

**Solar Services Agreement**  
**between**  
**Lee's Summit Solar, LLC**  
**and**  
**The City of Lee's Summit, Missouri**

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**August 13, 2019**

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## Solar Services Agreement

This **Solar Services Agreement** dated this 13th day of August, 2019 (the “Agreement”), by and between Lee’s Summit Solar, LLC, a Missouri limited liability company, as the Services Provider (the “**Provider**”), and the City of Lee’s Summit, Missouri as the Services Recipient (the “**Recipient**”).

**WHEREAS**, the Recipient is the owner of the real property and improvements collectively identified as the Site described in each License Agreement executed pursuant to the terms of this Agreement; and

**WHEREAS**, Recipient desires to receive solar electric power from a Solar System; and

**WHEREAS**, Provider has significant experience in designing, acquiring, operating, and maintaining such Systems, and is willing to provide such a System for Recipient which will include the design, operation and maintenance of such System; and

**WHEREAS**, the parties further agree that Provider will remain the owner of the Solar System but Recipient will receive all electric power generated by the Solar System and will have total discretion as to how much of the power it uses and when it uses said power (so long as it does not jeopardize the ability of the System to earn federal solar tax credits), or whether it sells any excess power pursuant to a Net Metering Agreement, and that discretion to use power or not use power, shall have no impact on the amount of the Service Fees paid to Provider; and

**WHEREAS**, Recipient shall not resell any power generated by the System to any other user except its Local Utility pursuant to a Net Metering Agreement; and

**WHEREAS**, Provider and Recipient agree that the System will be designed and constructed so that Recipient is the sole and exclusive user of said power and that no other person or entity shall be entitled to access said power and will, in fact, be denied access to said power; and

**WHEREAS**, the parties agree that the System will be located exclusively on properties owned by Recipient; and

**WHEREAS**, the parties hereby agree that this Agreement shall be treated as a services contract for federal tax purposes pursuant to Section 7701(e) of the Internal Revenue Code and is not intended to be a lease under federal law.

**NOW, THEREFORE**, in consideration of the promises and the mutual benefits from the covenants hereinafter set forth, Provider and Recipient agree as follows:

### **Article I. Definitions**

#### **Section 1. Definitions.**

“Actual Production” means for any period, the actual net energy production measured in kWhac.

“Actual Annual Energy Production” (sometimes referred to as “Actual Annual Production”) means the actual net energy production measured in kWhac produced by the Solar System for a contract year during the term of this Agreement. Industry standards measure production in kWhac. If the System is taken out of service for any period of time for any reason at the request of Recipient, Production shall include the Production that would have occurred had the System not been taken out of service.

“Actual Energy Consumed” means that portion of the Actual Energy Produced which is used by Recipient as Recipient has complete discretion as to when and how much of the available solar energy it takes from the System so long as it does not request that the System be taken out of service in a manner which would endanger the ability of the project to earn federal solar tax credits and further provided that Recipient pays for all power and Services that could have been provided but for Recipient’s request that it not be.

“Calendar Year” means January 1 through December 31 of each year. The first calendar year shall be a “short” year starting with the Solar Operations date and running through December 31 of that year. It shall also be a “pro-rated” year for determining performance and compliance with the provisions of this contract which are based upon a calendar year.

“Delivery Point” means the delivery point of solar electricity produced by the Solar System within the Site’s electric System on Recipient’s side of the Site’s utility meter.

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

“Event of Default” has the meaning given to it in Sections 15 and 16.

“Fair Market Value” has the meaning given to it in Section 17.

“Force Majeure” has the meaning given to it in Section 24.

“Insolation” means the amount of kWhs per square meter falling on a particular location, as published by the National Renewable Energy Laboratory.

“Interconnection Agreement” means the Interconnection Agreement between the Recipient and its Local Utility.

“kWhac” means a kilowatt-hour of alternating current, electric energy.

“kWdc” means a kilowatt of direct current, electric energy. Industry standards measure System Size in DC.

“License Agreement” shall have the meaning set forth in the attached License Agreement.

“Local Utility” means KCP&L.

“Local Utility Solar Incentive” means the Solar Power Rebate program that is provided by KCP&L to Recipient pursuant to applications made by Provider on behalf of Recipient prior to and during the Term of this Agreement

“Local Utility Rebate Application” means the application required by the Local Utility to be filled out by Recipient in order to qualify for the Local Utility Solar Incentive.

“Net Metering” has the meaning provided in Section 386.890 of the Missouri Statutes as well as any other applicable state or federal statutes or rules or regulations, or any subsequent legislation concerning net metering.

“Net Metering Agreement” means the net metering agreement entered into between Recipient and KCP&L Greater Missouri Operations Company.

“Operations and Maintenance Provider” or “O&M Provider” means the Provider, or any subcontractor who has entered into a contract with Provider, to provide operation and maintenance of the System.

“Option to Purchase” means Recipient’s option to purchase the Solar System from Provider pursuant to the terms set forth in Section 17.

“Owner of Provider” means GC Solar MM, LLC.

“Permits” shall mean all governmental permits, licenses, certificates, approvals, variances and other required items necessary for the installation, operation and connection of the Solar System.

“Premises” means that portion of the rooftop of a building or other property located on the Site as depicted in the License Agreement, upon which Provider and its agents will have a license for purposes of locating, constructing, installing, accessing and maintaining the Solar System, the location and dimensions of which shall be subject to Recipient’s prior approval.

“Projected Annual Energy Production” (sometimes referred to as “Projected Annual Production” or “Projected Production”) means the amount of kWh set forth on the Summary Term Sheet and Exhibit B, which is Provider’s best estimate of the annual energy output to be produced by the Solar System at the Site.

“Property” means the Site, Premises and Access Property collectively.

“Performance as Warranted by Provider” has the meaning given to it in Section 12.

“Provider” has the meaning given to it on page 1 of this Agreement.

“PVSyst Report” means a photovoltaic system report setting forth projected production for a specific system at a specific location based on the design and construction of the system and the historic weather patterns.

“PVSyst Analysis Report” means a subsequent inspection and analysis of a system to determine the actual as opposed to projected performance of the system and the causes thereof.

“Replacement of Solar System” means the right of Provider to determine whether any component of the System as a whole should be replaced at Provider’s cost so long as any replacement does not adversely affect Recipient. Provider shall be obligated to reimburse Recipient for any economic loss unless the cause of the loss was beyond Provider’s control.

“Services Charge” or “Services Fee” means the monthly payment from Recipient to Provider required by Section 5.

“Services” means the services that Provider shall provide to Recipient in order for Recipient to receive the power generated by the System, including but not limited to:

- (1) the engineering and design of a grid-connected photovoltaic solar electric generating system, consistent with Recipient’s goals;
- (2) analysis of reports or other materials from Recipient for Provider to evaluate whether Recipient’s roof or other property is suitable for the proposed installation;
- (3) the acquisition of all components for the Solar System;
- (4) all construction related management services;
- (5) the construction and installation on Recipient’s property of the Solar System;
- (6) procurement and maintenance of all necessary governmental and third party approvals, including but not limited to the Permits (as that term is defined herein) relating to the Solar System;
- (7) assisting with the implementing of an Interconnection Agreement with the Local Utility and where applicable a Net Metering Agreement;
- (8) internet monitoring of the System’s performance to discover any malfunctions or failures to operate properly;
- (9) testing of the System’s performance to discover any malfunctions or failures to operate properly;
- (10) maintenance of the System, including repairing the System, all at Provider’s sole cost and expense as part of the Services being provided to Recipient, in order that Recipient can receive and use the power generated by the System;
- (11) receipt of the electric energy generated by the System.

