

CONTRACT FOR PASSENGER INFORMATION SYSTEMS (AVL)

This contract is made and entered into as of the ____ day of _____, 2013, by the City of Durham (“City”) and Sundance Power Systems, Inc (“Contractor”), a corporation organized and existing under the laws of the State of North Carolina, whose principal office and place of business is located at 11 Salem Hill Road, Weaverville, NC 28787

Sec. 1. Background and Purpose. The purpose of this contract is for the procurement and installation of up to nine (9) Solar-Power Energy kits to power 9 Passenger Information Systems (AVL) signs at nine select bus stop locations throughout the City of Durham.

Sec. 2. Services and Scope to be Performed.

The purpose of this contract is for the procurement and installation of up to nine (9) Solar-Power Energy kits to power 9 Passenger Information Systems (AVL) signs at nine select bus stop locations throughout the City of Durham. All work and materials shall be in accordance with the Attachment A – Special Provisions. The contractor is expected to work cooperatively with Cleaver Devices Inc, formerly called Digital Recorders Inc. the vendor of the AVL signs for the successful installation and functioning of the project. In this contract, “Work” means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor’s duties to the City that arise out of this contract.

Sec. 3. Complete Work without Extra Cost. Except to the extent otherwise specifically stated in this contract, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

Sec. 4. Compensation. The City shall pay the Contractor for the Work as follows: The total funds available for all the services to be provided under the terms of this contract shall not exceed \$165,735. Payment will not be made for services performed or expenses incurred prior to the date of contract and service acceptance. The City shall not be obligated to pay the Contractor any payments, fees, expenses, or compensation other than those authorized by this section.

Sec. 5. Contractor’s Billings to City. The Contractor shall send invoices to the City on a monthly basis for the amounts to be paid pursuant to this contract. Each invoice shall document, to the reasonable satisfaction of the City: such information as may be reasonably requested by the City. Within twenty days after the City receives an invoice, the City shall send the Contractor a check in payment for all undisputed amounts contained in the invoice.

Sec. 6. Insurance.

Contractor shall purchase and maintain insurance coverage for no less than the following: Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Commercial General Liability, covering:

- Premises/operations
- Products/completed operations (two years minimum, from project completion)
- Broad form property damage
- Contractual liability
- Independent contractors, if any are used in the performance of this contract
- City of Durham must be named additional insured, and an original of the endorsement to effect the coverage must be attached to the certificate (if by blanket endorsement, then agent may so indicate in the GL section of the certificate, in lieu of an original endorsement)
- Combined single limit not less than \$1,000,000 per occurrence, with an annual aggregate on not less than \$2,000,000.

Workers' Compensation Insurance, covering:

- Statutory benefits;
- Covering employees; covering owners partners, officers, and relatives (who work on this contract) (this must be stated on the certificate)
- Employers' liability, \$1,000,000
- Waiver of subrogation in favor of the City of Durham

Insurance shall be provided by:

- Companies authorized to do business in the State of North Carolina

Insurance shall be evidenced by a certificate:

- Providing notice to the City of not less than 30 days prior to cancellation or reduction of coverage
- Certificates shall be addressed to:
City of Durham, North Carolina
Attention: Finance Director
101 City Hall Plaza
Durham, NC 27701
- The insurance certificate and the additional insured endorsement must be originals and must be approved by the City's Finance Director before Contractor can begin any work under this contract.
- The contractor shall indemnify and hold harmless the City of Durham from and against any losses, damages or claims in connection with the performance of these tasks.

Sec. 7. Performance of Work by City. Continuity of the work is based on satisfaction of performance. If the Contractor fails to perform the Work in accordance with the schedule referred to in section 2 above, the City may, in its discretion, in order to bring the project closer to the schedule, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor notice of its intention. The Contractor shall reimburse the City for additional costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

Sec. 8. Exhibits. The following exhibit is made a part of this contract:

Exhibit A. "Solar Panel Installation Detail"

In case of conflict between an exhibit and the text of this contract excluding the exhibit, the text of this contract shall control.

