NOTICE OF OPEN MEETING & VOTE TO CLOSE PART OF THE MEETING
A G E N D A
SPECIAL COUNCIL MEETING
City of Moberly
City Council Room – Moberly City Hall
101 West Reed Street
August 12, 2019
5:00 PM

Posted:

Pledge of Allegiance
Roll Call
Approval of Agenda
Recognition of Visitors
Communications, Requests, Informational Items & Consent Calendar
Public Hearing and Receipt of Bids
Ordinances & Resolutions

1. A Resolution Authorizing The City Manager To Execute A Consent And Agreement Between Heritage Hills Golf Course, LLC And Moberly, Missouri Public Building Corporation.
2. A Resolution Authorizing The City Manager To Execute A Second Solar Lease Agreement And License Agreement With Moberly Solar, LLC.
3. An Ordinance Approving A Certain Cooperative Agreement; Making Certain Findings; And Providing Further Authority.

Official Reports
Anything Else to Come Before the Council
Adjournment

The public is invited to attend the Council meeting. Representatives of the news media may obtain copies of this notice by contacting the City Clerk. If a special accommodation is needed as addressed by the Americans with Disabilities Act, please contact the City Clerk twenty-four (24) hours in advance of the meeting.

City of Moberly
City Council Agenda Summary

Agenda Number: #1.
Department: Parks
Date: August 12, 2019

Agenda Item: A Resolution Authorizing The City Manager To Execute A Consent And Agreement Between Heritage Hills Golf Course, LLC And Moberly, Missouri Public Building Corporation.

Summary: Our purchase agreement with Orscheln for the golf course requires Orscheln's consent for any material alteration at the golf course during the life of the agreement. Installation of solar panels on the cart barn (or anywhere else for that matter) constitutes a material alteration and must be agreed to by Orscheln and the Public Building Corporation (the record owner of the course). This agreement must be completed before we enter into Phase II of the solar installation.

Recommended Action: Approve this resolution

Fund Name: N/A

Account Number: N/A

Available Budget $: N/A

ATTACHMENTS:

___ Memo	___ Council Minutes
___ Staff Report	___ Proposed Ordinance
___ Correspondence	__x__ Proposed Resolution
___ Bid Tabulation	___ Attorney's Report
___ P/C Recommendation	___ Petition
___ P/C Minutes	___ Contract
___ Application	___ Budget Amendment
___ Citizen	___ Legal Notice
___ Consultant Report	___ Other_____

Roll Call	Aye	Nay
Mayor		
M___ S___ **Jeffrey**	___	___
Council Member		
M___ S___ **Brubaker**	___	___
M___ S___ **Kimmons**	___	___
M___ S___ **Davis**	___	___
M___ S___ **Kyser**	___	___
	Passed	Failed

BILL NO: _____ **RESOLUTION NO:_____**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSENT AND AGREEMENT BETWEEN HERITAGE HILLS GOLF COURSE, LLC AND MOBERLY, MISSOURI PUBLIC BUILDING CORPORATION.

WHEREAS, the city proposes to enter into an agreement with Moberly Solar, LLC to install solar panels at various locations including the cart barn building at the Moberly golf course; and

WHEREAS, the Asset Purchase and Sale Agreement entered into between the city and Heritage Hills Golf Course, LLC requires the consent of Heritage Hills Golf Course, LLC before any material alteration of golf course assets occurs; and

WHEREAS, the installation of solar panels on the cart barn is a material alteration of a golf course asset; and

WHEREAS, the Moberly, Missouri, Public Building Corporation is the record owner of the golf course property and therefore must also agree to the material alteration; and

WHEREAS, attached hereto is a Consent and Agreement document granting consent for the material alteration of the golf course by installation of solar panels upon execution by the city, Heritage Hills Golf Course, LLC and Moberly, Missouri Public Building Corporation.

NOW, THEREFORE, the Moberly, Missouri, City Council hereby directs the City Manager to execute the Consent and Agreement attached hereto and to take such other and further measures which may be necessary to complete the intent of this Resolution.

RESOLVED this day of August, 2019, by the Council of the City of Moberly, Missouri.

_____

Presiding Officer at Meeting

ATTEST:

_____

City Clerk

CONSENT AND AGREEMENT

This Agreement (this "**Agreement**") is made as of this ____ day of July, 2019 (the "**Effective Date**"), by and between Heritage Hills Golf Course LLC, a Missouri limited liability company ("**Heritage**"), and the City of Moberly, Missouri, a city of the third class and Missouri municipal corporation (the "**City**") and Moberly, Missouri, Public Building Corporation, a Missouri nonprofit corporation ("**PBC**").

WHEREAS, Heritage and the City entered into an Asset Purchase and Sale Agreement, dated as of January 7, 2019 (the "**Purchase Agreement**") regarding a public golf course facility located at 3534 State Highway JJ South, Moberly, Missouri and generally known as Heritage Hills Golf Course (the "**Golf Course**")

WHEREAS, PBC is now the record owner of the Golf Course and has executed a deed of trust (the "**Deed of Trust**") dated _____ in favor of Heritage secured by the Golf Course.

WHEREAS, the City desires to install solar panels on various portions of the Golf Course including on the roof of a certain building commonly known as the cart barn (the "**Cart Barn**").

WHEREAS, the parties to this Agreement acknowledge and agree that such installation on the roof of the Cart Barn represents a "material alteration" of the Real Estate (as referenced in Section 6.3 of the Purchase Agreement) which requires the consent of Heritage and that Heritage is willing to grant its consent thereto only upon the terms and conditions of this Agreement which terms and conditions the parties to this Agreement acknowledge and agree are reasonable.

WHEREAS, any defined terms used in this Agreement shall have the same definition, if any, as ascribed to them in the Purchase Agreement unless otherwise expressly defined in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth below, the parties agree as follows:

1. The above recitals are incorporated herein by reference.
2. Pursuant to Section 6.3 of the Purchase Agreement, Heritage consents to the City and PBC installing solar panels (the "**Solar Panels**") on various portions of the Golf Course, including on the surface of the Real Estate and on the roof of the cart barn; provided, Heritage does not consent to any installment of Solar Panels or any other material alteration to the main clubhouse building As such, no Solar Panels will be installed on the main clubhouse building or any other building or structure on the Real Estate.
3. After such installation, the City may only remove the Solar Panels (a) from the surface of the Real Estate upon restoring the Real Estate to its original condition prior to such installation and (b) from the Cart Barn upon the following conditions:
    a. The City must cause the roof of the Cart Barn to be restored to its original condition before such installation of such Solar Panels including, without limitation, in the event of any roof penetrations, the plugging of any holes in the decking of the roof and the replacement of any shingles penetrated or otherwise affected by such penetrations or installation, all in a commercially reasonable manner and to the reasonable satisfaction of Heritage.
    b. At least twenty (20) days prior to such removal, the City shall notify Heritage in writing, in the manner as provided for written notices in the Purchase Agreement,

and, upon request from Heritage, the City shall only perform such removal and restoration with a representative of Heritage present.

4. Within ninety (90) days after the date of this Agreement, the City shall ratify and confirm this Agreement pursuant to a duly authorized City Ordinance. The Solar Panels shall not be installed before the signing of such City Ordinance.
5. By their signatures below, the parties hereby agree to bind themselves and their successors or assigns to the terms of this Agreement. The parties acknowledge and agree that fax or PDF signatures on this Agreement shall be given the same effect as original signatures.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first mentioned above.

Heritage

Heritage Hills Golf Course LLC

By: _____
Barbara A. Westhues
Executive Vice President

City

City of Moberly, Missouri,

By: _____
Jerry Jeffrey
Mayor

ATTEST:

_____
D.K. Galloway CMC/MRCC, City Clerk

PBC

Moberly, Missouri, Public Building Corporation

By: _____
Name: _____
Title: _____

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City of Moberly
City Council Agenda Summary

Agenda Number: #2.
Department: P&R; Public Wo
Date: August 12, 2019

Agenda Item: A Resolution Authorizing The City Manager To Execute A Second Solar Lease Agreement And License Agreement With Moberly Solar, LLC.

Summary: Phase II includes park sites and airport. Park Board reviewed the MC Power proposal and approved all meter locations except the caboose at Depot Park.

Park sites approved by Park Board:

- **Golf Course Cart Barn (Roof)**. Serves Cart barn and Clubhouse.
- **Golf Course Pump Station (Ground-Mounted).** South of the clubhouse and #1/#9, out of public view.
- **Golf Course West Maintenance Shop (Ground-Mounted).** South of maintenance shop.
- **Aquatic Center (Ground-Mounted), Part I**. Shelter structure on grassy area between the fenceline and parking lot. Rebate funds would be used to move the fence southward and pour a concrete slab so it would be wholly incorporated into the Aquatic Center for rentable shade and seating.
- **Lodge/Aquatic Center (Ground-Mounted), Part II.** Energy was needed for the Lodge and additional capacity for the aquatic center. This was tentatively planned for the Riley Pavilion roof. MC Power's structural engineers, however, did not pass the Riley Pavilion for the load of the solar panels. Park Board approved a Plan B to be placed north of the Riley Pavilion which would replace a couple of the agricultural barns.
- **James Youth Center (Ground-Mounted).** This would be located SE of the JYC between the gravel parking lot and the woods.
- **Horse Arena Building (Roof).** Serves Horse Arena/Campground area.
- **Airport.** This would be located northwest of airport office and city hanger.

Recommended Action: Approve the Resolution.

