



## COUNTY FACILITIES PLANNING WORK INITIATION REQUEST FORM

*Please complete a form for each new proposal review request.*

**Work Proposal Name:**

Oakwood Solar Lift Station

**Date of Request:**

4/3/21

**Requesting Department:**

Parks

**Department Contact Name:**

Jeremy Lucas

**High Org:**

900

**Low Org:**

9000

**Approval Signature of Department Head:**
*Guy Smith*

### DESCRIPTION

**Please provide a detailed description of the request:**

An easement, service agreement, and ground lease for a proposed solar array at Oakwood Golf Course

**How will this proposal improve your operations, enhance customer service or otherwise benefit your department and the County?**

Aligns with the County's mission to reduce energy and emissions from Milwaukee County government operations and in the community - using energy more efficiently and securing cleaner sources of energy. Provides revenue to Parks.

**How does this proposal align with the County's objectives on racial equity?**

Please see the County's Vision/Mission/Values and strategic focus areas attached

The reduction of greenhouse gasses and reliance on fuel fossil energy will assist the county in achieving the goal of becoming the healthiest county in Wisconsin. This is an investment upstream to address root causes of health disparities and a step toward ensuring environmental justice related to the location of power facilities.

**Desired Timeline:**
**Begin Date:**

6/1/21

**End Date:**

6/1/41

**Duration:**

20 years

**Anticipated Funding Source** *(check all that apply and include amount allocated under each category):*
**Operating Budget:**
**Capital Budget:**
**Other** *(i.e. grants, donations, etc.; please describe):*
**Request Involves:**
☒ **Parks Property**
☐ **BHD Property**

# The Basics



## Vision

By achieving  
racial equity, Milwaukee  
is the healthiest County  
in Wisconsin

## Mission

We enhance quality of life through great  
public service

## Values

Inclusion

Seek diverse  
perspectives

Influence

Use your power for  
good

Integrity

Do the right thing

# Strategic Focus Areas

## 1. Create Intentional Inclusion

1A: Reflect the full diversity of the County at every level of County government

1B: Create and nurture an inclusive culture across the County government

1C: Increase the number of County contracts awarded to minority and women-owned businesses

## 2. Bridge the Gap

2A: Determine what, where and how we deliver services based on the resolution of health disparities

2B: Break down silos across County government to maximize access to and quality of services offered

2C: Apply a racial equity lens to all decisions

## 3. Invest in Equity

3A: Invest “upstream” to address root causes of health disparities

3B: Enhance the County’s fiscal health and sustainability

3C: Dismantle barriers to diverse and inclusive communities








Aprox. Leased Area: 3 acres



Example Ground Mount



Contractor		Project Name	Date:
	N27W24025 Paul Ct. Suite 100 Pewaukee, Wisconsin 53072 262-547-1200 www.SunVest.com	Milwaukee Co. (Oakwood Park)	1/25/2021
			Size KW: 540 ac



EASEMENT AGREEMENT FOR THE  
PLACEMENT OF UNDERGROUND  
TELECOMMUNICATIONS SYSTEMS

DRAFT

(This document is an easement of less than 99 years and not a conveyance subject to Transfer Return and fee per Sec. 77.21(1) Wis. Stats.)

This Easement Agreement for the Placement of Underground Telecommunications Systems (the "Easement") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between MILWAUKEE COUNTY, a Municipal Body Corporate duly organized and existing under and by virtue of the laws of the State of Wisconsin, Grantor, (herein after referred to as "County"), and \_\_\_\_\_ (herein after referred to as "Grantee").

1. **Premises.** The County hereby grants to the Grantee the right to place an underground telecommunications system (fiber optic cable, conduit, and ducts) and surface line location markers (the "Equipment") in Milwaukee County Park Property, along \_\_\_\_\_, described and depicted in Exhibit(s) \_\_\_\_\_, which exhibits are attached hereto and incorporated herein by reference. Those portions of the Property occupied by the Equipment are hereinafter collectively referred to as the "Premises".
2. **Term.** The term of this Easement shall be for an initial period of twenty-five (25) years, subject to early revocation or termination pursuant to the terms of this Easement. This Easement shall commence as of \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date"), and expire on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.
3. **Renewal.** This Easement may be renewed for one (1) consecutive ten (10) year term upon agreement of the Parties. If the Grantee desires to renew this Easement, the Grantee shall give written notice to the County a minimum of one hundred eighty (180) days prior to the expiration of the initial term by mailing said notice or by personal delivery to the Milwaukee County Department of Parks, Recreation and Culture at the address specified in Paragraph 21. Following receipt of said notice, the County shall indicate by written notice to the Grantee, given within sixty (60) days after receipt of the Grantee's notice, of the County's approval or denial of the Grantee's request for renewal.
4. ~~**Hold Over.** In the event the Grantee shall continue to occupy or use the Premises after the expiration of the Easement or any extension thereof, such holding-over shall be deemed to constitute an occupancy from month to month, upon the same terms and conditions as herein provided, and in no event shall the occupancy be deemed to be from one (1) year to one (1) year.~~
5. **Working Plans.** The construction drawings, the location maps, the Equipment location information, and the as-built survey required in Paragraph 11(g) below, all prepared by the Grantee, for the Grantee's ~~fiber optic cable installation~~ project to which this Easement relates (collectively hereinafter referred to as the "Working Plans") are made part of this Easement by reference. Throughout the initial term and any renewal of this Easement, the Grantee shall provide the County with copies of and/or information from the Working Plans as requested or required by the County.
6. **Use.** ~~The Grantee's use of the Premises shall be limited to the placement, construction, operation, maintenance, repair, replacement and removal of the Equipment as shown in the attached Exhibit(s) \_\_\_\_\_. The Equipment and the lineal distance, in terms of feet, occupied by the Equipment in the Premises are more fully describe on Exhibit(s) \_\_\_\_\_, which are attached hereto and incorporated herein by reference. The Parties acknowledge that this Easement is non-exclusive and that the County will continue to use the Premises and shall have the right to make other agreements, such as leases, licenses, and easement with one or more utilities or other entities provided that any such subsequent agreements shall not interfere with the Grantee's rights under this Easement. Equipment other than that which is defined in Exhibit(s) \_\_\_\_\_ shall be installed only upon amendment of this Easement or negotiation of an additional Easement Agreement.~~

