

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

**MODIFICATION TO
ECONOMIC DEVELOPMENT AGREEMENT**

This **Modification to Economic Development Agreement** (hereinafter referred to as the “Modification”) is made and entered into by and between **Brazoria County** (hereinafter referred to as the “County”) and **Cradle Solar LLC**, (hereinafter referred to as “Cradle Solar”), a Limited Liability Company authorized to do business in Texas.

AUTHORIZATION

This Agreement is authorized by the Texas Local Government Code, Chapter 381 – County Development and Growth – and by Order of the Brazoria County Commissioners Court approving this agreement, Court Order No. _____, dated _____.

RECITALS

The County and Cradle Solar hereby agree that the following statements are true and correct and constitute the basis upon which the County and Cradle Solar have entered into this Modification.

1. The County and Cradle Solar previously entered into an Economic Development Agreement (attached hereto as Exhibit “1”) on file in the County Clerk’s Office under Commissioners Court Order No. 6.Q.1, dated August 24, 2021, and as amended by Court Orders No. 6.M.10, dated July 12, 2022 and 7.C.1, dated July 26, 2022 (hereinafter referred to as the “Agreement”). Under the Agreement, Cradle Solar agreed to construct, operate, and maintain a solar electric power generation facility, with an approximate total generation capacity of 225 MW AC, on approximately 1,900 acres of land located in the County and described in “Exhibit A” of the Agreement in return for economic development grants provided by the County.
2. Pursuant to the terms of the Agreement, Cradle Solar was to commence construction on the project by December 31, 2023.
3. Cradle Solar has requested the County to modify the Agreement to permit Cradle Solar to delay the commencement date to December 31, 2024.
4. Because Cradle Solar has not begun the project and the Chapter 381 Payments will not extend beyond the seven years granted with the change in the commencement date, the County is willing to allow Cradle Solar to delay the commencement date in the Agreement.
5. Pursuant to the terms of the Agreement, Cradle Solar was to complete construction on the project by December 31, 2024.

6. Cradle Solar has requested the County to modify the Agreement to permit Cradle Solar to delay the completion deadline date to December 31, 2025.

7. Because Cradle Solar has not begun the project and the Chapter 381 Payments will not extend beyond the seven years granted with the change in the completion deadline date, the County is willing to allow Cradle Solar to delay the completion deadline date in the Agreement.

NOW THEREFORE, the County and Cradle Solar, for and in consideration of the terms and conditions set forth herein, do hereby contract, covenant and agree as follows:

A. Article 2. Definitions is hereby modified to read as follows:

“Commencement Deadline” means December 31, 2024.

“Completion Deadline” means on or before December 31, 2025.

B. Except as otherwise specifically amended in this Modification, the Agreement shall remain in full force and effect.

C. This Modification contains the entire understanding and agreement between the County and Cradle Solar, their assigns and successors in interest, as to the matters contained herein.

This Modification is executed by the parties in multiple originals, each having full force and effect, and the effective date of this Modification is the date of the countersignature of the County Judge.

BRAZORIA COUNTY

By: _____
L.M. “MATT” SEBESTA, JR.
COUNTY JUDGE
BRAZORIA COUNTY, TEXAS

Date signed: _____

CRADLE SOLAR, LLC

By: _____
Name:
Title:
CRADLE SOLAR, LLC

Date signed: _____

EXHIBIT 1

THE STATE OF TEXAS §
 §
COUNTY OF BRAZORIA §

ECONOMIC DEVELOPMENT AGREEMENT

This Economic Development Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between **Brazoria County** ("County") and **Cradle Solar, LLC** ("**Cradle Solar**"), a Delaware limited liability company. Brazoria County and Cradle Solar are sometimes referred to herein collectively as the "Parties" and each individually as a "Party."

AUTHORIZATION

This Agreement is authorized by the Texas Local Government Code, Chapter 381 – County Development and Growth – and by Order of the Brazoria County Commissioners Court approving this agreement, Court Order No. 6.Q.1, dated August 24, 2021, and as amended by Court Orders No. 6.M.10, dated July 12, 2022 and 7.C.1, dated July 26, 2022.

