

CONSENT AND AGREEMENT

(Power Purchase Agreement, Site Lease and Interconnection Agreement – MCP-Independence II, LLC)

This Consent and Agreement (this “**Consent**”) is made and entered into as of April [], 2021, by and among **CITY OF INDEPENDENCE, MISSOURI**, a Missouri municipal corporation (“**City**”), **NATIONAL COOPERATIVE BANK, N.A.**, a national bank (the “**Lender**”), **MCP-INDEPENDENCE II, LLC**, a Missouri limited liability company (the “**Borrower**”), and **GCEC 2018 MT I, LLC**, a Missouri limited liability company (the “**Master Tenant**”).

RECITALS

A. Borrower and Lender have entered into that certain Loan Agreement dated as of the date hereof (as amended, restated, supplemented, or otherwise modified from time to time, the “**Loan Agreement**”) and the other Loan Documents (as defined therein) in order to provide permanent financing for the photovoltaic solar electric energy generating facility owned by Borrower and located on certain real property in the City of Independence, Missouri (the “**Solar Project**”).

B. Borrower, as Seller, and City, as Buyer, are parties to that certain Solar Photovoltaic Installation Power Purchase Agreement dated as of July 10, 2017 (as amended, restated, supplemented or otherwise modified from time to time, the “**PPA**”) a copy of which is attached as **Exhibit A**. Borrower has assigned its rights to payments under the PPA to Master Tenant pursuant to a Renewable Energy Equipment Lease dated as of May 18, 2018 (the “**Master Lease**”).

C. Borrower, as Tenant, and City, as Landlord, are parties to that certain Solar Photovoltaic Installation Site Lease dated as of November 21, 2017, as amended pursuant to that First Amended Site Lease dated as of April __, 2021 (as further amended, restated, supplemented or otherwise modified from time to time, the “**Lease**”) a copy of which is attached as **Exhibit B**.

D. The City, through Independence Power & Light, a department of the City, as Power System Owner, and the Borrower, as Power Generator, are parties to that certain Independence Power and Light Department Small Generator Interconnection Agreement (SGIA) dated as of July 10, 2017, as amended by a First Amendment to Independence Power and Light Department Small Generator Interconnection Agreement dated as of May 24, 2018 (collectively, the “**Interconnection Agreement**”) a copy of which is attached as **Exhibit C**. The Interconnection Agreement, the PPA and the Lease are referred to herein as the “**Assigned Agreements**”.

E. As part of the transactions contemplated by the Loan Agreement, Borrower has executed in favor of the Lender a Leasehold Deed of Trust (the “**Leasehold Deed of Trust**”), pursuant to which Borrower collaterally assigns and grants a security interest to Lender in all right, title and interest of Borrower in, to and under the Lease, the Facility (as defined in the Lease) (the “**Facility**”) and the Site (as defined in the Lease) (the “**Site**”) as collateral security for its obligations under the Loan Agreement and the other Loan Documents (the “**Secured Obligations**”).

F. As part of the transactions contemplated by the Loan Agreement, Borrower has executed in favor of the Lender a Collateral Assignment of Project Documents (the “**Security Agreement**”), pursuant to which Borrower collaterally assigns and grants a security interest to

Lender in, among other things, all right, title and interest of Borrower in, to and under the Assigned Agreements as collateral security for the Secured Obligations. The Leasehold Deed of Trust and the Security Agreement of even date herewith executed by Borrower in favor of Lender are referred to herein collectively as the “**Security Documents**”.

G. As a condition to Lender providing a loan to Borrower under the Loan Agreement, Lender, Borrower, City and Master Tenant execute this Consent.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties do hereby agree as follows:

1. Consent to Assignment. In accordance with Section 11.1 of the PPA, the City acknowledges notice of the pledge of the PPA to the Lender and consents to the collateral pledge and assignment of the PPA to the Lender. In accordance with Section 7.1 of the Interconnection Agreement, the City acknowledges notice of the pledge of the Interconnection Agreement to the Lender and consents to the collateral pledge and assignment of the Interconnection Agreement to the Lender. In accordance with Section 13(c) of the Lease, the City acknowledges notice of the pledge of Borrower’s interest in the Facility and the Site to the Lender and consents to the collateral pledge and assignment of the Facility and the Site to the Lender as well as to Borrower granting a collateral assignment of and security interest in all of Borrower’s right, title and interest in and to the Lease.

