless a longer term is specified in Exhibit H), Developer shall maintain in full force and effect the following policies of insurance: commercial general liability, automobile liability, contractual liability, and professional liability. All policies of insurance required to be maintained under this Section 15 shall provide coverage up to the limits specified in Exhibit H and shall:

(i) include as additional insured(s) (subject to any customary exclusion regarding professional liability) FWCU and Engineer and any other individuals or entities identified by FWCU, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, partners, employees, agents, consultants and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;

(ii) contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to FWCU and Developer and to each other additional insured to whom a certificate of insurance has been issued;

(iii) remain in effect at least until final payment except with respect to completed operations insurance and any insurance coverage written on a claims-made basis, which shall remain in effect for at least two (2) years after final payment.

(iv) with respect to commercial general liability, automotive liability, and umbrella liability insurance, and all other liability insurance, including Workman's Compensation, if applicable, specified herein to be provided by Developer, shall contain a waiver of all rights of subrogation against FWCU and its officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them.

(b) Failure to maintain. If, at any time, Developer is in default with respect to maintaining any policy of insurance required by this Section to be maintained by it, then FWCU may (but shall not be obligated to): (i) obtain such insurance for and on behalf of the Developer; and (ii) recover from the Developer the costs incurred in connection therewith.

16. **Casualty/Payment Abatement.** If, during the Term, there is damage to, or total or partial destruction of, the Project by fire or other casualty such that the Project is rendered unfit, in whole or in part, for use by FWCU, then Developer shall apply the Insurance Proceeds to restore and/or replace the Project as promptly as is reasonable.

17. **FWCU Covenants.**

(a) Compliance. FWCU: (i) shall pay the Purchase Price and any amounts due hereunder punctually and in strict conformity with the terms of this Agreement; (ii) faithfully shall observe and perform all of its obligations under this Agreement; and (iii) except as otherwise set forth herein, shall not terminate this Agreement.

(b) Other Compliance. FWCU shall: (i) not take, or omit to take, any action under any contract, if the effect of such act or failure to act would in any manner impair or adversely affect the ability of FWCU to pay the Purchase Price; and (ii) observe and perform all of its obligations under all other contracts affecting or involving the Project to which FWCU is a party.

(c) No Liens. At all times FWCU shall: (i) keep the Project Site and, after receiving possession thereof, the Project, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing existing on the Closing Date; (B) the lien of current real estate taxes not delinquent; and (C) any of the foregoing existing due to compliance with this Agreement; and (ii) defend the Project Site against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Project, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, FWCU, then FWCU shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(d) Taxes. FWCU: (i) shall pay and discharge when due all taxes, assessments, and other governmental charges that lawfully are imposed upon the Project Site, the Project, or any part thereof; and (ii) upon request by Developer, shall take such actions as may be necessary or appropriate to remedy or cure any defect in, or cloud upon, the title to the Project Site, the Project, or any part thereof.

(e) Protection. FWCU shall: (i) preserve and protect the security hereof, and the rights of Developer established herein; and (ii) warrant and defend such rights against all claims and demands of all persons.

(f) Assurances. FWCU shall adopt such resolutions, execute and deliver such instruments, and make any and all further assurances as reasonably may be necessary or proper: (i) to carry out the intention of this Agreement; (ii) to facilitate the performance of this Agreement; and/or (iii) in connection with assuring and confirming the rights and benefits provided to Developer.

18. Developer Covenants.

(a) Filings. Developer shall keep in full force and effect, without any violations by Developer, any and all filings or registrations with any Agency necessary in connection with the acquisition of the materials to construct, and/or the construction of, the Project in accordance with this Agreement and the Construction Contract.

(b) Subcontractors. In accordance with Ind. Code § 36-1-12-13, Developer shall timely pay all subcontractors, laborers, material suppliers, and those performing services. FWCU may withhold any payment to Developer in a sufficient amount to pay subcontractors, laborers, material suppliers, and those furnishing services.

(c) No Liens. At all times prior to delivering possession of the Project to FWCU, Developer shall: (i) keep the Project, and the materials to construct the Project, free from any and all liens, claims, security interests, encumbrances, and restrictions, except for: (A) any of the foregoing existing on the Closing Date; (B) the lien of current real estate taxes not delinquent; and (C) any of the foregoing existing due to compliance with this Agreement; and (ii) defend the Project, and the materials to construct the Project, against the claims and demands of others. If any mechanic's, supplier's, or similar lien is filed against the Project Site, the Project, or the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, Developer, then Developer shall cause such mechanic's, supplier's, or similar lien to be discharged of record within 45 days after notice of the filing by bonding or providing other adequate security therefor, or as provided or required by the Laws.

(d) Laws. Developer shall comply with all Laws in the performance of its obligations under this Agreement.

(e) No Transfer. There shall be no Developer Transfer by Developer and Developer shall not cause or permit any Developer Transfer.

(f) Developer Interests. Developer: (i) shall not: (A) change its name; (B) merge into, or consolidate with, any other entity, or otherwise reorganize; (C) sell, convey, or transfer to any person any interest in Developer; and/or (D) otherwise permit any change in the members of Developer or the percentage of ownership in Developer; if the effect of the foregoing is that Developer no longer is controlled by, or under common control with, Gregory W. Martz; (ii) shall notify FWCU promptly of any change of the nature specified in the foregoing clause (ii); and (iii) shall not grant any security interest in any interest in Developer.

(g) No Termination. Developer shall not be dissolved, wound up, or converted to another type of entity, or have its existence as a limited liability company terminated.

(h) Business. Developer shall not make or permit to be made any material change in the character of its business as currently conducted.

(i) Records. During construction of the Project, Developer shall keep and maintain true, correct, accurate, and complete Books and Records. All Books and Records shall be kept and maintained in accordance with generally accepted accounting principles consistently applied. FWCU and its attorneys, accountants, representatives, architects, Engineers, and consultants at all reasonable times shall have: (i) free access to, and rights of inspection of, the Books and Records; and (ii) the right to audit, make extracts from, and receive from Developer originals or accurate copies of, the Books and Records.

19. Events of Default. Each of the following shall be deemed to be an "Event of Default" by FWCU or Developer, as applicable:

(a) the failure by the applicable party to pay any amount due hereunder on the date due, and the continuance of such failure for a period of ten (10) days after such payment is due; provided that, notwithstanding the foregoing, the ten-day cure period shall not apply with respect to any failure by FWCU to pay the Purchase Price when due;

(b) the failure by the applicable party to observe or perform any term or condition of this Agreement to be observed or performed by it (other than the payment of any amount due hereunder), and the continuance of such failure beyond the Cure Period;

(c) the filing of a petition or answer seeking arrangement or reorganization of the applicable party under the Laws;

(d) the approval by a court of competent jurisdiction of a petition, filed with or without the consent of the applicable party, seeking arrangement or reorganization under the Laws; or

(e) the assumption by a court of competent jurisdiction of custody or control of by the applicable party, or all or a substantial portion of the property of such party, pursuant to the provisions of any Law for the relief or aid of debtors.

20. Remedies.

(a) Remedies. If there is an Event of Default, then the non-defaulting party, without further notice or demand, shall have the right to: (A) enjoin the failure or specifically enforce the performance of such obligation; (B) perform the obligation that the defaulting party has failed to perform; provided that the performance by the non-defaulting party of such obligation shall not be construed to be a waiver of the Event of Default; (C) recover any costs incurred by the non-defaulting party in performing the obligation the defaulting party failed to perform as provided in Section 20(c); or (D) terminate this Agreement and pursue any other remedies that may be available at law or in equity.

(b) No Waiver. Neither: (i) a waiver by either party of an Event of Default; nor (ii) a delay in the exercise by either party of any right or remedy with respect to an Event of Default; shall be deemed either to: (i) constitute a waiver of any subsequent Event of Default; (ii) release or relieve the other party from performing any of its obligations under this Agreement; or (iii) constitute an amendment or modification of this Agreement. If any portion of the Purchase Price that is less than the entire Purchase Price is accepted during the continuance of an Event of Default, then such acceptance shall not be construed as a waiver of: (i) such Event of Default; or (ii) any right or remedy of Developer with respect to such Event of Default. The rights and remedies hereunder are cumulative, and, except as specifically limited in this Agreement, no:

(i) right or remedy shall be deemed to be, or construed as, exclusive of any other right or remedy hereunder, at law, or in equity; or

(ii) failure to exercise any right or remedy shall operate to prevent the subsequent exercise of such right or remedy.

(c) Damages. The non-defaulting party may recover from the defaulting party all damages that the non-defaulting party incurs: (i) by reason of any Event of Default by the defaulting party; and/or (ii) in connection with exercising its rights and remedies with respect to any Event of Default; together with interest thereon at the rate of 12% per annum. All such amounts shall be due and payable by the defaulting party immediately upon receipt of written demand from the other party, and the obligation of the defaulting party to pay such amounts shall survive the acquisition by FWCU of the completed Project.

21. Mutual Indemnification.

(a) Developer. Developer shall indemnify and hold harmless FWCU from and against any and all Claims arising from or connected with: (i) mechanics' liens filed against the Project or the Project Site for work performed by Developer or any party acting by, under, through, or on behalf of Developer; (ii) breaches by Developer under contracts to which Developer is a party, to the extent that such contracts relate to the performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iii) injury to, or death of, persons or loss of, or damage to, property, suffered in connection with performance of any work on the Project Site by Developer or any party acting by, under, through, or on behalf of Developer; (iv) the negligence or willful misconduct of Developer or any party acting by, under, through, or on behalf of Developer; or (v) the breach by Developer of any term or condition of this Agreement.

(b) FWCU. FWCU shall indemnify and hold harmless Developer from and against any and all Claims arising from or connected with: (i) the negligence or willful misconduct of

FWCU or any party acting by, under, through, or on behalf of FWCU; or (ii) the breach by FWCU of any term or condition of this Agreement.

Notwithstanding anything to the contrary set forth herein, the obligations of the parties under this Section shall survive the expiration or termination of this Agreement for a period of two years.

22. **Assignment**. Neither FWCU nor Developer shall assign this Agreement without the prior written consent of the other party. Notwithstanding any assignment permitted under this Section, Developer or FWCU, as the case may, shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by the other party of any assignment shall not release Developer or FWCU, as the case may be, from such performance. Any transfer of this Agreement by operation of law (including, without limitation, a transfer as a result of merger, consolidation, or liquidation of FWCU or Developer) shall constitute an assignment for purposes of this Agreement.

23. **Notice**. Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; or (b) sent by national overnight delivery service, with confirmation of receipt, addressed as follows: to Developer at 8561 N. County Road 175 E., Springport, Indiana 47386, Attn: Gregory W. Martz; and to FWCU at 200 E. Berry St., Room 130, Ft. Wayne, Indiana, 46802, Attn: Deputy Director. Either party may change its address for notice from time to time by delivering notice to the other party as provided above.

24. **Force Majeure**. Notwithstanding anything to the contrary set forth herein, if either party is delayed in, or prevented from, observing or performing any of its obligations under, or satisfying any term or condition of, this Agreement as a result of Force Majeure, then: (a) the party asserting Force Majeure shall deliver written notice to the other party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period; provided that the foregoing shall not apply with respect to the obligation to make any payment of money.

25. **Miscellaneous**. Subject to Section 22, this Agreement shall inure to the benefit of, and be binding upon, Developer and FWCU, and their respective successors and assigns. This Agreement constitutes the entire agreement between Developer and FWCU with respect to the subject matter hereof, and may be modified only by a written agreement signed by both Developer and FWCU. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. Whenever in this Agreement a singular word is used, it also shall include the plural wherever required by the context and vice versa. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Indiana. All Exhibits to this Agreement are attached hereto and incorporated herein by reference.

26. **Indiana Contracting Requirements**.

(a) No Investment in Iran. As required by Ind. Code § 5-22-16.5, Developer certifies that Developer is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in Ind. Code § 5-22-16.5-14, including, without limitation, termination of this Agreement and denial of future contracts, as well as civil penalties.

(b) E-Verify Program. Developer shall enroll in and verify the work eligibility status of all hired employees through the E-Verify program as defined in Ind. Code § 22-5-1.7. Developer is not required to participate should the E-Verify program cease to exist. Additionally, the Developer is not required to participate if the Developer is self-employed and does not employ any employees. The Developer shall require his/her/its subcontractors, who perform work under this Agreement, to certify to the Developer that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Developer agrees to maintain this certification throughout the duration of the term of any agreement contract with a subcontractor. FWCU may terminate for default if the Developer fails to cure a breach of this provision no later than thirty (30) days after being notified by FWCU.

(c) Antidiscrimination under Ind. Code § 5-16-6-1. Developer agrees as follows:

> (i) That in the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, no contractor or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin, or ancestry, discriminate against any resident of the State of Indiana who is qualified and available to perform the work to which the employment relates;
>
> (ii) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, color, sex, national origin, or ancestry;
>
> (iii) That there may be deducted from the amount payable to the Developer by FWCU under this Agreement a penalty of five dollars ($5.00) per person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of this Agreement; and
>
> (iv) That this Agreement may be canceled or terminated by FWCU and all money due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this clause.

(d) Antidiscrimination under § 93.036 of the Fort Wayne Municipal Code. Developer agrees as follows:

> (i) That in the performance of work under this Agreement or any subcontract hereunder, the Developer, Operator, and subcontractors, and any person acting on behalf of the Developer, Operator, or a subcontractor will not discriminate against

any person who is qualified and available to perform the work to which the employment relates.

(ii) That the Developer, Operator, and subcontractors, and any person acting on behalf of the Developer, Operator, or a subcontractor will not obstruct the enforcement of this section.

(iii) That the Developer, Operator, and subcontractors, and any person acting on behalf of the Developer, Operator, or a subcontractor will not retaliate against any person.

(e) Employee Drug Testing. Pursuant to Ind. Code § 4-13-18, Developer shall implement an employee drug testing program. FWCU may terminate this Agreement if it determines that Developer:

(i) Has failed to implement its employee drug testing program during the term of this Agreement;

(ii) Has failed to provide information regarding implementation of the Developer's employee drug testing program at the request of FWCU; or

(iii) Has provided to FWCU false information regarding the Developer's employee drug testing program.

27. **Fiscal Body Approval**. This Agreement is subject to approval by the Common Council of the City of Fort Wayne, Indiana ("Common Council"). If Common Council does not approve this Agreement, the Agreement shall be null and void, and the parties shall be excused from any further obligations or performance hereunder.

(Signatures on the following pages)

IN WITNESS WHEREOF, Developer and FWCU have executed this Agreement as of the date set forth above to be effective as of the Effective Date.

FWCU SOLAR PROJECT 2021 LLC

BY: GM DEVELOPMENT COMPANIES LLC,
Sole Member

By:____________________________
Gregory W. Martz, Sole Member

IN WITNESS WHEREOF, Developer and FWCU have executed this Build-Operate-Transfer Agreement as of the date set forth above to be effective as of the Effective Date.

