

ON DEMAND ELECTRICAL RELIABILITY
MASTER SERVICE AGREEMENT

This On Demand Electrical Reliability Master Service Agreement (the “**Agreement**”) is made and entered into to be effective as of September 22, 2017 (the “**Effective Date**”) by and between **Enchanted Rock Electric, LLC**, a Texas limited liability company (“**Contractor**”), and Texas A&M University System (“**Customer**”). Contractor and the Customer are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

WHEREAS, it is currently contemplated that Customer and the Contractor have entered, or intend to enter, ground leases, ground subleases or similar agreements granting Contractor the right to provide the services set forth herein to Customer at the real property locations listed in **Schedule 1** (as such locations may be added, modified or removed from time to time by agreement of the Parties); and

WHEREAS, Contractor and the Customer desire to enter into this Agreement to allow for the provision of such services at certain Sites owned or leased by Customer as more specifically provided herein; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I
DEFINITIONS

Unless otherwise defined in this Agreement (including **Exhibit A** attached hereto), capitalized terms not otherwise defined herein shall have the meaning set forth in the applicable Ground Lease or if not defined there, then as defined in the ERCOT Nodal Protocols as amended from time to time.

ARTICLE II
GROUND LEASE; SITE ADDENDUM

Prior to installing any System, installing any Contractor Equipment and/or providing any services pursuant to this Agreement at a Site, the Parties shall enter into (i) a ground lease, ground sublease or similar agreement to be in substantially the form attached hereto as **Exhibit B** (the “**Ground Lease**”) granting Contractor rights to provide the services set forth in this Agreement at the Site covered by a Ground Lease and (ii) a scope of work addendum relating to the Site which shall set forth, the Customer Load Limits, Contractor’s Equipment and any other additional terms required by this Agreement or as may be agreed to by the Parties, in substantially the form attached hereto as **Exhibit C** (such specific addendum for each applicable Site, the “**Site Addendum**”); *provided*, that to the extent Customer is unable to, or otherwise restricted from, executing and delivering a Ground Lease (in substantially the form attached hereto as **Exhibit B**) or a Site Addendum (in substantially the form attached hereto as **Exhibit C**) for a specific Site as a result of Customer not having fee ownership of the applicable real property related thereto or any other unique characteristics of a specific Site, each Party will use its commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement, an agreed Ground Lease and corresponding agreed Site Addendum on substantially similar terms and conditions as are provided in the form of Ground Lease and form of Site Addendum attached hereto including, without limitation, executing and delivering any additional instruments or documents necessary to consummate the transactions contemplated by this Agreement. No Ground Lease

or Site Addendum shall be effective unless signed by the duly authorized representatives of both Parties. The term of each Ground Lease shall be as set forth therein and each Site Addendum shall remain effective during the term of the applicable Ground Lease (unless otherwise amended or modified by the parties thereto). Upon the execution of each Ground Lease and Site Addendum, the terms and conditions of this Agreement shall immediately apply to the Parties and the Site covered thereby.

ARTICLE III ON DEMAND ELECTRICAL RELIABILITY PROVISIONS

3.1 Contractor Equipment.

(a) Contractor will exercise commercially reasonable efforts to (i) install the Contractor Equipment and (ii) take all actions to make such equipment operational by the Anticipated Completion Date for a specific Site. All costs and expenses of material and labor associated with the installation of the Contractor Equipment shall be borne by Contractor with the exception of Customer Contribution Costs per **Section 3.5(e)**. Customer will work with Contractor to facilitate the installation and interconnection of the Contractor Equipment with the Customer's electrical bus. Upon request of Contractor, Customer will be responsible for providing the following documents to Contractor as soon as practical: electrical one-line schematic, the utility plan, as built survey drawings, owner's title, and any architectural review board contact information. At least 30 days prior to the Anticipated Completion Date, Contractor shall give the Customer notice of its projected date of completion of installation of the Contractor Equipment (the "**Completion Date**"). Contractor shall as soon as practicable conduct a successful Commencement Test, and shall give Customer notice of the successful Commencement Test for the Site (and the date of the Contractor's notice to Customer shall be the Site's "**Acceptance Date**"). Costs associated with the Commencement Test will be paid by Contractor.

(b) Contractor shall carry the Customer's Load disconnected from the grid at each Site for 240 minutes during each year of the Term ("**Annual System Test**") and provide the Customer with evidence thereof in writing during the subsequent month indicating that the Annual System Test was successful. No Annual System Tests shall be required during the 12 month period following the Commencement Test. Customer shall pay Contractor the Grid Outage Fees for each Annual System Test. Any re-testing following a failed Annual System Test will be at Contractor's expense.

3.2 On Demand Electrical Reliability Services.

(a) From and after the Acceptance Date, Contractor shall operate the System at each Site for the purpose of providing Customer with Utility Grade Backup Power ("**UGBP**") at the Site during any Outage ("**On Demand Electrical Reliability Services**"). Contractor shall use commercially reasonable efforts to operate the System to provide System Availability equal to or greater than the applicable Single Failure Threshold and Termination Threshold. Contractor will also maintain and test equipment according to manufacturer's recommendations. Contractor may otherwise operate the System and the Contractor Equipment at each Site as provided in **Section 3.7** of this Agreement.

3.3 System Availability Definitions and Calculations.

(a) "Availability" shall mean (x) 100% if (x) Contractor is able to carry Customer's Load (provided such Customer Load is not in excess of Customer Load Limit) is served by the System during an Availability Event or (y) if Contractor fails to carry Customer's Load (provided such Customer Load is not in excess of Customer Load Limit) during an Availability Event, Availability shall mean the ratio, expressed as a percentage, of (I) the actual output of the System in kilowatt hours during the Outage to

(II) the Customer's kilowatt hour usage during the average for the same time interval as the Outage in the 10 most recent days of same day-type excluding the highest and lowest. The day-types are weekdays (Monday - Friday excluding ERCOT Holidays) and non-weekdays (Saturday, Sunday, and ERCOT Holidays). Contractor shall provide to Customer the data and calculations used in deriving such an Availability value.

(b) "Availability Event" means each Outage lasting 15 minutes or greater, a successful Commencement Test, or an Annual System Test; *provided, however*, Outages occurring within the same calendar day shall be considered the same Availability Event.

(c) "Termination Threshold" [REDACTED]

(d) "System Availability" means the Time Weighted Average of the Availability of the past five (5) Availability Events. System Availability calculations will not commence until the occurrence of the fourth (4th) Availability Event after the Acceptance Date.

(e) "Single Failure Threshold" [REDACTED]

(f) If the Availability during any Availability Event is less than the Single Failure Threshold then Contractor will as soon as practical perform a System Test at Contractor's cost and provide free energy to the Customer's Facility affected by the Outage for a duration of ten (10) hours immediately following a successful System Test. Contractor may provide Customer energy using Contractor's system and/or by reimbursing Customer for energy consumed during the ten (10) hours immediately following the successful System Test priced at the applicable rate between Customer and Customer's TDSP.

(g) If Contractor is prevented from providing 100% Availability due to the failure of the natural gas transport pipeline, natural gas local distribution company or any other natural gas supply entity to deliver natural gas to the System, the period during which natural gas supply is interrupted shall not be treated as an Availability Event.