Fund Name: N/A

Account Number: N/A

Available Budget $: N/A

ATTACHMENTS:

____ Memo	____ Council Minutes
____ Staff Report	____ Proposed Ordinance
____ Correspondence	____ Proposed Resolution
____ Bid Tabulation	____ Attorney's Report
____ P/C Recommendation	____ Petition
____ P/C Minutes	____ Contract
____ Application	____ Budget Amendment
____ Citizen	____ Legal Notice
____ Consultant Report	_x_ Other_____

Roll Call			Aye	Nay
Mayor				
M___	S___	**Jeffrey**	____	____
Council Member				
M___	S___	**Brubaker**	____	____
M___	S___	**Kimmons**	____	____
M___	S___	**Davis**	____	____
M___	S___	**Kyser**	____	____
			Passed	Failed

BILL NO: _____ **RESOLUTION NO: _____**

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A SECOND SOLAR LEASE AGREEMENT AND LICENSE AGREEMENT WITH MOBERLY SOLAR, LLC.

WHEREAS, the city council is desirous of taking advantage of the benefits of solar power to help offset energy costs incurred by the city; and

WHEREAS, Moberly Solar, LLC, a division of MC Power, has proposed a second lease agreement for Solar Electrical Arrays and a License Agreement to install a solar system at up to 8 municipal locations under a 20 year lease at a base rent rate of $2,750.00 annually; and

WHEREAS, by installing the solar electrical arrays the city will qualify for and receive State Solar Incentive rebates through AMREN and will also realize a reduction in normal electrical costs to offset future energy bills; and

WHEREAS, following the conclusion of the 20 year lease the city will have the option to purchase the solar system installed pursuant to this contract.

NOW, THEREFORE, the Moberly, Missouri, City Council hereby approves the attached Solar Services Agreement and License Agreement and authorizes the City Manager to execute the Agreement on behalf of the City.

RESOLVED this ____ day of August, 2019, by the Council of the City of Moberly, Missouri.

_____

Presiding Officer at Meeting

ATTEST:

_____

City Clerk

Solar Services Agreement Term Sheet

Services Recipient: City of Moberly, MO

Services Provider: Moberly Solar II, LLC

Site: Multiple Sites in Moberly, MO

System Size 179.6 kWdc

Description: Solar Electric Array

Contract Date: August_____, 2019.

Agreement Type: Solar Services Agreement. 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 a lease under federal law.

Term: 20 years from the Solar Operations Date.

Monthly Services Charge or Fee $2,750.00

Services Include: System and internet-based monitoring of System and full operation, maintenance and repair of all equipment during the term of the contract, including replacement of System components at the sole cost of Provider and all power generated by the system as more specifically described in the Solar Services Agreement.

Estimated Annual Production: 230,699 (kWhac). Figure might change slightly upon final design

Warranty of System by Provider: Provider warrants its Solar System and its Services as provided in Section 12.

Local Utility Solar Incentive - Rebate: If applicable, payable to Recipient.

Solar Operations Date: On or before February 1, 2020. Utility requires up to 90 days to approve Interconnection.

SRECs: All solar renewable energy credits ("SRECs") related to the Solar System shall be owned by and inure solely to the benefit of Provider unless claimed by the Local Utility pursuant to the Interconnection or Rebate Agreements.

Buyout Option: Buyout option at Fair Market Value at the end of the contract term unless Recipient acquires the Solar System by mutual agreement prior to that time.

Provider's Property: The Solar System shall at all times be the property of the Provider unless and until purchased by Recipient.

Tax Benefits: Shall be the property of the Provider.

Electric Energy: The parties agree that Recipient shall be the owner of the power generated by the Solar System.

Local Utility: Ameren

Recipient Information:

Billing Address: 101 W Reed St., Moberly, MO 65270

Representative: Greg Hodge

Billing Email: Gregh@cityofmoberly.com

Billing Phone: (660) 269-7637

Provider Information:

Address: 4031 NE Lakewood Way, Lee's Summit, MO 64064

Representative: Loren Williamson

Email: LWilliamson@mcpower.com

Phone: 816 251 4700

In the event of any conflict or inconsistency between the terms of this Summary Term Sheet and the Solar Services Agreement to which it is attached, the terms of the Solar Services Agreement shall prevail.

Table of Contents

Solar Services Agreement

This **Solar Services Agreement** dated this _____day of August, 2019, by and between Moberly Solar II, LLC, the Services Provider (also referred to as the "Provider"), and the City of Moberly, MO, the Services Recipient (also referred to as the "Recipient") shall be referred to as the Solar Services Agreement or ("Services Agreement").

WHEREAS, the Recipient is the owner of the real property or grantee to an easement and improvements collectively identified as the Site on the Summary Term Sheet and described in the License Agreement (Exhibit A) executed pursuant to the terms of this Services Agreement; and

WHEREAS, Recipient desires to receive solar electric power from a Solar System but does not feel qualified to design, acquire, operate and maintain such a 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 as part of a comprehensive Services Agreement 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 the property of Recipient; and

WHEREAS, the parties agree that this contract shall be considered a private contract pursuant to Missouri law and that Provider is engaged in a private business, and that neither party shall attempt at any time to make the power generated by the System available to the public at large or otherwise take any action that would cause the System to be considered one for public use; and

WHEREAS, the parties hereby agree that it is the express intention of the parties 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 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.

"Environmental Attributes" means the characteristics of electric power generation from the Solar System that have intrinsic value, separate and apart from the Energy Output, arising from the perceived environmental benefits of the Solar System, including but not limited to all environmental and other attributes that differentiate the Solar System or the Energy Output from energy generated by fossil fuel based generation facilities, fuels or resources, characteristics of the Solar System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemicals, soot, particulate matter or other substances. Environmental attributes shall include all products of the System other electricity including but not limited to, carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment tax credits, tax credits, emission allowances, green tags, tradable renewable credits and any new or addition such attributes created subsequent to the date of this Agreement.

"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" is the utility company specified in the Summary Term Sheet and means the electric distribution company responsible for electric energy transmission and distribution to Recipient at the Site.

"Local Utility Solar Incentive or Rebate" refers to any solar electric rebate, or other incentive, offered by the Local Utility.

"Local Utility Rebate Application" means the application required by the Local Utility to be filled out by Recipient in order to qualify for and receive any 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.

Operations and Maintenance Provider (O&M): 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.

"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 "Annual Projected Production" or "Projected Production") means the amount of kWhac 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 in the Summary Term Sheet and as identified in the Summary Term Sheet and 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 payment of $2,750.00 per month as set forth on the Summary Term Sheet.

"Services" means the "all inclusive" "comprehensive set of services" 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 whereby Recipient demonstrates that Recipient's roof or other property is suitable for the proposed installation; (3) the acquisition of all components for the Solar System ("materials procurement"); (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 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 the real property and improvements described in the Summary Term Sheet and in the License Agreement executed pursuant to this Services Agreement and described in Exhibit A.

"Solar Operations" will begin on the day in which the entire Solar System 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 Solar Operations Date.

"Solar Services Agreement" means this Agreement, including, any Exhibits or Schedules attached hereto.

"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 contract.

"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 unless this Services 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. In event of a conflict in terms or provisions, the body of the Agreement (Section 3 through the end) shall control over the definitions section and both the body of the Agreement and the definitions section shall control over the recitals.

Section 3. Solar Services Agreement

The parties to this Agreement hereby agree that it is the express intent of the parties that this Services 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. Any provision inconsistent with, or in conflict with the purpose of Section 7701 (e) shall be disregarded and considered void ab initio, with the remaining terms of the contract being preserved and enforceable.

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 contract 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 (1st) day of each successive calendar month thereafter, during the Term, Recipient shall pay Provider, in advance, the monthly Services Charge of $2,750.00 for such month. The first payment will be prorated

in the event it is for a partial month. The Services Fee shall be adjusted each January 1 to reflect an increase of 0.00 over the previous year's Services Fee.

(b) On or before the fifteenth (15th) 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.

(c) 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 the Solar System be taken out of operation or its capacity 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 (rebate) with the Local Utility, or any other local incentive provided by said Local Utility. The risk of the Local Utility Solar Incentive being or becoming unavailable (in whole or in part) shall be borne solely by Recipient.

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, shall be owned by, and inure solely to the benefit of Provider with the exception of SRECS which may be allocated to the Local Utility as part of the Net Metering or Interconnection Agreements.

(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 Access Property and the Premises 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 specified in the Summary Term Sheet, 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 ensure that its roof system 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 Services and the License Agreement. Upon execution of this Services 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 (other than legal costs and fees).

(d) Ownership of the Solar System, and all improvements placed on the Premises by Provider shall remain the absolute property of the Provider unless or until, 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 subsequent to year 7. Absent Recipient's exercise of its Option to Purchase, or a mutually agreeable contract for sale, ownership

of the Solar System and all improvements placed on the Premises by Provider shall remain with and belong to Provider and shall be removed by Provider at Provider's expense within thirty (30) days of expiration of this Services Agreement and 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), 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. Recipient shall have no possessory rights in the Solar System.

(f) As part of the monitoring of the System, the Operations and Maintenance provider (O&M 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. Said 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 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.

(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.

(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) Provider may subcontract others to provide any of the services or to fulfill any of its obligations under this Agreement but shall remain primarily liable for the performance of this contract.

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 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. 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 estimated or Projected Power then the Solar System and Services being performed are satisfactory under the contract 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 since variations of 5% or more in production are common among such facilities and can occur for a number of reasons which are not the "fault" of the Solar System or the Provider (e.g. unusual or unexpected weather patterns being the most common cause for fluctuations in the system's generation of power).

