

SOLAR SERVICES AGREEMENT  
BETWEEN  
EVERGY ENERGY SOLUTIONS, INC.  
AND  
CITY OF ROELAND PARK, KANSAS

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August \_\_, 2020

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## Solar Services Agreement

This **Solar Services Agreement** dated this \_\_\_ day of \_\_\_\_, 2020 (the "Agreement"), by and between Evergy Energy Solutions, Inc. a Missouri corporation, as the Service Provider (the "**Provider**"), and the City of Roeland Park, Kansas as the Services Recipient (the "**Recipient**" or "**City**").

**WHEREAS**, the Recipient is the owner of the real property and improvements collectively identified as the Site; and

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

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

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

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

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

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

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

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

### **Article I. Definitions**

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

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

"Actual Annual Energy Production" (sometimes referred to as "Actual Annual Production") means the actual net energy production measured in kWhac produced by the Solar System for a contract year during the term of this Agreement. Industry standards measure production in kWhac. If the System is taken out of service for any period of time for any reason at the request of Recipient, Actual Annual 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.

"Calendar Year" means January 1 through December 31 of each year.

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

"Effective Date" means the date this Agreement is signed by all parties. "Event of Default" has the meaning given to it in Sections 15 and 16.

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

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

"Hazardous Materials" means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any applicable law.

"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.

"Local Utility" means Evergy Metro, Inc.

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

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

"Net Metering" has the meaning provided in Sections K.S.A. 66-1263 through 66-1271 of the Kansas Statutes as well as any other applicable state or federal statutes or rules or regulations, or any subsequent legislation concerning net metering.

"Net Metering Agreement" means the net metering agreement entered into between Recipient and Evergy Metro, Inc.

"Operations and Maintenance Provider" or "O&M Provider" means the Provider, or a 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 Exhibit A, upon which Provider and its agents will have a license for purposes of locating, constructing, installing, accessing and maintaining the Solar System, the location and dimensions of which shall be subject to Recipient's prior approval.

"Projected Annual Energy Production" (sometimes referred to as "Projected Annual Production" or "Projected Production") means the amount of kWhac set forth in 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 and Premises, collectively.

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

"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.

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

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

- (1) the engineering and design of a grid-connected photovoltaic solar electric generating system, consistent with Recipient's goals;
- (2) analysis of reports or other materials from Recipient for Provider to evaluate whether Recipient's roof or other property is suitable for the proposed installation;
- (3) the acquisition of all components for the Solar System;
- (4) all construction related management services;
- (5) the construction and installation on Recipient's property of the Solar System;
- (6) procurement and maintenance of all necessary governmental and third-party approvals, including but not limited to the Permits (as that term is defined herein) relating to the Solar System;
- (7) assisting with the implementing of an Interconnection Agreement with the Local Utility and where applicable a Net Metering Agreement;

(8) internet monitoring of the System's performance to discover any malfunctions or failures to operate properly;

(9) testing of the System's performance to discover any malfunctions or failures to operate properly;

(10) maintenance of the System, including repairing the System, all at Provider's sole cost and expense as part of the Services being provided to Recipient, in order that Recipient can receive and use the power generated by the System;

(11) provide Recipient recurring report of electric energy generated by the System.

"Site" means each parcel of real property and improvements described in this Solar Services Agreement as set forth in Exhibit A, as may be amended from time to time by the parties.

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

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

"Solar Operations Date" shall be the date upon which the Solar System begins Solar Operations.

"Solar Services Agreement" or "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 Agreement.

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

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

"Termination Date" means the date upon which the Term ends pursuant to prior written notice or pursuant to the terms of this Agreement.

"Transfer" has the meaning given in Section 13.

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

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

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

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

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

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

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

- (a) Commencing on the Solar Operations Date, prior to which Provider shall provide Recipient not less than three (3) Business Days prior notice of the first day of the Solar Operations Date, and on the first (1st) day of each successive calendar year thereafter, during the Term, Recipient shall pay Provider, in advance, the annual Services Charge as set forth in paragraph (b) of this Section. The first payment will be prorated in the event it is for a partial year. The Services Fee shall be adjusted as provided in paragraph (b).
- (b) The fixed annual Services Charge shall be the amount identified in Exhibit C for the applicable Agreement year. The Services Charge shall remain as stated in the previous sentence until the parties agree to place additional Solar Facilities on additional properties, as identified in an amended Exhibit A, and add those Solar Facilities to the Solar System, at which time the Services Charge shall be revised to be an amount that the parties shall agree to in writing. Such written agreement for an increase in the Services Charge shall become part of this Agreement.
- (c) Recipient may wish to expand the system to include additional locations. If it is practical to amend the current contract to provide for the additional locations, this Agreement, and Exhibit A, will be so amended. If it is not practical to amend the contract, the parties will enter into a new or supplemental contract on the same terms and conditions of this contract with the possible exception of the Service Charges. The Service Charges of that new or supplemental contract will be dependent upon the size and configuration of any additional locations, but the parties will strive to maintain same service charge on a kilowatt hour basis.
- (d) On or before the fifteenth (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.
- (e) Unless subject to set off or other challenge, Recipient shall pay to Provider for each statement, as issued under Section 5(d), during the Term, within thirty (30) days following the receipt of said statement, a payment for the Services delivered during each year, which payment shall be in U.S. Dollars and paid by check to Provider, or by wire transfer of immediately available funds to a bank using wiring instructions provided by Provider, each as updated and amended from time-to-time.
- (f) Any payment not made within the time limits specified in this Agreement shall bear interest from the date on which such payment was required to have been made through and including the date such payment is actually received by the Provider. Such interest shall accrue at the lesser of 1% per month or the highest rate allowed by applicable law.
- (g) The payment for Services shall be made without regard to the actual consumption of electricity by Recipient. Recipient may use all or a portion of the capacity of the Solar System or may periodically request that any of the Solar Facilities in the Solar System be taken out of operation, or the capacity of the Solar System be limited. In such case Recipient shall pay for the Services provided based on what the production of the System would have been but for any requested interruption of, or reduction in, Services.



