

CITY OF ALBUQUERQUE
Albuquerque, New Mexico
Office of the Mayor

Mayor Timothy M. Keller

INTER-OFFICE MEMORANDUM

December 23, 2024

TO: Dan Lewis, President, City Council

FROM: Timothy M. Keller, Mayor



SUBJECT: Approving a Master Utility Service Agreement and Addendum to the Master Utility Service Agreement with Sustainability Partners to Increase Solar Infrastructure on City Facilities

The Administration is requesting Council approval of a Master Utility Service Agreement (M-USA) and an Addendum to the M-USA with Sustainability Partners LLC, a Delaware public benefit limited liability company (SP).


Sustainability Partners is a Public Benefit Company that provides infrastructure as a service. This Master Utility Service Agreement (M-USA) with Sustainability Partners includes a broad array of unique services including the capacity design, construction, upgrade, and maintenance of solar infrastructure on City of Albuquerque property. The term of the M-USA is continuous until the parties terminate.

The Addendum to the M-USA outlines the twenty-five City facilities that will be developed by Sustainability Partners with solar infrastructure. Each solar site will produce renewable energy for use by the City; Sustainability Partners will bill the City of Albuquerque as a utility service company.


This is a utility service agreement that eliminates the cost of financing, building, and solar facility maintenance. The utility expense will be billed by Sustainability Partners (SP) based on the production of each solar site. The expense is already built into the budget for the respective COA departments in the electric utility line item. The cost will be significantly less and the rates will be lower than the current rates. The City will be benefit by increasing its renewable energy capacity and energy efficiency through reduced electricity bills.

Approved:

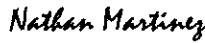
^{DS}
CD


12/30/24
Samantha Sengel, EdD Date
Chief Administrative Officer

Approved as to Legal Form:

^{DocuSigned by:}
 12/30/2024 | 3:09 PM MST
1A21D96D32C74EE...
Lauren Keefe Date
City Attorney

Recommended:

^{DocuSigned by:}
 12/24/2024 | 1:23 PM MST
FAFFE6F45756465...
Nathan Martinez Date
Director




City of Albuquerque

Mayor's Office

Timothy M. Keller, Mayor

Inter-Office Memorandum

December 24, 2024

To: Timothy M. Keller, Mayor
From: Dr. Samantha Sengel, Chief Administrative Officer 
Subject: Signature Authority

I will be out of the office starting Thursday, December 26, 2024 through Wednesday, January 1, 2025, returning to the office on Thursday January 2, 2025.

During this time, signature authority for the Office of the CAO will be as follows:

Thursday 12/26/24 – Friday 12/27/24

COO Patrick Montoya
Office: 505-768-3000
Email: patrick@cabq.gov

Saturday 12/28/24 – Wednesday 1/1/25

CFO Kevin Sourisseau
Office: 505-768-3000
Email: ksourisseau@cabq.gov

CC/ Email distribution:
Mayor Keller's Executive Team
Department Directors

Cover Analysis

1. What is it?

- a. A Master Utility Service Agreement and Addendum with Sustainability Partners.

2. What will this piece of legislation do?

- a. This MUSA and Addendum allows the City to contract with Sustainability Partners to build solar infrastructure on City sites.

3. Why is this project needed?

- a. It takes time to finance and build solar infrastructure. This contract allows the City to build solar infrastructure quickly. The City plans to build solar infrastructure on up to 25 City facilities over the next 18 months – 24 months. It will not cost the City to finance and build the solar sites; Sustainability Partners both finances and builds the solar facilities.

4. How much will it cost and what is the funding source?

- a. The City will pay Sustainability Partners as a utility service, the funding source for this utility service comes from the department accessing the solar energy on its facility.

5. Is there a revenue source associated with this contract? If so, what level of income is projected?

- a. There is no revenue source associated with this contract

6. What will happen if the project is not approved?

- a. The City will have to develop solar infrastructure in a traditional method that takes longer to finance and build.

7. Is this service already provided by another entity?

- a. This service is not provided by another entity. Sustainability Partners is the first to offer this service in the state of New Mexico.

FISCAL IMPACT ANALYSIS

TITLE: Master Utility Services Agreement and a Services Addendum with Sustainability Partners

R: O:
FUND: Various funds

DEPT: Various Department ID's

- No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

	Fiscal Years			
	2025	2026	2027	Total
Base Salary/Wages				-
Fringe Benefits at				-
Subtotal Personnel	-	-	-	-
Operating Expenses				-
Property				-
Indirect Costs	-	-	-	-
Total Expenses	\$ -	\$ -	\$ -	\$ -
<input type="checkbox"/> Estimated revenues not affected				
<input type="checkbox"/> Estimated revenue impact				
Revenue from program				0
Amount of Grant		-	-	
City Cash Match				
City Inkind Match				
City IDOH	-	-	-	-
Total Revenue	\$ -	\$ -	\$ -	\$ -

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created

COMMENTS: This is a utility service agreement that eliminates the cost of financing, building and solar facility maintenance. The utility expense will be billed by Sustainability Partners (SP) to each COA solar site. The budget is already built into the utilities (electricity) line-item account for the respective COA department budgets, which will be paid to SP instead of PNM. See Service Addendum for service locations.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

PREPARED BY:

Signed by: Evelyn L. Torres 12/24/2024 | 1:17 PM MST
63C4B3FDDF840D...
FISCAL ANALYST

APPROVED:

DocuSigned by: Nathan Martinez 12/24/2024 | 1:23 PM MST
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DIRECTOR

REVIEWED BY:

DocuSigned by: Haiyan Zhao 12/24/2024 | 1:24 PM MST
E1160E31D8C34B2...
EXECUTIVE BUDGET ANALYST

DocuSigned by: Diana Sandoval 12/26/2024 | 9:33 AM MST
08F4D687C3CA4E2...
BUDGET OFFICER

Signed by: Christie Borner 12/30/2024 | 9:32 AM MST
E02C282349CC47D...
CITY ECONOMIST



Via Email (ssengel@cabq.gov)

Dr. Samantha Sengel
Chief Administrative Officer
City of Albuquerque

RE: Service Addendum for the City of Albuquerque’s Solar Energy project

Sustainability Partners’ mission is to ensure a faster procurement process, expedited installation, higher quality sustainable equipment, and the lowest cost of use for the City of Albuquerque (the “City”).

Please find enclosed the updated Service Addendum for the City’s solar energy project with estimated Usage Rates (which include the insurance costs). The Service Addendum is subject to finalizing monthly costs pursuant to a further due diligence review. There is no financial obligation to the City until a Notice to Proceed is signed. To summarize the Service Addendum, it provides the following:

Table with 3 main sections: Agreement Term (Monthly), Equipment/Product Description (Solar power generating system...), and Usage Rates (which include the \$5,609,233 estimated ITC credit towards the project costs). The Usage Rates section contains a list of 20 units with their respective IDs and rates.

Total Monthly Usage Payment (excluding MMC and MMR)	\$54,423
Total Monthly MMC/MMR	\$4,544
Total Monthly Payment (including MMC and MMR)	\$58,967

After you have reviewed the Service Addendum, please sign and return to us. We will then proceed with finalizing vendor contracts (without any markups) and the monthly costs. We will prepare an amended and restated Service Addendum, if necessary, and the Notice to Proceed.

If you have any questions, please feel free to contact us. Your trust in us is our highest priority.

Thank you.

Master Utility Service Agreement

The parties to this Master Utility Service Agreement (“M-USA”) are the City of Albuquerque, NM (“**Customer**”) and Sustainability Partners LLC, a Delaware public benefit limited liability company (“**SP**”).

This M-USA sets forth the General Terms and Conditions attached as Exhibit 1 (the “**General Terms**”) that apply to all solutions and services to be provided to Customer as described in each subsequently fully executed documents that are substantially similar to the following:

Exhibit 2 (each a “**Service Addendum**” or “**SA**”) by the entity named in such SA (as applicable, the “**SP Entity**”);

Exhibit 3 (each a “**Notice to Proceed**” or “**NtP**”) that is associated with a specific part of or an entire SA;

Exhibit 4 (each a “**Certificate of Acceptance**” or “**CoA**”) that is associated with a specific part of or an entire NtP; and

Exhibit 5 (each an “**ACH Agreement**” or “**ACH**”) that is associated with every SP Entity of each NtP and must be executed where not prohibited under applicable laws, prior to the related NtP being effective.

This M-USA is entered into by and between the undersigned parties for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, as of _____, 2024.

City of Albuquerque, NM

Sustainability Partners LLC

By: _____
Name: Dr. Samantha Sengel
Title: Chief Administrative Officer
Phone: (505) 768-3000
E-Mail: ssengel@cabq.gov
Address: 1 Civic Plaza, 11th Floor
Albuquerque, NM 87102

By: _____
Name: Thomas Cain
Title: CEO
Phone: (480) 845-0400
E-Mail: tcain@s.partners
Date: _____, 2024

Exhibit 1
General Terms and Conditions

Sustainability as a Service®

These General Terms and Conditions (“**General Terms**”) apply to and are incorporated into each Agreement between the Parties. Capitalized terms not defined in these General Terms have the meanings given in the applicable Agreement and the Master Utility Service Agreement (“M-USA”) to which these General Terms are attached as Exhibit 1.