(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. If the fault lies with the Solar System or the Provider, the Provider shall have the right to 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 period. Said payment or adjustment shall be made 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 and 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 (the System being warranted to perform at 95% of Projected Annual Production). 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 two-year period, the parties agree that the value of the lost energy for the entire term of the contract will be the prevailing electrical utility rate at the time of defined system underperformance. Next the parties shall take the projected kilowatt hours for the two-year period 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 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 through no fault of its own, but rather was due to some other cause beyond its control (e.g. Recipient letting trees grow to the point where they are partially blocking the sun, requesting a temporary shutdown of the System), then the loss of production from such cause must first be added back to the Actual Production to determine the extent of any Actual Production shortfall. The burden of establishing that the shortfall was due to factors beyond the control of Provider shall be on the Provider.

(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 correspondingly pursuant to and 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 Annual Projected Production. For years 11-15, the warranted performance shall be 89% of the original Annual Projected Production. For years 16-20 the warranted performance shall be 86% of the original Annual Projected 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 payment as provided in this Section or the payment by Provider of an adjustment payment

Section 13. Transfer by Recipient of rights under Services Agreement or Property Interests

(a) Recipient hereby covenants and agrees that Recipient shall not sell, service, assign, mortgage, pledge or otherwise alienate or encumber (collectively, a "Transfer") its rights to receive Services ("Services Interest") in the *System* without the prior express written consent of Provider which such consent shall not be unreasonably withheld under the circumstances provided any such transfer would not jeopardize entitlement to the federal solar tax credit.

(b) Recipient shall give Provider at least sixty (60) days written notice of any intent to Transfer of all or a portion of the Site, identifying the transferee, the portion of the Site to be transferred and the proposed date of the transfer. No such transfer will occur without the prior express written consent of Provider which such consent shall not be unreasonably withheld under the circumstances provided any such transfer would not jeopardize entitlement to the federal solar tax credit or the ability of the Provider to perform its duties under this contract.

(c) Recipient agrees that this Services Agreement and the License Agreement shall run with the Site and survive any Transfer of the Site and that Recipient shall remain responsible for all Services Fees to be paid hereunder unless the parties as part of any transfer agree otherwise. Recipient represents and warrants that as of the date of this Services Agreement, Recipient owns the Site free and clear of any mortgage or deed of trust encumbering the Site as security for indebtedness (a "Mortgage").

(d) Prior to executing any Mortgage 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 Services 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 by providing written notice of termination to Recipient and seek damages for the Services it was unable to render as a result of said breach as well as the right to remove the System and seek damages

(e) Recipient guarantees all payments due for Services under the Services Agreement and shall be obligated to make all such payments in the event Recipient transfers any property or rights to any third party or otherwise ceases to own the property or Site in question or any lien or claim against the property arises due to the actions of the Recipient.

(f) Provider shall have the right to transfer ownership of its interest in the System, subject to the prior approval 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 the Site during the Term, then upon such relocation the obligations of the Parties shall remain as set forth in this Services Agreement; provided, however, that notwithstanding the foregoing, neither party shall take any action that would cause the Solar System to be taken out of service for federal income tax purposes to the extent it would affect the eligibility of the System to earn federal solar tax credits. 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 Services Agreement and License Agreement to modify the location of the System and the access to the System by Provider.

(b) If temporary removal of the Solar System is required at Recipient's request 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. 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 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.

Section 15. Default by Recipient and Provider's Remedies

It is the intent of the parties to preserve this contract in the event of a breach or default which is not so material that it would justify invoking the remedy of termination. Any default which would justify termination shall provide a minimum of 10 days to cure and if a cure is not reasonably possible within 10 days, then a reasonable period of time, so long as the party in default is diligently pursuing a cure and such cure period does not substantially and materially prejudice the other party.

(a) With respect to Recipient, there shall be an "Event of Default" if:

(i) Recipient fails to pay any amount due under this Services 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 is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Services Agreement and such breach or failure is not cured within thirty (30) days after written notice from Provider;

(iii) Recipient is in violation of any other material term of this Agreement;

(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 Recipient'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 is otherwise modified in such a manner that it is not materially prejudicial to the rights of the Provider; 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 Recipient'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 other action is taken that renders such default not materially prejudicial to the rights of the Provider.

(vi) Upon the occurrence of any material Event of Default (as set forth above including the expiration of all applicable grace periods), Provider shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive Provider of any other right of remedy allowed it by law:

(vii) Provider may terminate this Services Agreement and the License Agreement by giving to Recipient notice of Provider's election to do so, 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, except that Recipient shall be responsible for and Provider shall be entitled to collect from Recipient, Provider's reasonable cost of removal of the Solar System from the premises and all amounts due or to become due in the future under the Services Agreement; or Provider may enforce the provisions of this Services Agreement and may enforce and protect the rights of Provider hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for

the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Recipient under any of the provisions of this Services Agreement.

Section 16. Default by Provider and Recipient's Remedies

It is the intent of the parties to preserve this contract in the event of a breach or default which is not so material that it would justify invoking the remedy of termination. Any default which would justify termination shall provide a minimum of 10 days to cure and if a cure is not reasonably possible within 10 days, then a reasonable period of time, so long as the party in default is diligently pursuing a cure and such opportunity does not substantially and materially prejudice the other party.

(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) Except as otherwise provided, 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) Except as otherwise set forth in this Section, Provider is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Services Agreement or the License Agreement, and such breach or failure is not cured within thirty (30) days after written notice from the Recipient; provided, however, that the cure period shall be extended by the number of days during which the Provider is prevented from taking curative action solely by Force Majeure, or if such breach cannot be remedied within such thirty (30) day period, there shall be no default hereunder so long as the Provider commences a cure of such breach within such 30-day period and diligently prosecutes same to completion;

(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 Recipient'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 Recipient'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.

(vi) 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 (5) years that would result in the loss of federal solar tax credits unless its rights hereunder cannot be satisfied through the payment of money or the collection of damages through legal action.

(vii) 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. <u>Option to Purchase</u>

Provided no material default of Recipient shall have occurred and be continuing, Recipient may purchase the Solar System at the expiration of this Agreement, 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 prior to the expiration of the Agreement. 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 of 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. If either party believes in good faith that the appraisal was the product of manifest error or fraud then they may seek relief in a Missouri court having jurisdiction where the property is located.

The closing of the sale and purchase of the Solar System pursuant to the Option or pursuant to Agreement, shall take place on the earlier of the thirtieth (30th) day after the Purchase Price for the Solar System is determined pursuant to this Section 17, or the expiration of the Option Period.

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, 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.

Section 18. <u>Casualty</u>

(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 one hundred and twenty (120) 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 and the provisions of this Section shall be construed to accomplish that objective.

(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. Recipient shall indemnify and hold Provider harmless from any such damage or loss if it is negligent in discharging this duty.

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 Services Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Services Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary company, organizational or governmental action; (c) this Services 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 Services 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 Services 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 Services 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 part 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, and shall indemnify the other party against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such liens.

(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 and shall be responsible for any damages resulting therefrom.

(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 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 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, including legal actions, 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.

(j) Recipient further agrees to indemnify and hold Provider harmless from any breach of any representation or warranty contained within this section and agrees that if there is any breach of any representation or warranty in this section that would interfere with the operation of the System, or any part thereof, Recipient shall not be relieved of its obligations to pay the Services Fees set forth in this Agreement during the Term of this Agreement.

Section 21. <u>Indemnification; Insurance</u>

(a) Provider and Recipient (each, in such case, an "Indemnifying Party") shall indemnify, defend and hold the other Party 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 and/or (ii) negligence or willful misconduct.

(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.

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.

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 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 or Interpretation 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) the imposition of any material conditions on the issue of the renewal of any applicable permit, (iii) 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 contract is determined to subject Provider to regulatory jurisdiction, the parties agree to act in good faith in an attempt to restructure the contract 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 Services 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 Services 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). The settlement of strikes and labor disturbances shall be wholly within the control of the Party experiencing that difficulty.

(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 Services 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 Services 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 Services 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 set forth in the Summary Term Sheet, 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 delivered to the delivery, whichever is applicable. However, where applicable, the time period for responding to a notice shall commence from the date of actual

receipt thereof. The part 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 Services Agreement and/or 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; (ii) transfer or assign this Services Agreement and/or the License Agreement to any person or entity, provided, however, that (a) any such assignee shall agree to be bound by the terms and conditions hereof, and (b) Provider shall not be released from its obligations hereunder; or (iii) assign its rights under this Services 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 Services Agreement.

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. In the event the annual property tax exceeds $4,000 (the "Property Tax Cap"), any assessed amounts over and above the Property Tax Cap shall be paid by the Recipient, or if paid by Provider, reimbursed by Recipient.

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. If provider contests the amount or legality of charging personal property taxes or real property taxes associated with the System, Recipient agrees to reimburse Provider for one-half of the legal fees and costs associated with such contest.

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 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. Binding Arbitration

All claims, disputes, or controversies between Provider and Recipient in any way arising from or relating to this Agreement or the breach thereof, and not waived by the terms of this Agreement, will be submitted to and resolved by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and Procedures then in effect, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, subject to the following:

A demand for arbitration must be filed promptly and within a reasonable time after a claim has arisen. The party filing a demand for arbitration must assert a demand for all claims known to the party on which arbitration may be demanded. In no event may the demand for arbitration be made if the institution of legal or equitable proceedings arising out of such claim would be barred by the applicable statute of limitations. To the fullest extent permitted by Laws and Regulations, the place of arbitration will be Kansas City, Missouri. To the extent arbitration is required to take place in a different locale other than Kansas City, Missouri, the location of arbitration will be at the place required by applicable Laws and Regulations.

