

SOLAR ARRAY RESEARCH USE AGREEMENT

For Photovoltaic/Thermal Cogeneration Equipment Loma Verde Aquatic Center

THIS SOLAR ARRAY RESEARCH USE AGREEMENT (“Agreement”) is made and entered into by and between CITY OF CHULA VISTA, a chartered municipal corporation (“City”) and ICARUS RT, INC. (“Icarus”). City and Icarus may be hereinafter referred to individually as a “Party” or collectively as the “Parties”.

Recitals

- A. The California Energy Commission (“CEC”) provides grant-funding opportunities to start-up companies that deliver the most promising and innovative clean energy technologies through its Bringing Rapid Innovation Development to Green Energy (“BRIDGE”) program.
- B. Icarus has developed an innovative technology that utilizes the heat generated by a solar array to heat a swimming pool, as opposed to using a separate electric heater, thus more efficiently using energy generated through the use of solar power.
- C. With cooperation from the City, Icarus identified the Loma Verde Aquatic Center, which is located at 1420 Loma Lane, Chula Vista, CA 91911 (the “Premises”) and is owned by the City, as an eligible site to test its innovative technology and applied for funding through the BRIDGE program.
- D. CEC selected Icarus for funding through the BRIDGE program and awarded CEC contract EPC-21-016 to design and install a 280-kW commercial pilot Photovoltaic (PV) Array including Icarus Quartet Hybrid PV/Thermal Cogeneration project (the “PV/T System”) at the Loma Verde Aquatic Center.
- E. Icarus also plans to install up to eight (8) Level II EV charging stations, subject to measurements of the amount and value of boosted energy production from the PV/T system toward daytime EV charging, the cost to procure and install, and other applicable factors.
- F. The City and Icarus desire to enter this Agreement in order to enable Icarus to install the PV/T System at the Loma Verde Aquatic Center in accordance with the terms and conditions stated herein.

NOW, THEREFORE, intending to be legally bound, the Parties agree as follows:

1. **Representatives.** For purposes of this Agreement, the Parties shall give direction through their respective duly authorized representatives. City representatives will provide reasonably

timely feedback and coordination to Icarus representatives. Icarus shall provide a direct contact for any contractors performing work on its behalf. The Parties designate the following as their representatives:

City: _____, _____

Icarus: Mark Anderson, CEO

2. **Installation of PV/T System.** The Parties agree that Icarus shall cause the installation of a PV/T system at the Loma Verde Recreation Center in accordance with the awarded BRIDGE program grant. The PV/T System will consist of an array of approximately 880 (depending on final size of the PV array and of the PV panels determined by Icarus to be the best selection in procurement phase) photovoltaic solar panels measuring approximately 39” x 78”, using a total space of approximately 18, 590 square feet. [Note: Fewer larger power capacity panels may be installed, but approximately the same total area may be required.] . Installation shall include all work necessary to clear the site and to interconnect the PV/T System to the Premises’ electrical system and all work to connect the thermal cogeneration to be utilized for heating of the pool system.
 - 2.1. **Contractor.** To complete the installation, Icarus may hire duly qualified contractors, including subcontractors. City acknowledges that Icarus identified Black and Veatch as its primary contractor in its application for the BRIDGE grant and City accepts that Black and Veatch may serve as the primary contractor on site. All contractors performing work on the Premises shall have appropriate licenses, and if required by law, shall be registered with the Department of Industrial Relations to perform public works.
 - 2.2. **Right of Entry.** City hereby grants to Icarus a right of entry to enter on to the Premises at the Loma Verde Aquatic Center for all purposes set forth in this Agreement. Icarus may allow its contractors to enter the Premises pursuant to this right of entry. Icarus may store equipment and materials on the Premises during the installation phase, *provided that* City shall not be responsible for any of Icarus’s materials or Icarus’s contractors’ materials. Icarus shall seek permission from City as to the specific locations on the Premises where the materials may be stored, and City shall provide adequate space to meet Icarus’s reasonable requests. Icarus shall take appropriate measures to secure any materials or other items left at the Premises. During the installation of the project, during testing and commission, and for up to two years following commissioning, Icarus may access the site to showcase the project which will likely include bringing visitors from the California Energy Commission and others such as potential project developers. Icarus shall provide advance notice to City and shall be responsible for any visitors brought on site.”
 - 2.3. **Location of Installation.** Icarus shall confirm the specific location of all components of the PV/T System with the City.
 - 2.4. **Timing of Installation.** Icarus may begin the installation once Icarus has met all conditions precedent of this Agreement and on or after the City’s notice to Icarus that

Icarus may proceed with installation. Icarus shall be responsible for securing all permits, including but not limited to City permits, which it shall obtain prior to performing installation work. The Parties anticipate that installation will begin in January 2024 but will cooperate in good faith in determining the timing of the installation; in particular, the Parties acknowledge that site constraints, unforeseen circumstances, and inclement weather may affect the timing of the installation. If Icarus has not completed the installation work by June 30, 2025, the project will be deemed abandoned unless the Parties agree in writing to an extension of time.