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

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

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

- (a) All federal solar tax credits, accelerated depreciation, and other federal income tax attributes relating to, or arising from the Solar System, on the date it is placed in service, shall be the sole and separate property of the Provider. If additional incentives are provided by the state or federal government for projects that have previously been placed in service on a Site, and are still active, then those subsequent incentives shall be split equally between the Provider and Recipient, provided that in no event shall the application of this provision, adversely affect the existing federal solar tax credits, the existing tax treatment, or, the existing economic benefits from the system to the Provider. In other words, such incentives must be shared in a way that results in a net economic gain to both the Provider and Recipient.
- (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.
- (c) Recipient shall receive and have ownership of any and all available renewable energy credits or renewable energy certificates available to Provider or Recipient.

## **Section 8. License Agreement**

The parties agree a License Agreement is not necessary at this time. Should such an agreement be deemed necessary in the future, the parties agree to mutually work towards preparation of such an agreement.

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

- (a) Pursuant to 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) Following receipt of all Permits, Provider shall cause (i) the installation of the Solar System to be completed in a good and workmanlike manner in accordance with generally accepted installation techniques, and (ii) the Solar System to begin Solar Operation on or before the Solar Operation Date, or as soon as reasonably practicable thereafter, subject in all events to Force Majeure. Recipient hereby agrees to execute and deliver all documents that are reasonably necessary for Provider to complete the installation of the Solar System and Provider 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 that is provided to Provider in advance of the execution of this Agreement. Recipient shall verify that its roof system for each Solar Facility is capable of supporting the System and that a proper installation of the System will not void any warranties. Provider shall comply with all applicable laws governing the installation of the Solar System.

- (c) Provider shall be responsible for all costs and the performance of all tasks required for installation, maintenance and operation of the Solar System in accordance with all published specifications, the requirements of the Local Utility's Net Metering Agreement and Interconnection Agreement, and the terms of this Agreement. The Provider will not be responsible for boring, tree removal, or fencing, or any other work necessary to prepare the Site for Provider to begin installation of the Solar System, at any of the Sites identified in **Exhibit A**. Upon execution of this 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 as approved in advance by Provider.
- (d) Ownership of the Solar System, and all improvements placed on the Premises by Provider shall remain titled in the name of Provider, and Provider shall be the owner of such improvements, unless an Option to Purchase is exercised at the expiration of the Term of this Agreement or the parties reach a mutually agreeable contract for sale of the System. The Solar System and all improvements placed on the Premises by Provider shall remain titled in the name of Provider and shall be removed by Provider at Provider's expense within one hundred and eighty (180) days of expiration of this Agreement unless otherwise set forth herein. If this Agreement is terminated before expiration of the Term, Provider shall remove the Solar System and all improvements placed on the Premises by Provider and the parties shall account for removal costs in accordance with this Agreement. Provider shall, at its sole cost and expense, repair any and all damage caused by Provider in connection with such removal. Recipient shall provide Provider with reasonable access to perform such removal.
- (e) During the Term, Provider shall be solely responsible for the operation, repair and maintenance of the Solar System. Neither the Recipient or any of its agents, representatives, affiliates, or employees shall physically engage with or come into contact with any portion of the Solar System, except in an emergency or if any apparatus presents a dangerous condition to property or persons, nor shall they in any way attempt to affect its operation, attempt any repair or maintenance of the System, or attempt to alter or upgrade it in any way.
- (f) As part of the monitoring of the System, the Operations and Maintenance Provider will monitor and respond to outages within four (4) days of being made aware of the outage 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 Provider shall be allowed a reasonable time to complete the repairs so long as it is diligently pursuing said repairs. The Provider shall also report the status of any System malfunctions or necessary repairs within (4) days of becoming aware of the occurrence.
- (g) The O&M Provider shall take commercially reasonable measures to notify Recipient and Provider of any actual or reasonably foreseeable material adverse events within 48 hours of the time when the O&M Provider first knew or should have known of such event or the likelihood of such an event occurring.
- (h) Upon discovery of a condition or event that Recipient or the O&M Provider believes is both (i)

reasonably likely to result in a material adverse event (material adverse event being defined as an event that results in or is likely to result in a reduction of 20% or more in of production of the System during the calendar month in which said event occurs) or material injury to third parties; and (ii) avoidable or susceptible to mitigation through the O&M Provider's commercially reasonable actions, then the O&M Provider shall, within a commercially reasonable time under the circumstances, dispatch personnel and otherwise use commercially reasonable efforts to safely and prudently mitigate such material adverse event or injury to third parties. The O&M Provider shall notify Recipient and the Owner as soon as circumstances dictate or reasonably allow.