1. **The Sustainability Services.** Customer engages the SP Entity as an independent contractor to provide the following services (the “**Services**”) at the Location on the terms set forth in this Agreement for Unit(s):
 - 1.1. *SP Entity ownership.* If the SP Entity is funding the Unit(s), the SP Entity will acquire and cause the Unit(s) to be installed at the Location and retain all Unit(s) ownership. The SP Entity will pay the DTC in connection with the Installation of the Unit(s); and
 - 1.2. *Customer ownership.* If the Unit(s) are Customer funded, the Customer has and retains all Unit(s) ownership and operation rights provided there is no Payment Default; and
 - 1.3. *Maintenance.* Whether SP Entity ownership or Customer ownership, maintenance costs of Unit(s) shall be as provided for in Sections 7, 8, and 9 of this Agreement; and
 - 1.4. *Use.* Unless there is a Payment Default, the SP Entity allows Customer’s full use of the Unit(s) at the Location during the Initial Term and any and all subsequent Additional Terms (each being defined in the SA and collectively defined as the “Term”).
2. **USA Payments.**
 - 2.1. *In General.* Customer agrees that the USA Payment is for an Essential Utility Service. Customer will pay the USA Payments to the SP Entity as calculated in this Agreement.
 - 2.2. *Invoicing and Payment.* The SP Entity will electronically invoice Customer monthly, and invoiced amounts are due in full within 30 days of delivery by wire transfer or by such other payment method as Customer and the SP Entity shall hereafter agree. Where the Customer is non-investment grade credit, has had an SP Payment Default or the invoice includes IaaI or Rights Fee related amounts, the USA Payment shall be made prior to due date by ACH.
 - 2.3. *Late Fees.* If there is a Payment Default on any amount, such amount will accrue interest at the Delinquency Rate, and Customer will bear the reasonable costs and expenses (including attorneys’ fees and costs) incurred by the SP Entity in collecting such amounts.
 - 2.4. *Data Interruptions.* If data for calculation of a USA Payment is unavailable to the SP Entity, the SP Entity may estimate the payment associated with such Units based on historical Usage, usage of similar Units or other reasonable means; provided that (a) any such estimated amounts shall be clearly identified on the applicable invoice, and (b) if the relevant actual data becomes available within six months following the invoice date for the estimated payment, the SP Entity will reconcile on the next invoice the actual data with the estimated data and provide a true-up calculation to Customer.
 - 2.5. *Excess Usage.* Should the aggregate USA Payments exceed that required for SP Entity obligations, those funds will be credited to the Support Reserves.
 - 2.6. *Governmental Entity Provisions.* If Customer is a Governmental Entity and the USA Payment source is not revenue sharing, the following provisions shall apply:
 - a) *Utility Appropriations.* All authorization requests for appropriations and budgets which include Customer utilities shall also include sufficient funding specific to the SP Entity for all amounts due to the SP Entity and all amounts Customer reasonably anticipates will be due to the SP Entity prior to the next utility authorization request.
 - b) *Legislative Appropriation.* The SP Entity acknowledges that Customer’s payment of amounts due under this Agreement may be subject to the good faith appropriation by Customer’s applicable legislative body of the availability of funds following legislative appropriation.
 - c) Customer makes no representations, warranties, or covenants, express or implied, that the legislature will make appropriations sufficient for its Essential Utility Services. While the Customer (i) uses its best efforts in good faith to pass appropriations for Essential Utility Services, (ii) keeps the SP Entity fully informed of such efforts, and (iii) no other Customer Essential Utility Service receives a payment authorization for a higher percent of its amount due or an earlier delivery of its payment, the Customer’s unpaid and late USA Payments will not result in a Customer Payment Default.
 - d) *Invoicing and Payment.* If there is an applicable Prompt Payment Act under applicable Law, then, as applicable (i) in lieu of application of Section 2.2 above, the SP Entity will electronically invoice Customer monthly, and invoiced amounts are due and shall be paid in full in accordance with the provisions of the Prompt Payment Act or a Customer and SP Entity subsequently agree and (ii) in lieu of application of Section 2.3 above, payments not made when due shall entitle the SP Entity to the maximum penalties and other remedies as set forth in the Prompt Payment Act.
 - 2.7. *Priority of Payments.* For IaaU and Rights Fee agreements, the Customer agrees payments to SP entity will be treated pari-pasu in all respects with payments to the Customer’s other Essential Utility Services. Furthermore, the Customer represents that other than taxes, no existing, planned, or future encumbrances or obligations will take precedence for payment in front of these services and will provide timely documentation showing such upon SP entity request.
3. **Unit Procurement, Installation and Acceptance.**
 - 3.1. *Selection of the Installed Units.* Upon execution of a SA, Customer and the SP Entity shall cooperate in defining the specific design and specifications of the Installation together with information in support of SP underwriting where there is an intent for the SP Entity to fund the Units(s). Unit(s) for installation at the Location shall be selected by SP Entity and approved by Customer from an Approved MMC - MMR Provider listed in the applicable SA.
 - 3.2. *Selection of Sources.* Approved Providers for the USA Service shall be selected and contracted with by the SP Entity and approved by Customer unless otherwise specified in the applicable SA.
 - 3.3. *Competitive Bidding.* If Customer is a Governmental Entity, then to the extent that Customer or the SP Entity determines that a competitive bidding process is required under applicable Laws, the selection of the Unit(s), vendor(s), or contractor(s) for the Installation shall be in accordance with provisions of such applicable Laws and conducted jointly by the SP Entity and Customer including requirements that the general contractor use commercially reasonable efforts to allow qualified local and/or minority contractors have an opportunity to competitively bid on the SA. The awards will be based on lowest cost of usage from qualified bidder(s) or best value bidders(s) over the Unit’s expected useful life, consistent with the requirements and analysis provided by the SP Entity. To the extent applicable, this Section 3.3 shall govern over the terms of Sections 3.1 and 3.2 above.
 - 3.4. *Vendor Contracts.* A written agreement with an Approved Contractor for Installation work (an “**Installation Agreement**”) or with an Approved MMR/MMC/resiliency Provider for solutions and/or services covered by this Agreement (collectively these agreements are referred to as the “**Vendor Contracts**”) shall be executed by either the SP Entity or the Customer as determined by the related SA and subject to the other Party’s written approval of such Vendor Contracts. Each Party shall be an express beneficiary to the Vendor Contracts’ warranties, guaranties, and obligations. Each Party shall be independently entitled (without obligation) to enforcement of rights under the Vendor Contracts. All Vendor Contracts shall comply with any applicable Prevailing Wage Act to the extent required under applicable Laws. Neither SP nor an SP Entity will perform the work of a contractor, including, without limitation, building, construction, demolition, repair, maintenance, design, engineering, delivery, commissioning, or related work.
 - 3.5. *Underwriting.* Following selection of the Unit(s), Approved Provider(s) for the SA in accordance with the foregoing, the SP Entity shall make a good faith effort to contract for and underwrite the Vendor Contracts. Until the NtP for a SA is fully executed, neither Party shall have any financial liability or performance obligation to the other with respect to the terms of this Agreement for the associated SA.

Exhibit 1
General Terms and Conditions

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- 3.6. *Changed Expectations.* Should expectations of material terms from project contractors, service providers, vendors, Customer, or funding sources be changed from those on which the SA relied, then Customer may select one of the following options:
- a) the SP Entity will update the Agreement, including but not limited to Customer paying for any additional costs, by providing Customer for full execution an updated NtP(s), restated SA(s) or CO(s) appropriate to document the necessary changes;
 - b) Customer assumes responsibility for the changes (such as paying any additional costs directly) without any additional obligation of the SP Entity; or
 - c) terminate the Agreement and reimburse the SP Entity for all SA Actual Costs incurred or resulting from the termination, including those DTCs incurred from any Location restoration efforts.
- 3.7. Until such time that one of the options specified above is selected and finalized, further efforts towards the related Installation may be suspended by the SP Entity. *The Installation.* Following Customer's issuance of a NtP: (i) the SP Entity may proceed with issuing the Vendor Contracts and engage SP Services, the costs of which shall be included as DTCs; (ii) the SP Entity and the Customer shall work collaboratively to cause the applicable Vendor(s) to perform in accordance with their contract; and (iii) the Customer (through its staff, construction manager or project manager) will collaborate diligently and reasonably with the SP and SP Entity representatives on the Installation Agreements (including matters relating to the performance, conformity or timeliness of goods and services to be provided for the SA by Approved Vendors).
- 3.8. *Project Facilitation.* The SP Entity shall be able to communicate at all times directly with the Customer. Should Customer retain a third-party consultant, agent, or advisor for a SA, SP or the SP Entity may provide Notice requesting the third-party consultant, agent, or advisor be removed from involvement with an SA to facilitate effective project dynamics. The Parties shall confer in good faith within 10 business days of the Notice to resolve the removal Notice. If the Parties cannot agree to a resolution, then removal shall be accomplished by Customer within 20 business days of the Notice.
- 3.9. *Payment of the Direct Third-Party Costs.* Except as otherwise provided for in this Agreement, DTCs for SA work shall be paid in full by the Initial Funding Entity under this Agreement and shall be performed pursuant to the Vendor Contracts that comply with the terms of this Agreement. Subject to the terms of this Agreement, the Initial Funding Entity agrees to pay the DTC, except to the extent the DTC exceeds a specifically defined Installation Limit in the applicable SA. In the event there are Unit(s) Actual Costs such as pre-installation services that have been paid by the SP Entity and where both the Customer and the SP Entity reasonably expect the date of CoA to exceed the Unit(s) Completion Target date, the Customer will be charged a monthly fee of that month's Unit(s) Actual Costs times the Delinquency Rate until the Unit(s) CoA is executed or a new Completion Target date is mutually agreed to.
- 3.10. *Protection against Liens.* The SP Entity agrees, at Customer's direction, to withhold payment to any provider of materials or services in connection with providing or installing any equipment associated with a USA Service (as defined in SA - Exhibit 2) until such provider removes all liens, they have filed against Customer's property in relation to the USA Service. The portions of the USA Payments that represent this withholding shall be deferred until the liens are removed.
- 3.11. *Installation Payment Notices.* Each installation payment notice will (a) identify the amount to be paid by the Initial Funding Entity, (b) the date by which payment must be made, (c) payment instructions for electronic payment to the contracted party, and (d) be delivered at least 10 business days prior to the date by which the payment must be made.
- 3.12. *Inspection of Installation Work.* At its discretion and with reasonable prior notice to and coordination with Customer, the SP Entity may periodically inspect the Installation. If a contractor has not performed the Installation work in accordance with the Installation Agreement and in accordance with applicable industry standards, then (a) Customer and SP Entity will endeavor to cause the contractor to diligently cure such conditions, and (b) the SP Entity may suspend its obligations until the contractor has cured such conditions.
- 3.13. *Late Installation Payments.* If the Initial Funding Entity fails to pay any undisputed installation payment amount when due and Customer pays the contractor such installation payment, then amounts will accrue interest at Delinquency Rate, and the Initial Funding Entity will bear the reasonable costs and expenses (including attorneys' fees and costs) incurred by Customer in collecting such amounts.
- 3.14. *Certificate of Acceptance.* Notwithstanding anything to the contrary provided for or implied in this Agreement:
- a) *For Rights Fee or Iaal:* customer will be deemed to have executed the applicable CoA and start remitting USA Payments upon Customer receiving the funds or control of the funds through either a bank deposit, escrow account, irrevocable trust account or payment to a Customer directed third-party.
 - b) *For USA Service and all Other:* when Unit(s) have been installed and the Customer begins use of those Unit(s), the Customer will be deemed to have executed that applicable CoA and start remitting the USA Payments applicable to the Unit(s). Otherwise, as Unit(s) are installed, the Customer shall be provided with applicable and periodic (no more frequent than monthly) CoA's for execution. If within 5 business days of delivery, the Customer has neither executed a CoA nor provided the contractor and the SP Entity in writing the specific defects that are within the statement of work for the Unit(s) being covered by the CoA, which need to be cured prior to executing the CoA, the CoA will be deemed executed by the Customer.
 - c) *For Vendor cures:* should the contractor not promptly accomplish any cures satisfactory to the Customer and the SP Entity with the notice and grace periods provided for in the Vendor Contract, the SP Entity may in good faith initiate immediate binding arbitration from an independent arbitrator competent in the scope of work to clearly define any remaining work pursuant to the applicable Vendor Contract. Upon SP Entity identifying the arbitrator, both contractor and Customer will have three days to provide written reasonable objection to selection with specific reasons. The SP Entity may repeat this process with a new arbitrator until one is identified to which no Party objects. Upon the arbitrator declaring that all work covered by the statement of work has been substantially completed to the usual and customary industry standards, the Customer agrees the CoA is deemed executed.
- 3.15. *Installation Delays.* Except to the extent solely caused by either the SP Entity or Approved MMC Providers, if the CoA has not been executed and delivered by Customer on or before the Completion Target specified in the SA, the Customer will promptly pay an amount equal to the carrying charge percentage of the SA Actual Cost (the "**Carrying Charge**") and an additional Carrying Charge after each 30-day period thereafter during which such condition continues on SA Actual Cost. The Installation by contractors, engineers, architects, and vendors are solely responsible for the performance, conformity or timeliness of goods and services to be provided for the Installation.
4. **Unit Operation.**
- 4.1. *Customer Operation.* Except to the extent expressly prohibited under applicable Laws or to the extent responsibility for same is specifically otherwise allocated in Sections 7, 8, and 9, Customer (i) is solely responsible for the Unit(s) while in Customer's operation, use and/or possession and (ii) will indemnify, defend, and hold harmless the SP Entity from and against any and all Claims in any way relating to the Units(s) (including without limitation Customer's operation, use and/or possession of the Unit(s)).
 - 4.2. *Unit Location.* Customer will keep the Unit(s) at the Location, except to the extent the SP Entity approves otherwise. The Unit(s) shall be used solely in the conduct of Customer's business. To the extent permitted under applicable federal laws and laws of Venue Jurisdiction, Customer warrants that the Unit(s) will be used for commercial or business purposes and not for consumer, personal, home or family purposes.
 - 4.3. *Malfunctions; Defects; Changes to Environment.* Customer will promptly notify the SP Entity if Customer discovers a material malfunction, defect or interruption in the operation or condition of the Unit(s) or material change to an integral environmental resource, such as water, energy, gas, or air that

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General Terms and Conditions

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may degrade the Unit's performance, maintenance, or Useful Life. Customer may continue operating the Unit(s) that Customer knows is not in good and working condition only to the extent approved (and conditioned) in writing by the SP Entity.