Upon notice from Lender that performance under the Assigned Agreements shall be due to Lender, any affiliate of Lender or any Permitted Transferee (hereinafter defined)(each, a “Subsequent Owner”) instead of Borrower, City agrees, subject to the terms of Section 4 as they relate to payments to be made under the PPA, to render performance under the Assigned Agreements to Lender and to recognize the Lender or such other Subsequent Owner (as applicable) as its counterparty under the Assigned Agreements. City agrees to honor and accept an assignment of the Assigned Agreements to the Lender or such other Subsequent Owner as a permitted assignment under Section 11.1 of the PPA, Section 13(c) of the Lease and Section 7.1 of the Interconnection Agreement upon a foreclosure or other similar legal action, but only if Lender or such other Subsequent Owner promptly notifies City in writing that it has taken such assignment and agrees in writing to perform all of the obligations of Borrower under the Assigned Agreements. City acknowledges and agrees that the Lender or such other Subsequent Owner shall have no liability or obligation under the Assigned Agreements as a result of this Consent or the Security Documents except for obligations arising during any period in which the Lender or such other Subsequent Owner has provided notice that performance under the Assigned Agreements should be due to the Lender or such other Subsequent Owner and not the Borrower. In the event Lender or such other Subsequent Owner has provided notice that performance under the Assignment Agreements should be due to the Lender or such other Subsequent Owner, Lender or such other Subsequent Owner shall remedy, or agree in writing to remedy, any defaults under or breaches of the Assigned Agreements by Borrower that can be remedied by Lender or Subsequent Owner; provided that if possession of the Facility is necessary

to remedy such default or breach and Lender has commenced and thereafter diligently pursues proceedings to obtain possession of the Facility, the Lender shall be allowed a reasonable amount time to complete such proceedings in order to effect such remedy. For purposes of this Agreement, the term "Permitted Transferee" shall mean any entity that, together with its affiliates, owns and operates solar photovoltaic projects aggregating 50 MW ac (or engages an operator with such qualifications to operate the Facility).

2. Notice of Default; Cure Rights. If Borrower defaults in the performance of any of its obligations under any Assigned Agreement, City will provide prompt written notice of such default to the Lender and afford the Lender the opportunity to cure such default (a) with respect to payment defaults, within the greater of (i) thirty (30) days of such notice or (ii) within five (5) business days of the end of the applicable cure period provided to Borrower in the Assigned Agreement, and (b) with respect to non-payment defaults, within the greater of (i) ninety (90) days of such notice or (ii) thirty (30) days following the end of applicable cure period provided Borrower in the Assigned Agreement; provided, however, that such cure period in clause (b) may be extended by a reasonable period of time if the Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that (x) if possession of the Solar Project is necessary to cure such non-monetary default and the Lender has commenced proceedings to obtain possession of the Solar Project, the Lender shall be allowed a reasonable amount time to complete such proceedings, and (y) if Lender is prohibited from curing any such non-monetary default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Borrower, then the time periods specified herein for curing a non-monetary default shall be extended for the period of such prohibition.

3. Amendments; Assignments. City agrees that it shall not agree to any amendment, modification, supplement or termination of any Assigned Agreement (other than a termination of such agreements due to an uncured event of default after expiration of the Lender's rights to cure under Section 3 hereof), or accept a voluntary termination of any Assigned Agreement by Borrower as permitted under such documents, without the prior written consent of the Lender. City agrees that it shall not assign, pledge or otherwise transfer its interests in any Assigned Agreement without the prior written consent of the Lender, except to an assignee or transferee (a) permitted under the terms of the Assigned Agreements, (b) that is of equal or better credit than City, (c) who assumes City's obligations under the Assigned Agreements and this Consent (or to enter into a substantially similar agreements and a consent acceptable to the Lender). No amendment, modification, supplement, termination, assignment, pledge, or transfer of any Assigned Agreement shall be binding on the Lender unless it is in writing and signed by the Lender.

Lender may assign its rights or obligations under this Agreement to an entity acquiring the Loan Agreement, provided however, that any such assignee shall agree in writing to be bound by the terms and conditions hereof.

4. Direct Payment. Borrower and Master Tenant hereby direct City to pay all amounts payable by it under the Assigned Agreements in the manner and as and when required by the Assigned Agreements directly into the account set forth on Exhibit D attached hereto, and the City agrees to comply with such direction. City shall have no liability to Borrower or Master Tenant for complying with any such payment direction from Lender. All payments required to be made

by City under the Assigned Agreements shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever so long as the Lender or the Subsequent Owner is not in default under this Agreement, or the Assigned Agreements.