- (i) Recipient shall give O&M Provider the necessary information, and shall provide reasonable notice, if Recipient desires to change the operation of the System to affect such matters as, reducing the available energy generated by the system at given times, taking the system off-line, putting it back on-line or other reasonable actions related to its operation, provided such actions would not affect the entitlement to federal solar tax credits and with the understanding that such actions will not affect the Monthly Services Charges. Any changes pursuant to this subparagraph shall be implemented solely by Provider after consent by Recipient.
- (j) O&M Provider may temporarily shut the System down for safety reasons and for any necessary maintenance or repair. As part of a temporary shutdown Provider may disconnect the interconnection with the Local Utility. During any such shutdown, that is not caused by Recipient or Recipient's actions, Recipient is entitled to suspend any payment for Services or receive a credit against future payments for Services, as appropriate.
- (k) Provider shall not be responsible for any Hazardous Materials encountered at the Site unless the Hazardous Materials situation is caused by Provider on the Site. Otherwise, any Hazardous Materials situation caused by Recipient on the Site shall be the sole responsibility of the Recipient. Provider shall also be entitled to terminate the contract without further liability in the event Hazardous Materials are discovered on the Site. If this Agreement is terminated due to Hazardous Materials, to the extent allowable under applicable law, Recipient shall reimburse Provider for all expenses reasonably incurred by Provider in the design and installation of the Solar System prior to the discovery of the Hazardous Materials and in demobilizing and decommissioning the Solar System after the discovery of the Hazardous Materials.
- (l) Recipient shall notify Provider, as soon as reasonably possible, of any knowledge it obtains that suggests that the System is not operating properly, is malfunctioning, or has in any way been damaged.
- (m) After providing notice to Recipient of the intent to subcontract for any of the Services and after receiving the written consent by Recipient, which shall not be unreasonably withheld, for such subcontracting, Provider may subcontract others to provide any of the Services or to fulfill any of its obligations under this Agreement but Provider shall remain solely liable for the performance of this Agreement.

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

In the event Provider is able to introduce operating efficiencies or technological improvements to the System or any of the Services provided hereunder, the Provider and Recipient may consider amending terms of the agreement to achieve mutual benefit to both parties.

#### **Section 11. Metering - Net Metering**

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

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

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

It is the intention of the parties that Recipient pay only for Services received and that Recipient not pay for any Services not received. The Parties further understand that solar systems in general will vary in their production of power due to factors outside the control of the parties (e.g. weather) and that while the Annual Production of a System may be estimated or projected, it is difficult to establish the reasons why projected and Actual Production may vary. For this reason, the parties agree to define "compliance" or "acceptable performance" within certain parameters by calculating the Projected Annual Production of the System. The parties agree that weather shall be factored into the calculation of Projected Annual Production and shall not serve as an exception to the reduction in Services Fees as provided in paragraph (f) of this Section. Production may exceed 100% of Projected Annual Production at times and at other times may fall below 100%. The Parties agree that so long as the System is producing 95% or more of the Projected Annual Production, as measured in accordance with this Section 12, then the Solar System and Services being performed are satisfactory under this Agreement and that the Recipient is not paying for Services not received. Provider is the owner of the Solar System and responsible for the maintenance and repair of said System and the provision of other Services. The Solar System and the maintenance and repair of the Solar System as well as all other Services to be provided by Provider shall be jointly referred to as the System.

- (a) So long as the Solar System is producing power on an annualized basis, at 95% or more of Projected Annual Production, the System will be considered as performing in a satisfactory manner and in compliance with this Agreement.
- (b) If Actual Annual Production is below 95% of Projected Annual Production, Provider shall thoroughly test the System to determine the cause of any discrepancy between Projected Production and Actual Production, and shall thereafter take reasonable steps necessary to boost the production of the Solar System so that it performs at no less than 95% of Projected Annual Production.
- (c) Recipient shall be entitled to an adjustment payment from Provider or, at Recipient's election, a credit against future Service Fees if the System performs at less than 95% over a two-year calendar period, each as calculated in Section 12(d). Said payment or adjustment shall commence in January of the year following the failure to perform period.
- (d) Because solar array systems inherently have some variation in performance, the parties agree that in order to determine any adjustment payment or credit against future Services Fees, the parties will average the Actual Annual Production of the System over a two-year period to determine the extent of any shortfall in production and any adjustment in the Services Fee due. The production shall always be determined by taking the average of the current year's Actual Annual Production and the previous year's Actual Annual Production. By way of example, if the system performs at 95% for the 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 (or credit) recipient 2.5% of the Projected Annual Production for said two-year period. Provider shall have the right, at any time, to have a photovoltaic System study (PVSyst Analysis Report) performed by an independent expert to determine the cause of any shortfall in production.
- (e) In order to determine the amount of any reimbursement due to Recipient due to the failure of the System to perform and 95% or more of Projected Annual Production for any year, the parties agree that the value of the lost energy for the entire Term of this Agreement will be \$0.08 kWhac ("energy value component"). Next the parties shall take the projected kilowatt

hours for the year in question and multiply that number times the energy value component. By way of example, if Actual Production was 92.5% for the period in question then the adjustment would be determined by calculating the total value of projected Annual Production and multiplying that number times 2.5% (the extent to which Actual Production was less than the warranted performance of the System - the System is warranted at 95% In this example, 2.5% of the Projected Annual Production for the two-year period in which a shortfall occurred would be paid by Provider to Recipient or credited against future Services Fees, at Recipient's choice.