4.4. *Efficiency Programs/Features.* The SP Entity may incorporate demand response, performance/maintenance monitoring/updating, and similar initiatives into the operation of the Unit(s). Customer must provide Notice of approval, prior to implementation of an initiative where there is a reasonably expectation of material impact to Customer's operations. Such approval to not be unreasonably withheld.

5. **Customer Care at the Location.**

5.1. *In General.* The Unit(s) is/are entrusted in Customer's care while at the Location. While any Unit is at the Location, Customer shall be responsible for competently protecting such Unit from damage, modification, vandalism, interference, or destruction (excluding any damage, modification, or destruction solely and to the extent caused by the SP Entity or defect in the Unit itself), ensuring interconnected systems are performing reliably, safely, and effectively with related services not adversely impacting Expected Use defined in the SA.

5.2. *Obstructions; Interference.* Customer will keep all areas in and around the Unit(s) free from any obstruction or interference that may impair the Unit(s) performance, installation, access, maintenance, or removal. Except as otherwise provided by this Agreement or otherwise authorized by the SP Entity in writing, Customer will not allow any service, alteration, modification, interference, or other infringement upon the Unit(s).

5.3. *Insurance.* Should the Customer not obtain and maintain (as primary insurance for the SP Entity and Customer as co-insureds as their interests may appear in this Agreement), reasonable insurance coverage, including, liability insurance and insurance against loss or damage to the Unit(s), in such amounts and coverages, in such form and with such insurers as are reasonably satisfactory to the SP Entity and that will name the SP Entity, its successors and/or assigns, as loss payee and additional or co-insured with a certificate evidencing the same as to each policy, SP Entity shall have the right to obtain such insurance while the Unit(s) is/are at the Location and, to the extent not prohibited under applicable Laws, and add its pro-rated cost to the USA Payments due to the SP Entity. The applicable certificates of insurance will expressly provide that the Customer's policies may not be terminated or significantly modified without giving the SP Entity at least 30 days prior Notice.

5.4. *Connectivity.* When required for the project and in conformance with all Location security protocols, Customer will provide, at no cost to SP, continuous Internet access to the Unit(s) at the Location during the Term to enable SP to monitor and collect data to facilitate reliability, maintenance, performance, usage, and replacements, as well as supporting initiatives, such as demand response, benchmarking, and forecasting. SP Entity agrees to use diligent and reasonable efforts to comply with Notices regarding the protection of Customer's internal data and systems.

5.5. *Access.* During the Term of this Agreement (as defined in Section 10) and for 120 days thereafter, to the extent not prohibited under Law, together with conformance with all Location security protocols, the SP Entity and its agents, employees, affiliates, suppliers, contractors, subcontractors, lenders, and insurers may enter and access the Location to perform activities contemplated by this Agreement and, if necessary, to protect the SP Entity's interests in the Unit(s). Notwithstanding the foregoing, Customer may, upon at least three days prior Notice to the SP Entity identifying the relevant details, reject specific personnel who have previously failed to comply with codes of conduct or other similar policies applicable to Customer's personnel at the Location.

6. **Ownership & Reporting.**

6.1. *SP Entity Ownership.* To the fullest extent not prohibited by Law, the SP Entity owns and will continue to own all title and legal and beneficial ownership interests in the SP Entity funded Unit(s). All SP Entity funded Unit(s) and other assets of the SP Entity used in performing the Services will remain the sole property of the SP Entity, and will not be deemed attached to, a part of, or fixture to, the Location. All tax filings, reports and other documentation shall be filed in a timely and consistent manner. Customer is entrusted with possession of the SP Entity funded Unit(s), without the transfer to Customer of any ownership interest therein, only to use those Unit(s) at the Location during the Term. This Agreement will not be construed to transfer any ownership or control of SP Entity funded Units(s) nature or method of use. In the event that the Customer or the SP Entity makes an assignment into bankruptcy or becomes subject to the provisions of a Venue Jurisdiction Bankruptcy Trigger, the other Party shall be treated as a licensee of the Unit(s) under and pursuant to 11 U.S.C Section 365 when in the United States or similar legislation elsewhere. In the event of a further Liquidation Act, the other Party shall have an option of the Disposition of any unowned Units on an "AS-IS", "WHERE-IS", "WITH ALL FAULTS", and "WITHOUT WARRANTY OF ANY KIND" basis for a Disposition Fee of \$1.00.

6.2. *Ownership Notice Filings.* The SP Entity may file or record any documents or instruments, including registering the SP Entity's interest with the applicable Filing Methods to give third parties notice that the SP Entity is the owner of the SP Entity funded Unit(s). Only where the Customer owns the Unit(s), has an outstanding Inaal amount, there has been a Payment Default or there is a reasonable expectation the Customer may be deemed the Unit(s) owner without this Agreement being terminated, to the extent not prohibited by Law: (a) the Customer grants the SP Entity continuing security interests and liens sufficient to be reasonably collateralized for the Customer's Agreement obligations with the right to have filed any documents to aid in perfecting, maintaining, and/or protecting these interests and their priority; and (b) Customer must obtain SP Entity written consent prior to any collateral transfer, encumbrance or action that may reduce the collateral's value.

6.3. *Incentives.* Unless otherwise specified in the applicable SA, during the Term of this Agreement the Customer shall be responsible for obtaining and may receive all Incentives with respect to the Unit(s). Customer agrees to inform of SP Entity on a timely basis of all Incentive related communications that may affect obtaining such Incentives after the Term of this Agreement. SP Entity retains the economic benefits from activities independent of the Customer such as depreciation, financial restructuring, cash discounts, volume incentives, training credits, leverage, and investments.

6.4. *No Liens by Customer.* Customer will not directly or indirectly cause or create any Lien on or with respect to any asset where there is an associated USA Payment except as otherwise agreed in writing by the Parties, and, to the extent not prohibited under Laws, will indemnify the SP Entity against all costs and expenses (including attorneys' fees and costs) incurred by the SP Entity endeavoring to discharge, release or terminate such encumbrances or in litigating to quiet title as to or relating to any Liens.

6.5. *Reporting.* Customer shall accurately and timely documenting, collecting, maintaining, and file of all government reporting regarding Unit(s) related to safety, use, maintenance, warranty, emergency response, operators, permits, complaints, accidents, and performance with copies simultaneously sent to SP Entity.

6.6. Customer agrees that the SP Entity shall use Sustainability Partners Services, LLC as the Infrastructure Specialist for the Unit(s) Useful Life but may change with a CO.

7. **Major Maintenance / Renewal.**

- 7.1. *Unit Major Maintenance / Renewal (“MMR”).* During the Term of this Agreement and prior to any Unit Disposition to Customer, should either Party provide Notice of having material concerns over any and/or all Units reliability, safety, performance, maintainability, or effectiveness a curative MMR event be deemed to have occurred (an “**MMR Event**”). If within a reasonable time after Notice of an MMR Event, SP does not provide an NtP for the event or if the Customer does not approve the provided NtP, the Agreement will be deemed to be in Performance Default. *Updated Terms.* Upon and following an MMR Event,
- a) Unit(s) listed in the NtP will be added to the USA Service and Unit(s) removed shall be excluded,
 - b) the applicable Install Date for such Renewed Unit(s) shall be the date of the MMR Event,
 - c) the Useful Life for Renewed Unit(s) shall be updated based on the date of MMR Event and the Renewed Unit(s) characteristics, and the material and labor portion of Unit(s) Actual Cost shall equal new cost plus where MMR Event occurs prior to old Useful Life then add ((old Useful Life - amount of Useful Life used at MMR Event) / old Useful Life) * old Unit(s) Actual Cost. Should annual USA Payments be less than required to cover SP Entity obligations, SP Entity may apply the Support Reserves to reduce the difference.

8. **Minor Maintenance / Care.**

- 8.1. *Minor Maintenance / Care (“MMC”).* Customer shall be solely responsible to Operate the Unit(s). Notwithstanding the foregoing, the SP Entity shall have the right, but not an obligation, to cause the MMC to be performed, in collaboration with the Customer, to the extent SP Entity deems necessary or appropriate in its sole discretion to keep the Unit(s) in a State of Good Repair, the cost of which shall be included as Support Costs and reduce the Support Reserves accordingly.
- 8.2. *Approved MMC Provider.* Except as otherwise provided in this Agreement, Customer will restrict performance of the MMC to one of the Approved MMC-MMR Providers listed in the applicable SA. Customer may request a new Approved MMC-MMR Provider be added to the Approved MMC-MMR Provider list. If the SP Entity fails to respond to such a request within 10 business days, then such suggested Approved MMC Provider shall be deemed to have been added to the SA list of Approved MMC-MMR Providers. Customer and SP Entity agree that it is solely the selected vendors’ and installers’ responsibility for Unit performance.
- 8.3. *Unit Critical Repair.* Should a Unit that is an essential service, be inoperable and no Approved MMC-MMR Provider is available to affect an immediate repair, Customer shall use their best judgment in causing the Unit to be immediately repaired using the same standards as provided in Section 8.5(b) with such repair being paid for through the Support Reserve.
- 8.4. *MMC Agreements.* MMC will be performed pursuant to a written agreement between either SP Entity or Customer as determined by the related SA, and an Approved MMC Provider that has been approved by both Customer and SP Entity (a “**MMC Agreement**”), such approval not to be unreasonably withheld or delayed. If a Party fails to respond within 10 business days of receipt of a proposed MMC Agreement, that Party’s approval will not be required for such MMC Agreement. The non-contracting Party shall be an express third-party beneficiary of the MMC Agreement and the Approved MMC Provider’s warranties, guaranties, and obligations with respect to the Unit maintenance, and shall be independently entitled (without obligation) to enforcement thereof.
- 8.5. *Approved MMC Provider Replacement.* If Customer or the SP Entity determines that an Approved MMC-MMR Provider cannot reasonably be relied upon to perform Unit care consistent with adequate quality, reliability, or efficiency, or following a Material MMC Cost Increase, then
- a) MMC will be performed by a different Approved MMC-MMR Provider identified on the SA, ,
 - b) Customer and the SP Entity will jointly endeavor to identify a replacement Approved MMC Provider capable of performing Unit care with the appropriate quality, reliability, and efficiency at the lowest applicable cost, and
 - c) the Parties will update the SA to reflect any such different Approved MMC-MMR Provider and the applicable Material MMC Cost Increase.
- 8.6. *Material MMC Cost Increases.* If Customer becomes aware of a Material MMC Cost Increase, Customer will promptly notify the SP Entity in writing, as promptly as reasonably possible, before contracting with the Approved MMC Provider for further Unit MMC.
- 8.7. *Inspection of Unit MMC.* At its discretion, with reasonable prior notice to and coordination with Customer, the SP Entity and Infrastructure Specialist shall have reasonable access to the Location at all times as may be necessary and/or appropriate to inspect the Unit MMC work performed or being performed. If the Approved MMC Provider has not performed the Unit MMC work in accordance with the MMC Agreement and in accordance with applicable industry standards, then:
- a) Customer will cause the Approved MMC Provider to diligently cure such conditions, and
 - b) the SP Entity may suspend its obligations until the Approved MMC Provider has cured such conditions. Items removed by the Approved MMC Provider in connection with Unit care will be held by Customer for further instructions from the SP Entity regarding their inspection, collection and/or disposition.