Either party may apply to the arbitrator(s) seeking emergency relief, including any injunctive relief, until the arbitration award rendered, or the claim is otherwise resolved. In the event emergency relief is requested, the American Arbitration Association will expedite submitting the matter to the arbitrator(s) for resolution. Either party may also, without waiving any remedy under this Agreement, seek from any court having jurisdiction, any interim or provisional relief that is necessary to protect the rights or property of that party, including any injunctive relief, until the arbitrator(s) are appointed, the arbitration award rendered, or the claims are otherwise resolved.

An arbitration proceeding hereunder may include by consolidation or joinder, or by any manner, persons or entities substantially involved in a common question of fact or law.

There will be a pre-hearing meeting between the parties at which time each party will present a memorandum disclosing the factual basis of its claim and defenses and disclosing legal issues raised. The memorandum must also disclose the name of any expert a party will present as a witness during the proceedings. At the pre-hearing meeting, the arbitrator(s) will make rulings and set schedules for disclosures, discovery, hearings, and other matters, consistent with their powers set forth below.

The parties will be entitled to discover all documents and information reasonably necessary for a full understanding of any legitimate issue raised in the arbitration. The parties may use all methods of discovery available under the Federal Rules of Civil Procedure and will be governed thereby. The arbitrators will have authority to limit discovery so that such discovery methods are not unduly burdensome or onerous, unreasonably cumulative or duplicative, or to the extent the information can be obtained from some other source that is more convenient, less burdensome, or less expensive. Prior to the deposition of an expert witness, the party proposing to call such a

witness must provide a full and complete report by the expert, together with the expert's calculations and other data by which the expert reached any opinions concerning the subject matter of the arbitration. The report must be provided no more than 10 days prior to the scheduled date for the expert witness's deposition. The arbitrator(s) must endeavor to prevent the disclosure of information and documents protected by the attorney-client privilege. The arbitrators must also endeavor to prevent the introduction of evidence not disclosed as required herein.

To the extent allowed by Applicable Laws, the arbitrator(s) will have no authority to award any punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute.

Regardless of any contrary provision contained in this Agreement, claims disputes or controversies arising out of actions or claims filed or asserted by third parties on account of personal injury or death of a person or loss or damage to property, will not be subject to the provisions of this Section.

Section 33. Binding Effect

The Terms and provisions of this Services 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 Services Agreement shall be effective except by written amendment executed by both Provider and Recipient.

Section 35. Counterparts

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

Section 36. Entire Agreement

This Services 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 Services 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 Services Agreement shall not be construed as a third-party beneficiary contract.

Section 38. Severability

Should any provision of this Services 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 Services 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 provision(s) of this Services Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Services Agreement shall survive the termination or expiration of this Services Agreement.

Section 40. Governing Law

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

Section 43. Conflicts

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

Section 44. Exhibits

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

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

Provider:	**Recipient:**
Moberly Solar II, LLC	City of Moberly, MO
By:_____	By:_____
Name:_____	Name:_____
Title: _____	Title:_____

EXHIBIT A

LICENSE AGREEMENT REGARDING SOLAR PANELS

This License Agreement ("Agreement") is entered into on this _____day of August, 2019 ("Effective Date"), by and among Grantor: City of Moberly and Grantee: Moberly Solar II, LLC.

Grantor: City of Moberly, MO

Grantor's address: 101 W Reed St., Moberly, MO 65270

Grantee: Moberly Solar II, LLC

Grantee's address: 4031 NE Lakewood Way, Lee's Summit, MO 64064

WHEREAS, Grantor owns certain real property or is grantee of an easement located at multiple sites in the City of Moberly, County of Randolph, State of Missouri, more particularly described on Schedule "A" attached hereto and incorporated herein (the "Burdened Property"); and

WHEREAS, Grantor and Grantee have entered into that certain unrecorded Solar Services Agreement ("Services Agreement") dated August _____2019 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 Grantee 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 Burdened Property; and

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

WHEREAS, Grantor is willing to grant to Grantee the right to install, operate, maintain and remove the Serviced Equipment on the Burdened 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. Grantor hereby grants a License to Grantee 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 Burdened Property shown on Schedule "B" attached hereto and incorporated herein, and such other portions of the Burdened Property solely as reasonably necessary to effectuate the purposes of this License. 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 Grantee within the Solar System sites (collectively, the "Sites") located on the Burdened Property as shown on Schedule "B", all subject to the terms and conditions of this Agreement and the Services Agreement, as applicable. Grantor, for itself and its permitted successors and assigns, hereby grants to Grantee and its permitted successors and assigns and its agents, contractors, sub-contractors, and employees, the right to enter onto the Burdened Property, subject to the terms and conditions of this Agreement and the Services Agreement, for the purpose of conducting such permitted uses of the License. Grantor and Grantee understand that this Agreement is irrevocable, unless terminated pursuant to the terms of this Agreement and the Services Agreement.

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 or (iii) purchase of the Solar System by the Grantor in accordance with the Services Agreement.

4. Consideration. The consideration for this Agreement shall be the Services Agreement and the mutual benefit the parties obtained from said Agreement. Grantee shall also pay to Grantor an annual fee of Ten Dollars ($10.00) in consideration of this Agreement, if so requested by Grantee. Grantor hereby acknowledges receipt of any such annual fee covering the entire Term of this Agreement.

5. Access. Grantee shall have a right of access to the Serviced Equipment over and across Burdened Property at all reasonable times, at such locations as Grantor shall from time to time reasonably determine, subject to the Services Agreement and to the reasonable security and safety procedures established by Grantor.

6. Amendment Termination. Except as otherwise expressly set forth herein, this Agreement and the License may be amended, abandoned or terminated only with the consent of Grantor and Grantee. Any such amendment, abandonment of termination shall be in writing, executed and acknowledged by the required parties, and duly recorded in the land records of the jurisdiction in which the Serviced Equipment is situated.

7. No Dedication for Public Use. 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.

8. Liability. Subject to the terms and conditions of the Services Agreement, the liability of Grantor, its trustees, officers, partners, members, agents, employees, representatives, and permitted successors and assigns (collectively, the "Grantor Parties"), to Grantee, for any default by Grantor under this Agreement shall be limited solely and exclusively to an amount which is equal to the actual damage sustained by the Grantee. Subject to the terms and conditions of the Services Agreement, the liability of Grantee, its directors,

officers, partners, members, agents, employees, representatives, and permitted successors and assigns (collectively, the "Grantee Parties") to Grantor for any default by Grantee under this Agreement shall be limited solely and exclusively to an amount which is equal to the actual damage sustained by the Grantor.

9. Entire Agreement. This Agreement and the Services Agreement contain the entire Agreement between Grantor and Grantee 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.

10. Successors and Assigns. This Agreement shall run with the land and shall be binding upon the parties and their permitted successors and assigns. Notwithstanding the foregoing, no party may assign its rights or obligations under this Agreement unless such assignment is effected in conjunction with an assignment of the Services Agreement pursuant to the terms of the Services Agreement. All the provisions of this Agreement shall be covenants running with the land pursuant to applicable law. If any portion of the property is encumbered by a mortgage or other lien, Grantor shall obtain an subrogation or non-disturbance agreement that is subordinate to the terms of this Agreement.

11. Compliance with Law; No Waiver. This Agreement and the rights and obligations created hereunder are subject to, and governed by the laws, decisions, rules and regulations of any federal, state or local regulatory authority charged with the administration of the transactions contemplated hereby. Waiver of a breach of any provision hereof under any circumstances will not constitute a waiver of any subsequent breach of such provision, or of a breach of any other provision of this Agreement.

12. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Missouri.

13. 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.

14. Authority to Enter into Agreement. Grantee and Grantor 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.

15. 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 License 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.

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

Grantor:

City of Moberly, MO

By: _____

Name: _____

Title: _____

Grantee:

Moberly Solar II, LLC

By: _____

Name: _____

Title: _____

Schedule A

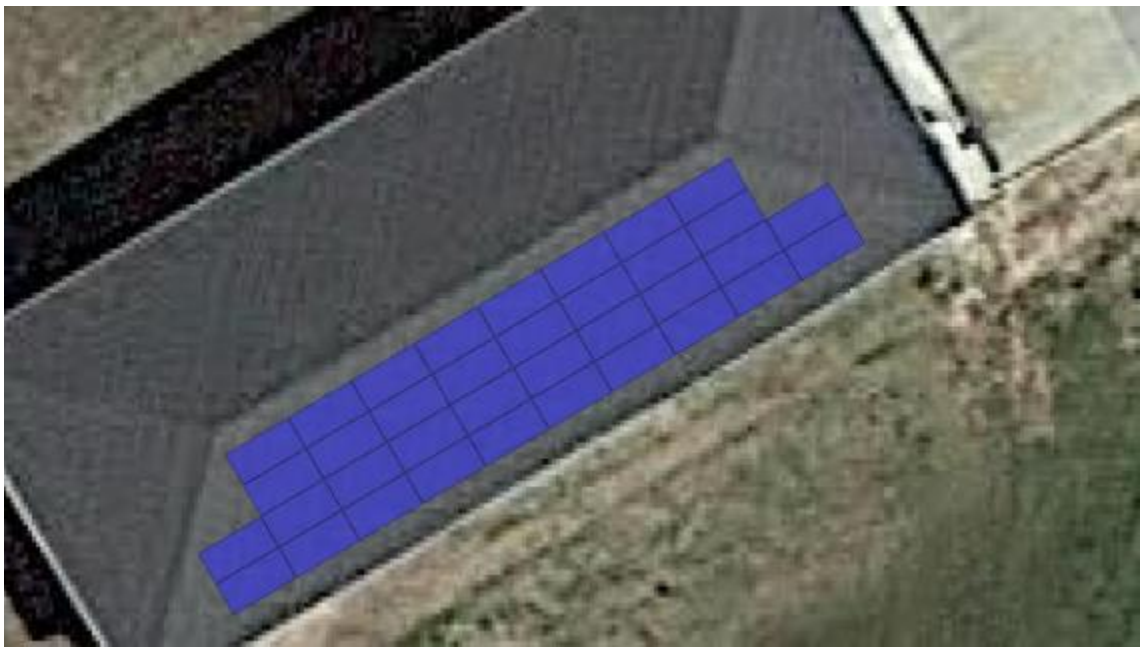
Location of Solar Array Sites – Subject to Final design