FT. WAYNE CITY UTILTIES, BY AND THROUGH THE FORT WAYNE BOARD OF PUBLIC WORKS

By: ______________________________
Shan Gunawardena, Chair,

By: ______________________________
Kumar Menon, Member

By: ______________________________
Chris Guerrero, Member

ATTEST: ______________________________ 6.7.22
Michelle-Fulk Vondran, Clerk

INDEX TO EXHIBITS

Exhibit A

Microgrid Project Description

The Microgrid Project involves three facilities – the Water Pollution Control Plant (WPCP), Three Rivers Filtration Plant (TRFP), and Wet Weather Pump Station (WWPS). Components of the microgrid include the electric utility at WWPS, natural gas generators, biogas combined heat and power (CHP), floating solar photovoltaics (i.e., floatovoltaics), battery storage and diesel generators.

The objective of the Microgrid Project is to produce power for the three facilities, reduce utility-purchased power consumption, and increase overall reliability and resilience of the electrical system. A microgrid controller will be utilized to balance power supply and demand while utilizing a connection to the utility (I&M) at the WWPS. The microgrid power will be distributed through the Owner's intertie connection between the 3 facilities. Islanding capabilities will also be incorporated into the design in the event of a power loss from the electric utility.

Under the build, operate transfer (BOT) Agreement, the Developer is responsible for a complete and functional microgrid system, including but not limited to design, construction, startup, and commissioning services of the generating equipment and overall microgrid controls. Continued operation and maintenance of the microgrid beyond the BOT are as described in the Operations and Maintenance agreements.

The Owner is furnishing 4.16kV electrical interconnection points on new intertie switchgear for the microgrid generating assets. The Developer is responsible for the site works and installation of necessary switchgear and transformers for a complete system interconnection at WWPS and WPCP. The Developer is responsible for the generator installation and connection to existing switchgear at TRFP.

Solar arrays are included in the Microgrid project as a form of renewable energy and diversification for energy production. Based on land availability, it was determined that the best installation location for the solar arrays would be the wet weather storage ponds located at WWPS. Floatovoltaics with a capacity of 6.3 MW DC, (5.0MW AC) will be installed on Pond 1. The solar will be connected at 4.16kV to the switchgear at WWPS. Battery storage will be located here as well.

The two existing 400 KW biogas (CHP) systems at WPCP will be integrated as generating assets for the Microgrid Project. The systems are capable of operating on biogas or natural gas. Operation and maintenance (O&M) of the existing engines is included in the Microgrid Project scope. It is assumed the CHP systems will continue operating on biogas from the WPCP anaerobic digesters; future biogas utilization equipment at WPCP may divert biogas away from the CHP systems.

Gas fueled generators will be installed at WPCP and TRFP; one 4.16kV 1.5-MW generator will be installed at WPCP with an additional pad for a future generator and one 4.16kV 1.5-MW generator will be installed at TRFP. The WPCP generator and additional pad for future generator will be located near the existing biogas CHP systems. The Developer will install the natural gas generator and connect to the WPCP electrical system via existing four-way pad-mounted switches.

At TRFP, the new generator will be installed near the electrical substation, northwest of Generator Building 3400. This generator will be connected to the existing 4.16kV Russ Electric Generator switchgear. At both TRFP and WPCP, provisions are provided for temporary generator connections. The temporary connections are provided with separate relays at the generator switchgear and will be incorporated with the microgrid controller. The temporary generators can be either 460V or 4.16kV; if 460V, a temporary transformer will be provided during operation.

For both TRFP and WPCP, new natural gas lines are required based on the projected fuel consumption by the generators. New gas meters will be supplied by NIPSCO at WPCP and TRFP. The Developer team will be responsible for design and construction of new gas lines within the boundaries of each site from the meter location to the natural gas generators.

The 30-percent design drawings show proposed routing of electrical duct banks between new and existing switchgear and generating systems. These design documents are being used to develop estimated construction costs for the Project.

The microgrid network will be designated as critical infrastructure for FWCU and will be isolated from the plant process control network (PCN) and external networks. The microgrid controller will allow for autonomous operation of the system in parallel with the electric utility and in island mode. The controller will have capabilities of automatically increasing or decreasing output based on plant demands and differential loads. On loss of communication, the microgrid controller will be capable of continued local operation of generating assets. Note that the microgrid is not intended to shed power to the electric utility.

The microgrid will be commissioned and started up by the Developers as part of the contract. The commissioning phase will include equipment startup and checkout, system functional testing, system performance testing, system operational testing, and a 60-day commissioning reliability test. The reliability test is intended to verify performance of the generating equipment with the microgrid controller, demonstrate functionality of the microgrid, and confirm reasonably potential operating scenarios.

The microgrid system is being designed to operate and respond to actual system behaviors. Economics and performance measurement have been established based upon modeled 15-minute load interval data from the year 2020 plus a variety of expected future loads.

During normal operation the equipment and programming will be controlled to optimally reduce the utility power consumption. The utility grid will be utilized to manage unpredictable and relatively instantaneous changes in electrical system loads. The controller will be programmed to respond to minimize variability in the utility consumption balanced with reasonable response capabilities of the microgrid generating equipment. The microgrid must provide a stable electrical power source to the facilities utilizing the utility source, existing dual fuel engines, existing diesel fuel engines, solar arrays, battery storage, and new natural gas (NG) engine generators.

Fort Wayne Microgrid Preliminary Control Narrative

A microgrid control system will have supervisory control and monitoring responsibility for all generation equipment.

The generating assets are:

- AEP/I&M electrical grid (fed through single meter at WWPS)
- 6.3 MW solar PV array (located at WWPS)
- 2 x 400 kW dual fuel CHP gensets (located at WPCP)
- 1 x 1,500 kW Caterpillar G3512H NG genset (located at WPCP)
- 1 x 1,500 kW Caterpillar G3512H NG genset (located at TRFP)
- 2 x 2,000 kW Caterpillar diesel gensets (located at TRFP)
- 1 x 2,500 kw Caterpillar diesel genset (located at TRFP)

Storage/Reserve assets (if needed for microgrid stability)

  - Battery storage 4.608 MWh (estimated) (located at WWPS)
  - Capacitor Bank

Controllers and Redundancy:

The main microgrid synchronization and load controls will utilize Woodward MSLC or equal. PLC based controls will be by ControlLogix. The microgrid system monitoring will be integrated and coordinated with the City's existing SCADA platform (Ignition) and will be designed to receive necessary load information from the City's process control network. The project will provide and maintain a functionally identical controller in the event of a main control system failure. Generating assets will be designed and programmed to operate locally and follow load changes in the event of a main control system failure.

Standard Operation:

Microgrid shall be controlled per the following parameters:

- Electrical draw at Grid Meter controlled to an optimal target based on the daily consumption need. Microgrid controller will allow for import/export through the Grid Meter to provide time for the generating equipment to respond to increased/decreased load and will favor microgrid system stability over instantaneous Grid Meter import target reaction.
- Balance of electrical energy to satisfy the microgrid fed by the following priority:
  1. Solar PV and battery storage
     - If available
  2. 400 kW CHP gensets
     - Either or both as needed
     - Only if running on digester gas
     - If running on natural gas, the priority to be determined by optimized engine size and quantity parameters along with the 1,500kw NG gensets
     - Minimum turndown of 50% capacity
  3. 1,500 kW NG gensets (regardless of location)
     - Either or all as needed
     - Minimum turndown of 50% capacity
  4. 2,000 kW diesel gensets
     - Dependent upon air permit hours available

The starting of large load motors (500 hp and larger) is expected and to be included in the standard operation of the microgrid system. The microgrid shall respond to the following types of large load motors as listed below:

- Category 1 – **Motors that start automatically and can typically provide no warning of pending or imminent need to start and need to start and operate immediately when required.**
  - Action required by microgrid – As the load is introduced increase power output of currently operating generators to the maximum extent possible, any remaining power required to satisfy the new load must be provided by the utility grid. As the load stabilizes, reduce the utility grid contribution to the target value by increasing power output of generators as available.
- Category 2 – **Motors that start automatically but will typically be able to provide some warning or alert of an imminent need to start, such as rising stormwater level. The motors need to start relatively quickly.**
  - Action required by microgrid – This will require a one-way signal from the plant SCADA system to notify the microgrid that a large load will soon be imposed. The controller shall energize, sync and balance an off-line generator (if available) to prepare for the imminent load. As the load is introduced, increase power output of currently operating generators to the maximum extent possible, any remaining power required to satisfy the new load must be provided by the utility grid. As the load stabilizes, reduce the utility grid contribution to the target value by increasing power output of generators as available.

- **Category 3 – Motors that are started manually and operations staff have time to provide manual notification of a pending need to start.**
    - Action required by microgrid – Operations staff will access the microgrid network and click software button labeled "Large Motor Start" (alternatively the manual start command from SCADA could provide the signal that a motor will start shortly) to notify the microgrid that a large load will soon be imposed. The controller shall energize, sync and balance an off-line generator (if available) to prepare for the imminent load. Visual indication will be provided showing that the microgrid is prepared for the new load, operator starts motor. As the load is introduced, the microgrid will increase power output of currently operating generators to satisfy the new load. Alternatively, if no offline generators are available the microgrid will provide notification that utility grid power will be used as required to satisfy the new load and operator may start the motor.

The microgrid shall be designed to accommodate the following large load motors:

FWCU Motors

Location	Connected Load	Motor ID	Power (hp)	Voltage (V)	Start Type	SWGR	Category
WWPS	CS Pump #5 (Future)	2000-P-0305	2000	4160	VFD	2015-MCC-1	2
WWPS	CS Pump #6 (Future)	2000-P-0306	2000	4160	VFD	2015-MCC-1	2
WPCP	Aeration Blower #5	1200-BLW-0501	1750	4160	Soft Start	0130-SWGR-1	3
WWPS	CS Pump #3	2000-P-0303	1500	4160	VFD	2015-MCC-1	2
WWPS	CS Pump #4	2000-P-0304	1500	4160	VFD	2015-MCC-1	2
WPCP	Aeration Blower #2	1200-BLW-0201	1250	4160	Soft Start	0130-SWGR-1	3
WPCP	Aeration Blower #3	1200-BLW-0301	1250	4160	Soft Start	0130-SWGR-1	3
WPCP	Aeration Blower #8	1250-BLW-0101	1250	4160	Soft Start	1250-MCC-9A	3
WWPS	CS Pump #7	2000-P-0307	1000	4160	VFD	2015-MCC-1	2
WWPS	CS Pump #8	2000-P-0308	1000	4160	VFD	2015-MCC-1	2
TRFP	HS-Pump 14	3570-P-0314	800	4160	VFD	3570-SWGR-1	1
TRFP	HS-Pump 15	3570-P-0315	800	4160	VFD	3570-SWGR-1	1
TRFP	HS-Pump 16	3570-P-0316	800	4160	VFD	3570-SWGR-1	1
TRFP	HS-Pump 17	3570-P-0317	800	4160	Soft Start	3570-SWGR-1	1
TRFP	HS-Pump 18	3570-P-0318	800	4160	VFD	3570-SWGR-1	1
TRFP	HS-Pump 9	3560-P-0309	700	4160	VFD	3560-SWGR-1	1
TRFP	HS-Pump 10	3560-P-0310	700	4160	Soft Start	3560-SWGR-1	1
TRFP	HS-Pump 11	3560-P-0311	700	4160	Soft Start	3560-SWGR-1	1
TRFP	HS-Pump 12	3560-P-0312	700	4160	Soft Start	3560-SWGR-1	1
WPCP	Aeration Blower Trim #1	1200-BLW-0101	500	480	VFD	1200-SWGR-1	2
WPCP	Aeration Trim Blower #4	1200-BLW-0401	500	480	VFD	1200-SWGR-1	2

Non-Standard Operation:
Routine Maintenance of gensets: Remove the affected unit from the priority and elevate all other units.
Major maintenance: Connect rental unit, set local control, and energize unit. The rental unit will not be included in the control sequence.

1. Alternate equipment response
    a. Preparing capacitor bank to release
    b. Preparing battery storage to release

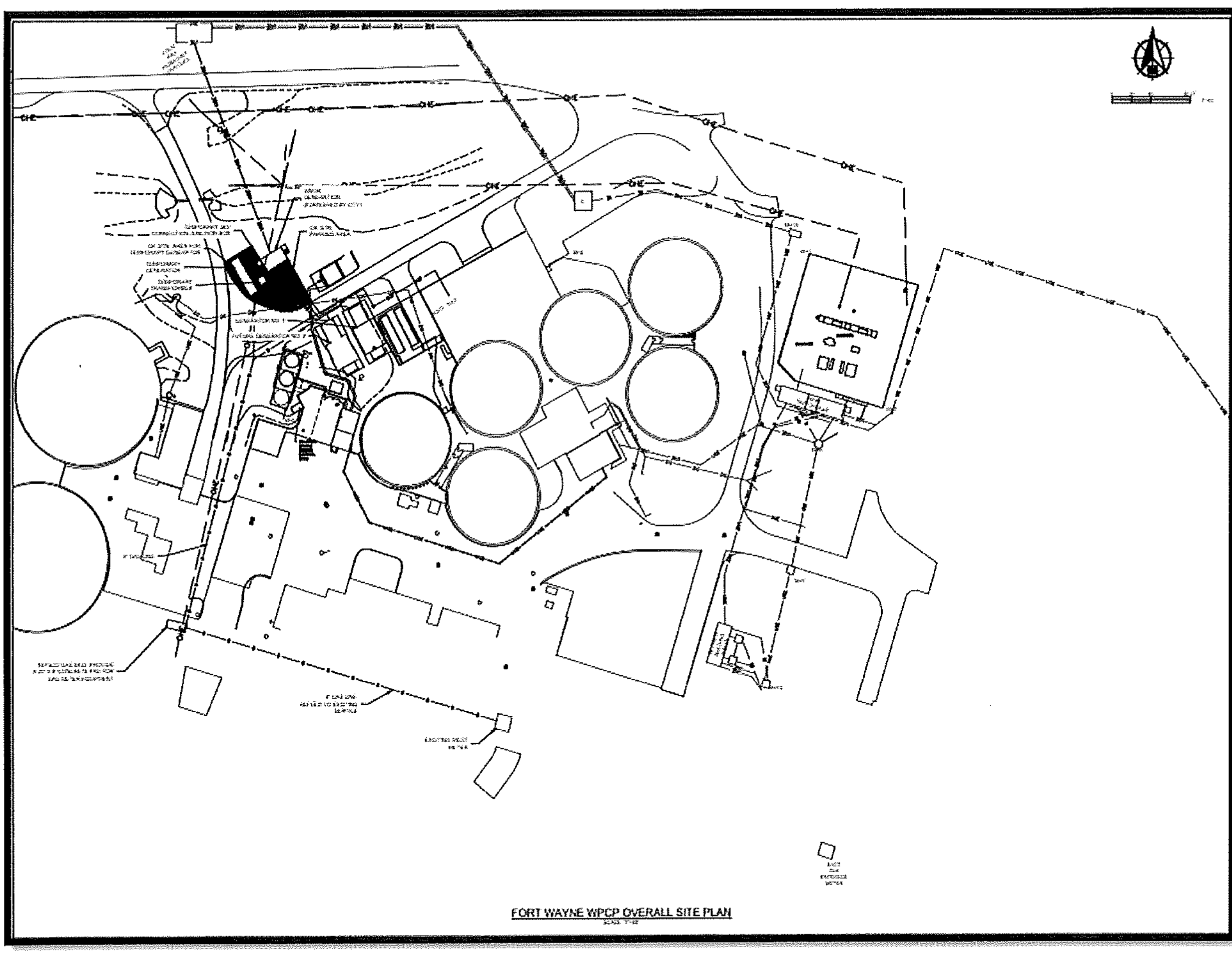
Loss of Utility Power (predicted/not predicted) Microgrid shall respond to a grid failure automatically. Critical systems will remain online through UPS systems already installed. The microgrid communications (monitoring and control) will be backed up by UPS. The plants will experience a shut-down and restart in island mode. Existing emergency generators on critical systems (DDPS, EPS, Dechlor, etc.) will come online as they currently do.

