

*****ATTACHMENTS*****

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Res. No. 146 - 20 - 21. By Alderpersons Donohue and Bohren.
January 18, 2021.

A RESOLUTION authorizing the appropriate City officials to execute the Site Lease Agreement between the Wisconsin Power and Light Company and the City of Sheboygan regarding a solar photovoltaic generating facility.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Site Lease Agreement between the Wisconsin Power and Light Company and the City of Sheboygan, a copy of which is attached hereto and incorporated herein.

FAP

By Lynne Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

**SITE LEASE AGREEMENT
WISCONSIN POWER AND LIGHT COMPANY
and
THE CITY OF SHEBOYGAN**

This Site Lease Agreement (“Lease” or “Agreement”), dated as of _____, 2021 (“Effective Date”), is by and between Wisconsin Power and Light Company, a Wisconsin corporation as Lessee (“Lessee”), and the City of Sheboygan as Lessor (“Lessor”). In this Lease, Lessor and Lessee are sometimes referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, Lessee is a public utility engaged in providing electric service in Wisconsin pursuant to Wis. Stat. § 196.01(5)(a);

WHEREAS, Lessee desires to construct and operate, or contract with a third party for the construction and operation of, a solar photovoltaic generating facility (the “*Customer-Hosted Facility*”) for the purpose of meeting the energy and capacity needs of Lessee’s retail and wholesale customers;

WHEREAS, in accordance with the Tariff (defined below) Lessee intends to use the Renewable Energy Facility shown on Exhibit B in support of and as part of the Alliant Energy Customer-Hosted Renewables Program;

WHEREAS, Lessee proposes to lease from Lessor certain of Lessor’s property located in Sheboygan County (the “*Property*”) as set forth on Exhibit A constituting the Lessee’s leasehold interest hereunder (the “*Premises*”), to facilitate the development and operation of the Customer- Hosted Facility shown on Exhibit B;

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual premises, representations, warranties, covenants, conditions herein contained, and the Exhibits attached hereto, Lessee and Lessor agree as follows.

SECTION 1 -- DEFINITIONS

When used in this Lease, the following terms shall have the meanings given below, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Section 1 which are capitalized shall be given their common and ordinary meanings when they appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Access Easement” means Lessee’s non-exclusive appurtenant rights for ingress, egress, and access to and from the Premises pursuant to the Access Easement is attached hereto and made a part hereof as Exhibit D, over a portion of the Property for purposes of providing Lessee with access to the Customer-Hosted Facility.

“Accredited Capacity” means the accredited capacity, in MW(ac) as calculated using the Midcontinent Independent System Operator Business Practice Manual then in effect as of the Effective Date. Accredited Capacity shall be fixed for the Term of the Lease.

“Affiliate” means with respect to any entity, such entity’s general partner or manager, or any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

“Alteration” has the meaning set forth in Section 8.7.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, and all licenses, permits, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation (i) the Lessee’s leasehold, access and easement interests in and to the Premises or any part thereof in connection with the Permitted Use, and (ii) the construction, operation, ownership, maintenance, repair, decommissioning and removal of the Customer-Hosted Facility.

“Claims” has the meaning in Section 11.1.

“Commercial Operations” means such operations of the Lessee where (1) the Committed Nameplate Capacity of the Customer-Hosted Facility is installed and the Customer-Hosted Facility can and does produce energy associated with such Committed Nameplate Capacity; and (2) all Permits and Required Approvals necessary to authorize that production and delivery of Delivered Energy have been obtained; and (3) Lessee has given Lessor prior written notice that the foregoing requirements with the respect to the Customer-Hosted Facility have been met.

“Commercial Operation Date” means the date (1) set forth in a written notice from Lessee to Lessor no later than ten (10) days prior to such date and (2) on which all other conditions to Commercial Operation as set forth in this Lease have been met.

“Committed Nameplate Capacity” means the total maximum designed power output Capacity of the Customer-Hosted Facility.

“Concealed Conditions” means subsurface or otherwise concealed physical conditions at the Premises that differ materially from the Documented Site Conditions or those conditions ordinarily expected to exist at a site like the Property and generally recognized as inherent in construction activities of the type and character as the work to be performed by Lessee under this Lease, and that Lessee could not have otherwise discovered through the exercise of reasonable diligence in advance of commencing its performance of its obligations at the Premises.

“Confidential Information” means all oral and written information exchanged between the Parties with either or both Parties which contain proprietary business or confidential information of a Party and is designated as “confidential” by such Party. The following exceptions, however, do not constitute Confidential Information for purposes of this Lease: (a) information that is or becomes generally available to the public other than as a result of a disclosure by either Party in violation of this Lease; (b) information that was already known by either Party on a non-confidential basis prior to this Lease; (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party; (d) information a Party is required to disclose in connection with any administrative or regulatory approval or filing process in connection with the conduct of its business or in accordance with any statute or regulations; and (e) any record required to be made available under federal or state law, including the Wisconsin Public Records Law (§§ 19.31 to 19.37, Wis. Stats.)

“CONE” means Cost of New Entry, which is defined in MISO to mean an estimate of capacity revenue needed by a new generator in its first year of operation to make it economically viable to build a power plant in MISO.

“Constructive Abandonment” has the meaning set forth in Section 6.1(c).

“Customer-Hosted Facility” means the solar power electrical generation facility and related structures, foundations, fixtures, facilities, equipment, energy storage facilities, gates, fences, barriers, landscaping, security systems, access roads within the Premises, and signage, and any other items or appurtenances that are used or useful in connection with the generation, production, interconnection, transmission, distribution, and sale of solar energy to be constructed, owned, operated, and maintained by Lessee, with specifications for an aggregate nameplate capacity of approximately 1 MW(ac), together with all appurtenant facilities and any transformers and interconnection facilities comprising underground cables and any necessary junction boxes or other equipment required to interconnect the facility to the local electric distribution system, and any and all Alterations, additions, replacements, or modifications thereto, all to be located on the Premises as further set forth in Exhibit B.

“Documented Site Conditions” means those conditions at the Premises documented in the Site Assessment in accordance with Section 2.6.

“Effective Date” means the date set forth in the introductory paragraph of this Lease.

“Energy” means the amount of electricity either used or generated by the Customer-Hosted Facility over a period of time, as expressed in units of kWh or MWh.

“Environmental Attributes” means any environmental offsets or allowances, renewable product, value, or credits of any kind or nature earned or attributable to (A) the Customer-Hosted Facility, and (B) the electric energy generated by the Customer-Hosted Facility, including, without limitation, those resulting from or associated with the Federal Clean Air Act, renewable energy credits, or any other federal or state acts, laws, regulations, or ordinances that provide offsets, allowances, or credits related to energy or emissions created through the generation of energy from the Customer-Hosted Facility.

“Environmental Laws” means all local, state or federal laws relating to health, safety, pollution, protection of the environment or Hazardous Materials, including, without limitation, the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. §6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”); the Clean Air Act, as amended, 42 U.S.C. §7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §136 et seq.; the Emergency Planning and Community Right to Know Act, 42 U.S.C. §11001 et seq.; the Occupational Safety and Health Act, 29 U.S.C. §651 et seq.; and all amendments, regulations, orders, decrees, permits, licenses, common law duties, legally binding guidelines, and deed restrictions now or hereafter promulgated thereunder or made pursuant thereto.

“Event of Default” has the meaning set forth in Section 14.4.

“Firm Demand” means that portion of the demand that Lessee, as an electricity provider, is obligated to provide to Lessor, except when system reliability is threatened or during emergency conditions.

“Force Majeure” means any acts, events, or occurrences that: (i) are not anticipated as of the execution date of this Lease; (ii) are not caused by the fault, negligence, or willful misconduct of the affected Party; (iii) are beyond the reasonable control of the affected Party; and (iv) could not have been avoided or overcome by the exercise of due diligence of the affected Party. Force Majeure includes, specifically, but not exclusively, the following: earthquakes, tidal waves, floods, fire, hurricanes, blizzards, quarantine, blockade, governmental acts, war (declared or not), rebellion, terrorism (foreign and domestic), or regional or national strikes or labor disputes (including walk outs, work stoppages, or slowdowns).

“Governmental Authority” means any national, state or local government, independent system operator, regional transmission owner or operator, any political subdivision thereof or any other governmental, judicial, regulatory, public or statutory instrumentality, authority, body, agency, department, bureau, or entity.

“Gross Negligence” has the meaning in Section 11.3.

“Hazardous Materials” means collectively, (i) any substance, material, waste, solid, liquid, gas, odor or form of energy, from whatever source, that is subject to or regulated by any current or future Environmental Law; (ii) those substances included within the definitions of “hazardous substances,” “hazardous materials,” “toxic substances,” “pollutant,” “contaminant,” “solid waste,” or “hazardous waste” in any Environmental Law; (iii) mold, fungi, or other similar substance, and (iv) more specifically, but not by way of limitation, (a) any substance now or in the future designated pursuant to Section 311(b)(2)(A) of the Clean Water Act, as amended, 33 U.S.C. 1321(b)(2)(A); (b) any toxic pollutant listed under Section 307(a) of the Clean Water Act, 33 U.S.C. 1317; (c) any “hazardous substance” or “pollutant or contaminant” as defined in Sections 101(14) and 101(33) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601(14) & 9601(33); (d) any element, compound, mixture, solution, or substance designated pursuant to Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9602; (e) petroleum, including crude oil or any fraction thereof; (f) any hazardous waste having the characteristics identified under or listed pursuant to the Solid Waste Disposal Act, as amended, 42 U.S.C. 6921 et seq.; (g) any material defined as “hazardous waste” pursuant to 40 C.F.R. Part 260; (h) any hazardous air pollutant listed under Section 112 of the Clean Air Act, 42 U.S.C. 7412; (i) any imminently hazardous chemical substance or mixture for which the Administrator of the Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substances Control Act, 15 U.S.C. 2606; (j) any substance, the presence of which causes or threatens to cause a nuisance on the Plant or Site or a nuisance or trespass to real estate in the vicinity of the Plant or Site; (k) underground storage tanks; (l) urea-formaldehyde foam insulation; (m) asbestos and asbestos containing materials (whether friable or non-friable); (n) atmospheric radon at indoor concentrations exceeding 4 picocuries per cubic liter; and (o) any and all other substances, materials, and wastes which are characterized as “pollutants” or “contaminants” or as “toxic” or “hazardous” under Environmental Laws.

“Indemnified Party” has the meaning in Section 11.1.

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“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (i) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (ii) two (2) percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Lessee and reasonably acceptable to Lessor.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of three hundred sixty-five (365) days and the actual number of days for which such interest is due.

“kW” means kilowatt.

“kWh” means kilowatt hour.

“Lease” has the meaning set forth in the introductory paragraph of this Lease.

“Leasehold Mortgage” has the meaning set forth in Section 13.4.

“Lessee” has the meaning set forth in the introductory paragraph of this Lease.

“Lessee Senior Representative” shall mean David DeLeon, President, Wisconsin Power and Light Company.

“Lessor” has the meaning set forth in the introductory paragraph of this Lease.

“Lessor Senior Representative” shall mean Chad Pelishek, Director of Planning and Development, City of Sheboygan.

“Liens” has the meaning set forth in Section 16.2(b).

“MW” means Megawatt.

“MWh” means Megawatt hour.

“MISO” means Midcontinent Independent System Operator.

“Monthly Rent” shall mean the rent payable to Lessor for use of the Premises in connection with the operation of the Customer-Hosted Facility, and as further described in Exhibit E.

“Mortgagee” shall have the meaning in set forth in Section 13.2(b).

“Notice of Construction” has the meaning set forth in Section 2.5.

“Parties” means Lessor and Lessee, and their respective successors and permitted assignees.

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“Permits” means all state, federal, and local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, operation, and maintenance of the Customer-Hosted Facility.

“Permitted Improvements” means the Customer-Hosted Facility that will be used to conduct the Permitted Use, together with accessory uses thereto, including, but not limited to, one or more solar energy generating and conversion systems and related structures, foundations, fixtures, facilities and equipment, energy storage facilities, access roads (including the Access Easement), electric interconnection facilities, comprising underground cables and any necessary junction boxes or other equipment needed to connect the Customer-Hosted Facility to the local electric distribution system, as further set forth in Exhibit B hereto, any gates, fences, barriers, landscaping, security systems, and signage, and any other items or appurtenances that are used or useful in connection with the generation, production, interconnection, transmission, distribution, and sale of solar energy.

“Permitted Use” means the use and occupation of the Premises solely and exclusively for the design, construction, operation, maintenance, repair, and removal of the Permitted Improvements, which are designed and intended for the purpose of generating renewable energy for sale within MISO, and any incidental uses thereto.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, or other business entity.

“Premises” has the meaning set forth in Exhibit A, as applicable, as such Exhibit A may be amended in accordance with the provisions of this Lease.

“Prudent Solar Industry Practice” means those practices generally recognized by the solar and battery storage industries, including Lessee, in the United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost, consistent with reliability, safety, site security, expedition, project economics and Applicable Legal Requirements. Prudent Solar Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“RECs” means renewable energy credits, which are defined in Wis. Stat. § 196.378(3), and, for purposes of this Lease only, include those renewable energy credits generated by the Customer-Hosted Facility.

“Release” or **“Released”** means or refers to any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of any Hazardous Material into the environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Material or pollutant or contaminant), and includes a threatened Release.

“Remediation” or **“Remediate”** means or refers to any (i) investigation, monitoring, clean-up, containment, remediation, mitigation, restoration, enhancement, removal, disposal or treatment of any Release or other condition involving non-compliance with Environmental Laws to remediation standards required by Environmental Laws, including the preparation and implementation of any work plans and the obtaining of authorizations, approvals and permits from governmental authorities with respect thereto, and (ii) any response to, or preparation for, any inquiry, order, consent order, hearing or other proceeding by or before any Governmental Authority with respect to any such non-compliance or otherwise pursuant to any Environmental Law.

“Required Approvals” means the permits, licenses, or other approvals from any federal, state, or local Governmental Authority or other third parties, directly related to and required for the design, installation, construction, and operation of the Customer-Hosted Facility.

“Tariff” means, as applicable, the Wisconsin Power and Light Company Customer-Hosted Renewables Pilot, Volume III, Original, Sheet No. 9.70, Amendment 536, Schedule CHR-1.

“Term” has the meaning set forth in Section 3.1.

“Termination Date” means the earlier to occur of (i) the last day of the Term or any Renewal Term, (ii) the date of termination of this Lease pursuant to Section 15.

“Work” has the meaning set forth in Section 12.1.