Airport: 3900 N Outer Rd

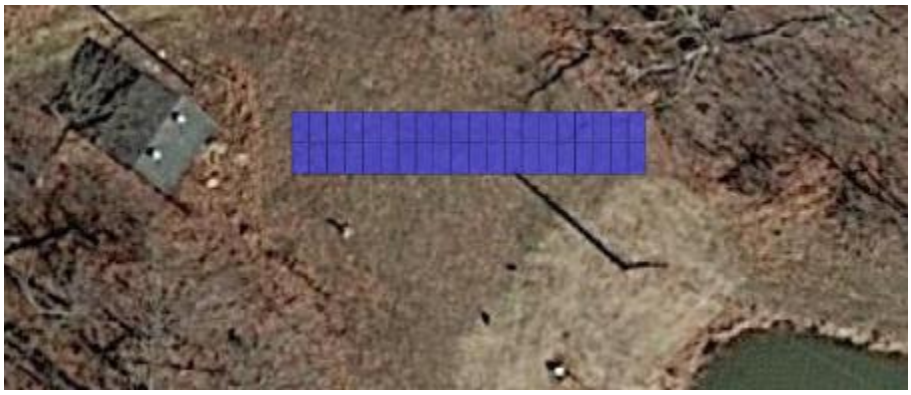
Aquatic Center: 100 Rothwell Park Rd.

Campfire Girls – James Youth Center: 220 Rothwell Park

Golf Clubhouse: 3534 Hwy JJ



Golf Water Pump: 3534 Hwy JJ



Maintenance: 4092 Hwy JJ

Rodeo Arena: Rothwell Park

The Lodge: 111 Rothwell

Schedule B

Burdened Property

Airport: 3900 N Outer Rd, Moberly MO

Aquatic Center: 100 Rothwell Park Rd., Moberly MO

Campfire Girls – James Youth Center: 220 Rothwell Park, Moberly MO

Golf Clubhouse: 3534 Hwy JJ, Moberly MO

Golf Water Pump: 3534 Hwy JJ, Moberly MO

Maintenance: 4092 Hwy JJ, Moberly MO

Rodeo Arena: Rothwell Park, Moberly MO

The Lodge: 111 Rothwell, Moberly MO

Exhibit B

Projection

Year	Projected Annual Production (kWh)	Guaranteed Production (kWh)
1	230,699	x 95% = 219,164
2	230,699	x 95% = 219,164
3	230,699	x 95% = 219,164
4	230,699	x 95% = 219,164
5	230,699	x 95% = 219,164
6	230,699	x 92% = 212,243
7	230,699	x 92% = 212,243
8	230,699	x 92% = 212,243
9	230,699	x 92% = 212,243
10	230,699	x 92% = 212,243
11	230,699	x 89%= 205,295
12	230,699	x 89%= 205,295
13	230,699	x 89%= 205,295
14	230,699	x 89%= 205,295
15	230,699	x 89%= 205,295
16	230,699	x 86% = 198,375
17	230,699	x 86% = 198,375
18	230,699	x 86% = 198,375
19	230,699	x 86% = 198,375
20	230,699	x 86% = 198,375

Park Board Meeting
August 5, 2019

Presented by: Lindsay Case



Building For The Future

MC POWER Companies

Financials

Assumptions to include:

- Utility rates increase annually at 3%
- No additional boring, concrete, or trenching
- Ameren accepts all net-metering agreements
- Proposed layouts to be similar to final design size
- No fencing
- MC Power to own and operate for term of agreement

Financials

Moberly Phase 2 - 179.6 kW DC (9 Sites)					
Year	Solar Services	Energy Savings	Rebate	Difference	Net
1	$33,000.00	$29,641.54	$44,900.00	$41,541.54	$41,541
2	$33,000.00	$30,530.79		-$2,469.21	$39,072.33
3	$33,000.00	$31,446.71		-$1,553.29	$37,519.04
4	$33,000.00	$32,390.11		-$609.89	$36,909.15
5	$33,000.00	$33,361.81		$361.81	$37,270.96
6	$33,000.00	$34,362.67		$1,362.67	$38,633.63
7	$33,000.00	$35,393.55		$2,393.55	$41,027.18
8	$33,000.00	$36,455.36		$3,455.36	$44,482.53
9	$33,000.00	$37,549.02		$4,549.02	$49,031.55
10	$33,000.00	$38,675.49		$5,675.49	$54,707.04
11	$33,000.00	$39,835.75		$6,835.75	$61,542.79
12	$33,000.00	$41,030.82		$8,030.82	$69,573.61
13	$33,000.00	$42,261.75		$9,261.75	$78,835.36
14	$33,000.00	$43,529.60		$10,529.60	$89,364.96
15	$33,000.00	$44,835.49		$11,835.49	$101,200.45
16	$33,000.00	$46,180.55		$13,180.55	$114,381.00
17	$33,000.00	$47,565.97		$14,565.97	$128,946.97
18	$33,000.00	$48,992.95		$15,992.95	$144,939.92
19	$33,000.00	$50,462.74		$17,462.74	$162,402.66
20	$33,000.00	$51,976.62		$18,976.62	$181,379.28
	O&M Only				
21	$2,305.20	$53,535.92		$51,230.72	$232,610.00
22	$2,351.30	$55,142.00		$52,790.69	$285,400.69
23	$2,398.33	$56,796.26		$54,397.93	$339,798.62
24	$2,446.30	$58,500.14		$56,053.85	$395,852.46
25	$2,495.22	$60,255.15		$57,759.93	$453,612.39
26	$2,545.13	$62,062.80		$59,517.68	$513,130.06
27	$2,596.03	$63,924.69		$61,328.66	$574,458.72
28	$2,647.95	$65,842.43		$63,194.48	$637,653.20
29	$2,700.91	$67,817.70		$65,116.79	$702,769.99
30	$2,754.93	$69,852.23		$67,097.30	**$769,867.29**
	$685,241.30	$1,410,208.59		$769,867.29	



Breakdown

Building		Size	Type of Array	Annual Offset	Rebate	Energy Savings	Solar Services	W/o Rebate Year 1	W/ Rebate Year 1
1	4092 Hwy JJ Shed	15.4	Ground	71%	$3,850.00	$1,865.02	$2,829.62	$964.60	$2,885.40
2	3534 Hwy JJ, W Water Pump	13.4	Ground	66%	$3,350.00	$2,337.68	$2,462.14	$124.46	$3,225.54
3	3534 Hwy JJ, Golf Clubhouse	12.1	Roof	21%	$3,025.00	$1,833.24	$2,223.27	$390.03	$2,634.97
4	111 Rothwell Park, The Lodge	18.1	Canopy	71%	$4,525.00	$2,940.79	$3,325.72	$384.93	$4,140.07
5	100 Park Rd, Aquatic Center	79.4	Canopy	59%	$19,850.00	$13,212.29	$14,589.09	$1,376.80	$18,473.20
6	3900 N Outer Rd, Airport	20.1	Ground	70%	$5,025.00	$3,594.43	$3,693.21	$98.78	$4,926.22
7	220 Park Rd, Rothwell Park James Youth Center	16.1	Ground	81%	$4,025.00	$2,851.09	$2,958.24	$107.15	$3,917.85
8	X, Rothwell Park Rodeo Arena	5	Roof	69%	$1,250.00	$1,007.00	$918.71	$88.29	$1,338.29
		179.6			**$44,900.00**	**$29,641.54**	**$33,000.00**	**$3,358.46**	**$41,541.54**

