

**CONTRACT NO.: DMS-08/09-029  
BETWEEN  
FLORIDA DEPARTMENT OF MANAGEMENT SERVICES  
AND  
ADVANCED ROOFING, INC.**

**AMENDMENT NO.: 1**

This Amendment to Contract No.: DMS-08/09-029 (the "Contract") is by and between the State of Florida acting through the Florida Department of Management Services (the "Department") and Advanced Roofing, Inc., (the "Contractor"), collectively known as the "Parties".

Therefore, the Parties agree to amend the Contract as follows:

1. The Parties agree to renew the Contract for three years beginning January 1, 2016, and ending December 31, 2018, pursuant to Section 2.2 of the Contract. This renewal does not affect the duration of the Contract terms for the Solar Energy Systems installed and operated as described in the Project Identification and Description Forms (Schedule A to the Contract).
2. Section 4.7, Transaction Fee is amended to strike the words ~~of one percent (1%)~~ in the second sentence of the paragraph.
3. Section 15.21 E-verify has been added in its entirety to read:  
Pursuant to State of Florida Executive Order Number 11-116, the Contractor is required to utilize the U.S. Department of Homeland Security's (DHS) E-Verify system to verify the employment of all new employees hired by the Contractor during the Contract term. Also, the Contractor shall include in related subcontracts a requirement that subcontractors performing work or providing services pursuant to the Contract utilize the E-Verify system to verify employment of all new employees hired by the subcontractor during the Contract term.

In order to implement this provision, the Contractor shall provide a copy of its DHS Memorandum of Understanding (MOU) to the Contract Manager within five days of the final execution of Amendment 1.

If the Contractor is not enrolled in DHS E-Verify System, it will do so within five days of receiving Amendment 1, and provide the Contract Manager a copy of its MOU within five days of the final execution of Amendment 1. The link to E-Verify is provided below:  
<http://www.uscis.gov/e-verify>.

Upon each Contractor or subcontractor new hire, the Contractor shall provide a statement within five days to the Contract Manager identifying the new hire with its E-Verify case number.

4. This Amendment is hereby made a part of this Contract. All other terms and conditions of the Contract shall remain in full force and effect. Except as otherwise expressly set forth herein, the terms and conditions contained in the Contract and subsequent amendments are unchanged. This Amendment sets forth the entire understanding between the Parties with regard to the subject matter hereof.

5. This Amendment is effective upon execution.

**SO AGREED** by the Parties' authorized representatives on the dates noted below:

**FLORIDA DEPARTMENT OF MANAGEMENT SERVICES**



Erin Rock, Deputy Secretary

12-16-15

Date

**ADVANCED ROOFING, INC.**



Signature

Robert P. Kornahrens, President

Print Name and Title

December 10, 2015

Date

## SOLAR ENERGY SERVICES CONTRACT

This Solar Energy Services Contract (this "Contract"), dated December 14, 2009, is by and between **Advanced Roofing, Inc.** ("ARI"), having its principal offices at 1950 NW 22<sup>nd</sup> Street, Fort Lauderdale, FL 33311 and the **Florida Department of Management Services** ("DMS") with its principal offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, for the purpose of providing services designed to reduce energy related operating costs, promote renewable energy, and lower greenhouse gas emissions for DMS and the State of Florida.

### RECITALS

WHEREAS, on November 6, 2008, ARI responded to DMS ITN NO.08-09-029, "Solar Pilot Project" seeking proposals for qualified vendors to design, install, operate and maintain Solar Energy Systems at the Facilities; and

WHEREAS, on May 21, 2009, DMS posted its notice of intent to award a contract to ARI based on ARI's offer to (i) design and install the Solar Energy Systems at no cost to the State, (ii) own the Solar Energy Systems through the term of the contract, (iii) charge DMS a fixed fee for operating and maintaining the Solar Energy Systems and for providing the services described herein for the benefit of DMS, and (iv) enable the Parties to adjust the fixed fee if the Solar Energy Systems fail to meet certain performance standards.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, and intending to be legally bound hereby, DMS and ARI agree as follows:

#### SECTION 1. DEFINITIONS.

Section 1.1 Definitions. The following terms have the meanings specified below unless the context clearly requires otherwise:

**"Affiliate"** means a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

**"Commencement Date"** means, with respect to each Solar Energy System, the first day of the calendar month after which DMS has inspected and accepted said system as evidenced by an executed Certificate of Acceptance as set forth in Schedule B.

**"Customer-owned renewable generation"** means an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy as defined pursuant to § 366.91, Florida Statutes.

**"Environmental Attributes"** means all of the benefits from the environmental characteristics of the Solar Energy System that are attributable to renewable energy or energy efficiency, including without limitation, credits towards achieving local, national or international renewable portfolio standards, greenhouse gas or emission reductions, credits, offsets, allowances or benefits; actual SO<sub>2</sub>, NO<sub>x</sub>, CO<sub>2</sub>, CO, Carbon, VOC, mercury, and other emissions avoided, carbon trading

credits, renewable energy credits or certificates, emission reduction credits, any other emission reductions, credits, offsets, allowances or benefits, green tags, white tags, tradable renewable energy credits and Green-e® products.

**“Equipment”** means the personal property installed by ARI at the Facilities as part of a Solar Energy System, solar photovoltaic system or solar thermal system(s), as those terms are defined in § 377.803, Florida Statutes, in accordance with Schedule A.

**“Expiration Date”** means the date on which this Contract terminates by reason of expiration of the Term pursuant to Section 2.1.

**“Facilities”** means that portion of the publicly owned or operated buildings or property to which the State has granted to ARI a Site License in accordance with Section 3.7 of this Contract to install, own, operate and maintain the Solar Energy System and as further described on Schedule A. Additional Facilities may be added to Schedule A upon the mutual consent of the Parties via written amendment to this agreement executed by both parties.

**“Fair Market Value”** means the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction. Fair Market Value of the Solar Energy System will be determined pursuant to Section 5.4 of this Contract.

**“Fiscal Year”** means the annual period from July 1<sup>st</sup> through June 30<sup>th</sup>.

**“Legally Available Funds”** means funds duly appropriated or otherwise legally available for the purpose of making payments under this Contract.

**“Net metering”** means a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption on site as defined more specifically pursuant to § 366.91, Florida Statutes.

**“Non-Appropriation”** means the failure of an appropriation or availability of the Governing body of DMS or the Legislature to appropriate money for any Fiscal Year sufficient for the continued performance by DMS of all of DMS 's obligations under this Contract as evidenced by the passage of a final budget which does not include funding sufficient to pay all payments due.

**“Parties”** means both DMS and ARI collectively.

**“Renewable energy”** means, as defined more specifically pursuant to § 366.91, Florida Statutes, electrical energy produced from a method that uses one or more of the following fuels or energy sources: hydrogen produced from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations.

**“Renewable Energy Credits” or “RECs”** means, as defined pursuant to § 366.92, a product that represents the unbundled, separable, renewable attribute of renewable energy produced in

Florida and is equivalent to 1 megawatt-hour of electricity generated by a source of renewable energy located in Florida.

“Solar Energy System” or “System” means each of the systems described in Schedule A.

“State” means the State of Florida and all the agencies and branches of state government.

“Term” means the term of this Contract as set forth in Section 2 of this Contract.

## SECTION 2. TERM OF CONTRACT

Section 2.1 Term. The Term shall begin on the date this Contract is fully executed and shall end on December 31, 2015. However, with respect to any Project Identification and Description Form (attached as **Schedule A**) executed by the parties, the Term for that Solar Energy System shall end on the date identified in the Project Identification and Description Form, which shall be no later than twenty (20) years after the Commencement Date.

Section 2.2 Renewals. Upon mutual agreement of the Parties, the Term may be renewed for a period not exceeding the initial Term set forth in Section 2.1. In no event may the Term for any Solar Energy System installed and operated pursuant to a Project Identification and Description Form executed pursuant to this Contract be renewed for a period in excess of twenty (20) years. The price during any renewal term shall be the price set forth in Section 4.1. The costs for the renewal may not be charged to DMS. Renewals shall be contingent upon satisfactory evaluations of ARI’s performance and subject to the availability of funds.

Section 2.3 Suspension of Work. DMS may in its sole discretion suspend any or all activities under this Contract, at any time, when in the best interests of the State to do so. DMS shall provide ARI written notice outlining the particulars of suspension. Examples of the reason for suspension include, but are not limited to, budgetary constraints, declaration of emergency, or other such circumstances. Within ninety days thereafter, or any longer period agreed to by ARI, DMS shall either (1) issue a notice authorizing resumption of work, at which time activity shall resume, or (2) terminate this Contract as to the applicable Solar Energy System(s). Suspension of work shall not entitle ARI to any additional compensation.

## SECTION 3. SCOPE OF SERVICES

Section 3.1 Installation of Solar Energy Systems. ARI shall, at no charge to DMS, install the applicable Solar Energy System(s) in the Facility(ies) pursuant to specifications set forth in a Project Identification and Description Form attached as **Schedule A**. Construction and installation shall be completed within the time period set forth in Schedule A, which time period shall be no later than one hundred and twenty (120) days after the execution of the Project Identification & Description Form. All materials used in the installation shall be of good quality and shall be free of defects that would diminish the appearance of the System or render it structurally or operationally unsound. Installation includes the furnishing of any equipment, rigging, and materials required to install, maintain and, where necessary, replace the System in the proper location. ARI shall protect the site from damage and shall repair damages or injury

caused during installation by ARI or its employees or agents. If any alteration, dismantling, excavation, etc., is required to achieve installation, ARI shall promptly restore the structure or site to its original condition. ARI shall perform installation work so as to cause the least inconvenience and interference with the Department and with proper consideration of others on site. Upon completion of the installation, the location and surrounding area of work shall be left clean and in original condition, with everything in satisfactory repair and order.