1. Start diesel engines at TRFP in island mode, Prioritize restart of TRFP
2. Add NG and other generators to supplement diesel engines
3. Bring on Power to WWPS and WPCP as possible
4. Utilize battery storage to maintain system stability
5. Prime rotating machinery
6. Isolate TRFP if required to achieve power stability

Exhibit B
Depiction of Project Site
Based on 30% Design Documents[1]

Water Pollution Control Plant (WPCP).

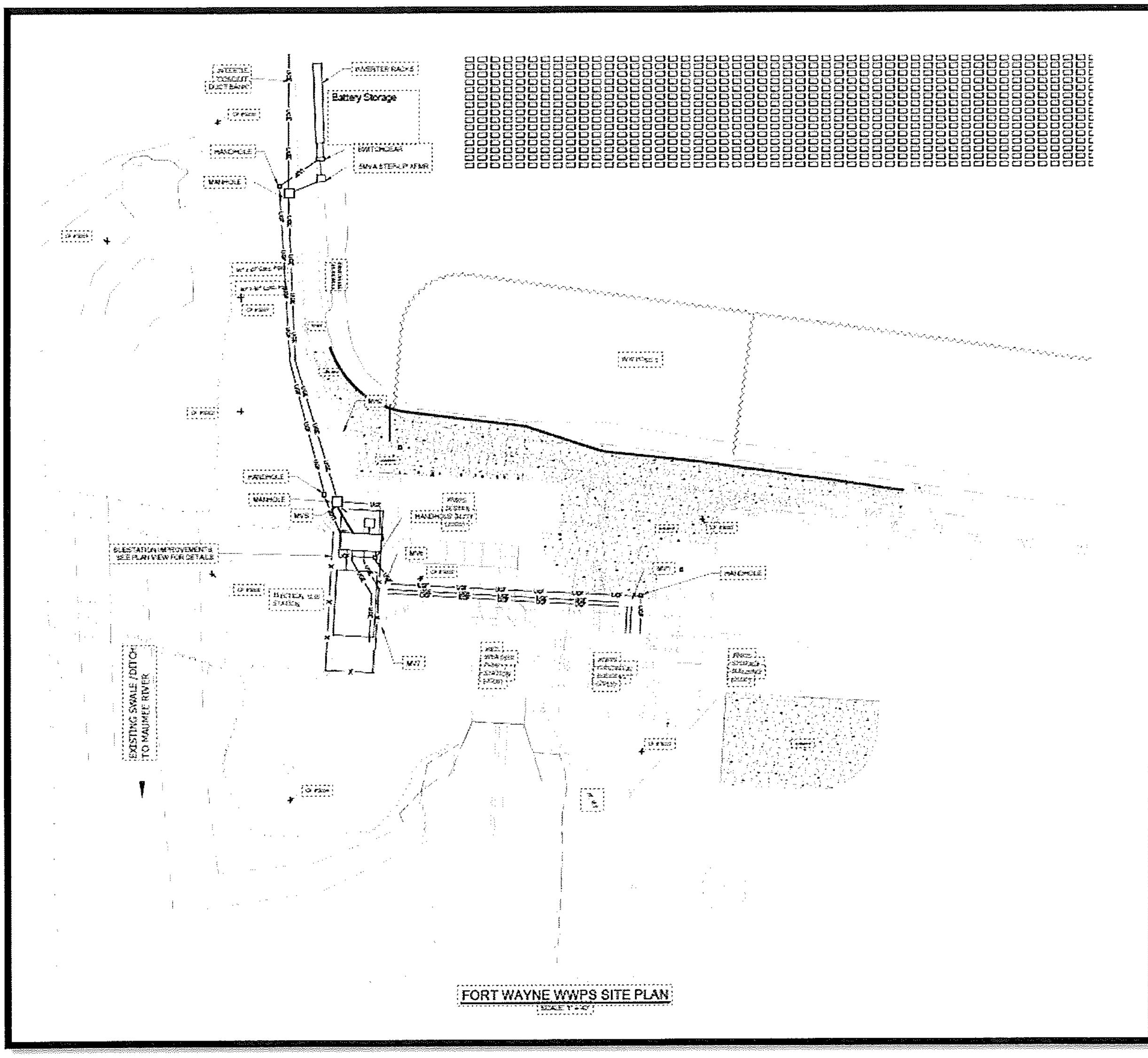
Site layout depicting the installation of ancillary connections for gas and electric and placement of one new 1.5MW Caterpillar Natural Gas Generator (G3512H) with an additional pad for a future generator and an additional temporary lot and transition cabinet for temporary hook up of gas and electric for mobile generator. New 5kV E-house and all associated and ancillary equipment to be placed per drawing along with all new conduit, wire, breakers, and terminations to connect WPCP microgrid generation to overall network. Installation includes all necessary microgrid controls for WPCP.



[1] The exact boundaries of the Project Site, including the location of laydown areas, working areas, and restricted areas, will be determined during the Plan Refinement Process and definitively established in the Easement Agreement.

Wet Weather Pumping Station (WWPS).

Site layout depicting the new 6.3MW Floating Solar Array on Pond 1. Installation includes a bottom anchored system connected to racking and walkway floats, all ancillary terminations, solar panel, panel racking, inverters, breakers and necessary transformer and equipment grounds. New 5kV E-house and all associated and ancillary equipment to be placed per drawing along with all new conduit, wire, breakers, and terminations to connect WWPS microgrid generation to overall network. Installation includes all necessary microgrid controls for WWPS. I&M Power additional equipment requirements TBD as WWPS will be the main utility connection for microgrid. Battery storage is located at WWPS next to inverter racks.



Three Rivers Filtration Plant (TRFP).

Site layout depicting the installation of ancillary connections for gas and electric and placement of a single new 1.5MW Caterpillar Natural Gas Generator (G3512H) and an additional temporary lot and transition cabinet for temporary hook up of gas and electric for mobile generator. Connection to current Russ Electric breakers and new controls cabinet in Russ Electric Controls line up along with all new conduit, wire, breakers, and terminations to connect TRFP microgrid generation to overall network. Installation includes all necessary microgrid controls for TRFP.

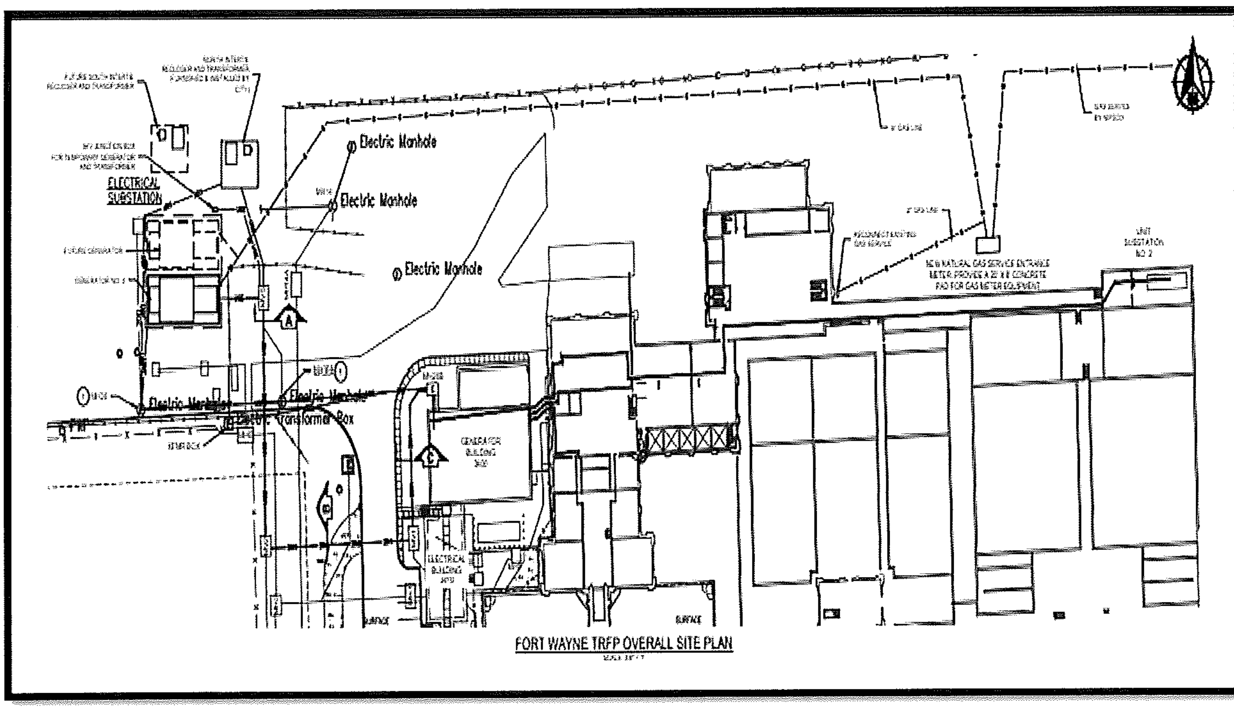


Exhibit C

Cost Summary based on 30% Design Documents

Item No.	Work Description	Contract Value	Payment Terms	
1	Contract Development and Preliminary Design (pre-construction)	$609,112.08	LS In Full at Contract Closing	
2	Development, Contract Management, Reporting, Consulting	$674,700.01	LS Percent Complete of All Work	
3	Project Design and Engineering	$934,107.62	LS Percent Complete of SOV	
4	5kV Electrical Improvements Labor	$2,181,264.00	LS Percent Complete of SOV	
5	Generators and Controls	$4,904,720.00		
	Controls	$590,000.00	LS Percent Complete of SOV	
	Installation	$1,938,129.00	LS Percent Complete of SOV	
	Generator Equipment Procurement	$2,376,591.00	LS Percent Complete of SOV	
6	Floating Solar Array	$10,713,478.54		
	Anchoring, Protections and Switching	$810,101.00	LS Percent Complete of SOV	
	Major Material	$2,461,284.00	LS Percent Complete of SOV	
	Mechancial	$1,991,370.79	LS Percent Complete of SOV	
	Electrical	$2,885,655.25	LS Percent Complete of SOV	
	Equipment Procurement (Solar Panels)	$2,565,067.50	LS Percent Complete of SOV	
7	General Contracting	$1,100,269.00	LS Percent Complete of SOV	
8	Commissioning	$447,825.00	Hourly, Not-To-Exceed	
9	Construction Contract Management, RPR, Document Controls	$354,121.75	Hourly, Not-To-Exceed	
10	Contractor Contingency	$1,200,000.00	Contingency	
11	Owner Allowance	$600,000.00	Allowance	
	SECTION TOTALS	$21,919,598.00		
	CONTRACTOR CONTINGENCY	$1,200,000.00		
	CONTRACT VALUE	$23,119,598.00		
	OWNERS ALLOWANCE	$600,000.00		
	PROJECT TOTAL	$23,719,598.00		

Item No.	Work Description	Year	Cost/Year		
12	Operations and Maintenance Year over Year Projections	Year	Cost/Year		
	O&M Field Services Tech (FTE)	1	$	68,400.00	Annual Inflation - 3.0%
	O&M McAllister Equipment	1	$	435,910.80	Annual Inflation - 3.0%
	O&M Solential Equipment	1	$	68,400.00	Annual Inflation - 3.0%
	Annual First Year Totals		$	572,710.80	

Exhibit D

Hourly Rate Schedule
(Commissioning)

	Project Commissioning				
Item Number	ITEM/DESCRIPTION	Loaded Rate	Hours	Contract Value	Payment Terms
1	**Oversite,Scheduling and Reporting**				
	Wessler Engineering	$ 165.00	415	$ 68,475.00	LS, Percent Complete of All Work
	Solential Energy	$ 165.00	150	$ 24,750.00	LS, Percent Complete of All Work
3	**Current and New Equipment Relay Adjustment and Verification**				
	Spectrum Engineering	$ 130.00	280	$ 36,400.00	LS, Percent Complete of All Work
	Material (Test or Test Related)	$ 11,900.00	1	$ 11,900.00	LS, Percent Complete of All Work
4	**Solar Generation**				
	Solential Energy	$ 165.00	265	$ 43,725.00	LS, Percent Complete of All Work
5	**Natural Gas Genators**				
	McAllister	$ 175.00	685	$ 119,875.00	LS, Percent Complete of All Work
	Solential (General Electrical Coordination)	$ 165.00	100	$ 16,500.00	LS, Percent Complete of All Work
6	**Microgrid Configuration and Controllers**				
	New Kirk	$ 175.00	344	$ 60,200.00	LS, Percent Complete of All Work
7	**Electrical Coordination and Commissioning Testing**				
	Solential Energy	$ 165.00	400	$ 66,000.00	LS, Percent Complete of All Work
Total Hours/Costs				**$ 447,825.00**	

Exhibit E

Project Specifications

Natural Gas Generation

1.5MW Data Specification Sheet Attached

Solar Generation

144 Split Cell Solar Panel Data Specification Sheet Attached

166kW High Efficient Inverter Data Specification Sheet Attached

Floating Solar Pontoon Racking Data Specification Sheet Attached

5kV Switch Gear

5 kV Switchgear specifications attached.