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Return to:

Parcel Identification Number/Tax Key Number:

Commented [PCA1]: This is for underground electric distribution facilities

Commented [PCA2]: Need a # greater than 25 but less than 99

Commented [PCA3]: Here is what is in the BDP easement. We will have to modify appropriately

(a) The purpose of this easement is to install, operate, maintain, repair, replace and extend underground utility facilities, conduit and cables, electric pad-mounted transformers, manhole, electric pad-mounted switch-fuse units, electric pad-mounted vacuum fault interrupter, concrete slabs, power pedestals, riser equipment, terminals and markers, together with all necessary and appurtenant equipment under and above ground as deemed necessary by Grantee, including one pole and overhead electric conductors within the easement area noted on the attached drawing, marked Exhibit "A" (Page 4 of 4), all to transmit electric energy, signals, television and telecommunication services, including the customary growth and replacement thereof. Trees, bushes, branches and roots may be trimmed or removed so as not to interfere with Grantee's use of the easement area.

(b) Grantor and Grantee understand, acknowledge and agree that this easement is non-exclusive and that Grantor will continue to use the easement area and shall have the right to make other agreements, such as leases, licenses, and easement with one or more utilities or other entities provided that any such subsequent agreements shall not interfere with Grantee's rights under this easement. Facilities and equipment other than that which is defined in this easement shall be installed only upon amendment of this easement or negotiation of an additional easement.

7. **Construction; Access:**

(a) Grantee or its agents shall have the right to enter and use Grantor's land with full right of ingress and egress over and across the easement area and adjacent lands of Grantor for the purpose of exercising its rights in the easement area, subject, however, to pertinent Milwaukee County ordinances and applicable rules and regulations relating to the operation, maintenance, and control of such premises. Grantor shall waive any fees for any necessary permits required by Grantor for Grantee's access

(ab) Grantee shall provide written notice to the Director of the Milwaukee County Department of Parks, Recreation and Culture prior to the commencement of work within the Easement Area by the Grantee. Said notice shall indicate the anticipated start date and duration of the proposed work and include; plans showing the location, depth, type of installation, trees and shrubs within line or easement area, drawings and specifications detailing construction methodology, the erosion and sedimentation control plan and the preservation and restoration methods to be employed. These shall be reviewed and approved by the County prior to commencing any construction activities. Said approval shall not be unreasonably withheld and the review will be made in a 14 days of receipt of the plans and prior to commencing any construction activities.~~timely fashion.~~ Violation of the aforementioned conditions during periods of emergency shall not result in cancellation or penalty. Within 24 hours of an incident constituting an emergency, Grantee shall give notice to the Director of the Department of Parks, Recreation and Culture, Milwaukee County, of such emergency.

(b) No trees, shrubs or vegetation adjacent to the easement area shall be removed, trimmed or damaged without the written permission of the department of Parks, Recreation and Culture. In that regard, a specific construction and restoration landscaping plan has been reviewed and approved by said department of the County.

(d) All Grantee construction, operation and repairs of the facilities installed within the easement area shall be completed at no expense to the Grantor, except, however, the construction of new facilities or modification of existing facilities at the request of Grantor.

(e) Grantee shall not suffer or permit any construction or mechanics' liens to be filed, or if filed, to remain uncontested, against the fee of the Property, nor against the Grantee's interest in the Property.

(f) It is further understood and agreed that the Grantor or its representatives shall have the right to enter upon the easement area at any time to make any inspection it may deem expedient to the proper enforcement of any term or condition of this easement and for the purpose of performing work related to any public improvement in, upon or along said easement area as the Grantor may deem appropriate provided such improvements do not damage the facilities and appurtenances thereto, including reasonable access to them, installed by the Grantee.

3. **Buildings or Other Structures:** Grantor agrees that no structures will be erected in the easement area or in such close proximity to the electric facilities as to create a violation of the Wisconsin State Electrical Code or any amendments to it.

4. **Elevation:** Grantor agrees that the elevation of the ground surface existing as of the date of the initial installation of Grantee's facilities within the easement area will not be altered by more than 4 inches without the written consent of Grantee, request for which shall be promptly considered by Grantee and not unreasonably withheld.

5. **Restoration:** Grantee agrees to restore or cause to have restored Grantor's land, as nearly as is reasonably possible, to the condition existing prior to such entry by Grantee or its agents. This restoration, however, does not apply to any trees, bushes, branches or roots which may interfere with Grantee's use of the easement area. Grantee shall exercise reasonable care and attempt to save and preserve any existing landscaping in the easement area, including, without limitation, the trees and bushes located thereon.

6. **Relocation of Facilities:** In the event that Grantor requires the relocation of Grantee's facilities, the Grantee will relocate such facilities, providing that Grantor provides a reasonable suitable alternate location for such facilities, together with all necessary easement rights to the Grantee for the facilities at their new location. The costs of such facilities relocation shall be paid by Grantor.

7. **Removal of Facilities:** In the event that Grantee's facilities are no longer required to provide electric service, Grantee shall: a) remove any unnecessary overhead and above-ground facilities, including poles, guy wires, overhead conductors, and pad-mounted equipment, and b) abandon unnecessary underground conduit and cables. Grantee shall restore the easement area at its expense and the associated easement rights herein shall terminate.

8. **Right of Entry Fee:** Grantee shall, at all times, obtain a Right of Entry Permit from County before performing any ground disturbing activities in any part of the Premises. The Permit to disturb or dig in the Premises requires fees for inspection. Any Grantee failing to obtain a Permit to disturb or dig in the Premises is subject to penalty.