9. **Reserves and Costs.**

- 9.1. *Resiliency Trigger.* When defined in the SA, is the trigger where the Customer approves SP to make a good faith effort to provide temporary substitutes reasonably equivalent to the existing Units(s) whose usage became unavailable and to add any DTCs the SP Entity incurs to the associated months USA Payment. If a non-Approved Resiliency Vendor is used, then the Customer may decline payment of those DTC in excess of what the reasonable costs would have been if an Approved Resiliency Vendor had been used unless SP has obtained Customer approval for such excess costs.
- 9.2. *Support Costs.* “**Support Costs**” means any Unit MMC and MMR to be paid by the SP Entity that are DTCs (and any applicable Customer Unit Replacement amounts, including replacement credit to the extent provided in the applicable Agreement). All other internal or other costs incurred by Customer are excluded from any payment obligation of this Agreement. Customer is responsible for the operation, service, and safe keeping of the Unit(s). Accordingly, Support Costs exclude, and Customer (and not the SP Entity) shall be responsible for, the costs of any Unit MMC or MMR Event, including those in any way due to, arising, or resulting from any improper operation, improper environmental controls, improper service, vandalism, Force Majeure Event, abuse, negligence, or misconduct by Customer or any third party, or a breach of this Agreement by Customer and said costs shall be paid forthwith and prior to any Remaining Useful Life determination. For any Unit MMC and MMR Event (including associated costs of diagnosis and correction) for which the SP Entity pays but is not responsible for paying as Support Costs, Customer will pay the SP and SP Entity’s associated out-of-pocket costs and expenses. Additionally, Customer and the SP Entity are responsible for appropriate planning and coordination of MMC and MMR Event services.
- 9.3. *Creation of Support Reserves.* To support the reliability, durability and safety priorities established by the Parties, a portion of the USA Payments shall be applied to fund the Support Reserves, which shall be determined after the SA is executed and set forth in subsequent Agreement documents. The SP Entity may invest reserves created by this Agreement into instruments reasonably equivalent to those with AA+ rating, the net proceeds of which will be retained by the associated reserve.

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- 9.4. *Payment of Support Costs.* The SP Entity shall pay Support Costs associated with the Unit(s) from the associated Support Reserve. If the Support Reserve is insufficient to fund certain Support Costs then the Customer shall either: (i) approve a CO provided by SP for paying the excess Support costs, (ii) pay for the excess Support costs, or (iii) terminate the Agreement. Unless specifically waived by the SP Entity, SP Entity's payment of Support Costs shall be conditioned upon:
- a) such Support Cost payment being actually due to an Approved Provider,
 - b) the absence of any existing or pending disputes between the Parties,
 - c) compliance to SP Entities usual and customary processes for vendor procurement, authorization, verification, billing and payment.

10. **The Term.**

- 10.1. *Commencement of Initial Term.* The Initial Term commences when Customer executes and delivers the applicable CoA, or the Unit(s) have otherwise been deemed accepted in accordance with Section 3.14. The Initial Term and any Additional Terms are set forth in the SA. If Customer is the Initial Funding Entity, the Initial Term shall be for the period equal to the Unit's remaining Useful Life.
- 10.2. *Renewal/Nonrenewal for Successive Terms.* The Initial Term will automatically extend for successive Additional Terms, unless Customer has given the SP Entity at least 30 days prior to the applicable Additional Term. So long as there have been no Payment Defaults within the past 12 months, the Customer Notice of nonrenewal serves as Notice for a Customer's termination for convenience of this Agreement.

11. **Changes.**

- 11.1. *Unused Contingencies.* In the event there are unused Installation contingencies reserves 90 days after a signed final CoA for a complete Installation, the SP Entity will lower the Customer's Unit(s) Usages Rates by the percentage those funds are calculated to the Unit(s) Actual Cost.
- 11.2. *Support Reserve Adjustments.* Once a year, Support Reserves and SPV services being credited by the USA Payment may change in an amount equal to applying the Rate Index from January of the calendar year in which the prior adjustment occurred (or if none, the year of the initial Install Date) through December of the year prior to when the Usage Rates are to be updated. Where % of USA Payment Eligible is undefined, 20% will be applied.
- 11.3. *Usage Rate Adjustments.* Prior to any change in Usage Rate(s) due to this Section, 11.3, (a) the effective date for any such change will not be earlier than 30 days following the Notice thereof and (b) Customer will have the right to terminate this Agreement upon Notice before the adjustment takes effect.
- a) *Compliance Costs.* In the event of any change in applicable Laws regarding the Unit(s), the Location or this Agreement, Customer will either (a) promptly pay the full amount of the SP Entity's costs of complying with such change, or (b) agree to an adjustment to the Usage Rates(s) determined by the SP Entity for which the proportional increase may not exceed the percentage represented by such compliance costs relative to the sum of the Unit's Actual Cost.
 - b) *Customer Viability.* During a period where Customer's credit rating or letter opinion becomes speculative by a national credit rating service, the SP Entity may reasonably adjust the Unit's Usage Rates and/or Lowest Expected Use and shall be effective upon delivery of the first invoice calculating such change(s).
 - c) *Usage Rate Reduction Payment.* At Customer's sole option, starting year 4 from the Install Date, the Customer may propose to make an additional payment once a year, (a "Usage Rate Reduction Payment") of no less than 10% and no more than 33% of Unit's Actual Cost. Following receipt of such a proposal for a Usage Rate Reduction Payment, the SP Entity shall provide Customer with updated Usage Rates (contingent on receipt of the Usage Rate Reduction Payment) determined by the SP Entity targeting the Return Limit.
 - d) *Use Adjustments.* Upon annual Customer written request or an annualized Unit's Use over any 3 months of a 12-month period has been or is expected to be less than 87% of the Expected Use of Full Capacity over the remaining Useful Life, the SP Entity may adjust the Unit's Usage Rate, Availability and/or Lowest Expected Use to reflect changed expectations. Where Unit(s) are part of a Rights Fee and the reduction in Unit's Use or net revenue share is material, SP Entity may elect to terminate the Agreement with the Customer subject to Section 14.2.
 - e) *Use Changes.* After NtP, should there be a material change to the use of a Location that was not noticed by the Customer to the SP Entity prior to NtP, such as early termination of a major lease or significant change to the Location's specific purpose, then the SP Entity shall be entitled to a Change Order pursuant to Section 3.6 reasonably adjusting the applicable SA to reflect such material change.
 - f) *Rate Indexing.* When Agreement specifies to apply the Rate Index to Usage Rates, then at the beginning of each year following the Starting Year, the Unit(s) Usage Rates may be adjusted by the average annual Rate Index over the Years to Average.

12. **Limitations on Liability.**

- 12.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY PROVIDED FOR OR IMPLIED IN ANY AGREEMENT OR UNDERSTANDING AMONG THE PARTIES, TO THE EXTENT NOT PROHIBITED UNDER APPLICABLE LAWS SP, THE SP ENTITY, AND ALL OF THEIR RELATED PARTIES:
- a) SHALL NOT BE HELD LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION OR HARM TO REPUTATION) ARISING FROM, OUT OF OR IN CONNECTION WITH THEIR PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT.
 - b) AGGREGATE LIABILITY UNDER THIS AGREEMENT ARISING FROM, OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT SHALL NOT EXCEED LESSER OF (A) THE ACTUAL OUT-OF-POCKET REASONABLE COSTS INCURRED BY CUSTOMER DIRECTLY ARISING FROM THE FRAUD OR GROSS WILLFUL MISCONDUCT OF THE SP ENTITY AND (B) THE TOTAL USA PAYMENTS ACTUALLY PAID TO THE SP ENTITY UNDER THIS AGREEMENT DURING THE 12 MONTHS PRIOR TO THE DATE ON WHICH SUCH LIABILITY WAS CREATED. The Usage Rates set forth in this Agreement reflect, and are dependent upon, the foregoing limitations of liability.
 - c) disclaim and make no representation or warranty, either express or implied, as to the fitness for a particular use or otherwise, quality, design, condition, capacity, suitability, accounting, merchantability or performance of the Unit or the services. Each Unit is provided "as is." Customer accordingly agrees not to assert any claim or offset whatsoever against the SP Entity based thereon.
- 12.2. Upon delivery of the Units at the Customer's Location, Customer will be solely responsible for compliance of the Units under applicable Laws, Customer standards and policies, or any other applicable requirements and hereby assumes and will bear the entire risk of loss and damage to the Unit(s) from any cause whatsoever, regardless of whether the loss is insured. In the event of loss or damage to the Unit(s), Customer, at the option of the SP Entity, will (a) repair or replace the same to restore the Unit(s) to good condition and working order; or (b) replace the same, with like property of the same or greater quality and functionality.
- 12.3. Notwithstanding anything to the contrary provided for or implied in this Agreement, the terms of this Section 12 shall survive any termination of this Agreement, regardless of cause or purpose.

13. Default; Remedies.

- 13.1. *Customer Payment Default.* Unless SP Entity receives a good faith Notice from Customer within 20 days of invoice receipt (i) describing in reasonable detail a dispute specific to the invoice amount and (ii) the undisputed portion has been paid in full, the entire invoice is deemed approved. An approved amount due but unpaid within 5 days of due date will be deemed a “**Payment Default**”) allowing the SP Entity to terminate this Agreement. Furthermore, Customer agrees to use best efforts to accomplish and/or support the safe implementation of any restrictions to use and/or access to Agreement’s Unit(s) specified by SP during the period of non-payment or termination and to promptly reimburse the SP Entity for its related direct and indirect costs. Furthermore, Customer agrees it is their responsibility to minimize all direct or indirect harm related to a Payment Default.
- 13.2. *Performance Default.* If a Party fails to substantially perform any other material obligation under this Agreement (a “**Performance Default**”) and fails to cure such Performance Default within 10 business days of Notice thereof, the non-defaulting Party may immediately terminate this Agreement.
- 13.3. Parties shall be entitled to seek specific performance or injunctive relief as a remedy for any Payment Default.
- 13.4. *Exclusive Remedies.* The remedies expressly provided in this Agreement are the sole and exclusive remedies of the Parties in connection with breaches of this Agreement, provided that the Parties will at all times maintain the right to not extend this Agreement at the end of the Initial Term or Additional Term, as applicable, and further provided that the foregoing remedies are in addition to any late fees and accrual of interest expressly provided elsewhere in this Agreement.

14. Obligations Following Termination.

- 14.1. *Disposition upon Termination.* Except to the extent otherwise required in this Section 14, upon a termination of this Agreement for any reason, Customer will immediately (a) if this Agreement expressly provides that Customer has a “Right of Return” (“**RoR**”), (where the Certificate of Acceptance has been fully executed and all USA Payments have been received by the SP Entity), to uninstall and deliver all Unit(s) and all property of the SP Entity in Customer’s possession or control, to locations identified by the SP Entity but no further than the Unit(s) manufacturers closest reconditioning center, at Customer’s sole expense, in undiminished performance or aesthetics from initial installation, using manufacture compliant packaging and documentation sufficient for individual resale, within 10 business days, or (b) have Disposition of Unit(s) according to selection in Addendum(s) to Customer within 45 business days as provided in Section 14.2, 14.3, or 14.4 below, as applicable and execute a General Release.
- 14.2. *Termination.* Upon a termination of this Agreement for any reason, Customer shall pay the aggregate of any Deferred USA Payments plus:
 - a) *IaU Addendums:* Dispositions of the SP Entity owned Unit(s) to the Customer shall be on an “AS-IS”, “WHERE-IS”, “WITH ALL FAULTS”, and “WITHOUT WARRANTY OF ANY KIND” basis from the SP Entity. Customer will receive rights to Unit warranties and Unit Maintenance agreements. Unless the SA provides a fixed Disposition Fee schedule, Customer shall pay a “Disposition Fee” for the Disposition of each Unit(s) for an amount of no less than \$1 as calculated in (i) and (ii) below:
 - i. the Unit’s Actual Costs not covered by the Support Reserve multiplied by the fraction represented by the Unit’s (i) Remaining Useful Life divided by (ii) Remaining Useful Life plus its Qualified Usage for all Unit(s) that have a Useful Life;
 - ii. in lieu of Section 14.2(a)(i), either Party may elect use of the Unit’s Actual Cost – Total Depreciation.
 - b) *Rights Fees and IaU Addendums:* Customer shall pay the aggregate of any Unredeemed Disbursements.
- 14.3. *Customer Default.* In connection with a termination by the SP Entity for an uncured Payment Default or Performance Default by Customer (and in lieu of any uninstallation and delivery of the Unit(s) otherwise contemplated by this Agreement), Disposition to Customer will occur for all SAs covered by this Agreement as provided in Section 14.2 above and the minimum Disposition Fee shall be sufficient to provide SP Entity members the Return Limit.
- 14.4. *Unit Disposition upon Other SP Entity Termination.* Subject to and without limiting any other provision providing for the Disposition of the Unit(s) on different terms, upon a termination of this Agreement by the SP Entity without cause, Customer will receive Disposition of any affected Unit(s) funded by the SP Entity (in lieu of any uninstallation, removal or collection of the Unit(s) otherwise contemplated by this Agreement) on an “AS-IS”, “WHERE-IS”, “WITH ALL FAULTS”, and “WITHOUT WARRANTY OF ANY KIND” basis for a Disposition Fee of \$1.00, if so elected in writing by the SP Entity in its sole discretion.
- 14.5. *Survival and Other Continuing Obligations.* For clarity, no termination of this Agreement will relieve Customer’s obligation to pay all USA Payments through the date of termination, incur and pay additional USA Payments if Usage continues, any other charge(s) that Customer has incurred under the Agreement, applicable Customer’s indemnification obligations under this Agreement, or the SP Entity’s obligation to pay amounts due to Customer prior to termination (together with all provisions of this Agreement that relate to the enforcement of rights and remedies) shall also expressly survive any termination of this Agreement until all of such obligations have been satisfied in full or there shall be a final non-appealable order of a court of competent jurisdiction (or, if applicable, the JAMS arbitration under Section 15.2) resolving any outstanding issues.
- 14.6. *Termination of Further Payment Obligations.* Except as otherwise expressly provided for in this Agreement, the respective obligations of the Parties shall cease and terminate upon any termination. Notwithstanding the foregoing no termination of this Agreement, the SP Entity will not be liable for payment of any installation, material, freight, restocking fees, cancellation charges, warranty, permits and maintenance cost or other costs not actually performed prior to such termination.
- 14.7. *Reserve Surplus.* To the extent the Support Reserve has a positive balance upon a termination of this Agreement, such amount shall first be applied to satisfy any unpaid obligations of Customer to the SP Entity and thereafter any remaining amount shall be distributed by the SP Entity to Customer.
- 14.8. *Offsets.* The Customer agrees the Disposition Fee may only be changed as a direct result of applying SP Entity confirmed Customer USA Payment overpayments or SP Entity members reaching the Return Limit.