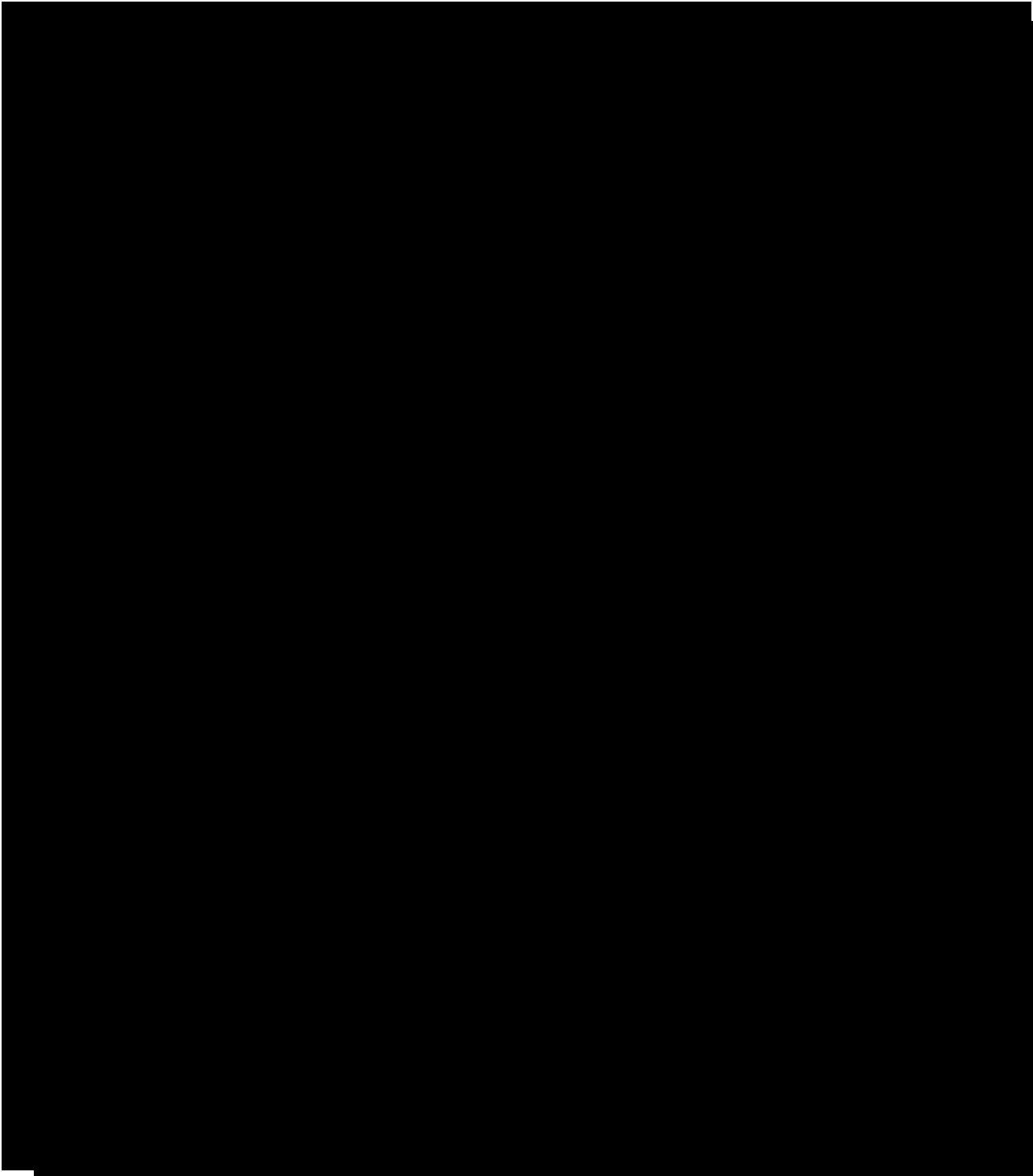
3.4 Customer Load Limits. Customer Load Limits for each Site are provided in the applicable Site Addendum. Customer may not exceed Customer Load Limits during an Outage.

3.5 Fees and Costs.

(a) *Grid Outage Fees.* Contractor will invoice Customer for Fuel Costs used to supply Customer during an Outage and bill Customer for maintenance expenses associated with the operations of the System during an Outage ("**Grid Outage Fees**"). Grid Outage Fees will be calculated as follows:

[REDACTED]

Each invoice for Grid Outage Fees shall specify the total kWh consumed by Customer and the \$/kWh charge based on the above Grid Outage Fee formula and broken out in detail to separate out Fuel Costs and other charges such as the Elective Electrical Maintenance Fees.



(c) *Parasitic Load Payments.* Customer, at its sole cost and expense, will provide electricity consumed at the Customer's facilities during construction of the System and required to keep Contractor Equipment, including but not limited to block heaters, batteries, lighting, and security, in a ready state of operations ("**Parasitic Load**").

(d) *Elective Electrical Maintenance Fees.* Customer may utilize Contractor Equipment to provide power to the Customer's facilities for up to [REDACTED] per year (i) during Customer-planned

and implemented electrical maintenance outages of Customer's facilities (and not including any planned electrical maintenance outages of the grid or the TDSP's facilities by ERCOT or the TDSP, which are subject to Section 3.5(a) of this Agreement), and (ii) ahead of and during weather events which Customer, in its sole discretion, anticipates could result in a loss of electric energy from the TDSP or grid or in a reduction in the power quality for electricity supplied by the TDSP or grid. Contractor will invoice Customer for Fuel Costs during such periods and for maintenance expenses of [REDACTED] Installed Megawatt hour ("**Elective Electrical Maintenance Fees**"). Each invoice for Elective Electrical Maintenance Fees shall specify the total kWh consumed by Customer and the \$/kWh charge based on the above Grid Outage Fee formula.

(e) *Customer Contribution Costs.* Customer agrees to pay for the *Customer Contribution Costs* (as defined in each applicable Site Addendum) as set forth in the applicable Site Addendum for a Site.

(f) *Natural Gas Supply* If Customer's current gas service meets the Customer Gas Supply Requirements then Contractor may choose to be a sub-metered customer to Customer. If Contractor chooses to sub-meter, Contractor will use a third party verifiable meter to measure gas volumes consumed at its System and will reimburse (such payment, a "**Natural Gas Payment**") Customer for each day that Contractor runs the on-site generation according to the following formula:

Natural gas volume (as reflected on the applicable sub-metered invoices) multiplied by (i) the quotient of the total monthly LDC charges (as reflected on the Customer's monthly invoice in dollars) and (ii) the total natural gas volume (as reflected on the Customer's monthly invoice) plus (iii) natural gas volume (as reflected on the applicable sub-metered invoices) multiplied by (iv) the market based Gas Daily Index.

If Contractor does not choose to sub-meter or if Customer's current gas service does not meet the Customer Gas Supply Requirements then Customer will be responsible for the *Customer Contribution Costs*.

(g) *Payment Terms.* Contractor agrees to directly bill Customer on a monthly basis for any services in accordance with this Agreement and the applicable Site Addenda. As soon as practicable after the end of each billing cycle, Contractor agrees to render to Customer a statement [REDACTED] Grid Outage Fees and Elective Electrical maintenance Fees, if any. Further, following any termination of a Ground Lease, on a monthly basis, Contractor shall render Customer an invoice setting forth the [REDACTED] due and owing following such termination. Customer agrees to pay such amounts within 15 days of receipt of each invoice. Customer shall pay all amounts owed to Contractor by mail, ACH transfer or wire at the address specified in the Contractor invoice, or such other address as Contractor may designate in writing. Contractor may, in its discretion, and at its sole cost and expense engage a third party to charge/invoice and collect all amounts due hereunder. Commencing on the thirty-first (31st) day following the date of the Customer receipt of the invoice, the Customer shall also be liable for interest at a rate equal to the Interest Rate on any unpaid amounts not subject to dispute.

(i) If the Contractor sub-meters for natural gas supply, as soon as practical after the end of each billing cycle, Customer agrees to render to Contractor its monthly natural gas bill for review. Contractor agrees to pay the Customer Natural Gas Payment within 15 days of receipt of Customer's monthly natural gas bill. Contractor shall pay all amounts owed to Customer at the address specified by the Customer in writing.