“Site” means each parcel of real property and improvements described in each License Agreement executed pursuant to this Services Agreement as set forth in Exhibit A. The parties acknowledge that the Site may expand and contract as properties are added to or removed from the Solar Operations on multiple City properties.

“Solar Facilities” means that portion of the Solar System which is located on any single parcel of property owned by Recipient.

“Solar Operations” means the operation of the System which will begin on the day in which the first Solar System begins operation and can be operated on a sustained basis and Provider is in receipt of all approvals, signoffs and Permits required by any governmental authorities and the Recipient’s Local Utility for the generation of solar energy.

“Solar Operations Date” shall be the date upon which the Solar System begins Solar Operations. Provider shall provide Recipient not less than three (3) Business Days prior notice of the first day of the Solar Operations Date.

“Solar Services Agreement” means this Agreement, including any Exhibits or Schedules attached hereto and each License Agreement that is executed in connection with this Agreement.

“Solar System” means the electric power generation as well as the electric power generation equipment, including, without limitation, solar panels, mounting racks, brackets, substrates or supports, power inverters and micro-inverters, optimizers, equipment, metering equipment, controls, switches, connections, conduit, wires and other equipment connected to the Delivery Point, installed by Provider on the Site for the purposes of allowing Recipient to receive the electric power produced by the System and for the purpose of providing Provider with the ability to provide the additional and related services under this Agreement.

“System” means the cumulative services of providing the electric power and the Solar System.

“Term” shall commence as of the Solar Operations Date and shall continue for 20 years, and thereafter each successive renewal period, unless this Agreement is sooner terminated pursuant to its terms.

“Transfer” has the meaning given in Section 13.

## **Section 2. Terms of Agreement**

The recitals and the definitions section shall be considered part of the terms of this Agreement. The Summary Terms Sheet has been prepared for the benefit of the parties but is not part of this Agreement and is not binding on the parties.

## **Section 3. Solar Services Agreement**

The parties to this Agreement hereby agree that it is the express intent of the parties that this Agreement shall be treated as a services contract for the purposes of federal tax law and specifically for the purposes of Section 7701 (e) of the Internal Revenue Code and is not intended to be interpreted as a lease under federal law.

## **Section 4. Exclusive Use of Power and Services to be Provided**

Provider agrees to provide Recipient with the exclusive access to, and use of, the electric power generated from the Solar System. No person or entity not a party to this Agreement shall have access to said power or use of said power, such access and use being specifically prohibited under this contract. Resale of the power generated by the System is prohibited except for any Net Metering Agreement between Recipient and its Local Utility. The parties further agree that installation of the Solar System is necessary to carry out the purpose of this Agreement and allow Provider to provide the full range of services contemplated by this Agreement.

## **Section 5. Payment for Services**

- (a) Commencing on the Solar Operations Date and on the first (1<sup>st</sup>) day of each successive calendar month thereafter, during the Term, Recipient shall pay Provider, in advance, the monthly Services Charge as set forth in paragraph (b) of this Section. The first payment will be prorated in the event it is for a partial month. The Services Fee shall be adjusted as provided in paragraph (b).



- (b) The initial Services Charge shall be shall be \$\_\_\_ based on the number of Solar Facilities places on City properties and the scope of the System that will be placed into service at the commencement of this Agreement. The Services Charge shall remain as stated in the previous sentence until the City elects to place additional Solar Facilities on additional properties and add those Solar Facilities to the Solar System, at which time the Services Charge shall be revised to be an amount that the parties shall agree to in writing. Such written agreement for an increase in the Services Charge shall become part of this Agreement.
- (c) Recipient may wish to expand the system to include additional locations. If it is practical to amend the current contract to provide for the additional locations, this contract will be so amended. If, for financing, or other reasons, it is not practical to amend the contract, the parties will enter into a new or supplemental contract on the same terms and conditions of this contract with the possible exception of the Service Charges. The Service Charges will be dependent upon the size and configuration of any additional locations but the parties will strive to maintain same service charge on a kilowatt hour basis.
- (d) On or before the fifteenth (15<sup>th</sup>) day of January of each year during the Term, Provider shall prepare and submit to Recipient a statement setting forth the Actual Annual Energy Production for the preceding calendar year in order that any adjustment in the payment for Services can be made pursuant to Section 12.
- (e) The payment for Services shall be made without regard to the actual consumption of electricity by Recipient. Recipient may use all or a portion of the capacity of the Solar System or may periodically request that any of the Solar Facilities in the Solar System be taken out of operation, or the capacity of the Solar System be limited. In such case Recipient shall pay for the Services provided based on what the production of the System would have been but for any requested interruption of, or reduction in, Services.

#### **Section 6. Local Utility Incentives - Rebate**

The Recipient is entitled to all rights, title and interest in and to the Local Utility Solar Incentive with the Local Utility, or any other local incentive provided by said Local Utility. Provider shall be responsible for ensuring that the Local Utility Solar Incentive is received by Recipient, and the Services Charge required by this Agreement is expressly conditioned upon the Recipient successfully receiving the Local Solar Incentive. In the event that all or any part of the Local Solar Incentive is not received by the Recipient for any part of the Solar System, then the Services Charge shall be reduced by an amount that shall fully compensate the City for such loss during the first full calendar year (January through December) of the Term.

#### **Section 7. Other Solar Incentives**

- (a) All federal solar tax credits, accelerated depreciation and other federal income tax attributes relating to, or arising from the Solar System, on the date it is placed in service,

shall be the sole and separate property of the Provider. If additional incentives are provided by the state or federal government for projects that have previously been placed in service, such as the project in question, then those subsequent incentives shall be split equally between the Provider and Recipient, provided that in no event shall the application of this provision, adversely affect the existing federal solar tax credits, the existing tax treatment, or, the existing economic benefits from the system to the Provider or any investor in the project. In other words, such incentives must be shared in a way that results in a net economic gain to both the Provider, Recipient and any Investors.

- (b) All certification or points toward certification under the Leadership in Energy and Environmental Design (LEED) program or any similar program for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions arising from the Solar System shall be owned by and inure solely to the benefit of Recipient.

### **Section 8. License Agreement**

Simultaneously with the execution of this Services Agreement, Provider and Recipient shall execute the License Agreement attached hereto as Exhibit A pursuant to which Provider will have a license over and across the parcels on which Solar Facilities are placed pursuant to this Agreement for purposes of locating, accessing, constructing and maintaining the Solar System, all as more particularly set forth in the License Agreement.

### **Section 9. Installation, Operation and Ownership of the Solar System**

- (a) Pursuant to the License Agreement and this Section 9, Recipient hereby consents to the installation of the Solar System on the Premises, including, without limitation, solar panels, mounting racks, brackets, substrates or supports, wiring and connections, power inverters, equipment, metering equipment and utility interconnections. Such installation shall be made in compliance with all approved plans and Permits. Recipient shall participate in the process of determining the size and production capabilities of the system and shall give notice of consent after reviewing the plans for safety and location on its premises but shall not otherwise participate in the actual engineering or design of the System. Such approval process shall not exceed thirty (30) days.
- (b) Provider shall cause (i) the installation of the Solar System to be completed in a good and workmanlike manner in accordance with generally accepted installation techniques, and (ii) the Solar System to begin Solar Operation on or before the Solar Operation Date, or as soon as reasonably practicable thereafter, subject in all events to Force Majeure. Recipient hereby agrees to execute and deliver all documents that are reasonably necessary for Provider to complete the installation of the Solar System and Provider agrees to reimburse Recipient for all costs (other than legal costs and fees) reasonably incurred by Recipient in connection with the review and execution of such documentation. Provider shall ensure that its installation of the Solar System does not, through any failure on its part to properly install the system, adversely affect or impair any roof warranty inuring to the benefit of the Recipient. Recipient shall verify that its

roof system for each Solar Facility is capable of supporting the System and that a proper installation of the System will not void any warranties. Provider shall comply with all applicable laws governing the installation of the Solar System.