SECTION 2 -- LEASE OF PREMISES

2.1 **Premises.** Lessor, for and in consideration of the rents, covenants, and agreements herein contained on the part of Lessee to be paid, kept, and performed, does hereby lease, rent, let, and demise unto Lessee, and Lessee does hereby take, accept, hire, and lease from Lessor, upon and subject to the conditions hereinafter expressed, the Premises (as further described in Exhibit A, as such Exhibit A may be amended in accordance with the provisions of this Lease) for the sole and exclusive purpose of conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the Permitted Improvements. Appurtenant to Lessee’s rights to the Premises is the non-exclusive right, subject to the terms set forth herein, to use of the Access Easement on Exhibit D for its respective specified purpose. The Premises, which shall include the Lessee’s appurtenant rights to the Access Easement, shown on Exhibit B, respectively, are demised subject to the following:

(a) any encumbrances shown on a survey of the Premises as described in paragraph 2.6;

(b) upon Lessee's written request and sole expense, Lessor furnishing a current letter report from a title company of Lessee's choice to Lessee. Lessee shall have the right to obtain a title opinion for a leasehold title policy from a title company of its choice. If, in the reasonable opinion of Lessee, such title opinion shows any defects of title or any liens or encumbrances which materially and adversely affect Lessee's use of the Premises, Lessee shall have the right, in Lessee's sole discretion, to (i) request that Lessor use commercially reasonable efforts to cure such defect in title within a reasonable period of time, provided, Lessor has the right to decline to cure such defect in its sole discretion, or (ii) terminate this Lease upon thirty (30) days written notice to Lessor. Lessor agrees to reasonably cooperate with Lessee, at no cost to Lessor, to enable Lessee to obtain a title guarantee, certificate, or a standard policy of title insurance insuring the Lease granted hereunder (including such endorsements as Lessee shall reasonably request);

(c) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibits A, B, and D, as such Exhibits A, B, and D may be amended in accordance with the provisions of this Lease;

(d) present and future zoning laws, ordinances, resolutions and regulations of the municipality in which the Premises lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit the use of the Premises for the Permitted Use, provided that Lessor shall not restrict or encumber Lessee's use of the Premises for the Permitted Use after the Effective Date or otherwise mortgage Lessee's leasehold interests in the Property without first allowing Lessee fifteen (15) days prior to the execution of such mortgage to obtain a subordination, nondisturbance, and attornment agreement ("*SNDA*") from Lessor's lender in a form reasonably acceptable to Lessee; and

(e) the condition and state of repair of the Premises as the same may be on the Effective Date.

Exhibit B, attached to this Lease, as of the Effective Date includes the Lessee's initial approximation of the Permitted Improvements, and Exhibit B may be amended by Lessee from time to time, with prior written approval by Lessor, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.2 Net Lease. Except as provided in this Lease, Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability in connection with this Lease or the ownership, construction, operation, maintenance, removal, replacement, or repair of the Permitted Improvements throughout the Term, except as otherwise provided in this Lease. Lessee hereby accepts the condition of the Premises as it may affect Lessee's construction, operation, repair, demolition, maintenance, and management of the Permitted Improvements, except as otherwise provided in this Lease. The Parties agree that Lessee shall not be liable for any conditions on the Premises:

- (a) arising from or related to acts or omissions occurring prior to the Effective Date; or,
- (b) occurring after the Effective Date that arise from or are related to Lessor's or Lessor's employees', contractors, or agent's Gross Negligence or willful misconduct.

2.3 Ownership of the Permitted Improvements. Lessor shall have no ownership of, or other interest in, Lessee's equipment, machinery, appurtenances within the Premises, or the Permitted Improvements. Lessor shall have no ownership or, or other interest in, the Customer-Hosted Facility or any related appurtenances and apparatus or the Environmental Attributes. Provided, however, Lessor may, at its sole discretion, and no later than the Effective Date, elect to receive any RECs, subject to Exhibit E, Section (1).

2.4 Additional Use. Except with the prior express written consent of Lessor, Lessee shall not use the Premises for any use other than the Permitted Use. Lessor shall not conduct or permit, whether by act or omission, any uses on the Premises that conflict with or interfere with the Permitted Use.

2.5 Notice of Construction; Delivery of Possession. At any time after the Effective Date and before Lessee causes the commencement of construction of the Permitted Improvements on the Premises, which period shall not be more than seven hundred thirty (730) days after the Effective Date, Lessee shall deliver to Lessor a written notice (the "**Notice of Construction**"), stating the approximate date, which shall be not less than sixty (60) days after the date of the Notice of Construction, on which Lessee intends to begin construction at the Premises with respect to the Permitted Improvements. Lessor shall deliver possession of the Premises needed for the Customer- Hosted Facility to Lessee at least thirty (30) days prior to the date of commencement of construction of the Customer-Hosted Facility as stated in the Notice of Construction.

2.6 Survey. Lessee shall obtain a survey of the Property at its own expense. Lessor shall cooperate with provide Lessee and Lessee's agents with reasonable access to the Premises for the purposes of conducting a Survey, provided that Lessee shall provide reasonable advance notice of the need for such access to Lessor.

2.7 Access to Premises Before Notice of Construction. During the period after the Effective Date and before delivery of the Notice of Construction under Section 2.5, as requested by Lessee after Lessee's having provided reasonable advance notice to Lessor, Lessor shall provide Lessee with reasonable access to the Premises for purposes of evaluating the condition of the Premises and in connection with designing and engineering the Permitted Improvements.

SECTION 3 -- TERM

3.1 Term. The "**Term**" shall begin on the Effective Date and end at noon central time on the twenty-fifth (25th) anniversary of the Effective Date.

3.2 Extended Term. So long as the Lessee is not then in an uncured Event of Default, this Lease will automatically renew for up to three (3) additional five (5) year terms after the initial Term (each a "**Renewal Term**") without action or notice by either Party, unless one Party gives the other written Notice of its intention not to renew this Lease for the upcoming Renewal Term ("**Non-Renewal Notice**"). Non-Renewal Notices shall be delivered no later than one hundred eighty (180) days prior to the expiration of the Term, or the then current Renewal Term, as the case may be, with the final day of the Term or last Renewal Term being the "**Termination Date**".

3.3 Memorandum of Lease. Promptly after the Effective Date and before delivery of the Notice of Construction under Section 2.5, the Parties shall execute a Memorandum of Lease in a form reasonably agreeable to both parties, and Lessee shall promptly thereafter record said Memorandum in the official records of Sheboygan County, Wisconsin. Upon the expiration or earlier termination of this Lease, Lessee agrees to execute an instrument releasing all of its rights granted herein except those rights which expressly survive the termination of this Lease, and to deliver the same to Lessor within ten (10) days after the Termination Date.

SECTION 4 -- RENT AND OTHER CONSIDERATION

Lessee agrees to pay Lessor the amounts set forth in Exhibit E as consideration for the Lease, Access Easements, and Lessee's other rights and interests in the Lessor's Property.

SECTION 5 -- INSURANCE

5.1 Insurance Requirements. Beginning on the Effective Date and throughout the Term, each Party shall maintain the policies and coverages set forth on Exhibit C. Upon request, each Party shall furnish to the other Party certificates of insurance showing policies carried. Further, each Party shall be named as an additional insured for the negligent acts and omissions of the other Party arising out of this Lease Agreement, on a primary and non-contributory basis, with respect to the Commercial General Liability coverage. Lessee may satisfy the foregoing insurance requirements, in whole or in part, through the provision of self-insurance by Lessee in the amounts identified in Exhibit C and pursuant to terms and conditions consistent with prudent utility practices and consistent with the manner in which Lessee insures other similar properties and risks. Each certificate of insurance delivered hereunder, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty (30) days prior written notice to the other Party and to any mortgagee named in such policy. Failure of either Party to enforce the minimum insurance requirements listed above shall not relieve the other Party of responsibility for maintaining these coverages.

5.2 Waiver of Subrogation. Whether the loss or damage is due to the negligence of Lessor or Lessee, or their respective employees or agents, or any other cause, Lessor and Lessee do each herewith and hereby release and relieve the other, its employees, and agents from responsibility for and waive their entire claim of recovery for (a) any loss or damage to the real or personal property of either located anywhere on the Property, including the Property itself, arising out of or incident to the occurrence of any of the perils which are covered by a fire and extended coverage policy of insurance, and (b) any loss resulting from business interruption at the Premises or Property or loss of rental income from the Premises or Property or any portion thereof, arising out of or incident to the occurrence of any of the perils which are covered by any business interruption insurance policy or by any loss of rental income insurance policy. Each Party shall cause its insurance carriers to consent to such waiver and to waive all rights of subrogation against the other Party.

SECTION 6 -- SURRENDER ON TERMINATION

6.1 Surrender of the Premises and Removal of the Permitted Improvements.

(a) On the Termination Date, Lessee shall peaceably and quietly leave, surrender and yield up unto Lessor the Premises.

(b) Notwithstanding the foregoing, Lessee shall be required, at Lessee's sole expense, as soon as reasonably practicable and no later than two hundred seventy (270) days after the Termination Date of this Lease, during which time Lessee shall continue to pay the Monthly Rent and Taxes, to decommission the Permitted Improvements subject to the Termination Date, remove the Permitted Improvements and any other alterations, changes, additions and improvements which may have been made upon the Subject Property, except the Access Easement, whether above-ground or below-ground, from the Premises and appurtenant areas, and restore and reclaim the Premises and appurtenant areas subject to the Termination Date to approximately their original condition existing on the Effective Date, normal wear and tear and casualty excepted. This shall include, but not be limited to, the removal from the Property of any and all deleterious material and substances that might cause injury to persons, crops, water supply sources, native vegetation or livestock, including junk material, pieces of iron, pipes, steel, concrete or other debris and foreign materials, leveling of all mounds, filling all pits, ruts and other excavations, restoring the surface of the Property used by Lessee to as near its original condition as is reasonably practicable after the completion of the operation or other activity conducted under this Lease in question, root plowing, discing and seeding of such areas with ten (10) pounds per acre of grass seed of Lessor's selection, and fertilizing the affected areas.

(c) Any property, improvements, or Permitted Improvements subject to the Termination Date left on the Premises after the passage of two hundred seventy (270) days following the Termination Date, or such longer period as granted by Lessor in its sole discretion, may, at the option of Lessor, be deemed abandoned (a "*Constructive Abandonment*") and thereafter shall become the personal property of Lessor; *provided*, the forgoing shall not apply to any property, improvements or Permitted Improvements of Lessee that are not timely removed if the failure to remove is caused by an event of *Force Majeure* or the negligent acts or omissions of Lessor (in which in either case the time period for removal shall be extended on a day-to-day basis).

(d) No later than the fifteenth (15th) anniversary date of the Commercial Operations Date, Lessee shall provide a bond or other security reasonably satisfactory to Lessor, which secures Lessee's obligation to remove the Improvements from the Subject Property at the end of the Term or earlier termination of this Lease. Such bond or other security ("Removal Bond") shall be in an amount equal to one hundred ten percent (110%) of Lessee's reasonable estimate of removal and restoration costs, less the reasonable salvage value of the Project, that will be incurred in complying with the terms of this Lease. The Removal Bond shall be assessed and the value accordingly adjusted if necessary due to an increase in the cost of performance under this Lease, at least once every five (5) years. If Lessee and Lessor are unable to agree to the proper amount of the Removal Bond, Lessee and Lessor shall mutually agree to a disinterested unaffiliated third party to determine said amount. The disinterested third party's determination shall be final for the purposes of assigning a value to the Removal Bond. The Removal Bond shall be released to Lessee upon Lessor's reasonable satisfaction that removal and restoration operations pursuant to this Lease have been complied with. The bond or other security shall extend for a reasonable period of time beyond the Term of this Lease and the form of bond (or other security) shall be reasonably satisfactory to the Parties. The provision of such bond or other security is not intended to limit the obligations of Lessee to comply fully with its obligations set forth in this section and to the extent the costs of compliance exceed the amount of the bond or other security, Lessee shall be responsible for such excess costs.

6.2 Title. Subject to Section 6.1(c), above, ownership and title to the Permitted Improvements, except the Access Easement, shall solely and exclusively be in the Lessee.

SECTION 7 -- DUTY TO MAINTAIN

7.1 Lessee's Duty. Subject to Section 12, commencing upon and continuing after the date of the Notice of Construction for the Customer-Hosted Facility, Lessee shall keep the Permitted Improvements in good condition, reasonable wear and tear excepted, and perform its obligations with respect to the Premises, conduct all necessary maintenance and repairs to the Permitted Improvements and shall maintain and keep the Permitted Improvements in accordance with Prudent Solar Energy Industry Practice and Applicable Legal Requirements.

7.2 Lessor's Duty. During the Lease Term, Lessor shall maintain the Property more particularly described on Exhibit A and the Premises, but excluding the Customer-Hosted Facility described on Exhibit B, in good and usable condition. Excluding the Customer-Hosted Facility, Lessor shall be responsible for all maintenance and repairs to the Property related to flood, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; and war, sabotage, vandalism, civil strife or other violence, related to the Property at Lessor's sole cost and expense. Lessee shall be responsible for day-to-day maintenance, including but not limited to grass cutting, weed control, and snow removal.

7.3 Damage. Lessor shall immediately notify Lessee in the event Lessor or Lessor's agents damage any portion of the Customer-Hosted Facility. Lessor shall be responsible for actual reasonable costs of repair, to be performed by Lessee or an approved Affiliate or subcontractor.

7.4 Public Safety. Lessor shall, as promptly as it becomes aware thereof, notify Lessee of the occurrence of any event or the existence of any condition or circumstance that poses an imminent threat or hazard to public health or safety (an "*Emergency*") at the Premises. Lessee shall respond to any such Emergency as promptly as reasonably possible and take all measures necessary to address the condition that gave rise to the Emergency. Lessor shall not be required to incur any cost or expense attributable to the Customer-Hosted Facility in the event of such Emergency, except to the extent such emergency is caused by Lessor's negligence or willful misconduct.

7.5 Construction, Maintenance, and Monitoring of the Customer-Hosted Facility.

(a) Lessee, at its sole cost and expense, and in accordance with Prudent Solar Industry Practice and Applicable Legal Requirements, shall at all times:

(i) have responsibility for the costs and performance of construction of the Customer-Hosted Facility and procuring and maintaining or causing the procurement or maintenance of insurance on the Customer-Hosted Facility;

(ii) have responsibility for the costs and performance of all repairs, replacements, maintenance, Remediation, compliance with permits, and compliance with Applicable Legal Requirements;

(iii) bear the risk of loss in case of a theft, damage, casualty, condemnation or confiscation of Customer-Hosted Facility except in the case of Lessor's negligence or willful misconduct; and

(iv) be responsible, in accordance with Section 6, for removing the Permitted Improvements from the Premises upon the termination of this Lease.