RECITALS

WHEREAS, the County is authorized under Chapter 381 of the Texas Local Government Code to make grants and loans for the purpose of promoting County development and growth; and

WHEREAS, the Commissioners Court of the County has authorized the County to make certain economic development grants to Cradle Solar in recognition of the positive economic and community benefits that will accrue to the County through Cradle Solar’s development of a solar electric power generation facility, with an approximate total generation capacity of 225 MW AC, located on approximately 1,900 acres of land more particularly described and/or depicted on the attached **Exhibit “A”** (the “Property”); and

WHEREAS, the County desires to offer incentives to Cradle Solar over a period of time which will enable Cradle Solar to develop the Property in conformity with the County’s ordinances and regulations; and

WHEREAS, the County believes that the development of the Property will contribute to the economic development of the County by increasing ad valorem taxes; and

WHEREAS, this Agreement is determined to be a program for the making of loans and granting of money as contemplated by Chapter 381 of the Texas Local Government Code; and

NOW, THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the County and Cradle Solar agree as follows:

ARTICLE 1.
Authority

1.1 The County's execution of this Agreement is authorized by Chapter 381 of the Texas Local Government Code and by Order of the Brazoria County Commissioners Court approving this Agreement, and constitutes a valid and binding obligation of the County subject to the condition precedent that Cradle Solar completes the Project (defined below), as specified herein.

1.2 Cradle Solar's execution and performance of this Agreement constitutes a valid and binding obligation of Cradle Solar if Cradle Solar proceeds with the development of the Property or portion thereof, subject to the terms, provisions and conditions herein.

1.3 The County acknowledges that Cradle Solar is acting in reliance upon the County's performance of its respective obligations under this Agreement in making its decision to commit substantial resources and money to develop the Property.

ARTICLE 2.
Definitions

As used in this Agreement, the following words or phrases shall have the following meanings:

"Act of Default" or **"Default"** means failure by a Party to comply with the requirements of this Agreement.

"Actual Productive Life" means the actual period of time the improvements were in active service and operation as part of a facility operating in a producing capacity. The Actual Productive Life of the Project begins on the Commercial Operations Date.

"Chapter 381 Payment(s)" means the amount(s) paid by the County to Cradle Solar under this Agreement, as further described in Article 5 herein. The Chapter 381 Payments constitute grants of funds as authorized by Chapter 381 of the Texas Local Government Code.

"Commencement Deadline" means on or before December 31, 2023.

"Commercial Operations Date" means the date on which the Project commences generating electricity (other than test energy) for which Cradle Solar is entitled to receive compensation from a third party purchaser.

"Completion Deadline" means on or before December 31, 2024.

"Development Costs" shall mean all costs to develop the Project, including the costs of the following Project components: solar modules/panels, racking, mounting, and tracking structures, inverter boxes, combiner boxes, meteorological equipment, piles and foundations, equipment/storage shed, O&M building, roadways, paving and fencing, collection system, electrical substations and switchyards, control systems necessary for commercial generation of

electricity, transmission line, and generation transmission tie line and associated towers and interconnection facilities.

“Effective Date” means the date this Agreement has been signed by all Parties.

“Eligible Property” means newly created value resulting from improvements including buildings, structures, tangible personal property as defined in the Tax Code including fixed machinery and equipment, site improvements and related fixed improvements related to the Project.

“Eligible Property Tax Revenues” means, for any given calendar year, an amount of money equal to the amount of all eligible property taxes levied and collected by the County on the Property, including any improvements thereon.

“Event of Bankruptcy or Insolvency” means the insolvency of a Party, appointment of receiver for any part of a Party’s property when such appointment is not terminated within ninety (90) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a Party when such proceeding is not dismissed within ninety (90) days after the filing thereof.

“Force Majeure” is defined in Section 10.5 herein.

“Ineligible Property” means land, existing improvements, tangible personal property that the Brazoria County Appraisal District classifies as inventory or supplies, tools, furnishings, and other forms of movable personal property; vehicles, watercraft, aircraft, housing, structures that are not necessary to or part of the Project, property to be rented or leased, property already subject to real or personal property tax(es) moved from one location in Brazoria County to the Property, property owned or used by the State of Texas or its political subdivisions or by any organizations owned, operated or directed by a political subdivision of the State of Texas, or any other property for which abatement is not allowed by State law.