15. Dispute Resolution; Governing Law.

- 15.1. *Governing Law; Jurisdiction.* The laws of the Dispute Resolution Location will govern the terms of this Agreement without giving effect to conflict of laws principles. Subject to Section 15.2 below, each Party consents to the Venue Jurisdiction. Each Party will bear its own costs for any disputes arising under this Agreement, provided that a prevailing Party shall be entitled to reasonable attorney’s fees, costs, and necessary disbursements in addition to any other relief to which such Party may be entitled.
- 15.2. *Arbitration.* For Customers that are not Governmental Entities any claim or dispute directly or indirectly arising from or relating to this Agreement or any related actions or omissions that are not claims of equitable relief or claims of provisional remedy shall be subject to arbitration in the Dispute Resolution Jurisdiction. The arbitration shall be administered by a JAMS Neutral and in accordance with JAMS comprehensive rules and procedures. Judgment on any award rendered in such arbitration shall be binding upon the Parties and may be entered in any court having jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. **THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY AND ALL RIGHTS TO LITIGATE MATTERS IN COURT, INCLUDING ANY RIGHTS TO TRIAL BY JURY.** This paragraph does not apply if Customer is a Governmental Entity, or to a claim for a provisional remedy or equitable relief.

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- 15.3. **Unit Stewardship.** Upon Notice of termination, while there is an outstanding Disposition Fee or USA Payment that are due to the SP Entity, regardless of any outstanding dispute, the Customer agrees to safely prevent all usage of the involved Unit(s), minimize any related costs and disruptions, perform reasonable and customary MMC, enable SP's Entity periodic verification and take sole responsibility for all resulting costs and adverse impacts.
16. **SP Entity Agent.** The Parties acknowledge and agree that, unless otherwise directed in writing by the SP Entity, the SP Entity has authorized SP to give and receive notices, invoice, and collect payments, make SP Entity decisions contemplated by this Agreement, give instructions contemplated by this Agreement, and take SP Entity actions contemplated by this Agreement.
17. **Nature of Agreement.** The Parties do not intend this Agreement to convey control of the right to use the Units in an exchange or exchange-like transaction. The SP Entity determines the Unit's nature and manner of use.
18. **Representations.** Each Party warrants that this Agreement is valid, binding, and enforceable against it in accordance with its express terms. Customer represents and warrants that the Agreement has been duly authorized and executed and that Customer is fully empowered to perform its obligations under the Agreement in accordance with the terms herein and applicable Laws (including with any articles, charter or other organizational documents or authorities applicable to Customer). Following the full execution of the applicable NtP, each Party further warrants that the applicable SA and NtP are valid, binding, and enforceable against it in accordance with its express terms, and Customer warrants that the same have been duly authorized for execution and performance in accordance with applicable Laws and with any articles, charter or other organizational documents or authorities applicable to Customer. The same warranties shall apply to any Addendum, CO or CoA signed by the Customer thereafter. Each Party further warrants that no re-characterization or other change in meaning or effect from what is stated in the Agreement is permitted.
19. **Representation by Counsel.** Each Party acknowledges that it has had the opportunity to be represented by counsel in connection with this Agreement and the transactions contemplated by this Agreement. Accordingly, any rule of law or any legal decision that would provide any Party with a defense to the enforcement of the terms of this Agreement against such Party based upon lack of legal counsel, shall have no application and is expressly waived. Customer further acknowledges that SP, including any of its representatives, is not a financial or municipal advisor to the Customer.
20. **Closing & Estimating Costs.** Customer shall be solely responsible and liable for (either by direct payment or by reimbursement of amounts paid by the SP Entity) all Closing costs as listed in NtP. Upon Customer requesting a pre-termination Disposition Fee, Customer shall prepay the SP Entities estimated cost for providing the requested information which shall not exceed six times the prior year's average USA Payment.
21. **Intellectual Property.** As between the Parties, each Party shall solely retain all their copyrights, trade secrets, patents and other intellectual property rights owned, held, licensed, or developed. Nothing in the USA Service or any Services shall be deemed a "work for hire".
22. **Force Majeure.** Except as expressly otherwise provided, neither Party shall be liable to the other to the extent it is unable to perform its obligations under the Agreement due to a Force Majeure Event.
23. **Entire Agreement; Amendment.** This Agreement, including these General Terms and any other incorporated exhibits and riders, completely and exclusively constitutes the entire understanding of the Parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the Parties, oral or written, regarding its subject matter. Except as otherwise specified in this Agreement, this Agreement may be modified only by a document signed by both Parties, and no obligation or duties shall be implied, because such implication would be contrary to the Party's intention to have their entire agreement expressed in writing.
24. **Agreement Transfer.** This Agreement may not be transferred, in whole or in part, by any Party without the other Party's written consent. In the event of a permitted transfer of this Agreement, references to the assigning Party shall be deemed to refer to the permitted transferee, except to the extent the applicable language or context require otherwise.
25. **Non-Profit Customer.** If Customer is a non-profit entity, Customer will either terminate the related Agreements or obtain SP Entity's prior approval to a Location change of ownership or a Customer change of control.
26. **Severability; Interpretation.** If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity will not render the Agreement unenforceable or invalid as a whole; provided that each provision that is so found to be unenforceable or invalid because of the amount or size of the burden or benefit shall be automatically reduced to the extent and by such amount such that the burden or benefit becomes enforceable and valid, and, in particular, the amount or size of any such burden or benefit provision found to be so invalid or unenforceable shall be read, notwithstanding any other provision of this Agreement, as if such provision read "to the maximum extent permitted by applicable law". The section headings in this Agreement are only for convenience of reference and are not to be considered in the interpretation of this Agreement's provisions.
27. **No Third-Party Beneficiaries.** Except as otherwise expressly provided herein, this Agreement and all associated rights are intended for the sole benefit of the Parties and will not imply or create any rights on the part of, or obligations to, any third-party. A Parties failure to exercise their rights does not mean the rights are waived for themselves or any other Party. Notwithstanding the foregoing, third parties are authorized to make independent procurement purchases from this Agreement pursuant to Customer's applicable procurement provisions, if any, and subject to the formation of an independent agreement between SP and a third party.
28. **Marketing.** Until Termination of all Agreements, SP may display SP's logo and name directly on the Units for identification purposes and use Customer's logo and name in connection with SP's advertising and marketing.
29. **Notice.** Any "Notice" shall be sent in writing to each Party's address and email address listed in this Agreement, or as subsequently updated by written notice.

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Glossary. Capitalized terms not otherwise defined in this Agreement have the following corresponding meanings:

- “**ACH**” means the method of SP Entity obtaining a Customer payment as authorized by Exhibit 5. Exhibit 5 shall be executed by the Parties as condition precedent to executing any related NtP.
- “**Agreement**” means this written agreement between Customer and the SP Entity comprised of each combination of these General Terms, the applicable SA(s), NtP(s), CO(s), and Certificate(s) of Acceptance, each of which controls, supersedes and restates the prior as herein set forth.
- “**Assignment**” means the transfer and acquisition of ownership.
- “**Availability**” A charge dependent on the Unit being available for Customer use, excluding scheduled maintenance, where the Unit materially meets the vendor performance criteria. Availability equals cost of the Units’ associated Closing costs, reporting, monitoring plus Availability Rate * # of Availability Units.
- “**Availability Rate**” A charge per Availability Unit, as determined in the SA.
- “**Availability Unit**” specifies, as determined in the SA, what measurement the Availability Rate is pricing for the Unit (i.e., hour / day / month).
- “**Approved Contractor**” means a qualified and licensed contractor identified as an “Approved Contractor” on the SA. Customer may add an Approved Contractor with the written consent of the SP Entity.
- “**Approved MMC Provider(s)**” means a qualified and licensed contractor identified as an “Approved MMC Provider” on the SA. Customer may add an Approved MMC Provider with the written consent of the SP Entity.
- “**Bankruptcy Trigger**” means in a bankruptcy proceeding under U.S. Bankruptcy Code when in the United States and when in Canada under the federal *Winding-Up and Restructuring Act*, R.S.C. 1985, c. W-11, the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “BIA”), the *Companies Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “CCAA”), or any similar legislations.
- “**Capacity Base**” means the greater of zero or the result of the Lowest Expected Use of Full Capacity times the month’s proration of the Unit’s yearly Full Capacity and then subtracting the current month’s Unit Use.
- “**Change Order**” or “**CO**” means a fully executed written agreement between Customer and the SP Entity to modify the Agreement.
- “**Claim**” means any claim, loss, liability (including negligence, tort, and strict liability), damages, penalty, equitable relief, judgment, suit and any legal proceeding, and all costs and expenses incurred or suffered in connection therewith (including reasonable attorneys’ fees and expert fees).
- “**Closing costs**” means all taxes (other than income taxes), citations, fines, fees, permits, and other governmental, SPV or SP as listed in the NtP.
- “**Connect Fee**” means the amount charged to Customer upon Trigger, as defined in the SA, for Unit(s) use.
- “**Deferred Catchup**” means the amount of outstanding Deferred USA Payment amounts divided by remaining months of Useful Life as determined by SP Entity unless otherwise specified in the SA.
- “**Deferred USA Payment**” means the amount of USA Payments the Customer is charged but payment is being deferred based on variables defined in the Payment Deferral Terms section of the Addendum.
- “**Delinquency Rate**” means the lesser of (i) 1.5% per month on the entire amount owed based upon a 360-day year calculated for the actual number of days elapsed and compounded monthly in arrears or (ii) the highest rate otherwise permitted by Law.
- “**Direct Third-Party Costs**” or “**DTC**” means direct third-party out-of-pocket SPV obligations from taxes, permits, insurance, SP Services, and IaaU related Vendor Contracts complying with the terms of this Agreement but excludes both Customer’s internal costs and SPV member costs.
- “**Disposition**” means the selection in the SA of either a Sole Use License or an Assignment upon termination.
- “**Dispute Resolution Location**” means Arizona unless Customer is a Governmental Entity, in which case will mean the state, province or territory where the Location is situated.
- “**Estimated Useful Life**” means the estimated useful life of the Units as set forth under the heading “Estimated Useful Life” in the NtP.
- “**Essential Utility Service**” means a service being delivered by infrastructure for Customers use such as: energy, water, transportation, sewer, facility, computing, lighting, HVAC, storage, grounds, or communications.
- “**Filing Methods**” means the ownership statements or fixture filings as per the Uniform Commercial Code when in the United States and the Personal Property Act legislation when in Canada.
- “**Force Majeure Event**” means any event, circumstance, series of events or set of circumstances beyond the reasonable control of, and caused without the fault or negligence of, the Party claiming, “Force Majeure Event,” such as acts of terrorism, war, riot, strike, explosion, fire, lightning, earthquake, floods, hurricanes, tropical storms, cyber-attack, natural disaster or the unavailability of electricity, gas or other utility services or suppliers on commercially reasonable terms.
- “**General Release**” means that to the extent permitted under applicable federal laws and laws of Venue Jurisdiction, a general release of all claims and liabilities against the SP and the SP Entity that is satisfactory to the SP Entity (including a waiver of California Civil Code Section 1542 and any similar other law of any jurisdiction, if applicable), which if not waived, may adversely affect the effectiveness of a release of all claims and causes of action.
- “**Governmental Entity**” means any federal, state, county, province, territory, municipality, or local governmental department or agency thereof.
- “**Iaal**” means infrastructure as an investment by the SP Entity where the Customer uses the investment proceeds to acquire and own Unit(s) and the investment returns for the SP Entity are generated through the SA.
- “**IaaU**” means infrastructure as a utility where the Unit(s) identified in the SA have their MMR and MMC managed by the SP Entity.
- “**ICOP**” is an IaaU where the SP Entity investors funding the Unit(s) own certificates of participation in the Customer USA Payments and where upon termination the Unit(s) will be transferred to the Customer, as per Section 14, with no further USA Payment obligations.
- “**Incentive**” means any government sourced and funded: incentive, promotion, credit, or subsidy which the Customer qualifies.
- “**Including**” always means “including without limitation”.
- “**Infrastructure Specialist**” or “**IS**” is the individual whose function is to facilitate the Units(s) staying reliable, safe, resilient, and improving through the life of the SA agreements. The IS may be involved in the design, engineering, monitoring, maintenance, upgrades, replacements, procurement, installation, commissioning, expansions, quotations, budgets, billing, credits, and payments to accomplish this. All Parties agree to the timely availability of involved staff, and/or agents, and third parties for the IS to pursue expedient resolutions for any of the Agreement’s stakeholder’s concerns.
- “**Initial Funding Entity**” means source of funds for SA Actual Cost incurred prior to Certificate of Acceptance.
- “**Installation**” means the installation of the Units at the Location(s) pursuant to the Installation Agreement complying with the terms of this Agreement.
- “**Law**” means any applicable federal, state, provincial, territorial, local or other law, rule, regulation, ordinance, zoning requirement or other legal requirement.
- “**Lien**” means any mortgage, pledge, lien, charge, security interest, encumbrance, or other claim of any nature.
- “**Liquidation Act**” means in the United States Chapter 7 of the U.S. Bankruptcy Code and when in Canada the BIA.
- “**Lowest Expected Use**” defaults to Expected Use when value is zero, N/A or undefined on the SA.
- “**Material MMC Cost Increase**” means any increase in an Approved MMC Provider’s pricing or rates for performance of the relevant Unit care by more than 5% over the lesser of any 12-month period or the time since the last Material MMC Cost Increase.

Exhibit 1
General Terms and Conditions

Sustainability as a Service®

- “**Minor Maintenance / Care**” and “**MMC**” means the performance of warranty services, maintenance, repairs, updates, and replacements with respect to the Unit(s) for purpose of (i) cleaning, maintaining aesthetics, or routine warranty service or care, (ii) restoring Unit(s) to a State of Good Repair, (iii) performing service recommended or necessary to maintain a Unit in good working order, or (iv) other similar purposes.
- “**Major Maintenance / Renewal**” and “**MMR**” means a replacement, major overhaul, substitution, or material upgrade of the Unit(s) from time to time, subject to the terms of this Agreement, that is not performed for the purposes of MMC.
- “**Notice to Proceed**” or “**NtP**” means a fully executed Exhibit 3. Terms of the NtP takes precedence over General Terms and SA.
- “**Operate**” means to use and have stewardship over the Unit(s) and any interdependent systems (a) in accordance with the applicable owner’s manual, manufacturer guidelines or other similar document(s) provided in connection with the systems, (b) in compliance with all Laws relating to possession, operation or use of the Unit(s), and (c) in such a manner so as to ensure Unit(s) (i) remain eligible without exception for the applicable warranties, warranty agreements and insurance coverages, and (ii) stay reliable, safe, and effective.
- “**Party**” means Customer, SP, or the SP Entity, as applicable, and “**Parties**” means Customer, SP, and the SP Entity together.
- “**Prompt Payment Act**” means laws that require the timely payment by Government Entities of valid and proper invoices.
- “**Qualified Usage**” means any period by which SP Entity’s capital accounts used to fund the Unit decreases due to Unit USA Payments.
- “**Recommended**” means recommended monthly reserves SP Entity has estimated to cover possible future MMR and MMC costs.
- “**Related Parties**” means any officer, director, employee, partner, member, manager, contractor, or agent, or any affiliate or other person or entity whose relationship to a Party is such as to create any vicarious, joint, or derivative liability or obligation or such as to subject the Party to any claim from such person or entity for equitable or implied indemnity or contribution.
- “**Remaining Useful Life**” means the remaining quantity of Useful Life available as determined by a third party selected by SP. Upon Notice to the Customer of SP’s elected determination, the Customer shall have 5 business days to veto the determination by providing in writing specific reasons that are reasonably incurable, upon which SP Entity shall obtain a new determination.
- “**Renewed Units**” means those Units that are the result of an MMR event.
- “**Return Limit**” takes the 20% trimmed mean daily 1-year U.S. Treasury rate plus the non-zero amount stated as Real Return Limit in the associated SA or 7% when not defined, from the time of a Unit(s) NtP until termination to determine the maximum Unit(s) Disposition Fee that SP Entity members may receive as a rate of return on the Unit(s) Actual Cost from the net of Unit(s) related: Usage Fees received, SPV Services paid and Disposition Fee. Upon a Unit(s) MMR installation event, the SP Entity will in good faith adjust the new Unit(s) Usage Rates to not plan on exceeding this limit.
- “**Rights Fee**” means an upfront fee paid to Customer for SP Entity to receive limited but exclusive usage and data rights of the Unit(s). SP Entity usage right is for full control of Unit(s) access and recipient of associated revenues without disrupting Units existing public services should Customer be in USA Payment Default until cured. The SP Entity data right is for confidential, non-transferable, access and use (such as Environmental, Social, and Governance, “ESG”, analysis) of all performance data for the Unit(s). In consideration for this fee, Customer will pay the USA Payments defined by the involved SA(s). Unit(s) part of usage right are subject to all MMR and MMC obligations.
- “**Scope Contingency**” means authorization of Customer signatory to approve changes to scope of Approved Providers and thus Usage Rates prior to Unit(s) CoA.
- “**SA Actual Costs**” means the cumulative Unit(s) Actual Costs plus Unredeemed Disbursements.
- “**Sole Use License**” means a license from SP Entity to Customer for their sole use and control of the Unit(s).
- “**SP Services**” means services consistent with Title 48 CFR 31.201-3 that are provided by SP such as accounting, treasury, tax, audit, compliance, insurance, reporting, legal, asset monitoring, project management, admin, contract management, design, engineering, and Infrastructure Specialist.
- “**SPV Services**” means the SPV cumulative DTC obligations that have not been reimbursed by either Customer, Support Reserves or Closing Costs.
- “**Start Date**” means the date from which Customer’s NtP is fully executed.
- “**State of Good Repair**” means Title 49 CFR § 625.17, a condition sufficient for the asset to operate reliably, safely and at performance targets specified in SA and where undefined, from Unit(s) manufacturer specifications.
- “**Supply Chain Contingency**” means authorization of Customer signatory to approve changes to Approved Providers costs, and thus Usage Rates prior to Unit(s) CoA.
- “**Support Reserves**” means amounts reserved by the SP Entity for the payment of Unit MMC and MMR Costs, increased by the portion of each USA Payment allocated to the Unit MMC Reserve and MMR Reserve as set forth on the SA and/or the NtP and decreased by the amount of each associated Support Cost paid by the SP Entity.
- “**Total Depreciation**” means the summation of amounts resulting from using the Excel formula of DDB (Unit’s Actual Cost, 0, Useful Life, Useful Life - completed year #) where completed year # is a count of year #s where no Payment Default occurred from Unit(s) CoA to current.
- “**Unit’s Actual Cost**” means those cumulative IaaU direct SPV incurred costs not sourced from a member owned or controlled entity unless approved by SP.
- “**Underwriting Contingency**” means authorization of Customer signatory to approve changes to Unit(s) Useful Life, Expected Usage, Lowest Expected Use, Availability, and/or Full Capacity and thus Usage Rates prior to Unit(s) CoA.
- “**Units**” is the description of USA service components. All references to performance or capacity applies solely to that which may be measured at time of CoA.
- “**Unit Use**” is the quantity of Usage Units used plus the prorated Standard Deviation when specified in the SA.
- “**Unredeemed Disbursement**” means a lump sum amount when combined with Closing costs, cash disbursements to the Customer for Rights Fee or IaaU, and the accumulated monthly cash flow to SP Entity members, yields a total member return of no less than the Return Limit.
- “**Useful Life**” means the Unit(s) quantity of time or usage, as determined by the Estimated Useful Life that is specified in the NtP, which the Parties hereby agree are reasonable.
- “**Usage**” means a Units’ Use, but annually limited by the specified Full Capacity / Year, multiplied by its Usage Rate.
- “**Usage Rate**” is the cost of using a Unit per Usage Unit, as determined in the SA adjusted for any unused contingencies. This cost includes consideration the Customer considers is reasonable and satisfactory to compensate the Customer for Unit(s) being installed on their property for the purpose of generating USA Payments.
- “**Usage Unit**” defines what is being measured to determine Unit Use of an individual Unit (i.e. Hour / Passenger / Gallon / MBTU / kWh / Student Day / Occupancy / Connection / MGD / etc.)
- “**Venue Jurisdiction**” means the State of Arizona unless Customer is a Governmental Entity, in which case the Venue Jurisdiction will mean the exclusive jurisdiction of the federal courts in the Dispute Resolution Location with each Party agreeing that the exclusive venue of such courts is convenient, proper and an integral part of the Agreement.

Exhibit 2
Service Addendum ("SA")

Sustainability as a Service®

This Document: SA Ref #: _____ of the M-USA effective on: _____ for Customer: _____

This Agreement. Each unique combination of General Terms, SA, NtP, CoA, and ACH Agreement constitutes a standalone binding agreement between Customer and SP Entity. Capitalized terms not defined in this SA have the meanings given in the General Terms.

The "General Terms" referred to herein are those General Terms set forth in Exhibit 1 to the Master Utility Service Agreement ("M-USA") dated as of _____ between Sustainability Partners, LLC ("SP") and Customer, in the form attached thereto on the effective date of the M-USA, without giving effect to any amendments, waivers, or other modifications to the General Terms thereafter unless specifically set forth in this SA, the NtP(s), or CoA(s).

Type of SA (Rights Fee/ IaaU /IaaI): _____

If type is Rights Fee then revenue sharing source is: _____
If type is IaaU, this SA is a critical supplier of services agreement, limited to the design, engineering, permitting, repair, maintenance, remodeling, renovation, modernization, or construction of an existing facility at the Location and does not involve a change or increase in the size, type, or extent of the facility.