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

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

- (a) Neither party shall assign or transfer its rights to receive Services in the System without the prior express written consent of the other party, which said consent shall not be unreasonably withheld, conditioned or delayed. The transfer of any of Recipient's property shall not be treated as an assignment of the right to receive Services as described in this paragraph, and in any such case, Recipient shall remain obligated according to the terms of this Agreement.
- (b) Recipient shall give Provider at least thirty (30) days written notice of any intent to Transfer any property that is part of the Site, identifying the transferee, the property or portion of the Site to be transferred and the proposed date of the transfer. Thereafter, Provider may negotiate with the transferee to determine whether Provider elects to keep the Solar Facilities on such property or remove the Solar Facilities from the property to be transferred. If said transfer occurs within the first ten years of this Agreement, Recipient shall pay the costs associated with Provider's removal of the Solar Facilities on the transferred property or removing the Solar Facilities, at the election of Provider. If said transfer occurs outside of the first ten years of this Agreement, Provider shall pay for all costs associated with removing the Solar Facilities on such property or removing the Solar Facilities. During the first ten years of this Agreement, subject to the terms of this Agreement, Recipient may sell or transfer any property where the Solar Facilities are located, provided that such transfer shall not cause a recapture of the federal solar tax credit. In the event that Recipient seeks to sell or transfer any such property, the parties agree to work in good faith to coordinate and ensure that a recapture of the solar tax credits does not result from the transfer or sale.

Recipient shall not be relieved of its obligation to pay for services as a result of any transfer or assignment, unless Recipient, Provider and any Assignee reach an agreement whereby Provider agrees to accept the Assignee as the party responsible for making payments for Services related to property transferred or assigned. During the Term, Recipient shall not transfer its right to receive the Services to any other party.

- (c) Prior to executing any mortgage or deed of trust encumbering the Site, Recipient agrees to obtain a written subordination agreement from its lender(s) expressly stating that such lender's interest in the Site is subordinate to Provider's ownership of the Solar System, and subordinate to this Agreement. In the event Recipient does not obtain such a written subordination agreement, Provider shall have the right to terminate this Services Agreement at any time as it applies to such encumbered property.
- (d) Except for assignments to an Evergy Metro, Inc., or any of Provider's or Evergy Metro, Inc.'s subsidiaries or affiliates, Provider hereby covenants and agrees that Provider shall not assign its obligations to provide the Services under this Agreement or its ownership rights in the system, without the prior express written consent of Recipient, which consent shall not be unreasonably withheld, including the obligations of the O&M Provider under this Agreement shall not be assigned to another party without the prior express written consent of Recipient, which consent shall not be unreasonably withheld.

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

- (a) If Provider and Recipient determine the Solar System must be relocated to an alternate location at any property within the definition of the Site during the Term, then upon such relocation the obligations of the parties shall remain as set forth in this Agreement unless otherwise agreed in writing by the parties at such time. In the event of such a relocation, the party requiring the relocation shall be responsible for all associated costs of removal and reinstallation of the relocated Solar System as well as restoration costs at the original Site; and the parties agree to execute an amendment to this Agreement and Exhibit A to modify the location of the System and the access to the System by Provider for such property.
- (b) If temporary removal of the Solar System is required at Recipient's request on any property that is part of the Site due to Site work unrelated to the Solar System, Recipient is responsible for all associated costs of removal and replacement, which removal and replacement shall be performed by Provider at Provider's then-prevailing rates for such service which shall be agreed upon in writing prior to the relocation work. During any period while the Solar System is off-line in connection with relocation at the request of Recipient, Recipient shall continue to be responsible for all Services Fees due hereunder. Otherwise Recipient shall be relieved of the obligation to pay Services Fees during any period the System, or any portion thereof, is out of service as requested by Provider.
- (c) Recipient agrees, at the request of Provider, and if within the reasonable control of Recipient, at Recipient's sole cost and expense, to promptly remove any interference with the Solar System's Insolation and access to sunlight, as such access exists as of the Solar Operations Date. Any such interference with the Solar System's Insolation or access to sunlight will cause a decrease in production and shall not be the responsibility of the Provider and the production lost as a result will be added to the Actual Production for any year affected thereby.
- (d) Recipient agrees that it will use commercially reasonable efforts to make available a wireless internet connection at all times during the Term, sufficient for Provider to remotely monitor the Solar System. Recipient shall not be obligated to incur any additional costs, beyond those costs that the City Council may budget for upgrades and enhancements to the City's wireless and fiber optic system as a whole and for each property within the System, to provide these connections to monitor the Solar System as described in this paragraph. In the event no wireless internet connection is available at a specific Site, the parties shall exclude that Site

from all calculations and obligations described in Section 12 of this Agreement unless the Site is subsequently provided wireless internet connection.

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

In the event that Recipient causes an Event of Default, then Provider must provide written notice of such Event of Default and thereafter Recipient shall be allowed thirty (30) days to cure such default. If a cure is not reasonably possible in this time period, then Recipient shall provide written notice to Provider that additional reasonable time is required to cure the default but such reasonable time shall not exceed an additional twenty (20) days.