Microgrid Controller

Microgrid Controller specifications attached

Battery Storage

Battery Storage specifications attached

<u>All Documents are in a separate Microsoft Teams Folder</u>

Exhibit F

FWCU Design Standards and Master Specifications

Available at: https://utilities.cityoffortwayne.org/contractors-engineers-developers/design-standards-manual

Exhibit G

Plan Schedule based on 30% Design Documents

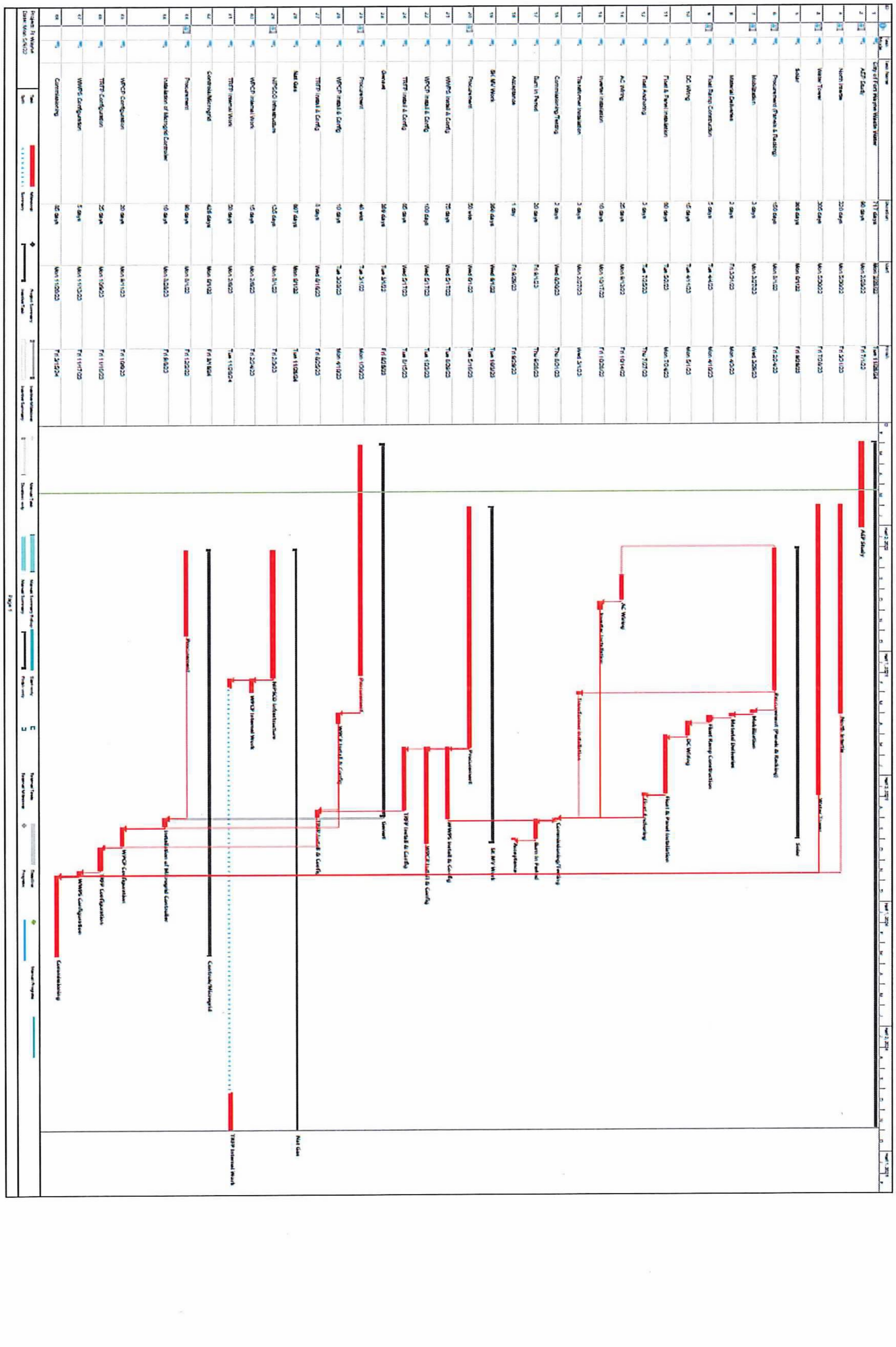


Exhibit H

Required Insurance Policies

Engineer Insurance Requirements

Engineer shall maintain in full force and effect during the performance of its work the following insurance coverage; provided, however, that if a High-Risk Insurance Attachment is attached hereto, the requirements of the High-Risk Insurance Attachment shall be substituted in lieu of the following requirements;

a) Worker's Compensation:	per statutory requirements
b) General Liability:	$1,000,000 minimum per occurrence/ $1,000,000 aggregate (if the value of the projects exceeds $10,000,000 then this shall be $5,000,000 aggregate).
c) Automobile Liability:	$1,000,000 per occurrence
d) Products Liability:	$1,000,000 per occurrence
e) Completed Operations Liability:	$1,000,000 minimum per occurrence

The Certificate of Insurance must show the City of Fort Wayne, its Divisions and Subsidiaries as an Additional Insured and a Certificate Holder, with 30 days notification of cancellation or non-renewal. All Certificates of Insurance should be sent to the following address:

City of Fort Wayne Purchasing Department
200 East Berry St., Suite #480
Fort Wayne, IN 46802

Required Insurance Policies

Developer Insurance Requirements

In accordance with Section 15 of the Agreement, Developer shall maintain the following policy(ies) of insurance with the coverage limits as provided below or greater if required by applicable Laws:

A. General Liability Insurance

1. General Aggregate
   a) *(Except Products-Completed Operations):* *$ 1,000,000*

2. Products-Completed Operations
   a) *Aggregate:* *$ 2,000,000*

3. Personal and Advertising
   a) *Injury (Per Person/Organization):* *$ 1,000,000*

4. Bodily Injury and Property
   a) *Damage (Each Occurrence):* *$ 2,000,000*

5. Excess or Umbrella Liability, on a follow-form basis excess to commercial general liability, automobile liability, and employer's liability:
   a) *5,000,000 per occurrence and in the aggregate*

6. Each Subcontractor employed by the Developer or by any other Subcontractor shall have equivalent Workers Compensation and General Liability coverage limits as provided above.

B. Worker's Compensation: per statutory requirements

C. Automobile Liability:
1. Combined Single Limit: $ 1,000,000
2. Non-owned and Hired
   a) *Automobile Liability:* *$ 1,000,000*
   b) *Aggregate:* *$ 1,000,000*

D. Contractual Liability:

1. Bodily Injury:

a)	*Each Accident*	*$ 300,000*
b)	*Annual Aggregate*	*$ 1,000,000*

2. Property Damage:

a)	*Each Accident*	*$ 300,000*
b)	*Annual Aggregate*	*$ 1,000,000*

3. **Developer shall maintain** professional liability insurance with policy limits of at least $1,000,000 per claim and in the aggregate. Developer shall maintain such professional liability I insurance during the entire design and construction phases and for a period of ten (10) years following Substantial Completion. Developer shall provide to FWCU a "Certificate of Insurance" evidencing such professional liability insurance for its review and approval.

4. Developer shall maintain "all-risk" insurance coverage covering physical damage to

5. Developer's equipment provided **for** use at the Project Site, whether owned, leased rented, or borrowed.

6. At all times during the performance of the work, Developer shall procure and keep in force, or cause to be procured and kept in force, a policy of builder's risk insurance:

7. The policy shall be at least as broad as the ISO "all-risks" of direct physical loss or damage to the portions or elements of the Project, including temporary or permanent works, under construction, with no exclusions for certified acts of terrorism, earthquake, earth movement, volcanic activity, tsunami, flood, storm, tempest, windstorm, hurricane, tornado, ice flow, subsidence, or explosion. The policy shall contain extensions of coverage that are typical for a project of the nature of the Project and shall contain only those exclusions that are typical for a project of the nature of the Project. Developer may place a separate terrorism risk insurance policy with FWCU's prior, written consent, given in its sole discretion; if approved, Developer's builder's risk insurance policy may exclude or restrict terrorism risk, so long as such terrorism risk insurance policy is placed and in effect.

8. The policy shall cover all property, roads, buildings, bridge structures, other structures, fixtures, materials, supplies, foundations, pilings, machinery, and equipment that are part of or related to the portions or elements of the Project under construction, and the works of improvement, including permanent and temporary works and materials, and including goods intended for incorporation

into the equipment located at the Project Site, in storage or in the course of transit to the Project and all improvements that are within the Project.

9. The policy shall provide coverage per occurrence up to the full replacement cost, without risk of co-insurance. The policy limit shall be equal to the completed value of the Project with only those sublimits as are required by applicable Laws or as specified herein.

10. FWCU, Developer, and subcontractors of every tier shall be named insureds on the policy as their interests may appear. The policy shall be written so that no act or omission of any insured shall vitiate coverage of the other insureds (i.e., "separation of insureds"). Developer may name itself or FWCU as loss payee under the policy. The proceeds of the policy shall be held by the loss payee and timely applied to the cleanup, repair and reconstruction of the Project.

11. The policy shall provide a deductible not exceeding $250,000 per occurrence. If a $250,000 per-occurrence deductible is not available for catastrophe perils such as earthquake, windstorm, or flood, then a percentage deductible not to exceed three percent (3.0%) shall be acceptable.

12. FWCU may require documentation from Developer substantiating placement of the broadest coverage available. Such documentation may include, but is not limited to, customary summary reports of coverage or placement options and Developer's insurance advisor's transmittal letter. FWCU reserves the right to review and reject Developer's placement of the builder's risk insurance should FWCU, in its reasonable judgment, by itself or with and through the FWCU's insurance advisor, determine that Developer's placement does not reflect placement of Builder's Risk Insurance with the broadest coverage available.

13. None of the builder's risk or property insurance policies described above shall apply to Developer's tools or any equipment used by Developer or any of its subcontractors to construct the Project. Developer and any subcontractors shall be responsible for loss to their tools or any equipment used to construct the Project and shall be responsible for purchasing insurance coverage for loss to such tools, including loss of use over water and under water.

Exhibit I

Completion Addendum

This Completion Addendum (Ft. Wayne) (the "Addendum") is entered into this __day of __________, 20__, by and between FWCU Solar Project 2021 LLC (the "Developer"), and Ft. Wayne City Utilities (the "FWCU").

Recitals

WHEREAS, Developer and FWCU have executed that certain Build-Operate-Transfer Agreement (Ft. Wayne) dated ____________________________ (collectively, the "Agreement");

WHEREAS, all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Agreement;

WHEREAS, the Agreement provides for the execution of this Addendum following the Substantial Completion Date; and

WHEREAS, Final Completion has occurred.

<u>Agreement</u>

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged hereby, the parties agree that Final Completion occurred on this _____ day of ____________, 20__.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date set forth above to be effective as of the Closing Date.

FWCU SOLAR PROJECT 2021 LLC

By: GM DEVELOPMENT COMPANIES LLC,
Sole Member

By:________________________________
Gregory W. Martz, Sole Member

FT. WAYNE CITY UTILITIES

By: ________________________________

Printed: ____________________________

Title: ______________________________

Exhibit J

Easement Agreement

This EASEMENT AGREEMENT (the "Agreement") is entered into as of the Effective Date (as hereinafter defined) by and between Ft. Wayne City Utilities, acting by and through the Fort Wayne Board of Public Works (hereinafter called "FWCU"), and the undersigned party identified on the signature page hereof (hereinafter called "CONTRACTOR") (each a "Party" and collectively the "Parties").

WITNESSETH:

WHEREAS, "FWCU" is a municipally owned utility under Ind. Code § 8-1-2-1(h) and owns generation and transmission facilities at various locations within the City of Fort Wayne, Indiana; and

WHEREAS, CONTRACTOR desires access to the "FWCU" Premises (as hereinafter defined) as a guest or business invitee of "FWCU" to perform services pursuant to a build, operate, and transfer agreement dated _______________, 2022 between CONTRACTOR and FWCU (the "BOT Agreement"); and

WHEREAS, access is granted to CONTRACTOR upon its agreement to indemnify and hold harmless FWCU or its respective parents, subsidiaries, including FWCU affiliates, members, directors, officers, employees and agents (collectively, the "FWCU Parties") for any damages to person or property or claims against the FWCU Parties, arising out of the actions and/or presence of CONTRACTOR and/or its Representatives (as hereinafter defined) on the FWCU Premises.

NOW, THEREFORE, the Parties agree as follows:

I. SCOPE

This Agreement applies to all of CONTRACTOR's operations or work on premises owned, operated, or leased by the FWCU Parties or under the control of the FWCU Parties or the property which is in part managed by FWCU personnel for certain contracted projects (the "FWCU Premises"), and to any work performed by CONTRACTOR for FWCU or the FWCU Parties under any contract or purchase order, regardless of where such work is performed, and to all situations where representatives of CONTRACTOR ("Representatives") have access to FWCU Premises in order to perform work for FWCU or the FWCU Parties. Representatives of CONTRACTOR include its directors, officers, employees, personnel, agents, affiliates, subcontractors and suppliers of any tier, and their agents and employees, individually or collectively.

II. SITE ACCESS

A. FWCU is concerned with the safety of its employees, contractors and visitors while on FWCU Premises and imposes certain reasonable restrictions in an attempt to ensure their safety. In recognition of these concerns, FWCU may require its contractors and visitors (and their agents, employees and representatives) to carry and display a badge/pass at the time of entering and while on FWCU Premises. FWCU's authorized security representative may in his/her discretion waive any or all of the conditions precedent to issuance of a badge/pass in his/her judgment. FWCU reserves the right to withdraw any pass issued to Representatives at any time if FWCU, in its sole judgment, has reason to believe that CONTRACTOR and/or Representatives are not complying with the terms of this Agreement.

B. Access is given to CONTRACTOR and its Representatives to specific areas of the Three Rivers Filtration Plant (TRFP), Wet Weather Pumping Station (WWPS) and Water Pollution Control Plant (WPCP) as depicted on Attachment 1 attached hereto. CONTRACTOR's access shall include appropriate laydown and working areas as identified in Attachment 1. CONTRACTOR and its Representatives are specifically precluded from accessing any areas marked as "Restricted Areas" on Attachment 1, and CONTRACTOR and its Representatives shall not operate any FWCU equipment located on any FWCU Premise at any time.

III. INDEPENDENT CONTRACTOR; COMPLIANCE WITH LAWS

A. Representatives shall always be construed to be employees, agents, subcontractors or affiliates of CONTRACTOR and CONTRACTOR shall assume all the obligations and liabilities applicable to it as the employer, principal, contractor or affiliate of Representatives. CONTRACTOR shall be an independent contractor under this Agreement and shall assume all the rights, obligations and liabilities applicable to it as such independent contractor hereunder and any provisions in this Agreement or any contract with or purchase order issued by FWCU which may appear to give FWCU the right to direct CONTRACTOR as to the details of doing the work herein covered or to exercise a measure of control over the work shall be deemed to mean that CONTRACTOR shall follow the desires of FWCU in the results of the work only.

B. Contractor represents and warrants that it will comply with all federal, state and local laws, rules and regulations applicable to it in the performance of its duties and obligations while on the FWCU Premises or performing work or services for the FWCU Parties.

IV. INDEMNIFICATION

To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend and hold harmless the FWCU Parties, their respective parents, subsidiaries, lenders, financing institutions and affiliated entities, and all of their agents, representatives, employees, directors, officers and partners (each individually and all collectively referred to hereinafter as "Indemnity"), from and against (a) any and all claims, suits, actions and proceedings (together, the "Claims" and individually a "Claim") whatsoever which may be brought or instituted on account of, grow out of, occur from, be incident to, or result directly or indirectly from: (i) the performance or nonperformance by CONTRACTOR of any work or services at the FWCU Premises or work or service done on behalf of the FWCU Parties at other than the FWCU Premises; (ii) the presence of CONTRACTOR and/or its Representatives on the FWCU Premises, or (iii) any violation of federal or state law, regulation, order, rule or of any other governmental authority having jurisdiction by CONTRACTOR and/or its Representatives, and (b) all losses, costs, damages, liabilities and expenses related to the Claims (including damages for any injury or death of any person or damage to or destruction of any property), including, but not limited to, attorneys' fees and other costs of defending against Claims, and further including, without limitation, full indemnity, defense and hold harmless for Claims which may also be caused by or result from the concurrent or partial negligence of CONTRACTOR or any other Indemnity. **This indemnity obligation is intended to indemnify each Indemnity against the consequences of its or their active, passive, concurrent or partial negligence; provided, however, that this indemnity shall not apply to (i) any Claim caused by the sole negligence of any Indemnity or (ii) the portion of any Claim caused by the willful misconduct of any Indemnity.** CONTRACTOR shall conduct with due diligence and in good faith the defense of all Claims against any Indemnity, even if any such Claim be groundless, false or fraudulent, and shall bear the cost of all judgments and settlements in connection therewith; provided, however, that without relieving CONTRACTOR of its obligations under this Agreement, any Indemnity, at its election, may defend or participate in the defense of any Claim against such Indemnity. Maintenance by CONTRACTOR of insurance covering the liability of CONTRACTOR hereunder shall not affect CONTRACTOR's obligations hereunder, and the limits of such insurance shall not constitute a limitation on CONTRACTOR's liability under this Indemnification provision.