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- The Permit to disturb or dig in the Premises can be obtained at the Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Rd. Wauwatosa, Wisconsin, 53226.
9. ~~Easement Fee.~~ Grantee shall pay to the County an annual fee (the "Easement Fee") of five dollars (\$5.00) per lineal foot for the use of the Premises. The lineal distance, which the Equipment occupies in the Premises, is approximately \_\_\_\_\_ lineal feet. The initial annual Easement Fee is, therefore, \_\_\_\_\_ dollars (\$\_\_\_\_\_.00). The Easement Fee shall increase annually by three percent (3%) effective as of each anniversary of the Effective Date of this Easement throughout the initial term and any renewal term of this Easement. The first payment shall be due upon execution of this Easement. Subsequent Easement Fee payments shall be due on or before the anniversary of the Effective Date of this Easement. All payments are to be made to payable to the Milwaukee County Treasurer, and sent or personally delivered to the County's Department of Parks, Recreation and Culture at the address specified in Paragraph 21.
10. ~~Construction or Mechanics Liens.~~
- (a) ~~Grantee shall not suffer or permit any construction or mechanics' liens to be filed, or if filed, to remain uncontested, against the fee of the Premises, nor against the Grantee's interest in the Premises, by reason of work, labor services or materials supplied, or claimed to have been supplied, to the Grantee or anyone holding the Premises, or any part thereof, through or under the Grantee; and nothing contained herein shall be deemed or construed in any way as constituting the consent or request of the County, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or material man for the performance of any labor or furnishing of any materials, for any specific improvement, alteration or repair of or to the Premises or any part thereof, nor as giving the Grantee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any mechanics' or construction liens against the fee of the Premises. If any such lien is filed, the Grantee shall immediately cause the same to be discharged or released, or shall upon request provide adequate and acceptable security or bond to protect the County's interest.~~
- (b) ~~If any such construction or mechanics' lien shall at any time be filed against the Grantee's interest in the Premises, the Grantee covenants that it will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise. Upon the Grantee's failure to do the foregoing, the County may take such action as may be reasonably necessary to protect the County's interest, in addition to any other right or remedy which it may have. Any amount paid by the County in connection with such action shall be repaid by the Grantee to the County upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.~~
11. **Special Conditions.**
- (a) No exterior storage of materials, equipment or vehicles is permitted on the Premises, except the temporary and orderly placement of items in conjunction with construction, maintenance, repair, replacement, or removal activities.
- (b) Grantee shall be responsible for maintaining the Equipment.
- (c) The County shall not be liable for any damage to the Equipment that may be caused by County, its employees, contractors, or others.
- ~~(d) Any modifications to the Equipment shall be subject to the written approval of the Parks Director and any other required governmental approvals.~~
- (e) The Equipment shall remain the exclusive property of the Grantee.
- (f) The Grantee shall in no way encumber, or allow to be encumbered, the County's title to the Premises.
- (g) Within thirty (30) days following installation of the Equipment, the Grantee shall provide the County with an as-built survey showing the actual location of the Equipment. Said survey shall be accompanied by a complete and detailed inventory of all Equipment installed.
- (h) The Grantee shall, at its own expenses, keep and maintain the Premises in a presentable condition consistent with good business practice. Whether during installation, ongoing repair and maintenance, or removal of the Equipment throughout the initial term and any renewal of this Easement ~~or any holdover period~~, the Grantee shall repair, replace, restore, reseed, and/or replant topsoil, grass, shrubbery, or other plantings lost, damaged, or destroyed in the course of the Grantee's work. ~~The restoration of any disturbed surface area shall be done in a timely and good workman like manner immediately following the Grantee's work, subject only to weather conditions. Restoration shall be done to a condition satisfactory to County Parks staff, but not less than the condition that existed before the initial installation of the Equipment.~~
- ~~(i) If the County, at its sole discretion, determines that the location of the Grantee's Equipment prevents or impedes the construction of a public improvement and that no reasonable alternative is available, the Grantee, at its own expense, shall relocate its Equipment on the Premises to accommodate the public improvement.~~
- ~~(j) The Grantee shall contact Diggers Hotline, the Park Maintenance Division of the Milwaukee County Department of Parks, Recreation and Culture and all applicable municipalities prior to commencing any~~

~~construction to verify all pertinent easements and existing utility locations with the Easement Area. Punitive damages will be charged, if easement are not strictly adhered to, for addition personal charges and subsequent property damages.~~

~~(k) — Grantee shall secure and pay for all permits required by any governing body or agency, including but not limited to, the Milwaukee County Department of Parks, Recreation and Culture before any substantial construction, repair or maintenance work commences. All Grantee construction, operation and repairs of the facilities installed within the Easement Area shall be completed at no expense to the County.~~

## ~~12. Taxes~~

~~(a) — Real Estate Taxes. County is a tax exempt entity. Should any Milwaukee County Ordinance or State of Wisconsin Statute require that any of the Premises be subject to real estate taxes or assessments, the Grantee shall be liable for the Grantee's proportionate share of all such real estate taxes and assessments and for all taxes imposed on the full value of the Grantee's Equipment, if any, constructed on the Premises.~~

~~(b) — Personal Property Taxes. Grantee shall pay, before delinquency, all municipal, county and state or federal taxes assessed any interest of the Grantee in the Premises or assessed against the Equipment.~~

## 13. Indemnification and Insurance.

Indemnification: It is understood that during the time said facilities are located on the premises of the Grantor pursuant to this grant, We Energies shall indemnify and save the Grantor harmless from any and all claims for injury or death to any person or for damage to property of any person arising out of the installation, operation, reconstruction and maintenance of said facilities; excepting, however, any claims or actions arising out of negligence or willful acts on the part of the Grantor, its employees, agents and invitees.

**9. Environmental Indemnification:** Grantee shall, to the full extent provided for under any environmental laws, rules and regulations, be responsible for any repair, cleanup, remediation or detoxification arising out of any hazardous materials brought onto or introduced into the easement area or surrounding areas by Grantee, its agents or guests. Grantee shall indemnify, defend and hold Grantor harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom.