Sec. 9. Termination for Convenience ("TFC"). (a) *Procedure*. Without limiting any party's right to terminate for breach, the City may, without cause, and in its discretion, terminate this contract for convenience by giving the Contractor written notice that refers to this section. TFC shall be effective at the time indicated in the notice. The City Manager may terminate under this section without City Council action. (b) *Obligations*. Upon TFC, all obligations that are still executory on both sides are discharged except that any right based on prior breach or performance survives, and the indemnification provisions and the section of this contract titled Trade Secrets and Confidentiality shall remain in force. At the time of TFC or as soon afterwards as is practical, the Contractor shall give the City all Work, including partly completed Work. In case of TFC, the Contractor shall follow the City's instructions as to which subcontracts to terminate. (c) *Payment*. The City shall pay the Contractor an equitable amount

for the costs and charges that accrue because of the City's decisions with respect to the subcontracts, but excluding profit for the Contractor. Within 20 days after TFC, the City shall pay the Contractor a one hundred dollar TFC fee and for all Work performed except to the extent previously paid for. Work shall be paid for in accordance with the method (unit prices, hourly fees, etc.) to be used for payment had the Work been completed except to the extent it would be inequitable to either party, and if Work was to be paid for on a lump-sum basis, the City shall pay the part of the lump sum that reflects the percentage of completion attained for that Work. The Contractor shall not be entitled to any payment except as stated in this section because of TFC, whether on the basis of overhead, profit, damages, other economic loss, or otherwise.

Sec. 10. Notice. (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

To the City:

Pierre Osei-Owusu Sr. Transportation Planner

City of Durham

1907 Fay Street,

Durham, NC 27704

The fax number is (919) 560-1534

To the Contractor: Sundance Power Systems Inc

Evan Becka,

11 Salem Hill Road

Weaverville, NC 28787

The phone number is (828) 645-2080

(b) Change of Address. Date Notice Deemed Given. A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by United States mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the United States Postal Service or upon actual delivery, whichever first occurs.

Sec. 11. Trade Secrets and Confidentiality. The request for proposals section titled "Trade Secrets and Confidentiality" shall apply to any Trade Secrets disclosed to the City during the process leading to the parties' entering into this Contract (including all of the Contractor's responses to the RFP). This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract. The word "Proposer" used in that section shall mean the "Contractor."

Sec. 12. Indemnification.

(a) To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of this contract as a result of acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. In performing its duties under this subsection "a," the Contractor shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to City.

(b) Definitions. As used in subsections "a" above and "c" below -- "Charges" means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, and expenses (included without limitation within "Charges" are (1) interest and reasonable attorneys' fees assessed as part of any such item, and (2) amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental

laws, regulations, ordinances, rules, or orders -- including but not limited to any such alleged violation that arises out of the handling, transportation, deposit, or delivery of the items that are the subject of this contract). "Indemnitees" means City and its officers, officials, independent contractors, agents, and employees, excluding the Contractor.

(c) Other Provisions Separate. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. (d) Survival. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contractor under this contract.

(e) Limitations of the Contractor's Obligation. If this section is in, or is in connection with, a contract relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, then subsection "a" above shall not require the Contractor to indemnify or hold harmless Indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of Indemnitees.

Sec. 13. Miscellaneous

(a) Choice of Law and Forum. This contract shall be deemed made in Durham County, North Carolina. This contract shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the North Carolina General Court of Justice, in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out of this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City's written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out of this contract. The City Manager may consent to an assignment without action by the City Council. Unless the City otherwise agrees in writing, the Contractor and all assignees shall be subject to all of the City's defenses and shall be liable for all of the Contractor's duties that arise out of this contract and all of the City's claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows: (1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The

Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. Such action shall include but not be limited to the following: employment, upgrading, demotion, transfer, recruitment or advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these EEO provisions. (2) The Contractor shall in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. (3) The Contractor shall send a copy of the EEO provisions to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding. (4) In the event of the Contractor's noncompliance with these EEO provisions, the City may cancel, terminate, or suspend this contract, in whole or in part, and the City may declare the Contractor ineligible for further City contracts. (5) Unless exempted by the City Council of the City of Durham, the Contractor shall include these EEO provisions in every purchase order for goods to be used in performing this contract and in every subcontract related to this contract so that these EEO provisions will be binding upon such subcontractors and vendors.