5. Representations and Warranties of City. City hereby represents and warrants, in favor of Lender, as of the date hereof, that (i) the execution, delivery and performance by City of this Consent, the Assigned Agreements have been duly authorized by all necessary governmental action on the part of City, (ii) each of this Consent and each Assigned Agreement is in full force and effect and constitutes the legal, valid and binding obligation of City, enforceable against City in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the Assigned Agreements and this Consent are the only agreements between Borrower and City (and its affiliates) with respect to the Site, the Facility or the Solar Project, and all of the conditions precedent to effectiveness of the provisions under the Assigned Agreements have been satisfied or waived, (iv) a true and correct copy of the PPA is attached hereto as Exhibit A and the PPA has not been amended, modified or supplemented and no material waivers have been granted thereunder, (v) a true and correct copy of the Lease is attached hereto as Exhibit B and the Lease has not been amended, modified or supplemented and no material waivers have been granted thereunder, (vi) a true and correct copy of the Interconnection Agreement is attached hereto as Exhibit C and the Interconnection Agreement has not been amended, modified or supplemented and no material waivers have been granted thereunder, (vii) City is not in default of any of its obligations under any Assigned Agreement, (viii) to the best of its knowledge, Borrower is not in default of any of its obligations under any Assigned Agreement, (ix) there are no material disputes between City and Borrower under any Assigned Agreement, (x) City has not assigned all or any part of its rights under any Assigned Agreement and City has no notice of, and has not consented to, any previous assignment by Borrower of all or any part of its rights under any Assigned Agreement, other than the assignment by Borrower to Master Tenant of its rights to payments under the PPA pursuant to the Master Lease, (xi) to the best of the City's knowledge, no event or condition presently exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either City or Borrower to terminate or suspend its obligations under any Assigned Agreement, (xii) the representations and warranties made by City to Borrower under the Assigned Agreements are true and correct as if made on the date hereof, and (xiii) Borrower has paid in full all Rent due by Borrower under the Lease.

6. Replacement Agreement. In the event any Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Borrower, City will, at the option of Lender exercised within sixty (60) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms and conditions as such Assigned Agreement (with a term equal to the remaining term of such Assigned Agreement), subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree.

7. Lender's Security Interest in Solar Project. City acknowledges that that Borrower has granted a first priority security interest in the Solar Project to the Lender. City acknowledges that the Solar Project is the personal property of Borrower and does not constitute fixtures, notwithstanding any statements to the contrary in the Assigned Agreements. City agrees that upon

the exercise of remedies by the Lender with respect to the Solar Project, City will provide the Lender or any Subsequent Owner access to the Site and the Solar Project. City consents to the granting to, and any enforcement by, Lender of a security interest in any stock or other ownership interests in the Borrower.

8. Execution and Recordation of Leasehold Deed of Trust and UCC-1 Fixture Filing. City consents to Borrower's execution of the Leasehold Deed of Trust and agrees that Lender may record the Leasehold Deed of Trust in the Official Records of Jackson County, Missouri; provided that such instrument shall only provide for an assignment, security interest and encumbrance upon Borrower's right, title and interest in the Site and shall not encumber City's fee simple estate in the Site. City will promptly, upon the reasonable request from Lender, execute, acknowledge and deliver to any documents or instruments necessary in connection with such recordation at no cost or expense to City. City consents to Lender recording a UCC-1 Fixture Filing covering the Solar Project.

9. Waiver of Liens. City hereby disclaims any title to or rights in the Solar Project or any other personal property, fixtures, installations or other property of Borrower (whether or not affixed to the Property) and waives any landlord's lien, encumbrance or other interest therein which City may now or hereafter have or acquire therein under the Assigned Agreements or applicable law.

10. [Reserved.]

11. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given (a) upon personal delivery to the party to be notified; (b) when received when sent by e-mail or fax by the party to be notified; provided, however, that notices given by e-mail or fax shall not be effective unless either (i) a duplicate copy of such e-mail or fax notice is promptly given by one of the other methods described in this Section, or (ii) the receiving party delivers a written confirmation of receipt for such notice either by e-mail, fax or any other method described in this Section; (c) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth in (d), provided that the sending party receives a confirmation of delivery from the overnight courier service; or (d) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties given in the foregoing manner:

If to Borrower or Master
Tenant:

MCP-Independence II, LLC
GCEC 2018 MT I, LLC
4803 S. National Ave., Suite 200
Springfield, Missouri 65810
Attn: Mark E. Gardner
Email: _____