Section 3.2 Interconnection / Net Metering. ARI shall assist DMS in facilitating interconnection of Solar Energy Systems on the customer side of the meter with the local utility and maintenance of on-going compliance with the Interconnection Agreement between the local utility and DMS. ARI and DMS agree to cooperate in order to attempt to qualify DMS for Net Metering with the local utility, however, ultimate qualification of the Solar Energy System as Customer-Owned Renewable Generation sufficient to entitle DMS for Net Metering is not a material term of this Contract.

Section 3.3 Acceptance of Solar Energy Systems. ARI shall advise DMS when ARI considers a Solar Energy System to have been substantially completed in accordance with all contractual requirements. DMS will promptly make an inspection to determine whether the Solar Energy System is complete. If DMS determines the Solar Energy System is not complete, DMS will promptly provide ARI with a specific material performance deficiency list of all items that must be corrected or completed before DMS would consider the Solar Energy System complete. If ARI receives a deficiency list and once ARI has completed all items on the deficiency list, ARI can request a second inspection by DMS to verify the Solar Energy System to be installed is complete. When the Solar Energy System to be installed is considered completed, DMS will promptly provide ARI with a Certificate of Acceptance (Schedule B), which shall establish the Commencement Date. The Parties intend that a DMS Certificate of Acceptance will be executed for each Solar Energy System as soon as the installation is complete and DMS is receiving the benefit of the services described in Section 3.4. Both before and after Acceptance, but prior to exercise of the Early Buyout Option, risk of loss or damage shall remain with ARI. ARI shall be responsible for filing, processing, and collecting all damage claims. The Department will reasonably assist ARI with all damage claims. If the Department rejects the System, ARI shall remove it from the premises within ten days after notification of rejection. If ARI does not remove the System within 20 calendar days, or provide DMS with evidence of reasonable attempts to remove the System, it shall be deemed abandoned by ARI, and the Department shall have the right to dispose of it as its own property. ARI shall reimburse the Department for costs and expenses incurred in storing or effecting removal or disposition of a rejected System.

Section 3.4 Operation, Monitoring and Maintenance Services. ARI shall, for the benefit of DMS, operate, monitor and maintain the System by providing ongoing remote monitoring of the Solar Energy System during all solar resource hours, providing quarterly inspection of the Solar Energy System for damage, dirt and other materials that may impact panel performance, providing semi-annual cleaning of the Solar Energy System modules for removal of excess dirt buildup, providing an annual inspection of electric components, including modules, balance of system components, inverter(s) and wire management system, and providing any necessary periodic service, repairs, and adjustments to the Solar Energy Systems to ensure that it continues

to provide greenhouse gas emissions-free, renewable energy to the grid. DMS shall incur no cost obligations to ARI for service, repairs, and adjustments beyond the fees set forth in Section 4; provided, however when the need for ARI maintenance or repairs principally arises due to the negligence or willful misconduct of DMS or any employee or other agent of DMS, and ARI can so demonstrate such causal connection, ARI may charge DMS for the actual cost of the maintenance or repair insofar as such cost is not covered by any warranty or insurance proceeds.

**Section 3.5 Useful Life and Replacement.** ARI shall, at no additional cost to DMS, provide for the replacement or the extension of the useful life of the Solar Energy Systems, including necessary System components, during the Term. The useful life of each Solar Energy System is identified in Schedule A.

**Section 3.6 Records and Data.**

(a) If this Contract is terminated for any reason, all finished or unfinished documents, data, studies, correspondence, reports and any other products prepared for the purpose of performing this Contract, shall be made available to, or delivered to, DMS for its use before any additional payments are made for any reason.

(b) ARI shall be subject to audit by the DMS or its designee. DMS shall have the right upon reasonable notice to have its employees or agents inspect all of the books and records of ARI relating to this Contract at ARI's principal place of business during normal business hours.

(c) If DMS receives a public records request related to this Contract, ARI shall be solely responsible for taking whatever action it deems appropriate to legally protect its claim of exemption from the public records law.

**Section 3.7 Access to the Facilities.** DMS agrees to provide ARI, its Affiliates, employees and/or agents access to the Facilities during normal business hours for the purpose of design, construction, installation, upgrading, maintenance and repair of the System, including for provision of all services required under this Contract (hereinafter, the "Site License"). To the extent reasonable and permitted by law, the Site License shall be construed to (i) provide ARI with the exclusive right to use the space occupied by the System, and (ii) allow ARI to apply for and receive the Florida solar rebate. ARI, its Affiliates, employees and/or agents, as Site Licensee, shall be required to sign in at security desk and receive a badge and to be escorted by DMS building manager, technology staff, or other designated personnel during the length of access. Reasonable after-hours access may be granted provided that Site Licensee submits its reasonable request in advance. If ARI does not have access to the Facilities for emergencies, ARI is not responsible for degradation or loss of service during such time. Notwithstanding the terms of this paragraph, ARI must comply with all laws, rules, regulations, procedures, guidelines, etc., that apply to third-party access to the Facilities.

**Section 3.8 Permits and Approvals.** ARI shall be responsible for obtaining all governmental permits and approvals as may be required for installation of the Solar Energy Systems and for the performance of its obligations hereunder. DMS shall cooperate with ARI in obtaining all such permits and approvals. In no event shall DMS, however, be responsible for

payment of any permit fees. The equipment and the operation of the equipment by ARI shall at all times conform to all federal, state and local code requirements. ARI shall furnish copies of each permit or license which is required to perform the work to DMS before ARI commences the portion of the work requiring such permit or license.

Section 3.9 Performance Standards. ARI shall remain responsible for performing all work performed under this Contract in a professional, timely and accurate manner. ARI shall perform all such work so as not to harm the structural integrity of the Facilities or their operating systems. ARI shall repair and restore to its original condition any area of damage caused by ARI's performance under this Contract. DMS reserves the right to direct ARI to take certain corrective action if the structural integrity of the Facilities or its operating system is or will be harmed. All costs associated with such corrective action to damage caused by ARI's performance of the work shall be borne by ARI.

Section 3.10 Literature. Upon request, and to enable DMS to prepare for and/or address emergency situations impacting the safety or operation of a Solar Energy System that may arise from time to time ARI shall furnish literature reasonably related to the System (e.g., user manuals, descriptive brochures, etc.).

Section 3.11 Changes. DMS may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, including but not limited to the capacity of any Solar Energy System, provided that such changes are within the scope of this Contract. The Parties shall make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of each Party, which consent shall not be unreasonably withheld.

Section 3.12 Employees, Subcontractors and Agents. All ARI employees, subcontractors, or agents performing work under this Contract shall be properly trained technicians who meet or exceed any specified training qualifications. Upon request, Contractor shall furnish a copy of technical certification or other proof of qualification. All employees, subcontractors, or agents performing work under this Contract must comply with all security and administrative requirements of DMS and shall comply with all controlling laws and regulations relevant to the services they are providing under this Contract. The State may conduct, and this Contractor shall cooperate in, a security background check or otherwise assess any employee, subcontractor, or agent furnished by this Contractor. The State may refuse access to, or require replacement of, any personnel for cause, including, but not limited to, technical or training qualifications, quality of work, change in security status, or non-compliance with a Customer's security or other requirements. Such approval shall not relieve ARI of its obligation to perform all work in compliance with this Contract. The State may reject and bar from any facility for cause any of ARI's employees, subcontractors, or agents.

Section 3.13 Independent Contractor Status. ARI, together with its agents, distributors, resellers, subcontractors, officers and employees, shall have and always retain under this Contract the legal status of an independent contractor, and in no manner shall they be deemed employees of the State or deemed to be entitled to any benefits associated with such employment. During the term of this Contract, ARI shall maintain at its sole expense those



benefits to which its employees would otherwise be entitled to by law, including health benefits, and all necessary insurance for its employees, including workers' compensation, disability, and unemployment insurance, and provide the Department with certification of such insurance upon request. ARI remains responsible for all applicable federal, state, and local taxes, and all FICA contributions

Section 3.14 Subcontracting. ARI shall be fully responsible for all work performed under this Contract. Should ARI need to subcontract out any services, ARI shall submit a written request to the Department's Contract Manager identified in Schedule A. The written request shall include, but be not limited to, the following:

- A. The name, address and other information identifying the subcontractor;
- B. Component / type of services to be performed by the subcontractor;
- C. Time of performance of the identified service;
- D. How ARI plans to monitor the subcontractor's performance;
- E. Certification that the subcontractor has all licenses and / or has satisfied all legal requirements to provide the services to DMS;
- F. A copy of the written subcontract agreement; and
- G. Acknowledgement from the subcontractor that subcontractor agrees to comply with all terms and conditions of this Contract, including all insurance requirements.