(b) The Lessor shall have no obligation to perform any of the Lessee obligations set forth in Section 7.5(a) above, and Lessee or Lessee's agent(s), as applicable, shall be solely responsible for the performance of all such obligations.

7.6 Vegetation; Structures. Lessor agrees that it shall not permit on the Premises or on any adjacent or nearby property owned by Lessor or its Affiliates any new structure, vegetation, activity, or land use to penetrate the airspace in any manner that would cast a shadow on the Customer-Hosted Facility. While Lessee retains certain rights to expand the Customer-Hosted Facility upon the Premises, Lessor's obligations under this provision only extend the portion of the Premises actually in use at the time of approval/permitting of any new structures, vegetation, activity, or land use.

7.7 Security; Safety. Lessee shall be responsible for the security of the Property, including the Premises, and shall install or implement any other necessary security measures consistent with prudent industry practices.

**SECTION 8 --
CONSTRUCTION AND OPERATION OF PERMITTED IMPROVEMENTS**

8.1 General Description. Except as otherwise specified herein, the Permitted Improvements shall consist of the improvements described on Exhibit B, which is each attached hereto and which, as of the Effective Date, includes a preliminary description of the specifications of the major components of the Permitted Improvements to be constructed by the Lessee.

8.2 Governmental Approval.

(a) Except as otherwise specified herein, Lessee will obtain at its sole cost all Permits required for Lessee's use of the Premises, the Permitted Use, and the Permitted Improvements from any and all Governmental Authorities having jurisdiction in the matter.

(b) At Lessee's request and sole expense, Lessor shall reasonably cooperate with Lessee so that Lessee can meet its obligations under this Lease. At Lessee's request and sole expense, Lessor agrees to take all reasonable measures with respect to which it has legal capacity to facilitate and expedite the review of all local permits and approvals necessary for the Permitted Improvements.

8.3 Development Commences Promptly. Lessee shall promptly and diligently prosecute to completion (subject only to an event of *Force Majeure*) all actions to: (a) commence the necessary activities for the permitting, designing and engineering of the Permitted Improvements following the Effective Date; and (b) commence the necessary activities for the construction of the Permitted Improvements following the date of its Notice of Construction.

8.4 Completion Requirements. Lessee will arrange for the construction of the Permitted Improvements in a good, careful, proper and workmanlike manner in accordance with Prudent Solar Industry Practice and all Applicable Legal Requirements.

8.5 Access to and Use of the Premises. Upon the Effective Date and throughout the Term, and during construction and operation of the Permitted Improvements, including, but not limited to, all related pre-construction activities, Lessee and its contractors or agents shall have unrestricted access, including ingress and egress rights, to the Premises at all times, provided, Lessee acknowledges that prior to delivery of the Notice of Construction Lessee's access to the Premises shall be non-exclusive. Lessor agrees to maintain all roads, parking lots, driveways, easements, and walkways that are now and may be located in and around the Premises necessary for proper ingress and egress to and from, and use of, the Premises. Prior to relocating access, Lessor shall consult with Lessee and seek Lessee's approval, which such approval shall not be unreasonably withheld.

8.6 Alterations. Lessee shall have the right from time to time both before and after the completion of the Permitted Improvements and at Lessee's sole cost and expense to make, or cause to be made, additions, alterations and changes, other than structural changes or repair or replacement of parts at the Permitted Improvements, to the Premises as is reasonably required to conduct the Permitted Use in compliance with the provisions of this Lease ("*Alteration*").

8.7 Signs. Lessee shall be permitted to place signs on the Property, provided, any such signs shall be subject to the approval of Lessor (such approval not to be unreasonably withheld, conditioned or delayed) and shall be consistent with size, height, area, lighting, setback or other restrictions under Applicable Legal Requirements.

SECTION 9 -- SUBORDINATION; NONDISTURBANCE

9.1 Subordination and Nondisturbance.

(a) Except in accordance with and subject to the provisions of this Lease, including Section 9.1(b) below, after the Effective Date, neither Lessee nor Lessor shall create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's, or materialman's lien or any mortgage upon the Premises, and neither Lessee nor Lessor will suffer any other matter or thing arising out of Lessee's use and occupancy of the Premises whereby the estate, rights and interests of either Lessee or Lessor in the Premises or any part thereof might be impaired.

(b) Notwithstanding the foregoing, the Parties acknowledge and agree that Lessee may grant a security interest in its rights under its Lease and in and to the Customer- Hosted Facility. The Property is not presently encumbered by any deed of trust, mortgage or other lien, .

(c) Lessor agrees not to further restrict the Permitted Use or encumber the Premises after the Effective Date or otherwise further mortgage the Property without first allowing Lessee fifteen (15) days to obtain a SNDA from Lessor's lender.

9.2 Discharge. If any mechanic's, laborer's or materialman's lien, or any mortgage, shall at any time be filed against the Premises by reason of Lessee's or, as applicable, Lessor's failure to make a payment to any contractor or subcontractor of Lessee or Lessor, respectively, Lessee or Lessor, as applicable, within thirty (30) days after notice of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Lessee or Lessor, respectively, shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Lessee or Lessor, respectively, may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Lessee or Lessor, as applicable, and costs and expenses reasonably incurred by Lessee or Lessor, respectively, in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Lessee's or Lessor's making of the payment of the cost and expenses, respectively, shall be paid by Lessee or Lessor to the other Party within thirty (30) calendar days of Lessee or Lessor's invoice therefor, as applicable.

SECTION 10 -- QUIET ENJOYMENT

10.1 Quiet Enjoyment. Lessor represents and warrants that it has full right, power, and authority to execute this Lease. Lessor warrants and agrees that, throughout the Term and any extensions thereof:

(a) Any uses of the Property by Lessor or any third party shall not unreasonably interfere with the Permitted Use and the operational requirements of the Permitted Improvements and shall not materially reduce the solar insolation available to the Customer-Hosted Facility that uses solar to generate electricity; and

(b) Lessee shall be entitled to peaceful and quiet enjoyment of the Premises, subject to the terms of this Lease. Lessor agrees, in good faith, to make commercially reasonable efforts to protect Lessee from interference or disturbance by other lessees or third persons. Lessee covenants and agrees that it will not adversely affect the quiet enjoyment of other lessees in the Property.

SECTION 11 -- INDEMNIFICATION

11.1 To the maximum extent permitted by law, each Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and such other Party's Related Persons (as defined below) (each, an "**Indemnified Party**") from and against any and all claims, litigation, actions, proceedings, losses, damages, liabilities, obligations, costs and expenses, including reasonable attorneys', investigators' and consulting fees, court costs and litigation expenses (collectively, "**Claims**") suffered or incurred by such Indemnified Party, arising from:

(a) physical damage to the Indemnified Party's property to the extent caused by the Indemnifying Party or any Related Person thereof which (i) in Lessee's case, shall include damage to the Permitted Improvements and (ii) in Lessor's case, shall include damage to the Premises or Property;

(b) physical injuries or death to or of the Indemnified Party or the public, to the extent caused by the Indemnifying Party or any Related Person thereof;

(c) any Event of Default arising from breach of any covenant which remains uncured beyond applicable cure periods, and any failure to be true of any representation or warranty, made by the Indemnifying Party under this Agreement;

(d) the presence or release of Hazardous Materials in, under, on or about the Premises, which are or were brought or permitted to be brought onto the Premises by the Indemnifying Party or any Related Person thereof; or

(e) the violation of any Environmental Law by the Indemnifying Party or any Related Person thereof; or

11.2 In no event shall the Indemnifying Party be responsible for defending, indemnifying or holding harmless any Indemnified Party to the extent of any Claim caused by, arising from, or contributed to, by the Gross Negligence (defined below) or willful misconduct of such Indemnified Party or any Related Person thereof.

11.3 No Consequential Damages. In no event shall a Party be liable to the other Party for any indirect, consequential, incidental, special or punitive damages, including, without limitation, lost revenues, profits, interest charges, cost of capital, or claims of its customers except to the extent specifically provided under this Agreement; provided, however, that this limitation of liability will not limit a Party's liability for: (i) damages that are caused by the Gross Negligence, fraud, or willful misconduct of the Party claiming the benefit of this waiver; or (ii) damages payable by a Party to a third party as a result of a third party claim for which such Party is entitled to indemnification hereunder. For purposes of this agreement, "**Gross Negligence**" means (i) a marked and flagrant departure from the standard of conduct of a reasonable person acting in the circumstances at the time of the alleged misconduct, or (ii) such wanton and reckless conduct or omissions as constitutes in effect an utter disregard for harmful, foreseeable and avoidable consequences.

11.4 Related Persons. As used herein the term "Related Person" shall mean any Affiliates, contractors, lessees, and subtenants of a Party, and each of their respective, principals, officers, employees, servants, agents, representatives, subcontractors, licensees, invitees, guests, successors and/or assigns, but explicitly excluding the other Party and its Related Persons.

11.5 This indemnity shall survive expiration or earlier termination of this Agreement as provided Section 20.19.

SECTION 12 -- DAMAGE OR DESTRUCTION

12.1 Lessee Repair and Restoration. If, at any time during the Term, a Permitted Improvement or portion thereof shall be substantially damaged or destroyed and rendered inoperable by fire or other casualty, Lessee may at its sole cost and expense either (a) repair or replace the Permitted Improvements, or (b) elect to terminate this Lease in which case Lessee shall decommission and remove the Permitted Improvements in accordance with Section 6 of this Lease; and perform environmental Remediation, if required; and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date. Such removal, repair, Remediation, or replacement, including such changes and alterations as aforementioned and including temporary repairs, are referred to in this Section as the "*Work*."

12.2 Conditions of the Work. Except as otherwise provided in this Section 12, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of this Lease.

12.3 Failure to Commence Repairs. If the Work shall not have been commenced within one hundred eighty (180) days of the date of the casualty or other occurrence, or such longer period as may be reasonably required to adjust the insurance, achieve final plans and obtain all necessary Permits, or if such Work after commencement shall not proceed with due diligence (any *Force Majeure* event excepted), Lessor may terminate this Lease pursuant to Section 14. On such termination, Lessee shall decommission and remove the Permitted Improvements, except the Access Easement, and any other structures on the Premises and restore the Premises in accordance with Section 6. Upon the completion of such activities, Lessee shall have no further obligation to pay Lessor the Monthly Rent or any other amount under this Lease (other than payments due as of the Termination Date and payments required by any provisions of this Lease that expressly survive termination).

12.4 Lessee's Right to Terminate in Event of Shutdown. In the event a Governmental Authority decrees, orders or demands that operation of the Permitted Improvements cease or that the Permitted Improvements be removed from the Premises, Lessee shall have the right to terminate this Lease without penalty to either Party. *[For purposes of this Section 12.4, Governmental Authority shall not include Lessor.]*

SECTION 13 –ASSIGNMENT

13.1 Assignment by Lessor. Lessor shall be permitted to assign or transfer this Lease or any part thereof only upon the prior written consent of Lessee, such consent not to be unreasonably withheld, conditioned, or delayed.

13.2 Release of Lessor. Provided Lessee has consented to any assignment by Lessor in accordance with Section 13.1, above, Lessor shall be relieved from its obligations under this Lease:

(a) by any whole disposition of Lessor's interest in the Lease in compliance with Section 13.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by the terms of this Lease; and

(b) in the event of any foreclosure on the Premises by any person with a mortgage interest in the Premises (a "*Mortgagee*"), in which case the Mortgagee shall substitute for the Lessor for purposes of this Lease and which Mortgagee shall be bound by the terms of this Lease; provided, however, that the Mortgagee subsequently shall be entitled to assign its right under this Lease in accordance with the provisions of Section 13.1.

Absent express written consent of Lessee, the execution of a Mortgage or any assignment from one Mortgagee to another Mortgagee shall not relieve Lessor from its obligations under this Lease. Any attempt by Lessor to assign or transfer this Lease or any rights, duties or interest hereunder in violation of this Section will be null and void.

13.3 Assignments by Lessee. Lessee shall be permitted to assign this Lease without the consent of Lessor in accordance with Section 13.4, below or with respect to an affiliate of Lessee. Lessee shall not otherwise have the right to assign any of its rights, duties, or obligations under this Lease without the written consent of Lessor, which such consent shall not be unreasonably withheld, conditioned, or delayed. In the event of any assignment under this Section 13.3, Lessee shall be released from any further liability under this Lease from and after the effective date of such assignment if, as of the date of assignment, the assignee accepts responsibility for all payment and performance obligations under the Lease. To the extent provided for in each conveyance document, an assignee under this Section 13.3 shall have all of the rights and benefits of Lessee under and pursuant to this Agreement.

13.4 Lessee's Right to Finance. Lessee will from time to time and at any time have the right, respectively, without the consent of Lessor, to collaterally assign or otherwise encumber Lessee's interests in this Lease or the Premises or any portion thereof held by Lessee by one or more mortgages, deeds of trust, security agreements, or other instruments in the nature thereof, as security for one or more loans, indebtedness or obligations incurred by Lessee ("**Leasehold Mortgage**"). A Leasehold Mortgage may encumber Lessee's right to use and occupy the Premises, the leasehold estate created hereby, all right, title and interest in and to any existing building, fixture, or personal property, as well as in and to any and all other buildings at any time located on or partially on the Premises, and any other property so affixed to the land, buildings or improvements as to be a part thereof. Any such indebtedness or obligation and any such Leasehold Mortgage will be for such amount and on such other terms and conditions as Lessee may agree to. The aforesaid right shall be a continuing right. Any Leasehold Mortgage or loans, or extensions, renewals, refinancings, or replacements thereof obtained by or on behalf of Lessee shall impose no personal liability on Lessor and the sole recourse of the Mortgagee to be against Lessee and their respective interests in this Lease and the Permitted Improvements.

SECTION 14 -- TERMINATION, DEFAULT, AND REMEDIES

14.1 Termination for Convenience.

(a) Lessee's Right to Terminate for Convenience. Lessee shall have the right to terminate this Lease as to all or any part of the Premises (the "**Termination Option**") without cause at any time, provided:

(i) Lessee is not in default pursuant to this Lease on the date that Lessee exercises its option to terminate this Lease and on the Termination Date;

(ii) Lessee shall give written notice to Lessor of its termination of the Lease effective not less than one hundred eighty (180) days after the date of the written notice ("**Termination Date**").