V. TERM

The term of this Agreement (the "Term") shall commence on the Effective Date and end on the earlier of the Conveyance Closing Date or termination of the BOT Agreement.

VI. SAFETY RULES AND OTHER FWCU POLICIES

While its Representatives are performing services for FWCU, CONTRACTOR shall cause its Representatives to abide by all FWCU's applicable safety rules and procedures and the terms of this Agreement. Contractor may require its Representatives to execute an acknowledgement agreeing to be bound by the terms of this Agreement in the form attached as Attachment 2. CONTRACTOR shall also ensure that it has the safety programs in place as indicated in Attachment 3. During the course of this Agreement, FWCU may furnish CONTRACTOR with additional policies and procedures which are applicable to CONTRACTOR's Representatives providing services to FWCU hereunder, in which case CONTRACTOR will inform such Representatives that compliance with any such additional policies is required, will review such additional Policies with its Representatives providing services to FWCU; and will cause its Representatives to comply with such additional policies. Notwithstanding the foregoing, CONTRACTOR is solely responsible for direction and control over the adoption of employment and safety policies for its Representatives, which it agrees will be provided to FWCU if adopted.

VII. INSURANCE

CONTRACTOR shall purchase and maintain insurance coverage in accordance with Exhibit H to the BOT Agreement.

VIII. MISCELLANEOUS

A. To the extent that the terms of this Agreement are more stringent than the terms of any purchase order issued by FWCU to CONTRACTOR or other agreement between FWCU and CONTRACTOR which requires CONTRACTOR and its Representatives to provide technical, consulting, repair, maintenance or other services to FWCU, the terms hereof shall be in addition to and take precedence over the terms thereof. Except for agreements regarding pricing, fees and specifications for work to be performed by CONTRACTOR, this Agreement represents the complete agreement between the Parties with regard to the subject matter hereof, and any change, alteration or modification to this Agreement must be mutually agreed upon in writing by both Parties.

B. This Agreement shall be construed in accordance with the laws of the State of Indiana.

C. Any provision hereof (or a portion thereof) which is illegal, invalid, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating or impairing the remaining provisions (or portions thereof, as applicable) hereof, and any such illegality, invalidity, prohibition or unenforceability shall not affect the legality, validity or unenforceability of such provision (or portion thereof) in any jurisdiction.

D. Any failure by FWCU at any time, or from time to time, to enforce or require strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of performance of such terms or conditions and shall not affect or impair such terms or conditions or the remainder of this Agreement in any way, or affect the right of FWCU at any time to avail itself of such remedies as may be available for any such breach or breaches of such terms or conditions or the remainder of this Agreement.

E. This Agreement may not be assigned by either party without the express written consent of the other party. Any assignment in violation of this provision shall be null and void.

F. In the event filing suit becomes necessary to enforce or interpret the terms of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and cost of litigation in addition to court costs and other damages.

G. All notices required hereunder shall be in writing and sent by certified mail, return receipt requested, to the address written below, or to such replacement address set forth in a notice.

H. This Agreement may be executed in one or more counterparts, each of which shall constitute an original, but all of which shall constitute one and the same agreement. The Parties agree that a facsimile copy of a Party's signature on this Agreement shall be deemed to be an original signature for all purposes.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, FWCU and the undersigned CONTRACTOR have executed this Easement Agreement as of the ____ day of ____________________, 20____ (the "Effective Date").

FT. WAYNE CITY UTILITIES, ACTING BY AND THROUGH THE FORT WAYNE BOARD OF PUBLIC WORKS

By: ________________________________
Shan Gunawardena, Chair

By: ________________________________
Kumar Menon, Member

By: ________________________________
Chris Guerrero, Member

ATTEST: ________________________________
Michelle Fulk-Vondran, Clerk

Notice Address:
ATTN: Zachary Schortgen
200 E. Berry St.
Suite 250
Fort Wayne, IN 46802

IN WITNESS WHEREOF, FWCU and the undersigned CONTRACTOR have executed this Easement Agreement as of the ____ day of ___________________, 20____ (the "Effective Date").

CONTRACTOR:

Solential Energy Solutions, LLC

By: ________________________________

Name: James R. Shaw
Title: President
Date: ____________________________

Notice Address:
ATTN: Susan Loessl
13277 N. Illinois St.
Suite 110
Carmel, IN 46032

Attachment 1

Site access is based on Exhibit B, which outlines scope of project, detailing construction locations and needed areas of access.

Attachment 2

FORM OF SUBCONTRACTOR ACKNOWLEDGEMENT

_________________________ as a Subcontractor of _______________________________

"Subcontractor" "DEVELOPER"

will be performing certain work as part as such subcontract at premises owned, located at and/or operated by Fort Wayne City Utilities ("FWCU") or a parent company or affiliate thereof. In that connection, DEVELOPER has provided Subcontractor a copy of the Easement Agreement between DEVELOPER and FWCU and all attachments thereto.

Subcontractor has reviewed and agrees that as a condition for being allowed on the premises of FWCU, it will comply with all terms and conditions of the Easement Agreement.

Executed this _____ day of ___________, 20_____.

____
Signature

____
Printed Name

Its: _____________________________________

Attachment 3

CONTRACTOR SAFETY PROGRAMS DOCUMENTATION

Document Title	Required Yes/No
General	YES
Safety Manual	YES
HazCom Plan	YES
Emergency Action Plan	YES
Certificates of Insurance	YES
Copies of prior three (3) years OSHA 300A Summaries	YES
Drug Screen (required in last 6 months or proof of participation in random program)	YES
Job Specific	
Confined Space Entry Program	NO
Cranes, Slings, and Hoists Program	YES
Electrical Safety Program	YES
Fall Protection Program	YES
Fire Protection Program	YES
Hot Work Program	NO
Mobile Platforms and Scaffolds Program	NO
Respiratory Program	NO
Personal Protective Equipment Program *(including hearing, eye, head, face, & respiratory)*	YES
PPE Hazard Assessments for High Risk Operations	NO
Job Hazard Analyses for High Risk Operations	NO
Lockout/Tagout Program/Procedures	YES
Powered Industrial Trucks *(Forklift, JLGs, etc).*	YES
Training Records	
Training Records for the Job Specific Programs outlined above (list below)	NO
Respiratory Fit Test / Medical Approval for Respirator Use	NO

Exhibit K

FORT WAYNE CITY UTILITIES
TREAMENT FACILIITES MICROGRID ENERGY PROJECT

OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT ("Agreement") is made and entered this _____ day of ____________________, 202_ by and between Fort Wayne City Utilities, acting by and through the Fort Wayne Board of Public Works ("Owner"), and ___________ ("Operator") in accordance with the provisions of Ind. Code § 5-23.

RECITALS

WHEREAS, Owner has contracted with FWCU Solar Project 2021 LLC ("Developer") to design and construct an interconnected system of natural gas generators, biogas combined heat and power, and floating solar photovoltaics (the "Facilities") to generate electrical energy behind the meter and reduce Owner's dependence on the main electrical grid (the "Project"); and

WHEREAS, upon Substantial Completion of the Project, as that term is defined in the Build-Operate-Transfer Agreement (Ft. Wayne) between Developer and Owner (the "BOT Agreement"), Owner will need a contractor to assist with the operation, maintenance, and management of the Facilities; and

WHEREAS, Operator provides operation, maintenance and management services for the aforementioned types of generation facilities and has agreed to provide those services for the Facilities on the terms and conditions set forth in this Agreement.

NOW THEREFORE, for and in consideration of the mutual promises and undertakings set forth herein, the parties hereby agree as follows:

ARTICLE 1
AGREEMENT

Section 1.1 - Agreement. This Agreement consists of the terms and conditions set forth herein and the following Appendices, which are incorporated and made part of this Agreement by this reference.

Appendix A – Microgrid Operation Scope of Services and Compensation
Appendix B – Generator Preventative Maintenance and Compensation
Appendix C – Solar Array Preventative Maintenance and Compensation
Appendix D – Unscheduled Maintenance and Repairs

Section 1.2 - Effective Date and Term. This Agreement shall be effective on the date of Substantial Completion of the Project as defined in the BOT Agreement ("Effective Date") and shall continue thereafter for an initial term of five (5) years ("Initial Term"). At the conclusion of the Initial Term, this Agreement shall automatically renew for four (4) successive renewal terms of five (5) years (each being referred to herein as a "Renewal Term") unless either party provides notice of intent not to renew at least ninety (90) days prior to the end of the then-existing term. The Initial Term and all Renewal Terms are collectively referred to herein as the "Term".

Section 1.3 – Operator's Status as an Independent Contractor. Operator has been retained by Owner as an independent contractor to operate, maintain and manage the Facilities on behalf of Owner, in accordance with the Standards for Performance of the Services defined in Section 2.2. Owner has delegated to Operator overall responsibility for operating, maintaining and managing the Facilities to ensure the Facilities are available during the Term to help meet Owner's energy needs. Neither Operator nor any of its employees, subcontractors or agents shall be deemed to have any other status, except that Operator is the agent of Owner to the limited extent that this Agreement expressly grants Operator the authority to act on behalf of Owner.

Section 1.4 - Representatives. Owner and Operator shall each designate a representative ("Designated Representative") to act on its behalf in overseeing the performance of this Agreement. Owner and Operator may change their Designated Representatives upon written notice to the other party given as provided in this Agreement. Designated Representatives shall be the primary point of contact for all matters arising under this Agreement and shall have the power and authority to bind their respective principals under the terms of this Agreement, with any required internal corporate approvals with respect to such authority being the responsibility of each representative to obtain from his or her principal.

ARTICLE 2
SERVICES

Section 2.1 - Scope of Services. During the Term, Operator shall (i) operate, maintain, and manage the Facilities on behalf of Owner (such being referred to herein as the "Services") and (ii) also perform the specific duties set forth in this Agreement and the Appendices attached hereto if they are not otherwise required by the standards defined in Section 2.2.

Section 2.2 - Standards for Performance. Operator shall perform the Services required under this Agreement in accordance with (i) the requirements and service levels set forth in Appendices A-D, (ii) operating and maintenance manuals for the Facilities, (iii) applicable vendor warranties, (iii) applicable laws and regulations, (iv) prudent industry practices, (v) and all insurance policies required in Article 9 of this Agreement. Operator shall use all reasonable efforts to optimize the useful life of the Facilities and minimize Reimbursable Costs (as defined below) and Facility outages or other unavailability.

Section 2.3 - Operator's Personnel Standards. Operator shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned. All individuals employed by Operator to perform the Services shall be employees of Operator or subcontractors of Operator, and their working hours, rates of compensation and all other matters relating to their employment shall be determined by Operator. With respect to labor matters, hiring personnel, and employment policies, Operator shall comply with all applicable laws.

Section 2.4 - Compliance. Operator shall comply with all laws applicable to the operation, maintenance and management of the Facilities and the performance of the Services. Operator shall provide reasonably necessary assistance to Owner to secure permits, licenses, and approvals (and renewals of the same) that Owner is required to obtain from or file with any governmental agency regarding the Facilities. Operator also shall assist Owner with filing such reports, notices, and other communications as may be required by any governmental agency regarding the Facilities.

Section 2.5 - Operating Records and Reports. Operator shall maintain, at a location acceptable to Owner, operating logs, records, and reports that document the operation and maintenance of the Facilities, all in form and substance that are acceptable to Owner, as further described in the Appendices attached hereto. Operator shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Facilities provided to Operator by Owner and vendors.

ARTICLE 3
OWNER RESPONSIBILITIES

Section 3.1 - Information. Owner shall provide Operator with all vendor manuals, spare parts lists, a copy of the BOT Agreement, and all Project drawings, vendor warranty agreements, and other documents provided to Owner in connection therewith. Subject to the standards of performance set forth in Section 2.2, Operator shall be entitled to rely upon such information in performance of the Services.

Section 3.2 - Overhaul of Major Equipment and Capital Improvements. With the exception of major equipment teardowns and overhauls and capital improvements that are necessary due to the negligent acts or omissions of Operator, or otherwise as a result of Operator's breach of the terms of this Agreement, the cost of all major equipment teardowns and overhauls and all capital improvements shall be the responsibility of Owner. Operator shall promptly notify Owner in writing of any such teardowns and overhauls of major equipment or capital improvements that Operator believes are necessary or advisable together with a proposed schedule for completing such repairs or improvements. If Owner has consented in writing to reimburse Operator for such costs, Operator shall schedule, coordinate, contract and oversee the performance of such activities. Operator also shall be responsible for monitoring and enforcing contract compliance by the contractor performing such work, including taking such steps, short of litigation, to enforce any warranties granted to Owner by the contractor performing such work.

ARTICLE 4
SITE ACCESS

Section 4.1 – Operator Access. From and after the Effective Date and subject to any requirements of applicable laws or the terms of this Agreement, Owner shall provide Operator and its subcontractors, agents and employees with access to the Facilities and the relevant portion(s) of the Three Rivers Filtration Plant, Water Pollution Control Plant, and Wet Weather Pumping Station where the Facilities are located (such being collectively referred to herein as the "Site") at all times and without prior notice to the extent required to perform the Services or any activity related to the Services. During any such access to the Site, any such agents, employees and invitees of Operator or Operator's Subcontractors shall comply with all reasonable safety and security procedures.

Section 4.2 – Owner Access. Owner and its agents, employees and invitees shall have access to the Facilities and Site at all times to perform any investigations, studies, operations and maintenance work or any other activities deemed appropriate by Owner in its sole discretion.

ARTICLE 5
COMPENSATION AND PAYMENT

Section 5.1 – Operator's Compensation. As compensation to Operator for performance of the Services, Owner shall pay Operator the fees identified in the Appendices.

Section 5.2 – Payments during Renewal Terms. If this Agreement is renewed in accordance with Section 1.2, the fees for the Services identified in the Appendices shall be increased on an annual basis (at the beginning of each year during the applicable Renewal Term) by 3.0%.

Section 5.3 – Billing of Annual Fees. No later than December 1 of each year, Operator shall deliver Owner an invoice for Services identified in Appendices A-C for the upcoming year, less any amounts Owner disputes in good faith or is permitted to offset under this Agreement.