#### SECTION 4. PAYMENTS.

Section 4.1 Service Fee. Beginning on the Commencement Date, DMS shall pay ARI or its Affiliate a fixed fee (the "Service Fee") as set forth in Schedule A and invoiced in accordance with Section 4.3 for each Solar Energy System operated and maintained under this Contract. The total annual Service Fee shall be calculated as follows: first, by multiplying the total average annual peak sun hours as determined using solar radiation data for the applicable technology, orientation and location nearest the geographic measuring point supplied by the National Renewable Energy Lab or reasonable equivalent ("Sun Hours"), times the agreed fixed production capacity factor of eighty percent (80%) ("Capacity Factor"), times the total nameplate capacity of the applicable Solar Energy System specified in Schedule A ("Nameplate Capacity"), times the expected average cost savings per kilowatt hour (kWh) utility rate at the applicable Facility as of the date the Schedule A is executed ("Utility Rate").

The Sun Hours and Capacity Factor shall be fixed for the Term of the Contract. The Utility Rate shall be fixed subject to a three percent (3%) escalator every year for the Term of the Contract. The Nameplate Capacity shall be subject to adjustment in accordance with Section 4.2 below.

Service Fee pricing for this Contract shall apply to Solar Energy Systems of various sizes as identified on each Project Identification and Description Form, however, if the aggregate installed Nameplate Capacity of a particular Solar Energy System identified on a prospective Project Identification and Description Form exceeds ten (10) megawatts (MW), the Parties reserve the right to negotiate in good faith for lower Service Fees.

Section 4.2 Service Fee Adjustment. Within ninety (90) days after the first anniversary of the Commencement Date for each Solar Energy System, the Parties agree to undertake an evaluation of ARI's services performance ("Services Performance"). The Parties agree that the evaluation shall include measuring the actual capacity performance of the Equipment and the services ("Actual Capacity"). If the Actual Capacity is lower than the Nameplate Capacity, the Service Fee shall be adjusted prospectively by using the Actual Capacity instead of the Nameplate Capacity.

Section 4.3 Invoicing and Payment. The Service Fee shall be invoiced and paid in quarterly installments. All invoices for fees or other compensation for services or expenses be submitted in detail sufficient for a proper preaudit and postaudit thereof. In the event DMS fails to make payment within forty (40) days of the due date, DMS shall pay, as late charges, any interest assessed for untimely payment. The interest rate will be the rate set pursuant to Section 55.03, Florida Statutes. DMS shall not be required to begin any payments to ARI under this Contract unless and until a DMS Certificate of Acceptance has been issued. DMS shall pay ARI pursuant to Sections 215.422 and 287.0585, Florida Statutes.

If ARI's services are not rendered for an entire quarter, the Service Fee shall be prorated based on the number of days that services were rendered. ARI may not bill DMS for any additional expenses incurred under this Contract unless agreed to in advance in writing. Any travel expenses must be submitted in accordance with Section 112.061, Florida Statutes, and DMS may establish rates lower than the maximum rates provided therein.

Section 4.3 Revenue Sharing. Upon ARI's entering into any transaction for the sale of Renewable Energy Credits (RECs) created by generation from a Solar Energy System, where the price per REC is greater than or equal to three-hundred seventy-five dollars (\$375.00), ARI shall share one-half of the value exceeding \$375/REC that is actually received by ARI with DMS ("Revenue Sharing"); provided, however that payments for Revenue Sharing shall be applied solely to offset the fees due under Section 4.1, and in no event shall Revenue Sharing payments exceed the amount of such fees.

Section 4.4 Performance Guarantee. ARI agrees to the terms of the Services Performance Guarantee set forth in Schedule A.6. ARI further agrees that DMS may offset any money DMS is owed under the Services Performance Guarantee against any amount due to ARI under this Contract.

Section 4.5 Annual Appropriations. The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature. DMS, as an agency of the State, is subject to the appropriation of funds by the governing body of DMS in an amount sufficient to allow continuation of its performance in accordance with the terms and conditions of this Contract for each and every Fiscal Year following the Fiscal Year in which the Contract is in effect. The Parties acknowledge that appropriation for such payments is a governmental function that DMS cannot contractually commit the governing body of DMS to perform and this Contract does not constitute such a commitment. However, DMS reasonably believes that money in an amount sufficient to make all payments can and will lawfully be

appropriated and made available to permit continued utilization of the Solar Energy System. DMS shall, upon learning that sufficient funds will not be available to continue its full and faithful performance under this Contract, provide prompt written notice to ARI of such event.

Section 4.6 Best Pricing Offer. During the Contract term, if DMS becomes aware of better pricing offered by ARI for substantially the same services as those set forth in this Contract, but upon the same or similar terms of the Contract, then at the discretion of DMS the price under the Contract shall be immediately reduced to the lower price.

Section 4.7 Transaction Fee. The State has instituted MyFloridaMarketPlace, a statewide eProcurement System. Pursuant to section 287.057(23), Florida Statutes, all payments shall be assessed a Transaction Fee of one percent (1.0%), which ARI shall pay to the State. For payments within the State accounting system (FLAIR or its successor), the Transaction Fee shall, when possible, be automatically deducted from payments to ARI. If automatic deduction is not possible, ARI shall pay the Transaction Fee pursuant to Rule 60A-1.031(2), F.A.C. By submission of these reports and corresponding payments, ARI certifies their correctness. All such reports and payments shall be subject to audit by the State or its designee.

ARI shall receive a credit for any Transaction Fee paid by ARI for the purchase of any item(s) if such item(s) are returned to ARI through no fault, act, or omission of ARI. Notwithstanding the foregoing, a Transaction Fee is non-refundable when an item is rejected or returned, or declined, due to ARI's failure to perform or comply with specifications or requirements of this Contract.

Failure to comply with these requirements shall constitute grounds for declaring ARI in default and recovering procurement costs from ARI in addition to all outstanding fees. **CONTRACTORS DELINQUENT IN PAYING TRANSACTION FEES MAY BE SUBJECT TO BEING REMOVED FROM THE DEPARTMENT OF MANAGEMENT SERVICES' VENDOR LIST AS PROVIDED IN RULE 60A-1.006, F.A.C.**

## Section 5. TERMINATION / PURCHASE OPTION

Section 5.1 Termination for Non-Appropriation. Either Party may terminate this Contract with respect to a Solar Energy System for which a Non-Appropriation has occurred. The termination shall be effective as of the last day for which funds were appropriated and ARI may, by written notice to DMS, request that all Equipment in that Solar Energy System be delivered in a reasonable manner to ARI or ARI's designee at a place in the State designated by ARI. If DMS fails or refuses to voluntarily deliver such equipment to ARI as provided in Section 6.4, then ARI shall have the right, to the extent permitted by law, to obtain a judgment against DMS from Legally Available Funds for compensatory damages.

Section 5.2 ARI Options Upon DMS Termination. In the event of a termination by DMS, including for Non-Appropriation under Section 5.1 above, of some but not all of the Solar Energy Systems operated under this Agreement, ARI may:

- (a) Elect to terminate this Contract with respect to all, but not less than all, of the

remaining Solar Energy Systems. This election shall be made by written notice to DMS within thirty (30) days after the Non-Appropriation has occurred and shall be effective upon the last day of the Fiscal Year for which funds were not appropriated. Upon the effective date of the termination, DMS shall pay to ARI any payments and other amounts that are due and have not been paid at or before the end of its then current Fiscal Year with respect to this Contract. In the event of termination of this Contract as provided in this Section, DMS shall comply with Section 5.1 regarding the return of the Equipment.

(b) Elect to assign this Contract, or rights to the use of the Solar Energy Systems, to a third party. In such case, DMS shall continue to have the duty to provide access to the Facilities where the remaining Solar Energy Systems are situated in accordance with this Contract and the Site License. ARI or its Affiliate shall have access and the right to continue to operate and maintain the remaining Solar Energy System(s) or to reconfigure the Equipment so as to redirect the flow of energy produced by the Solar Energy System(s).

**Section 5.3 Termination Upon Default.** This Contract is subject to termination upon the occurrence of an event of default, as provided in Section 11 below.

**Section 5.4 DMS Purchase Option.** At any time subsequent to the fifth anniversary of the Commencement Date for each Solar Energy System, DMS shall have the option to purchase (the "Purchase Option") such Solar Energy System by paying ARI or its Affiliate the Fair Market Value thereof no later than one-hundred and eighty (180) days after the date DMS notifies ARI of its intent to exercise the Purchase Option. The "Fair Market Value" of a Solar Energy System shall be the value determined by the mutual agreement of DMS and ARI within ten (10) days after receipt by ARI of notification from DMS of its intent to exercise a Purchase Option. If DMS and ARI cannot mutually agree to a Fair Market Value, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value such equipment. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally. To the extent transferable, the remaining period, if any, on all warranties for the relevant Solar Energy System will be transferred from ARI to DMS at DMS's sole expense. If the Parties are unable to agree on the selection of an appraiser, such appraiser shall be jointly selected by the appraiser firm proposed by DMS and the appraiser firm proposed by ARI. Upon receipt by ARI of payment of the Fair Market Value, title to the relevant Solar Energy System shall transfer to DMS as-is, where-is. If DMS exercises the Purchase Option for a particular Solar Energy System but fails to pay the Fair Market Value in a timely manner, ARI may remove all of its Equipment from the applicable Facility at ARI's cost by a mutually convenient date but in no case later than two hundred seventy (270) days after the date DMS notified ARI its intent to exercise the Purchase Option. Upon removing such Equipment, ARI shall leave each Facility in neat and clean order.

## SECTION 6. WARRANTIES

Section 6.1 Equipment Warranties. ARI covenants and agrees that all materials and equipment to be installed as part of this Contract shall be new, in good and proper working condition and protected by appropriate original equipment manufacturer (OEM) written warranties covering all parts and equipment performance. ARI further agrees to deliver to DMS for inspection and approval, upon a request from DMS, all such written warranties and to obtain extended OEM warranties for a minimum of twenty (20) years.