(b) Lessor's Right to Terminate for Convenience. Lessor shall have the right to terminate the Lease:

(i) if Lessee has not commenced construction of the Permitted Improvements on the Premises by the date that is seven hundred thirty (730) days from the Effective Date; or

(ii) if the Commercial Operations Date has not occurred within one thousand ninety-five (1,095) days of the Effective Date, provided, termination under this Section 14.1(b) shall be effective upon thirty (30) days' written notice from the non-defaulting Party to the defaulting Party.

14.2 Termination for Concealed Conditions. Prior to the Full Operations Date, Lessee may immediately suspend its performance of its obligations under this Agreement if it encounters Concealed Conditions at the Premises.

(a) If the presence of or required remedy of such Concealed Conditions could reasonably be expected to cause a material increase in the length of time required for Lessee to perform its obligations under this Agreement, Lessee shall be entitled to a day-for-day extension in any deadline applicable to such performance under this Lease, provided Lessee has provided written notice to the Lessor of the need for and maximum timeframe for such a day-to-day extension.

(b) If the presence of or required remedy of such Concealed Conditions could reasonably be expected to cause a material increase in Lessee's cost of performance of any of its obligations under this Lease, Lessee shall be entitled to terminate this Lease upon ten (10) days prior notice to Lessor; provided, however, that if the required remedy for such Concealed Conditions consists of the implementation of structural changes or improvements to the Premises that are required to support the Permitted Improvements, then, in lieu of such termination, Lessee may give written notice to Lessor of such needed changes. Lessor shall respond in writing to such notice within thirty (30) days thereafter stating whether Lessor agrees to implement such changes. If Lessor states in its responsive notice that it agrees to make the structural changes identified by Lessee, Lessor shall implement such structural changes or improvements in accordance with Applicable Legal Requirements, during which time Lessee shall be entitled to a day-for-day extension in any deadline applicable to such performance under this Lease. If Lessor states in its responsive notice that it does not agree to implement the structural changes proposed by Lessee, then Lessee shall be entitled to terminate this Lease upon ten (10) days written notice to Lessor.

14.3 Effect of Termination. Upon any termination of this Lease, Lessee shall, in accordance with the provisions of Section 6, remove the Permitted Improvements from the Premises, including any above-ground or below-ground cables, wires, junction boxes, or other equipment included as part of or used in conjunction with the Permitted Improvements and shall restore the Premises and Access Easements to a condition reasonably similar to their original condition as of the Effective Date, excepting reasonable wear and tear and casualty. Upon termination of this Lease for convenience under Section 14.1 or for Concealed Conditions under Section 14.2, and except for any Concealed Conditions associated with a release or threatened release of Hazardous Materials or a violation of any Environmental Laws, neither Party shall any liability to the other Party and, except for those obligations that expressly survive termination, the obligations of the respective Party shall terminate as of the effective date of termination.

14.4 Termination for Default. The following events shall be deemed to be events of default (each an “*Event of Default*” and collectively, the “*Events of Default*”):

(a) The failure to make any payment required to be made hereunder as the same shall become due and payable, and such failure shall continue for a period of thirty (30) days after written notice of such failure has been received by the defaulting Party. If the Parties have a good faith dispute as to whether a payment is due hereunder, the alleged defaulting Party may deposit the amount in controversy in escrow with any reputable third party escrow agent or the court, which amount shall remain undistributed and shall not accrue interest penalties, and no Event of Default shall be deemed to have occurred, until final decision by a court of competent jurisdiction or upon agreement by the Parties. No such deposit shall constitute a waiver of the non-defaulting Party’s right to institute legal action for recovery of such amounts;

(b) Any act or omission of Lessor that materially impacts, affects, or impairs Lessee’s ability to operate the Permitted Improvements;

(c) This Lease becomes subject to execution, attachment, or other process or Law; or

(d) A Party’s failure to comply in any material respect with any material term, provision or covenant of this Lease, other than payment of monetary sums, and if such failure to continues for a period of thirty (30) days after written notice specifying such failure has been received by the defaulting Party and the defaulting Party’s Mortgagee or Leasehold Mortgagee, as the case may be, or in the case of any such failure which cannot with due diligence and in good faith be cured within thirty (30) days, within such additional period as may be reasonably required to cure such failure with due diligence and in good faith.

(e) A filing by the Lessee for bankruptcy or insolvency of the Lessee pursuant to Chapter 128, Wisconsin Statutes.

14.5 Remedies in the Event of Default. In an Event of Default, the non-defaulting Party shall be entitled to any or all of the following remedies:

(a) Terminate this Lease by written notice to (i) the defaulting Party and (ii) the defaulting Party’s Mortgagee or Leasehold Mortgagee, as applicable, and such termination shall be effective thirty (30) days after receipt of such notice. In the case of an Event of Default by Lessee, Lessee shall remove, or cause the removal of, the Permitted Improvements, surrender possession and vacate Premises in accordance with Section 6, and deliver possession thereof to Lessor;

(b) Cure the Event of Default for the account and at the defaulting Party's expense, and obtain reimbursement from the defaulting Party upon demand for the reasonable cost of curing the Event of Default, including, but not limited to, attorneys' fees and costs, together with the Interest Rate from the date of such expenditure until the same is repaid; and/or

(c) Exercise any and all remedies available to the non-defaulting Party at law or in equity, all of which remedies shall be cumulative, including the right to enforce this Lease by injunction or other equitable relief.

14.6 Additional Damages. In addition to any other damages to which the non-defaulting Party is entitled under this Lease and applicable law, the non-defaulting Party shall be entitled to the following additional damages in an Event of Default by the defaulting Party:

(a) Damages Incurred by Lessor to Regain Possession Following the Termination Date. If Lessee fails to surrender the Premises in accordance with Section 6, Lessor shall be entitled to recover from Lessee the cost of regaining possession of the Premises, including any reasonable attorneys' fees.

(b) Damages Incurred in Obtaining a New Location for the Customer-Hosted Facility. In an Event of Default by Lessor which results in the Customer-Hosted Facility or the Premises becoming unusable, in whole or in substantial part, for the purposes intended by this Lease as stated in this Lease, Lessee shall be entitled to recover from Lessor, within forty-five (45) days written demand from Lessee, all Lessee's reasonable expenses in connection with obtaining a new location for the Customer-Hosted Facility, brokerage commissions, and attorneys' fees, and cancellation charges, fees, or penalties imposed upon Lessee by third-parties.

(c) Damages Incurred in the Event of Constructive Abandonment Following the Termination Date. In the event of a Constructive Abandonment following the Termination Date under Section 6.1(c), Lessor may remove all Permitted Improvements from the Premises and shall be permitted to keep such Permitted Improvements as personal property. Lessee shall reimburse Lessor for reasonable and documented costs of such removal of the Permitting Improvements, net of salvage value, and restoration of the Premises to a condition reasonably similar to their original condition as of the Effective Date, excepting reasonable wear and tear and casualty. Lessee's liability for these damages shall survive expiration or earlier termination of this Lease.

14.7 Lessee Liability Upon Termination. Except as set forth in provisions surviving the termination of this Lease, as provided in Section 18.19 and except with respect to any amounts owed and due by Lessee prior to or following the Termination Date, the Termination of this Lease shall relieve Lessee of its liability and obligations under this Lease.

14.8 Force Majeure. If performance of the Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed.

SECTION 15 -- LESSEE REPRESENTATIONS, WARRANTIES, AND COVENANTS

15.1 Lessee Representations and Warranties. As of the date of this Lease, Lessee represents and warrants to Lessor as follows:

(a) Lessee is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Wisconsin and is qualified to transact business in the State of Wisconsin.

(b) Lessee has legal capacity to enter into and perform this Lease.

(c) The execution of this Lease has been duly authorized, and each person executing this Lease on behalf of Lessee has authority to do so and to bind Lessee.

(d) To Lessee's knowledge, there is no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Lessee or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Lease or Lessee's ability to carry out its obligations under this Lease.

(e) To Lessee's knowledge, none of the documents or other written or other information furnished by or on behalf of Lessee to Lessor or Lessor's agents pursuant to this Lease contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

15.2 Lessee Covenants. Lessee hereby represents, warrants, and covenants the following to Lessor:

(a) Minimal Impacts. Lessee agrees to design and construct the Permitted Improvements and to locate and operate the Permitted Improvements in such a way as to reasonably minimize impacts to the Premises and to Lessor's activities, if any, on the Premises, to the extent practical, without negatively impacting the Permitted Improvements or the operation and output of the Customer-Hosted Facility. Lessee shall operate and maintain the Permitted Improvements in good order and repair throughout the term of this Agreement.

(b) Costs. Lessee covenants to Lessor that Lessee shall be responsible for all costs necessary to construct, operate, maintain, repair, remove, replace, and expand the Permitted Improvements.

(c) Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, and regulations of any governmental agency applicable to the Customer-Hosted Facility. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Premises or Permitted Improvements of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Any such contest or proceeding shall be controlled and directed by Lessee.

(d) Construction Liens. Lessee shall keep the Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies, or equipment furnished to, the Premises in connection with Lessee's use of the Premises pursuant to the Lease; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within sixty (60) days after it receives notice of the filing of such lien, remove or bond over such lien from the Premises pursuant to applicable law or provide Lessor with title insurance insuring Lessor's interest in the Premises against such lien claim.

(e) Hazardous Materials. Lessee shall not violate any federal, state, or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under any Environmental Law, on or under the Premises. Lessee shall indemnify Lessor against any such violation that is caused by Lessee or Lessee's agents or contractors and occurs after the Effective Date. Lessee shall promptly notify Lessor of any such violation. In no event, however, shall Lessee be required to clean up, remove or take other remedial action with regard to any contamination or damage to soil or ground water on or in the Premises caused by any Hazardous Materials brought onto the Premises by Lessor, or by Lessor's employees, agents, contractors, subcontractors, representatives or invitees. Lessee will not be responsible for any pre-existing Hazardous Materials not introduced to the Premises by Lessee or its employees, agents, contractors, subcontractors, representatives or invitees. Lessee is not responsible for any pre-existing environmental conditions at the Premises.

(f) GPS Coordinates. Lessee shall provide Lessor with as-built drawings of the Customer-Hosted Facility and any underground improvements constructed on the Premises within thirty (30) days of the date of mechanical completion, as defined in the relevant engineering, procurement, and construction agreement for the Customer-Hosted Facility. This provision shall survive expiration or earlier termination of this Lease.

**SECTION 16 --
LESSOR REPRESENTATIONS, WARRANTIES AND COVENANTS**

16.1 Lessor Representations and Warranties. As of the date of this Lease, Lessor represents, warrants, and covenants the following to Lessee:

(a) Lessor has received any necessary state, local, or municipal authorizations, if any, necessary to enter into this Lease.

(b) Lessor is the sole owner of the Premises and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of Lessor is authorized to do so. When signed by Lessor, this Agreement constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

(c) The execution of this Lease has been duly authorized, and each person executing this Lease on behalf of Lessor has authority to do so and to bind Lessor.

(d) There are no oil, gas, or mineral rights affecting the Property and Lessor has delivered to Lessee true and complete copies of any and all oil, gas, or mineral leases, licenses, easements, or agreements affecting the Property or any part thereof, and Lessor unequivocally waives any surface rights it may have whatsoever to any minerals in, under, or on the Property.

(e) To Lessor's knowledge, none of the documents or other written or other information furnished by or on behalf of Lessor to Lessee or Lessee's agents pursuant to this Lease contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading;

(f) Lessor's Property is in accordance with applicable state or local jurisdictional building code, whichever is more stringent.

16.2 Lessor Covenants. Lessor makes the following covenants to Lessee:

(a) No Interference. Lessor's activities and any grant of rights Lessor makes to any person or entity shall not, currently or prospectively, materially interfere with: the construction, installation, maintenance, or operation of the Permitted Improvements, except the Access Easement; access over the Premises to such Permitted Improvements or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Lessor's activities or any rights granted by Lessor to a third party shall not materially disturb or interfere with the efficiency or output of the Customer-Hosted Facility on the Premises or disturb the Property or the Premises such that it could be expected to damage or interfere with the structural integrity or expected maintenance or operation of the Customer-Hosted Facility. Lessor may not use, or otherwise grant the right to use, the Property for the development of any renewable energy facilities other than the Customer-Hosted Facility. Throughout the Term and any extensions thereof, as provided in Section 10.1, Lessor shall protect Lessee's rights of quiet enjoyment.

(b) Liens and Tenants. Lessor represents that there are no recorded or unrecorded liens, encumbrances, leases (including leases for tenant farmers), mortgages, deeds of trust (except as disclosed to Lessee in writing), or other exceptions (collectively, "Liens") to Lessor's fee title ownership of the Premises or to Lessor's right, title or interest in the Premises. Except as disclosed by Lessor in writing to Lessee, Lessor represents that there are no mortgages, deeds of trust, or similar liens or security interests encumbering all or any portion of the Premises. In accordance with Section 2.1(a), Lessor shall reasonably cooperate and assist Lessee in curing any title objection and obtaining any nondisturbance agreement from each party that holds rights (recorded or unrecorded) that might interfere with Lessee's rights under this Agreement.

(c) Requirements of Governmental Agencies. Lessor shall assist and reasonably cooperate with Lessee, at no out-of-pocket expense to Lessor, in complying with or obtaining any Required Approvals for the financing, construction, installation, monitoring, replacement, relocation, maintenance, operation or removal of Customer-Hosted Facility, including execution, if necessary, of applications for such Required Approvals, and including participating in any appeals or regulatory proceedings respecting the Permitted Improvements.

(d) **Hazardous Materials.** Lessor shall not violate any federal, state or local law, ordinance or regulation relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Materials on or under the Premises. Lessor shall indemnify Lessee against any such violation that is caused by any Lessor or any employee, contractor or agent of Lessor and that existed on or before the Effective Date. Lessor shall promptly notify Lessee of any such violation. If Remediation is required due to Hazardous Materials in, on, or under the Premises, not including the Access Easement, which was not proximately caused by Lessee, so long as Lessee is not in default of the Lease, Lessee shall have the option to terminate this Lease in accordance with Section 14 as if an Event of Default occurred under Section 14.4(d).

(e) **Title Insurance.** Lessor agrees that within ten (10) calendar days of receipt, Lessor shall use commercially reasonable efforts to execute and deliver to Lessee any documents reasonably required by the title insurance company selected by Lessee necessary to allow Lessee to obtain policies of title insurance insuring their respective interests in the Property.