Section 5.4 – Billing for Reimbursable Costs. As used in this Agreement, "Reimbursable Costs" shall mean the time and materials cost for unscheduled maintenance and repairs as described in Appendix D. Billing for Reimbursable Costs shall be governed by the following provisions:

(a) Each year this Agreement remains in effect, Owner will issue a purchase order for the annual fees identified in Appendices A-C plus an allowance of $50,000.00 for Reimbursable Costs (the "Owner's Allowance"). Unscheduled maintenance and repairs within the Owner's Allowance, as determined on a cumulative basis, may be initiated by Operator without further approval by Owner. Upon completion of unscheduled maintenance or an unscheduled repair within the Owner's Allowance, Operator shall deliver an invoice to Owner itemizing the actual costs of materials used in the repair, the number of hours of labor expended in making the repair, and the hourly rate(s) of the individual(s) involved in making the repair.

(b) Reimbursable Costs that exceed the Owner's Allowance shall not be undertaken without Owner's approval. If Operator becomes aware of the need for unscheduled maintenance or an unscheduled repair that will exceed the Owner's Allowance, Operator shall provide Owner a statement of the fixed costs and proposed schedule for completion of the unscheduled maintenance or repair in accordance with Appendix D. If Owner approves the unscheduled maintenance or repair, Operator shall proceed to complete the work and deliver an invoice to Owner as described in Subsection 5.4(a).

(c) If an emergency endangering the safety or protection of persons, the Facilities, or the Site occurs, Operator shall promptly notify Owner and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. Operator shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

Section 5.5 – Payment by Owner. Owner shall submit payment on each invoice within forty-five (45) days after receipt thereof. However, with respect to any disputed portion of an invoice, Owner shall provide Operator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article 15.

Section 5.6 -- Interest. Any amount owed to either party under this Agreement by the other party which remains unpaid more than 30 days after the date such amount is due and payable shall accrue interest at a rate of 1% per month.

ARTICLE 6
LIMITATIONS ON AUTHORITY

Section 6.1 - General Limitations. Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Owner in writing, Operator and any employee, representative, subcontractor or other agent of Operator may not:

(a) Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of the Facilities or any other property or assets of Owner, including any property or assets purchased by Operator where the purchase cost is a Reimbursable Cost;

(b) Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Owner or (ii) that prohibits or otherwise restricts Operator's right to assign such contract or agreement to Owner at any time;

(c) Make or consent or agree to make any expenditure for equipment, materials, assets or other items which would be a Reimbursable Cost, except as otherwise set forth herein;

(d) Take or agree to take any other action that materially varies from the requirements of this Agreement;

(e) Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Owner or Operator, the cost of which, in the case of Operator, would be a Reimbursable Cost hereunder, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(f) Create, incur, assume, or allow any lien or encumbrance upon the Facilities, the Site, or any portions thereof;

(g) Engage in any other transaction on behalf of Owner or any other person or entity not expressly authorized by this Agreement or that violates applicable laws, this Agreement or any other agreement to which Owner or Operator are a party; or

(h) Enter into any agreement to do any of the foregoing.

Section 6.2 - Execution of Documents. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Owner) to be executed by Operator shall be executed by the authorized representative of Operator or, subject to prior written notice to Owner, by such other representative of Operator who is authorized and empowered by Operator to execute such documents.

ARTICLE 7
TERMINATION

Section 7.1 - Immediate Termination by Owner. Owner may terminate this Agreement immediately (i) upon the filing of an action for liquidation or reorganization under the U.S. Bankruptcy Code by Operator or by one of Operator's creditors if such action is not promptly dismissed, (ii) upon the occurrence of a Force Majeure Event (as defined herein) that is not remedied within 120 days of its initial occurrence, or (iii) upon a change in laws or regulations that renders operation of the Facilities illegal or materially more costly. If the Agreement is terminated by Owner pursuant to this Section, Operator shall be compensated for all Reimbursable Costs incurred by Operator to and including the date of termination. In addition, Operator shall be entitled to keep the annual operating fees paid pursuant to Section 5.2 of this Agreement for the year during which termination occurs but shall not be entitled to any annual fees thereafter.

Section 7.2 - Termination Upon Notice by Owner. Owner may terminate this Agreement upon written notice to Operator in the event (i) Operator violates, or consents to a violation of, any laws or regulations applicable to the Services or the Facilities, where the violation has or may have a material adverse effect on the maintenance or operation of the Facilities or Owner's interest therein, and Operator does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Operator diligently commences and pursues such cure and indemnifies Owner for all related costs, of whatever kind), or (ii) of a material breach by Operator in the performance of the Services, if Operator does not cure such breach within 30 days from the date of Operator's receipt of notice from Owner demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Operator diligently commences and pursues such cure and indemnifies Owner for all related costs, of whatever kind). If the Agreement is terminated by Owner pursuant to this Section 7.2, Owner shall have the remedies set forth in Article 8.

Section 7.3 - Termination by Owner Without Cause. In addition to its rights set forth in this Article 6, Owner reserves the right to terminate this Agreement without cause upon ninety

(90) days written notice to Operator. If the Agreement is terminated by Owner pursuant to this Section 6.3, Operator shall be compensated for all Reimbursable Costs incurred by Operator up to the date of such termination and shall be entitled to keep annual operating fees paid pursuant to Section 5.2 of this Agreement for the year during which termination occurs but shall not be entitled to any annual fees thereafter.

Section 7.4 - Termination by Operator. Operator may terminate this Agreement for cause in the event of: (i) Owner's bankruptcy; or (ii) Owner's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of Owner's receipt of a notice from Operator demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Owner diligently commences and continues to pursue such cure). If the Agreement is terminated by Operator pursuant to this Section 7.4, Operator shall have the remedies set forth in Article 8.

Section 7.5 - Project Condition at End of Term. Upon expiration or termination of this Agreement, Operator shall remove its personnel from Owner's premises leave the Facilities in as good condition as they were on the Effective Date, normal wear and tear and casualty excepted. Operator shall be paid all unpaid Reimbursable Costs. All special tools, improvements, inventory of supplies, spare parts, safety equipment, operating and maintenance manuals, operating logs, records and documents maintained by Operator pursuant to this Agreement and any other items furnished on a Reimbursable Cost basis under this Agreement will become the property of Owner without additional charge. Operator shall cooperate with Owner and any new vendor on the transition of operation and maintenance responsibilities to such vendor. Owner shall also have the right, in its sole discretion, to assume and become liable for any contracts or obligations that Operator may have undertaken with third parties in connection with the Services. Operator shall cooperate in taking all reasonable steps requested by Owner required to cause the assumption of the contracts, provided that Owner agrees to indemnify and hold harmless Operator for all liabilities arising out of events and obligations arising from the assumption of contract rights and obligations after the date of any such assumption. Operator shall use commercially reasonable efforts to cooperate with Owner or a succeeding operator to assure that the operation, maintenance and management of the Facilities are not disrupted.

ARTICLE 8
REMEDIES

Section 8.1 – Owner Remedies in the Event of Material Default. In the event of a material default in the performance of the Services or the obligations of Operator hereunder that is not cured within 30 days of Operator's receipt of a notice from Owner demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Operator diligently commences and continues to pursue such cure), Owner shall have the following remedies:

(a) Owner may terminate this Agreement in accordance with Section 7.2.

(b) Owner may hire a contractor to perform any portion of the Services not performed by Operator in accordance with the terms of this Agreement and recover the costs of the contractor's work from Operator.

(c) Owner may use its own workforce to complete any Services not performed by Operator in accordance with the terms of this Agreement and recover the costs of completing such work from Operator.

(d) Owner may deduct the cost of Services not performed in accordance with the terms of this Agreement from any amounts that may be due and owing Operator.

(e) Owner may file a lawsuit to recover any costs or damages incurred as a result of Operator's non-performance or defective performance under this Agreement.

(f) Owner may pursue any other remedies that are available at law or in equity.

Section 8.2 – Operator Remedies in the Event of Material Default. In the event of a material default of the obligations of Owner hereunder that is not cured within 30 days of Owner's receipt of a notice from Operator demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Owner diligently commences and continues to pursue such cure), Operator shall have the following remedies.

(a) Operator may terminate this Agreement in accordance with Section 7.4.

(b) Operator may file a lawsuit to recover any costs or damages incurred as a result of Owner's non-performance or defective performance under this Agreement.

(c) Operator may pursue any other remedies that are available at law or in equity.

ARTICLE 9
INSURANCE

Section 9.1 - Coverage. Owner and Operator shall obtain and maintain the insurance set forth in Sections 9.2 and 9.3. Such insurance may be maintained under individual or blanket insurance policies.

Section 9.2 – Operator Coverage.

(a) Operator shall maintain during the term of this Agreement the insurance described below with insurance companies acceptable to Owner and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

Worker's Compensation:	per statutory requirements

General Liability:	$1,000,000 minimum per occurrence/$2,000,000 aggregate
Automobile Liability:	$1,000,000 per occurrence
Professional Liability:	$1,000,000 per occurrence
Completed Operations Liability:	$1,000,000 minimum per Occurrence
Excess/Umbrella Coverage:	$5,000,000.00

(b) The amounts of insurance required in the foregoing subsection may be satisfied by Operator purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified.

(c) All policies of liability insurance to be maintained by Operator shall provide for waivers of subrogation in favor of Owner and shall include the following:

(i) a severability of interests or cross liability clause;

(ii) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Owner; and

(iii) Owner and such other persons or entities as may be required shall be named as additional insureds.

(d) All policies of insurance required to be maintained pursuant to Section 9.2 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of Owner, without 30 days prior written notice to Owner, except for termination for non-payment of premium which shall require ten (10) days prior written notice to Owner. Owner has the option in placing the coverages listed above and naming the Operator as an additional insured.

Section 9.3 – Owner Coverage. Owner shall maintain from and after the date of this Agreement the insurance described below and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

(a) Liability Insurance: Owner is a self-insured entity. Owner maintains a self-insurance fund in such amounts that will enable it to provide coverage for claims up to the limits specified in the Indiana Tort Claims Act.

(b) Property and Casualty Insurance: Owner shall maintain adequate property and casualty insurance on the Facilities and the premises upon which the Facilities are located.

Section 9.4 – Certificates of Insurance. On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

Section 9.5 – Payment of Deductible Amounts. Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of the Project or otherwise referred to in this Agreement, Operator shall promptly pay to Owner any deductible amount related to any claim against or other cost to Owner covered under any such insurance policy which arose due to the gross negligence of Operator.

ARTICLE 10
INDEMNIFICATION AND LIABILITIES

Section 10.1 - Indemnification.

(a) Indemnification by Operator. Except for any claims arising out of the negligent acts or omissions of Owner, Operator shall indemnify, defend and hold harmless Owner, the members thereof, and their respective officers, directors, employees, agents, Affiliates and representatives (the "Owner Indemnified Parties"), from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of or in any way connected with this Agreement and Operator's obligations hereunder. Any costs or expenses incurred by Operator pursuant to its indemnity obligations under this Section 10.1(a), including the cost of deductibles with respect to the insurance maintained by Operator or Owner pursuant to Article 8 or losses in excess of such insurance coverage, shall not constitute a Reimbursable Cost under this Agreement.

(b) Indemnification by Owner. Owner shall indemnify, defend and hold harmless Operator, its officers, directors, employees, agents, Affiliates and representatives (the "Operator Indemnified Parties") from and against any and all claims (in whatever form and to the fullest extent permitted by law) arising out of the negligent acts or omissions of Owner in the performance of its obligations under this Agreement.

Section 10.2 - Environmental Liability.

(a) Operator Liability. Operator shall not be responsible for claims directly or indirectly related to hazardous materials present at the premises upon which the Facilities are located before the date of this Agreement, except to the extent Operator acted with respect to such materials in a negligent manner. Owner shall defend, indemnify and hold Operator harmless against such claims, except to the extent such claims arise from Operator's negligent acts or omissions.

(b) Owner Liability. Owner shall not be responsible for claims directly related to hazardous materials present at the premises upon which the Facilities are located arising out of the negligent acts or omissions of Operator. This provision of the Agreement shall not be construed to require Operator to take corrective action with respect to any hazardous materials at the Project before the date of this Agreement.

(c) Governmental Actions. If action is required at the premises upon which the Facilities are located to comply with any applicable environmental laws during the term of this Agreement, Owner (with Operator's assistance) shall be responsible for the costs of compliance. Costs for such compliance action shall only be incurred by Operator only with Owner's prior written consent, unless a governmental authority requires Operator to incur such costs and expenses prior to obtaining such written consent.

ARTICLE 11
LIMITATIONS OF LIABILITY

Section 11.1 - Limitations of Liability.

(a) Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, Operator and Owner each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.

(b) Damages Limited to Annual Operating Fee. The aggregate liability of Operator (except for those claims that are subject to the provisions of Section 10.1(a) (*Indemnification by Operator)* or covered by the insurance set forth in Article 9, and then only to the extent such claims are actually covered thereby, after giving effect to any deductibles, exclusions, limits, or self-insured retentions thereunder) with respect to claims of Owner arising out of the performance or nonperformance of obligations under this Agreement. Operator's liability shall in no event exceed, during any year, the annual fee payable to Operator during such year plus the amount necessary to satisfy Operator's indemnification responsibilities under Article 10.

(c) Survival. The parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.

ARTICLE 12
WARRANTIES

Section 12.1 – Operator Warranty. Operator warrants to Owner that all of the Services shall be performed in accordance with this Agreement (and the standards of performance set forth herein) by qualified personnel, and all equipment, materials and other items installed in the Facilities by Operator be free from defects in design, material and workmanship ("Warranty"). The foregoing Warranty, and the remedy set forth below, applies to any defect that appears within two (2) years from the date the work giving rise to the claim was performed. Each party shall notify the other party promptly after such party becomes aware of a defect. Any repair, replacement or other work performed pursuant to the Warranty shall be subject to the Warranty for two (2) years from the date of such Warranty work; provided that in no event shall the Warranty extend beyond two (2) years after the Term. Operator shall have no liability to Owner under this Agreement (whether based on warranty or otherwise) (a) for any defect that appears later than two (2) years after the date the work giving rise to the defect was performed or (b) for any damage or defect that occurs solely as a result of any negligent act or omission of Owner or any parties acting under a separate agreement with Owner. In the case of any damage or defect that occurs as a result of any negligent act or omission of Owner and breach of the Warranty by Operator, Operator's liability shall be in proportion to its relative responsibility for such damage or defect.

Section 12.2 – Vendor Warranties. Owner has obtained from sellers of equipment, material, or services (other than the Services) that comprise the Facilities, warranties against defects in materials and workmanship related to such Facilities (the "Vendor Warranties"). Operator shall take no action that voids or nullifies the Vendor Warranties without the express written consent of Owner. Owner hereby releases Operator from any liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by the Vendor Warranties. Upon Owner's request, Operator agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by Owner for Owner's benefit or assignable by Operator to Owner without any further action or consent by or on the part of any third party. Unless otherwise requested, Operator shall administer such warranties and immediately notify Owner of any defects discovered or suspected that may be covered by such warranties. When requested, Operator shall assign any such warranty to Owner and assist Owner with the administration and enforcement of such warranty, or, if such warranty is not assignable to Owner, assist Owner with the administration and enforcement of such warranty.