All warranties shall be eligible to be transferred to and to extend to DMS. The warranties shall specify that only new, and not reconditioned parts, may be used and installed when repair is necessary. The original warranties shall be in force for a minimum of one year from the Commencement Date.

Notwithstanding the above, nothing in this Section shall be construed to alleviate/relieve ARI from complying with its obligations to perform under all terms and conditions of this Contract.

Section 6.2 Labor Warranties. ARI warrants that all work performed under this Contract complies with customary, reasonable and prudent standards of care in accordance with standards in the industry and are performed in a professional manner and consistent with DMS supplied specifications and standards.

## SECTION 7. INDEMNIFICATION AND LIMITATION OF LIABILITY

Section 7.1 Indemnification by ARI. ARI shall be fully liable for the actions of its agents, employees, partners, or subcontractors and shall fully indemnify, defend, and hold harmless the State and DMS, and their officers, agents, and employees, from suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to personal injury and damage to real or personal tangible property alleged to be caused in whole or in part by ARI, its agents, employees, partners, or subcontractors, provided, however, that the ARI shall not indemnify for that portion of any loss or damages proximately caused by the negligent act or omission of the State or DMS.

Further, ARI shall fully indemnify, defend, and hold harmless the State and DMS from any suits, actions, damages, and costs of every name and description, including attorneys' fees, arising from or relating to violation or infringement of a trademark, copyright, patent, trade secret or intellectual property right, provided, however, that the foregoing obligation shall not apply to a DMS's misuse or modification of the System. If any part of the System is the subject of an infringement suit, or in ARI's opinion is likely to become the subject of such a suit, ARI may at its sole expense procure for DMS the right to continue using the product or to modify it to become non-infringing. If ARI is not reasonably able to modify or otherwise secure DMS the right to continue using the System, ARI shall remove the System at ARI's sole expense. DMS shall not be liable for any royalties.

ARI's obligations under the preceding two paragraphs with respect to any legal action are

contingent upon the State or DMS giving ARI (1) written notice of any action or threatened action, (2) the opportunity to take over and settle or defend any such action at ARI's sole expense, and (3) assistance in defending the action at ARI's sole expense. ARI shall not be liable for any cost, expense, or compromise incurred or made by the State or DMS in any legal action without ARI's prior written consent, which shall not be unreasonably withheld.

**Section 7.2 Indemnification by DMS.** DMS, as an agency of the State, is prohibited from entering into indemnification agreements. Subject to that prohibition, the Parties agree that ARI shall not be responsible for damages resulting solely and exclusively from DMS's negligence.

**Section 7.3 Limitation of Liability:** With respect to each Solar Energy System installed under this Contract, ARI's liability for all claims of direct damages, regardless of the basis on which the claim is made, shall be limited to (i) the amount payable for such claims under any insurance policy required under Section 10 of this Contract; plus (ii) \$100,000. This limitation shall not apply to claims arising under the indemnity provisions contained in this Contract.

Unless otherwise specifically enumerated in this Contract, no party shall be liable to another for special, indirect, punitive, or consequential damages, including lost data or records, even if the party has been advised that such damages are possible. No party shall be liable for lost profits, lost revenue, or lost institutional operating savings. The State and DMS may, in addition to other remedies available to them at law or equity and upon notice to ARI, retain such monies from amounts due ARI as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them. The State may set off any liability or other obligation of ARI or its affiliates to the State against any payments due ARI under any contract with the State.

## **SECTION 8. OWNERSHIP**

**Section 8.1 Ownership / License of Certain Proprietary Property Rights.** ARI or its Affiliate shall remain the owner of the Solar Energy System(s) and all Equipment it installs, including for purposes of ownership and qualification for all tax incentives and rebates, and shall own all Renewable Energy Credits and Environmental Attributes generated by or associated with each Solar Energy System. So long as this Contract remains in good standing, DMS shall be entitled to a license to the beneficial enjoyment of the services provided by ARI through the continued operation of the Solar Energy System. Moreover, provided that there is no conflict with ARI's ownership rights of the Solar Energy System, DMS's rights under this Contract include the right to assert that it owns the output of the Solar Energy System(s) sufficient to qualify the System as Customer-Owned Renewable Generation for purposes of Net Metering for the Term of this Contract. In the event that transfer of ownership to DMS occurs for any reason, DMS shall not, by virtue of this Contract, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are or may be used in connection with the Solar Energy System. Moreover, in the event that transfer of ownership to DMS occurs for any reason, ARI shall grant to DMS all rights ARI has for any and all software or other intellectual property rights necessary for DMS to operate, maintain, and repair the Solar Energy System.

**Section 8.2 Ownership of Existing Equipment.** Ownership of the equipment and materials presently existing at the Facilities at the time of execution of this Contract shall remain the property of DMS.

**Section 8.3 Transfer of Ownership of Installed Equipment; Risk of Loss.** Upon DMS's execution of the Purchase Option pursuant to Section 5.4 and issuance of a Certificate of Purchase of Solar Energy System pursuant to Schedule C, DMS shall have all legal title to and ownership of all underlying Equipment and ARI shall take all actions necessary to vest such title and ownership in DMS. Prior to this date, the risk of loss or damage to all items shall be the responsibility of ARI, unless loss or damage results from negligence by DMS, and ARI shall be responsible for filing, processing and collecting all damage claims.

**Section 8.4 Ownership Upon Expiration.** Upon the Expiration Date for a particular Solar Energy System, DMS shall have the final option to purchase the Solar Energy System at Fair Market Value in accordance with the procedures set forth in Section 5.4; ARI shall have no further obligation or liability associated with the System or the Equipment. If DMS chooses not to purchase any Solar Energy System, then ARI shall remove all of the Equipment from the applicable Facility by a mutually convenient date but in no case later than one hundred eighty (180) after the final Expiration Date, and in such case the Facility shall be returned to its original condition, except for Solar Energy System support structures, electric/wiring components and ordinary wear and tear, and ARI shall leave each Facility in neat and clean order.

## **SECTION 9. FACILITIES MAINTENANCE AND EQUIPMENT SERVICES**

**Section 9.1 Changes to Solar Energy Systems and Facilities by DMS; Emergencies.** To the extent ARI remains responsible for operation and maintenance under Section 3, DMS shall not move, remove, modify, alter, or otherwise change in any way the Solar Energy Systems or any part thereof without the prior written approval of ARI, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, DMS may take reasonable steps to change a Solar Energy System if, due to an emergency, it is not possible or reasonable to notify ARI before taking any such actions. In the event of such an emergency, DMS shall take reasonable steps to protect the Solar Energy System from damage or injury and shall follow instructions for emergency action provided in advance by ARI. DMS agrees to maintain the Facilities in good repair and to protect and preserve all portions thereof that may in any way affect the operation or maintenance of the Solar Energy System.

**Section 9.2 Changes to Solar Energy Systems by ARI.** Notwithstanding anything to the contrary in this Contract or elsewhere, ARI shall at all times have the right, subject to DMS's prior written approval, which approval shall not be unreasonably withheld, to change the Solar Energy System or revise any procedures for the operation of the Equipment, provided that (i) such modifications or additions to, or replacement of the Solar Energy System, and any operational changes, or new procedures improve the efficiency or performance of the Solar Energy System, and (ii) any cost incurred shall be the responsibility of ARI.

## SECTION 10. INSURANCE AND CONSTRUCTION BOND

During the Contract term, ARI at its sole expense shall provide commercial insurance of such a type and with such terms and limits as may be reasonably associated with this Contract, which, as a minimum, shall be:

- a. workers' compensation and employer's liability insurance per Florida statutory limits covering all employees engaged in any Contract work;
- b. general liability coverage on an occurrence basis in the minimum amount of \$1,000,000 (defense cost shall be in excess of the limit of liability), naming the State as an additional insured;
- c. equipment and property insurance for property and equipment installed pursuant to this Contract, in the minimum amount of eighty percent (80%) of the replacement cost for such property and equipment for each Solar Energy System; and
- d. automobile liability insurance covering all vehicles, owned or otherwise, used in this Contract work, with minimum combined limits of \$300,000, including hired and non-owned liability.

Policies for Bodily Injury and Property Damage Liability Insurance shall be written to include Contractual Liability Insurance to protect DMS and ARI against claims from the operations of subcontractors. Certificates of ARI's insurance containing evidence of the Hold Harmless Clause protecting the State shall be sent to the DMS Contract Manager within thirty (30) days of execution of the Contract and shall be subject to DMS approval for adequacy of protection.

Providing and maintaining adequate insurance coverage throughout the Term is a material obligation of ARI and is of the essence of this Contract. Upon request, ARI shall provide certificate of insurance. This Contract shall not limit the types of insurance Contractor may desire to obtain or be required to obtain by law. The limits of coverage under each policy maintained by ARI shall not be interpreted as limiting ARI's liability and obligations under this Contract. All insurance policies shall be through insurers authorized to write policies in Florida.

## SECTION 11. EVENTS OF DEFAULT

The following are events of default under this Contract:

(a) Any failure by either Party to pay any payment required to be paid when due. DMS's failure to pay for reason of Non-Appropriation shall not constitute an event of default, and shall be governed by Section 6 of this Contract.

(b) Any failure by either Party to observe and perform any material covenant, condition or agreement on its part to be observed or performed hereunder or under this Contract, other than



as referred to in Clause (a) of this Section.