(f) **Litigation.** **No litigation is pending, and, to the best of Lessor's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened in writing or anticipated with respect to, or which could affect, the Property. If Lessor learns that any such litigation, action, claim or proceeding is threatened in writing or has been instituted, Lessor shall promptly deliver notice thereof to Lessee.**

SECTION 17 -- NO WAIVERS

17.1 **No Implied Waivers – Remedies Cumulative.** No covenant or agreement of this Lease shall be deemed to have been waived by Lessor or Lessee, unless such waiver shall be in writing and signed by the Party against whom it is to be enforced or such Party's agent. Consent or approval of Lessor or Lessee to any act or matter must be in writing and shall apply only with respect to the particular act or matter in which such consent or approval is given and shall not relieve the other Party from the obligation wherever required under this Lease to obtain consent or approval for any other act or matter. Lessor or Lessee may restrain any breach or threatened breach of any covenant or agreement herein contained, but the mention herein of any particular remedy shall not preclude either Lessor or Lessee from any other remedy it might have, either in law or in equity. The failure of Lessor or Lessee to insist upon the strict performance of any one of the covenants or agreements of this Lease or to exercise any right, remedy or election herein contained or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy or election, but the same shall continue and remain in full force and effect. Any right or remedy of Lessor or Lessee herein specified or any other right or remedy that Lessor or Lessee may have at law, in equity or otherwise upon breach of any covenant or agreement herein contained shall be a distinct, separate and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

17.2 Acceptance of Payment. Neither receipt nor acceptance by Lessor of any payment due herein, nor payment of same by Lessee, shall be deemed to be a waiver of any default under the covenants or agreements of this Lease, or of any right or defense that Lessor or Lessee may be entitled to exercise hereunder.

SECTION 18 -- MISCELLANEOUS

18.1 Confidentiality. Except as provided in this Section 18.1, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the term of this Lease, without the other Party's prior express written consent, as applicable.

(a) Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates, attorneys, accountants, representatives, agents and employees who have a need to know related to this Lease.

(b) If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a court, governmental agency or authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the court, governmental agency or authority, as required by applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided however, to the extent permitted by law, such disclosing party shall notify the other parties of the required disclosure, such one or both of the other parties may attempt (if such party so chooses) to cause that court, governmental agency, authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

18.2 Successors and Assigns. This Lease shall run with the land and shall inure to the benefit of and be binding upon Lessor and Lessee and, assignment or other transfer under Section 14 hereof, Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Lessee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in this Lease and/or are exercising rights under this Lease to the extent consistent with such interest.

18.3 Notices. Any Notice pursuant to the terms and conditions of this Lease shall be in writing and deemed effective as follows: (a) if delivered personally, upon delivery; (b) if sent by certified mail, return receipt requested, upon certified receipt; (c) if sent by a recognized mail or courier service, with delivery receipt requested, upon receipt; (d) if sent by email, upon the opening by the recipient of the email and acknowledge by recipient as having been received or with a return receipt returned to the sender; or (e) if sent by facsimile transmission, when dispatched and acknowledged by recipient as having been received in full and in legible form. Notices shall be addressed to the following persons and address (or to such other persons or addresses as the respective Parties may add or substitute by written notice):

To Lessee: Wisconsin Power and Light Company
4902 N Biltmore Lane
Madison, Wisconsin 53718
Attention: Cat Tackett
Telephone: 608-458-3845
Email: CatTackett@alliantenergy.com

To Lessor: City of Sheboygan
828 Center Avenue, Suite 208
Sheboygan, Wisconsin 53081
Attention: Chad Pelishek
Telephone: (920) 459-3377
Email: Chad Pelishek@sheboyganwi.gov

18.4 Governing Law. This Lease and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the State of Wisconsin without regard to principles of conflicts of law. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived.

18.5 Dispute Resolution. Unless otherwise expressly provided for in this Lease, the dispute resolution procedures of this Section 18.5 shall be the exclusive mechanism to resolve disputes arising under this Lease. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Lease. Any and all disputes arising under, out of, or in relation to this Agreement, its negotiation, performance, purported breach or termination ("*Dispute*") shall first be submitted for resolution in accordance with the provisions of this Section 18.5. Any Dispute shall first be referred to the Lessee Senior Representative and the Lessor Senior Representative for informal resolution. Any dispute that cannot be resolved between the Lessee Senior Representative and Lessor Senior Representative within ten (10) calendar days or in the case of payment disputes five (5) calendar days, after receipt by each thereof of Notice of such Dispute shall be referred to the executive officer designated by the Lessee as its designated representatives for resolution and the City Administrator on behalf of the Lessor. If the Parties, negotiating in good faith, fail to reach an agreement within a reasonable period of time, not exceeding ten (10) calendar days after such referral, then Lessee and Lessor may avail themselves to any process, including court action, to enforce any right or remedy available to them at law.

18.6 Condemnation. If eminent domain proceedings are commenced against all or any portion of the Property and the taking and proposed use of such property would prevent or adversely affect Lessee's construction, installation or operation of Customer-Hosted Facility on the Property, the Parties shall either amend this Lease to relocate the Customer-Hosted Facility, or, at Lessee's option, this Lease shall terminate in which event neither party shall have any further obligations hereunder. All compensation awarded for any taking pursuant to the power of eminent domain, whether for the whole or a part of the Premises, shall be Lessor's property, whether such damages shall be awarded as compensation for diminution in the value of leasehold or of the fee interest in the Premises or otherwise, and Lessee hereby assigns to Lessor all of Lessee's right, title and interest in and to all such compensation; provided, however, that Lessor shall not be entitled to any award made to Lessee for the taking of Lessee's Customer-Hosted Facility or alterations, or for moving expenses, reestablishment expenses, or similar items.

18.7 Waiver of Right to Trial by Jury. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. EACH OF THE PARTIES TO THIS AGREEMENT WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT.

18.8 Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same document.

18.9 Severability. If any article, section, phrase or portion of this Lease is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Lease will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Lease and the benefits to the Parties are not substantially impaired, and provided further, that the Parties shall enter into negotiations concerning the terms affected by such decisions for the purpose of achieving conformity with requirements of any Applicable Legal Requirements and the intent of the Parties. Entire Agreement. This Lease, together with its exhibits, contains the entire agreement between Lessee and Lessor with respect to the subject matter hereof to which Lessee and Lessor are Parties, supersedes all other understandings or agreements, both written and oral, between the Parties relating to the subject matter hereof.

18.10 Headings and Captions. The headings and captions in this Lease are intended for reference only, do not form a part of this Lease, and will not be considered in construing this Lease.

18.11 Singular and Plural, Gender. If two or more persons, firms, corporations or other entities constitute either Lessee or Lessor, the word "Lessee" or the word "Lessor" shall be construed as if it reads "Lessees" or "Lessors" and the pronouns "it," "he," and "him" appearing in this Lease shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context in which it is used shall require.

18.12 Press Releases. Lessee reserves the right to issue a written press release with respect to this Lease and the Customer-Hosted Facility without the prior written agreement of Lessor, provided, Lessee shall make a good faith effort to notify Lessor in advance of such issuance.

18.13 No Joint Venture. Each Party will perform all obligations under this Lease as an independent contractor. Nothing herein contained shall be deemed to constitute any Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Lessee and Lessor hereunder are individual and neither collective nor joint in nature.

18.15 Expenses. Except as otherwise agreed to, each Party hereto shall pay all expenses incurred by it in connection with its entering into this Lease, including, without limitation, all attorneys' fees and expenses.

18.16 No Broker. Lessee and Lessor each represents and warrants to the other that it has dealt with no broker in connection with the consummation of this Lease, and in the event of any brokerage claims against Lessee or Lessor predicated upon prior dealings with the other Party, the Party purported to have used the broker agrees to defend the same.

18.17 Amendments; Binding Effect. This Lease may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Lease or their successor in interest. This Lease inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

18.18 Survival.

(a) The provisions of Sections 7.1 (Lessee's Duty), shall survive the expiration or termination of this Lease for a period of one hundred eighty (180) days.

(b) The provisions of Sections 6.1 (Surrender of the Premises and Removal of the Permitted Improvements), 6.2 (Title), 12.3 (Failure to Commence Repairs), 14.6 (Additional Damages), and 14.7 (Lessee Liability Upon Termination) shall survive the expiration or termination of this Lease for a period of three hundred sixty-five (365) days.

(c) The provisions of Sections 11 (Indemnification), 14.5 (Remedies in the Event of Default), and Section 18 (Miscellaneous), shall survive the expiration or termination of this Lease indefinitely.

18.19 No Third-Party Beneficiaries. This Lease is intended solely for the benefit of the Parties hereto. Except as expressly set forth in this Lease, nothing in this Lease shall be construed to create any duty to or standard of care with reference to, or any liability to, or any benefit for, any Person not a Party to this Lease.

18.20 Further Assurances. From time to time and at any time at and after the execution of the Lease, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of the Lease that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by the Lease. Neither Party shall unreasonably withhold, condition, or delay its compliance with any reasonable request made pursuant to this Section.

18.21 Good Faith. All rights, duties and obligations established by this Lease shall be exercised in good faith and in a commercially reasonable manner. In any instance when Lessor's consent or approval is required under this Lease, such consent shall not be unreasonably withheld.

18.22 Estoppel Certificate. Each Party hereto agrees that at any time during the term of this Lease, within ten (10) days after request by the other Party hereto, it will execute, acknowledge and deliver to such other Party or to any prospective purchaser, sublessee, assignee, Mortgagee, or Leasehold Mortgagee designated by such other Party, a certificate stating: (a) that this Lease is unmodified and in force and effect (or if there have been modifications, that this Lease is in force and effect as modified, and identifying the modification agreements); (b) the date to which rent has been paid; (c) whether or not there is any known existing Event of Default by either Party in the payment of any rent or other sum of money hereunder, and whether or not there is any other existing Event of Default by either Party hereto with respect to which a notice of default has been served, and if there is any such default, specifying the nature and extent thereof; and (d) whether or not there are any known set-offs, defenses or counterclaims against enforcement of the obligations to be performed hereunder existing in favor of the Party executing such certificate. Lessee's failure to execute the above instrument within ten (10) days after written request to do so by Lessor shall constitute an Event of Default.

18.23 Unpaid Amounts, Interest Rate. Any amount owed by Lessee hereunder, unless otherwise provided herein, shall be paid within ten (10) days from the date Lessor renders statements of account therefor to Lessee and shall bear interest from the date due until the date paid at a rate equal to the Interest Rate.

18.24 Merger of Title. No merger of Lessee's interest in this Lease or of the leasehold estate created by this Lease with the fee simple estate in the Premises, or any part thereof, will occur by reason of the fact that the same person may acquire or own or hold, directly or indirectly, (i) Lessee's interest in this Lease or the leasehold created by this Lease and (ii) the fee estate in the Premises or any part thereof or any interest therein, and no such merger will occur unless and until all persons having an interest in the ownership interests described in (i) and (ii) above join in a written instrument effecting such merger and record same.

18.25 Spreading of Mortgage. Notwithstanding the fact that no merger of estates will occur upon the simultaneous ownership by the same person or entity of the fee simple estate in the Premises and the leasehold estate created by this Lease, a leasehold mortgage in existence at the time such simultaneous ownership occurs will nevertheless attach to the fee simple interest held by the Lessee in the Property, as well as continuing to encumber the leasehold estate.

18.26 Lessor's Access to Premises. Lessor or any agent of Lessor shall have the right at any reasonable time and upon prior written notice to Lessee, (and Lessee shall have the right to have an agent of Lessee's present at the time of such entry and examination) to enter the Premises for the purpose of examination or for any purpose which it or they may deem necessary for the protection of the rights of Lessor. Nothing herein contained shall be deemed to obligate the Lessor to make any inspection or examination of the Premises or to maintain said Premises.

[Signature Page Follows]

IN WITNESS WHEREOF, Lessor and Lessee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

City of Sheboygan

Wisconsin Power and Light Company

By: _____
Name: Michael J. Vandersteen
Title: Mayor

By: _____
Name: JP Brummond
Title: VP Business Planning

Attest: _____
Name: Meredith De Bruin
Title: City Clerk

City Signatures authorized pursuant to Res. ____-____-____.

EXHIBIT A
Legal Description of the Premises

The property available is Lot 6, about 13 acres including the stormwater detention pond, located in the Sheboygan Business Park near 4243 Gateway Drive in Sheboygan, WI.

Of the acres available, the new solar facility will need ~5 acres in order to avoiding any potential wetland areas. There does seem to be minimal floodplain hazard, however, the parcel may require a floodplain permit.

SHEBOYGAN BUSINESS CENTER PRT OF LOT 6 DESC AS FOLLOWS: COM AT NE COR OF LOT 2 CSM REC IN VOL 9 P 17 R.O.D. THE PT OF BEGINNING, TH W 275.15', TH SWLY 284.86', TH N 71.88', TH SWLY 326.25', TH NWLY 627.42' TH NELY 260.85', THELY 942.72', TH S 465.40' TO P



EXHIBIT B
Customer-Hosted Facility

After discussions conclude and a lease agreement is finalized, a detailed design will be developed to include the development of construction drawings and implementation schedule.

EXHIBIT C
Insurance Requirements

Certificates of insurance must be on file with Lessee and Lessor, respectively, prior to commencement of construction of the Permitted Improvements, and such coverage must remain in effect for the duration of this Lease. Each Party shall provide the other Party with thirty (30) days' written notice prior to cancellation or non-renewal of any of the insurance policies required herein. Failure of either Party to enforce the minimum insurance requirements listed below will not relieve the other Party of responsibility for maintaining these coverages.

Policies	Minimum Limits
Workers' Compensation:	Statutory
Employer's Liability: Each Accident: Employer's Liability Disease	\$1,000,000
Each Employee: Employer's Liability Disease Policy Limit:	\$1,000,000 \$1,000,000
Commercial General Liability: coverage for products/completed operations, blanket contractual liability and personal injury.	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate
Automobile Liability: Combined Single Limit, for all owned, non-owned and hired automobiles.	\$1,000,000
Excess or Umbrella Liability: Such coverage must include, as scheduled policies, the Employer's Liability Insurance, Commercial General Liability Insurance (including completed operations) and Automobile Liability Insurance described in this Section. The excess policies will be "following form."	\$4,000,000 Each Occurrence \$4,000,000 Aggregate
Errors and Omissions Insurance: Coverage under a "Claims Made" policy must remain in effect for a period of three (3) years after the completion of the Work.	\$3,000,000 Each Claim \$3,000,000 Aggregate

Additional Endorsements Required and to be Stated on Certificates of Insurance:

Lessor and its respective employees, officers and directors must be included as additional insured for the Permitted Improvements on a primary and non-contributory basis, with respect to General Liability and Excess/Umbrella (if any) coverages.