(ii) Contractor and Customer may set off against any amounts that may be due and owing to the other Party under this Agreement or any Ground Lease.

(iii) The payment provisions contained in this **Section 3.5(g)** shall survive any termination of this Agreement.

(h) *Taxes.* Any taxes assessable on any services provided by Contractor to Customer under this Agreement or any applicable Site Addendum including, without limitation, any Federal Excise and Transportation Tax or Texas Limited Sales and Use Tax are the sole and exclusive responsibility of Customer. Notwithstanding the foregoing, however, Customer shall not be responsible for, and Contractor shall be liable for, any taxes relating to Contractor Equipment, fuel provided to Contractor that is not used to serve Customer or any taxes on power generated and not used to serve Customer.

3.6 Demand and Energy Calculations. All demand calculations will use Customer's TDSP's applicable quantity measurement for demand payments. All energy calculations will use kilowatt hours.

3.7 Non-Emergency Use.

Customer acknowledges and agrees that Contractor is willing to enter into this Agreement and the Ground Leases in part due to its ability to provide electricity using the System and the Contractor Equipment at each Site at times when there is not an Outage. Accordingly, Contractor may (and Customer expressly authorizes Contractor to) supply electricity at each Site at times other than during an Outage; provided, that in no event shall:

(i) Contractor's supply of electricity result in any costs or expenses to Customer with the exception of [REDACTED] annual System Tests and Parasitic Loads; and

(ii) Customer experience any operational changes or limitations on its use of its facility connected to the Contractor Equipment, increase Customer's costs of operating its facility connected to the Contractor Equipment or require Customer to back down Customer Load or shutdown and restart any of its operations, any exceptions included in the applicable Site Addendum notwithstanding.

3.8 Change in Law. In the event that there is a Change in Law during the Term of this Agreement applicable to a Party, any Site, Ground Lease, or the Services and if such Change in Law (a) renders the performance of this Agreement, any Ground Lease or any Site Addendum (in whole or in part) illegal or unenforceable or (b) has a material adverse effect on the ability, or cost, of a Party to comply with any or all of its obligations under this Agreement, any Ground Lease or any Site Addendum, then the Parties shall meet within ten (10) Business Days of notice from the affected Party to discuss, and acting in good faith, agree upon any amendments, or alternative arrangements in lieu thereof, that may be required to this Agreement, any Ground Lease or any Site Addendum, as applicable, in order to: (i) take account of the Change in Law such that the Parties can continue to comply with the terms of this Agreement, the Ground Leases and Site Addenda and (ii) preserve the allocation of risks, rights and obligations between the Parties resulting from such Change in Law. If the Parties are unable to agree to any such amendment(s) or alternative arrangements within ninety (90) days after a Party's notice as described above, the affected Party may elect within thirty (30) days thereof to terminate this Agreement, the related Site Addenda and Ground Leases without any liability to either Party.

3.9 ATS Notification

Customer shall notify Contractor in writing of the date Customer requires Contractor to commission the automatic transfer switch (ATS Commission Date) at least fifteen (15) weeks prior to the ATS Commission Date.

ARTICLE IV DEFAULT; REMEDIES; TERM; TERMINATION

4.1 Contractor Default. The occurrence of any of the events set forth below shall constitute a “Contractor Event of Default” under this Agreement solely with respect to the applicable Site and the applicable Ground Lease for such Site:

(a) Contractor damages the Site (as defined in the applicable Ground Lease) and improvements located thereon or damages a Customer’s facility connected to the Contractor Equipment (as defined in the applicable Site Addendum) which result directly from the operations of Contractor Equipment and Contractor does not replace or repair such damage within thirty (30) days after written notice of such damage is delivered by Customer specifying the nature of the damage in reasonable detail; *provided*, that Contractor will not be in default under this clause (a) if Contractor commences replacement or repair of such damage, or causes a third party to do so, within such thirty (30) days and thereafter Contractor or such third party diligently pursues such replacement or repair until same is complete; or

(b) subject to Section 3.3 of this Agreement, Contractor fails to deliver the System Availability for a Site equal to or greater than the applicable Termination Threshold; or

(c) Contractor fails to comply within thirty (30) days after written notice with any provision of this Agreement with respect to a Site or any applicable Ground Lease other than a breach as described in clauses (a) or (b) of this section.

4.2 Customer Remedies. If a Contractor Event of Default shall have occurred and be continuing with respect to a Site, Customer’s sole and exclusive remedies under

(i) Section 4.1(a) of this Agreement are to terminate the applicable Ground Lease by written notice or to seek indemnification for Damages, or both;

(ii) Section 4.1(b) of this Agreement are to either terminate the applicable Ground Lease by written notice

(iii) Section 4.1(c) of this Agreement is to seek indemnification for Damages.

4.3 Customer Default. A “Customer Event of Default” under this Agreement shall occur if Customer fails to comply within thirty (30) days after written notice from Contractor of such failure with any provision of this Agreement with respect to a Site or any applicable Ground Lease.

4.4 Contractor Remedies. If a Customer Event of Default shall have occurred and be continuing with respect to a Site, Contractor’s remedies under this Agreement and the applicable Ground Lease are to terminate the applicable Ground Lease and Site Addendum by written notice or to seek indemnification for Damages, or both.

4.5 Waiver/Mitigation. It is not a waiver of a Contractor Event of Default or a Customer Event of Default, as applicable, if the non-defaulting party fails to declare immediately a default or delays in taking any action. Each Party has a duty to mitigate Damages.

4.6 Term. Unless otherwise terminated in accordance with this Agreement, the term of this Agreement shall commence on the Effective Date and remain in effect so long as the Contractor is providing any On Demand Electrical Reliability Services pursuant to a Ground Lease at any Site of the Customer.

4.7 Renewal Term(s). The term of any applicable Ground Lease may be extended upon mutually agreeable terms.

4.8 Termination. With respect to each Site, in the event Customer effectively terminates the applicable Ground Lease and/or Site Addendum in accordance with the terms hereof and thereof (such Site in which the Ground Lease has been effectively terminated, the "**Terminated Site**"), the rights and obligations of the Parties hereunder with respect to such Terminated Site with respect to the Ground Lease and the Addendum relating thereto, shall be automatically terminated without any further action on behalf of the Parties with the exception of any obligations surviving termination.

4.9 Effect of Termination.

(a) **Obligations After Termination.** Upon termination of this Agreement as to a Terminated Site, neither Party shall have any further obligations hereunder related to such Site except for (i) obligations accruing prior to the date of termination, including, without limitation, payment of the Fuel Costs, reimbursement of expenses, remittance for payments under **Article III** and similar payments accruing prior to the termination of this Agreement, and (ii) obligations, promises, or covenants set forth herein that are expressly made to extend beyond the Term or by their nature extending beyond the Term.

(b) **Removal of Equipment.** Upon termination of this Agreement with respect to each Terminated Site, Contractor shall remove the Contractor Equipment from the Terminated Site as provided in the applicable Ground Lease.

(c) Notwithstanding the effective termination of the terms and conditions of this Agreement with respect to a Terminated Site, this Agreement shall remain effective for all other Sites.

ARTICLE V REPRESENTATIONS

5.1 Representations of Contractor. Contractor hereby represents and warrants to Customer as follows:

(a) All actions on the part of Contractor necessary for the authorization, execution and delivery of this Agreement, each Ground Lease and each Site Addendum, the performance of all obligations of Contractor hereunder and thereunder have been taken, and, upon execution and delivery, this Agreement, each Ground Lease and each Site Addendum shall constitute the valid and legally binding obligation of Contractor, enforceable against Contractor in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) The execution, delivery and performance of this Agreement, each Ground Lease and each Site Addendum will not result in any violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any provision, instrument, judgment, order,

writ, decree or contract or an event which results in the creation of any lien, charge or encumbrance upon any assets of Contractor or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to Contractor, its prospects, business or operation, or any of its assets or properties.