Proposed Layouts

Airport

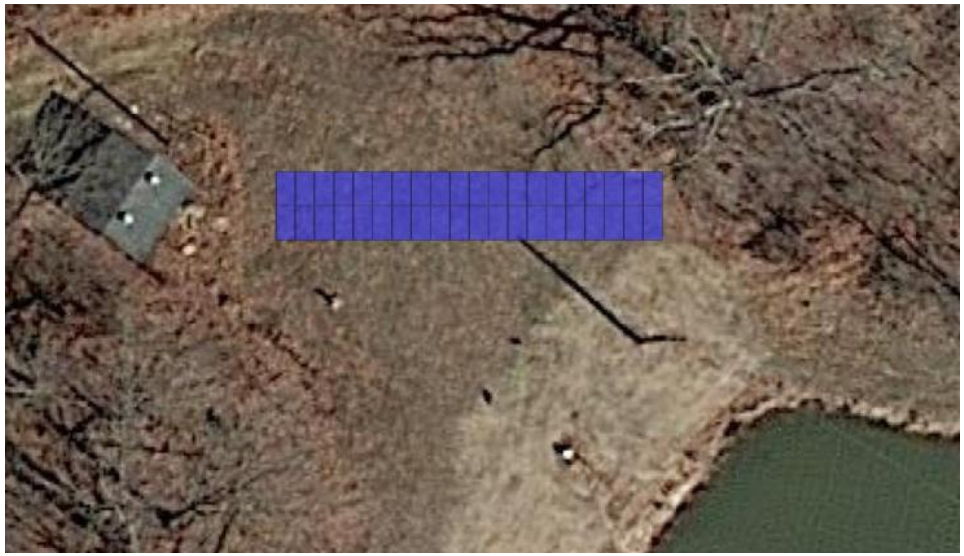
Aquatic Center

Proposed Layouts

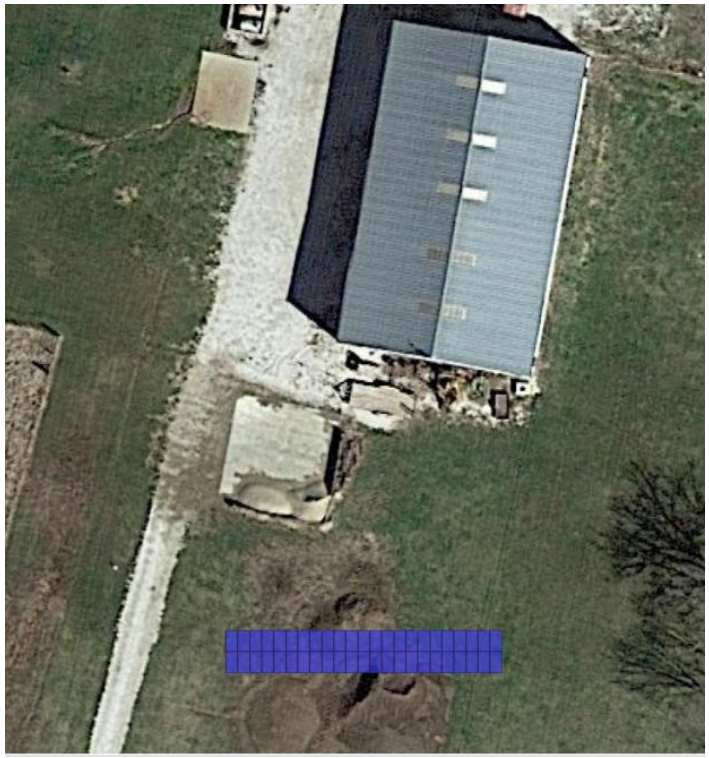
James Youth Center

Golf Course Shed – power goes to clubhouse

Proposed Layouts



Golf Water Pump



Maint. Shed

Proposed Layouts

Lodge

Rodeo Arena

Thank You!

Lindsay Case
Senior Energy Consultant
lcase@mcpower.com
816.207.7659

MC Power Companies
4031 NE Lakewood Way
Lee's Summit, MO 64064
816. 251.4700



City of Moberly
City Council Agenda Summary

Agenda Number: #3.
Department: Parks and Recreation
Date: August 12, 2019

Agenda Item: An Ordinance Approving A Certain Cooperative Agreement; Making Certain Findings; And Providing Further Authority.

Summary: Attached is an agreement with Dustin McCormick (written by Tom Cunningham) to trade the labor in developing cart paths on the "Back 9" in exchange for the home at 4092 State HWY JJ next to the west maintenance shop. This agreement:

- Would put in cart paths on the back 9 at Heritage Hills.
- The house by the west maintenance shop would be exchanged for the labor. He would then fix up the home. We would have had to pay to demolish this otherwise, so trading it for labor saves us funds not only on the cart paths, but on demolition.
- We would pay materials which could be in the $37,000 range. We have approximately $9,500 earmarked for this in Friends of the Park accounts. We have another approximately $10,000 in the budget for demolition of this house, the savings of which could offset a portion of the cart paths. Another $10,000 from solar rebates at the golf course could also be used for this improvement. To cover the difference between the $37,000 and the $29,500, we could tap the golf course budget as they have had a FT position unfilled for most of the duration GreatLIFE has been running the operation.
- The goal would be to have at least 9 holes playable in wet conditions, increasing access and providing more value to customers' in terms of memberships and greens/cart fees.

Recommended Action: Approve Attached Agreement

Fund Name: See Above

Account Number: See Above

Available Budget $: See Above

ATTACHMENTS:

___ Memo	___ Council Minutes
___ Staff Report	__x_ Proposed Ordinance
___ Correspondence	___ Proposed Resolution
___ Bid Tabulation	___ Attorney's Report
___ P/C Recommendation	___ Petition
___ P/C Minutes	___ Contract
___ Application	___ Budget Amendment
___ Citizen	___ Legal Notice
___ Consultant Report	___ Other_____

Roll Call	Aye	Nay
Mayor		
M___ S___ **Jeffrey**	___	___
Council Member		
M___ S___ **Brubaker**	___	___
M___ S___ **Kimmons**	___	___
M___ S___ **Davis**	___	___
M___ S___ **Kyser**	___	___
	Passed	Failed

BILL NO: _____ ORDINANCE NO: _____

AN ORDINANCE APPROVING A CERTAIN COOPERATIVE AGREEMENT; MAKING CERTAIN FINDINGS; AND PROVIDING FURTHER AUTHORITY.

WHEREAS, Sections 70.210 through 70.320 of the Revised Statutes of Missouri, as amended, authorize Missouri municipalities to contract with any private person, firm, association, or corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service, provided, that the subject and purposes of any such contract or cooperative action are within the scope of the powers of such municipality; and

WHEREAS, The Moberly, Missouri, Public Building Corporation (the "**Corporation**") is the owner in fee of improved real property containing a public golf course facility located at 3534 State Highway JJ South, Moberly, Missouri 65270 and generally known as Heritage Hills Golf Course (the "**Golf Course**") which property also includes an improved parcel known and numbered as 4092 Highway JJ, Moberly, Missouri (the "**Ancillary Parcel**"); and

WHEREAS, the City of Moberly (the "**City**") retains sole responsibility for the management and operation of the Golf Course under that certain Management, Operating, and Purchase Agreement dated February 19, 2019 (the "**Management Agreement**") between the City and the Corporation; and

WHEREAS, the City and the Corporation each wish to convey a certain portion of the Ancillary Parcel containing a residential structure to DMC Concrete LLC, a Missouri limited liability company having a principal office in the City (the "**Contractor**") in exchange for the installation by the Contractor of concrete golf cart paths on portions of the Golf Course, all in accordance with and subject to the terms and conditions of that certain Cooperative Agreement

by and among the Corporation, the City, and the Contractor, a copy of which is attached as Exhibit A to and incorporated by reference in this Ordinance (the "**Cooperative Agreement**");

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOBERLY, MISSOURI, as follows, to wit:

SECTION 1. The Cooperative Agreement in substantially the form of Exhibit A is hereby approved and the Mayor is hereby authorized and directed to execute and deliver the Cooperative Agreement on behalf of the City.

SECTION 2. The Mayor, City Manager, City Clerk, and applicable City staff are hereby authorized and directed to take such further actions as may be necessary or convenient to carry out and satisfy the City's obligations under the Cooperative Agreement, all of which will facilitate the operation and enjoyment of the Golf Course and are hereby found and determined to be consistent with the terms of the Management Agreement, for a public purpose, and in furtherance of the health, safety and welfare of the citizens of the City.

SECTION 3. The portions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found by a court of competent jurisdiction to be invalid, the remaining portions of this Ordinance are valid, unless the court finds the valid portions of this Ordinance are so essential and inseparably connected with and dependent upon the void portion that it cannot be presumed that the Council of the City would have enacted the valid portions without the invalid ones, or unless the court finds that the valid portions standing alone are incomplete and are incapable of being executed in accordance with the legislative intent.

SECTION 4. This Ordinance shall take effect and be in force from and after its passage and adoption by the Council of the City and its signature by the officer presiding at the meeting at which it was passed and adopted.

PASSED AND ADOPTED by the Council of the City of Moberly, Missouri on this ____ day of _____, 2019.

_____
Presiding Officer at Meeting

ATTEST:

_____
Diane Kay Galloway, CMC/MRCC, City Clerk

EXHIBIT A
COOPERATIVE AGREEMENT

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT (this "**Agreement**") is made and entered into as of this ____ day of _____, 2019 by and among MOBERLY, MISSOURI, PUBLIC BUILDING CORPORATION, a Missouri non-profit corporation having a principal office at 101 West Reed Street, Moberly, Missouri 65270 (the "**Corporation**"); the CITY OF MOBERLY, a city of the third class and Missouri municipal corporation having a principal office at 101 West Reed Street, Moberly, Missouri, 65270 (the "**City**"); and DMC CONCRETE LLC, a Missouri limited liability company having a principal office at 3658 Highway JJ, Moberly, Missouri 65270 (the "**Contractor**").

RECITALS

A. The Corporation is a non-profit corporation established under the laws of the State of Missouri "[t]o benefit and carry out the purposes of the City of Moberly, Missouri…, by providing for the acquisition, construction, improvement, extension, repair, remodeling, renovation and financing of public sites, buildings, facilities, furnishings and equipment for the benefit or use of the City."

B. Sections 70.210 through 70.320 of the Revised Statutes of Missouri, as amended, authorize the City to contract with any private person, firm, association, or corporation for the planning, development, construction, acquisition, or operation of any public improvement or facility, or for a common service, provided, that the subject and purposes of any such contract or cooperative action are within the scope of the powers of the City.

C. The Corporation is the owner in fee of improved real property containing a public golf course facility located at 3534 State Highway JJ South, Moberly, Missouri 65270 and generally known as Heritage Hills Golf Course (the "**Golf Course**") which property also includes an improved parcel known and numbered as 4092 Highway JJ, Moberly, Missouri and legally described in Exhibit A, attached to and incorporated by reference in this Agreement (the "**Ancillary Parcel**").