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

- (i) Recipient fails to pay any amount due under this Agreement, and such failure continues for ten (10) additional days after receipt of written demand from Provider (in such event, Recipient shall not be entitled to any additional cure period as set forth in the paragraph above) so long as Provider is not in material breach of this Agreement and been notified of such according to the terms herein by Recipient at the time such demand is made by Provider;
- (ii) Recipient is in breach of any representation, warranty, or covenant set forth in this Agreement or Recipient fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within the time period set forth above in this Section after written notice from Provider
- (iii) Recipient as a matter of fact is unable to pay its debts generally as they become due or is "**insolvent**" as such term is generally interpreted under applicable Kansas Law; (b) Recipient files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law of the United States of America or any State, district or territory thereof; (c) Recipient makes an assignment for the benefit of creditors; (d) Recipient consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Recipient has a petition in bankruptcy filed against it that is not dismissed or stayed within 90 days thereafter; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Recipient's assets; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the whole or any substantial part of Recipient's assets.

Upon the occurrence of any Event of Default by Recipient and failure to timely cure such Event of Default, Provider shall have the right to terminate this Agreement. Provider may terminate this Agreement by giving to Recipient notice of Provider's election to terminate, in which event the Term of this Services Agreement shall end. In such event, Provider shall have the right to remove the Solar System from the Premises as provided for herein, and Provider shall be entitled to collect from Recipient the Provider's reasonable cost of removal of the Solar System from the Premises and any damages, including the present value of all future payments otherwise due from Recipient to Provider under this Agreement for the next two years had the Agreement not been terminated.

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

In the event that Provider causes an Event of Default, then Recipient must provide written notice of such Event of Default and thereafter Provider shall be allowed thirty (30) days to cure such default. If a cure is not reasonably possible in this time period, then Provider shall provide written notice to Recipient that additional reasonable time is required to cure the default but such reasonable time shall not exceed an additional twenty (20) days.

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

- (i) Provider, after notice from Recipient that it has failed to maintain the Insurance required under this Agreement, fails to cure such default within a reasonable period of time;
  - (ii) Provider fails to achieve Solar Operations within a reasonable period of time following the projected Solar Operations Date and fails to cure such default within a reasonable period of time, it being understood that the Solar Operations date is an estimate of the date the System will reach operational status;
  - (iii) Provider is in breach of any representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement, and such breach or failure is not cured within the time period set forth above in this Section;
  - (iv) Provider as a matter of fact is unable to pay its debts generally as they become due or is "**insolvent**" as such term is generally interpreted under applicable Kansas Law; (b) Provider files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other Applicable Law of the United States of America or any State, district or territory thereof; (c) Provider makes an assignment for the benefit of creditors; (d) Provider consents to the appointment of a receiver of the whole or any substantial part of its assets; (e) Provider has a petition in bankruptcy filed against it that is not dismissed or stayed within 90 days thereafter; (f) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Provider's assets; or (g) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction assumes custody or control of the whole or any substantial part of Provider's assets.
- (b) Upon the occurrence of any Event of Default by Provider and failure to timely cure such Event of Default, Recipient shall have the right to terminate this Agreement. Recipient may terminate this Agreement by giving to Provider notice of Recipient's election to terminate, in which event the Term of this Services Agreement shall end. In such case, Recipient may require Provider, at Provider's sole cost and expense, to remove all of its tangible property comprising the Solar System from the Premises by a mutually convenient date but in no case later than one hundred eighty (180) days after the date the termination notice is given and in such case the Premises shall be returned to its original condition,. Recipient may not terminate this Agreement or take any action during the first five years that would result in loss of federal solar tax credits unless its rights hereunder cannot be adequately satisfied through the payment of money damages.(c) During the period of any Event of Default by Provider, Recipient has the right to suspend the payment of Services Fees for the Services provided.

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

- (a) **Initial Term.** The initial Term of this Agreement shall be for a period of twenty (20) years commencing on the Solar Operations Date (the "Initial Term"). 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 Agreement which are based upon a calendar year. Early termination of this agreement must be agreed to by the Parties.
- (b) RESERVED
- (c) RESERVED
- (d) **Option to Purchase.** Provided no Event of Default by Recipient shall have occurred and be continuing, Recipient may purchase the Solar System at the end of the Initial Term on the following terms and conditions:

The Recipient must give Provider written notice of its intent to exercise the Option at least one



hundred and eighty (180) days in advance of such purchase. If Recipient exercises such option, the purchase price shall be the Fair Market Value of the Solar System. For the purposes of this Agreement, "Fair Market Value" of the Solar System may be determined by mutual agreement, within 30 days before the exercise of the option. Within said 30-day timeframe, or a reasonable period of time thereafter, the Parties, after consulting with a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry, shall attempt to agree as to the Fair Market Value of the System on an installed and operating basis. If the Parties cannot reach an agreement within said 30-day period, then the parties shall make reasonable efforts to agree on a different appraiser who is a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to determine Fair Market Value. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value of the Solar System on an installed and operating basis and shall set forth such determination in a written opinion delivered to the Parties. The valuation made by the appraiser will be binding upon the Parties in the absence of manifest error or fraud. The costs of the appraisal shall be borne by the Parties equally. The parties may also negotiate a mutually agreeable purchase price following year ten (10) of the Agreement.

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

At closing, Recipient shall pay Provider an amount equal to the Fair Market Value in immediately available funds, and Provider shall assign its entire right, title and interest in and to the Solar System, including any remaining manufacturer's warranties that are assignable for PV modules, inverters, or other components to Recipient free and clear of any liens created by the Provider with respect to the System, on an "as is," "where is" and "with all faults" basis, without representations or warranties.

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

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

## **Section 18. Casualty**

- (a) If the Solar System is damaged or destroyed by fire, theft or other casualty, Provider and Recipient shall proceed promptly to establish and collect all valid claims which may have arisen against insurers or others based upon any such damage or destruction. Provider, using the proceeds, shall within one hundred eighty (180) 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 for any portion of the Solar System that is rendered unusable as determined by Provider in its reasonable discretion.