All policies applicable to the Work (except Errors and Omissions) must contain a waiver of subrogation in favor of the other Party.

EXHIBIT D Access Easement

After discussions conclude and a lease agreement is finalized, a detailed design will be developed. We will require an access road easement off of the Gateway Drive cul-de-sac to access the facility control house (if required), transformer, inverters, etc.

The area shown below is only ~4.5 Acres and represents some reasonable set-backs from the property boundary as well as identified hydric soil areas and the stormwater detention pond.

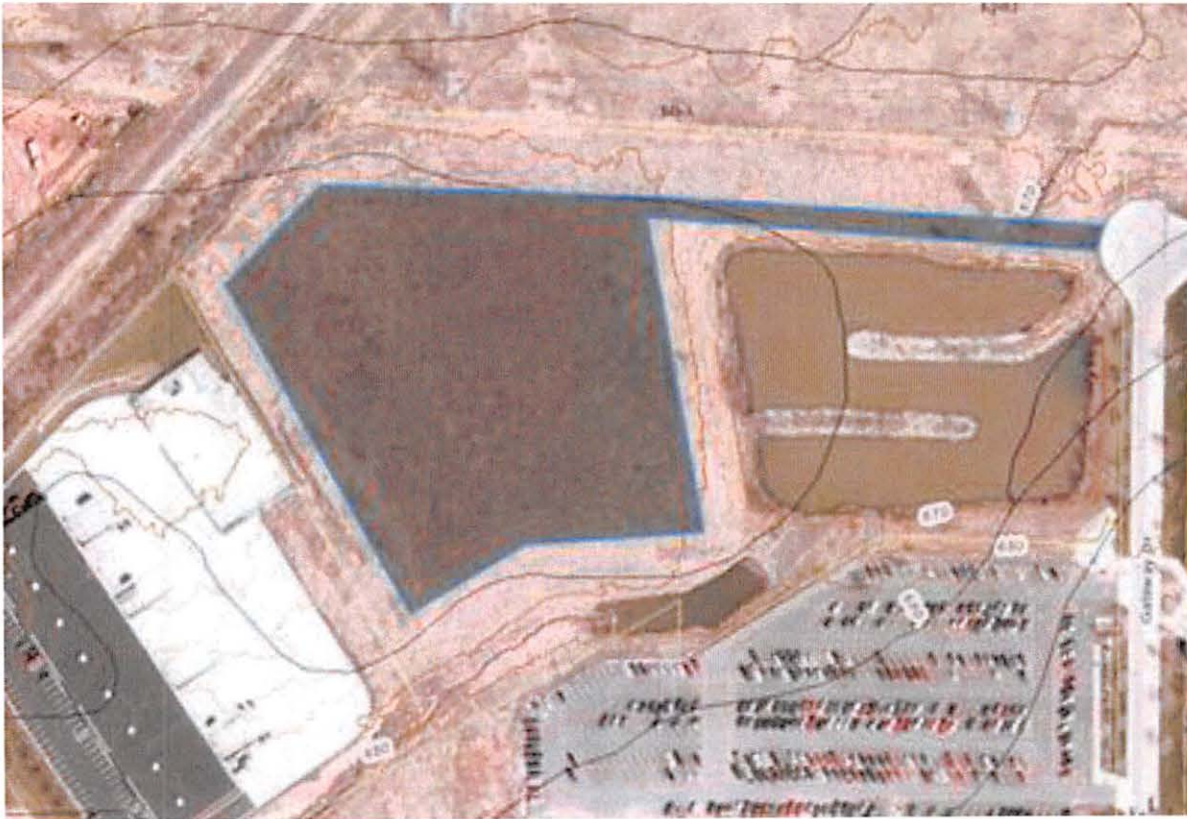


EXHIBIT E
Lease and Access Easement Compensation

- (1) **Payment for Lease and Access Easements.** During the Term, within thirty (30) days of the Effective Date and each month thereafter, Lessee shall pay to Lessor, in advance, without notice or demand, the Monthly Rent. If the first or last Lease Term is less than an entire calendar month, the Monthly Rent shall be prorated for the applicable portion of such Monthly Rent. All rights to RECs generated by the Customer-Hosted Facility will be retained by Lessee. The Monthly Rent shall be calculated as follows:

Customer-Hosted Facility Rent Calculation

1.	Nameplate Capacity of Facility (MWac)	1 MW
2.	Accredited Capacity of Facility (MWac)	0.5 MW
3.	Customer's Firm Demand	1.4 MW
4.	MISO CONE (2020 - Zone 2)	\$ 90,940.00
5.	Gross Annual Lease Amount	\$ 45,470.00
6.	Gross Monthly Lease Amount (divide Line 5 by 12)	\$ 3,789.16

- (2) **Payment Adjustments.** If Lessor owns less than the full surface estate in all or any part of the Property, all payments required hereunder shall be reduced to the proportion that Lessor's interest in the Property bears to the full surface estate in the Property, or any portion thereof subject to this Lease, as the case may be.
- (3) **Late Payments.** If any payment of Monthly Rent is not made within five (5) days of the date of written notice to Lessee from Lessor of such late payment, a one-time penalty of ten percent (10%) of the amount due shall be immediately payable by Lessee to Lessor.
- (4) **Taxes.**
- (a) **Lessee Taxes.** During the Term, Lessee shall, at Lessee's cost and expense, bear, pay, and discharge or cause to be borne, paid, and discharged, on or before the last day upon which the same may be paid without interest or penalty for the late payment thereof, all taxes, assessments, sewer rents, water rents and charges, duties, recaptured taxes due to a change in use, license and permit fees, charges for public utilities of any kind, and payments and other charges of every kind and nature whatsoever, ordinary or extraordinary, foreseen or unforeseen, general or special (all of which are herein sometimes collectively referred to as "**Taxes**") which shall pursuant to present or future law or otherwise, prior to or during the term hereby granted have been or shall be levied, charged, assessed, or imposed upon, or grow or become due and payable out of or for, or become or have become, a lien on the Premises and that are directly attributable to the Permitted Improvements. Lessee shall pay all interest and penalties imposed for late payment of any Taxes which Lessee is obligated to pay or to cause to be paid hereunder.

- (b) Lessor Taxes. Lessor shall pay before the same become delinquent (i) any transfer or conveyance tax arising out of this Lease; (ii) exclusive of any Taxes attributable to the Permitted Improvements, Lessor's municipal, state, or federal income, income profit or revenue tax imposed on rent, inheritance, estate, succession, transfer, gift, franchise, corporation, income or profit tax or capital levy or any tax related to a change in ownership of the Premises; and (iii) any other Taxes which are not obligated to be paid by Lessee in Exhibit E Section (4)(a), above.
- (c) The provisions of this Exhibit E Section (4) shall survive the expiration or earlier termination of this Lease such that all taxes that arise during the term of the Lease shall remain the responsibility of the Lessee.

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL CONSIDERATION

ITEM DESCRIPTION: Res. No. 146-20-21 by Alderpersons Donohue and Bohren authorizing the appropriate City officials to execute the Site Lease Agreement between the Wisconsin Power and Light Company and the City of Sheboygan regarding a solar photovoltaic generating facility.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: January 20, 2021

MEETING DATE: January 25, 2021

FISCAL SUMMARY:

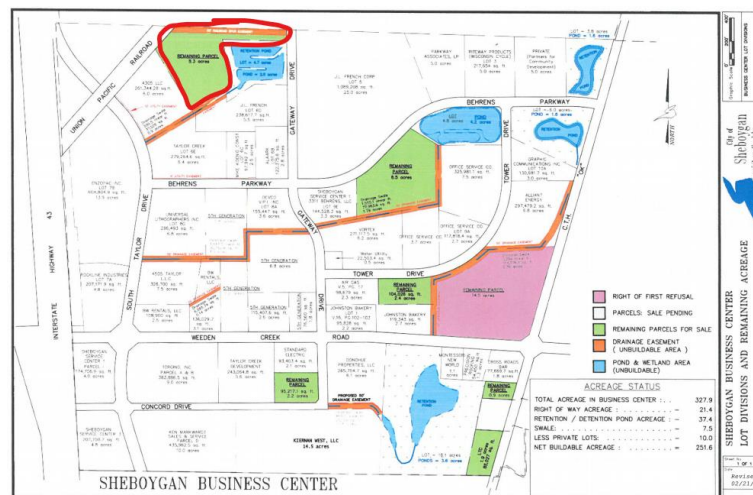
Budget Line Item: N/A
 Budget Summary: N/A
 Budgeted Expenditure: N/A
 Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
 Municipal Code: N/A

BACKGROUND / ANALYSIS:

City of Sheboygan staff were notified that Alliant Energy released a new program centered around customer hosted solar generating facility. City staff had numerous meetings with Alliant Energy representatives and presented a number of city-owned properties for them to consider developing a solar generating facility. This agreement in the Sheboygan Business Center is an eight acre parcel off Gateway Drive that due to the fact the parcel has a storm water detention pond at its street frontage has been difficult to develop. The parcel is shown below in the graphic:



Under the agreement, Wisconsin Power and Light would lease the property and install all the necessary improvements to operate a solar generating facility at this location. Original lease

is for 25 years with option for three additional 5-year term extensions. WPL shall pay monthly lease payments to the City for an annual payment of \$45,470.00.

STAFF COMMENTS:

The City's Five Year Sustainability Plan outlines renewable projects as key goal of the sustainability strategy for the city. Therefore, city staff supports this project and recommends the Common Council approve the agreement.

ACTION REQUESTED:

Motion to recommend to the Common Council to approve Res. No. 146-20-21 by Alderpersons Donohue and Bohren authorizing the appropriate City officials to execute the Site Lease Agreement between the Wisconsin Power and Light Company and the City of Sheboygan regarding a solar photovoltaic generating facility.

ATTACHMENTS:

- I. Res. No. 146-20-21

III

4.4

Res. No. 147 - 20 - 21. By Alderpersons Donohue and Bohren.
January 18, 2021.

A RESOLUTION authorizing the Director of Planning and Development to execute a SAAS Services Agreement with Benevate Inc. for Neighborly Software.

RESOLVED: That the Director of Planning and Development is hereby authorized to enter into the attached SAAS Services Agreement with Benevate, Inc. for Neighborly Software.

BE IT FURTHER RESOLVED: That the appropriate City officials are authorized to draw funds from the appropriate Community Development Block Grant account in payment of the fees due under the SAAS Services Agreement for the use of Neighborly Software.

BE IT FURTHER RESOLVED: That the Director of Planning and Development may, subject to the availability of funds, extend the term of the SAAS Services Agreement on the same or substantially similar terms, if the Director of Planning and Development believes doing so is in the best interest of the City.

FAP

My Lynne Bohren

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

BENEVATE INC. (dba NEIGHBORLY SOFTWARE) SAAS SERVICES ORDER FORM

Customer: City of Sheboygan, Wisconsin	Contact: Chad Pelishek, Director of Planning & Development
Address: 828 Center Avenue, Suite 208 Sheboygan, WI 53081	Phone: (920) 459-3383 Email: Chad.Pelishek@sheboyganwi.gov
Department Manager Contact Information:	Name: Phone: Email:
Fiscal/Invoice Contact Information:	Name: Phone: Email:
Services: Company will use commercially reasonable efforts to provide Customer the services described in the Services Statement of Work ("SOW") attached as Exhibit A hereto (the "Services").	
Services Fees: \$14,400.00 per year, payable annually in advance, subject to the terms of Section 4 and Per User Pricing attached as Exhibit D hereto.	Initial Service Term: One year from Effective Date
Implementation Services: Company will use commercially reasonable efforts to provide Customer the services described in the Implementation Services Statement of Work attached as Exhibit C hereto ("Implementation Services"), and Customer shall pay Company the Implementation Fee at Effective Date. Implementation Fee (one-time): \$14,000.00	

SAAS SERVICES AGREEMENT

This SaaS Services Agreement ("Agreement") is entered into on this ____ day of _____ 20__ (the "Effective Date") between Benevate Inc with a place of business at 3423 Piedmont Rd. NE, Suite 550 Atlanta, GA 30305 ("Company"), and the Customer listed above ("Customer"). This Agreement includes and incorporates the above Order Form, as well as the attached Terms and Conditions and contains, among other things, warranty disclaimers, liability limitations and use limitations. There shall be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the date hereof.

BENEVATE Inc.:

CITY OF SHEBOYGAN, WISCONSIN:

By: _____

By: _____

Name: J. Jason Rusnak

Name: _____

Title: President, Benevate Inc

Title: _____

TERMS AND CONDITIONS

1. SAAS SERVICES AND SUPPORT

1.1 Company will use commercially reasonable efforts to provide Customer the services described in the Statement of Work ("SOW") attached as Exhibit A hereto.

1.2 Subject to the terms of this Agreement, Company will use commercially reasonable efforts to provide Customer the Services as described in accordance with the Service Level Terms attached hereto as Exhibit B.

2. RESTRICTIONS AND RESPONSIBILITIES

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, documentation or data related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software (except to the extent expressly permitted by Company or authorized within the Services); use the Services or any Software for timesharing or service bureau purposes.

2.2 Customer represents, covenants, and warrants that Customer will use the Services in compliance with all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Company against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing.

2.3 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment").

2.4 Customer agrees that each set of login credentials (email address and password) for the Services may be used only by a single, named user ("Authorized User"). At no time is it permissible for an Authorized User to share their login credentials. The number of Authorized Users licensed hereunder is specified on Exhibit D: Per User Pricing. Customer agrees to notify Company of any unauthorized user access of which you become aware.

3. CONFIDENTIALITY; PROPRIETARY RIGHTS

3.1 Both parties understand that Customer is bound by the Wisconsin Public Records Law and, as such, this Agreement is subject to that law and all other laws applicable to municipalities in the State of Wisconsin. The Wisconsin Public Records Law limits the extent to which Customer may prevent public access to a public record (as that term is defined by the Wisconsin Public Records Law). The Wisconsin Public Records Law prohibits the

disclosure of trade secrets. Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of Company includes non-public information regarding features, functionality and performance of the Service. Proprietary Information of Customer includes non-public data provided by Customer to Company to enable the provision of the Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use or divulge to any third person any such Proprietary Information, unless required by law (including in response to a public records request). In the event the Customer receives a public records request or similar request—such a subpoena—for Proprietary Information, the Customer will promptly email Company at [insert desired email address]. Company may provide guidance to Customer as to whether, in its opinion, requested information constitutes a trade secret or is otherwise protected from disclosure. Any such guidance shall be provided to Customer within 3 business days of Customer's email, time being of the essence, so that Customer has time to comply with its obligations to respond to the public records request. Customer agrees to consider any guidance provided by Company in making its decision how to proceed under the Wisconsin Public Records Law or similar law. If the Customer follows the guidance provided by Company, Company agrees to indemnify, defend, and hold the City harmless from any liability of any kind whatsoever that may result from the Customer following the guidance from Company.