D. The City retains sole responsibility for the management and operation of the Golf Course under that certain Management, Operating, and Purchase Agreement dated February 19, 2019 (the "**Management Agreement**") between the City and the Corporation and the City and the Corporation wish to convey a certain portion of the Ancillary Parcel depicted on Exhibit B, attached to and incorporated by reference in this Agreement (the "**Residential Portion**") containing a residential structure to the Contractor in exchange for the installation by the Contractor of concrete golf cart paths on portions of the Golf Course, in accordance with the terms and requirements of this Agreement (collectively, the "**Cart Paths**") which Cart Paths will facilitate the operation and enjoyment of the Golf Course.

E. The Contractor is willing to undertake the installation of the Cart Paths in exchange for the conveyance in fee by the Corporation of the Residential Portion, all in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant and agree as follows:

1. Undertakings by Corporation; Grant of Cross Easements; Covenant to Connect to Public Sewerage. In consideration of the undertakings and covenants of the Contractor and of the City, each as set forth in paragraph 2 of this Agreement, the Corporation hereby agrees, represents and covenants to the City and the Contractor that subject to the satisfactory completion of the installation of the Cart Paths in accordance with this Agreement, the Corporation shall cause to be subdivided as required by the Subdivision Regulations of the City and shall convey to the Contractor by warranty deed the Residential Portion and all improvements thereon together with all goods, furnishings, equipment and other personalty then within the residential structure not later than December 31, 2019; *provided that* the Corporation, the City or either of them shall have a period of Ninety (90) calendar days from the date of this Agreement to remove from the Residential Portion such goods, furnishings, equipment and other personalty within or ancillary to the residential structure as the Corporation or the City, as applicable may determine; and *provided further that* upon the expiration of the aforesaid 90 day period any such goods, furnishings, equipment and other personalty not so removed shall be deemed to be part of the Residential Portion neither the Corporation nor the City shall have any further rights therein. In connection with the foregoing, the City hereby agrees to assume and pay all costs of the aforesaid subdivision including, without limitation, preparation of an applicable subdivision or boundary adjustment plat and submittal to and review by applicable City agencies and to prepare at the City's sole cost and expense such further exhibits and instruments as reasonably required to convey the easements described in this paragraph 1. Contemporaneously with the conveyance of the Residential Portion, the Corporation shall grant to the Contractor for the benefit of the Residential Portion a perpetual access and egress easement over a portion of the driveway currently serving the maintenance shed located on the Ancillary Parcel in general conformance with the depiction attached as Exhibit C to and incorporated by reference in this Agreement and the Contractor shall grant to the Corporation and the City for the benefit of the Ancillary Parcel an easement to use the lagoon and attendant sewerage connections for sanitary sewage treatment purposes for so long as access to public sanitary sewerage under then-current City policies and practices therefor remains unavailable to service the Residential Portion and the Ancillary Parcel; *provided that* the Contractor hereby represents, warrants and covenants to the City and the Corporation that, upon receiving written notice from the City that public sanitary sewerage is available to service the Residential Portion, the Contractor shall promptly connect the Residential Portion to such sanitary sewerage system at such cost and expense to the Contractor as may be applicable under then-current policies and practices of the City for such connections and shall at the Contractor's sole cost and expense abandon, cap, and close down in full accordance with all applicable local, State and federal environmental standards the lagoon and attendant sewerage connections*; provided, however,* that nothing in this paragraph 1 shall require the Contractor to pay costs or expense for connecting the Ancillary Parcel to the public sanitary sewerage system and such costs shall be borne solely by the City and the Corporation. It is intended that the

foregoing covenant to connect the Residential Portion to the public sanitary sewerage system shall run with the land and be binding upon any and all successors in interest to the Residential Portion and the parties to this Agreement further agree to cooperate with one another to take such actions as may be required to cause to be recorded promptly following Closing (as hereinafter defined) the foregoing covenant in the land records of the office of the Randolph County Recorder.

2. Undertakings by Contractor, City; Work Schedule; Contractor Warranties. The Contractor hereby agrees and covenants to the Corporation and the City that the Contractor shall undertake at the Contractor's sole cost and expense to provide all equipment and labor necessary to install the Cart Paths in accordance with this Agreement at the locations depicted on Exhibit D, attached to and incorporated by reference in this Agreement, and subject to the specifications and standards set forth in Exhibit E, attached to and incorporated by reference in this Agreement (collectively, the "**Work**"). The City hereby agrees to assume all reasonable costs of paving materials for the Work currently estimated at approximately $37,000 (*See* Exhibit E). The Contractor shall commence the Work within a reasonable period following the date of this Agreement and actual completion of the Work shall be effected as expeditiously as possible, but in no event later than November 30, 2019, subject to force majeure, and in any event satisfactorily and in a workmanlike manner; *provided that* prior to initiating the Work, the Contractor shall consult with and cooperate with the City to establish a mutually acceptable construction schedule which will minimize disruption of Golf Course operations and play and inconvenience to Golf Course patrons. All Work shall be undertaken in full accord with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes applicable to or affecting the Golf Course, including, without limitation, the City's building regulations and all applicable federal and state environmental laws and regulations. The Contractor shall provide to the Corporation and the City commercially reasonable written warranties with respect to the Work for the benefit of the City and the Corporation.

3. Mutual Cooperation. To effectuate the respective conveyances set forth in paragraph 1 of this Agreement, the Corporation and the City shall each comply with all applicable reviews and timely obtain such approvals under the City's subdivision regulations and ordinances as may be necessary to lawfully convey the Residential Portion to the Contractor and to effectuate the cross easements described in paragraph 1 of this Agreement. The Corporation, the City, and the Contractor each agree to cooperate with the other and to execute any such instruments as may be necessary or convenient to effectuate the foregoing conveyances. The Contractor may, but shall not be obligated, to obtain at the Contractor's sole cost and expense, a commitment for an ALTA Owner's Policy (6-17-06) of title insurance for the Residential Portion.

4. Closing. Subject to satisfactory installation of the Cart Paths, closings on the conveyance of the Residential Portion and the cross easements (together, the "**Closing**") shall take place on a mutually convenient date not later than December 31, 2019 (the "**Closing Date**"). The Closing shall occur at the offices of a title insurance company selected by the City and reasonably acceptable to the Contractor (the "**Title Company**") during normal business hours or at such other location as the Contractor and the City may mutually agree. At the Closing, the Corporation shall transfer and convey to the Contractors all of the Corporation's right, title and interest in the Residential Portion by Special Warranty Deed, free and clear of all tenancies, liens and encumbrances

other than those created by this Agreement. Each party to this Agreement shall execute, acknowledge, and deliver, after the Closing, such further assurances, instruments and documents as the other may reasonably request in order to fulfill the intent of this Agreement and the transactions contemplated hereby. All real estate taxes, and all other public or governmental charges and public or private assessments against the Residential Portion which are or may be payable on an annual basis (including liens or encumbrances for sewer, water, drainage or other public improvements), shall be adjusted and prorated between the City and the Contractor. Any such prorations shall be made as of the day prior to the Closing and shall be paid at the Closing, or if prepaid, such prorated portion shall be credited to the applicable party, and shall from and after the Closing be assumed and paid, whether or not assessments have been levied as of the Closing Date. Any tax proration shall be based upon the most recent assessment and shall be a final proration.

BY CLOSING ON THE RESIDENTIAL PORTION, THE CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE CONTRACTOR HAS HAD ADEQUATE OPPORTUNITY TO INSPECT, REVIEW AND CONSIDER ALL MATTERS AFFECTING THE USE OF THE RESIDENTIAL PORTION BY THE CONTRACTOR AND THAT THE CONVEYANCE OF SAME BY THE CORPORATION IS MADE ON AN "AS IS/WHERE IS" BASIS. THE CONVEYANCE OF THE RESIDENTIAL PORTION AND ALL IMPROVEMENTS THEREON SHALL BE WITHOUT REPRESENTATION OR WARRANTY WITH RESPECT TO USE, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION: (i) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS OR HABITABILITY, GOOD OR FAIR CONDITION OR REPAIR OR GOOD AND WORKMANLIKE CONSTRUCTION AND (ii) ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO CONDITIONS ON THE RESIDENTIAL PORTION AS OF THE CLOSING DATE, ALL OF WHICH WARRANTIES ARE EXPRESSLY DISCLAIMED BY THE CORPORATION AND BY THE CITY.

5. Force Majeure. Neither the Corporation, the City nor the Contractor shall be considered in breach or default of their obligations under this Agreement, and times for performance of obligations hereunder shall be extended, in the event of any delay caused for *force majeure*, including, without limitation, damage or destruction by fire or other casualty; strike; lockout; civil disorder; war; shortage or delay in shipment of material or fuel; acts of God; or other causes beyond the parties' reasonable control including, without limitation, any court order or judgment resulting from any litigation affecting the validity of this Agreement whether in whole or in part.

6. Notices. All notices, certificates or other communications required or desired to be given hereunder shall be in writing and shall be deemed duly given when (a) mailed by registered or certified mail, postage prepaid, or (b) sent by overnight delivery or other delivery service which requires written acknowledgment of receipt by the addressee, addressed as follows:

If to the City: City of Moberly
101 West Reed Street – City Hall
Moberly, Missouri 65270
Attn: City Manager

	with a copy to:	Thomas A. Cunningham, Esq. Cunningham Vogel & Rost, P.C. 333 South Kirkwood Road, Suite 300 St. Louis, Missouri 63122
If to the Corporation:		Moberly, Missouri, Public Building Corporation 101 West Reed Street Moberly, Missouri 65270 Attn: President
If to the Contractor:		DMC Concrete LLC 3658 Hwy JJ Moberly, Missouri 65270 Attn: Manager

Any party shall have the right to specify that notice is to be addressed to another address by giving to the other parties Ten (10) days written notice thereof.