(c) Contractor will obtain and maintain all permits, licenses, regulatory approvals and comply with all laws and requirements including compliance with all environmental laws, of any governmental or quasi-governmental authority, including, ERCOT, the Public Utility Commission of Texas, Texas Commission on Environmental Quality, Texas Reliability Entity, Inc., and the North American Electric Reliability Corporation, that are necessary to the installation, operation, and/or maintenance, of each System, and each Site, in the performance of Contractor's obligations under the Agreement.

5.2 Representations of Customer. Customer hereby represents and warrants to Contractor as follows:

(a) All actions on the part of Customer necessary for the authorization, execution and delivery of this Agreement, each Ground Lease and each Site Addendum, the performance of all obligations of Customer hereunder and thereunder have been taken, and, upon execution and delivery, this Agreement, each executed Ground Lease and each executed Site Addendum shall constitute the valid and legally binding obligation of Customer, enforceable against Customer in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(b) No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any governmental authority or ERCOT is required on the part of Customer in connection with the execution and performance of this Agreement, each Ground Lease and each Site Addendum by Customer. The execution, delivery and performance of this Agreement, each Ground Lease and each Site Addendum will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either a default under any such provision, instrument, judgment, order, writ, decree or contract or an event which results in the creation of any lien, charge or encumbrance upon any assets of Customer or the suspension, revocation, impairment, forfeiture or nonrenewal of any material permit, license, authorization or approval applicable to Customer, its prospects, business or operation, or any of its assets or properties. Customer has obtained all third-party consents and approvals required in connection with the execution, delivery and performance of this Agreement, each Ground Lease and each Site Addendum and the consummation of the transactions contemplated hereby and thereby. Customer owns each Site in fee simple, free and clear of any liens or has a valid leasehold interest in each Site.

ARTICLE VI LIMITATIONS OF LIABILITY

6.1 Limitations of Liability. Notwithstanding any provisions in this Agreement to the contrary, in each instance in which a Party is entitled to recover any loss, liability, claim or damage or expense (including costs of investigation and defense and reasonable attorneys' fees) (the "**Damages**") from the other Party (a) in the case of actual damages as a result of an Event of Default, the Damages shall not exceed an amount equal to the total amount paid or payable by Customer to Contractor with respect to the Site subject to the Event of Default and (b) in the case of any physical damage to or loss of tangible personal property and/or damage to real property caused by a Party, the Damages shall be limited to the

lesser of the replacement cost or the cost of repair of such real or tangible personal property, and to the extent that Party fails or refuses to pay such Damages, the cost of investigation, defense and reasonable attorney's fees. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY OR ANY AFFILIATE OF THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR ANY OTHER NON-DIRECT DAMAGES (INCLUDING, TO THE EXTENT NOT CONSTITUTING AN ELEMENT OF DIRECT DAMAGES, LOST PROFITS OR FUTURE REVENUES, COST OF CAPITAL, LOSS OF BUSINESS REPUTATION OR OPPORTUNITY) OR ANY CLAIM OR DEMAND AGAINST THE OTHER PARTY BY ANY THIRD PARTY, SUBCONTRACTOR, AGENT, EMPLOYEE OR INVITEE THEREOF, HOWEVER CAUSED, WHETHER UNDER THEORY OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF SAID PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING SHALL NOT LIMIT THE RIGHTS OF ANY PARTY TO INDEMNIFICATION IN ACCORDANCE WITH THIS AGREEMENT WITH RESPECT TO ANY CLAIM FOR DAMAGES ASSERTED AGAINST SUCH INDEMNIFIED PARTY BY ANY UNAFFILIATED THIRD PARTY.

6.2 Indemnification. Indemnification by Customer is subject to its authority under the laws of the state of Texas, subject to the limitations on liabilities and damages set forth herein, each Party (the "**Indemnifying Party**") agrees to indemnify and hold harmless the other Party (the "**Indemnified Party**") for, and to pay the Indemnified Party, the amount of any Damages incurred or suffered by the Indemnified Party to the extent directly arising from: (i) any breach of any express written representation or warranty made by the Indemnifying Party in this Agreement; (ii) any breach by the Indemnifying Party of any express written covenant or obligation in this Agreement; (iii) any bodily injury or death to persons caused by the negligence or willful misconduct of the Indemnifying Party, and in such case, the Damages, if any, to which the Indemnified Party shall be entitled, shall be limited to those directly attributable to physical bodily injury (including death) or (iv) physical damages to or loss of tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party. In no event shall either party be entitled to Damages from the other party arising from damage to such party's intangible personal property; provided however the forgoing limitation shall not apply to any Damages resulting from a breach of the confidentiality obligation provided hereunder.

6.3 Remedies. The indemnification provided for in this **Article VI** shall be the exclusive remedy in any action seeking Damages or any other form of monetary relief brought by any party to this Agreement against another party to this Agreement with respect to any provision of this Agreement or otherwise arising in connection with this Agreement (regardless of the basis of such claims); provided that nothing herein shall be construed to limit the right of a party, in a proper case, to seek injunctive relief or termination for a breach of this Agreement.

6.4 Indemnification Procedures.

(a) If either Party receives notice of any claim or circumstances, which could give, rise to an indemnified loss, the receiving party shall give written notice to the other party within ten (10) days. The notice must include the following:

- (i) a description of the events or circumstances entitling the party to indemnification hereunder,
- (ii) the basis on which indemnification may be due, and
- (iii) the anticipated amount of the indemnified loss.

(b) An Indemnifying Party may assume the defense of the claim at its own expense with counsel chosen by it. The Indemnifying Party shall then control the defense and any negotiations to settle

the claim. As soon as practicable after receiving written notice of the indemnification request, the Indemnifying Party must advise the Indemnified Party as to whether or not it will defend the claim. If the Indemnifying Party does not assume the defense, the Indemnified Party shall assume and control the defense, and all defense expenses constitute Damages.

(c) If the Indemnifying Party elects to defend the claim, the Indemnified Party may retain separate counsel, at its sole cost and expense, to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The Indemnifying Party may settle the claim without the consent or agreement of the Indemnified Party, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Party to comply with restrictions or limitations that adversely affect the Indemnified Party, (ii) would require the Indemnified Party to pay amounts that the Indemnifying Party does not fund in full, (iii) would not result in the Indemnified Party's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

ARTICLE VII MISCELLANEOUS

7.1 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made when (i) delivered personally to the recipient, (ii) telecopied to the recipient with confirmation of delivery or delivered by other form of electronic transmittal customarily used for such communication that permits retention of an electronic copy of such notice and verification of receipt (in each case with hard copy sent to the recipient by overnight courier service (charges prepaid) that same day) if telecopied or so delivered electronically before 5:00 p.m. Houston, Texas time on a Business Day, and otherwise on the next Business Day, or (iii) one Business Day after being sent to the recipient by overnight courier service (charges prepaid). Such notices, demands and other communications shall be sent to the addresses specified below, or to such other address or to the attention of such other person as the recipient Party has specified by prior written notice to the sending Party.

If to Contractor to: Enchanted Rock Electric, LLC
 c/o Contracts Department
 1907 Lawrence Rd. Suite 400
 Kemah, TX 77565

If to Customer to: Texas A&M University System
 Moore-Connally Building
 301 Tarrow St., 5th Floor
 College Station, Texas 77840-7896
 ATTN: Kevin P. McGinnis

7.2 Independent Contractor. Under this Agreement, Contractor shall be an independent contractor. This Agreement shall not be construed as creating a partnership, joint venture, agency or employment relationship, or as granting a franchise under federal, state or local law.