~~(a) — Except as otherwise provided, County and Grantee shall be responsible for the consequences of their own acts or omissions and those of its employees, boards, commissions, agencies, officers and representatives and be responsible for losses, claims, liabilities, which are attributable to such acts or omissions.~~

~~(b) — In furtherance hereof, Grantee also hereby agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, the County and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Easement.~~

~~(c) — Grantee shall, to the full extent provided for under any environmental laws, rules and regulations, be responsible for any repair, cleanup, remediation or detoxification arising out of (1) any hazardous materials brought onto or introduced into the Premises or surrounding areas by Grantee, its agents or guests, and/or (2) hazardous materials whose presence pre-exists the commencement of Grantee's Easement term, located in and on the Premises, that are discovered or disturbed as a result of Grantee's construction activities on, at or near the Premises. Grantee shall indemnify, defend and hold County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom.~~

~~(d) — Grantee shall, at its own cost and expense during the term of this Easement, keep the Facilities insured against loss or damage by fire and such other contingencies included in an all risk insurance policy covering the cost of the Facilities. Grantee shall also, during the entire term of this Easement, keep in full force and effect a policy of commercial general liability insurance with respect to Grantee's activities in and around the Easement Areas in an amount of not less than \$1,000,000 combined single limit. Grantee shall also maintain insurance coverage for worker's compensation claims as required by the State of Wisconsin, including employer's liability. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Milwaukee County, as its interests may appear, shall be named as an additional insured and be afforded a thirty (30) day written notice of cancellation or non renewal. Disclosure must be made of any non standard or restrictive additional insured endorsement, and any use of non standard or restrictive additional insured endorsement will not be acceptable. A certificate indicating the above coverages shall be submitted for review and approval by the County for the duration of this Easement. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for~~



- approval prior to the commencement of activities under this Agreement. The insurance requirements contained within this Agreement are subject to periodic review and adjustment by the County Risk Manager.
14. **Assignment and Subletting.** The Grantee shall not assign this Easement nor sublet the Premises, or any portion thereof, without the prior written consent of the County such consent. ~~Said consent may be withheld at the sole discretion of the County, but shall~~ not be unreasonably withheld. Before an assignment shall be effective, any assignee shall assume in writing all obligations of the Grantee under the terms and conditions of this Easement.
- ~~15. **Revocation and Termination.**~~
- ~~(a) The County shall have the right, at its sole option, to declare this easement void, revoke the same, reenter and take possession of the Premises under the following conditions:~~
- ~~(1) By giving the Grantee thirty (30) days written notice, upon or after any one of the following events:~~
- ~~(i) The abandonment by the Grantee of the Premises.~~
- ~~(ii) The use of the Premises for an illegal purpose.~~
- ~~In the event of revocation under this Subparagraph, the County shall retain any Easement Fee that has been prepaid.~~
- ~~(2) By giving the Grantee thirty (30) days written notice specifying the nature of the default in the event the Grantee defaults in the performance of any term or condition of the easement other than those as set forth in Subparagraph 15(a)(1). Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then the Grantee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Grantee immediately takes steps to cure the default as soon as reasonably possible and proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable. In the event of revocation under this Subparagraph, any prepaid Easement Fee shall be prorated on a per diem basis and refunded to the Grantee.~~
- ~~(3) Effective at any time following the expiration of the first renewal term, by giving the Grantee a minimum one (1) year's prior written notice of revocation in the event the Premises, in the sole discretion of the governing body of the County, are desired for any public purpose or use, which use shall exclude Grantee's permitted use under the easement and any similar private use by any additional telecommunications provider. Any Easement Fee that has been prepaid for the period following the date the Equipment is relocated shall be prorated on a per diem basis and refunded to the Grantee. In the event of revocation under this Subparagraph, the County shall use its best efforts to provide Grantee with a satisfactory alternate location on County owned property, which could accommodate the Equipment.~~
- ~~(b) The Grantee shall have the right to terminate this easement at any time during the initial term of this easement or any renewal terms by giving the County a minimum of one (1) year's written notice of termination. In the event of termination under this Subparagraph, the date of termination must coincide with the anniversary of the Effective Date.~~
- ~~16. **Rights Upon Expiration, Revocation or Termination.** Upon the expiration, revocation or termination of this easement for cause, the Grantee's rights in the Premises and its obligations hereunder (except any obligations that by their nature or by their language survive termination) shall cease, and the Grantee shall immediately surrender the Premises, subject to the provisions of Paragraph 18.~~
17. **Compliance.** The Grantee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the County, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Premises.
- ~~18. **Hazardous Substance Indemnification.** The Grantee represents and warrants that its use of the Premises herein will not generate any hazardous substance; and that it will not store or dispose on the Premises, nor transport to or over the Premises, any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic wastes, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.~~
- ~~19. **Removal and Disposal of Equipment.** Upon the expiration, revocation or termination of this easement, the Grantee, at the Grantee's sole cost, shall remove from the Premises all of the Equipment installed by the Grantee. The Grantee shall also repair any damages it causes to the Properties to a condition equivalent to that which existed prior to the date that the Grantee first occupied the Premises. Removal of Equipment and repair of the Properties shall be accomplished within sixty (60) days of expiration, revocation or termination of the easement, except as~~

may be adjusted by the County to allow for winter conditions. The expiration or termination of this easement shall not become effective until removal and repair have been accomplished to the satisfaction of the County; however, during such removal and repair period the Grantee's right to use the Premises shall be limited to removal and repair activities. In the event the Grantee fails to accomplish said removal and repair, the County may cause the removal and repair to be accomplished at the Grantee's expense and with no liability or cost to the County. The County may waive or alter this removal and repair requirement if, at its sole discretion, it so chooses. Any such waiver or alteration shall not reduce the time allowed for the removal or repair activities or place conditions on the Grantee which are greater than those provided in this Paragraph.

**20. Premises Required by Eminent Domain.**

(a) In the event the Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefore, including by not limited to, all damages and compensation for the diminution of value of this Easement, and the reversion and fee interests, shall belong to the County without and deduction therefrom for any present or future estate of the Grantee, and the Grantee hereby assigns to the County all of its right, title and interest to any such award. However, the Grantee shall have the right to recover from the condemning authority such compensation as may be separately awarded to the Grantee for moving and relocation expenses.

(b) In the event the whole of the Premises or any part thereof shall be taken or condemned so that the balance cannot be used for the same purpose and with substantially the same utility to the Grantee as immediately prior to such taking, this Easement shall terminate upon delivery of possession to the condemning authority and any Easement Fee that has been prepaid for the period following the termination shall be prorated on a per diem basis and refunded to the Grantee unless the Grantee will receive compensation for any prepaid Easement Fee from the condemning authority.