(i) SDBE. The Contractor shall comply with all applicable provisions of Article III of Chapter 18 of the Durham City Code (Equal Business Opportunities Ordinance), as amended from time to time. The failure of the Contractor to comply with that article shall be a material breach of contract which may result in the rescission or termination of this contract and/or other appropriate remedies in accordance with the provisions of that chapter, this contract, and State law. The Participation Plan submitted in accordance with that article is binding on the Contractor. Section 18-59(f) of that chapter provides, in part, "If the City Manager determines that the Contractor has failed to comply with the provisions of the Contract, the City Manager shall notify the Contractor in writing of the deficiencies. The Contractor shall have 14 days, or such time as specified in the Contract, to cure the deficiencies or establish that there are no deficiencies." It is stipulated and agreed that those two quoted sentences apply only to the Contractor's alleged violations of its obligations under Article III of Chapter 18 and not to the Contractor's alleged violations of other obligations.

(j) Prompt Payment to Subcontractors. Within 7 days of receipt by the Contractor of each payment from the City under this contract, the Contractor shall pay all subcontractors (which term includes subconsultants and suppliers) based on work completed or service provided under the subcontract. Should any payment to the subcontractor be delayed by more than 7 days after receipt of payment by the Contractor from the City under this contract, the Contractor shall pay the subcontractor interest, beginning on the 8th day, at the rate of 1% per month or fraction thereof on such unpaid balance as may be due. By appropriate litigation, Subcontractors shall have the right to enforce this subsection (a) directly against the Contractor, but not against the City of Durham. If the City's Project Manager determines that it is appropriate to enforce this subsection (a), the City of Durham may withhold the sums estimated by the Project Manager to be sufficient to pay this interest from progress or final payments to the Contractor. (b) Nothing in this section shall prevent the Contractor at the time of invoicing, application, and certification to the City from withholding invoicing, application, and certification to the City for payment to the subcontractor for unsatisfactory job progress; defective goods, services, or construction not remedied; disputed work; third-party claims filed or reasonable evidence that such a claim will be filed; failure of the subcontractor to make timely payments for labor, equipment, and materials; damage to the Contractor or another subcontractor; reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainage not to exceed 10%. (c) The City's Project Manager may require, as a

prerequisite to making progress or final payments, that the Contractor provide statements from any subcontractors designated by the Project Manager regarding the status of their accounts with the Contractor. The statements shall be in such format as the Project Manager reasonably requires, including notarization if so specified.

(k) No Third Party Rights Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(l) Principles of Interpretation and Definitions. In this contract, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. References to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The words "include," "including," etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this contract. (3) "Contract" and "Agreement," whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this contract. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "shall" is mandatory. (8) The word "day" means calendar day.

(m) Modifications. Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract.

IN WITNESS WHEREOF, the City and the Contractor have caused this contract to be executed under seal themselves or by their respective duly authorized agents or officers.

ATTEST:

CITY OF DURHAM

By: _____

Pre-audit certificate _____

By SUNDANCE POWER SYSTEMS, INC.

ATTEST:

Secretary
(SEAL)

By: _____
President

State of _____

ACKNOWLEDGMENT BY
SUNDANCE POWER SYSTEMS, INC.

County of _____

I, a notary public in and for the aforesaid county and state, certify that

_____ personally appeared
before me this day and stated that he or she is _____ Secretary of Sundance Power
Systems Inc, and that by authority duly given and as the act of the corporation, the foregoing
contract or agreement with the City of Durham was signed in its name by its _____
President, whose name is _____, sealed with its
corporate seal, and attested by him/herself as its said Secretary or Assistant Secretary. This the
_____ day of _____, 20_____.

My commission expires:

Notary Public

Attachment A- Special Provisions:

SIGN ENCLOSURES:

All Signs are enclosed in a manner such as to inhibit entry of dirt, dust, water and other contaminants during normal operation or cleaning. Access panels and display boards are mounted for ease of maintenance/replacement.