7.3 Amendments and Waiver. This Agreement may be amended or modified by, and only by, a written instrument executed by all the Parties hereto. The terms of this Agreement may be waived by, and only by, a written instrument executed by the Party against whom such waiver is sought to be enforced. Any waiver at any time by a Party of its rights, duties, and/or obligations with respect to any default under this Agreement, or with respect to any other matter arising out of or in connection with this Agreement, shall not be deemed a continuing waiver nor a waiver with respect to any prior or subsequent default or

other matter. Any delay in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of either Party to enforce any provision of this Agreement or to require performance by the other Party of any of the provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of either Party thereafter to enforce each and every provision hereof.

7.4 Assignments and Parties in Interest. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective permitted successors and assigns. This Agreement shall not be assigned by a Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; *provided, however*, such consent shall not be required with respect to any assignment of this Agreement by Contractor (i) to any of its Affiliates, (ii) to any other person or entity provided that Contractor (or an Affiliate of Contractor) (x) continues to operate the System and perform the Services on behalf of such person or entity or (y) owns a legal or beneficial interest in such person or entity, (iii) in connection with any merger, consolidation or similar transaction involving the sale of Contractor, or (iv) in connection with the sale of all or substantially all of the assets of Contractor or any division thereof. Any assignment in violation of this provision shall be null and void. Any person or entity to which this Agreement is assigned pursuant to the provisions of the U.S. Bankruptcy Code, 11 U.S.C. Section 101 et. seq., shall be deemed without further act or deed to have assumed all of the obligations arising under this Agreement and must otherwise comply with all requirements of the Bankruptcy Code before such assignment. Any such assignee shall upon demand execute and deliver to Contractor an instrument confirming such assumption, however a Party's failure to deliver such documentation shall not relieve that Party or its successor of the obligations created herein.

7.5 No Implied Rights or Remedies. Except as otherwise expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or to give any person, firm, or corporation, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.

7.6 Entire Agreement. This Agreement, and an executed Ground Lease and an executed Site Addendum for a Site embodies the entire agreement and understanding between the Parties hereto relating to the subject matter hereof and supersedes any prior agreements and understandings relating to the subject matter hereof. In the event of any conflict between the terms set forth herein or any other document referenced herein or therein, the terms set forth in this Agreement shall control. **CUSTOMER EXPRESSLY WARRANTS, REPRESENTS AND ACKNOWLEDGES THAT NO PROMISE, AGREEMENT, REPRESENTATION, OR STATEMENT HAS BEEN MADE TO CUSTOMER, OTHER THAN THOSE EXPRESSLY STATED IN WRITING IN THIS AGREEMENT, UPON WHICH CUSTOMER HAS RELIED IN ENTERING INTO THIS AGREEMENT.**

7.7 Remedies. Each Party shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any other agreement or contract and, subject to the limitations set forth herein, all of the rights which such Person has under any law.

7.8 Interpretative Matters. In this Agreement, unless otherwise specified or where the context otherwise requires:

(a) the headings of particular provisions of this Agreement are inserted for convenience only and will not be construed as a part of this Agreement or serve as a limitation or expansion on the scope of any term or provision of this Agreement;

(b) words importing any gender shall include other genders;

- (c) words importing the singular only shall include the plural and vice versa;
- (d) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation";
- (e) the words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (f) references to "Articles," "Sections," "Exhibits," "Appendices" or "Schedules" shall be to Articles, Sections, Exhibits, Appendices or Schedules of or to this Agreement;
- (g) all Exhibits, Appendices and Schedules referred to herein and attached hereto are incorporated herein by reference.
- (h) references to any person or entity include the permitted successors and assigns of such person or entity;
- (i) except as otherwise expressly provided herein, wherever a conflict exists between this Agreement and any other agreement referenced herein, this Agreement shall control but solely to the extent of such conflict;
- (j) references to any agreement or contract, unless otherwise stated, are to such agreement or contract as amended, modified or supplemented from time to time in accordance with the terms hereof and thereof;
- (k) the Parties hereto have participated jointly in the negotiation and drafting of this Agreement; accordingly, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party hereto by virtue of the authorship of any provisions of this Agreement; and
- (l) unless otherwise expressly stated in any Exhibit, Addendum or Appendix hereto (collectively, the "**Attachments**") that a provision in such Attachment controls a conflict between Articles I through VII of this Agreement (the "**Main Provisions**") and the Attachment, in the event of a conflict between any term in the Main Provisions and any Attachment, the Main Provisions shall control.

7.9 Severability. If any part or provision of this Agreement is or shall be deemed violation of any Applicable Law, such legal invalidity shall not void this Agreement or affect the remaining terms and provisions of this Agreement, and this Agreement shall be construed and interpreted to comport with all such laws, rules or regulations to the maximum extent possible.

7.10 Dispute Resolution. Subject to Tex. Gov't Code ch. 2260. Except in the event that a Party reasonably determines it would be prejudiced by entering into such discussions or by delaying litigation, in the event of a dispute between Customer and Contractor on any issue arising from or relating to this Agreement, a Ground Lease or a Site Addendum (including the interpretation or performance hereof), such issue shall be referred for resolution to each Party's respective Authorized Representative, who shall attempt to resolve such issue within ten (10) Business Days after one Party gives the other Party notice of such dispute (or, if mutually agreed in writing by such Authorized Representative, a longer period of time, which shall be specified in such writing). If the Parties have not resolved the dispute within such timeframe, either Party may then seek available remedies (subject to the terms of this Agreement) in a

court of competent jurisdiction in accordance with **Section 7.12**. For purposes of this Section, the "Authorized Representative" for a Party shall be designated in writing in the attached **Exhibit D**.

7.11 Absence of Third Party Beneficiary Rights. No provision of this Agreement is intended, nor will any provision be interpreted, to provide or to create any third party beneficiary rights or any other rights of any kind in any client, customer, Affiliate, stockholder, employee or partner of any Party hereto or any other person or entity.

7.12 Governing Law. This Agreement has been accepted and made performable in Bryan, Texas. This Agreement and the rights and obligations of the Parties hereto shall be construed under and governed by the laws of the State of Texas, without giving effect to principles of conflict of laws. The exclusive venue for resolution of any dispute between the Parties related to the subject matter of this Agreement shall be in the courts located in Bryan, Brazos County, Texas.

7.13 Counterparts. This Agreement may be executed in any number of counterparts and any Party hereto may execute any such counterpart, each of which when executed and delivered (which deliveries may be made by facsimile) shall be deemed to be an original, and all of which counterparts taken together shall constitute but one and the same instrument.

7.14 Contractor Financing.

(a) Notwithstanding anything to the contrary contained in this Agreement or any Ground Lease, Contractor and every successor and permitted assign is hereby given the right, without Customer's prior written consent, to collaterally assign and grant a security interest in this Agreement and all Contractor's rights hereunder and to assign or mortgage its interest in any Ground Lease as security under one or more leasehold mortgages or deeds of trust ("**Leasehold Mortgage**"). If Contractor or its successors or assigns shall enter into a collateral assignment or Leasehold Mortgage with any third party (a "**Leasehold Mortgagee**"), and if the Leasehold Mortgagee shall send to Customer written notice thereof, specifying Leasehold Mortgagee's name and address, Customer agrees that the provisions of this Section shall apply to such Leasehold Mortgage and to any successive holders thereof, and shall supersede any inconsistent provisions contained in any other Section of this Agreement or the applicable Ground Lease, as long as the Leasehold Mortgage shall remain unsatisfied of record or until written notice of satisfaction is given by Leasehold Mortgagee to Customer.