“Notice” shall have the meaning ascribed to it in Section 10.8 of this Agreement.

“Payment Commencement Date” means January 1st of the first calendar year following the commencement of construction.

“Project” means the construction, operation, and maintenance of a solar energy facility.

“Project Participants” mean Cradle Solar’s contractual partners in the development of the Project.

“Property” shall have the meaning ascribed to it in the Recitals of this Agreement, and as more particularly described and/or depicted on the attached **Exhibit “A”**.

ARTICLE 3.
Term

3.1 Term of Agreement. This Agreement will become enforceable upon the Effective Date and will terminate seven (7) years after the Payment Commencement Date unless the Term is automatically reduced in accordance with Section 4.1.6 below (the “**Term**”).

ARTICLE 4.
Cradle Solar’s and Project Participants’ Performance Conditions

4.1 Notwithstanding any provision in this Agreement, Cradle Solar has no obligation hereunder to construct the Project, any infrastructure on the Property, or any other improvements on the Property. The following are, however, conditions not subject to the cure periods set forth in Article 8, that must be satisfied in order for Cradle Solar and/or Project Participants to receive the Chapter 381 Payments described herein:

4.1.1 Design and construct the Project in conformance with all applicable laws.

4.1.2 Provide Notice to the County as provided under Section 10.8 when construction commences and on the Commercial Operations Date.

4.1.3 Remain current and paid on all property taxes (real property and personal property) for portions of the Property leased or owned by Cradle Solar or its Affiliates, subject to rights of appeal in accordance with law.

4.1.4 Expend no less than \$202,500,000.00 on Development Costs for the Project.

4.1.5 Create and maintain no less than two (2) new permanent jobs located in Brazoria County.

4.1.6 The Project shall be in active service and operation for period of fourteen (14) years from the Commercial Operations Date in order for Cradle Solar to receive seven (7) full years of Chapter 381 Payments. If at any time during the fourteen (14) year period the Project ceases to be in active service, Cradle Solar will be subject to recapture as follows:

A. If it is determined on the Commercial Operations Date, or at any time thereafter (including after the expiration of the Term) that one-half the Actual Productive Life of the Project is less than the initial seven (7) year Term of this Agreement, then (i) the Term shall be automatically reduced to a period that is equal to one-half (1/2) of the Actual Productive Life of the Project, and (ii) Cradle Solar shall reimburse the County the full amount of the Chapter 381 Payments for each year (or portion of a year) for which the initial seven (7) year Term exceeded one half of the Actual Productive Life of the Project.

B. If Cradle Solar is required to reimburse a Chapter 381 Payment for a portion of a year under this Section 4.1.6, then the amount of such payment shall be determined by proration (by multiplying the amount of Chapter 381 Payment for the entire year by a fraction, the denominator of which is 365 and the numerator of which is the number of days in excess of the Term represented by one-half of the Actual Productive Life of the improvements).

C. Any recapture/reimbursement payment owed hereunder shall be payable within ninety (90) days of written notice.

4.1.7 On the Commercial Operations Date, Cradle Solar shall certify by statement to County the estimated productive life of the Project; provided, however the estimate of productive life shall not control the operation of this subsection.

4.1.8 In the event County Roads will be utilized to transport facility infrastructure, equipment and/or heavy haul items associated with the Project to the Property, Cradle Solar will be required to obtain all approvals and permits through the Brazoria County Engineering Department. Cradle Solar is required to enter into an escrow agreement or a Developers Agreement with County to financially participate in the maintenance of and rebuilding of any affected County Roads. Cradle Solar will be required to meet with the County Engineering Department prior to transporting any infrastructure, equipment and/or heavy haul items to the Project site. Cradle Solar will be required to pay 100% of any and all temporary maintenance and any reconstruction to any County Roads damaged as a result of its Project, including but not limited to design, reconstruction, construction oversight, material testing, and a contracted construction company procured through the County procurement standards. Failure to comply with these requirements will be a Default of this Agreement and may result in the termination hereof and recapture of payments as set forth below in Article 8 or, if no Chapter 381 Payments have been issued, County may seek civil recourse.