- (c) Provider shall be responsible for all costs and the performance of all tasks required for installation, maintenance and operation of the Solar System in accordance with all published specifications, the requirements of the Local Utility's Net Metering and Interconnection Agreement, and the terms of this Agreement and the License Agreement. The Provider will be responsible for all costs associated with these performance tasks except for the Permits. Upon execution of this Agreement and the License Agreement, Provider shall commence pre-installation activities relating to the Solar System, which shall include, without limitation, obtaining all Permits, contracts, and Agreements required for the installation of the Solar System and preparation of all applications required for utility interconnection of the Solar System. Recipient agrees to cooperate with respect to any action Provider must take in the preparation of all applications and agreements required for such utility interconnection, including but not limited to executing and delivering any and all documentation requested by Provider that is reasonably necessary to effectuate such interconnection at Provider's expense and further provided that Provider reimburses Recipient for all costs reasonably incurred by Recipient in connection with taking any such action.
- (d) Ownership of the Solar System, and all improvements placed on the Premises by Provider shall remain titled in the name of Provider, and Provider shall be the owner of such improvements, unless an Option to Purchase is exercised at the expiration of the Term of this Agreement or the parties reach a mutually agreeable contract for sale of the System. The Solar System and all improvements placed on the Premises by Provider shall remain titled in the name of Provider and shall be removed by Provider at Provider's expense within thirty (30) days of expiration of this Agreement or earlier termination as provided herein. Provider shall, at its sole cost and expense, repair any and all damage caused by such removal. Recipient shall provide Provider with reasonable access to perform such removal.
- (e) During the Term, Provider shall be solely responsible for the operation, repair and maintenance of the Solar System. Neither the Recipient or any of its agents, representatives, affiliates, or employees shall physically engage with or come into contact with any portion of the Solar System, except in an emergency or if any apparatus presents a dangerous condition to property or persons, nor shall they in any way attempt to affect its operation, attempt any repair or maintenance of the System, or attempt to alter or upgrade it in any way.
- (f) As part of the monitoring of the System, the Operations and Maintenance Provider will monitor and respond to outages within four (4) days and shall use good faith and best efforts to repair the System within said four (4) days. However, if such repairs cannot be reasonably made within said four (4) days then the O&M Provider shall be allowed a

reasonable time to complete the repairs so long as it is diligently pursuing said repairs. The O&M Provider shall also report the status of any System malfunctions or necessary repairs within (4) days of the occurrence.

- (g) The O&M Provider shall take commercially reasonable measures to notify Recipient and Provider of any actual or anticipated material adverse events within 48 hours of the time when the O&M Provider first knew or should have known of such event or the likelihood of such an event occurring.
- (h) Upon discovery of a condition or event that Recipient or the O&M Provider believes is both (i) reasonably likely to result in a material adverse event (material adverse event being defined as an event that results in or is likely to result in a reduction of 20% or more in of production of the System during the calendar month in which said event occurs) or material injury to third parties; and (ii) avoidable or susceptible to mitigation through the O&M Provider's commercially reasonable actions, then the O&M Provider shall, within a commercially reasonable time under the circumstances, dispatch personnel and otherwise use commercially reasonable efforts to safely and prudently mitigate such material adverse event or injury to third parties. The O&M Provider shall notify Recipient and the Owner as soon as circumstances dictate or reasonably allow.
- (i) Recipient shall give Provider the necessary information, and shall provide reasonable notice, if Recipient desires to change the operation of the System to affect such matters as, reducing the available energy generated by the system at given times, taking the system off-line, putting it back on-line or other reasonable actions related to its operation, provided such actions would not affect the entitlement to federal solar tax credits and with the understanding that such actions will not affect the Monthly Services Charges. Any changes pursuant to this subparagraph shall be implemented solely by Provider after consent by Recipient.
- (j) Provider may temporarily shut the System down for safety reasons and for any necessary maintenance or repair. As part of a temporary shutdown Provider may disconnect the interconnection with the Local Utility. During any such shutdown that is not caused by Recipient or Recipient's actions, Recipient is entitled to suspend any payment for Services or receive a credit against future payments for Services, as appropriate.
- (k) Provider shall not be responsible for any Hazardous Materials encountered at the Site unless said Hazardous Materials were brought onto the Site by Provider. Otherwise, any Hazardous Materials on the Site shall be the sole responsibility of the Recipient, and the Recipient shall indemnify and hold Provider harmless from any liability in connection therewith including costs and attorney's fees in the event Provider is included in any legal action involving such Hazardous Materials. Provider shall also be entitled to terminate the contract without further liability in the event Hazardous Materials are discovered on the Site.

(l) Recipient shall notify Provider of any knowledge it obtains that suggests that the System is not operating properly, is malfunctioning, or has in any way been damaged.

(m) After providing notice to Recipient of the intent to subcontract for any of the Services and after receiving the written consent by Recipient for such subcontracting, Provider may subcontract others to provide any of the Services or to fulfill any of its obligations under this Agreement but Provider shall remain solely liable for the performance of this Agreement.

#### **Section 10. Improved Efficiencies to the System**

In the event Provider is able to introduce operating efficiencies or technological improvements to the System or any of the Services provided hereunder, the Services Fee will not be reduced. Any such improvements shall be at the sole cost of the Provider and for the sole economic benefit of the Provider.

#### **Section 11. Metering – Net Metering**

Provider shall assist Recipient in coordinating with the Local Utility regarding the installation and maintenance of a separate bi-directional meter to permit Recipient to buy and sell power from and to the Local Utility, if applicable. Recipient agrees that it will not resell any power generated by the System to any person or entity other than the Local Utility.

Provider shall monitor production of power from its System and shall install any necessary equipment to enable the proper monitoring of the System and the measurement of power produced by the System.

#### **Section 12. Provider's Warranty of the System and the Performance of the System and Adjustments to Services Fee**

It is the intention of the parties that Recipient pay only for Services received and that Recipient not pay for any Services not received. The Parties further understand that solar systems in general will vary in their production of power due to factors outside the control of the parties (e.g. weather) and that while the Annual Production of a System may be estimated or projected, it is difficult to establish the reasons why projected and Actual Production may vary. For this reason, the parties agree to define "compliance" or "acceptable performance" within certain parameters by calculating the Projected Annual Production of the System. The parties agree that weather shall be factored into the calculation of Projected Annual Production and shall not serve as an exception to the reduction in Services Fees as provided in paragraph (f) of this Section. Production may exceed 100% of projected production at times and at other times may fall below 100%. The Parties agree that so long as the System is producing 95% or more of the Projected Power then the Solar System and Services being performed are satisfactory under this Agreement and that the Recipient is not paying for Services not received. Provider is the owner of the Solar System and responsible for the maintenance and repair of said System and the provision of other Services. The Solar System and the maintenance and repair of the Solar System as well as all other Services to be provided by Provider shall be jointly referred to as the System (System

meaning the combination of the Solar System and all other Services to be provided under this contract including the power generated by the System).