With a copy to:

Rosenblum Goldenhersh, PC
7733 Forsyth Blvd., 4th Floor
St. Louis, Missouri 63105

Attn: Matthew Potter
Email: mpotter@rgsz.com

If to City: City of Independence, Missouri
111 E. Maple
Independence, Missouri 64050
Attn: _City Manager

With a copy to: City of Independence, Missouri
111 E. Maple
Independence, Missouri 64050
Attn: City Counselor

If to Lender: National Cooperative Bank, N.A.
2011 Crystal Drive, Suite 800
Arlington, Virginia 22202
Attention: Corporate Banking
Email: _____

With a copy to: Gallagher Evelius & Jones, LLP
218 North Charles Street, Suite 400
Baltimore, Maryland 21201
Attention: Matthew Pirnot
Facsimile: (410) 468-2786

12. Successors and Assigns. This Consent shall be binding upon City and its permitted successors and assigns and shall inure to the benefit of the Lender, any Subsequent Owner and their successors and assigns.

13. Termination. This Consent shall terminate upon the satisfaction in full of the Secured Obligations, and the parties hereto agree to execute, deliver and, if necessary, record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments shall not be a condition to the termination of this Consent.

14. Amendment of Financing Documents. The Loan Agreement, the Security Documents, the other Loan Documents, any related financing documents and the security interests granted thereunder may be amended, restated, refinanced (in whole or in part), supplemented or otherwise modified from time to time without City's consent and without affecting the validity or enforceability of this Consent; provided, however, City's prior written consent shall be provided to any such modification if such modification affects the rights and interest of the City under this Agreement or the Assigned Agreements.

15. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of Missouri, without giving effect to principles of conflicts of law which would result in the application of the laws of another jurisdiction.

16. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party.

17. Course of Dealing; Amendment. No course of dealing between any parties hereto shall be effective to amend, modify or change any provision of this Consent. Lender shall have the right at all times to enforce the provisions of this Consent in strict accordance with the provisions hereof and thereof, notwithstanding any conduct or custom on the part of Lender in refraining from so doing at any time or times. The failure of Lender at any time or times to enforce its respective rights under such provisions, strictly in accordance with the same, shall not be construed as having created a custom in any way or manner contrary to specific provisions of this Consent or as having in any way or manner modified or waived the same. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by the Lender and each other party hereto.

Nothing in this Agreement shall be construed to amend, modify or change any provision of the Assigned Agreements with respect to any provisions in place between Borrower and City.

18. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be deemed to be an original and all of which, when taken together, will be deemed to constitute one and the same agreement. All references made (a) in the neuter, masculine, or feminine gender shall be deemed to have been made in all such genders, and (b) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Any capitalized term used but not defined herein shall have the meaning ascribed to such term in the Assigned Agreements.

19. Use of Electronic Signatures and Records. Pursuant to the Uniform Electronic Transactions Act, the parties hereby agree and consent to the use of electronic signatures and electronic records in connection with the transaction that is the subject of this Consent; provided, however, that such consent and agreement only permits the use of, but does not require, electronic signatures or electronic records, including on documents delivered in counterparts.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized officers as of the date first above written.

CITY:

**CITY OF INDEPENDENCE,
MISSOURI**

By: _____

Name: _____

Title _____

[Signature Page to Consent and Agreement – Power Purchase Agreement and Site Lease (MCP-Independence II, LLC)]

Accepted and Agreed to:

LENDER:

NATIONAL COOPERATIVE BANK, N.A.

By: _____
Name: _____
Title: _____

BORROWER:

MCP-INDEPENDENCE II, LLC,
a Missouri limited liability company

By: GCEC 2018 ML I, LLC, a Missouri limited liability company,
its managing member

By: _____
Mark E. Gardner,
Manager

MASTER TENANT:

GCEC 2018 MT I, LLC,
a Missouri limited liability company

By: GCEC 2018 MM I, LLC, a Missouri limited liability company,
its managing member

By: _____
Mark E. Gardner,
Manager

[Signature Page to Consent and Agreement – Power Purchase Agreement and Site Lease (MCP-Independence II, LLC)]

EXHIBIT A

PPA

[see attached]

EXHIBIT B

LEASE

[see attached]

EXHIBIT C

INTERCONNECTION AGREEMENT

[see attached]

EXHIBIT D

PAYMENT INSTRUCTIONS

Wire Instructions:

ABA: _____

Account No: _____

Account Name: _____

Checks should be mailed to:

[Insert Address]