4.1.9 Prior to Cradle Solar receiving any County permits and commencing construction, Cradle Solar shall dedicate, or have the fee owner of the land dedicate, all rights-of-way to the public in fee for thoroughfares running through or adjacent to the Property in accordance with the Brazoria County Thoroughfare Plan.

A. If a planned or existing thoroughfare runs through the Property, Cradle Solar shall dedicate or have dedicated the necessary right-of-way of one hundred twenty feet (120').

B. If a planned or existing thoroughfare runs adjacent to the Property, Cradle Solar shall dedicate or have dedicated one-half of the necessary right-of-way.

C. If the Property is being subdivided, additional requirements may be found in the Brazoria County Subdivision Regulations.

D. Unless otherwise agreed in writing, Cradle Solar shall design the Project in a manner that does not encroach on any thoroughfare, existing or proposed.

4.1.10 Prior to receiving any County permits and commencing construction, Cradle Solar shall dedicate or have dedicated the drainage ditches that assist in the drainage of County infrastructure as determined by the Brazoria County Engineer.

4.1.11 Cradle Solar shall only be required to install approximately 12,700 linear feet of screening along the Project boundaries as identified on **Exhibit “B.”** The screening fence shall be not less than four feet or more than eight feet in height and constructed of masonry, reinforced concrete, wood, chain link fencing with privacy screen, or R-Panel, which does not affect drainage. A fence opening shall be equipped with gates equal in height and screening characteristics to the wall or fence.

4.1.12 Cradle Solar shall make a charitable contribution in the amount of \$95,000.00 to the Cole Gordon’s – The Helping Hand Foundation, Inc. upon the execution of this Agreement. Cradle Solar shall make an additional charitable contribution in the amount of \$100,000.00 to the Cole Gordon’s – The Helping Hand Foundation, Inc. no later than twelve months after the Commercial Operations Date. Each donation shall specify that the funds be used for the development of Cole Gordon’s Helping Hand Ranch located at 2576 Cannon Road, Alvin, Texas.

4.2 Cradle Solar represents and warrants that it has or will have, prior to commencement of construction, a long-term leasehold or easement interest in the Property that permits the construction and operation of the Project on the Property.

4.3 Notwithstanding anything to the contrary contained herein, the Chapter 381 Payments only apply to the Eligible Property Cradle Solar installs or builds upon the Property after the date hereof, in accordance with the terms of this Agreement, and excludes the value of the Property.

ARTICLE 5. **Chapter 381 Payments**

5.1 Cradle Solar’s Submission of Data. Following the Payment Commencement Date of the Project, Cradle Solar shall request initiation of the first Chapter 381 Payment. The initial request and all subsequent requests shall be in writing and made within sixty (60) days following the end of each calendar year. The request for initiation of each Chapter 381 Payment is a condition of payment not subject to the cure periods set forth in Article 8. Failure to make such request within sixty (60) days following the end of the calendar year will result in a forfeiture of that year’s Chapter 381 Payment. County shall not be required to make a Chapter 381 Payment during any applicable calendar year unless and until:

5.1.1 Cradle Solar submits to County a schedule detailing the Eligible Property Tax Revenues levied and collected by the County for such calendar year.

5.1.2 In addition to the schedule, Cradle Solar must submit a copy of all property tax receipts for the Project, including amended reports, filed by Cradle Solar evidencing payment of taxes on Eligible Property.

5.1.3 Cradle Solar has submitted its report/statement of compliance detailed in Article 7 below for the applicable year.

5.2 County Chapter 381 Payments. For a period of seven (7) years, or one-half (1/2) the Actual Productive Life of the Project, whichever is less, County shall annually pay to Cradle Solar, an amount of money (the “Chapter 381 Payment”) equal to the product obtained by multiplying the percentages detailed below by the Eligible Property Tax Revenues levied and collected by the County in such tax year that are attributable to the Project.