ARTICLE 13
CONFIDENTIALITY

Section 13.1 - Operator. During the Term of this Agreement, and for a period of three (3) years thereafter, Operator agrees to hold in confidence any Confidential Information obtained by Operator in the performance of the Services or otherwise supplied to Operator by Owner or someone acting on Owner's behalf in connection with this Agreement. As used herein, "Confidential Information" shall collectively refer to and mean all information or material disclosed or provided by Owner concerning the Facilities, the Site, the Project described in the BOT Agreement, Owner's business plans and the activities undertaken at the Site, data, information, or knowledge regarding the performance of the Facilities, and any other data, information, or materials specifically marked "Confidential" by Owner.

Section 13.2 - Exceptions. The provisions of this Article shall not apply to information that was in the public domain, was already in the receiving party's possession, or was received lawfully and free of any obligation to treat it as confidential.

Section 13.3 - Required Disclosure. If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Article 13, the receiving party will notify the other party promptly in writing so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

ARTICLE 14
TITLE, DOCUMENTS AND DATA

Section 14.1 - Materials And Equipment. Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by Operator on a Reimbursable Cost basis hereunder shall pass immediately to and vest in Owner upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect Operator's obligations as set forth in this Agreement.

Section 14.2 - Documents. All materials and documents prepared or developed by Operator, its employees, representatives or contractors in connection with the Facilities or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts, shall become Owner's property when prepared, and Operator, its agents, employees, representatives, or contractors shall not use such materials and documents for any purpose other than performance of the Services, without Owner's prior written approval. All such materials and documents, together with any materials and documents furnished to Operator, its agents, employees, representatives, or contractors by Owner, shall be delivered to Owner upon expiration or termination of this Agreement and before final payment is made to Operator.

Section 14.3 - Review By Owner. All materials and documents referred to in Section 14.2 hereof shall be available for review by Owner (including their agents or advisors) at all reasonable times during development and promptly upon completion. However, Owner's approval of materials and documents submitted by Operator shall not relieve Operator of its responsibility for the correctness thereof or of its obligation to meet all requirements of this Agreement.

Section 14.4 - Proprietary Information. Where materials or documents prepared or developed by Operator or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how acquired from third parties by Operator or others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that Owner shall have the right to the same to the extent necessary for operation or maintenance of the Facilities.

ARTICLE 15
RESOLUTION OF DISPUTES

Section 15.1 - Resolution Through Discussions. If any dispute or difference of any kind (a "Dispute") arises between Owner and Operator in connection with, or arising out of, this Agreement, the Owner and Operator within 30 days shall attempt to settle such Dispute in the first instance through informal discussions. The designated representatives of Owner and Operator shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 business days, the Dispute shall be referred within 2 business days of the lapse of the 5 business day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Owner and Operator have had at least 5 business days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, the parties may, but are not required to, refer the matter refer the Dispute to a third-party mediator, the costs of which shall be shared equally by the parties

Section 15.2 – Judicial Proceedings. If the parties are unable to resolve a Dispute arising out of, or in connection with, this Agreement by the procedure prescribed in Section 15.1, the parties, or either one of them, may pursue relief in a court of competent jurisdiction.

Section 15.3 - Continued Performance. During the pendency of any discussions, mediation, or court proceedings, Operator and Owner shall continue to perform their obligations under this Agreement.

ARTICLE 16
MISCELLANEOUS PROVISIONS

Section 16.1 – Assignment. Neither Owner nor Operator party may assign its rights or obligations under this Agreement without the prior written consent of the other party hereto, except that this Agreement may be assigned by Owner without such prior consent to any successor of Owner or to a person or entity acquiring all or substantially all of the Facilities or the premises upon which such Facilities are located. Operator hereby consents to the assignment by Owner of a security interest in this Agreement to any lenders or bondholders.

Section 16.2 - Force Majeure. As used herein, Force Majeure shall mean acts of God including, floods, storms, earthquakes, explosions, and fires, labor disputes, strikes, insurrections, riots, wars, acts of terrorism, federal, state or local laws, orders, rules, or regulations, epidemics, pandemics, utility or energy shortages, and other events that (i) are beyond the reasonable control of the parties to this Agreement, (ii) are unforeseeable, and (iii) cannot, with the exercise of due diligence, be overcome. If either Owner or Operator is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to Force Majeure, the party affected by such Force Majeure event shall be excused from whatever performance is impaired by the event, provided that the affected party promptly, upon learning of such event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to Force Majeure.

Section 16.3 - Amendments. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

Section 16.4 - Survival. Notwithstanding any provisions herein to the contrary, the obligations and limitations set forth in Articles 10, 11, 12, 13, and 15 shall survive in full force despite the expiration or termination of this Agreement.

Section 16.5 - No Waiver. It is understood and agreed that any delay, waiver or omission by Owner or Operator with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Owner or Operator of any subsequent breach or default of the same or other required performance on the part of Owner or Operator.

Section 16.6 - Notices. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be in writing and shall be given to each party at its address or fax number set forth in this Section 16.6 or at such other address or fax number as hereafter specified as provided in this Section 16.6. All Notices shall be (i) delivered personally or (ii) sent by fax, electronic mail, telegraph, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (A) when transmitted if sent by fax, electronic mail, or telegraph (provided the transmittal is confirmed), or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To Operator:
[Name of O&M firm]
[Address of O&M firm]
ATTN: ***[Name of representative designated pursuant to Section 1.4]***
Tel: ***[Telephone number, including country code, if needed]***
Fax: ***[Facsimile machine number, including country code, if needed]***
E-Mail: ***[E-mail address]***
To Owner:

[Name of Owner &M firm]
[Address of Owner firm]
ATTN: ***[Name of representative designated pursuant to Section 1.4]***
Tel: ***[Telephone number, including country code, if needed]***
Fax: ***[Facsimile machine number, including country code, if needed]***
E-Mail: ***[E-mail address]***

Section 16.7 - Fines And Penalties. If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against Operator or Owner arising from Operator's failure to operate and maintain the Facilities in accordance with applicable laws without Owner's prior written consent, such fines and penalties shall, subject to the limitations set forth in Article 11, be the sole responsibility of Operator and shall not be deemed a Reimbursable Cost.

Section 16.8 - Representations And Warranties. Each party represents and warrants to the other party that:

(a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;

(b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and

(c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

Section 16.9 - Counterparts. The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

Section 16.10 - Governing Law. This Agreement shall be governed in all respects by the laws of the State of Indiana, without regard to conflict of laws principles. Venue for any dispute shall be in the federal and state courts sitting in Allen County, Indiana, and the parties irrevocably consent to the personal jurisdiction thereof.

Section 16.11 – Complete Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior and contemporaneous agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement. If the terms and conditions of this Agreement vary or are inconsistent with any portion of the Appendices, the terms of this Agreement shall control and be given priority, and the provisions of the Appendices shall be subject to the terms of this Agreement.

Section 16.12 - Partial Invalidity. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

Section 16.13 - Captions. Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

Section 14.14 – Fiscal Body Approval. This Agreement is subject to the approval by the Common Council of the City of Fort Wayne, Indiana. In the event such approval is not obtained, this Agreement shall be null and void and without further force or effect.

[Signatures Begin on Next Page]

IN WITNESS WHEREOF, the parties have executed this Operations and Maintenance Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

OWNER:

FORT WAYNE CITY UTILITIES ACTING BY AND THROUGH THE FORT WAYNE BOARD OF PUBLIC WORKS

By: ______________________________
Shan Gunawardena, Chair

By: ______________________________
Kumar Menon, Member

By: ______________________________
Chris Guerrero, Member

ATTEST:

____
Michelle Fulk-Vondran, Clerk

IN WITNESS WHEREOF, the parties have executed this Operations and Maintenance Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

OPERATOR:

By: ______________________________

Title:

By: ______________________________

Title:

Appendix A

Overall Microgrid System Operation

Overall Microgrid System Operation – Scope

The Operator and the Operator's agents are responsible for operation of the microgrid and associated components during the specified term period. Maintenance of the generating engines and solar components are not specified in this subsection.

Overall Microgrid System Operational Personnel (FTE Assignment) will be put in place on the first day of operations to serve as a first point of contact (POC) for all things concerning the operations, maintenance, performance, reporting and daily health status of the Microgrid.

Overall Microgrid System Operations – Costs

Costs associated with the Overall Microgrid System Operations are based on annual lump sum values. The following table summarizes the annual costs for the first five years.

Overall Microgrid System Operations 5-year cost model and table

Microgrid FTE Term - 5 Years	
Year 1	$ 68,400/year
Year 2	$ 70,452/year
Year 3	$ 72,566/year
Year 4	$ 74,743/year
Year 5	$ 76,985/year

Unless otherwise agreed by the Parties, the Service Fees for Overall Microgrid System Operations that are provided by Operator after the end of the Term will be equal to such Service Fees in effect for the previous year of the Term plus 3.0%.

Overall Microgrid System Operations – Operator's (MacAllister Machinery CO INC) Roles and Responsibilities

The following responsibilities are assigned to the Operator for the Overall Microgrid System Operations. This list is not all inclusive and does not preclude the Operator from providing services as needed by the Owner related to the Overall Microgrid System Operations.

- Dedicated to FWCU Microgrid as first point of contact
- Microgrid equipment operation and coordination of scheduled and unscheduled maintenance activities
- Ability of being on-call, on-site within 2 hours
- Monitoring and Reporting
    - Daily visual "Health Status Checklist" reporting of mutually agreed upon list

        - Coordinated with FWCU personnel
    - Daily, weekly, monthly, quarterly, and annual reporting
    - Submit written reports to FWCU on a monthly basis
- Incident/Failure reporting and communication
    - Documented response within 72 hours of a microgrid incident or failure
    - Documented corrective action plan of 72 hours after official incident or failure notice
    - Documented root cause analysis of incident or failure 72 hours after

      FWCU approved implementation of the corrective action plan
- Warranty Support Services: Includes administration and labor for all equipment warranty claims
- Spare Parts Inventory and status
- Calibration of Microgrid meters
- Switchgear Maintenance
- Circuit Breaker Maintenance
- Microgrid Controller Operations and Maintenance

Specifically, the responsibilities of the Operator related to the Overall Microgrid System Operation do not include:

- Operations and maintenance of FWCU facilities, equipment, valves, systems, electrical gear, etc.
- Maintenance of engine generators
- Maintenance of floatovoltaics systems
- Other items specified in separate subsections of this Exhibit

<u>Overall Microgrid System Operations – Owner (FWCU) Roles and Responsibilities</u>
The following responsibilities are assigned to the Owner for the Overall Microgrid System Operation.

- Appointment on-site point of contact (POC) for each facility
    - WWPS
    - WPCP
    - TRFP
- POC to perform the daily visual "Health Status Checklist"
    - Report any unusual events
    - Visuals of newly implemented equipment surroundings
        - Example open doors, gates or large debris on Pond 1
    - Visuals of doors, access cabinets or safety shields not closed, malfunctioning or broken

    - Visuals of required signage
- Testing and Troubleshooting coordination
    - Occasionally work with FTE on parameter testing in order to help equipment to restart, re-sync or with power up/down procedures to ensure issue isn't affecting performance

Appendix B

Maintenance of Engine Generators

Maintenance of Engine Generators – Scope

The Operator and the Operator's agents are responsible for maintenance of the engine generators included as part of the microgrid during the specified term period. This includes the three natural gas generators (one at TRFP and two at WPCP), two existing diesel generators (installed at TRFP), and two existing biogas-fueled combined heat and power (CHP) systems (installed at WPCP).

Refer to the MacAllister Warranty Statement (Exhibit L) for additional details.

Maintenance of Engine Generators – General Notes and Assumptions

The following key assumptions apply to Section K.3:

General Notes:

- Based on 7500 hours annually, on average.
- Engine Oil change at 2000 hours
- Coolant changed every 3 years or 15,000 hours (includes up to 50 gallons)
- Gearbox oil change @ 4,000 hours
- Travel time at 1 hour per round trip
- Batteries changed every 3 years or 15,000 hours
- Air filters – primary/secondary every 8000 hours
- Estimate is based on equipment being installed in an enclosure with overhead crane accessibility
- Adjusted labor hours on repair options to account for confined workspace

Maintenance of Engine Generators – Costs

MacAllister O&M Scheduled Maintenance Cost Breakdown

	Year 1 Estimated Hours/Costs	Year 2 Estimated Hours/Costs	Year 3 Estimated Hours/Costs	Year 4 Estimated Hours/Costs	Year 5 Estimated Hours/Costs
Natural Gas Engines					
TRFP G3512H (1.5MW)	7,873	7,873	7,873	7,873	7,873
Rate - $12.21/Engine Hour	$96,129	$96,129	$96,129	$96,129	$96,129
WPCP #1 G3512H(1.5MW)	7,000	7,000	7,000	7,000	7,000
Rate - $12.21/Engine Hour	$85,470	$85,470	$85,470	$85,470	$85,470
Existing Diesels Engines	Emergency Use Only – Final to determine hours of expectation and cost				
TRFP #1 (2MW)	TBD	TBD	TBD	TBD	TBD
Rate - $12.15/Engine Hour					
TRFP #2 (2MW)	TBD	TBD	TBD	TBD	TBD
Rate - $12.15/Engine Hour					
Existing Kraft Biogas Engines – Additional Costs					
WPCP #1 (400kW)	172.5	172.5	172.5	172.5	172.5
Rate - $11.68/Engine Hour	$2,014.80	$2,014.80	$2,014.80	$2,014.80	$2,014.80
WPCP #2 (400kW)	172.5	172.5	172.5	172.5	172.5
Rate - $11.68/Engine Hour	$2,014.80	$2,014.80	$2,014.80	$2,014.80	$2,014.80

General Inflation is calculated at 3%.

Exclusions in scheduled maintenance costs: (Covered in Operator FTE or Unscheduled Events)

- Daily/Weekly Operations & Maintenance
- Response to shutdowns
- Maintenance /Repairs to Silencers/Catalyst
- Maintenance/Repairs to Balance of Plant Equipment
- ENG/GEN/GEARBOX crane/rigging/transport at Unscheduled or Overhaul intervals
- ENG/GEN/GEARBOX removal and installation at Unscheduled or Overhaul intervals
- Excludes Parts and Labor pricing escalations starting year 2022 and beyond
- Switchgear Maintenance

- Circuit Breaker Maintenance
- Any Unscheduled Maintenance/Repairs to covered equipment
- Travel cost for any unscheduled maintenance or repairs on covered equipment
- Travel cost for any unscheduled/scheduled repair on equipment not covered under agreement
- Fluids (engine oil, gearbox oil, coolant) for make up between scheduled changes
- Applicable Indiana sales tax not included
- CAT Platinum Extended warranty as specified in Exhibit L

Escalation rates will be calculated on CPI on any given year contracts call for an new price period or extension.

<u>Maintenance of Engine Generators – Operator (MacAllister Machinery CO INC) Roles and Responsibilities</u>

Inclusions:

- PM's for covered equipment
- Fluid changes (engine oil, coolant, gearbox oil)
- Scheduled Maintenance for covered equipment (spark plugs, batteries, thermostats)
- Travel cost for PM's, scheduled maintenance, Top End Overhaul
- Top End Overhaul
- ENG/GEN commissioning after Top End Overhaul
- Scheduled Maintenance on Dungs Fuel train as called out in O&M
- Scheduled Maintenance on Hilco CCV as called out in O&M
- Rental generator allowance provided at Top End overhaul
    - Allowance includes:
        - XQ-1475G
        - 50 feet of cable
        - Transformer
        - Freight round trip
        - Installation and removal
        - Generator Allowance based on 2021 pricing – subject to change based on when Top End Overhaul occurs

<u>Maintenance of Engine Generators – Owner (FWCU) Roles and Responsibilities</u>

- Daily Health Status Checklist
- Visual Inspections for oil, steam, water or general fluid leaks
- Audible Alarm notifications
- Coordination with FTE and/or MacAllister for troubleshooting

Appendix C

Maintenance of Floatovoltaics Systems

Maintenance of Floatovoltaics Systems – Scope

The Operator and the Operator's agents are responsible for maintenance of the floatovoltaics systems included as part of the microgrid during the specified term period.