(c) ARI initiates a proceeding in any court, seeking liquidation, reorganization, debt arrangement, dissolution, winding up, appointment of trustee, receiver, custodian, or the like for substantially all of its assets, and such proceeding continues undismissed, unstayed and in effect for a period of 60 consecutive days; or an order for relief is entered in an involuntary case under the federal bankruptcy laws or other similar laws now or hereafter in effect.

## SECTION 12. REMEDIES UPON DEFAULT

Section 12.1 Opportunity to Cure Defaults. Each Party shall have a period of forty (40) days after being notified of an event of default to cure said default, provided that the Party has not already failed to cure a default under the terms of this Contract.

Section 12.2 Remedies upon Default by DMS. If a default by DMS is not cured in accordance with Section 12.1, ARI may, without a waiver of other remedies which exist in law or equity, exercise all remedies available at law or in equity or other appropriate proceedings including bringing an action or actions from time to time for recovery of amounts due and unpaid by DMS, and/or for damages which shall include all costs and expenses reasonably incurred in exercise of its remedy.

Section 12.3 Remedies Upon Default by ARI. Rule 60A-1.006(3), F.A.C. currently governs the procedure and consequences of a default by ARI. If any part of this Contract is terminated, ARI shall continue work on any work not terminated. Except for defaults of subcontractors at any tier, ARI shall not be liable for any excess costs if the failure to perform this Contract arises from events completely beyond the control, and without the fault or negligence, of ARI. If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is completely beyond the control of both ARI and the subcontractor, and without the fault or negligence of either, ARI shall not be liable for any excess costs for failure to perform, unless the subcontracted products were obtainable from other sources in sufficient time for ARI to meet the required delivery dates. If, after termination, it is determined that ARI was not in default, or that the default was excusable, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of DMS. The rights and remedies of DMS in this clause are in addition to any other rights and remedies provided by law or under this Contract.

## SECTION 13. ASSIGNMENT

Section 13.1 Assignment by ARI. ARI acknowledges that DMS is induced to enter into this Contract by, among other things, the professional qualifications of ARI. ARI agrees that, except as provided herein, neither this Contract nor any right or obligations hereunder may be assigned in whole or in part to another firm, without the prior written approval of DMS, which approval will not be unreasonably withheld; provided ARI can without prior approval from DMS assign this Contract to its parent or Affiliates.

ARI may, with prior written approval of DMS, which consent shall not be unreasonably

withheld, delegate its duties and performance under this Contract, and/or utilize subcontractors, provided that any assignee(s), delegee(s), or subcontractor(s) shall fully comply with the terms of this Contract. Notwithstanding the provisions of this paragraph, ARI shall remain jointly and severally liable with its assignees(s), or transferee(s) to DMS for all of its obligations under this Contract.

Section 13.2 Assignment by DMS. DMS may transfer or assign this Contract and its rights and obligations herein to a successor or a purchaser of the Facilities.

## SECTION 14. REPRESENTATIONS AND WARRANTIES

Section 14.1 Mutual Representations. Each Party warrants and represents that:

(a) it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Contract and perform its obligations hereunder;

(b) its execution, delivery, and performance of this Contract have been duly authorized by, or are in accordance with, its organic instruments, and this Contract has been duly executed and delivered for it by the signatories so authorized, and it constitutes its legal, valid, and binding obligation;

(c) its execution, delivery, and performance of this Contract will not breach or violate, or constitute a default under any Contract, lease or instrument to which it is a party or by which it or its properties may be bound or affected; or

(d) it has not received any notice, nor to the best of its knowledge is there pending or threatened any notice, of any violation of any applicable laws, ordinances, regulations, rules, decrees, awards, permits or orders which would materially and adversely affect its ability to perform hereunder.

Section 14.2 DMS Representations. DMS hereby warrants and represents that:

(a) it has provided or shall provide timely to ARI, all records relating to its electrical use and fees, or any maintenance of Facilities requested by ARI and the information set forth therein is, and all information in other records to be subsequently provided pursuant to this Contract will be true and accurate in all material respects; and

(b) it has not entered into any leases, contracts or agreements with other persons or entities regarding the licensing or provision of a solar energy system for the Facilities or with regard to servicing any of the Equipment to be located in the Facilities.

Section 14.3 ARI Representations. ARI hereby warrants and represents that:

(a) it has provided proof and documentation of required insurance pursuant to Section 12, and has made available, upon reasonable request, all documents relating to its performance under this Contract, including all contracts and subcontracts entered into;

(b) it shall use qualified subcontractors and delegees, licensed and bonded in this state to perform the work so subcontracted or delegated pursuant to the terms hereof;

(c) it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform its obligations under this Contract.

(d) to the best of its knowledge, there is no pending or threatened action, proceeding, or investigation, or any other legal or financial condition, that would in any way prohibit, restrain, or diminish ARI's ability to satisfy its Contract obligations. ARI warrants that neither it nor any affiliate is currently on the convicted vendor list maintained pursuant to section 287.133 of the Florida Statutes, or on any similar list maintained by any other state or the federal government. ARI shall immediately notify DMS in writing if its ability to perform is compromised in any manner during the term of this Contract.

## SECTION 15. MISCELLANEOUS

**Section 15.1 Waiver of Liens.** Prior to transfer of ownership in the Solar Energy System to DMS, ARI will obtain and furnish to DMS a Waiver of Liens from each vendor, material manufacturer and laborer in the supply, installation and servicing of each Solar Energy System. Should liens or claims be filed against the Facilities by reason of ARI's acts or omissions, ARI shall cause same to be discharged by bond or otherwise within ten (10) days after filing.

**Section 15.2 Financing / Classification as Personal Property.** ARI may pledge its interest in this Agreement, including any rights to payment and any Equipment, as security for loans or financing against its personal property. DMS acknowledges that ARI may finance the acquisition and installation of each Solar Energy System with financing accommodations from one or more financial institutions and that ARI's obligations will be secured by, among other collateral, a pledge or collateral assignment of this Agreement and ARI's rights to payment and a first security right in the Equipment. In order to facilitate such financing, and with respect to any lender or financier and any Solar Energy System, DMS acknowledges and agrees that the Equipment is ARI's personal property, is not considered a fixture to the Site, and acknowledges that it has been advised that part of the collateral securing financial accommodations of ARI may be the granting of a first priority security interest ("Security Interest") in the Equipment to a lender, which may be perfected by any requisite filing under the Uniform Commercial Code (UCC). Such filings shall not create any interest in or lien upon the real property underlying the Facility or the Site License or the interest of DMS and shall expressly disclaim the creation of such an interest or a lien.

**Section 15.3 Compliance with Law and Standard Practices.** ARI shall perform its obligations hereunder in compliance with any and all applicable federal, state, and local laws, rules, and regulations, in accordance with sound engineering and safety practices, and in compliance with any and all reasonable rules of DMS relative to the Facilities. By way of non-exhaustive example, Chapter 287, Florida Statutes, and Chapter 60A-1, Florida Administrative Code, govern this Contract. By way of further non-exhaustive example, ARI shall comply with Section 247A(e) of the Immigration and Nationalization Act, the Americans with Disabilities

Act, and all prohibitions against discrimination on the basis of race, religion, sex, creed, national origin, handicap, marital status, or veteran's status. Violation of such laws shall be grounds for Contract termination.

Further, ARI shall not use, store, dispose of or otherwise handle any Hazardous Substance (as defined in 42 U.S.C. Sections 9601, 9603, 6921, 7412, 49 U.S.C. Sections 1802 and 33 U.S.C. Sections 1321 and 1317 as now or hereinafter amended) or Hazardous Material in or on the Facilities except in a lawful manner and so as not to cause DMS any cost, loss, obligation or liability or expose DMS to any claim or suit with respect to same. "Hazardous Materials" shall mean petroleum, or any fraction thereof, asbestos, polychlorinated biphenyls, or any other substance identified either as a "hazardous substance", "hazardous waste", "pollutant", "contaminant" or other similar term in any applicable federal, state or local law or regulation, as such law or regulations may be now or hereafter amended.

Section 15.4 Independent Capacity of ARI. The Parties agree that ARI, and any agents and employees of ARI, in the performance of this Contract, shall act in an independent capacity and not as officers, employees, or agents of DMS.

Section 15.5 No Waiver. The failure of ARI or DMS to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of either Party's right to thereafter enforce the same in accordance with this Contract in the event of a continuing or subsequent default on the part of ARI or DMS.

Section 15.6 Severability. In the event that any clause or provision of this Contract or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Contract unless the result would be manifestly inequitable or unconscionable.

Section 15.7 Complete Contract; Modifications; Incorporation of ARI's Response to ITN. This Contract, when executed, shall constitute the entire Contract between both Parties and this Contract may not be amended, modified, or terminated except by a written agreement signed by the Parties. The terms, conditions and representations contained in ARI's Response to ITN dated September 22, 2008, are hereby incorporated into this Contract; provided that in the event of any conflict, the terms, conditions and representations of this signed document shall supersede and prevail over those of the Response to ITN. No oral agreements or representations shall be valid or binding upon DMS or ARI.

Section 15.8 Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Contract.

Section 15.9 Applicable Law. This Contract and the construction and enforceability thereof shall be interpreted under the laws of the State.

Section 15.10 Notice. Any notice required or permitted hereunder shall be deemed sufficient if given in writing and delivered personally or sent by registered or certified mail,

return receipt requested, or delivered to a nationally recognized express mail service, postage prepaid to the address shown below or to such other persons or addresses as are specified by similar notice. DMS's Contract Manager for this project will serve as liaison for the ongoing administration of this Contract and the resolution of any problems related thereto.