- (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 either party shall have the right to terminate this Services Agreement.
- (d) It is the intent of the parties that the Recipient shall not have liability nor suffer any economic loss as a result of damage to the System equipment absent intentional or negligent misconduct on the part of Recipient or its agents.
- (e) Recipient shall provide reasonable on-site security to prevent damage or destruction to the System by third parties lawfully occupying its property or as a result of trespassers entering onto the property and causing damage to the System.

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

- (a) Each party represents and warrants to the other party that (a) such party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby; (b) the execution and delivery of this Agreement and the performance of such party's obligations hereunder have been duly authorized by all necessary company, organizational or governmental action; (c) this Agreement is a legal, valid and binding obligation of such party enforceable against such party in accordance with its terms; (d) to such party's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the other party) is required in connection with the due authorization, execution and delivery of this Agreement by such party or the performance by such party of its obligations hereunder; and (e) neither the execution and delivery of this Services Agreement by such party nor compliance by such party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such party's organizational documents or any rule, regulation or law. Recipient covenants that recipient has lawful title to the Property and the Premises and full right to enter into this Agreement. Recipient will not initiate or conduct activities that it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar System or its function (including activities that may adversely affect the Solar System's exposure to sunlight), without Provider's prior written consent, or which would affect either party's ability to perform its obligations hereunder.
- (b) Each of Provider and Recipient hereby represents and warrants to the other party that there are no actions, suits or proceedings pending, or to such party's knowledge, threatened against or affecting such party or the Property, at law or in equity, or before any governmental authority, and, to such party's knowledge, it is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority, which, if adversely determined, would have a material adverse effect on the ability of such party to perform its obligations hereunder.
- (c) Neither Recipient nor Provider shall directly or indirectly cause, create, incur, assume or suffer to exist any pledge, lien (including mechanics', labor or material man's lien), charge, encumbrance or claim on or with respect to the Solar System or any interest therein. Each party shall also promptly pay before a fine or penalty may attach to the Solar System any taxes, charges or fees of whatever type of any relevant governmental authority for which such party is responsible. If either party breaches its obligations under this Section, it shall immediately notify the other party in writing, shall promptly cause such liens to be discharged and released of record without cost to the other party.
- (d) Notwithstanding the foregoing, it is understood that Provider will finance the System and that

liens against the System for said financing are specifically permitted. Recipient shall fully cooperate with Provider in connection with such financing including but not limited to providing statements and opinions of counsel that Provider is currently in compliance with all provisions of the Agreement and that Recipient is likewise in compliance with all terms of the Agreement including but not limited to all representations and warranties contained within the Agreement.

- (e) Each party agrees to promptly provide the other party with a copy of any default notices that it received from any of its lenders or other party holding a mortgage, deed of trust or security interest in the Site or the Solar System.
- (f) Each party agrees that it will take no action that would cause the Solar System to lose its eligibility for the federal solar tax credit.
- (g) Recipient represents and warrants that Recipient owns all properties that are included in the Site, has the right to place the Solar System on the Site, and any mortgage or encumbrance on the Site and such properties does not, and shall not, interfere with the placement of the Solar System on the Site and if there is any mortgage or fixture filing against the Site which could be construed as prospectively attaching to the System as a fixture of the Site, Recipient shall provide to Provider a disclaimer, release or other similar instrument reasonably acceptable to Provider from any such mortgagee or person making a fixture filing on the Site and stating that the ownership of the System remains in Provider and further acknowledging that the System is personal property of Provider and agreeing not to disturb the rights of Provider in the System and under this Agreement. If Recipient is the fee owner of the Site, Recipient consents to the filing of a disclaimer of the System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction of the Site. If Recipient is not the fee owner, Recipient will obtain such disclaimer from such owner.
- (h) Recipient represents and warrants that its roof system for each Solar Facility is capable of supporting the System as of the Solar Operations Date.
- (i) 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.
- (j) Recipient represents and warrants that any land or building upon which solar panels and the associated equipment is placed shall be appropriate from a geotechnical standpoint; that any such property is not located in a floodplain; that any storm water permits have been obtained or that the property in question is not subject to any such storm water permits; that no encroachment on the property in question has been permitted, authorized or exists at the time this contract is executed; that Recipient has reviewed each location for the placement of solar panels and the associated equipment and has determined that its location will not fall within any easement that could disrupt the operation of any part of the System or require any part of the System to be temporarily or permanently shut down or removed; that there are no additional permits or governmental permissions required for the installation of the System; that there are no known defects or flaws in Recipient's title to the property which would in any way affect the operation of the System or any part thereof or require that the System or part thereof be shut down or taken out of Service for any period of time or removed or relocated.
- (k) Recipient further represents and warrants that, to the extent such actions are within the control of Recipient, it will not permit any action to be taken by any party which would in any way affect the operation of the System, or otherwise cause any part of the System to be shut down or taken out of operation for any period of time and that Recipient will take any necessary action to prevent any adverse effect on the operation of the System including preventing or eliminating or terminating any condition that would adversely affect the operation of any part of the System or would cause any part of the System to be shut down or taken out of service for any period of time.