(b) Customer shall, upon providing a notice of default or notice of termination to Contractor, simultaneously provide a copy of such notice (the "**Leasehold Mortgage Notice**") to any applicable Leasehold Mortgagee. Any Leasehold Mortgagee shall have the right, but not the obligation, to remedy or cause to be remedied or to commence to remedy the defaults which are the subject matter of such notice. Customer shall accept such performance by or on behalf of any Leasehold Mortgagee as if the performance had been done by Contractor. If any Leasehold Mortgagee cures or has made substantial progress in curing any default prior to the expiration of any cure period, Customer shall not be entitled, on account of such default, to terminate this Agreement or the applicable Ground Lease or impair the rights to use the applicable Site.

(c) In the event, however, that in order to cure such default, possession of, or title to, the applicable Site or the leasehold estate thereto would be required, or if the default is of such a nature that it is not reasonably susceptible of cure by a Leasehold Mortgagee, Customer shall not be entitled, on account of such default, to terminate this Agreement or the applicable Ground Lease or impair the rights to use the applicable Site, provided that the Leasehold Mortgagee shall (i) notify Customer within thirty (30) days following the expiration of such cure period that it intends to cause such cure; (ii) perform all of Contractor's obligations under this Agreement and the applicable Ground Lease which are reasonably

susceptible of being complied with or performed by Leasehold Mortgagee without having gained possession of the applicable Site and title to the leasehold; and (iii) take steps to acquire or sell Contractor's interest in the applicable Ground Lease by foreclosure or otherwise and prosecute the same to completion with reasonable diligence. If the Leasehold Mortgagee is using reasonable efforts to comply with the foregoing provisions, then upon the Leasehold Mortgagee's having caused the applicable Ground Lease to be transferred by foreclosure, assigned in lieu of foreclosure or otherwise, the applicable Ground Lease shall continue in full force and effect as a lease between Customer and the Leasehold Mortgagee or its designee, the purchaser of the leasehold estate in any foreclosure proceedings, or the assignee or transferee of the leasehold estate under any assignment or transfer in lieu of foreclosure, and the Leasehold Mortgagee, its designee or such purchaser, shall with due diligence cure any such default.

(d) Nothing herein, however, shall be construed to require the Leasehold Mortgagee to continue such foreclosure or other steps after the stated default has been cured or as a condition to its exercise of any of its rights under this **Section 7.14**, to cure any bankruptcy of Contractor and any such default shall be deemed waived by Customer upon completion of foreclosure, assignment in lieu of foreclosure or other enforcement of the Leasehold Mortgage, but at such time as any such Leasehold Mortgagee (or any successor or assignee thereof) takes title to the applicable System or Contractor Equipment, such Person shall thereafter be obligated to perform all of the other obligations of the lessee under the applicable Ground Lease for the duration of such Person's ownership thereof.

(e) Unless otherwise expressly agreed by Leasehold Mortgagee, Leasehold Mortgagee shall not be deemed to be an assignee or transferee of the applicable Ground Lease or of the leasehold estate so as to require the Leasehold Mortgagee to assume the performance of any of the terms, covenants and conditions on the part of Contractor to be performed hereunder and in all events the liability of Leasehold Mortgagee, its successors and assigns, shall be limited in all respects to its interest in the applicable Lease and the leasehold estate created hereby.

(f) Customer shall not agree to any material amendment, mutual termination or modification or accept any surrender of this Agreement or any Ground Lease, nor shall any such amendment, termination, modification or surrender be effective, without the prior written consent of the applicable Leasehold Mortgagee.

(g) Customer agrees to cooperate with Contractor as reasonably requested by Contractor or a financing party in connection with any financing transaction secured by a Leasehold Mortgage and to enter into or secure such estoppels, consents, subordinations or other agreements as are customarily provided by a counterparty to a material contract or real property agreement in connection with a financing similar to such financing transaction.

(h) If this Agreement terminates because of Contractor's default or is terminated in bankruptcy, Customer shall, upon written request from any Leasehold Mortgagee within ninety (90) days after such event, enter into a new master service agreement for the Terminated Sites on substantially the same terms and conditions of this Agreement.

7.15 Contractor's Insurance.

The Contractor, at its own expense shall purchase, maintain, and keep in force such insurance as will protect Contractor from claims set forth below which may arise out of or result from the Contractor's operations under this Agreement, whether such operations be by itself or by any Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

Before commencing any of the work in connection with the System, the Contractor shall furnish and maintain a valid, "Certificates of Insurance" acceptable to Customer substantiating the fact that Contractor has taken out the specified insurance for the period covered by the Lease. The certificate(s) shall include policy Endorsements providing additional insured status (for all policies, except Workers Compensation) in favor of Customer and waiver of subrogation (all policies) in favor of Customer.

Limits of Insurance shall be at a minimum:

(1) Comprehensive General Liability, Public Liability Insurance (Including Contractual, Completed Operations, and Products Liability) – in the amount of \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. Customer and Customer's authorized officers, representatives, and employees shall be named as Additional Insured as respect to liability arising out of activities performed by or on behalf of Contractor; products and completed operations of Contractor, premises owned, occupied or used by Contractor.

(2) Automobile Liability Insurance – in the amount of \$1,000,000 combined single limit per accident, for bodily injury and property damage. The policy shall provide coverage for owned, hired, and non-owned coverage.

(3) Worker's Compensation Insurance – The Contractor shall provide and maintain Worker's Compensation Insurance which complies in all aspects and amounts with all applicable state and local statutes and ordinances and Employers Liability converge in the amount of Bodily Injury By Accident - \$1,000,000 per accident; Bodily Injury by Disease - \$1,000,000 policy limit; Bodily Injury by Disease - \$1,000,000 per employee. The insured shall agree to waiver all rights of subrogation against Customer, and Customer's officers, officials, employees and volunteers, for losses arising from work performed by the Contractor for Customer.

(4) Umbrella Excess Liability Insurance – Notwithstanding anything herein to the contrary, this policy shall be on an ISO form or other form acceptable to Customer written on an umbrella excess basis above coverages as described above in this Section 7.15 hereof, endorsed to include Customer as an additional insured to the fullest extent allowed under Chapter 151 of the Texas Insurance Code (Customer shall be named as Primary Additional Insured on all policies required in this Section 7.15 hereof), contain cross-liability and severability of interest endorsements, state that this insurance is primary insurance as regards any other insurance carried by the Contractor, and have no restrictive endorsements without the prior written consent of Customer and shall be in the amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

Such insurance shall be maintained for any period of time in which this Agreement, a Ground Lease or an Addendum is in effect.

7.16 Confidentiality.

Subject to the Texas Public Information Act, Tex Gov't Code ch. 552, the existence of this Agreement, the terms and conditions provided herein, the transactions contemplated hereby, and all information transferred or otherwise revealed by one party to the other party pursuant to this Agreement including, but not limited to, confidential intellectual property, trade secrets, third-party confidential information, engineering information, manufacturing information, technology, know-how, and other sensitive or proprietary information of the disclosing party will at all times remain the disclosing party's property and

shall be kept strictly confidential by the receiving party. The parties' obligations under this section shall survive any termination of the Agreement. Notwithstanding anything herein to the contrary, if Customer is required to disclose such confidential Information by applicable law, regulation or legal process, including the Texas Public Information Act, Texas Gov't Code 552 (the "Public Information Act"), Customer shall, to the maximum extent permitted by law, (i) furnish to Contractor prompt written notice of such request, the details of such request and any other details thereof requested by Seller, (ii) prior to releasing any such confidential information pursuant to a request under the Public Information Act, give Contractor a reasonable opportunity to assert any claimed exemption from disclosure under Public Information Act and (iii) not disclose, and will use all reasonable efforts to maintain the confidentiality of, such confidential information, subject to the limitations of the Public Information Act. Without limiting the foregoing, Contractor may pursue procedures and rights granted to it under the Public Information Act to keep such confidential information from being publicly disclosed in the instance of a request falling under the Public Information Act. The parties' obligations under this Section 7.16 shall survive the termination of this Agreement.