Year One	50%
Year Two	50%
Year Three	50%
Year Four	80%
Year Five	80%
Year Six	80%
Year Seven	80%

The benefits of the Chapter 381 Payments shall continue throughout the last year of the Term as long as the Property and Project continue to qualify throughout the last year.

5.3 Although certain payments under this Agreement are calculated based on a formula applied to the Eligible Property Tax Revenues, this Agreement shall be not construed as a commitment, issue, or obligation of any specific taxes or tax revenue for payments to Cradle Solar. The payments to be made to Cradle Solar, if paid, shall be made solely from lawfully available funds that have been budgeted and appropriated each applicable fiscal year during the Term by County as provided in this Agreement. All payments will be made from the general fund of the County or from such other funds of the County as may be legally set aside for the implementation of Article III, Section 52a of the Texas Constitution or Chapter 381 of the Local Government Code or any other economic development or financing program authorized by statute. In no event shall the County’s obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision.

In the event that the County does not appropriate funds in any fiscal year for payments due under this Agreement, such failure shall not be considered a default under this Agreement and County shall not be liable to Cradle Solar for such payments otherwise due during such fiscal year; however, the Term of this Agreement shall be extended one (1) year for each year the County fails to appropriate funds for payment otherwise due under this Agreement. The Agreement may be extended until Cradle Solar receives the Chapter 381 Payments due under this Agreement, so long as Cradle Solar remains compliant with the terms of this Agreement. If the County is unable to make payments for any fiscal year[s] of the Agreement, Cradle Solar will continue to submit the data required by this Article to preserve proof of the amount requested by Cradle Solar during the Term of this Agreement. Cradle Solar shall also have the right, but not the obligation, to rescind this Agreement. To the extent, there is a conflict between this paragraph and any other language or covenant in this Agreement, this paragraph shall control.

ARTICLE 6.
Covenants, Warranties, Obligations and Duties

Cradle Solar makes the following covenants and representations to County and agrees to timely and fully perform the following obligations and duties, subject to the terms, provisions and conditions hereof. Any false statement contained herein or failure to timely and fully perform as required in this Agreement shall be an Act of Default by Cradle Solar, subject to the cure periods set forth in Article 8 below.

6.1 Cradle Solar is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Term of this Agreement.

6.2 The execution of this Agreement has been duly authorized by Cradle Solar, the individuals signing this Agreement are empowered to execute such Agreement on behalf of Cradle Solar, and said authorization, signing and binding effect is not in contravention of the provisions of Cradle Solar's organization documents.

6.3 To the knowledge of Cradle Solar, no litigation or governmental proceeding is pending or threatened against or affecting the Property or lease of the Property.

6.4 There are no actions, suits or proceedings pending or, to Cradle Solar's knowledge, threatened against Cradle Solar affecting any portion of the Property, at law or in equity, or before or by any federal, state, municipal or other governmental court, department, commission, board, bureau, agency or instrumentality, domestic or foreign.

6.5 If Cradle Solar elects to develop the Project, Cradle Solar will use commercially reasonable efforts to obtain any necessary licenses, permits or approvals for the Project and will use commercially reasonable efforts to maintain all such necessary licenses and permits, to the extent required by law.

6.6 Cradle Solar shall timely and fully comply with all of the terms and conditions of this Agreement, subject to the terms, provisions and conditions of this Agreement.

6.7 If Cradle Solar's interest in the Property is a leasehold interest or easement interest (i.e., Cradle Solar is not the fee owner of the surface estate of the Property), then Cradle Solar shall remove all structures or fixtures, with the exception of actual buildings, in order to return the Property to its previous use within one (1) year of Cradle Solar's termination of active service and operation. Regardless of Cradle Solar's interest in the Property (i.e., a leasehold interest, easement interest, or fee ownership), Cradle Solar shall remove and dispose of all batteries, battery storage, and hazardous waste upon termination of active service and operation in accordance with the law at the time of removal. Additionally, Cradle Solar shall remove and properly dispose of any battery at the end of the life of the component in accordance with the law at the time.