- (a) So long as the Solar System is producing power on an annualized basis, at 95% or more of Projected Annual Production, the System will be considered as performing in a satisfactory manner and in compliance with this Agreement.
- (b) If Actual Annual Production is below 95% of Projected Annual Production, Provider shall thoroughly test the System to determine the cause of any discrepancy between Projected Production and Actual Production, and shall thereafter take whatever action is necessary and reasonably possible to boost the production of the Solar System so that it performs at no less than 95% of Projected Annual Production.
- (c) Recipient shall be entitled to an adjustment payment from Provider or, at Recipient's election, a credit against future Service Fees if the System performs at less than 95% over a two-year calendar period. Said payment or adjustment shall commence in January of the year following the failure to perform period.
- (d) Because solar array systems inherently have some variation in performance, the parties agree that in order to determine any adjustment payment or credit against future Services Fees, the parties will average the Actual Annual Production of the System over a two-year period to determine the extent of any shortfall in production and any adjustment in the Services Fee due. The production shall always be determined by taking the average of the current year's Actual Annual Production and the previous year's Actual Annual Production. By way of example, if the System performs at 95% for the first year at 97% for the second year, the production for said two-year period would be considered to be 96% and no adjustment would be due. If the system performs at 95% for the second year and 90% for the third year, then the actual production for the two-year period would be considered to be 92.5%. Recipient would be entitled to a credit of 2.5% of the Projected Annual Production for said two-year period and Provider would pay recipient 2.5% of the Projected Annual Production for said two-year period. Provider shall have the right, at any time, to have a photovoltaic System study (PVSyst Analysis Report) performed by an independent expert to determine the cause of any shortfall in production.
- (e) In order to determine the amount of any reimbursement due to Recipient due to the failure of the System to perform and 95% or more of Projected Annual Production for any year, the parties agree that the value of the lost energy for the entire Term of this Agreement will be \$\_\_\_\_\_ kWhac ("energy value component"). Next the parties shall take the projected kilowatt hours for the year in question and multiply that number times the energy value component. By way of example, if Actual Production was 92.5% for the period in question then the adjustment would be determined by calculating the total value of projected Annual Production and multiplying that number times 2.5% (the extent to which Actual Production was less than the warranted performance of the System – the System is warranted at 95%). In this example, 2.5% of the Projected Annual Production

for the two-year period in which a shortfall occurred would be paid by Provider to Recipient or credited against future Services Fees, at Recipient's choice.

- (f) Notwithstanding the forgoing, if Provider can show that the loss of production was due to some other cause resulting from the action of another party (e.g. Recipient letting trees grow to the point where they are partially blocking the sun or requesting a temporary shutdown of the System), then such loss of production from such cause shall serve as an exception to the reduction in Service Fees or payment from Provider to Recipient as authorized in paragraph (f) of this Section. The burden of establishing that the shortfall was due to factors caused by a third party shall be on the Provider. Production shortfalls caused by weather conditions shall not be treated as a cause by a third party and shall be factored into the reduction in Service Fees or payment from Provider to Recipient as authorized in paragraph (f) of this Section.
- (g) The parties also acknowledge that the solar panels and other components of the System will naturally degrade over time and that actual performance will decrease and the performance warranted by Provider will be adjusted according to Exhibit B. The warranted performance for the first 5 years is 95% of Projected Annual Production. For years 6-10, the warranted performance will be 92% of the original Projected Annual Production. For years 11-15, the warranted performance shall be 89% of the original Projected Annual Production. For years 16-20 the warranted performance shall be 86% of the original Projected Annual Production. All other provisions of this Section shall apply to the duties of the Provider and the remedies of the Recipient except that the baseline performance levels required and warranted will be as adjusted as set forth in this paragraph.
- (h) The sole remedy for failure of the system to meet its projected production pursuant to this Section shall be an adjustment in the amount of the Services Charge as provided in this Section or the payment by Provider of an adjustment payment.

### **Section 13. Transfer of rights and Property Interests**

- (a) Recipient hereby covenants and agrees that Recipient shall not assign its rights to receive Services in the System without the prior express written consent of Provider, which said consent shall not be unreasonably withheld. The transfer of any of Recipient's property shall not be treated as an assignment of the right to receive Services as described in this paragraph.
- (b) Recipient shall give Provider at least thirty (30) days written notice of any intent to Transfer any property that is part of the Site, identifying the transferee, the property or portion of the Site to be transferred and the proposed date of the transfer. Thereafter, Provider may negotiate with the transferee to determine whether Provider elects to keep the Solar Facilities on such property or remove the Solar Facilities from the property to

be transferred. Provider shall pay for all costs associated with removing the Solar Facilities on such property or removing the Solar Facilities, at the election of Provider. During the first five years of this Agreement, Recipient may sell or transfer any property where the Solar Facilities are located, provided that such transfer shall not cause a recapture of the federal solar tax credit. In the event that Recipient seeks to sell or transfer any such property, the parties agree to work in good faith to coordinate and ensure that a recapture of the solar tax credits does not result from the transfer or sale. Recipient shall not be relieved of its obligation to pay for services as a result of any transfer or assignment, unless Recipient, Provider and any Assignee reach an agreement whereby Provider agrees to accept the Assignee as the party responsible for making payments for Services related to property transferred or assigned. During the Term, Recipient shall not transfer its right to receive the Services to any other party.

- (c) Recipient represents and warrants that as of the date of this Services Agreement, Recipient owns all properties that are included in the Site, has the right to place the Solar System on such properties, and any mortgage or encumbrance on such properties shall not interfere the placement of the Solar System on such property.
- (d) Prior to executing any mortgage or deed of trust encumbering the Site, Recipient agrees to obtain a written subordination agreement from its lender(s) expressly stating that such lender's interest in the Site is subordinate to Provider's ownership of the Solar System, and subordinate to this Agreement and the License Agreement. In the event Recipient does not obtain such a written subordination agreement, Provider shall have the right to terminate this Services Agreement as it applies to such encumbered property.
- (e) Provider hereby covenants and agrees that Provider shall not assign its obligations to provide the Services under this Agreement or its ownership rights in the system, without the prior express written consent of Recipient, which consent shall not be unreasonably withheld. Provider further agrees that the obligations of the O&M Provider under this Agreement shall not be assigned to another party without the prior express written consent of Recipient, which consent shall not be unreasonably withheld.

#### **Section 14. Relocation or Replacement of the Solar System**

- (a) If Provider and Recipient determine the Solar System must be relocated to an alternate location at any property within the definition of the Site during the Term, then upon such relocation the obligations of the parties shall remain as set forth in this Agreement. In the event of such a relocation, the party requiring the relocation shall be responsible for all associated costs of removal and reinstallation; and the parties agree to execute an amendment to this Agreement and the License Agreement to modify the location of the System and the access to the System by Provider for such property.
- (b) If temporary removal of the Solar System is required at Recipient's request on any property that is part of the Site due to Site work unrelated to the Solar System, Recipient



is responsible for all associated costs of removal and replacement, which removal and replacement shall be performed by Provider at Provider's then-prevailing rates for such service which shall be agreed upon in writing prior to the relocation work. During any period while the Solar System is off-line in connection with relocation, at the request of Recipient, Recipient shall continue to be responsible for all Services Fees due hereunder. Otherwise Recipient shall be relieved of the obligation to pay Services Fees during any period the System, or any portion thereof, is out of service.