<p><b>TO ARI:</b></p> <p>Advanced Roofing, Inc. 1950 NW 22<sup>nd</sup> Street Fort Lauderdale, FL 33311</p>	<p><b>TO DMS:</b></p> <p>Florida Department of Management Services Division of Real Estate Development and Management 4050 Esplanade Way Tallahassee, Florida 32399-0950</p> <p><u>With copy to:</u></p> <p>Florida Department of Management Services Office of General Counsel Suite 160 4050 Esplanade Way Tallahassee, Florida 32399-0950</p>
--	--

Section 15.11 Statutory Notices and Requirements. DMS shall consider the employment of unauthorized aliens a violation of Section 274A(e) of the Immigration and Nationality Act. Such violation shall be cause for unilateral cancellation of this Contract. An entity or affiliate who has been placed on the public entity crimes list or the discriminatory vendor list may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a company, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity pursuant to limitations under Chapter 287 Florida Statutes.

Wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. The original contract price and any additions thereto will be adjusted to exclude any significant sums by which DMS determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of this Contract.

ARI warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for ARI to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for ARI any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Contract. For the breach or violation of this provision, DMS shall have the right to terminate this Contract without

liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

Section 15.12 Public Records. DMS shall have the right of unilateral cancellation for refusal by ARI to allow public access to all documents, papers, letters, or other material subject to the provisions of Chapter 119, Florida Statutes and made or received by ARI in conjunction with this Contract.

Section 15.13 Force Majeure. Neither Party will be liable for any default or delay in the performance of its obligations under this Contract to the extent such default or delay is caused by fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in the United States; injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party ("Force Majeure Events"); provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means, including disaster recovery plans. Performance times shall be considered extended for a period of time equivalent to the time lost because of any such delay, provided that in the event ARI is delayed in its performance by reason of such cause, no such extension shall be made unless notice thereof is presented by ARI to DMS in writing within ten (10) business days after the start of the occurrence of such delay, no payment shall be made by DMS for any fees or expenses incurred by ARI by reason of such delay, and ARI shall use best efforts to perform its obligations during such period of delay, and notify DMS of its abatement or cessation.

Section 15.14 Lobbying and Integrity. DMS shall ensure compliance with Section 11.062, FS and Section 216.347, Florida Statutes. ARI shall not, in connection with this or any other agreement with the State, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any State officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty, or (2) offer, give, or agree to give to anyone any gratuity for the benefit of, or at the direction or request of, any State officer or employee. For purposes of clause (2), "gratuity" means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind. Upon request of DMS's Inspector General, or other authorized State official, ARI shall provide any type of information the Inspector General deems relevant to ARI's integrity or responsibility. Such information may include, but shall not be limited to, ARI's business or financial records, documents, or files of any type or form that refer to or relate to this Contract. ARI shall retain such records for at least three years after the expiration of this Contract. ARI agrees to reimburse the State for the reasonable costs of investigation incurred by the Inspector General or other authorized State official for investigations of ARI's compliance with the terms of this or any other agreement between ARI and the State which results in the suspension or debarment of ARI. Such costs shall include, but shall not be limited to: salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. ARI shall not be responsible for any costs of investigations that do not result

in ARI's suspension or debarment.

**Section 15.15 Prison Rehabilitative Industries and Diversified Enterprises, Inc. (PRIDE).** Section 946.515(2), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles which are the subject of, or required to carry out, this Contract shall be purchased from the corporation identified under Chapter 946 of the Florida Statutes (PRIDE) in the same manner and under the same procedures set forth in section 946.515(2) and (4) of the Florida Statutes; and for purposes of this Contract the person, firm, or other business entity carrying out the provisions of this Contract shall be deemed to be substituted for the agency insofar as dealings with such corporation are concerned." Additional information about PRIDE and the products it offers is available at <http://www.pridefl.com>.

**Section 15.16 Products Available from the Blind or Other Handicapped.** Section 413.036(3), F.S. requires the following statement to be included in the solicitation: "It is expressly understood and agreed that any articles that are the subject of, or required to carry out, this contract shall be purchased from a nonprofit agency for the Blind or for the Severely Handicapped that is qualified pursuant to Chapter 413, Florida Statutes, in the same manner and under the same procedures set forth in section 413.036(1) and (2), Florida Statutes; and for purposes of this contract the person, firm, or other business entity carrying out the provisions of this contract shall be deemed to be substituted for the State agency insofar as dealings with such qualified nonprofit agency are concerned." Additional information about the designated nonprofit agency and the products it offers is available at <http://www.respectofflorida.org>.

**Section 15.17 Security and Confidentiality.** ARI shall comply fully with all security procedures of the United States, State of Florida and Customer in performance of this Contract. ARI shall not divulge to third parties any confidential information obtained by ARI or its agents, distributors, resellers, subcontractors, officers or employees in the course of performing Contract work, including, but not limited to, security procedures, business operations information, or commercial proprietary information in the possession of the State or Customer. ARI shall not be required to keep confidential information or material that is publicly available through no fault of ARI, material that ARI developed independently without relying on the State's or Customer's confidential information, or material that is otherwise obtainable under State law as a public record. To ensure confidentiality, ARI shall take appropriate steps as to its personnel, agents, and subcontractors. The warranties of this paragraph shall survive this Contract.

**Section 15.18 Dispute Resolution.** Any dispute concerning performance of this Contract shall be decided by DMS's designated contract manager, who shall reduce the decision to writing and serve a copy on ARI. The decision shall be final and conclusive unless within twenty one (21) days from the date of receipt, ARI files with DMS a petition for administrative hearing. DMS's decision on the petition shall be final, subject to ARI's right to review pursuant to Chapter 120 of the Florida Statutes. Exhaustion of administrative remedies is an absolute condition precedent to ARI's ability to pursue any other form of dispute resolution; provided, however, that the Parties may employ the alternative dispute resolution procedures outlined in Chapter 120.

Without limiting the foregoing, the exclusive venue of any legal or equitable action that arises out of or relates to this Contract shall be the appropriate state court in Leon County,

Florida; in any such action, Florida law shall apply and the Parties waive any right to jury trial.

Section 15.19 Advertising. Subject to Chapter 119, Florida Statutes, ARI shall not publicly disseminate any information concerning this Contract without prior written approval from DMS, including, but not limited to mentioning this Contract in a press release or other promotional material, identifying DMS or the State as a reference, or otherwise linking ARI's name and either a description of this Contract or the name of the State or DMS in any material published, either in print or electronically, to any entity that is not a party to Contract, except potential or actual authorized distributors, dealers, resellers, or service representative.

Section 15.20 Cooperative Purchasing. Pursuant to their own governing laws, and subject to the agreement of ARI, other entities may be permitted to make purchases at the terms and conditions contained herein. Non-DMS purchases are independent of the agreement between DMS and ARI, and DMS shall not be a party to any transaction between ARI and any other purchaser. State agencies wishing to make purchases from this agreement are required to follow the provisions of s. 287.042(16)(a), F.S. This statute requires DMS to determine that the requestor's use of the contract is cost-effective and in the best interest of the State.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

**ADVANCED ROOFING, INC.:**

**FLORIDA DEPARTMENT OF  
MANAGEMENT SERVICES:**

By:   
[Signature]

By:   
Linda H. South, Secretary

Title: President

Date: 12/14/09

Date: 11-24-09

*Approved as to form and legality:*

  
DMS General Counsel Office

12/10/09  
Date



**Schedule A  
Project Identification and Description Form**

The Solar Energy Services Contract ("Contract") entered into on \_\_\_\_\_, 2009, by and between **Advanced Roofing, Inc.** ("ARI"), having its principal offices at 1950 NW 22<sup>nd</sup> Street, Fort Lauderdale, FL 33311 and the **Florida Department of Management Services** ("DMS") with its principal offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, for the purpose of providing services designed to reduce energy related operating costs, promote renewable energy, and lower greenhouse gas emissions for DMS and the State of Florida, is hereby supplemented and amended on the date last signed below by this Project Identification & Description Form which is fully incorporated into the Contract as follows:

The Parties hereby agree that the attached Schedules A.1 - A.6 adequately describe the Facility where this Solar Energy System will be installed, the Solar Energy System specifications, the construction and installation schedule, the ongoing services to be performed and the Service Fee associated therewith.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

**ADVANCED ROOFING, INC.:**

**FLORIDA DEPARTMENT OF  
MANAGEMENT SERVICES:**

By: \_\_\_\_\_  
[Signature]

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

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

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

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

*Approved as to form and legality:*

\_\_\_\_\_  
*DMS General Counsel Office*

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

**Schedule A.1  
Facility Information Form**

<b>Facility Information</b>	
<b>Facility Name:</b>	
<b>Address:</b>	
<b>Building Description:</b>	
<b>Owned by the State or Leased? (If leased, provide copy of lease agreement)</b>	
<b>Owner of System (Affiliate of Advanced Roofing, Inc.):</b>	
<b>Department Contract Manager:</b>	

**Schedule A.2  
System Information**

<b>Solar Energy System Information</b>	
Module Manufacturer's DC Power Rating (STC) in Watts for Total System (the "Nameplate Capacity"):	
Number of Modules:	
DC Wattage (STC) per Module:	
Module Manufacturer:	
Inverter Module(s):	
Inverter Manufacturer:	
Data Monitoring System:	
System Warranty:	
Useful Life of the System:	
Peak Sun Hours (based on NREL data):	

**Schedule A.3  
Construction & Installation Schedule**

<u>Construction and Installation Schedule<sup>1</sup></u>	
Estimated Start Date:	
Estimated Date of Substantial Completion:	
Date of Inspection:	
Deficiency List Identified (If Any):	
Date of Second Inspection (If Any):	
Estimated Date of Final Completion / Execution of Certificate of Acceptance (the "Commencement Date"):	
Estimated Date of Services Performance Review (after first anniversary of Commencement Date):	
Expiration Date (up to twenty years after Commencement Date and subject to renewal as provided in Section 2.2):	

<sup>1</sup> In addition to information below, additional documentation, such as a flowchart, may be attached.