3.2 Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the Services.

3.3 Company shall own and retain all right, title and interest in and to (a) the Services and Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing.

3.4 Company shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and Company will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Services and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business.

4. PAYMENT OF FEES

4.1 Customer will pay Company the then applicable fees described in the Order Form for the Services and Implementation Services in accordance with the terms therein (the "Fees"). Company reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term or then-current renewal term, upon thirty (30) days prior notice to Customer (which may be sent by email). Per User Pricing, set forth on Exhibit D, shall increase by no more than 3% (the "Renewal Price Cap"), applied to the then-effective Per User Pricing set forth on Exhibit D at the time of renewal. The aforementioned Renewal Price Cap shall be forfeited if the Services are not renewed prior to the termination date of the initial Service Term or then current renewal term; in which case, the fees for any subsequent renewal shall be calculated according to Company's then-current pricing.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices must be received by Company thirty (30) days after receipt of the invoice. The fees do not include any taxes, including, without limitation, sales, use or excise tax. If Customer is a tax-exempt entity, you agree to provide Company with a tax exempt certificate. Otherwise, Company will pay all applicable taxes to the proper authorities and Customer will reimburse Company for such taxes. If Customer has a valid direct-pay permit, you agree to provide us with a copy. For clarity, Company is responsible for paying Company's income taxes, both federal and state, as applicable, arising from Company's performance of this Agreement.

4.3 The parties acknowledge that appropriation of funds is a governmental function which the Customer cannot contractually commit itself in advance to perform and this Agreement does not constitute such commitment. The Customer's obligation to pay under this Agreement is contingent upon Customer's annual appropriation of funds for such purpose, and the non-appropriation of funding for such purpose in any fiscal year shall immediately relieve both parties of their respective obligations hereunder, as of the last day for which funds have been appropriated. The Customer shall endeavor, upon determining that sufficient funds will not be budgeted and appropriated in any fiscal year under this Agreement, to provide prompt written notice within 30 days of such event.

5. TERM AND TERMINATION

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term as specified in the Order Form, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days'

notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement. Customer will pay in full for the Services up to and including the last day on which the Services are provided.

5.3 Upon the termination of this Agreement Company shall, within five (5) business day following the termination of this Agreement, provide Customer, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees due to Service Provider), with a final extract of the Customer Data in electronic format (Microsoft Excel .xls or Structured Query Language .sql). Further, Company will delete the database and file storage container on Microsoft Azure and shall certify to Customer the destruction of any Customer Data within the possession or control of Company, but such destruction shall occur only after the Customer Data has been returned to Customer. This Section shall survive the termination of this Agreement.

6. WARRANTY AND DISCLAIMER

Company shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Implementation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. HOWEVER, COMPANY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. INDEMNITY

As permitted by law, Company shall hold Customer harmless from liability to third parties resulting from infringement by the Service of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing.

8. LIMITATION OF LIABILITY

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON OR PROPERTY DAMAGE, COMPANY AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND COMPANY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.3 This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein.

10.4 No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind Company in any respect whatsoever.

10.5 All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

10.6 Company may use Customer's name and logo in a list of customers section on its website.

10.7 This Agreement shall be governed and construed in all respects in accordance with the laws of the State of Wisconsin.

9. INSURANCE

9.1 During the course of performing services under this Agreement, Company agrees to maintain the following levels of insurance: (a) Commercial General Liability of at least \$2,000,000 in aggregate and \$1,000,000 each occurrence; (b) Professional Liability (E&O) of at least \$5,000,000; (c) Cyber Liability of at least \$5,000,000; (d) Commercial Auto Insurance for Hire and Non-owned vehicles of at least \$1,000,000; and (e) Workers Compensation complying with applicable statutory requirements. Company will add Customer as an additional insured, primary and noncontributory, to our Commercial General Liability policy. Company will provide Customer with copies of certificates of insurance upon Customer's written request.

10. MISCELLANEOUS

10.1 If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

10.2 This Agreement is not assignable, transferable or sublicensable by Customer except with Company's prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent.

EXHIBIT A

Services Statement of Work

1. SaaS Services Description. Company will provide Customer with hosted software for the enrollment, qualification, administration and reporting of the following activities:
 - a. Housing Rehabilitation
 - b. CDBG Public Services
 - c. CDBG Public Facilities
 - d. Acquisition and Disposition
 - e. Business Loans
 - f. Historic Preservation

Company will make available to Customer all updates, and any documentation for such updates, to the Services. Company will ensure that (i) new features or enhancements to existing features are synchronized with the previous version, and (ii) updates will not degrade the performance, functionality, or operation of the Services.

2. Training Services. Company will conduct one (1) eight (8) hour training session, which may be recorded by Customer. The purpose of the training sessions is to familiarize administrator personnel with the workflow and functionality of hosted software.
3. Technical Support. Company will provide Technical Support to Customer via electronic mail on weekdays during the hours of 9:00 am through 7:00 pm Eastern time, with the exclusion of Federal Holidays ("Support Hours"). Customer may initiate a helpdesk ticket during Support Hours by emailing support@neighborlysoftware.com. Company will use commercially reasonable efforts to respond to all Helpdesk tickets within one (1) business day.
4. Data Storage. Company agrees that any and all Customer data will be stored, processed, and maintained solely in data centers located in the United States.
5. Backup and Recovery of Customer Data. As a part of the Services, Company is responsible for maintaining a backup of Customer Data and for an orderly and timely recovery of such data in the event that the Services may be interrupted. Company shall maintain a contemporaneous backup of Customer Data that can be recovered within four (4) hours at any point in time.
6. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of Customer Data or the physical, technical, administrative, or organizational safeguards put in place by Company that relate to the protection of the security, confidentiality, or integrity of Customer Data, Company shall, as applicable: (a) notify Customer as soon as practicable but no later than twenty-four (24) hours of becoming aware of such occurrence; (b) cooperate with Customer in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by Customer; (c) in the case of Personally Identifiable Information (PII), at Customer's sole election, (i) notify the affected individuals who comprise the PII as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five (5) calendar days of the occurrence; (d) in the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for six (6) months following the date of notification to such individuals; (e) perform or take any other actions required to comply with applicable law as a result of the occurrence; Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Company's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Company has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Company. This Section shall survive the termination of this Agreement.

EXHIBIT B

Service Level Terms

The Services shall be available 99.5%, measured monthly, excluding holidays and scheduled downtime. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be a "Performance Credit."

1) Definitions.

(a) "Actual Uptime" shall mean the total minutes in the reporting month that the Services were actually available for normal use.

(b) "Maintenance Window" shall mean the total minutes in the reporting month represented by the following day(s) and time(s) during which Company shall maintain the Services: Tuesday, Thursday, Saturday 11pm-3am ET.

(c) "Scheduled Downtime" shall mean the total minutes in the reporting month represented by the Maintenance Window.

(d) "Scheduled Uptime" shall mean the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

2) Calculation. $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 = \text{Percentage Uptime}$ (as calculated by rounding to the second decimal point)

3) Performance Credit. Performance credits may not be redeemed for cash and will only apply a credit to the month in which the incident occurred.

(a) Where Percentage Uptime is equal to or greater than 99.5%, no Performance Credit will be due to Customer.

(b) Where Percentage Uptime is less than 99.5%, Customer shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month)

EXHIBIT C

Implementation Services Statement of Work

This Implementation Services Statement of Work describes the Services to be performed, and Deliverables to be provided, by Company in completion and satisfaction of the Implementation Services.

- 1) **Company Key Roles.** Company will assign an Engagement Manager who will be Customer's primary contact person and who will coordinate all the activities of the Implementation team.
- 2) **Customer Key Roles.** Customer will assign a person to be the focal point to coordinate the user and technical support and resources needed for the implementation, and to be responsible for approvals and decisions. This person will coordinate data collection and reconciliation, review each stage of the implementation process, and provide end user involvement with systems and user acceptance training. Schedule and cost estimates assume that personnel acting in the roles noted above to be reasonably and readily available to the Company team as needed throughout the project. Additionally, all approvals and decisions are made within a reasonable time period.
- 3) **Implementation Steps.** The following are the general steps which make up the implementation process:
 - Kickoff meeting
 - Program Design and Documentation
 - System Configuration and Signoff
 - Data Review and Validation
 - Administrator Training
 - Historical Data Collection (if applicable)
- 4) **Implementation Deliverables.** The following are the items that will be delivered as part of implementation:
 - a. Program Design and Documentation
 - List of all documents to be uploaded into the system as part of the Program
 - List of all documents to be generated by the system as part of the Program
 - b. System Configuration
 - Create Administrator accounts in the system
 - Configure Customer enrollment application in the system
 - Configure Customer specific approvals and workflow in the system, including up to thirty (30) documents/images to be uploaded
 - Configure up to two (2) program documents to be generated by system
 - c. Data Review and Validation
 - Provide up to five (5) business days for Customer to test and validate system data and configuration
 - d. Administrator Training
 - Conduct one (1) eight (8) hour training session, which may be recorded by Customer.
 - e. Historical data conversion
 - (Optional) Upload Customer historical "active" data (i.e. outstanding loans, grants, etc.) to be provided by Customer in an electronic format specified by Company and priced in Exhibit D.
- 5) **Customer Responsibilities**
 - a. Design and approve data elements, program workflow, and eligibility criteria
 - b. Identify all program documents required to be stored in the system
 - c. Identify all program documents to be generated by the system
 - d. Provide historical data in electronic format specified by Company
 - e. Test and approve system configuration
 - f. Provide final sign off that the system meets all requirements ("Go Live")
 - g. Participate in administrator training session

EXHIBIT D

Per User Pricing

Additional programs can be added any time and user licenses may be purchased, pro-rata to the Initial Service Term, based on the pricing table below.

Annual Recurring Fees	USER PRICE	FREQ	USERS	ANNUAL PRICE
Neighborly Software Per Administrator Fee (Users 1-10)	\$200	Monthly	6	\$14,400.00
Neighborly Software Per Administrator Fee (Users 11+)	\$150	Monthly	0	\$0.00
- Technical Support	Included			
- Hosting/Security in Microsoft Tier IV Data Center	Included			
- Data Storage, Backup and Recovery	Included			

ANNUAL TOTAL \$14,400.00

One Time Implementation Fees	UNIT PRICE	FREQ	UNITS	AMOUNT
Software Implementation Per Program ^a	\$2,000	One Time	6	\$12,000.00
- Software Configuration to Client Design	Included			
- Administrator Training (8 hrs Virtual)	Included			
- Administrator Guide	Included			
- Travel (<i>no travel during pandemic</i>)	\$800	Per Trip	0	\$0.00
- Rushed Implementation or Delayed Implementation: Fees may apply ^{2a, 2b}	see notes below	Per Program		\$0.00
Data Migration per program	\$2,000	Per Program	1	\$2,000.00
- Additional fees for migrations beyond 5 business days	\$100	Hour	0	\$0.00
Craftsman Book Spec. Database-Cost Estimating	\$500	Annually	0	\$0.00

ONE TIME IMPLEMENTATION TOTAL \$14,000.00

a - Includes configuration for the following

- (1) Housing Rehabilitation
- (2) CDBG Public Services
- (3) CDBG Public Facilities
- (4) Acquisition and Disposition
- (5) Business Loans
- (6) Historic Preservation (Loans & Grants)

Year One Total: \$28,400.00
Estimated Year Two Total: \$14,400.00

Notes
<p>1. Recurring fees are invoiced annually in advance.</p> <p>2. Implementation fees are invoiced at engagement based on an eight-week implementation period.</p> <p>2a. Implementation greater than eight weeks: The client is expected to dedicate the appropriate resources during the implementation period. If client requires implementation to be pushed beyond the eight-week period, Neighborly Software will charge \$500 per week of delay until the program has gone live.</p> <p>2b. Rushed Implementation fee: If the client requires a rushed implementation shorter than two-weeks, Neighborly Software will charge a one-time rushed implementation fee of \$1,000 in addition to the program</p> <p>3. Loan/Asset/Grant Migration: Neighborly Software will commit a staff person to dedicate 5 business days to complete the migration upon completion of the import template. We ask that the client commit resources to assist in this effort. Should the client cause the migration to extend beyond 5 business days, Neighborly Software will charge \$100 / hour for the time expended to complete the data migration project.</p>

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL CONSIDERATION

ITEM DESCRIPTION: Res. No. 147-20-21 by Alderpersons Donohue and Bohren authorizing the Director of Planning and Development to execute a SAAS Services Agreement with Benevate Inc. for Neighborly Software.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: January 20, 2021

MEETING DATE: January 25, 2021

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

The city of Sheboygan worked with an outside consultant to find loan tracking software that would work for city loan programs. MUNIS, the city's current ERP program has a loan software package, but given the requirements of the city loans primarily funded with federal dollars, the MUNIS software did not work. Based on interviews and demonstrations with vendors, the city review team feels the Neighborly Software provides loan tracking software that both the Department of City Development and Finance can use as well as allows the City Development department to use it track all projects funded with Community Development Block Grant (CDBG) funds. This software will allow non-profits and loan applicants to submit online applications. The program will also provide an online portal for loan applicants to see real time loan payments and request loan payoff information. The City currently uses spreadsheets and word documents to administer the CBDG program. Finance uses the AS400 and MUNIS to administer the loan payback process. This program will not be able to be integrated into MUNIS, but should reduce the amount of staff time currently spent on issuing payment histories, pay-offs and other requests from applicants. The software will be funded with CDBG dollars. The City has approximately 40 business development loans and 500 housing rehabilitation loans. The plan is migrate the loans the current loans into the new software to track it in one location accessible to the two departments.

STAFF COMMENTS:

City Development and Finance staff are excited about implementing software to make the administration of the project more efficient and user-friendly.

ACTION REQUESTED:

Motion to recommend to the Common Council to approve Res. No. 147-20-21 by Alderpersons Donohue and Bohren authorizing the Director of Planning and Development to execute a SAAS Services Agreement with Benevate Inc. for Neighborly Software.

