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STATE OF FLORIDA)
)
COUNTY OF INDIAN RIVER)

THIS FIRST AMENDED AND RESTATED SITE ACCESS AGREEMENT (“Access Agreement”) is made effective as of the ____ day of _____, 2023 (the “Effective Date”), by and between INDIAN RIVER SUSTAINABILITY CENTER, LLC (“Operator”), and INDIAN RIVER COUNTY SOLID WASTE DISPOSAL DISTRICT, a special dependent district of Indian River County, Florida (“District”). Operator and District are referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, Operator and District entered into that certain Wastewater Treatment Agreement, dated as of July 13, 2021 (as such may be further amended or assigned from time-to-time, collectively, the “Treatment Agreement”), pursuant to which Operator is authorized to install, operate, maintain, repair, replace and remove a 30,000 gallons-per-day wastewater evaporation plant featuring a Type 3 LM-HT® Heartland Concentrator™ System (collectively, the “Project”) located on certain real property, improvements and appurtenances as more particularly described on Exhibit “A” attached hereto and by reference incorporated herein (the “Premises”).

WHEREAS, pursuant to the terms of the Treatment Agreement, the Operator will process (by evaporation) the District’s wastewater at the Project for the term of the Treatment Agreement, provided that the District provides sufficient quantities of wastewater and other required inputs as required in the Treatment Agreement, which items include, without limitation, access to the Premises.

WHEREAS, District and Operator entered into a Site Access Agreement dated June 7, 2022 (the “Original Agreement”), whereby District granted access to the Premises to Operator in order to allow Operator to perform its duties and obligations under the Treatment Agreement.

WHEREAS, the District and Operator desire to replace the Original Agreement with this Access Agreement, in order to update the boundaries of the Premise.

NOW, THEREFORE, in consideration of good and valuable considerations, including, without limitation, and where applicable, each Party's respective duties and obligations under the Treatment Agreement, the Parties agree as follows:

1. Grant and Term. From and after the Effective Date, and continuing until the earlier of the termination of the Treatment Agreement but not later than twenty (20) years from the Commercial Operation Date of the Project as defined in the Treatment Agreement, District grants to Operator the right to access and to conduct all activities necessary to perform its obligations and to enjoy any rights it may have under the Treatment Agreement, including but not limited to the operation, maintenance, service, repair and removal of the Project in accordance with the terms and provisions of the Treatment Agreement, including, without limitation, access from 6:00AM to 6:00PM daily and off-hours with adherence to the District's site access protocols.

2. Consideration. In consideration of the right to access and use the Premises, Operator shall pay to the District the sum of \$1.00.

3. Indemnification. In addition to any other obligations that Operator has under the Treatment Agreement, Operator hereby agrees to protect, indemnify, defend and hold harmless District, along with its employees, tenants, invitees, contractors, lenders and agents from any and all claims, losses, damages, expenses, liabilities, demands and causes of action arising from, caused by, related to or involving (i) the entry onto or use of the Premises by Operator, or by the Operator's contractors, agents and/or consultants ("Operator's Consultants"), including, but not limited to, performance of construction or maintenance work relating to the Project, or (ii) any acts, omissions or negligence of Operator or Operator's Consultants.

4. No Modification. Nothing herein shall be deemed to modify or amend the terms and provisions of the Treatment Agreement or limit any party's duties, obligations, rights and interests thereunder.

5. Assignment. The District shall not assign any of its rights or obligations hereunder without the prior written consent of the Operator. The Operator may assign (including any collateral assignment) any of its rights and obligations hereunder to any lender providing financing for the benefit of the Operator.

6. Severability. If any provision of this Access Agreement is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Access Agreement shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provision with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provision. The invalidity of a provision of this Access Agreement in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

7. Counterparts. This Access Agreement may be executed by the Parties and transmitted electronically or by facsimile in as many counterparts as the Parties may

deem necessary and convenient, and all such counterparts taken together shall constitute but one and the same instrument.

8. Entire Agreement. This Access Agreement contains the entire understanding and agreement of the Parties with respect to its subject matter, and supersedes any prior understandings or agreements, whether written, oral or otherwise.

9. Governing Law. This Access Agreement shall be governed by the laws of the State of Florida, without regard to the conflicts of law principles that would result in the application of any law other than the law of the State of Florida. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN FLORIDA WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS ACCESS AGREEMENT. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

[SEPARATE SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, the Parties have caused this instrument to be executed as of the day and year first above written.

ATTEST: Jeffrey R. Smith, Clerk

**INDIAN RIVER COUNTY
SOLID WASTE DISPOSAL**

DISTRICT

By: _____
Deputy Clerk

By: _____
Joseph H. Earman, Chairman

District Approved: _____

APPROVED:

By: _____
Michael C. Zito
Interim County Administrator

**APPROVED AS TO LEGAL
FORM AND SUFFICIENCY:**

By: _____
Dylan Reingold
County Attorney

CENTER, LLC

INDIAN RIVER SUSTAINABILITY

WITNESSES:

By: Heartland Water Technology, Inc.,
its Managing Member

Name: Susan C. Portin

Title: EVP, Business and Legal Affairs

Date: _____

APPROVED:

By: _____
Name: Alain Castro
Title: Managing Partner, Proximo Energy

Date: _____

Exhibit "A"

The "Premises"