7. Term. This Agreement shall commence on the dated date hereof and shall remain in full force and effect until the next business day following Closing Date. After the expiration of the term of this Agreement, no party shall have any further obligation to any other party hereunder.

8. Entire Agreement; Amendment. The parties agree that this Agreement constitutes the entire agreement among the parties and that no other agreements or representations other than those contained in this Agreement have been made by the parties. This Agreement shall be amended only in writing and effective when signed by the authorized agents of each of the parties.

9. Transfer or Assignment. This Agreement shall not be assignable, transferable or delegable by any party without prior written consent of the other party.

10. Limited Public Liability No Personal Liability. Notwithstanding anything in this Agreement to the contrary, the City shall be not be liable to the Contractor or any partner, representative, agent, affiliate, successor or assign of any of them for monetary damages for any reason or for any claim arising out of this Agreement; *provided that* nothing in this paragraph 10 shall be deemed to exclude or limit equitable remedies including, without limitation, specific performance each of which equitable remedies shall be available to each of the parties . No official, agent, employee, or representative of the City shall be personally liable to the Contractor or any partner, representative, agent or affiliate of any of them in the event of any default or breach by any party under this Agreement, or for any amount which may become due to any party or on any obligation under the terms of this Agreement. Nothing in this Agreement shall be construed as a waiver of the sovereign immunity of the City or the immunities of the City's officials.

11. Relationship of the Parties; No Third Party Right. Nothing contained in this Agreement nor any act of the Corporation, the City, or the Contractor shall be deemed or construed

to create a partnership or agency relationship among or between the parties or their agents or representatives and this Agreement is and shall be limited to the specific purposes set out in this Agreement. Other than as expressly provided in this Agreement, no party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other parties. The parties do not intend to confer any benefit under this Agreement on any person or entity other than the named parties hereto.

12. Severability. In the event any term or provision of this Agreement is held to be unenforceable by a court of competent jurisdiction, the remainder shall continue in full force and effect, to the extent the remainder can be given effect without the invalid provision.

13. Binding Effect. Except as otherwise expressly provided in this Agreement, the covenants, conditions and agreements contained in this Agreement shall bind and inure to the benefit of the Corporation, the City, and the Contractor and their respective successors and permitted assigns.

14. Choice of Law; Venue. This Agreement and its performance shall be governed by and construed under the laws of the State of Missouri applicable to contracts made and to be performed wholly within such state, without regard to choice or conflict of laws provisions. The parties hereto agree that any action at law, suit in equity, or other judicial proceeding arising out of this Agreement shall be instituted only in the Circuit Court of Randolph County, Missouri or in the Federal District Court for the Eastern District of Missouri and waive any objections based upon venue or *forum non conveniens* or otherwise.

15. Headings; No Presumption; Agreement Preparation. The headings and captions of this Agreement are for convenience and reference only, and in no way define, limit, or describe the scope or intent of this Agreement of any provision thereof and shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. Each party to this Agreement and their attorneys have had full opportunity to review and participate in the drafting of the final form of this Agreement and all documents attached as exhibits and schedules. This Agreement shall be construed without regard to any presumption or other rule of construction whereby ambiguities within this Agreement or such other document would be construed or interpreted against the party causing the document to be drafted. The parties each further represent that the terms of this Agreement and the documents attached to this Agreement as exhibits and schedules have been completely read by them and that those terms are fully understood and voluntarily accepted by them. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any Party.

16. Execution; Counterparts. Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so, and upon request by the other party, proof of such authority will be furnished to the requesting party. This Agreement may be executed at different times and in two or more counterparts, and all counterparts so executed shall for all purposes constitute one and the same instrument, binding on the parties hereto, notwithstanding that both parties may not have executed the same counterpart. In proving

this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, the parties have each caused this Agreement to be executed in their respective names and caused their respective seals to be affixed thereto, and attested to as of the date first above written.

MOBERLY, MISSOURI, PUBLIC BUILDING CORPORATION

By: _____
Printed name:
Title:

ATTEST:

_____
Printed name:
Title:

CITY OF MOBERLY
(the "**City**")

By:_____
Jerry Jeffrey, Mayor

ATTEST:

_____
D. K. Galloway, CMC/MRCC, City Clerk

DMC CONCRETE LLC

By: _____
Printed name:
Title:

ATTEST:

_____
Printed name:
Title:

EXHIBIT A

The Ancillary Parcel (depicted in Orange Outline)

EXHIBIT B

Residential Portion (depicted in Blue Outline)

EXHIBIT C

Cross Easements (approximate locations)

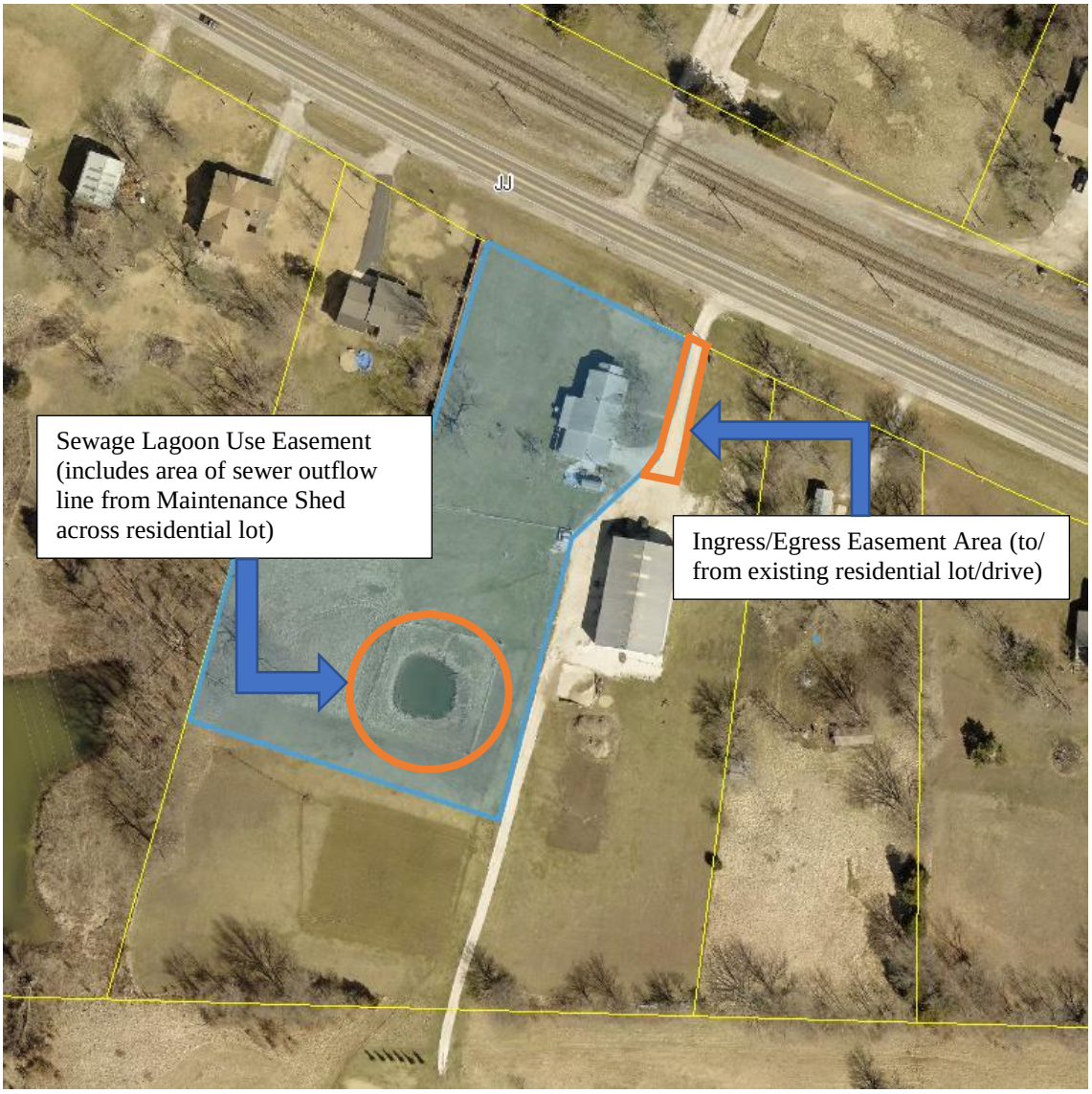


EXHIBIT D

Cart Paths Locations

Hole 18 – 785' +/-

Holes 16-17 – 1435' +/-


Scale 1:
1,287
Go
0
50
100ft
TR D
TR C
TR B
TR A
COUNTY RD 1205
Pave or Remove?

Hole 15 – 1070’ +/-

EXHIBIT E

Cart Paths Installation Standards and Specifications

2" depth washed rock base compacted and rolled throughout 3290' length as required to support widths as specified herein; 4,000 lb. mix concrete with fiber, 4" thick; 5' wide on straightaways, 6' wide on curves. Rebar installed lengthwise to prevent separation of panels. All paving holes or other existing defects to be repaired prior to or in conjunction with installation of rock base and concrete mix. All materials to be installed in a workmanlike manner and in accordance with applicable manufacturer's specifications and standards.

Basis of Estimated Costs:

Total 3290' length by 5.5' width and 4" thickness = 223.4 cubic yards of concrete; adding 10% for potential overrun = 245.74 cubic yards.
$125/cu. yd 4000 lb. mix with fiber = $30,717.50; adding 10% for steel rebar = additional $3,072.
2" thick rock base x 3290' length = approximately 220 tons of rock at $12/ton delivered = $2,640.

Costs Summary:

$30,717 concrete + fiber
$ 3,072 steel
$ 2,640 rock
$36,429