ATTACHMENTS:

- I. Res. No. 147-20-21

III

6.26

R. C. No. 316 - 19 - 20. By FINANCE AND PERSONNEL COMMITTEE.
April 8, 2020.

Your Committee to whom was referred R. C. No. 342-18-19 by Finance and Personnel Committee and R. O. No. 214-18-19 by City Clerk submitting a claim from Kailee Ridenour, on behalf of her minor child, for alleged injuries that occurred when she slipped on ice and fell on her child; recommends referring to the Finance and Personnel Committee of the 2020-2021 Council.

20-21
F&P

_____ Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

VI

5.38

R. C. No. 342 - 18 - 19. By FINANCE AND PERSONNEL COMMITTEE.
April 15, 2019.

Your Committee to whom was referred R. O. No. 214-18-19 by City Clerk submitting a claim from Kailee Ridenour, on behalf of her minor child, for alleged injuries that occurred when she slipped on ice and fell on her child; recommends referring to Finance and Personnel Committee of the new council.

*Finance + Personnel
2019-2020*

James A. Bohrer

Committee

I HEREBY CERTIFY that the foregoing Committee Report was duly accepted and adopted by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____, _____, City Clerk

Approved _____ 20____, _____, Mayor

II

3.3

R. O. No. 214 - 18 - 19. By CITY CLERK. February 4, 2019.

Submitting a claim from Kailee Ridenour, on behalf of her minor child, for alleged injuries that occurred when she slipped on ice and fell on her child.

*Finances
Personnel
4-8-19 refer to Finances
Personnel of new council*

CITY CLERK

DATE RECEIVED

1-22-19

RECEIVED BY

MKC

CLAIM NO.

24-18

CITY OF SHEBOYGAN NOTICE OF DAMAGE OR INJURY

INSTRUCTIONS: TYPE OR PRINT IN BLACK INK

1. Notice of death, injury to persons or to property must be filed not later than 120 days after the occurrence.
2. Attach and sign additional supportive sheets, if necessary.
3. This notice form must be signed and filed with the Office of the City Clerk.

4. TWO ESTIMATES MUST BE ATTACHED IF YOU ARE CLAIMING DAMAGE TO A VEHICLE.

1. Name of Claimant: Nora Ridenour (Kailee Ridenour - Mother)
2. Home address of Claimant: 1425 Pershing Avenue, Sheb. WI 53083
3. Home phone number: 920-889-3116
4. Business address and phone number of Claimant: N/A
5. When did damage or injury occur? (date, time of day) Sat. Jan 19th app. 10:30 am
6. Where did damage or injury occur? (give full description) Across the street from the YMCA to the left of the tennis courts, at the edge of the path where the sidewalk meets.
7. How did damage or injury occur? (give full description) I was carrying Nora because the snowdrifts and snow was so high she couldn't walk, when I picked her up we slipped on the ice and fell. I landed on her leg and it broke her tibia bone.
8. If the basis of liability is alleged to be an act or omission of a City officer or employee, complete the following:
 - (a) Name of such officer or employee, if known: _____
 - (b) Claimant's statement of the basis of such liability: _____
9. If the basis of liability is alleged to be a dangerous condition of public property, complete the following:
 - (a) Public property alleged to be dangerous: unshoveled sidewalks and snow everywhere. They were not safe.
 - (b) Claimant's statement of basis for such liability: We slipped and fell because the sidewalk wasn't cleared.

20. Give a description of the injury, property damage or loss, so far as is known at this time. (If there were no injuries, state "NO INJURIES").

Broken leg (spiral break in her tibia)

11. Name and address of any other person injured: _____

12. Damage estimate: (You are not bound by the amounts provided here.)

Auto: \$ _____

Property: \$ _____

Personal injury: \$ TBD

Other: (Specify below) \$ _____

TOTAL

\$ Bills yet to be determined

Damaged vehicle (if applicable)

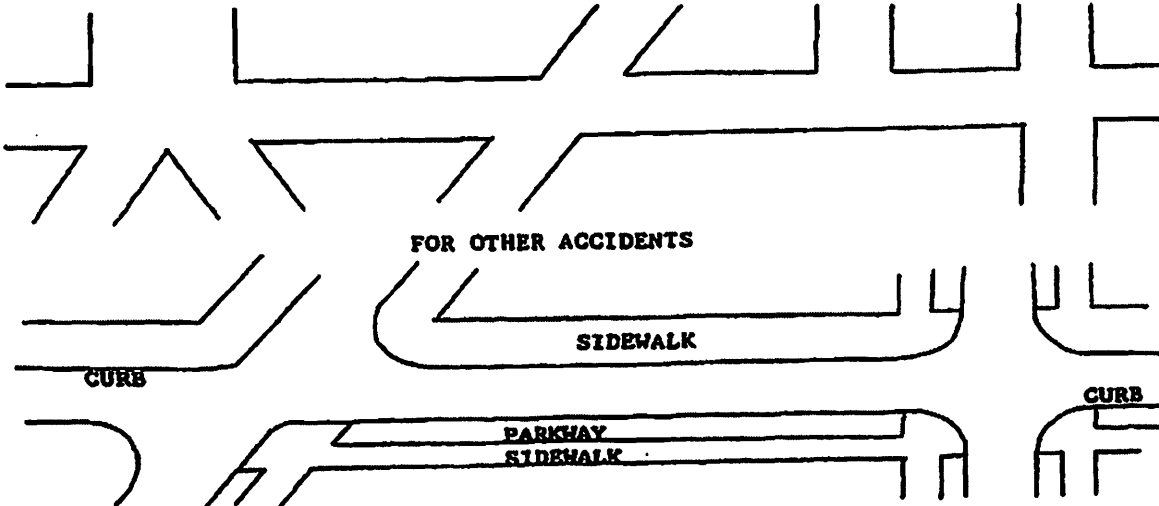
Make: _____ Model: _____ Year: _____ Mileage: _____

Names and addresses of witnesses, doctors and hospitals: _____

FOR ALL ACCIDENT NOTICES, COMPLETE THE FOLLOWING DIAGRAM IN DETAIL. BE SURE TO INCLUDE NAMES OF ALL STREETS, HOUSE NUMBERS, LOCATION OF VEHICLES, INDICATING WHICH IS CITY VEHICLE (IF APPLICABLE), WHICH IS CLAIMANT VEHICLE, LOCATION OF INDIVIDUALS, ETC.

NOTE: If diagrams below do not fit the situation, attach proper diagram and sign.

Separate page.



SIGNATURE OF CLAIMANT

Kailee Ridenaar

DATE

2-21-19

DATE RECEIVED 1-22-19

RECEIVED BY NKC

CLAIM NO. 24-18

CLAIM

Claimant's Name: Nora Ridenour
Claimant's Address: 1425 Pershing Ave.
Sheb, WI 53083
Claimant's Phone No. 920-889-3116

Auto \$ _____
Property \$ _____
Personal Injury \$ TBD
Other (Specify below) \$ _____
TOTAL \$ _____

PLEASE INCLUDE COPIES OF ALL BILLS, INVOICES, ESTIMATES, ETC.

WARNING: IT IS A CRIMINAL OFFENSE TO FILE A FALSE CLAIM.
(WISCONSIN STATUTES 943.395)

The undersigned hereby makes a claim against the City of Sheboygan arising out of the circumstances described in the Notice of Damage or Injury. The claim is for relief in the form of money damages in the total amount of \$ _____. To be determined, haven't recieved bills yet.

SIGNED Kaitlee Ridenour

DATE: 2-21-19

ADDRESS: 1425 Pershing Avenue Sheb, WI 53083

MAIL TO: CLERK'S OFFICE
828 CENTER AVE #100
SHEBOYGAN WI 53081

Lake Michigan

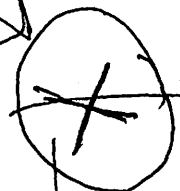
Parking Lot

Tennis Courts

Bathrooms

walking path

Sidewalk



Where we slipped and fell

YMCA



CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL COMMITTEE CONSIDERATION

ITEM DESCRIPTION: R.C. No. 316-19-20 (R.C. No. 342-18-19, R.O. No. 214-18-19) is a notice of claim from Kailee Ridenour for alleged injuries.

REPORT PREPARED BY: Laurie Suhrke, Accountant II

REPORT DATE: January 21, 2021

MEETING DATE: January 25, 2021

FISCAL SUMMARY:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

STATUTORY REFERENCE:

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

R.C. No. 316-19-20 (R.C. No. 342-18-19, R.O. No. 214-18-19) is a notice of claim from Kailee Ridenour for alleged injuries from a slip and fall on the ice.

STAFF COMMENTS:

City staff has reviewed the above notice of claim and under the authorization by the Common Council, Res. No. 64-17-18, has determined it is in the best interest of the City of Sheboygan to file the claim.

ACTION REQUESTED:

Motion to recommend the Common Council accept and file document R.C. No. 316-19-20 (R.C. No. 342-18-19, R.O. No. 214-18-19).

ATTACHMENTS:

- I. R.C. No. 316-19-20
- II. R.C. No. 342-18-19
- III. R.O. No. 214-18-19

III

DIRECT REFERRAL TO FINANCE AND PERSONNEL COMMITTEE

Res. No. 151 - 20 - 21. By Alderpersons Donohue and Bohren.
January 25, 2021.

A RESOLUTION authorizing the appropriate City officials to execute an Amendment to Offer Purchase with Martens-Trilling True Value extending the closing date to July 30, 2021 due to continued environmental testing.

RESOLVED: That the Mayor and City Clerk are hereby authorized to execute the Amendment to Offer to Purchase between the City of Sheboygan and Martens-Trilling True Value, a copy of which is attached hereto and incorporated herein.

FAP

I HEREBY CERTIFY that the foregoing Resolution was duly passed by the Common Council of the City of Sheboygan, Wisconsin, on the _____ day of _____, 20____.

Dated _____ 20____. _____, City Clerk

Approved _____ 20____. _____, Mayor

WB-40 AMENDMENT TO OFFER TO PURCHASE

**CAUTION: Use a WB-40 Amendment if both Parties will be agreeing to modify the terms of the Offer.
Use a WB-41 Notice if a Party is giving a Notice which does not require the other Party's agreement.**

1 Buyer and Seller agree to amend the Offer dated July 8, 2020, and accepted July 21, 2020, for
2 the purchase and sale of real estate at Parcel #59281102670, Sheboygan WI 53081

3 _____, Wisconsin as follows:

4 Closing date is changed from January 29, 2021, to July 30, 2021.

5 Purchase price is changed from \$ _____ to \$ _____.

6 Other: _____

7 The Phase II report was submitted to the DNR which determined that further monitoring of
8 the Property is necessary. Buyer agrees to extend this offer contingent on the results of
9 monitoring wells that are satisfactory to buyer in buyer's sole discretion. This offer is
10 further contingent on receipt of a case closure letter from the WDNR and evidence that
11 the wells have been appropriately abandoned. If Buyer is not satisfied with the results
12 of the monitoring wells or a case closure letter has not been obtained from the DNR, or
13 if the wells have not been appropriately abandoned, then Buyer at it's option may give
14 Seller written notice of the termination of this Offer prior to Closing.

15 _____
16 _____
17 _____
18 _____
19 _____
20 _____
21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

28 The attached _____ is/are made part of this Amendment.

29 ALL OTHER TERMS OF THE OFFER TO PURCHASE AND ANY PRIOR AMENDMENTS REMAIN THE SAME.

30 This Amendment is binding upon Seller and Buyer only if a copy of the accepted Amendment is delivered to the Party
31 offering the Amendment on or before February 1, 2021 (Time is of the Essence). Delivery
32 of the accepted Amendment may be made in any manner specified in the Offer to Purchase, unless otherwise provided
33 in this Amendment.

34 **NOTE: The Party offering this Amendment may withdraw the offered Amendment prior to acceptance and**
35 **delivery as provided at lines 30-33.**

36 This Amendment was drafted by Attorney Ryan J. Zinkel, Rohde Dales LLP on 01/19/2021
37 _____ Licensee and Firm ▲ Date ▲

38 This Amendment was presented by Attorney Ryan J. Zinkel, Rohde Dales LLP on 01/19/2021
39 _____ Licensee and Firm ▲ Date ▲

40 (x) _____ (x) _____
41 Buyer's Signature ▲ Date ▲ Seller's Signature ▲ Date ▲
42 Print name ▶ Martens-Trilling True Value Print name ▶ _____

43 (x) _____ (x) _____
44 Buyer's Signature ▲ Date ▲ Seller's Signature ▲ Date ▲
45 Print name ▶ _____ Print name ▶ _____

46 This Amendment was rejected _____
47 _____ Party Initials ▲ Date ▲ Party Initials ▲ Date ▲

CITY OF SHEBOYGAN

REQUEST FOR FINANCE AND PERSONNEL CONSIDERATION

ITEM DESCRIPTION: Res. No. 151-20-21 by Alderpersons Donohue and Bohren authorizing the appropriate City officials to execute an Amendment to Offer Purchase with Martens-Trilling True Value extending the closing date to July 30, 2021 due to continued environmental testing.

REPORT PREPARED BY: Chad Pelishek, Director of Planning and Development

REPORT DATE: January 20, 2021

MEETING DATE: January 25, 2021

FISCAL SUMMARY:

STATUTORY REFERENCE:

Budget Line Item: N/A
Budget Summary: N/A
Budgeted Expenditure: N/A
Budgeted Revenue: N/A

Wisconsin Statutes: N/A
Municipal Code: N/A

BACKGROUND / ANALYSIS:

City Development staff continues to work with Sheboygan County and their consultant Stantec to complete environment testing related to the property directly south and west of Trilling Hardware that Martens Hardware is interested in purchasing for a storage building expansion. Stantec has completed a Phase 1 and Phase 2 Environmental Assessments on the property. The Phase 2 after being submitted to the DNR is requiring additional testing to occur to confirm the extent of contamination. Stantec estimates this work to take until June 30, 2021 with working with DNR to obtain case closure should the property be capped as part of a redevelopment. Given the need for an additional six months of environmental work, this resolution would extend the closing date to July 30, 2021.

STAFF COMMENTS:

City staff supports this extension and recommends the Common Council support this timeline.

ACTION REQUESTED:

Motion to recommend to the Common Council to approve Res. No. 151-20-21 by Alderpersons Donohue and Bohren authorizing the appropriate City officials to execute an Amendment to Offer Purchase with Martens-Trilling True Value extending the closing date to July 30, 2021 due to continued environmental testing.

ATTACHMENTS:

- I. Res. No. 151-20-21