7.17 Publicity

Each Party shall (a) submit to the other Party for approval all advertising, written sales promotions, press releases and other publicity matters relating to this Agreement in which the name or mark of the other Party is mentioned or which contains language from which the connection of said name or mark may be inferred or implied and (b) not publish or use such advertising, sales promotions, press releases or publicity matters without the other Party's prior consent.


7.18 Force Majeure. In the event a Party is rendered unable, wholly or in part, by Force Majeure (as defined below) to carry out any of its obligations under this Agreement, it is agreed that upon giving notice of the event of Force Majeure after the occurrence of such to the other Party, the affected Party's obligations under this Agreement shall be suspended to the extent required during the continuance of any such event of Force Majeure. Upon the termination of such Force Majeure, the affected Party shall give notice to the other Party as soon as possible. Notices of the onset or termination of Force Majeure may be given by phone or e-mail to any authorized representative of the other Party if followed within forty-eight (48) hours by a written notice to the other Party. The term "Force Majeure" as used herein shall mean any cause or event not within the reasonable control of the affected Party or which could not have been prevented by the exercise of due diligence by the affected Party, including fire, flood, windstorm, storm or other weather events or other acts of God, strike, wars, insurrections, acts of terror, acts of vandalism, civil disturbances, riots, protests, or permit or other regulatory delays. The affected Party shall make all commercially reasonable attempts to remedy or mitigate the effects of the Force Majeure and to continue performance under this Agreement.

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Signature Page(s) to Follow.]*

The Parties have duly executed this Agreement as of the Effective Date.

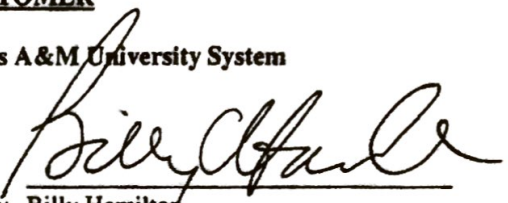
CONTRACTOR

Enchanted Rock Electric, LLC

By: 
Name: W. Thomas McAndrew
Title: Authorized Agent

CUSTOMER

Texas A&M University System

By: 
Name: Billy Hamilton
Title: Executive Vice Chancellor
and Chief Financial Office

SCHEDULE 1

Site Name	Address
Texas A&M RELIS Campus	3100 Texas 47, Bryan, TX 77807

EXHIBIT A
DEFINITIONS

"Affiliate" means, as to a person (individual or entity), any other person who directly or indirectly controls, is controlled by, or is under common control with such person.

"Agent" means agents, contractors (of any tier), employees, licensees, and, to the extent under the control of the principal, invitees.

"Anticipated Completion Date" means the date June 27, 2018.

"Availability Reduction" means an amount equal [REDACTED] multiplied by the number of times Contractor provides 100% Availability during an Availability Event lasting at least thirty minutes, plus to the extent any Availability Event lasts more than 30 minutes [REDACTED] minute that Contractor continues to provide 100% Availability during such Availability Event.

"Commencement Date" is the date set forth in the Ground Lease for a specific Site.

"Commencement Test" means, as to a specific Site, a test of the System undertaken by Contractor which lowers the Customer's meter import channel reading to zero while grid connected for a period of 240 minutes without disruption of Customer operations and carrying Customer Load for a period of 30 minutes while disconnected from the grid.

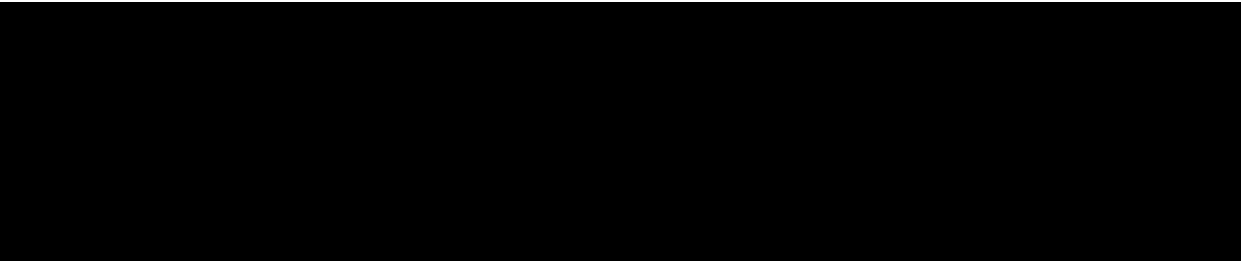
"Contractor Equipment" means the equipment listed in the applicable Site Addendum, which shall be provided by Contractor at the Site and necessary to provide services pursuant to the terms of this Agreement as part of the System, and any other equipment of Contractor or an Affiliate of Contractor brought onto the Site in connection with any applicable Site Addendum (or amendment thereof).

"Customer Gas Supply Requirements" means that Customer's current gas service is (i) physically capable of supplying the required quantity of natural gas to run Contractor's System and (ii) the Contractor's natural gas commodity pricing is based on Gas Daily Index rates.

"Customer Load" means the electricity consumed expressed in kVA, kW, and Amps/Phase as a function of time required at the facility connected to the Contractor Equipment.

"Customer Load Meter" means the Elster bi-directional 2 channel meter, or any other meter used by the TDSP to measure Customer's Load, at the Customer's primary metering point.

"ERCOT" means the Electrical Reliability Council of Texas.



“ERCOT Protocols” means the current ERCOT Nodal Protocols and rules, requirements, and guidelines including, without limitation, the other Binding Documents as set forth on the www.ercot.com website issued by ERCOT as of the date hereof (and as may be amended, modified or replaced from time to time).

“Fuel Costs” means, in MMBtu’s, the actual amount of fuel consumed by each of Contractor’s generators as measured by the aggregate generator fuel consumption data multiplied by the daily natural gas price per MMBtu paid by Contractor, including all transportation and LDC charges.

“Gas Daily Index” means Platt’s Gas Daily Houston Ship Channel

“Generation Meter” means the Ian bi-directional 4 channel meter, or any other meter used by TDSP, to measure the output of the Contractor’s generation.

“Injury” means (1) harm to or impairment or loss of property or its use, or (2) harm to or death of a person.

“Installed Megawatt” means the total power generating capacity of Contractor’s Equipment installed on the applicable Site in megawatts and is equal to the ESP Capacity in kW set forth on the applicable Site Addendum divided by 1,000.

“Interest Rate” means the interest rate for overdue payments being the lesser of (a) the rate specified in Section 2251.025(b) of the Texas Government Code, or (b) one and one-half of a percent per month.

“kW” means kilowatt.

“kVa” means kilovolt amps.

“LDC” means the natural gas local distribution company.



“MW” means megawatt.

“Outage” means the occurrence of conditions on the TDSP’s side of the Customer’s Load Meter resulting in a transfer of the Customer Load at the Customer’s facility to the Contractor Equipment.

“Site” means a physical location designated by the Customer in, or in accordance with, this Agreement and an applicable Ground Lease for the supply of Utility Grade Backup Power at such location.

“**System**” means the system used to deliver the services set forth in this Agreement to the Customer at a Site as described in the applicable Site Addendum for such Site.

“**System Capacity**” is defined in the applicable Site Addendum for each Site.

“**TDSP**” means Bryan Texas Utilities.

“**Term**” means the term of this Agreement on a Site by Site basis as established in the Ground Lease for a specific Site (subject to Contractor’s option to terminate this Agreement early as set forth herein).