- (c) Recipient agrees, at the request of Provider, and if within the reasonable control of Recipient, at Recipient's sole cost and expense, to promptly remove any interference with the Solar System's Insolation and access to sunlight, as such access exists as of the Solar Operations Date. Any such interference with the Solar System's Insolation or access to sunlight will cause a decrease in production and shall not be the responsibility of the Provider and the production lost as a result will be added to the Actual Production for any year affected thereby.
- (d) Recipient agrees that it will use commercially reasonable efforts to make available a wireless internet connection at all times during the Term, sufficient for Provider to remotely monitor the Solar System. Recipient shall not be obligated to incur any additional costs, beyond those costs that the City Council may budget for upgrades and enhancements to the City's wireless and fiber optic system as a whole and for each property within the System, to provide the wireless internet connection to monitor the Solar System as described in this paragraph.

#### **Section 15. Default by Recipient and Provider's Remedies**

In the event that Recipient causes an Event of Default, then Provider may provide written notice of such Event of Default and thereafter Recipient shall be allowed thirty (30) days to cure such default and if a cure is not reasonably possible this time period then for such additional reasonable period of time as may be required to cure such default, so long as Recipient is diligently pursuing a cure and such cure period does not substantially and materially prejudice Provider.

- (a) With respect to Recipient, there shall be an "Event of Default" if:
  - (i) Recipient fails to pay any amount due under this Agreement, and such failure continues for ten (10) additional days after receipt of written demand from Provider (the cure period shall be extended for 20 additional days so long as the default in payment has not occurred more than 2 times per year);
  - (ii) Recipient fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within the time period set forth above in this Section after written notice from Provider;

- (iii) Under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets that are part of the System and such custody or control is not terminated or stayed within 90 days from the date of assumption of such custody or control, or such other action is taken that renders such default not materially prejudicial to the rights of the Provider.
- (b) Upon the occurrence of any Event of Default by Recipient and failure to timely cure such Event of Default, Provider shall have the right to terminate this Agreement. Provider may terminate this Agreement and the License Agreement by giving to Recipient notice of Provider's election to terminate, in which event the Term of this Services Agreement and the License Agreement shall end, and all right, title and interest of Provider and Recipient hereunder shall expire on the date stated in such notice. In such event, Provider shall have the right to remove the Solar System from the premises as provided for herein, and Provider shall be entitled to collect from Recipient the Provider's reasonable cost of removal of the Solar System from the premises and any damages including the discounted present value of all future payments due under this Agreement.

#### **Section 16. Default by Provider and Recipient's Remedies**

In the event that Provider causes an Event of Default, then Recipient may provide written notice of such Event of Default and thereafter Provider shall be allowed thirty (30) days to cure such default and if a cure is not reasonably possible this time period then for such additional reasonable period of time as may be required to cure such default, so long as Provider is diligently pursuing a cure and such cure period does not substantially and materially prejudice recipient.

- (a) With respect to Provider, there shall be an "Event of Default" if:
  - (i) Provider, after notice from Recipient that it has failed to maintain the Insurance required under this Agreement, fails to cure such default within a reasonable period of time;
  - (ii) Provider fails to achieve Solar Operations within a reasonable period of time following the projected Solar Operations Date and fails to cure such default within a reasonable period of time, it being understood that the Solar Operations date is an estimate of the date the System will reach operational status;
  - (iii) Provider is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement or the License Agreement, and such breach or failure is not cured within the time period set forth above in this Section;
  - (iv) A court of competent jurisdiction enters an order, including an order of bankruptcy or similar proceeding, judgment, or decree appointing a receiver of

the whole or any substantial part of such Provider's assets, and such order, judgment or decree is not vacated or set aside or stayed within 90 days from the date of entry thereof or such order or the facts establish that such order or proceeding is not materially prejudicial to the rights of the Recipient; or

- (v) Under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Provider's assets and such custody or control is not terminated or stayed within 90 days from the date of assumption of such custody or control or such order is otherwise modified or under the facts it is not materially prejudicial to the rights of the Recipient.
- (b) Upon an Event of Default by Provider, Recipient may pursue any of its available remedies at law or in equity, including self-help. Without limiting the foregoing, Recipient's remedies expressly include the following: (a) to terminate or suspend this Services Agreement with respect to all obligations arising after the effective date of such termination or suspension; (b) to bring suit for the collection of any amounts for which Provider is in default, seek injunctive relief, or seek specific performance for any other covenant or agreement of Provider, without terminating this Services Agreement, (b) to bring suit against Provider for reimbursement of the amounts reasonably expended by Recipient including costs and reasonable attorney's fees. In addition, Recipient shall have the right to offset against any payments payable by Recipient hereunder until all costs are reimbursed in full. Recipient may not terminate this Agreement or take any action during the first five years that would result in loss of federal solar tax credits unless its rights hereunder cannot be adequately satisfied through the payment of money damages.

Recipient has the right to suspend the payment of Services Fees during the period of any material breach of the contract by the Provider.

#### **Section 17. Term of the Agreement, Option to Purchase and Termination**

- (a) **Initial Term.** The initial Term of this Agreement shall be for a period of twenty (20) years commencing on the Solar Operations Date (the "Initial Term").
- (b) **Early Termination.** At any time following the fifth anniversary date of the contract, the Recipient may elect to terminate this Agreement if, based on the judgment of Recipient, this Agreement no longer provides a public benefit. Upon such early termination, Provider shall have the right to remove the Solar System as provided for herein, and Provider shall be entitled to collect from Recipient the Provider's reasonable cost of removal of the Solar System from the premises and the discounted present value of all future payments due under this Agreement.
- (c) **Option to Purchase.** Provided no Event of Default by Recipient shall have occurred and be continuing, Recipient may purchase the Solar System at the end of the Initial Term on the following terms and conditions:

The Recipient must give Provider written notice of its intent to exercise the Option at least ninety (90) days in advance of such purchase. If Recipient exercises such option, the purchase price shall be the Fair Market Value of the Solar System. However, the parties may also negotiate a mutually agreeable purchase price following year seven (7) of the Agreement. For the purposes of this Agreement, "Fair Market Value" of the Solar System may be determined by mutual agreement, within 30 days before the exercise of the option. Within said 30-day timeframe, or a reasonable period of time thereafter, the Parties, after consulting with a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry, shall attempt to agree as to the Fair Market Value of the System on an installed and operating basis. If the Parties cannot reach an agreement within said 30-day period, then the parties shall agree on a different appraiser who is a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine Fair Market Value. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Solar System on an installed and operating basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of manifest error or fraud. The costs of the appraisal shall be borne by the Parties equally.

The closing of the sale and purchase of the Solar System shall take place on approximately the thirtieth (30<sup>th</sup>) day after the Purchase Price for the Solar System is determined pursuant to this Section 17, or on such other date as mutually agreed by the parties..

At closing, Recipient shall pay Provider an amount equal to the Fair Market Value in immediately available funds, and Provider shall assign its entire right, title and interest in and to the Solar System, including any remaining manufacturer's warranties for PV modules, inverters, or other components to Recipient free and clear of any liens created by the Provider with respect to the System.

The parties represent and warrant to one another that there has been no discussion that would lead either party to conclude that the option will be exercised by Recipient, only that there will be an option and that the decision whether to exercise the option will depend on the facts and circumstances that exist at the time the option is capable of being exercised by the Recipient.

- (d) **Termination.** If Recipient does not elect to purchase the Solar System as set forth in paragraph (c) of this Section at the end of the twenty-year Term, then Provider shall remove the Solar Facilities from each of the Sites at the sole cost of Provider. Provider and Recipient shall cooperate to establish a schedule for Provider to access the Sites and remove the Solar Facilities.
- (e) **Repurposing.** If Recipient exercises the option to purchase the Solar Facilities as set forth in paragraph (c) of this Section and seeks to repurpose the Solar Facilities for use at different Sites, or the same Sites but in different configurations, Provider shall provide assistance to Recipient regarding the design and placement of such Solar Facilities upon

terms and conditions, and at a price to be paid by Recipient, as the parties agree upon at that time.