ELECTRONIC SYSTEM REQUIREMENTS:

All electronic circuit boards used in the Sign System are conformal coated to meet the requirements of military specification MIL-I-46058C. All Sign System components are certified to have been subjected to a "burn-in" test of a minimum of twelve (12) hours operation in a temperature of 150 degrees F. prior to final inspection.

READABILITY:

The Sign message is readable by a person with 20/20 vision, from a distance of not less than 110 feet. The Side Sign has a viewing cone of equal readability at 65 degrees on either side of a line perpendicular to the center of the mean plane of the display. The intensity of the illumination of the display pixels appears, to the naked eye, to be approximately uniform throughout the full viewing cone. The solar kit be used must meet all applicable EPA emission standards and shall have a complete three (3) year warranty.

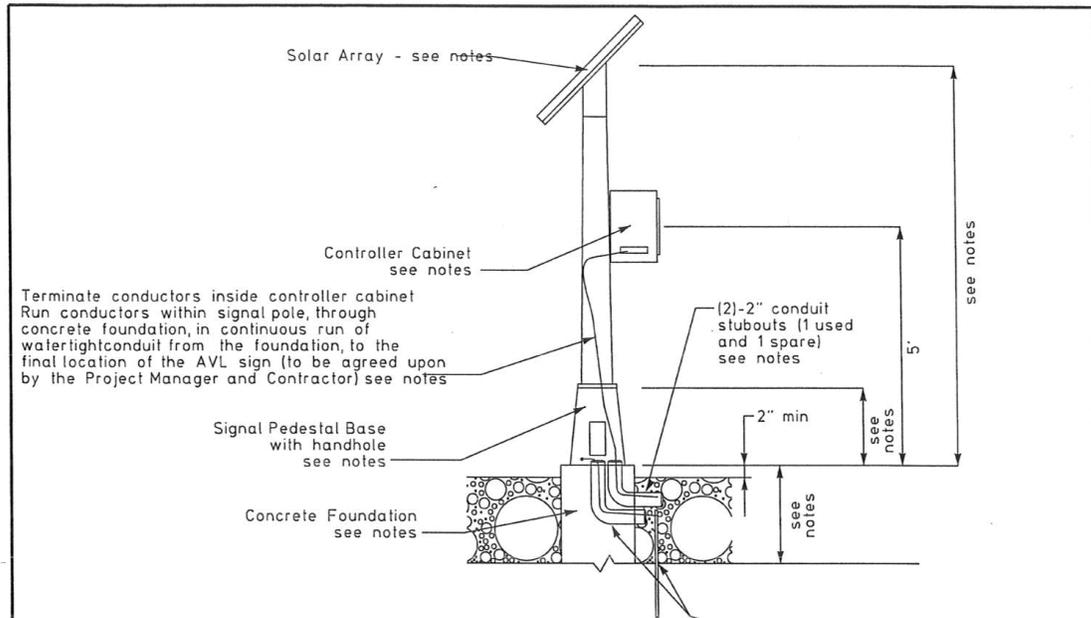
SOLAR POWER KIT:

The Contractor's Solar Power kit shall be furnished and constructed as follows:

- a. Height of pole to be determined by field conditions, but not to exceed 16'
- b. Signal pole shall be cylindrical aluminum with a diameter of 4"
- c. Transformer base shall match 4" pole diameter
- d. Reinforced concrete foundation size varies with pole height (Minimum foundation 24"dia. x40"D with applicable reinforcement according to current NCDOT standards)
- e. The pole foundation must be structurally approved prior to installation
- f. Base mounting bolts into cylindrical foundation shall be 14"x3/4" threaded elbow bolts
- g. Conduit for grounding wire shall be installed within concrete foundation
- h. Solar array mounting dependent upon site conditions