“**Time Weighted Average**” means, the average of the Availability during each Availability Event used to calculate a threshold, with each Availability ratio included in the average having been multiplied by the percentage of time of that Availability Event to the total amount of time for all of such Availability Events prior to the average being taken.

“**Transient Power**” means the short term high power output to manage transient Customer facility conditions such as changes in configuration, starting large motor loads, etc. Transient Power has a value set forth in Site Addendum.

“**Utility Grade Backup Power**” or “**UGBP**” means voltage and frequency, at no less than the quality standards as governed by Texas Public Utility Commission (PUCT) Substantive Rule 25.51, Power Quality (“§25.51”), Paragraphs (a) and (b), to satisfy Customer Load.

EXHIBIT B
GROUND LEASE

EXHIBIT C
SITE ADDENDUM

This SITE ADDENDUM (this “Site Addendum”) is made and entered into to be effective as of September 22, 2017, by and between **Enchanted Rock Electric, LLC**, a Texas limited liability company (“Contractor”), and **Texas A&M University System** (“Customer”) and is executed and delivered in connection with that certain Ground Lease dated of even date herewith related to the Customer’s facility located at 3100 Texas 47, Bryan, TX, 77807.

Unless otherwise specifically provided herein, the general terms and conditions set forth in the Master Reliability Services Agreement to which this Site Addendum relates (including the definitions included therein) and the Ground Lease executed and delivered concurrently herewith by the parties hereto (or their permitted successors and assigns) shall apply to this Site Addendum.

System Description: Twenty-four (24) paralleled, 448 kW ESP, 480 volt, 437 kW ESP, 12.47kV, three phase gas engine generator/alternator sets and associated switchgear. Six clusters of four (4) gensets will be connected to six (6) 2250KVa step up transformers via individual isolation switches. The transformers will step up the voltage to 12.47KV to match the main bus voltage of the TAMU RELLIS campus bus.

System Capacity:

	ESP Standby Capacity¹
System kW	10,488
Power Factor	0.8 lagging
System V	12,470

Customer Load Limits:

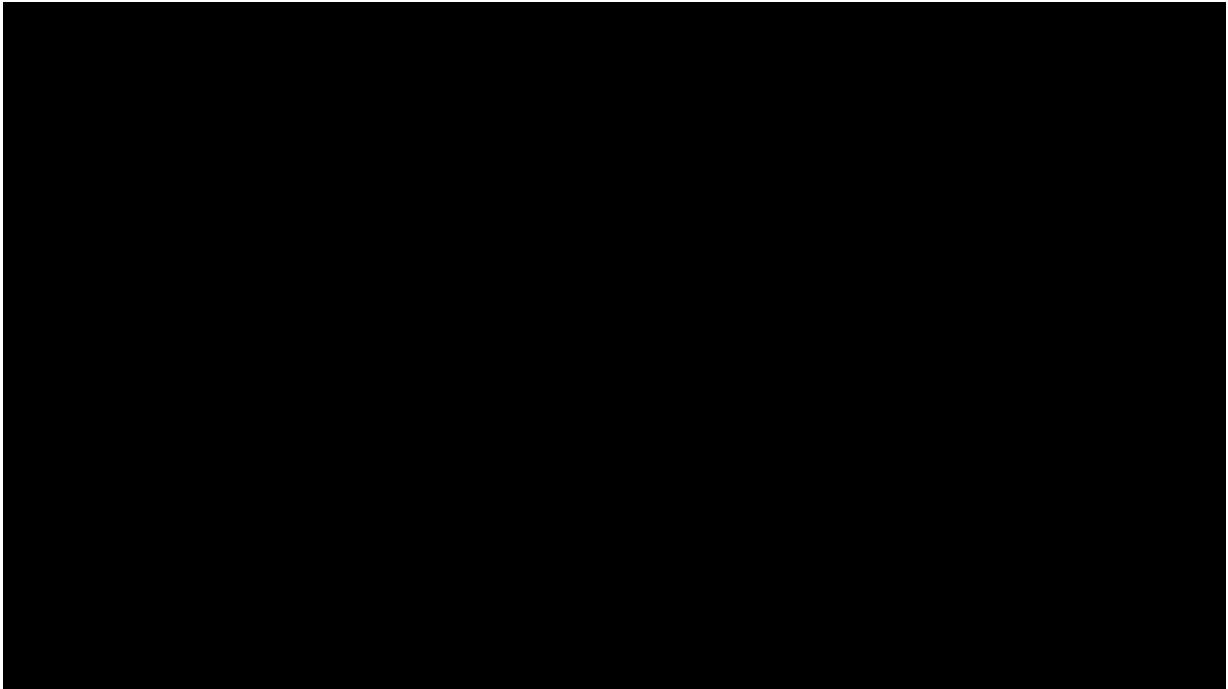
24 Hour Energy Limit	176,198 kWh	70% x ESP Capacity x 24 hours
Transient Power (100% to 95% of ESP Capacity)	10,488 kW to 9,963 kW	30 seconds
Transient Power (94.9% to 90.0% of ESP Capacity)	9,963 kW to 9,439 kW	15 minutes

Customer Contribution Costs:

Customer Contribution Costs are payable upon a successful Commencement Test:

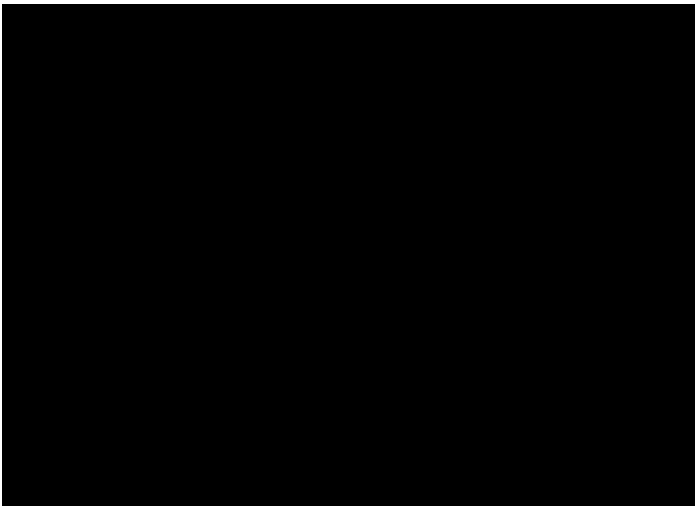


¹ ESP Capacity: Emergency Standby Power (ESP) in kW in accordance with ISO 8528-1 (Assumes 0.8 lagging power factor and isochronous mode at 12.47kV with an average generator output of 70% of ESP over a rolling 24 hour period)



Contractor Equipment (also known as “Tenant Equipment” for purposes of the applicable Ground Lease):

As shown in Exhibit E




*[Remainder of Page Intentionally Left Blank.
Signature Page(s) to Follow.]*

The Parties have duly executed this Site Addendum as of the date first set forth above.

CONTRACTOR

Enchanted Rock Electric, LLC

By: 
Name: W. Thomas McAndrew
Title: Authorized Agent

CUSTOMER

Texas A&M University System

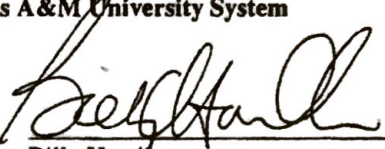
By: 
Name: Billy Hamilton
Title: Executive Vice Chancellor
and Chief Financial Officer

EXHIBIT D
AUTHORIZED REPRESENTATIVE

The Authorized Representative of Contractor shall be:

Kevin McGinnis

The Authorized Representative of Customer shall be:

Payson Tucker

The Authorized Representative of a Party may be changed upon written notice to the other Party.