- (l) Recipient further represents and warrants that, to the best of its knowledge, there are no existing amounts of regulated Hazardous Materials that are currently located at the Site.
- (m) As of the date of this Agreement, Recipient has not entered, and shall not enter, into any contracts or agreements with any other person regarding the provision of the services contemplated to be provided by Provider under this Agreement, but reserves the right to enter into such agreements in the future.
- (n) As a material inducement to Provider's execution of this Agreement, Recipient covenants and agrees as follows:
  - (1) Recipient hereby grants Provider and its employees, agents, contractors, and subcontractors the right to access the Site in order to construct, maintain, operate, monitor, repair, replace, decommission and remove the System. Such access will be provided during regular business hours, or such other reasonable hours as may be requested by Provider.
  - (2) Recipient will not conduct activities on, in or about the Site that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Provider (i) acknowledges that Recipient and its employees, agents, contractors and subcontractors (collectively, the "**Recipient Permittees**") may need to access the Site to maintain, repair or replace improvements in the vicinity of the System and (ii) consents to such access subject to Recipient Permittees' exercise of commercially reasonable efforts to minimize interference to the System and compliance with Provider's safety rules. Recipient shall implement and maintain reasonable and appropriate security measures on the Site to prevent Recipient Permittees and other unrelated third parties, from having access to the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System.
  - (3) Recipient shall at all times maintain the areas of the Site consistent with all applicable laws pertaining to the health and safety of persons and property.
  - (4) Recipient (i) acknowledges that the installation of all or a portion of the System may require installation to the ground or may require physically mounting and adhering portions of the System to the improvements appurtenant to the property and (ii) consents to such mounting or adhering, as applicable.
  - (5) Recipient shall provide and take reasonable measures for security of the System, including commercially reasonable monitoring of the Site's alarms, if any.
  - (6) Recipient shall promptly notify Provider of any matters it is aware of pertaining to any damage to or loss of the use of the System or that could reasonably be expected to adversely affect the System.

## **Section 20. Indemnification; Insurance**

- (a) To the extent allowed under applicable law, each party (the "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)

negligence or willful misconduct and (iii) Event of Default.

- (b) The Indemnified Party shall deliver to the Indemnifying Party a notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a “**Claim Notice**”). Such Claim Notice shall be delivered promptly to the Indemnifying Party after the Indemnified Party receives notice that an action at law or a suit in equity has commenced.
- (c) 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 below:
  - (1) Comprehensive or Commercial General Liability (including premises-operations; independent contractors protective, products and completed operations; broad form property damage).  
  
Bodily Injury: \$1,000,000 per occurrence.  
  
Property damage: \$2,000,000 per occurrence.  
  
Products and completed operations to be maintained for three (**3**) years after the final payment: \$2,000,000 per occurrence/aggregate.  
  
General aggregate: \$2,000,000.  
  
Damages to Service Feed Premises: \$1,000,000 per occurrence.
  - (2) Workers Compensation Insurance (and to the extent such is not applicable, Employers Liability Insurance) which shall fully comply with applicable law, and employer’s liability insurance with limits of not less than the greater of (i) statutory requirements or (ii) One Hundred Thousand Dollars (\$100,000.00) per occurrence. Provider shall provide a valid waiver executed by workers compensation and employer’s liability insurance carrier(s) of any right of subrogation against Recipient or its employees for any injury to a covered employee working on Recipients’ premises.

All liability insurance, except professional liability insurance, shall be written on an occurrence basis with form(s) and carrier(s) reasonably acceptable to Recipient.

The limits of liability for each policy coverage amount stated above shall be automatically adjusted upward as necessary to remain at all times not less than the maximum amount of liability set forth in applicable state statutes; provided that nothing herein or in any such policy shall be deemed to waive the City's sovereign immunity.

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

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

## **Section 21. Waiver**

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.

## **Section 22. Change in Law or Interpretation of Law**

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

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

Either Party may record in the real estate records for the jurisdiction in which the Site is located a memorandum of this Agreement setting forth the Parties hereto and the Term with the specific form of such agreement to be subject to the reasonable approval of the parties and that shall not disclose the business terms and shall comply with the Confidential Information section of this Agreement.

## **Section 24. Force Majeure**

(a) In the event either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of any cause beyond the reasonable control of, and without the fault or negligence of, such Party (an event of "Force Majeure"), such Party shall be excused from performance hereunder and shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from, or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof (with failure to use such efforts constituting an event of default hereunder).

(b) As used herein, the term "Force Majeure" shall include, without limitation, (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Site, (v) an annual level of direct beam solar resource availability that is less than or equal to 90% of historical averages as measured by long term calibrated and appropriate weather station representative of the Site, (vi) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vii) epidemic or pandemic, (viii) strikes, walkouts, lockouts or similar industrial or labor actions or disputes, (ix) requirement by Local Utility that the Solar System discontinue operation for any reason, (x) appropriation or diversion of electricity by sale of order of any governmental authority which prevents or prohibits the parties from carrying out their respective obligations under this Agreement (including, without limitation, an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output

to federal or state regulation of prices and/or services). Economic hardship of either party shall not constitute a Force Majeure under this Agreement nor shall any change in the Internal Revenue Code or loss of any tax credit associated with the Solar System.

## **Section 25. Records**

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

## **Section 26. Notices**

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

### Recipient

City of Roeland Park  
c/o City Administrator, Keith Moody  
4600 West 51<sup>st</sup> Street, Suite 200  
Roeland Park, Kansas 66205

### Provider

Evergy Energy Solutions  
c/o Mark Cosby  
1200 Main Street, Floor 30  
Kansas City, Missouri 64113

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

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

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

conditions of this Agreement. Recipient may, with the prior written consent of Provider, which consent shall not be unreasonably withheld, conditioned or delayed, transfer or assign this Agreement, provided such Assignee agrees to be bound by the terms and conditions of this 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. Recipient and Provider shall cooperate in contesting any such assessment.