**21. Right of Entry.** The County or its representatives shall have the right to enter upon the Premises (but shall not have access to the Equipment without prior notice to the Grantee or without allowing the Grantee to have its representative accompany the County) at any reasonable time for the following purposes:

(a) To make any inspection it may deem expedient to the proper enforcement of any term or condition of this Easement.

(b) For the purpose of performing work related to any public improvement, provided that the County restores the Premises to a condition equivalent to that which existed on the date the County initiated the installation of the public improvement. The Grantee agrees to hold the County harmless for any loss of access to the Premises by the Grantee, which may occur during the period of installation of the public improvement.

**22. Notices.** All notices to be given under the terms of this Easement shall be signed by the person sending the same, and shall be sent by mail or personal delivery to the address of the Parties specified below:

To Grantee:

To County:  
Milwaukee County Parks  
Parks Director  
9480 Watertown Plank Road  
Wauwatosa, WI 53226

Any party hereto may, be giving five (5) days written notice to the other party in the manner stated herein, designate any other address in substitution of the address shown above to which notice shall be given.

**23. Severability.** If any term or provision of this Easement or the application thereof to the County or the Grantee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Easement, or the application of such terms or provisions to the County or the Grantee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of the Easement shall be valid and be enforceable to the fullest extent permitted by law.

**24. Non-Discrimination.** In the performance of the services under this Easement, the Grantee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, or national origin.

**25. No Waiver.** No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the County or the Grantee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the County or the Grantee herein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

26. **Entire Agreement.** The entire agreement of the parties is contained herein and this Easement supersedes any and all oral contracts and negotiations between the parties.
27. **Conflict of Interest.** The Grantee shall not employ or contract with any person currently employed by the County for any services included under the provisions of this Easement.
28. **Law Applied.** This Easement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin and Wisconsin Courts.
29. **Goodwill.** Any and all goodwill arising out of this Easement inures solely to the benefit of the County; the Grantee waives all claims to benefit of such goodwill.
30. **Quiet Enjoyment.** Pursuant to this Easement and subject to the rights and privileges retained by the County and granted to other grantees, the County hereby covenants and agrees that if the Grantee shall perform all of the covenants and agreements herein to be performed on the Grantee's part, the Grantee shall, at all times during the continuance hereof, have the peaceable and quiet enjoyment and possession of the Premises without any manner of hindrance from the County or any person lawfully claiming the Premises.
31. **Public Record.** This Easement shall be recorded, at the Grantee's expenses, at the office of the Milwaukee County Register of Deeds after it is executed by the parties.

~~NOW, THEREFORE, it is further agreed that the Grantee in consideration of the Easement so granted to it through all the land previously described, hereby covenants and agrees with the County that it will construct and maintain said facilities in good order and condition and that, in and during the construction of said facilities and thereafter in and about their operation, maintenance, repair or reconstruction, will indemnify and save harmless the County, its successors and assigns, from all loss or injury to its property due to such construction, operation, maintenance, repair and reconstruction, and that no special charge will be made against said land, for the cost of such construction, operation, maintenance, repair and reconstruction. The County reserves unto itself, its successors and assigns, all mineral rights and the right to make such use of the land included in the previously described easement area except the right to erect buildings or other structures thereon, as will not injure or disturb said underground conduit and cables or its appurtenances; provided, however, that plans for said improvements be reviewed and approved by the Grantee prior to construction. Said approval will not be unreasonably withheld and the review will be made in a timely fashion for no charge to the County.~~

**SIGNATURE PAGES FOLLOW:**

IN WITNESS WHEREOF, the authorized representatives of the above named parties have caused their hands and seals to be hereunto affixed.

MILWAUKEE COUNTY

(Signature)  
CHRIS ABELE, COUNTY EXECUTIVE  
(Print Name-Title)

(Date)

State of Wisconsin )  
 ) ss.  
\_\_\_\_\_ County )

On the above date, this instrument was acknowledged before me by the above named \_\_\_\_\_ of \_\_\_\_\_

\_, known to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.

\_\_\_\_\_  
(Signature, Notary Public, State of Wisconsin)

\_\_\_\_\_  
(Print or Type Name, Notary Public, State of Wisconsin)

\_\_\_\_\_  
(Date Commission Expires)

(Signature)  
JOSEPH CZARNEZKI, MILWAUKEE COUNTY CLERK  
(Print Name-Title)

State of Wisconsin )  
 ) ss.  
\_\_\_\_\_ County )

On the above date, this instrument was acknowledged before me by the above named \_\_\_\_\_ of \_\_\_\_\_

\_, known to me to be such officer, and who acknowledged that she executed the forgoing instrument on its behalf for the purpose aforesaid and by its authority as such officer.

\_\_\_\_\_  
(Signature, Notary Public, State of Wisconsin)

\_\_\_\_\_  
(Print or Type Name, Notary Public, State of Wisconsin)

\_\_\_\_\_  
(Date Commission Expires)

Approved as to form:

Reviewed by:

\_\_\_\_\_  
Milwaukee County Corporation Counsel

\_\_\_\_\_  
Milwaukee County Risk Management



[  
a Wisconsin [  
By its [  
]

\_\_\_\_\_  
(Signature)  
  
\_\_\_\_\_  
(Print Name and Title)

\_\_\_\_\_  
(Date)

State of Wisconsin )  
 ) ss.  
\_\_\_\_\_) County )

On the above date, this instrument was acknowledged before  
me by the above named \_\_\_\_\_  
of \_\_\_\_\_

\_\_\_\_\_, known to me to be such officer, and who acknowledged that she executed the forgoing  
instrument on its behalf for the purpose aforesaid and by its authority as such officer.

\_\_\_\_\_  
(Signature, Notary Public, State of Wisconsin)  
  
\_\_\_\_\_  
(Print or Type Name, Notary Public, State of Wisconsin)  
  
\_\_\_\_\_  
(Date Commission Expires)

## **SOLAR GROUND LEASE AGREEMENT**

**THIS SOLAR GROUND LEASE AGREEMENT** (this "Lease") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date"), by \_\_\_\_\_, a \_\_\_\_\_ ("Landlord"), and Wisconsin Electric Power Company, a Wisconsin corporation doing business as We Energies ("Tenant"). Landlord and Tenant are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

### **WITNESSETH:**

A. Landlord is the owner of that certain property located at \_\_\_\_\_, \_\_\_\_\_ (commonly known as \_\_\_\_ [if applicable for schools/site clarification]) and further legally described in Exhibit A attached hereto (the "Property").