### **Section 18. Casualty**

- (a) If the Solar System is damaged or destroyed by fire, theft or other casualty, Provider and Recipient shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Provider, using the proceeds, shall within ninety (90) calendar days after the insurance proceeds become available to Provider, cause the Solar System to be repaired, restored, replaced or rebuilt to substantially the same condition as existed immediately prior to the damage or destruction (the "Restoration Work").
- (b) Until such time as the Restoration Work is completed, the Services Fee hereunder shall be abated.
- (c) Notwithstanding the foregoing, in the event of substantial damage or destruction by casualty (i) which damage Recipient and Provider in good faith mutually determine is such that the reconstruction of an economically viable Solar System is not practicable, either because (a) the insurance proceeds made available to Provider are not sufficient to repair such loss or damage, or (b) such reconstruction cannot be carried out under applicable legal requirements, including then-current building or zoning laws, or (ii) which damage occurs during the last three (3) years of the Term, then Recipient shall have the right to terminate this Services Agreement.
- (d) It is the intent of the parties that the Recipient shall have no liability nor suffer any economic loss as a result of damage to the equipment absent intentional or negligent misconduct on the part of Recipient which is not covered by insurance.
- (e) Recipient shall provide reasonable on-site security to prevent damage or destruction to the System by third parties lawfully occupying its property or as a result of trespassers entering onto the property and causing damage to the System.

### **Section 19. Representations and Warranties; Covenants of the Parties**

- (a) Each Party represents and warrants to the other party that (a) such party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized by all necessary company, organizational or governmental action; (c) this Agreement is a legal, valid and binding obligation of such party enforceable against such party in accordance with its terms; (d) to such party's knowledge, no governmental approval (other than any governmental

approvals which have been previously obtained or disclosed in writing to the other party) is required in connection with the due authorization, execution and delivery of this Agreement by such party or the performance by such party of its obligations hereunder; and (e) neither the execution and delivery of this Services Agreement by such party nor compliance by such party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such party's organizational documents or any rule, regulation or law. Recipient covenants that recipient has lawful title to the Property and the Premises and full right to enter into this Agreement. Recipient will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar System or its function (including activities that may adversely affect the Solar System's exposure to sunlight), without Provider's prior written consent, or which would affect either party's ability to perform its obligations hereunder.

- (b) Each of Provider and Recipient hereby represents and warrants to the other party that there are no actions, suits or proceedings pending, or to such party's knowledge, threatened against or affecting such party or the Property, at law or in equity, or before any governmental authority, and, to such party's knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority, which, if adversely determined, would have a material adverse effect on the ability of such party to perform its obligations hereunder.
- (c) Neither Recipient nor Provider shall directly or indirectly cause, create, incur, assume or suffer to exist any pledge, lien (including mechanics', labor or material man's lien), charge, encumbrance or claim on or with respect to the Solar System or any interest therein. Each party shall also promptly pay before a fine or penalty may attach to the Solar System any taxes, charges or fees of whatever type of any relevant governmental authority for which such party is responsible. If either party breaches its obligations under this Section, it shall immediately notify the other party in writing, shall promptly cause such liens to be discharged and released of record without cost to the other party.
- (d) Notwithstanding the foregoing, it is understood that Provider will finance the System and that liens against the System for said financing are specifically permitted. Recipient shall fully cooperate with Provider in connection with such financing including but not limited to providing statements and opinions of counsel that Provider is currently in compliance with all provisions of the Agreement and that Recipient is likewise in compliance with all terms of the Agreement including but not limited to all representations and warranties contained within the Agreement.
- (e) Each party agrees to promptly provide the other party with a copy of any default notices that it received from any of its lenders or other party holding a mortgage, deed of trust or security interest in the Site or the Solar System.
- (f) Each party agrees that it will take no action that would cause the Solar System to lose its eligibility for the federal solar tax credit.

- (g) Recipient represents and warrants that any building upon which solar panels and the associated equipment is placed shall be appropriate for the placement of said equipment and that the building is in a condition which will support said equipment for the Term of this Agreement.
- (h) Recipient represents and warrants that any land or building upon which solar panels and the associated equipment is placed shall be appropriate from a geotechnical standpoint; that any such property is not located in a floodplain; that any storm water permits have been obtained or that the property in question is not subject to any such storm water permits; that no encroachment on the property in question has been permitted, authorized or exists at the time this contract is executed; that Recipient has reviewed each location for the placement of solar panels and the associated equipment and has determined that its location will not fall within any easement that could disrupt the operation of any part of the System or require any part of the System to be temporarily or permanently shut down or removed; that there are no additional permits or governmental permissions required for the installation of the System; that there are no known defects or flaws in Recipient's title to the property which would in any way affect the operation of the System or any part thereof or require that the System or part thereof be shut down or taken out of Service for any period of time or removed or relocated.
- (i) Recipient further represents and warrants that, to the extent such actions are within the control of Recipient, it will not permit any action to be taken by any party which would in any way affect the operation of the System, or otherwise cause any part of the System to be shut down or taken out of operation for any period of time and that Recipient will take any necessary action to prevent any adverse effect on the operation of the System including preventing or eliminating or terminating any condition that would adversely affect the operation of any part of the System or would cause any part of the System to be shut down or taken out of service for any period of time.

## **Section 21. Indemnification; Insurance**

- (a) Provider (the "Indemnifying Party") shall indemnify, defend and hold Recipient and its employees, directors, officers, managers, members, shareholders and agents (each, in such case, an "Indemnified Party") harmless from and against any and all third party claims, suits, damages, losses, liabilities, expenses and costs (including reasonable attorney's fees) including, but not limited to, those arising out of property damage (including environmental claims) and personal injury and bodily injury (including death, sickness and disease) to the extent caused by the Indemnifying Party's (i) material breach of any obligation, representation or warranty contained herein, (ii) negligence or willful misconduct and (iii) the operation of the Solar System.

(b) Provider shall maintain during the Term of this Services Agreement, with Recipient named as additional insured therein, as its interest may appear, for the duration of this Services Agreement, the insurance coverage outlined in (1) through (6) below:

- (1) Comprehensive or Commercial General Liability (including premises-operations; independent contractors protective, products and completed operations; broad form property damage).
- (2) Bodily Injury: \$1,000,000 per occurrence.
- (3) Property damage: \$2,000,000 per occurrence.
- (4) Products and completed operations to be maintained for one (1) year after the final payment: \$2,000,000 per occurrence/aggregate.
- (5) General aggregate: \$2,000,000.
- (6) Damages to Service Feed Premises: \$1,000,000 per occurrence.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in Chapter 537.610, RSMo, applicable to political subdivisions pursuant to Section 537.600, RSMo; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity. The statutory waiver of sovereign immunity for 2019 is \$2,865,330 for all claims arising out of a single accident or occurrence.

Provider shall also provide Property Insurance ("All Risk" coverage) equal to at least 100% of the replacement cost covering the Solar System, and all other improvements placed by Provider on the Premises. If possible, Provider will have the Recipient named as an additional insured.

Recipient shall carry property and liability insurance on its property in accordance with adopted City policies and ordinances, all in a form reasonably acceptable to Provider. The parties shall agree to the terms of said insurance prior to the beginning of construction of the Solar System.