- 2.5. Site Coordination. Icarus acknowledges that the City may have other contractors performing work at the Premises at the same time. Icarus shall work with the City's contractors to ensure that Icarus or Icarus's contractors will not interfere with any work being performed for City. City shall reasonably assist Icarus in all coordination efforts.
- 2.6. Repair/Restoration. To the extent that Icarus or its contractors damage any portion of the Premises, Icarus shall promptly restore the Premises to their pre-existing condition. For avoidance of doubt, installation of the PV/T System itself does not constitute damage to the Premises.
- 2.7. City Commitment. City will support the installation of the PV/T System by providing project analysis and inspection services. Icarus will not be responsible for the costs of City permits and inspections. City will make all good faith efforts to otherwise support Icarus and enable completion and implementation of the Project. For avoidance of doubt, this section is not intended to impair any authority the City has in its governmental capacity.
3. **Installation of EV Charging Stations**. In addition to the PV/T System, Icarus intends, but is not obligated, to install up to eight (8) Level II EV charging stations on site. In determining the ultimate number of EV charging stations, if any, Icarus will consider the performance of the PV/T System, cost to procure and install, and other applicable factors. Icarus shall, in a reasonably timely manner, provide City with all information related to a proposed installation of EV charging stations, including but not limited to the proposed number, location, anticipated performance, timing of installations, and required steps to implementation (including interconnection, agreements with service providers, etc.). Icarus shall coordinate with City on all phases of EV charger station installation, and City may require a future agreement or memorandum of understanding between the Parties delineating the terms of the EV charging station installation. This agreement does not obligate City to allow the installation of EV charging stations.
4. **Conveyance and Acceptance of PV/T System**. Once site preparation work begins, Icarus shall diligently pursue completion of the installation of the PV/T System and shall not remove the PV/T System or abandon the project without City's written consent. Following installation, Icarus shall perform all tasks necessary to commission the PV/T System and ensure that it is operational and functional. Within thirty (30) days following installation and commissioning of the PV/T System, the PV/T System and all components thereof shall

become the property of City. Icarus shall deliver the PV/T System with a clean title to all components, free and clear of liens and encumbrances, and shall deliver and assign to City all manufacturer's warranties. Icarus shall prepare and deliver as-built drawings of the PV/T System. Icarus shall execute and deliver any documents necessary to effectuate the terms of this Section.

- 4.1. **Rejection.** Within thirty (30) days of Icarus notifying City that the installation and commissioning is complete, City shall accept the PV/T System. City may refuse acceptance of the PV/T System if: (1) installation of the PV/T System was defective or improperly completed, or (2) the PV/T System does not functionally provide solar energy for use at the Premises or for interconnection to a public utility system. City acknowledges that the purpose of the BRIDGE grant is to test innovative technologies, and thus City will not reject the improvements if they simply do not perform to the hoped-for standard. In the event City rejects the PV/T System, Icarus shall either: (1) repair any defects resulting in non-acceptance within thirty (30) days, or (2) remove the PV/T System at Icarus's own cost within 30 days and restore the Premises to their pre-existing condition.
5. **On-Going Monitoring.** Following conveyance of the PV/T System to the City, Icarus shall continue test the monitor/control system, and all sub-systems, and shall use the solar site to gather data and categorize performance of the PV/T system. City shall continue to provide access to the PV/T System for Icarus to continue to test and gather data for a reasonable period of time to be determined by the Parties in order to enable Icarus to meet all requirements and goals of the BRIDGE grant. The Parties agree that Icarus may perform regular monitoring of the PV/T System at least for one year following conveyance to the City and may continue monitoring the PV/T System at least until June 30, 2026.
6. **Technology.** Icarus represents and warrants that it owns, or has all necessary rights to use, all intellectual property related to the PV/T System.
7. **Obligations of the Parties.**
 - 7.1. **Project Costs.** Accept as expressly stated to the contrary, each Party will pay its own fees, costs and expenses, and those of its agents, independent contractors, and consultants, in connection with this Agreement. For avoidance of doubt, Icarus shall pay all costs related to acquiring, installing, commissioning, testing and collecting data from the PV/T System. City shall be responsible for all ongoing maintenance and care following City's acceptance of the PV/T System.
 - 7.2. **Standard of Care.** Icarus expressly warrants and agrees that its performance, and the performance of its contractors, under this Agreement shall be performed in accordance with the professional standard of care exercised by members of the profession currently practicing under similar conditions and in similar locations.
 - 7.3. **Indemnification.** City shall indemnify, defend, and hold harmless Icarus, its officers, agents and employees, from and against any claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this

Agreement including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of City, its officers, agents, partners or employees.