B. Landlord and Tenant have agreed to enter into a Solar Service Agreement under Tenant's "Solar Now" Solar PV System Hosting Pilot Program whereby Landlord would host a Tenant-owned approximately \_\_\_\_\_ kW nameplate capacity electric power generating photovoltaic solar panel array and connector equipment (such as wires, cabling, pipes, conduit, inverters, mounting, trackers, controls and associated equipment) on the Property (all of the foregoing collectively, the "PV System").

C. Tenant desires to lease from Landlord and Landlord desires to lease to Tenant, certain areas of the Property as further specified herein for purposes of installing, operating, maintaining and repairing the PV System, all on the terms and conditions hereinafter provided.

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. **Lease.** Landlord hereby leases to Tenant, during the Term hereof and subject to the restrictions set forth herein, those portions of the Property constituting approximately \_\_\_\_\_ sq ft (\_\_\_\_\_) acres of land that are described on Exhibit B attached hereto and made a part hereof (the "Premises"), for the purposes of installing, operating, maintaining, repairing and removing the PV System. Subject to the terms and conditions set forth in this Lease, Tenant shall have the right to use the Premises for the installation, operation, maintenance, repair and removal of the PV System, as such PV System is more particularly described on Exhibit C attached hereto and made a part hereof.

2. **Term.** The term of this Lease (the "Term") shall begin on the Effective Date and shall end on the last day of the calendar month that includes the [twentieth (20<sup>th</sup>)] or [twenty-fifth (25<sup>th</sup>)] or [thirtieth (30<sup>th</sup>)] anniversary of the Rent Commencement Date (as defined below) (the "Expiration Date"). In the event that prior to the Rent Commencement Date Tenant determines, in Tenant's sole discretion, that the Premises are not suitable for the installation and operation of the PV System, Tenant may terminate this Lease by providing written notice of such termination to Landlord.

3. **Rent.** In consideration of the rights granted hereunder, beginning on the date (the "Rent Commencement Date") on which Tenant, under the Service Agreement, first furnishes electricity that has been generated by the PV System (excluding electricity generated during commissioning and testing periods), Tenant shall pay to Landlord rent ("Rent") in the amount specified in Exhibit D attached hereto and made a part hereof and payable as set forth in Exhibit D. In the event of any failure by Landlord (as "Customer") to pay Tenant (as "the Company") any rates or other compensation due under the Service Agreement, during the time of such non-payment Tenant shall not be obligated to pay Rent under this Lease.

4. **Easements.**

(a) **Access.** Landlord hereby grants to Tenant, and its agents and contractors, during the Term, non-exclusive easements over, across and through areas of the Property surrounding the Premises (as reasonably designated by Landlord from time to time) for ingress and egress to and from the Premises at all times (including parking related to Tenant's use of the Premises), and for the installation, maintenance, repair, replacement and removal of the PV System and related equipment (including construction laydown and related activities).

**Commented [GE1]:** We want to ensure this does not lead to unforeseen utilities, e.g., 5G cell towers

(b) **Sunlight and Solar Energy.** Landlord hereby grants to Tenant, during the Term, an exclusive easement over and across the Premises and surrounding Property for the unobstructed passage of sunlight to the photovoltaic panel systems within the PV System (the "Panels"), and for the capture, use and conversion of the unobstructed flux of solar energy over and across the Premises and the Property from all angles from sunrise to sunset during each day of the Term. Without limiting the generality of the foregoing, Landlord specifically agrees not to construct, plant or allow any construction or plantings on or about the Premises or surrounding Property which block sunlight from reaching the Panels.

(c) **Effects.** Landlord hereby grants to Tenant, during the Term, an exclusive easement over and across the Premises and surrounding Property for electromagnetic, audio, visual, view, light, noise, vibration, electrical, radio interference and/or other effects attributable to the PV System.

(d) **Interconnection, and Utilities.** Landlord hereby grants to Tenant, and its agents and contractors, during the Term, non-exclusive easements over, across and through the Premises and surrounding Property for the installation, maintenance, repair, replacement and removal of interconnection facilities such as wires, cabling and similar facilities and for utilities required for the operation of the PV System and the connection of the PV System to Tenant's electrical distribution system (all of the foregoing collectively, the "Interconnection Facilities"). The locations for such Interconnection Facilities shall be as shown in Exhibit C or as mutually agreeable to Landlord and Tenant.

(e) **Distribution.** Landlord hereby grants to Tenant, and its agents and contractors, perpetual non-exclusive easements over, across and through those portions of the Premises and surrounding Property that are depicted on a preliminary map attached as Exhibit E. A final mutually agreed upon easement ("Final Easement") describing these facilities under this paragraph (e) for the installation, maintenance, repair, replacement and removal of overhead and underground facilities for Tenant's electrical distribution system will be provided to Landlord upon completion of Tenant's final design. The Final Easement shall replace Exhibit E.

(f) **Cooperation.** Tenant's activities under the easements described in this Section 4 shall not unreasonably interfere with Landlord's normal business activities on the Property (excluding the Premises), and the Parties will cooperate to establish reasonable policies and procedures, consistent with Tenant's internal rules and regulations, applicable industry standards and prudent utility practices, for the ongoing maintenance, repair and operation of Tenant's PV System.

**5. Additional Terms and Conditions.** In addition to the other terms of this Lease, the rights and obligations herein shall be subject to the following terms and conditions:

(a) Tenant shall be solely responsible for installing, operating, maintaining and repairing the PV System, at Tenant's sole cost and expense in a good and workmanlike manner (provided that if the need for any such repairs is due to damage caused by Landlord or any of its agents, employees or contractors, Landlord shall reimburse Tenant for the reasonable cost of such repairs within ten (10) days after Landlord's receipt of a written invoice therefor from Tenant).

(b) In the event that any fees, taxes, charges, impositions or levies are assessed against the PV System and/or the Premises by any governmental authority as a result of the installation and operation of the PV System on the Premises, Landlord and Tenant shall cooperate in good faith to mutually determine a reasonable allocation of such liability.