6.8 Cradle Solar shall identify all telecommunications facilities that may be affected by the Project and provide notice to each telecommunication provider or business that may be

affected. Cradle Solar shall use sufficient setbacks from all telecommunications facilities in order to prevent interference.

6.9 Employment of Undocumented Workers. During the term of this Agreement, Cradle Solar agrees not to employ directly and knowingly any undocumented workers on the Project, and if convicted of a violation under 8 U.S.C. Section 1324a(f), Cradle Solar shall repay the amount of the Chapter 381 Payments received by Cradle Solar as of the date of such violation within 120 business days after the date Cradle Solar is convicted of such violation, plus interest at the rate of five percent (5.0%) per annum, from the date of such conviction until paid. Cradle Solar agrees to notify County within thirty (30) days of any charge filed against Cradle Solar alleging the employment of undocumented workers under 8 U.S.C. Section 1324a(f).

6.10 Annual Payment to Economic Development Fund. Cradle Solar agrees to pay to County, through the Brazoria County Auditor's Office, an annual contribution to be used specifically to fund economic development in Brazoria County as authorized by Local Government Code, Section 381.004. Contributions will be made annually, for the Term, in the amount of .000207 of the value reported in "Part V Section F" of the application for Economic Development Agreement (estimated value of eligible improvements at the conclusion of this Agreement). Air carriers receiving abatement will contribute an amount equal to .000207 of the estimated value of the personal property of the air carrier indicated in its Application. Each project will contribute no more than \$25,000.00 for projects \$500 million or less in capital investment and no more than \$50,000 for project greater than \$500 million in capital investment nor less than \$2,000 annually to be used specifically to fund economic development in Brazoria County as authorized by Local Government Code, Section 381.004. The annual contribution shall be paid to Brazoria County through the County Auditor's Office on or before January 1 of each year of the economic development agreement term.

ARTICLE 7. **Reporting and Monitoring**

7.1 During the Term of this Agreement, Cradle Solar shall collect and maintain all records necessary for calculating the Development Costs and documenting employment (the "Records"). Cradle Solar, during normal business hours, with five (5) business days' prior notice, shall allow the County reasonable access to review the Records in Brazoria County, Texas, but the confidentiality of such Records shall be maintained by the County unless disclosure of such records and information shall be required by a court order, a lawfully issued subpoena, or at the direction of the Office of the Texas Attorney General.

7.2 Following the Payment Commencement Date of the Project, Cradle Solar must submit a written report/statement of compliance annually during the life of this Agreement to the Brazoria County Commissioners Court clearly detailing the status of the Project, the amount expended on Development Costs, Cradle Solar's use of Brazoria County vendors and service providers, and the number of new operation and maintenance jobs created during the previous year as set forth under Article 4 of this Agreement. Said report/statement must be filed by January 31st of each year with the County Judge.

7.3 Cradle Solar has a continuing obligation for a period of fourteen (14) years from the Payment Commencement Date to report to the County any site closure or permanent cessation of operation of the Project.

ARTICLE 8.
Default

8.1 Should Cradle Solar fail to comply with the obligations under this Agreement, subject to Force Majeure, such failure shall be an Act of Default by Cradle Solar and, if not cured and corrected within sixty (60) days after written notice to do so, the County, as its sole and exclusive remedy, except as outlined in Section 4.1.8, may terminate this Agreement, cease making any Chapter 381 Payments pursuant to this Agreement, withhold Chapter 381 Payments, and seek recapture of Chapter 381 Payments as set forth in Section 4.1.6 subject to the County's rights under Section 10.16 of this Agreement. Cradle Solar shall not be responsible for any alleged consequential damages arising pursuant to this Agreement. Notwithstanding the above, if such Act of Default is a matter beyond Cradle Solar's reasonable control that cannot be cured by reasonably diligent efforts within sixty (60) days, then such occurrence shall not be an Act of Default so long as Cradle Solar promptly initiate and diligently and continuously attempt to cure the same, even if the same is not cured within said sixty (60) day period.

8.2 An Event of Bankruptcy or Insolvency on the part of Cradle Solar shall constitute an Act of Default for purposes of this Article.