Icarus shall indemnify, defend and hold harmless City, its officers, agents, partners and employees, from and against any Claims, arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons but only in proportion to and to the extent that such Claims arise from the negligent or intentional acts or omissions of Icarus, its officers, contractors, agents, or employees.

The parties agree that the indemnity obligations under this Section shall survive expiration and termination of this Agreement.

- 7.4. Insurance. Icarus, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

General Liability Self-Insurance Program (contractual liability included) with minimum limits as follows:

- 1) Each Occurrence \$ 1,000,000
- 2) Products/Completed Operations Aggregate \$2,000,000
- 3) Personal and Advertising Injury \$1,000,000
- 4) General Aggregate \$ 2,000,000

Business Automobile Liability Self-Insurance Program for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence.

Workers' Compensation as required under California State law.

The coverages required under this Section shall not limit the liability of Icarus.

The General Liability and Auto Liability coverages referred to under this Section shall include City as an additional insured. Prior to entering the Premises or performing any work on the Premises, Icarus shall furnish City with certificates of insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to City of any material modification, change or cancellation of the above insurance coverages. All insurance required by this Section shall be endorsed to include a waiver of subrogation against the City.

Icarus hereby waives any right of recovery against City as a result of loss or damage to the property of either Icarus or City when such loss or damage arises out of an Act of God or any of the property perils insurable under extended coverage, whether or not such peril has been insured, self-insured, or non-insured.

- 7.5. **Lien Free Condition.** Icarus shall not cause or permit any liens to be placed against the PV/T System or any components thereof, against the Premises or against City's other property as a result of Icarus's exercise of rights under this Agreement. In the event of the filing of any such liens, Icarus shall promptly cause such liens to be removed. To the extent required by Civil Code section 9550 et seq., Icarus shall procure a payment bond for work performed on City property.
- 7.6. **Grant Terms.** Icarus shall be the Party responsible for compliance with, and shall perform the project in accordance with, the BRIDGE program and CEC contract EPC-21-016.
- 7.7. **Prevailing Wages.** Icarus represents and warrants that it is familiar with Labor Code sections 1720 et seq., and 1770 et seq., and all regulations of the Department of Labor Relations related to such sections (the "Prevailing Wage Laws".) Icarus shall determine whether the Prevailing Wage Laws apply to any work under this Agreement, either as a condition of the BRIDGE program and CEC contract EPC-21-016 or otherwise under the law. To the extent applicable, Icarus shall ensure that it and all of its contractors fully comply with the Prevailing Wage Laws.
8. **Termination.** In the event that Icarus breaches any of its obligations under this Agreement, City may, but is not obligated to, send Icarus a written notice specifying the nature of such breach. Icarus shall have ten (10) days from the receipt of such notice to cure such breach. If more time is reasonably required for Icarus's performance, then Icarus shall commence performance within such ten (10) day period and, thereafter, diligently proceed to completion. If Icarus fails to cure or to commence cure within such ten (10) day period, then City shall have the right to terminate this Agreement immediately by serving Icarus with written notice of termination. City shall have all rights and remedies available under California law including, but not limited to, actions for damages and specific performance, for any breach of Icarus's obligations hereunder
- If Icarus fails to complete the installation prior to termination or by June 30, 2025, and City has not agreed to an extension of the completion time, then Icarus shall promptly remove any portion of the PV/T System that has been installed and shall return the Premises to their pre-existing condition within thirty (30) days. If Icarus fails to restore the Premises within this time, City may sell any part of the PV/T System that remains on site and use the proceeds to restore the Premises.
9. **Limitation on Liability.** Notwithstanding other provisions in this Agreement, neither Party shall be liable to the other Party for any damages for lost profits. This section shall survive termination of the Agreement.
10. **Marketing/Publicity.** Each Party may reference this project and the PV/T System in any marketing or promotional materials. Icarus shall not use City's seal, logo, trademarks or other intellectual property without City's express written consent.
11. **Miscellaneous.**

- 11.1. Integrated Agreement. This Agreement supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement. No alteration or variation of this Agreement shall be valid unless made in writing and signed by City and Icarus.

- 11.2. Independent Contractor Status. The Parties are independent contractors. In the performance of this agreement the Parties will not be agents or employees of the other Party.

- 11.3. Governing Law. This agreement shall be performed in Chula Vista, California, and construed pursuant to California law.

- 11.4. Compliance with Laws. In its performance under this Agreement, Icarus shall comply with any and all applicable federal, state and local laws, including the Chula Vista Municipal Code.

- 11.5. No Waiver. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

- 11.6. Counterparts. This Agreement may be executed in multiple counterparts, which together shall constitute a single executed agreement.

The undersigned are duly authorized to bind their respective agencies.

AGREED:

CITY OF CHULA VISTA

ICARUS RT, INC.

By: _____
 Maria V. Kachadoorian
 City Manager

By: _____
 Mark G. Anderson, PE
 Founder & CEO

Date: _____

Date: _____

By: _____

Date: _____