Refer to the O&M Contract (Exhibit K) for additional details.

Operations and Maintenance of Floatovoltaics Systems – Costs

Solential Energy Scheduled Maintenance Cost Breakdown

Facility: Wet Weather Pond 1 – 6.3MWdc Solar Array, consisting of Solar generation, inversion equipment and related components located in Fort Wayne, IN at Fort Wayne City Utilities Wet Weather Pumping Station Pond 1.

Floating Solar Array - 5 Years	
Year 1	$ 65,600/year
Year 2	$ 67,568/year
Year 3	$ 69,595/year
Year 4	$ 71,683/year
Year 5	$ 73,833/year

Unless otherwise agreed by the Parties, the Service Fees for the Standard System Services that may be provided by Operator after the end of the Term will be equal to such Service Fees in effect for the previous year of the Term plus [3.0%].

Operation and Maintenance of Floatovoltaics Systems – Operator Roles and Responsibilities

- Wet Weather Plant Pond 1 Area Maintenance:
  - Coordinating with FWCU POC on Health Status Checklist
  - FTE Operator will maintain a debris free area in and around the solar array floatation racking, walkways and inverter/transformer pad areas to ensure full system capability on an as needed basis. (no less than Quarterly).
- Wet Weather Plant Pond 1 Area Inspections:
  - Coordinating with FWCU POC on Health Status Checklist
  - FTE Operator will visually inspect the Facility areas immediately surrounding the solar arrays (such as fencing, walkways, anchoring systems, floatation racking, equipment and data cabinets, and inverter/transformer systems and supports) on a regular basis (no less than Quarterly) and will report any material issues discovered by

Operator to Owner promptly.
  - Coordinating with FWCU POC on Health Status Checklist
  - FTE Operator will visually inspect all code-required signage for the Facility solar arrays on a regular basis (no less than Quarterly) and will report any material issues discovered by Operator to Owner promptly.

- Quarterly/Annual Inspections:
  - FTE Operator will visually inspect the inverters, modules, racking, anchoring, anchoring supports, panel boxes and wiring for the Facility solar arrays no less than once per year and will report any material issues discovered by the Operator to Owner promptly.
  - FTE Operator will check that all solar panels, floatation racking, anchoring and anchoring supports are tightened in material compliance with the manufacturer's torque specifications no less than once per year and will report any material issues discovered by the Operator to Owner promptly.
  - FTE Operator will perform usual and customary breaker safety tests in an effort to verify functionality in accordance with Prudent Utility Practice no less than once per year and will report any material issues discovered by the Operator to Owner promptly.
  - FTE Operator will perform usual and customary inverter diagnostic tests in an effort to verify functionality in accordance with Prudent Utility Practice no less than once per year and will report any material issues discovered by the Operator to Owner promptly.

- FTE Operator will make reasonably available to Owner real-time performance monitoring of theFacility solar system via Operator's SolView asset management platform (provided as a Software as a Service – SaaS – part of the O&M Services), including historical data (e.g., energy, power, environment, and weather) in reports, graphs and alarms. Operator will also provide Annual Reports and logs of O&M Services as required by the Agreement.
- FTE Operator will be available by telephone 7am-6pm local time at the Facility, (Monday – Friday) at the following phone number TBD to receive notifications related to the operation of the Facility from Owner or others.
- FTE Operator will provide reasonable and usual and customary troubleshooting and diagnostics services requested by Owner related to the operation of the Facility. Operator also will provide reasonable and usual and customary Owner advocacy by providing assistance in coordinating service visits and warranty support from all Facility equipment suppliers. (For clarity, Operator is not responsible for performing such warranty service or for repairing or replacing the solar arrays and related equipment and infrastructure at the Facility.)

- Spare parts inventory and status

Operation and Maintenance of Floatovoltaics Systems – Owner (FWCU) Roles and Responsibilities

- Daily Health Status Checklist
- Visual Inspection coordination
- Audible Alarm notifications
- Coordination with FTE and/or Solential for troubleshooting

Appendix D

Unscheduled Maintenance and Repairs

Microgrid Unscheduled Events – Scope

The Operator and the Operator's agents are responsible for operation and maintenance of the microgrid and its components. This includes scheduled, planned, and regular maintenance. For unscheduled events, the Operator shall notify the Owner as soon as Operator becomes aware of the need for unscheduled maintenance or repairs. Costs associated with unscheduled events are not included in the contract value and will be paid on a time and materials basis.

Unscheduled events will be handled as follows:

- Operator shall provide a verbal notification to the Owner of a microgrid incident or failure, per the scheduled time in the "Alarm Status" section
- Operator shall provide a documented response within 72 hours of a microgrid incident or failure
- Operator shall provide a documented corrective action plan of 72 hours after official incident or failure notice
- Operator shall provide a documented root cause analysis of incident or failure 72 hours after FWCU approved implementation of the corrective action plan

This schedule describes potential unscheduled events and unforeseen circumstances. The following list provides a summary of potential events; this is not an exhaustive and complete list. Operator to provide response time as part of the Operational Warranty and coordinate with Owner for any and all unscheduled events.

Unscheduled Event Forecast

UNSCHEDULED EVENTS
Daily/Weekly Operation & Maintenance
Response to Shutdowns
Maintenance /Repairs to Silencers/Catalyst
General Maintenance to balance of plant equipment
ENG/GEN/GEARBOX crane/rigging/transport at Unscheduled or Overhaul intervals
ENG/GEN/GEARBOX removal and installation at Unscheduled or Overhaul intervals
Fluids (engine oil, gearbox oil, coolant) for make up between scheduled changes
Unscheduled Maintenance/Repairs to covered equipment

Alarm Status

Operator is responsible for verbally notifying the Owner of unscheduled events. Three potential alarm statuses are described, depending on the severity of the event. At a minimum, Operator shall verbally notify the Owner of unscheduled events within 24 hours.

- Alarm Status 1: typical for on-site/observed monitoring by the Operator. Notify Owner within 24 hours of observation.
- Alarm status 2: typical for events that are remote monitored. Notify Owner within 8 hours of observation.
- Alarm status 3: typical for events that are continuously remote monitored with alarms and notifications (i.e., 24/7 remote monitoring). Notify Owner within 10 minutes of alarm.

<u>Possible Events</u>
The following describe nine potential events that could occur as an unscheduled event. These possible events are not covered under other sections of Exhibit K.
For each potential event ("Trouble #"), a description is provided as well as the expected alarm status and required reporting to the Owner.

Trouble 1
- Online monitoring/daily rounds/oil samples/etc. indicate potential issue with some component of the microgrid system that could cause disruption in performance in the future (long term, > 1 week)
  - Notify Owner, Alarm Status 1 (physical inspection) or 2 (remote monitoring)
  - Analysis of urgency & report to Owner (immediately after discovery)
  - Diagnostics/Solution development/Schedule/Planning

Trouble 2
- Online monitoring/daily rounds/oil samples/etc. indicate potential issue with some component of the microgrid system that could cause disruption in performance in the immediate future (short term, < 1 week)
  - Notify Owner, Alarm Status 3
  - Analysis of urgency & report to Owner (immediately after discovery)
  - Diagnostics/Solution development/Schedule/Planning

Trouble 3
- Online monitoring/daily rounds indicate an imminent/immediate issue with some isolated component of the microgrid system that causes minor disruption in performance or optimization of the microgrid (single piece of equipment, isolated communications issue, etc.)
  - Notify Owner, Alarm Status 1 (physical inspection) or 2 (remote monitoring)
  - Analysis of urgency & report to Owner (immediately after discovery)
  - Diagnostics/Solution development/Schedule/Planning
    - Immediate remote repairs/support if possible
    - Capable to mobilize for onsite repairs < 48 hours

Trouble 4

- Online monitoring/daily rounds indicate an imminent/immediate issue with multiple components of the microgrid system that cause moderate disruption in performance or optimization of the microgrid (single piece of equipment, isolated communications issue, etc.)
  - Notify Owner, Alarm Status 3
  - Analysis of urgency & report to Owner (immediately after discovery)
  - Diagnostics/Solution development/Schedule/Planning
    - Immediate remote repairs if possible
    - Capable to mobilize for repairs < 8 hours

Trouble 5

- Online monitoring/daily rounds indicate an imminent/immediate issue with multiple components of the microgrid system that causes major disruption in performance or optimization of the microgrid (generating equipment available cannot satisfy expected facility loads, disrupted communications, etc.)
  - Notify Owner, Alarm Status 3
  - Analysis of urgency & report to Owner (immediately after discovery)
  - Diagnostics/Solution development/Schedule/Planning
    - Immediate remote repairs if possible
    - Capable to mobilize for repairs < 8 hours

Trouble 6

- Routine maintenance performed by Operator caused damage to equipment or components of the microgrid if actions by Operator were performed with less-than industry standard care.
  - Notify Owner, Alarm Status 1
  - Summarize corrective actions to Owner

Trouble 7

- Catastrophic failure of a major microgrid component (equipment or controller)
  - Notify Owner, Alarm Status 3

Trouble 8

- Load profile/condition or scenario discovered/experienced that demonstrate fatal flaw with microgrid programming, capabilities, or reaction.
  - Notify Owner, Alarm Status 3

Trouble 9

- Inability of microgrid to generate less than 80% design requirement, measured on a 7-day running average.
  - Notify Owner, Alarm Status 2

- Analysis of urgency & report to Owner (immediately after discovery)
- Diagnostics/Solution development/Schedule/Planning
  - Immediate remote repairs if possible
  - Capable to mobilize for repairs < 8 hours
- Mobilize/start-up temporary generator and ancillary equipment within 2 days of notification. Operate temporary generator until microgrid is capable of generating designed/anticipated without the temporary generator. Demobilize temporary generator after 2 days of successful demonstration of microgrid operation and stability.

Microgrid Unscheduled Events - Costs

Annual costs for unscheduled events are not included in K.5; annual costs associated with unscheduled events are covered under the Microgrid Operational Warranty in Section K.1.

Unscheduled Events are excluded from the Base Costs associated with O&M and will be paid at the rate detailed in Contractor's most recent price list, a copy of which is attached hereto as Schedule D-1. Payment for Unscheduled Events will be on a time and materials basis and invoiced to the Owner monthly as-needed. A minimum allowance of $50,000.00 will be included in the purchase order for the Services but will only be used if required for Unscheduled Events. In addition to any rates set forth on Appendix D, Table 1A, the following rates for standard labor and the most commonly used pieces of equipment are established. The following table summarizes labor rates for potential personnel who would be on site or assisting with unscheduled events. Labor rates are assumed as 2022 dollars. All labor rates will be adjusted at a rate of 3.0 percent per year, subject to Owner approval.

Labor Rates – Table 1A

Personnel	Scheduled Rate/Hr	Scheduled Overtime Rate/Hr	Unscheduled Emergency Rate/Hr
Field Tech	$95.00	$142.00	$170.00
Electrician	$150.00	$225.00	$281.00
Engineer	$175.00	$262.00	$327.00
Programmer	$175.00	$262.00	$327.00
Diver	$275.00	N/A	$412.00
Heavy Equipment Operator	$155.00	$232.00	$290.00

Subject to Change with Final Design and Timing.

Travel cost for any unscheduled maintenance or repairs on covered and not covered equipment will be added as mutually agreed upon daily per diem.

Equipment Rentals

The following summarizes equipment rental rates for equipment that may be necessary for unscheduled events. Equipment rental rates are presented in 2022 dollars. All rates will be adjusted at a rate of [3.0] percent per year, subject to Owner approval.

Equipment Rate	$/day	$/week	$/month
2000kW Gen Set Solution (Diesel)	TBD	14,850	46,050
1475kW Gen Set Solution (Nat Gas)	TBD	18,700	61,100
2500kVa Transformer	TBD	3,600	10,800

Unscheduled Maintenance

The following summarize costs of on-site and off-site unscheduled events and maintenance that may be necessary during operation of the microgrid. Unscheduled maintenance rates are presented in 2022 dollars. All rates will be adjusted at a rate of 3.0% per year, subject to Owner approval.

Unscheduled Maintenance	Cost	Unit
Engine rebuild (outside of stated in Appendix B - Maintenance of Generators - inclusions)	Covered in Platinum Insurance	LS
Replenish fluids outside of scheduled changes	Covered in Platinum Insurance	$/gal
Mobilization of temporary generator	See Above	LS
Operation of temporary generator	See Above	$/day [could be $/wk]
Demobilization of temporary generator	See Above	LS
Solar component replacement	See Table 1A	Field Tech

Microgrid Unscheduled Events – Operator Roles and Responsibilities

- Verbal notification to the Owner of unscheduled events
- Documented notification to the Owner of unscheduled events
- Documented corrective action plan of unscheduled event
- Documented root cause analysis of unscheduled event
- Emergency/Back Up Generation Equipment Mobilization

Microgrid Unscheduled Events – Owner (FWCU) Roles and Responsibilities

- Review and approve corrective action plan, submitted by Operator

City Utilities Engineering

Interoffice Memo

Date: June 6, 2022

To: Common Council Members

From: Michael Kiester, Manager, City Utilities Engineering

RE: Treatment Facilities Microgrid Energy Project W.O. # 76846

6.6.2022

Council District # N/A

The contractor shall furnish all labor, insurance, equipment, materials and power for the completion of the project: **FW City Utilities Treatment Facilities Microgrid Project. Final design and construction of emergency power generating facilities and sustainable energy generation facilities including natural gas generators, floating solar photovoltaics, battery storage, and ancillary equipment.**

Implications of not being approved: The Water Pollution Control Plant and Wet Weather Pumping and Storage facilities are not currently equipped with emergency power facilities. As CU continues with the implementation of the Long Term Control Plan, these facilities are becoming more critical to operational requirements of the system. The sustainable portion of the project aims to reduce risk and upward pressure associated with climbing electrical energy rates, provide operational resiliency tools, and leverage assets between large energy-intense facilities. If not approved, CU will continue to have significant exposure to electrical rate increases and lack the tools needed to combat the current market.

If Prior Approval is being Requested, Justify: N/A

This project was advertised to Providers on 1/14/2021, and 1/21/2021 in the Journal Gazette

The contract for Resolution # 109-5-10-22-3 awarded to GM Development Companies for $23,719,598 utilizing the Build-Operate-Transfer procurement method as described in IC 5-23. 10 teams submitted qualifications for the project. 2 teams were shortlisted to provide competitive proposals and GM Development Companies provided the best value solution.

The cost of said project funded by Sewer Utility Bonds.

Council Introduction Date: June 14, 2022

CC: Matthew Wirtz
Jill Helfrich
File