8.3 In the event of unforeseeable third party delays and upon a reasonable showing by Cradle Solar that they have immediately and in good faith commenced and are diligently and continuously pursuing the correction, removal or abatement of such delays by using their diligent, good faith efforts, County may consent to and excuse any such delays, which consent and excuse shall not be unreasonably withheld, conditioned or delayed.

8.4 Any delay for any amount of time by County in providing notice of Default to Cradle Solar shall in no event be deemed or constitute a waiver by County of such default of any of County's rights and remedies available, as set forth herein.

8.5 Any waiver granted by County to Cradle Solar of an Act of Default shall not be deemed or constitute a waiver of any other existing or future Act of Default by Cradle Solar or of a subsequent Act of Default of the same act or event by Cradle Solar.

8.6 Should Cradle Solar be in Default of this Agreement, as defined within this Agreement, beyond the applicable cure period(s), County shall have the remedies set out in Section 8.1 and 4.1.8 as its sole and exclusive remedies.

8.7 Notwithstanding the foregoing, should Cradle Solar fail to commence the Project by the Commencement Deadline or fail to complete the development of the Project on or before the respective Completion Deadline (in all cases subject to Force Majeure), the County shall have

the right to terminate this Agreement after thirty (30) days following Cradle Solar's receipt of Notice from County of intention to terminate.

ARTICLE 9.
Assignment

9.1 Cradle Solar may assign this Agreement to a new owner or lessee of the Project upon the approval by resolution of the Commissioners Court of Brazoria County subject to the financial capacity of the assignee and provided that all conditions and obligations in this Agreement are guaranteed by the execution of a new contractual agreement with the County. No assignment or transfer shall be approved if the parties to the existing agreement, the new owner or new lessees are liable to County or any affected jurisdiction for outstanding taxes or other obligations. Approval shall not be unreasonably withheld.

9.2 Notwithstanding any other provision hereof, County agrees that Cradle Solar may, with the prior consent of the County not to be unreasonably withheld, implement financing structures, including construction lending or tax equity financing, and in any case, mortgage, pledge, or otherwise encumber its interest in the Project, its leasehold and easement interests in the Property, and/or its interest in this Agreement to any lender, any trustee or beneficiary under a deed of trust, any master or special servicer, or any tax equity investor (in any type of financing, a "Mortgagee") for the purpose of financing operations of the Project, constructing the Project, or acquiring additional equipment for the Project following any initial phase of construction. Any Mortgagee shall be entitled to cure or commence cure of any such defaults on behalf of Cradle Solar, and County shall accept such curative action by Mortgagee in the same manner as if the curative action was completed by Cradle Solar. This provision shall not be construed to limit or diminish the County's lien priority for taxes owed pursuant to the Texas Tax Code.

ARTICLE 10.
Miscellaneous Provisions

10.1 Complete Agreement/Amendment. This Agreement represents a complete agreement of the Parties and supersedes all prior written and oral matters related to this Agreement. This Agreement may be canceled, changed, modified or amended, in whole or in part, only by the written agreement by the Parties.

10.2 Mutual Assistance/Good Faith. The County and Cradle Solar agree to act in good faith and to do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement, and to aid and assist the Parties in carrying out such terms and provisions in order to put the Parties in the same condition contemplated by this Agreement.

10.3 Permitting. The Parties agree to cooperate with one another to facilitate the expeditious processing of permits, including zoning application(s), subdivision applications, plat approvals, development application(s), building permit applications, crossing agreements, and road use agreements and permissions required for the Project and other development on the Property, if any.

10.4 Representations and Warranties. The Parties represent and warrant to one another that this Agreement is within their authority, and that they are duly authorized and empowered to enter into this Agreement, unless otherwise ordered by a court of competent jurisdiction.

10.5 Force Majeure. All obligations of Cradle Solar and County (excluding monetary obligations) shall be subject to events of “Force Majeure” which shall mean any contingency or cause beyond the reasonable control of a party, as applicable, including, without limitations, acts of God or the public enemy, war, riot, civil commotion, insurrection, adverse weather, government or de facto governmental action or inaction (unless caused by negligence or omissions of such party), fires, explosions, floods, strikes, slowdowns or work stoppages, or shortage of materials and labor.