Schedule A.4 -- Services & Fee Schedule

Services / Utility Rate / Fee Schedule							
Year	Quarter	Service Start Date	Service End Date	Total Service Days	Utility Rate	Services Fee <sup>2</sup>	
						Quarterly	Annual
1	1						Annual Total
	2						
	3						
	4						
2	1						Annual Total
	2						
	3						
	4						
3	1						Annual Total
	2						
	3						
	4						
4	1						Annual Total
	2						
	3						
	4						
5	1						Annual Total
	2						
	3						
	4						
6	1						Annual Total
	2						
	3						
	4						
7	1						Annual Total
	2						
	3						
	4						
8	1						Annual Total
	2						
	3						
	4						
9	1						Annual Total
	2						
	3						
	4						
10	1						Annual Total
	2						
	3						
	4						

2 In accordance with Section 4 of the Contract, the Services Fee is calculated as follows: Peak Sun Hours x 0.80 x Nameplate Capacity x Utility Rate. The Service Fee Adjustment, applicable to the remaining Term, shall be determined within 90 days of the Anniversary Date based on actual Services Performance.

Services / Utility Rate / Fee Schedule (Continued)							
Year	Quarter	Service Start Date	Service End Date	Total Service Days	Utility Rate	Services Fee	
						Quarterly	Annual
11	1						Annual Total
	2						
	3						
	4						
12	1						Annual Total
	2						
	3						
	4						
13	1						Annual Total
	2						
	3						
	4						
14	1						Annual Total
	2						
	3						
	4						
15	1						Annual Total
	2						
	3						
	4						
16	1						Annual Total
	2						
	3						
	4						
17	1						Annual Total
	2						
	3						
	4						
18	1						Annual Total
	2						
	3						
	4						
19	1						Annual Total
	2						
	3						
	4						
20	1						Annual Total
	2						
	3						
	4						

**Schedule A.5  
Revenue Sharing (If Applicable)**

<b>Renewable Energy Credit Revenue Sharing (If Applicable)</b> <b>(If REC price <math>\geq</math> \$375, split 50% not to exceed Total Energy Savings Costs)</b>					
<b>Year</b>	<b>Actual Solar Energy System Production (in kWh)</b>	<b>RECs Produced</b>	<b>REC price (if <math>\geq</math> \$375)</b>	<b>Revenue Received By ARI (on REC Revenue Portion <math>\geq</math> \$375)</b>	<b>50% Revenue Share Credit to DMS (not to exceed total Guaranteed Savings)</b>
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

**Schedule A.6  
Services Performance Fee Guarantee**

ARI has formulated and hereby guarantees that the following levels of performance will be realized by DMS as a result of the provision of services under the Contract to DMS (in the aggregate). The Parties will establish a reasonable process for verifying the actual amount of capacity performance by the System each year. If the actual amount is less than the guaranteed amount, DMS will be entitled to a credit against the payments due under Section 4.1 of the Contract. The amount of the credit shall equal the difference between Nameplate Capacity and the Actual Capacity, multiplied by the Utility Rate for that year as set forth in Schedule A.4.

Year	Nameplate Capacity (KW)	Actual Capacity (KW)	Credit (if any)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
Total			



**Schedule B**  
**DMS Certificate of Acceptance of Solar Energy System**

I, the undersigned representative of the Florida Department of Management Services ("DMS"), hereby certify, represent and warrant that:

1. I am duly authorized to execute this Certificate on behalf of DMS.
  
2. This Certificate is provided in accordance with Section \_\_\_\_ of the Solar Energy Services Contract dated as of \_\_\_\_\_, by and between DMS and Advanced Roofing, Inc. ("ARI"), and pertains to the equipment and system described in attached Schedule A (the "Equipment").
  
3. The Equipment (i) has been delivered, installed and interconnected in accordance with DMS's Specifications, (ii) is in good working order and is fully operational and properly functioning, and (iii) has been fully accepted by DMS on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

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

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

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

**Schedule C**  
**Certificate of Purchase of Solar Energy System**

The undersigned hereby certify that DMS has properly exercised the Purchase Option with respect to the Solar Energy System identified in the attached Schedule A (the "Equipment"), in accordance with Section \_\_\_\_\_ of the Solar Energy Services Contract dated as of \_\_\_\_\_ (the "Contract"), by and between the Florida Department of Management Services ("DMS") and Advanced Roofing, Inc. ("ARI").

DMS further certifies that (i) the Equipment has been properly delivered, (ii) the Equipment is in good working order, (iii) the Equipment is fully accepted AS IS on this day, and (iv) payment in full for the Equipment will be made within forty (40) days of receipt of invoice in accordance with Florida law.

ARI further certifies that (i) it has conveyed all of its right, title and interest in the Equipment is conveyed to DMS, (ii) the conveyance is made free and clear of all restrictions, liens, encumbrances, rights, title and interest of others, and (iii) it will execute all other documents and take all other reasonable steps necessary to put DMS (and any successors or assigns) in actual possession and control of the Equipment.

Any case or controversy arising between the parties will be governed by the terms of the Contract.

The Purchase Price for the Equipment is \$\_\_\_\_\_. The Parties stipulate and agree that the Purchase Price represents the Fair Market Value of the Solar Energy System as determined in accordance with Section 5.4 of the Contract.

DATED: \_\_\_\_\_

ARI:

DMS:

By: \_\_\_\_\_  
[Signature]

By: \_\_\_\_\_  
[Signature]

Title: \_\_\_\_\_  
(Corporate Seal)

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

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

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

**Schedule A  
Project Identification and Description Form**

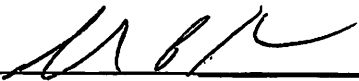
The Solar Energy Services Contract ("Contract") entered into on December 14, 2009, by and between **Advanced Roofing, Inc.** ("ARI"), having its principal offices at 1950 NW 22<sup>nd</sup> Street, Fort Lauderdale, FL 33311 and the **Florida Department of Management Services** ("DMS") with its principal offices at 4050 Esplanade Way, Tallahassee, Florida 32399-0950, for the purpose of providing services designed to reduce energy related operating costs, promote renewable energy, and lower greenhouse gas emissions for DMS and the State of Florida, is hereby supplemented and amended on the date last signed below by this Project Identification & Description Form which is fully incorporated into the Contract as follows:

The Parties hereby agree that the attached Schedules A.1 - A.6 adequately describe the Facility where this Solar Energy System will be installed, the Solar Energy System specifications, the construction and installation schedule, the ongoing services to be performed and the Service Fee associated therewith.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties hereto subscribe their names to this Contract by their duly authorized officers on the date last executed below

**ADVANCED ROOFING, INC.:**

**FLORIDA DEPARTMENT OF  
MANAGEMENT SERVICES:**

By:   
[Signature]

By:   
Secretary

Title: President

Date: 12/14/09

Date: 12/9/09

*Approved as to form and legality:*

  
DMS General Counsel Office

12/10/09  
Date

**Schedule A.1  
Facility Information Form**

Facility Information	
<b>Facility Name:</b>	Senate Office Building – Parking Garage
<b>Address:</b>	
<b>Building Description:</b>	Parking Garage
<b>Owned by the State or Leased? (If leased, provide copy of lease agreement)</b>	
<b>Owner of System (Affiliate of Advanced Roofing, Inc.):</b>	Senate Parking Garage Solar, LLC
<b>Department Contract Manager:</b>	

Schedule A.2  
System Information

Solar Energy System Information	
Module Manufacturer's DC Power Rating (STC) in Watts for Total System (the "Nameplate Capacity"):	25,344 watts
Number of Modules:	198
DC Wattage (STC) per Module:	128
Module Manufacturer:	United Solar Ovonic
Inverter Capacity:	30,000watts
Inverter Manufacturer:	PVPowered
Data Monitoring System:	AGT
System Warranty:	25years
Useful Life of the System:	25 years
Peak Sun Hours (based on NREL data):	4.7daily

**Schedule A.3  
Construction & Installation Schedule**

<u>Construction and Installation Schedule<sup>1</sup></u>	
Estimated Start Date:	01/15/2009
Estimated Date of Substantial Completion:	04/01/2010
Date of Inspection:	04/15/2010
Deficiency List Identified (If Any):	
Date of Second Inspection (If Any):	
Estimated Date of Final Completion / Execution of Certificate of Acceptance (the "Commencement Date"):	04/31/2010
Estimated Date of Services Performance Review (after first anniversary of Commencement Date):	05/01/2011
Expiration Date (up to twenty years after Commencement Date and subject to renewal as provided in Section 2.2):	04/30/2030

<sup>1</sup> In addition to information below, additional documentation, such as a flowchart, may be attached.