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

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

### **Section 30. Confidential Information**

Neither party shall use, divulge, disclose, produce, publish or permit access to, any confidential information received by the other party, to the extent such information qualifies as a closed record under the Kansas Open Records Act in K.S.A. 45-215, et. Seq., except to the extent necessary to comply with the terms of this Agreement. If a receiving party believes that it will be compelled by a court or other governmental authority to disclose confidential information of the disclosing party, it shall give the disclosing party prompt written notice, and in all cases not less than five (5) business days' notice in advance of disclosure, so that the disclosing party may determine whether to take steps to oppose such disclosure.

### **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 therewith, either party may issue a press release(s) generally describing the size and location of the System, and the identity of the other Party, without the prior written consent of the other Party, so long as only Provider has the exclusive right to (i) claim that electric energy provided to Recipient was generated by the System, and (ii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement. However, no confidential information shall be disclosed with respect to the cost of the project or the amount of the Services Fees without the consent of the other party.

### **Section 32. Dispute Resolution**

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

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

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



#### **Section 34. Amendments**

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

#### **Section 35. Counterparts**

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

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

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

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

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

#### **Section 38. Severability**

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

#### **Section 39. Survival**

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

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

The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of Kansas 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 Kansas 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, notwithstanding anything to the contrary herein, 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 as such damages shall not be allowed hereunder.

#### **Section 42. Headings**

The headings in this Agreement are solely for convenience and ease of reference and shall have no

effect in interpreting the meaning of any provisions of this Agreement.

**Section 43. Conflicts**

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

**Section 44. Exhibits**

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

*[Remainder of this page intentionally left blank]*

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

**CITY OF ROELAND PARK, KANSAS**

By \_\_\_\_\_

Title \_\_\_\_\_

Address:  
4600 W. 51<sup>st</sup> Street  
Roeland Park, Kansas 66205  
Facsimile: (913) 722-3713

ATTEST:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

**Evergy Energy Solutions, Inc.**

By \_\_\_\_\_

Title \_\_\_\_\_

Address:  
1200 Main Street, Floor 30  
Kansas City, Missouri 64105

EXHIBIT A

Site List

Roeland Park City Hall  
4600 West 51<sup>st</sup> Street  
Roeland Park, Kansas 66205

Roeland Park Community Center  
4850 Rosewood Drive  
Roeland Park, Kansas 66205

Premises Description

In the event a Site listed in this Exhibit A does not contain a description of the Premises upon which a Solar System may be built and maintained in accordance with the Agreement, the parties shall draft and execute a document containing a description of the Premises. Upon its execution, a mutually executed Premises description shall be incorporated into this Exhibit A as a "Premises" and be subject to the terms and conditions of this Agreement.

**Exhibit B**

<b>Year</b>	<b>Project Annual Production (kWhac)</b>	<b>Guaranteed Production (kWhac)</b>
1	272496	<i>x95%=258871</i>
2	271134	<i>x95%=257577</i>
3	269778	<i>x95%=256289</i>
4	268429	<i>x95%=255008</i>
5	267087	<i>x95%=253733</i>
6	265752	<i>x92%=244492</i>
7	264423	<i>x92%=243269</i>
8	263101	<i>x92%=242053</i>
9	261785	<i>x92%=240842</i>
10	260476	<i>x92%=239638</i>
11	259174	<i>x89%=230665</i>
12	257878	<i>x89%=229511</i>
13	256589	<i>x89%=228364</i>
14	255306	<i>x89%=227222</i>
15	254029	<i>x89%=226086</i>
16	252759	<i>x86%=217373</i>
17	251495	<i>x86%=216286</i>
18	250238	<i>x86%=215205</i>
19	248987	<i>x86%=214129</i>
20	247742	<i>x86%=213058</i>

**EXHIBIT C**  
**PRICING**

Utility reference numbers: 9338 71 3084, 2950 89 3087, 6075 21 4952

System Name: [City of Roland Park]

**Fee Schedule**

Initial Payments:

1. Roof Replacement: \$65,000 plus associated taxes Due upon completion of work  
(Estimate Nov 2020)
  
2. Parking Canopy: \$117,033 plus associated taxes Due upon completion of work  
(Estimate Feb 2021)

**Solar Services Recurring Fees**

Recipient shall pay Provider for the Solar Services provided pursuant to the terms of this Agreement at the rate of \$24,920.00, plus any additional amount required pursuant to this Agreement. Assuming no additional amounts are required pursuant to this Agreement, the annual payments over the Term of this Agreement are anticipated to be as follows:

Year	Payment	Year	Payment	Year	Payment	Year	Payment
1	\$24,920.00	6	\$24,920.00	11	\$24,920.00	16	\$24,920.00
2	\$24,920.00	7	\$24,920.00	12	\$24,920.00	17	\$24,920.00
3	\$24,920.00	8	\$24,920.00	13	\$24,920.00	18	\$24,920.00
4	\$24,920.00	9	\$24,920.00	14	\$24,920.00	19	\$24,920.00
5	\$24,920.00	10	\$24,920.00	15	\$24,920.00	20	\$24,920.00