10.6 Binding Effect. This Agreement will be binding on and inure to the benefit of the Parties and their respective successors and assigns.

10.7 Termination. If Cradle Solar elects not to proceed with the development of the Project as contemplated by this Agreement, Cradle Solar may notify the County in writing, and this Agreement and the obligations of all Parties will be deemed terminated and of no further force or effect as of the date of such notice, except those that expressly survive the termination hereof, if any.

10.8 Notice. Any notice or other communication (“Notice”) given under this Agreement must be in writing, and may be given: (i) by depositing the Notice in the United States Mail, postage paid, certified, and addressed to the Party to be notified with return receipt requested; (ii) by personal delivery of the Notice to the Party, or an agent of the Party; or (iii) by confirmed facsimile, provided that a copy of the Notice is also given in one of the manners specified in (i) or (ii). Notice deposited in the mail in the manner specified will be effective when deposited with the United States Postal Service. Notice given in any other manner will be effective only if and when received by the Party to be notified. For the purposes of Notice, the addresses of the Parties will, until changed as provided below, be as follows:

Cradle Solar:

Cradle Solar, LLC

Attn: _____

6688 N. Central Expressway
Suite 500
Dallas, Texas 75206

County:

L. M. “Matt” Sebesta, Jr.

County Judge

111 E. Locust, Suite 100

Angleton, Texas 77515

With a copy to:

Mary Shine
Assistant District Attorney
111 E. Locust, Suite 408A
Angleton, Texas 77515

Any Party may designate a different address or additional notice party (such as a lender or financing party) at any time by giving Notice to the other Party.

10.9 Interpretation. In the event of any dispute regarding the interpretation of this Agreement, this Agreement will be interpreted fairly and reasonably and neither more strongly for nor against any Party based on draftsmanship.

10.10 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship between the parties. Neither the County nor its respective past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Property or the design, construction or operation of any portion of the Property.

10.11 Applicable Law. This Agreement is made, and will be construed and interpreted, under the laws of the State of Texas and venue will lie in Brazoria County, Texas. No Party to this Agreement waives or relinquishes any immunity or defense on behalf of itself, its officers, employees, agents or representatives as a result of the approval or execution of this Agreement, except as otherwise expressly set forth herein.

10.12 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the Parties that the remainder of this Agreement not be affected and it is also the intention of the Parties that, in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

10.13 Paragraph Headings. The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the paragraphs.

10.14 No Third Party Beneficiaries. This Agreement is not intended to, nor shall it be interpreted to, confer any rights, privileges or causes of action upon any third party.


10.15 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. A facsimile signature will be deemed to be an original signature for all purposes.

10.16 Legal Action. In the event that a Party initiates a cause of action in court, the prevailing party or parties shall be entitled to reasonable and necessary attorney's fees and costs of court.

[Signature Page Follows]

EXECUTED this the 27th day of September, 2022.

Cradle Solar, LLC
a Delaware Limited Liability Company

By: 
Name: Omar Aboudaher
Title: Authorized Signatory

Date: 9/13/2022

BRAZORIA COUNTY, TEXAS,
a political subdivision

By: 
L. M. "Matt" Sebesta, Jr.
County Judge

Date: 9-27-22

Exhibit "A" - Description of Property

NFP Brazoria Solar, LP is proposed to be located on the following parcels:

Parcel ID	Owner	Facility Address	Legal Description
151278	Founders Way LP	County Road 618 TX 77583	A0024 S F AUSTIN TRACT 29-29A-30R-PT TR 30 ACRES 1550.32
556728	Founders Way LP	N/A	A0024 S F AUSTIN TRACT 30 (PT) ACRES 77.59
166784	Founders Way LP	County Road 46	A0249 H T & B R R TRACT 2-3 ACRES 280.54
151274	Founders Way LP	County Road 48- SH 288 Off NAR	A0024 S F Austin Tract 29r (canal) Acres 9.81

Exhibit “B” – Depiction of the Project Boundaries Subject to Screening Requirements