(c) Tenant shall pay for all utility services related to Tenant's use of the Premises as described hereunder.

(d) Tenant shall keep and maintain the PV System and the Premises reasonably free of debris and trash.

(e) Landlord shall not directly or indirectly allow any lien on or with respect to Property or PV System by, through or under Landlord.

(f) Tenant shall not directly or indirectly allow any lien on or with respect to the Premises or PV System by, through or under Tenant.

**6. Modifications to Premises.** Any modifications to the Premises in connection with the rights granted to Tenant hereunder shall be made in accordance with any and all applicable governmental guidelines, laws, ordinances, codes, rules, regulations and requirements of all federal, state or local governmental units or agencies having jurisdiction over the Premises (collectively, "Laws") in effect from time to time. Any ground disturbing work requires permitting by the Parks Department through a Right of Entry permit.

**7. Licenses, Permits, Laws and Rules.** Tenant shall secure and maintain throughout the Term of this Lease from the proper governmental authorities all licenses or permits required by applicable Laws for the installation, location, maintenance and operation of the PV System on the Premises. Tenant shall, at Tenant's sole cost and expense, promptly observe and comply with any and all Laws, as such Laws may relate to the use, location, maintenance or operation of the PV System. Landlord shall provide reasonable cooperation and assistance to Tenant in obtaining all governmental approvals required by Tenant.



8. **Maintenance of the Premises.** Tenant shall maintain the Premises in a state of good condition and repair in accordance with all Laws, and Landlord shall maintain the remainder of the Property in a state of good condition and repair in accordance with all Laws; provided, however, that Tenant shall, at Tenant's expense, promptly repair any damage to the Property to the extent such damage is caused by Tenant or any of its employees, agents or contractors, and Landlord shall, at Landlord's expense, promptly repair any damage to the Premises to the extent such damage is caused by Landlord or any of its employees, agents or contractors. To the extent that any repairs or replacements of the Premises are Landlord's responsibility and are necessary during the Term hereof, Landlord shall promptly notify Tenant thereof, and shall coordinate such repairs or replacements with Tenant so as to not interfere with Tenant's exercise of its rights hereunder.

9. **Default and Remedies.**

(a) In the event of any breach of any provision of this Lease by Tenant, which breach shall remain uncured for thirty (30) days after written notice thereof to Tenant (or such longer period of time, in the event that such cure will reasonably take longer than thirty (30) days, so long as Tenant begins the cure during such thirty (30)-day period and diligently pursues completion of the same thereafter), or in the event of a termination of the Solar Service Agreement as a result of a breach or default thereunder by Tenant (as the Company), Landlord may declare Tenant to be in default hereunder and may terminate this Lease. In addition, Landlord shall be entitled to exercise all available rights and remedies at law or in equity as a result of such default; provided, however, that in no event shall Landlord be entitled to receive consequential, special or punitive damages as a result of a default under this Lease by Tenant.

(b) In the event of any breach of any provision of this Lease by Landlord, which breach shall remain uncured for thirty (30) days after written notice thereof to Landlord (or such longer period of time, in the event that such cure will reasonably take longer than thirty (30) days, so long as Landlord begins the cure during such thirty (30)-day period and diligently pursues completion of the same thereafter), or in the event of a termination of the Solar Service Agreement as a result of a breach or default thereunder by Landlord (as Customer), Tenant may declare Landlord to be in default hereunder and may terminate this Lease. In addition, Tenant shall be entitled to exercise all available rights and remedies at law or in equity as a result of such default; provided, however, that in no event shall Tenant be entitled to receive consequential, special or punitive damages as a result of a default under this Lease by Landlord.

10. **Sale of PV System; Surrender of Premises; Removal of PV System.** Not later than one (1) year prior to the Expiration Date, Landlord and Tenant will begin good faith negotiations regarding the possible sale (or other mutually agreeable disposition) of the PV System, for fair market value, to Landlord. In the event that Landlord and Tenant are not able to agree upon the terms and conditions for a sale or other disposition of the PV System to Landlord by the Expiration Date, or in the event of any termination of this Lease prior to the Expiration Date, upon such expiration or termination Tenant shall have ninety (90) days (subject to reasonable extension in the event of adverse weather conditions) to decommission and remove the PV System and any related property from the Premises (except for the Interconnection Facilities, which may be abandoned in place) and restore the surrounding area where such PV System was located to the condition existing prior to the installation of the PV System (reasonable wear and tear and customary commercial facility degradation excepted). Such decommissioning, removal and

restoration shall be at Tenant's expense, unless the Lease has been terminated as a result of a default by Landlord (in which event Landlord shall bear the costs of such decommissioning, removal and restoration).

#### **11. Indemnification.**

(a) Landlord shall indemnify, defend and hold Tenant, and Tenant's officers, agents, contractors and employees, harmless from and against any and all losses, injuries, damages, demands, costs, expenses, fines, penalties, lawsuits, claims and/or liabilities (including reasonable attorneys' fees), occasioned by, arising out of or resulting in connection with, this Lease, Landlord's activities at or from the Property, any act or failure to act by Landlord, its officers, agents, contractors, employees or invitees, or any default by Landlord hereunder, except to the extent arising from the negligence or willful misconduct of Tenant or its officers, agents, contractors, employees or invitees.

(b) Tenant shall indemnify, defend and save Landlord, and Landlord's officers, agents, contractors and employees, harmless from and against any and all losses, injuries, damages, demands, costs, expenses, fines, penalties, lawsuits, claims and/or liabilities (including reasonable attorneys' fees), occasioned by, arising out of or resulting in connection with, this Lease, Tenant's activities at or from the Premises, any act or failure to act by Tenant, its officers, agents, contractors, employees or invitees, or any default by Tenant hereunder, except to the extent arising from the negligence or willful misconduct of Landlord or its officers, agents, contractors, employees or invitees.