## **Section 22. Waiver and Attorney's Fees**

- (a) Any waiver at any time by either Party of its rights with respect to an Event of Default under this Services Agreement or with respect to any other matters arising in connection with this Services Agreement, shall not be deemed to be a waiver with respect to any subsequent default or other matter. Any waiver under this Services Agreement must be in writing.
- (b) The prevailing Party in any action to enforce this Services Agreement shall be entitled to recover its reasonable attorneys' fees and costs of collection from the non-prevailing Party.

## **Section 23. Change in law or Interpretation of law**

If after the Solar Operations date, Provider determines that a Change in Law has occurred or will occur, or that an interpretation of current law has occurred or will occur, that has or will have a material adverse effect on Provider's rights, entitlements, obligations or costs under this Agreement, then provider may notify the Recipient in writing of such Change in Law. Within 30



days following receipt by the Recipient of such notice, the parties shall meet and attempt in good faith to negotiate such amendments to this Agreement as are reasonably necessary to preserve the economic value of this Agreement to both parties. If the parties are unable to agree on such amendments within said 30 days, then the Provider or Recipient may terminate this Agreement and remove the System without either party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination. If a Change in Law renders this Agreement or Provider's performance under this Agreement either illegal or impossible, then Provider may terminate this Agreement immediately upon notice to Recipient without either party having further liability under this Agreement except with respect to liabilities accrued prior to the date of termination. For the purposes of this Agreement, Change in Law or Interpretation of Law means, after the date of the execution of this Agreement, (i) the enactment, adoption, promulgation, modification or repeal of any applicable law or regulation, (ii) a change in any law that would in any way materially impact performance by either party under this Agreement or any interpretation of law that would have the same effect. In the event this Agreement is determined to subject Provider to regulatory jurisdiction, the parties agree to act in good faith in an attempt to restructure this Agreement in a manner that preserves the economic value to both parties.

### **Section 23. Memorandum of Services Agreement**

Either Party may record in the real estate records for the jurisdiction in which the Site is located a memorandum of this Agreement setting forth the Parties hereto and the Term with the specific form of such agreement to be subject to the reasonable approval of the parties.

### **Section 24. Force Majeure**

- (a) In the event either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of any cause beyond the reasonable control of, and without the fault or negligence of, such Party (an event of "Force Majeure"), (other than causes insured against) such circumstance shall not constitute an event of default, and such Party shall be excused from performance hereunder and shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from, or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof (with failure to use such efforts constituting an event of default hereunder).
  
- (b) As used herein, the term "Force Majeure" shall include, without limitation, (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Site, (v) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long term calibrated and appropriate weather station representative of the Site, (vi) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vii) requirement by Local Utility that the Solar System

discontinue operation for any reason, (viii) appropriation or diversion of electricity by sale of order of any governmental authority which prevents or prohibits the parties from carrying out their respective obligations under this Agreement (including, without limitation, an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or services). Economic hardship of either Party shall not constitute a Force Majeure under this Agreement nor shall any change in the Internal Revenue Code or loss of any tax credit associated with the Solar System.

## **Section 25. Records**

Each Party hereto shall keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Each Party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder.

## **Section 26. Notices**

All notices required or permitted to be given hereunder shall be in writing, and shall be given: (1) by email of a PDF (so long as notice is also given on the same date by one of the other notice methods), or (2) by personal delivery, or (3) by United States Certified Mail, Return Receipt Requested, postage prepaid; at the addresses of the parties at the following addressed

or at such other address as any part hereto entitle to notice may register with the other party by like notice. All notices shall be deemed given and effective on the date sent, or transmitted, or deposited in the U.S. Mail, or hand delivered, whichever is applicable. However, where applicable, the time period for responding to a notice shall commence from the date of actual receipt thereof. The party providing notice shall also take reasonable actions to contact the other party in person within 5 days of sending such notice to ensure such notice was received.

## **Section 27. Assignment by Provider**

Provider may upon written notice, without the need for consent from Recipient, (i) transfer, pledge or assign this Agreement and the License Agreement, or Solar System as security for any financing or to an affiliated special purpose entity created for the financing or for tax credit purposes related to Solar System, provided Recipient's property is in no event encumbered or (ii) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof. No such assignment shall be effective until written notice of such assignment is provided to Recipient. Provider shall not be relieved from future performance, liabilities, and obligations under this Agreement. Provider may, with the prior written consent of Recipient, which consent shall not be unreasonably withheld, transfer or assign this Agreement or the License Agreement, provided such Assignee agrees to be bound by the terms and conditions of this Agreement and

License Agreement, and further provided that Provider shall not be released from its obligations hereunder.

**Section 28. Personal and Real Property or other Taxes**

Provider shall claim the Solar System as personal property in the county in which the Solar System is located. If taxes are assessed as real or personal property (property taxes) Provider shall pay said taxes, if required, and shall contest the payment of said taxes so long as a statute is in force exempting or limiting such taxation.

Either party to the contract may contest any taxes or fees referred to in this section or the parties may jointly contest any such taxes or fees.

**Section 29. Treatment for Federal Income Tax Purposes**

Provider and Recipient hereby agree that this Services Agreement shall be treated as a services contract for federal tax purposes pursuant to Section 7701 (e) of the Internal Revenue Code and is not intended to be interpreted as a lease under federal law.

**Section 30. Confidential Information**

Neither party shall use, divulge, disclose, produce, publish or permit access to, any confidential information received by the other party, to the extent such information qualifies as a closed record under the Missouri Sunshine Law in Chapter 610 of the Revised Statutes of Missouri, except to the extent necessary to comply with the terms of this Agreement.

**Section 31. Press Releases**

The parties recognize that one or both may want to publicize information about the installation and operation of the System. In connection there with, either party may issue a press release(s) describing the project and its operation. However no confidential information shall be disclosed with respect to the cost of the project or the amount of the Services Fees without the consent of the other party.

**Section 32. Dispute Resolution**

In the event of a dispute regarding this Agreement that the parties are unable to resolve between themselves, no party may file a lawsuit in a court without first participating in mediation of the issue provided such issue does not involve the integrity of a structure or the safety of the public and City employees or agents. Mediation shall take place within thirty (30) days after any party requesting same and the costs shall be shared equally unless the jointly selected mediator is unavailable. The parties shall submit the names of two mediators to each other and one name shall be selected. Mediation shall proceed expeditiously and the failure to provide names of potential mediators or to attend a scheduled mediation session shall constitute breach of this Agreement. If mediation is not successful after one session with a mediator, any party shall be free to file or pursue other remedies.

### **Section 33. Binding Effect**

The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each party, shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

### **Section 34. Amendments**

No modification of this Agreement shall be effective except by written amendment executed by both Provider and Recipient.

### **Section 35. Counterparts**

Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original. Facsimile and electronic signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile, electronic or photocopy of this Agreement in any court or arbitration proceedings between the parties.

### **Section 36. Entire Agreement**

This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes any other prior agreement, written or oral, between the parties concerning such subject matter.

### **Section 37. Third Party Beneficiaries**

Nothing in this Agreement shall provide any benefit to any third-party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the parties that this Agreement shall not be construed as a third-party beneficiary contract.

### **Section 38. Severability**

Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion unless such enforcement would materially affect the economic value for one of the parties to this Agreement.

### **Section 39. Survival**

Any provisions of this Agreement that expressly or by implication come into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

### **Section 40. Governing Law**

The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Missouri excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction. The parties hereby submit to the exclusive jurisdiction of the federal and state

courts located in the State of Missouri to the extent the matters herein are not subject to arbitration.

**Section 41. Remedies Cumulative**

No remedy herein conferred upon or reserved to either party shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. However, nothing contained herein shall be construed to permit either party to bring an action against the other for lost profits or other special or consequential damages.