The "LOCATION":		Venue Jurisdiction:	
\$ Amount:	N/A	Triggered by:	N/A
		for (Rights Fee/IaaI/Connect Fee):	N/A

The "USA SERVICE"

Unit "Id #"	Quantity	Units	\$ Installation Limit / Each
* A *			
* B *			

The Term

"Initial Term":	1	Month/Years	M	"Additional Term":	1	Month/Years	M
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*(If Customer is the Initial Funding Entity, the Initial Term is determined based on Section 10.1)

USA PAYMENT CALCULATION and DEFINITIONS

"USA Payment"	is the total of Unit(s) * (Usage + Capacity + Availability) + MMC/MMR Reserves + Deferred Catchup
"Capacity"	is Capacity Base * Usage Rate

Unit Id #	SP Initial Funding Entity?	Rights Fee?	Full Capacity / Year	How Usage Unit will be measured	Usage Unit	Usage Rate	Availability	
							Unit	Rate
* A *								
* B *								

OTHER APPLICABLE TERMS

"Expected Use" of Full Capacity (monthly):	=	%	"Lowest Expected Use" of Full Capacity (monthly):	=	%
--	---	---	---	---	---

Customer's signatory is authorized to approve up to any of the following cost changes:					
Scope Contingency:	=	15%	Underwriting Contingency	=	10%
			Supply Chain Contingency:	=	15%

Exhibit 2
Service Addendum (“SA”)

Sustainability as a Service®

“Rate Index” (select one)	=	PPI	U.S. Core CPI - All Urban Consumers, U.S. City Average (CUUR0000SA0) U.S. PPI - Commercial machinery repair & maintenance (PCU81138113) User Defined:
% of USA Payment Eligible	=	33%	To be credited solely to Support Reserves and SPV Services
Apply to Rate Index to Usage Rate? No	# of “Years to Average” for Adjustment:	10	“Starting Year” after CoA = 1

INSTALLATION MATTERS

“Installation Limit”: \$ TBD	“Completion Target”:	TBD	Months	Monthly “Carrying Charge”:	0.85%
Usage Rates include contingencies of: \$		“Resiliency Trigger”	Hours/Days/Weeks:		Days

“APPROVED PROVIDERS”: Approving party to be SP Entity or Customer (S/C)

Approved Vendors:

Name	Select	Contract	Name	Select	Contract

Approved Installation Contractors:

Name	Select	Contract	Name	Select	Contract

Approved MMC – MMR Providers:

Name	Select	Contract	Name	Select	Contract

Approved Resiliency Providers:

Name	Select	Contract	Name	Select	Contract

PAYMENT DEFFERAL TERMS

Defer USA Payments by:	0%	Defer monthly Usage over:	N/A	# of months being deferred:	N/A
# of months to spread Deferred Catchup over:		N/A		Starting month # for Deferred Catchup:	N/A

Disposition:	Upon termination perform Assignment of ownership or grant Sole Use License? (A/L)		L
Self-Install:	Has Customer opted to self-install the USA Service itself? Yes/No		No
Standard Deviation:	Add to the Units(s) Use the Unit’s prior 12 months Usage standard deviation? Yes/No		Yes
Right of Return	Does Customer have a RoR (per Section 14.1 of the General Terms)?		No
Real Return Limit %	7%	If RoR is Yes, then # of months after the USA Start Date the RoR applies to:	N/A
Closing Costs:	Direct bill Customer or fund by adjusting Usage Rates? Direct/Rates		Rates
SPV Services:	Direct bill Customer or add to monthly USA Payment? Direct/USA		USA
	Maximum monthly addition to USA Payment as a %:		5 %

Additional Terms: The following terms shall control over any conflicting terms in the Agreement:

1. New Mexico has an applicable Prompt Payment Act, so pursuant to Section 2.6 (d), Section 2.3 regarding late payments is not applicable to this Agreement.
2. Section 15.1 is restated in its entirety as follows: “The laws of the Dispute Resolution State will govern the terms of this Agreement without giving effect to conflict of laws principles. Subject to Section 15.2 below, each Party consents to the exclusive jurisdiction of the state courts in the Dispute Resolution State and agrees that the exclusive venue of such courts within Bernalillo County is convenient, proper and is an integral part of this Agreement.”
3. SP Entity is responsible for ensuring that it does not bill for USA Payments that exceed the Agreement amount. With each invoice submitted to the City, the Contractor shall include a report that identifies the usage rate and usage calculated for the monthly invoice under this Agreement.
4. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, as amended.
5. In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended. The parties agree to comply and act in accordance with all provisions of the Albuquerque Human Rights Ordinance, the New Mexico Human Rights Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973, and all federal, New Mexico and City laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the City’s Office of Civil Rights.
6. Prior to Notice to Proceed, Customer shall inform the SP Entity of all applicable requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the “ADA”) specifically related to the Units in the Service Addendum so such costs can be included in the Usage Rates for the project prior to Notice to Proceed.
7. At any time during normal business hours, and as often as is reasonable, the SP Entity shall make all reasonable records with respect to the Units available to the Customer for examination. The SP Entity shall allow the Customer to audit, examine, and make excerpts or transcripts from such records, and to make audits of all materials, Approved Vendor contracts, Approved Vendor invoices, and Customer invoices. The SP Entity understands and will comply with the City’s Accountability in Government Ordinance, §2-10-1 et seq. and Inspector General Ordinance, §2-17-1 et seq. R.O.A. 1994.
8. Both parties represent that this Agreement is entered into without collusion on the part of either party with any person or firm, without fraud, and in good faith. The SP Entity also represents that no gratuities, in the form of entertainment, gifts or otherwise, were, or will be, offered or given by the SP Entity or any agent or representative of the SP Entity, to any officer or employee of the City for the purpose or with the intention of securing: this Agreement; more favorable treatment with respect to this Agreement; or more favorable treatment with respect to making any determinations regarding performance under this Agreement.
9. Unless otherwise specified, days shall consist of calendar days. If days are specified as “business” days, then such business days shall consist of any days other than (i) a Saturday or Sunday or (ii) any day on which the offices of the Customer are closed.
10. The parties acknowledge that the Customer is a government entity subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding any other provision of this Agreement, the Customer shall not be responsible to SP Entity for any disclosure of Confidential Information pursuant to that Act or pursuant to the Customer’s public records act laws, rules, regulations, instructions or any other legal requirement.
11. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

Exhibit 2
Service Addendum (“SA”)

Sustainability as a Service®

Effective Date: _____, 2024

Customer:

SP Entity:

By: Sustainability Partners Services LLC, its Manager

By: _____

Name: _____

Title: _____

By: _____

Name: Adam T. Cain

Title: COO

Exhibit
Not for Signature

Exhibit 3
Notice to Proceed (“NtP”)

_____, 202__

This Document. NtP Ref #: _____ for SA Ref #: _____ of M-USA effective: _____

RE: **Notice to Proceed** for Customer: _____

The above referenced M-USA and Exhibits provide meanings for Capitalized terms not otherwise defined in this NtP.

Execution by the Parties of this NtP authorizes all Parties to proceed with the Unit(s) listed below being made available for Customer’s eventual execution of a related CoA according to the terms of the M-USA and the above-referenced Exhibits.

Confirmed Units for this NtP to be installed at the Location are:

NtP Units				
Unit “Id #”	Quantity	Description of USA service components	Usage Rate	Estimated Useful Life
* A *				

Customer has reviewed and approved the drawings, scopes, permits, reporting, schedules, and contracts to procure, install, commission, monitor and service the above NtP Unit(s) from the involved Approved Providers.

Customer approves acquisition of the NtP Unit(s) by the Initial Funding Entity to occur, and the Installation may begin, subject to the terms of the SA.

Monthly:

	SP Recommended	Actual				
MMC Reserve	\$ _____	\$ _____	Per (Month/Year)	M	Starting month # after Install Date	1
MMR Reserve	\$ _____	\$ _____	Per (Month/Year)	M	Starting month # after Install Date	1

Closing Costs: (those not included in SA Usage Rates being expressed as % of SA aggregate Actual Costs)

for IaaU type of SA							
taxes, fees and permits:	TBD	funding underwriting:	TBD	asset underwriting:	TBD	compliance:	TBD
legal:	TBD	formation:	TBD	origination:	TBD	SP Services:	TBD

for IaaI or Rights Fee type of SA							
funding underwriting	TBD	formation:	TBD	origination:	TBD	SP Services:	TBD

Exhibit Not for Signature

Effective Date: _____, 2024

This Notice to Proceed is hereby issued and accepted:

Customer:

Name: _____

Signature: _____

Name: _____

Title: _____

SP Entity:

Name: _____

By: Sustainability Partners Services LLC, its Manager

Signature: _____

Name: Adam T. Cain

Title: COO

Exhibit 4
Certificate of Acceptance (“CoA”)

_____, 202__

This Document: CoA Ref #: _____ for SA Ref #: _____ of M-USA effective: _____

RE: **Certificate of Acceptance** for Customer: _____

CoA Units				
Unit “Id #”	Quantity	Description of USA service components	Usage Rate	Starting Usage % (0% = New)
* A *				0%

Customer hereby accepts as complete the delivery, installation, commissioning, training, monitoring, reporting and performance of the CoA Unit(s) in all material respects.

“Install Date”: _____

Customer hereby confirms and acknowledges that the required insurance has been obtained as of the date set forth below.

Initial “Insurance Date”: _____

Effective Date: _____

The above referenced M-USA and Exhibits provide meanings for Capitalized terms not otherwise defined in this CoA.

Exhibit
Not for Signature

Customer:

By: _____

Name: _____

Title: _____

SP Entity:

By: Sustainability Partners Services LLC, its Manager

By: _____

Name: Adam T. Cain

Title: COO

Exhibit 5
ACH Agreement

This Document: ACH Agreement for Ref #: _____ of [M-USA/CEA] effective: _____ for the SP Entity: _____

RE: **ACH Agreement** for Customer: _____

Customer authorizes the SP Entity to use the Automated Clearing House network for all Customer payments.

The Customer hereby authorizes the SP Entity to initiate CCD (cash concentration and disbursement) debit or credit entries upon the SP Entity request via Automated Clearing House (ACH) to or from Customer Bank Account held at the depository financial institution named below (the "Depository"). Customer authorizes the SP Entity to debit the account from time to time to satisfy any USA Payment or Disposition Fee payable to the SP Entity in accordance with the Agreement and such amount may vary but shall never exceed the amount payable.

Parties acknowledges that the origination of ACH transactions to Customer account by the SP Entity must comply with the provisions of U.S. law.

Should an ACH transaction encounter an insufficient fund or ACH cancellation the Customer agrees to a 4% transaction fee on the USA Payment per instance.

Customer agrees that the SP Entity reserves the right to request that USA Payment be made by other generally accepted funds transfer mechanisms such as Federal Wire and SP Entity reserves all rights and remedies available under the Agreement.

ACH Instructions:

Bank Name _____ Branch _____

City _____ State _____ ZIP _____

Bank Account Title _____

Bank Account Type: Checking ____ Savings ____

Routing # _____ Bank Account # _____

******Please include an image of a voided check with this ACH Agreement for verification******

Please indicate if this is a new Agreement or a change of a previous Agreement: NEW X CHANGE ____ (By marking this as a change of an existing Agreement, Customer hereby gives Notice to terminate use of any previously given ACH instructions and authorize SP Entity to use the ACH instructions herein from the date of this Agreement until its termination.)

This authorization is to remain in full force and effect until SP Entity has received Notice from the Customer of its termination in such time and manner as to afford SP Entity and Depository a reasonable opportunity to act on such notification. Customer releases SP Entity and its affiliates, agents and representatives from all liability for their compliance with these instructions.

Customer understands that any fund transfer via an ACH system under this authorization is subject to the rules of the National Automated Clearing House Association applicable to the ACH system. It is not subject to the rules of the Electronic Funds Transfer Act, Regulation E issued by the Board of Governors of the Federal Reserve, or Uniform Commercial Code Article 4A.