- i. Mount solar array to provide adequate sun exposure per manufacturer's recommendations
- j. All wires to run in conduit from the AVL sign, to a junction box, through the foundation, transformer base, and inside the aluminum pedestal
- k. Wiring shall meet all NEC standards and local codes
- l. All installations must be inspected and approved by local authorities
- m. All attachments made to aluminum pole shall be banded or bolted as approved by Project Manager
- n. Prior to ordering or installing equipment the contractor shall submit material cut sheets to the Project manager for approval to ensure all equipment is compliant with the project specifications
- o. Control cabinet shall be heavy duty aluminum keyed with a number 2 lock, gel cell Batteries, Charge control, Digital timer
- p. All Fixtures to connect and power a 14" x 72" two- line AVL Shelter Sign as noted in these specifications
- q. The system shall not exceed three Solar Panels
- r. Solar array shall be mounted per manufacturer's recommendations
- s. The NEN1A style cabinet shall be rack mount style and equipped with disconnect switch
- t. The NEMA style cabinet shall be adequately sized to house the control equipment, wiring and batteries
- u. All hardware and mounting materials, required equipment, wiring and fixtures (etc.) for each system is to be supplied and installed at the expense of the Contractor
- v. All equipment will operate normally between -25 degrees Fahrenheit and +150 degrees Fahrenheit, and between 20 % and 95% humidity
- w. Quoted Price to include Delivery and installation of Solar Equipment
- x. Price to include a one year Maintenance/Service Agreement
- y. All other items necessary to provide a turn-key solar energy to power the outdoor signs to be supplied and constructed by the Contractor
- z. See attached detail drawing for additional installation information

Exhibit A – AVL Solar Panel Installation Detail



- NOTES:**
- a.Height of pole to be determined by field conditions, but not to exceed 16'
 - b.Signal pole shall be cylindrical aluminum with a diameter of 4"
 - c.Transformer base shall match 4" pole diameter
 - d.Reinforced concrete foundation size varies with pole height (Minimum foundation 24" dia. x 40"D with applicable reinforcement according to current NCDOT standards)
 - e.The pole foundation must be structurally approved prior to installation
 - f.Base mounting bolts into cylindrical foundation shall be 1/4"x3/4" threaded elbow bolts
 - g.Conduit for grounding wire shall be installed within concrete foundation
 - h.Solar array mounting dependent upon site conditions
 - i.Mount solar array to provide adequate sun exposure per manufacturer's recommendations
 - j.All wires to run in conduit from the AVL sign, to a junction box, through the foundation, transformer base, and inside the aluminum pedestal
 - k.Wiring shall meet all NEC standards and local codes
 - l.All installations must be inspected and approved by local authorities
 - m.All attachments made to aluminum pole shall be banded or bolted as approved by Project Manager
 - n.Prior to ordering or installing equipment the contractor shall submit material cutsheets to the Project manager for approval to ensure all equipment is compliant with the project specifications
 - o.Control cabinet shall be heavy duty aluminum keyed with a number 2 lock, gelcell Batteries, Charge control, Digital timer
 - p.All Fixtures to connect and power a 14" x 72" two-line AVL Shelter Sign as noted in these specifications
 - q.The system shall not exceed three Solar Panels
 - r.Solar array shall be mounted per manufacturer's recommendations
 - s.The NEMA style cabinet shall be rack mount style and equipped with disconnect switch
 - t.The NEMA style cabinet shall be adequately sized to house the control equipment, wiring and batteries
 - u.All hardware and mounting materials, required equipment, wiring and fixtures (etc.) for each system is to be supplied and installed at the expense of the Contractor
 - v.All equipment will operate normally between -25 degrees Fahrenheit and +150 degrees Fahrenheit, and between 20 % and 95% humidity
 - w.Quoted Price to include Delivery and Installation of Solar Equipment
 - x.Price to include a one year Maintenance/Service Agreement
 - y.All other items necessary to provide a turn-key solar energy to power the outdoor signs to be supplied and constructed by the Contractor

 <p>DURHAM 1869 CITY OF MEDICINE</p>	<p>DATE: 03/01/2013</p>	<p>CITY OF DURHAM AVL SOLAR PANEL INSTALLATION DETAIL CITY OF DURHAM, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION</p>	<p>SCALE: NONE</p>
	<p>REVISED: N/A</p>		<p>DETAIL NO: 11</p>