**Schedule A.4  
Services & Fee Schedule**

Year	Quarter	Service Start Date	Service End Date	Total Service Days	Utility Rate	Service Fee	
						Quarterly	Annual
1	1	03/01/10	03/31/10	31	\$ 0.1014	\$ 296.61	Annual Total \$ 2,124.11
	2	04/29/10	06/30/10	63	\$ 0.1014	\$ 602.79	
	3	07/29/10	09/30/10	64	\$ 0.1014	\$ 612.36	
	4	10/29/10	12/31/10	64	\$ 0.1014	\$ 612.36	
2	1	01/01/11	03/31/11	90	\$ 0.1045	\$ 886.96	Annual Total \$ 3,597.11
	2	04/01/11	06/30/11	91	\$ 0.1045	\$ 896.81	
	3	07/01/11	09/30/11	92	\$ 0.1045	\$ 906.67	
	4	10/01/11	12/31/11	92	\$ 0.1045	\$ 906.67	
3	1	01/01/12	03/31/12	91	\$ 0.1076	\$ 923.72	Annual Total \$ 3,725.33
	2	03/31/12	06/30/12	92	\$ 0.1076	\$ 933.87	
	3	07/01/12	09/30/12	92	\$ 0.1076	\$ 933.87	
	4	10/01/12	12/31/12	92	\$ 0.1076	\$ 933.87	
4	1	01/01/13	03/31/13	90	\$ 0.1108	\$ 940.97	Annual Total \$ 3,816.17
	2	04/01/13	06/30/13	91	\$ 0.1108	\$ 951.43	
	3	07/01/13	09/30/13	92	\$ 0.1108	\$ 961.89	
	4	10/01/13	12/31/13	92	\$ 0.1108	\$ 961.89	
5	1	01/01/14	03/31/14	90	\$ 0.1142	\$ 969.20	Annual Total \$ 3,930.66
	2	04/01/14	06/30/14	91	\$ 0.1142	\$ 979.97	
	3	07/01/14	09/30/14	92	\$ 0.1142	\$ 990.74	
	4	10/01/14	12/31/14	92	\$ 0.1142	\$ 990.74	
6	1	01/01/15	03/31/15	90	\$ 0.1176	\$ 998.28	Annual Total \$ 4,048.58
	2	04/01/15	06/30/15	91	\$ 0.1176	\$ 1,009.37	
	3	07/01/15	09/30/15	92	\$ 0.1176	\$ 1,020.46	
	4	10/01/15	12/31/15	92	\$ 0.1176	\$ 1,020.46	
7	1	01/01/16	03/31/16	91	\$ 0.1211	\$ 1,039.65	Annual Total \$ 4,181.46
	2	04/01/16	06/30/16	91	\$ 0.1211	\$ 1,039.65	
	3	07/01/16	09/30/16	92	\$ 0.1211	\$ 1,051.08	
	4	10/01/16	12/31/16	92	\$ 0.1211	\$ 1,051.08	
8	1	01/01/17	03/31/17	90	\$ 0.1247	\$ 1,059.08	Annual Total \$ 4,295.14
	2	04/01/17	06/30/17	91	\$ 0.1247	\$ 1,070.84	
	3	07/01/17	09/30/17	92	\$ 0.1247	\$ 1,082.61	
	4	10/01/17	12/31/17	92	\$ 0.1247	\$ 1,082.61	
9	1	01/01/18	03/31/18	90	\$ 0.1285	\$ 1,090.85	Annual Total \$ 4,423.99
	2	04/01/18	06/30/18	91	\$ 0.1285	\$ 1,102.97	
	3	07/01/18	09/30/18	92	\$ 0.1285	\$ 1,115.09	
	4	10/01/18	12/31/18	92	\$ 0.1285	\$ 1,115.09	
10	1	01/01/19	03/31/19	90	\$ 0.1323	\$ 1,123.57	Annual Total \$ 4,556.71
	2	04/01/19	06/30/19	91	\$ 0.1323	\$ 1,136.06	
	3	07/01/19	09/30/19	92	\$ 0.1323	\$ 1,148.54	
	4	10/01/19	12/31/19	92	\$ 0.1323	\$ 1,148.54	

11	1	01/01/20	03/31/20	91	\$ 0.1363	\$ 1,170.14	Annual Total
	2	04/01/20	06/30/20	91	\$ 0.1363	\$ 1,170.14	
	3	07/01/20	09/30/20	92	\$ 0.1363	\$ 1,183.00	
	4	10/01/20	12/31/20	92	\$ 0.1363	\$ 1,183.00	\$ 4,706.27
12	1	01/01/21	03/31/21	90	\$ 0.1404	\$ 1,192.00	Annual Total
	2	04/01/21	06/30/21	91	\$ 0.1404	\$ 1,205.24	
	3	07/01/21	09/30/21	92	\$ 0.1404	\$ 1,218.49	
	4	10/01/21	12/31/21	92	\$ 0.1404	\$ 1,218.49	\$ 4,834.22
13	1	01/01/22	03/31/22	90	\$ 0.1446	\$ 1,227.76	Annual Total
	2	04/01/22	06/30/22	91	\$ 0.1446	\$ 1,241.40	
	3	07/01/22	09/30/22	92	\$ 0.1446	\$ 1,255.04	
	4	10/01/22	12/31/22	92	\$ 0.1446	\$ 1,255.04	\$ 4,979.24
14	1	01/01/23	03/31/23	90	\$ 0.1489	\$ 1,264.59	Annual Total
	2	04/01/23	06/30/23	91	\$ 0.1489	\$ 1,278.64	
	3	07/01/23	09/30/23	92	\$ 0.1489	\$ 1,292.69	
	4	10/01/23	12/31/23	92	\$ 0.1489	\$ 1,292.69	\$ 5,128.62
15	1	01/01/24	03/31/24	91	\$ 0.1534	\$ 1,317.00	Annual Total
	2	04/01/24	06/30/24	91	\$ 0.1534	\$ 1,317.00	
	3	07/01/24	09/30/24	92	\$ 0.1534	\$ 1,331.47	
	4	10/01/24	12/31/24	92	\$ 0.1534	\$ 1,331.47	\$ 5,296.95
16	1	01/01/25	03/31/25	90	\$ 0.1580	\$ 1,341.60	Annual Total
	2	04/01/25	06/30/25	91	\$ 0.1580	\$ 1,356.51	
	3	07/01/25	09/30/25	92	\$ 0.1580	\$ 1,371.42	
	4	10/01/25	12/31/25	92	\$ 0.1580	\$ 1,371.42	\$ 5,440.95
17	1	01/01/26	03/31/26	90	\$ 0.1628	\$ 1,381.85	Annual Total
	2	04/01/26	06/30/26	91	\$ 0.1628	\$ 1,397.21	
	3	07/01/26	09/30/26	92	\$ 0.1628	\$ 1,412.56	
	4	10/01/26	12/31/26	92	\$ 0.1628	\$ 1,412.56	\$ 5,604.18
18	1	01/01/27	03/31/27	90	\$ 0.1676	\$ 1,423.31	Annual Total
	2	04/01/27	06/30/27	91	\$ 0.1676	\$ 1,439.12	
	3	07/01/27	09/30/27	92	\$ 0.1676	\$ 1,454.94	
	4	10/01/27	12/31/27	92	\$ 0.1676	\$ 1,454.94	\$ 5,772.31
19	1	01/01/28	03/31/28	91	\$ 0.1727	\$ 1,482.30	Annual Total
	2	04/01/28	06/30/28	91	\$ 0.1727	\$ 1,482.30	
	3	07/01/28	09/30/28	92	\$ 0.1727	\$ 1,498.59	
	4	10/01/28	12/31/28	92	\$ 0.1727	\$ 1,498.59	\$ 5,961.76
20	1	01/01/29	03/31/29	90	\$ 0.1778	\$ 1,509.99	Annual Total
	2	04/01/29	06/30/29	91	\$ 0.1778	\$ 1,526.77	
	3	07/01/29	09/30/29	92	\$ 0.1778	\$ 1,543.54	
	4	10/01/29	12/31/29	92	\$ 0.1778	\$ 1,543.54	\$ 6,123.84

2 In accordance with Section 4 of the Contract, the Services Fee is calculated as follows: Peak Sun Hours x 0.80 x Nameplate Capacity x Utility Rate. The Service Fee Adjustment, applicable to the remaining Term, shall be determined within 90 days of the Anniversary Date based on actual Services Performance.



**Schedule A.5  
Revenue Sharing (If Applicable)**

<b>Renewable Energy Credit Revenue Sharing (If Applicable) (If REC price <math>\geq</math> \$375, split 50% not to exceed Total Energy Savings Costs)</b>					
Year	Actual Solar Energy System Production (in kWh)	RECs Produced	REC price (if $\geq$ \$375)	Revenue Received By ARI (on REC Revenue Portion $\geq$ \$375)	50% Revenue Share Credit to DMS (not to exceed total Guaranteed Savings)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					

**Schedule A.6  
Services Performance Fee Guarantee**

ARI has formulated and hereby guarantees that the following levels of performance will be realized by DMS as a result of the provision of services under the Contract to DMS (in the aggregate). The Parties will establish a reasonable process for verifying the actual amount of capacity performance by the System each year. If the actual amount is less than the guaranteed amount, DMS will be entitled to a credit against the payments due under Section 4.1 of the Contract. The amount of the credit shall equal the difference between Nameplate Capacity and the Actual Capacity, multiplied by the Utility Rate for that year as set forth in Schedule A.4.

Year	Nameplate Capacity (KW)	Actual Capacity (KW)	Credit (if any)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
Total			