Exhibit Not for Signature

Customer:

FEIN: _____

By: _____

Name: _____

Title: _____

Date: _____

SP Entity:

By: Sustainability Partners Services LLC, its Manager

By: _____

Name: Adam T. Cain

Title: COO

Date: _____

Service Addendum (“SA”)

Sustainability as a Service®

#1079-005

This Document: SA Ref #: **1079-005** of the M-USA (as defined below) effective on: _____, 2024 for Customer: City of Albuquerque, NM, Energy and Sustainability Management Division, 1 Civic Plaza, 7th Fl. ESMD, Albuquerque, NM 87102.

This document constitutes a Service Addendum (“SA”) in the form provided in Exhibit 2 to the M-USA.

This Agreement. Each unique combination of General Terms, SA, NtP, CoA, and ACH Agreement constitutes a standalone binding agreement between the executing parties (collectively, the “Agreement”).

The “General Terms” referred to herein are those General Terms set forth in Exhibit 1 to the Master Utility Services Agreement (“M-USA”) dated _____, 2024 between Sustainability Partners LLC (“SP”) and Customer, in the form attached thereto on the effective date of the M-USA, without giving effect to any amendments, waivers, or other modifications to the General Terms thereafter unless specifically set forth in this SA, the NtP(s), or CoA(s). Capitalized terms used and not otherwise defined in this SA shall have the respective meanings set forth in the Agreement.

SA Type	Y/N	Amount	To	From	Trigger to disburse funds
IaaU	Y				
IaaI	N	Amount: \$ N/A	Customer	SP Entity	N/A
Rights Fee	N	Amount: \$ N/A	Customer	SP Entity	N/A
			SP Entity	Customer	“Revenue Sharing Source” is: N/A

If this SA is IaaU of an existing facility, the parties agree that the SP Entity is a critical supplier of a services agreement, limited to the design, engineering, permitting, repair, maintenance, remodeling, renovation, modernization, or construction at the Location and does not involve a change or increase in the size, type, or extent of the facility.

The “LOCATION”:	Throughout the City of Albuquerque	Venue Jurisdiction:	NM
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The “USA SERVICE”

Unit “Id #”	Quantity	Unit descriptions	\$ Installation Limit / Each (includes materials + installation labor)
Solar power generating system consisting of structural components, solar panels and inverters, metering, transformers, switchgear, wiring, conduits and data control systems at each of the locations identified in the Units below:			
* A *	1	911 Center	\$2,362,234
* B *	1	Animal Welfare Eastside	\$824,176
* C *	1	Arroyo Del Oso Golf Course	\$807,629
* D *	1	Daytona Transit (Ken Sanchez Transit Center)	\$2,670,033
* E *	1	Highland Pool	\$615,997
* F *	1	Isotopes Park	\$2,139,976
* G *	1	Los Altos Golf Course	\$1,438,038
* H *	1	Pino Yards	\$807,629
* I *	1	Plaza Del Sol	\$1,065,985
* J *	1	Puerto Del Sol Golf Course	\$799,622
* K *	1	Ventana Ranch Community Ctr.	\$849,265
* L *	1	West Mesa Aquatic Center	\$1,085,201
* M *	1	ABQ International Sunport	\$2,821,104
* N *	1	Cesar Chavez Community Ctr.	\$279,092
* O *	1	Holiday Park Community Ctr.	\$318,841
* P *	1	International District Library	\$471,021
* Q *	1	McKinley Community Center	\$153,600
* R *	1	Palo Duro Senior Center	\$189,090
* S *	1	Albuquerque Shooting Range	\$98,804
* T *	1	Singing Arrow Community Ctr.	\$285,054

Service Addendum (“SA”)

Sustainability as a Service®

#1079-005

* U *	1	Albuquerque Solid Waste Dept.	\$860,842
* V *	1	Str Taylor Ranch Library	\$265,748
* W *	1	West Gate Community Ctr.	\$299,534
* X *	1	Westside Homeless Shelter	\$283,351
* Y *	1	Albuquerque Transit Building	\$645,064

The Term

“Initial Term”:	1	Month/Years	M	“Additional Term”:	1	Month/Years	M
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*(If Customer is the Initial Funding Entity, the Initial Term is determined based on Section 10.1 of the M-USA.)

USA PAYMENT CALCULATION and DEFINITIONS

“USA Payment”	is the total of Unit(s) * (Usage + Capacity + Availability) + MMC/MMR Reserves + Deferred Catchup
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Unit Id #	SP Entity Initial Funding Entity? Y/N	Rights Fee? Y/N	Unit Monthly “Capacity” Charge \$	“Full Capacity” / Year	How Usage “Unit” will be measured	Usage Unit	Usage Rate
* A *	Y	N	N/A	365	per day where the aggregate cloud cover is less than 85% as reported by NOAA – National Weather Service	days	\$207.73
* B *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$72.48
* C *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$71.02
* D *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$234.79
* E *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$54.17
* F *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$188.18
* G *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$126.46
* H *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$71.02
* I *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$93.74
* J *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$70.32
* K *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$74.68
* L *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$95.43
* M *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$248.08
* N *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$24.54
* O *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$28.04
* P *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$41.42
* Q *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$13.51
* R *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$16.63
* S *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$8.69
* T *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$25.07
* U *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$75.70
* V *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$23.37
* W *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$26.34
* X *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$24.92
* Y *	Y	N	N/A	same as Id #A	same as Id #A	same as Id #A	\$56.72

Monthly Usage of Full Capacity

“Expected Use” =	91%	“Lowest Expected Use” =	85%	“Maximum Expected Use” =	94%
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Service Addendum (“SA”)

Sustainability as a **Service®**

#1079-005

Customer’s signatory is authorized to approve up to any of the following cost changes:					
Scope Contingency:	=	15%	Underwriting Contingency	=	10%
			Supply Chain Contingency:	=	15%

INSTALLATION MATTERS

“Installation Limit”: \$	See “USA SERVICE” table above	“Completion Target”:	12	Months	Monthly “Carrying Charge”:	0.85%
“Resiliency Trigger” Hours/Days/Weeks:	TBD	Days				

Mutually Approved Vendors (e.g., suppliers, contractors, service/maintenance providers, resiliency providers) “Approved Vendors” or “AVs” means the entities listed below. The Party contracting is “S” for SP Entity or “C” for Customer			
Name	Contracting C / S	Name	Contracting C / S
ESG/Yearout Energy	S	TBD	

PAYMENT DEFFERAL TERMS

Defer USA Payments by:	0%	Defer monthly Usage over:	N/A	# of months being deferred:	N/A
# of months to spread Deferred Catchup over:	N/A	Starting month # for Deferred Catchup:			N/A

“Rate Index” (select one) = U.S. Core CPI - All Urban Consumers, U.S. City Average (CUUR0000SA0) U.S. PPI - Commercial machinery repair & maintenance (PCU81138113) Other:	Other = 7% Annually	Years to average for “Smoothing”	5	“Starting Year” after CoA =	2
% of USA Payment Eligible for Rate Index =	100% of Usage	% of adjustment dedicated to Support Reserves =			20%
Credited to:	Usage in USA Payment				

Disposition:	Upon termination perform Assignment of ownership or grant Sole Use License? (A/L)	A
“Self-Install”:	Has Customer opted to self-install the USA Service itself? Yes/No	No
Right of Return - “ROR”	Does Customer have a RoR (per section 14.1 of the General Terms)?	No
“Real Return Limit” %	8.5% If RoR is Yes, then # of months after the USA Start Date the RoR applies to:	N/A
Closing Cost billing:	Direct bill Customer or fund by adjusting Usage Rates? Direct/Rates	Rates
Support:	Direct bill Customer or add to monthly USA Payment? Direct/USA	USA
	Maximum monthly addition to USA Payment as a %:	5 %

Additional Terms: The following terms shall control over any conflicting terms in the Agreement:

1. Procured through the Purchasing Cooperative of America (“PCA”) contract number PCA OD-381-22. The 2% cooperative purchasing fee for PCA on the monthly USA Payment (excluding MMC & MMR maintenance reserves) will be set forth as a separate line item on the Customer's monthly invoice.
2. In performing the Services required hereunder, the parties hereto shall not discriminate against any person on the basis of race, color, religion, sex, gender, gender identity, sexual orientation, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, national origin, ancestry, age, physical or mental handicap or serious medical condition, or disability as defined in the Americans With Disabilities Act of 1990, as now enacted or hereafter amended. The parties agree to comply and act in accordance with all provisions of the Customer’s Human Rights Ordinance, the New Mexico Human Rights Act, Titles VI and VII of the U.S. Civil Rights Act of 1964, as amended, the Age Discrimination Act of 1975, and

Section 504 of the Rehabilitation Act of 1973, and all federal, New Mexico and the Customer’s laws and rules related to the enforcement of civil rights. Questions regarding civil rights or affirmative action compliance requirements should be directed to the Customer’s Office of Civil Rights.

3. Prior to Notice to Proceed, Customer shall inform the SP Entity of all applicable requirements of the Americans With Disabilities Act of 1990, and all applicable rules and regulations (the “ADA”) specifically related to the Units in the Service Addendum so that such costs can be included in the Usage Rates for the project prior to Notice to Proceed.
4. The parties acknowledge that the Customer is a government entity subject to the New Mexico Inspection of Public Records Act (Sections 14-2-1 et seq., NMSA 1978). Notwithstanding any other provision of this Agreement, the Customer shall not be responsible to SP Entity for any disclosure of Confidential Information pursuant to that Act or pursuant to the Customer’s public records act laws, rules, regulations, instructions or any other legal requirement.
5. Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this Agreement may be electronically signed and that the electronic signatures appearing on this Agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
6. SP Entity will assist Customer in obtaining and monetizing Federal Investment Tax Credits (ITCs) under Section 48 of the Internal Revenue Code (currently estimated to be \$5,609,233). Usage Rates in this SA are calculated based on the estimated ITCs. The ITCs are expected to be obtained within 12 months of NtP. Failure to complete the sale of Tax Credits within the estimated timeframe or tax credit proceeds less than the estimated amount will cause Usage Rates to be adjusted upward accordingly.
7. The USA Payment shall be made pursuant to the Authorization Agreement for direct ACH debits and credits.
8. The following shall supersede and replace Section 10.2 of the M-USA: “The Initial Term will automatically extend for successive Additional Terms, unless Customer has given SP Entity written nonrenewal notice at least 30 days prior to the applicable Additional Term, so long as there have been no Payment Defaults within the past 12 months and installation of all the Units has been completed. The Customer notice of nonrenewal serves as notice for a Customer’s termination for convenience of this Agreement.”
9. The following shall supersede and replace Section 2.5 of the M-USA: “Excess Usage. Should the aggregate USA Payments exceed the Maximum Expected Use, those funds will be credited to the Support Reserves.
10. In the event the Customer decides to terminate this Agreement related to a Force Majeure Event, the Customer’s obligations under Section 14 still apply.
11. Customer’s consent is not required for the SP Entity to assign, transfer, or encumber all or any portion of its rights in any USA Payment received from Customer.
12. Customer shall have the right to approve the final design of the Units, such approval not to be unreasonably withheld. If Customer does not approve the final design or Customer fails to give a definitive response within fourteen days of receipt of the design, SP Entity may terminate this Agreement.
13. The Agreement is subject to the terms of an access license in favor of the SP Entity as Licensee, in form and substance acceptable to the SP Entity and the definition of the Agreement shall be deemed to include the license.

Signature Page Follows

Service Addendum (“SA”)

Effective Date: _____, 2024

Customer:

City of Albuquerque, NM

SP Entity:

Albuquerque Solar Infrastructure, LLC

By: Sustainability Partners Services LLC, its Manager

By: _____

Name: Dr. Samantha Sengel

Title: Chief Administrative Officer

By: _____

Name: Adam T. Cain

Title: COO