**Section 42. Headings**

The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provisions of this Agreement.

**Section 43. Conflicts**

In the event of any conflict or inconsistency between the terms of the Summary Term Sheet and this Agreement, the terms of this Agreement shall prevail.

**Section 44. Exhibits**

All Exhibits referred to in this Agreement and attached hereto are incorporated herein by reference.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Services Agreement as of the Contract Date.

**Lee's Summit Solar, LLC**

GC Solar 2019 Fund I, LLC, its sole member

By: GC Solar MM, LLC, its manager

By: \_\_\_\_\_

Title: \_\_\_\_\_

**City of Lee's Summit, Missouri**

\_\_\_\_\_  
Stephen A. Arbo, City Manager

EXHIBIT A

LICENSE AGREEMENT REGARDING SOLAR PANELS

[Attached]

LICENSE AGREEMENT REGARDING SOLAR PANELS

This License Agreement (“Agreement”) is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), by and among the City of Lee’s Summit, Missouri as the “Licensor” and [Gardner Capital] as the “Licensee”.

Licensor’s address:

220 SE Green Street  
Lee’s Summit, MO 64063

Licensee’s address:

[ADD]

WHEREAS, Licensor owns certain real property located at \_\_\_\_\_ in the City of Lee’s Summit, County of Jackson and Cass, State of Missouri, more particularly described on Schedule “A” attached hereto and incorporated herein (the “Property”); and

WHEREAS, Licensor and Licensee have entered into that certain unrecorded Solar Services Agreement (“Services Agreement”) dated \_\_\_\_\_ together with all amendments, modifications, and extensions thereof; and

WHEREAS, capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the Services Agreement pursuant to which Licensee agreed to install (or cause to be installed) a grid-connected photovoltaic, solar electric generating system (the “System”) including all equipment associated therewith (the “Serviced Equipment”) on the Property; and

WHEREAS, Licensor has agreed to service such Serviced Equipment; and

WHEREAS, Licensor is willing to grant to Licensee the right to install, operate, maintain and remove the Serviced Equipment on the Property by entering into this License Agreement (the “License”).

NOW, THEREFORE, for the mutual covenants and agreements contained herein, the parties hereto agree as follows:

1. Creation of the License. Licensor hereby grants a License to Licensee and its successors and assigns under the Services Agreement, and its agents, contractors, sub-contractors, and employees, in, under, across and through the portions of the Property shown on Schedule “B” attached hereto and incorporated herein, and such other portions of the Property solely as reasonably necessary to effectuate the purposes of the Services Agreement. The License granted herein is non-exclusive.
  
2. Use of License. The use of the License shall be limited to the installation, operation, maintenance and removal of the Serviced Equipment, which includes, without limitation,



solar photovoltaic equipment and related Systems and equipment and any and all related connections, meters, conduit, monitoring equipment, structures, fences and barriers constructed by Licensee within the Solar System sites (collectively, the “Sites”) located on the Property as shown on Schedule “B”, all subject to the terms and conditions of this Agreement and the Services Agreement, as applicable. Licensor, for itself and its permitted successors and assigns, hereby grants to Licensee and its agents, contractors, sub-contractors, and employees, the right to enter onto the Property, subject to the terms and conditions of this Agreement and the Services Agreement, for the purpose of conducting such permitted uses of this Agreement and the Services Agreement. Licensor and Licensee understand that this Agreement is revocable at any time by the Licensor; provided however, that the Licensor’s revocation of this license while the Services Agreement remains in full force and effect shall constitute a breach of the Services Agreement by Licensor and Licensee shall have all available remedies for Licensor’s breach of the Services Agreement as provided thereunder.

3. Term. This Agreement shall commence on the Effective Date set forth above and terminate upon the earlier of (i) Sixty days (60) after the expiration or termination of the Services Agreement, (ii) removal of the Solar System in accordance with the Services Agreement (iii) revocation of the License by Licensor, or (iv) purchase of the Solar System by the Licensor in accordance with the Services Agreement.
4. Consideration. The only consideration for this Agreement shall be the Services Agreement and the mutual benefit the parties obtained from said Services Agreement. There is no separate consideration paid by Licensee to Licensor for the License.
5. Access. Licensee shall have a right of access to the Serviced Equipment over and across Property at all reasonable times, at such locations as Licensor shall from time to time reasonably determine, subject to the Services Agreement and to the reasonable security and safety procedures established by Licensor.
6. Termination. Except as otherwise expressly set forth herein, this Agreement and the License may be amended, abandoned or terminated only with the consent of Licensor and Licensee. Any such amendment, abandonment or termination shall be in writing, executed and acknowledged by the required parties.
7. No Dedication for Public Use; No Possessory Interest. The provisions hereof are not intended to and do not constitute a dedication for public use, and the rights herein created are private and for the exclusive benefit of the parties hereto and their permitted successors, assigns, employees, invitees and licensees, contractors and sub-contractors. Licensor only grants a revocable License to Licensee and conveys no possessory interest in the Property to Licensee.
8. Entire Agreement. This Agreement and the Services Agreement contain the entire Agreement between Licensor and Licensee with respect to the License. The

unenforceability of any provision hereof shall not affect the remaining provisions of this Agreement, but rather such provision shall be severed and the remainder of this Agreement shall remain in full force and effect.

9. Breach and Remedy. Any breach of this Agreement by the parties shall constitute a breach of the Services Agreement and the parties' sole remedies for a breach of this Agreement shall be the remedies for a breach of the Services Agreement. Licensee shall have no right to bring any claim for adverse possession, quiet title, claim for possession, or any other *in rem* action against the Licensor, the holder of any possessory interest in the Property, or the Property.
10. Compliance with Law; No Waiver. This Agreement and the rights and obligations created hereunder are subject to, and governed by the laws of the State of Missouri. Waiver of a breach of any provision hereof will not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Agreement.
11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.
12. Counterparts. This Agreement may be executed in counterparts with the same effect as if both parties hereto had executed the same document. Both counterparts shall be construed together and shall constitute a single document.
13. Authority to Enter into Agreement. Licensee and Licensor each represent and warrant that they have full power and authority to execute, deliver, and perform their respective obligations under this Agreement and that it shall be binding upon them for the Term of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**Licensor:**

City of Lee's Summit, Missouri

\_\_\_\_\_

Stephen A. Arbo, City Manager

**Licensee:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Schedule A

Location of Solar Array Sites

Schedule B

Property

**Exhibit B**

**Projection**

<b><u>Year</u></b>	<b><u>Projected Annual Production (kWh)</u></b>	<b><u>Guaranteed Production (kWh)</u></b>
1		x 95% =
2		x 95% =
3		x 95% =
4		x 95% =
5		x 95% =
6		x 92% =
7		x 92% =
8		x 92% =
9		x 92% =
10		x 92% =
11		x 89%=
12		x 89% =
13		x 89% =
14		x 89% =
15		x 89% =
16		x 86% =
17		x 86% =
18		x 86% =
19		x 86% =
20		x 86% =

**Exhibit B**  
**Projection**

<u>Year</u>	<u>Projected Annual Production (kWh)</u>	<u>Guaranteed Production (kWh)</u>
1		x 95% =
2		x 95% =
3		x 95% =
4		x 95% =
5		x 95% =
6		x 92% =
7		x 92% =
8		x 92% =
9		x 92% =
10		x 92% =
11		x 89%=
12		x 89% =
13		x 89% =
14		x 89% =
15		x 89% =
16		x 86% =
17		x 86% =
18		x 86% =
19		x 86% =
20		x 86% =