#### **12. Insurance.**

**Commented [GE2]:** Check with Risk.

(a) Tenant shall carry or cause to be carried the following insurance during the entire Term hereof:

(i) Commercial general liability insurance, including contractual liability insuring the indemnification provisions contained in this Lease, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; naming Landlord as an additional insured; and

(ii) Automobile liability insurance in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; naming Landlord as an additional insured; and

(iii) Workers compensation and employer's liability insurance with statutory limits and employer's liability in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; and

(iv) Umbrella/Excess liability insurance in an amount of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence; and

(v) "All Risk" property insurance for the full replacement cost of the PV System and all additions, improvements and alterations to the Premises and all other items of Tenant's property at or in the Premises.

Alternatively, Tenant may self-insure for the risks described in this Section 12(a).

(b) Landlord shall carry or cause to be carried the following insurance during the entire Term hereof:

(i) Commercial general liability insurance, including contractual liability insuring the indemnification provisions contained in this Lease, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; naming Tenant as an additional insured; and

(ii) Automobile liability insurance in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; naming Tenant as an additional insured; and

(iii) Workers compensation and employer's liability insurance with statutory limits and employer's liability in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence; and

(iv) Umbrella/Excess liability insurance in an amount of not less than Two Million and 00/100 Dollars (\$2,000,000.00) per occurrence; and

(v) "All-Risk" property insurance for the full replacement cost of the Landlord's surrounding Property. (and any buildings or other improvements thereon), including coverage to protect against loss of rents.

(c) Each Party shall, prior to the commencement of the Term hereof and thereafter upon annual request during the Term, furnish certificates of insurance evidencing the coverages required hereunder. Tenant's obligations under this Section 12(c) shall not apply to the extent that Tenant self-insures.

(d) Landlord and Tenant and all parties claiming under them hereby mutually waive the right of subrogation against the other Party.

**13. Damage or Destruction.** In the event the Premises shall be partially or totally destroyed by fire or other casualty so as to become partially or totally unfeasible for use by Tenant hereunder, the damage shall be promptly repaired by Landlord, and a just and proportionate part of the Rent and all other additional rent and charges shall be abated until so repaired; provided, however, that if more than ten percent (10%) of the Premises shall be damaged or destroyed by fire or other casualty, then Tenant shall have the option to terminate this Lease by giving written notice to Landlord of its election to so terminate within thirty (30) days after Tenant's receipt of notice of the fire or other casualty.

**Commented [GE3]:** We can't agree to this. Won't they have insurance for this type of damage?

**14. Eminent Domain.** If all or substantially all of the Premises is taken by any public authority under its power of condemnation or the threat thereof, this Lease shall terminate as of the date possession shall be transferred to the acquiring authority, and the Rent and all other additional rent and charges payable hereunder shall be apportioned accordingly. If any material part of the Premises is taken, then Tenant shall have the right to terminate this Lease as of the date possession is transferred to the acquiring authority, upon giving written notice thereof to Landlord, and the Rent payable hereunder shall be apportioned accordingly. Upon any taking of

less than substantially all of the Premises (unless this Lease is terminated by Tenant as provided herein), this Lease shall continue in force as to the part of the Premises not taken, and the Rent payable thereafter shall be reduced in proportion to the amount of total area of the Premises taken. In the event of any such taking, Landlord, upon receipt and to the extent of the award in condemnation or proceeds of sale, shall, unless this Lease has been terminated, make necessary repairs and restorations to restore the Premises remaining to as near its former condition as circumstances will permit. Any damages awarded by or amounts paid by the acquiring authority for any such taking, whether for the whole or a part of the Premises, shall belong to Landlord; provided, however, that Tenant shall have the right to pursue such claim or claims as Tenant may have legally for relocation expenses, interruption of business and such items which do not reduce the award or proceeds of sale payable to Landlord; and further provided that to the extent that Tenant incurs any cost or damage due to the loss of expected depreciation related to the PV System as a result of such taking, then Landlord shall reimburse Tenant for such cost or damage (as reasonably estimated by Tenant) within thirty (30) days after Landlord's receipt of the award of damages or other compensation from the acquiring authority.

**Commented [GE4]:** I believe "to the extent of the award" means that we do not have to commit to anything more than this, right?

**Commented [GE5]:** To the extent of the award.

#### 15. Assignment/Subletting.

(a) ~~Tenant may not assign this Agreement, in whole or in part, or sublease any part of the Premises without the prior written approval of the Parks Executive Director. Tenant shall have the right to assign its interest in this Lease and the leasehold estate created hereby upon written notice to Landlord, provided that any such assignee agrees in writing to assume and perform the obligations of Tenant under this Lease.~~

(b) Landlord shall have the right to assign its interest in this Lease and the leasehold estate created hereby in connection with a sale of the Premises, upon written notice to Tenant, provided that any such assignee agrees in writing to assume and perform the obligations of Landlord under this Lease.

#### 16. Title to Property; Title to PV System.

(a) Landlord represents and warrants to Tenant that (i) Landlord owns the Property free and clear of any easements or other encumbrances or restrictions that could have a material adverse effect on Tenant's rights under this Lease, (ii) Landlord has full and complete authority to enter into this Lease under all of the terms, conditions and provisions set forth herein, and (iii) no approvals are required under any recorded or unrecorded documents affecting the Property for the construction of the PV System or Tenant's use of the Premises for the purposes described in Section 1 above.

**Commented [GE6]:** We don't know this. Can they handle this under due diligence?

(b) Notwithstanding the PV System's presence and operation on the Premises, Tenant shall at all times retain title to and be the legal and beneficial owner of the PV System and all alterations, additions or improvements made thereto by Tenant, and the PV System shall remain the property of Tenant or Tenant's assigns, and Tenant shall have the right to remove the PV System from the Premises in accordance with the terms of this Lease. In no event shall anyone claiming by, through or under Landlord (including but not limited to any present or future mortgagee of the Premises and/or surrounding Property) have any rights in or to the PV System at any time, except as otherwise provided in this Lease, and except for any rights that Landlord



might have under the Service Agreement with respect to Solar Renewable Energy Credits related to the PV System). Landlord shall not cause the PV System or any part thereof, to become subject to any lien, encumbrance, pledge, levy or attachment arising by, under or through Landlord, and Landlord will promptly, at its expense, take such action as may be necessary to duly discharge any such lien, encumbrance, pledge, levy or attachment if the same shall arise at any time

**17. Estoppel; Non-Disturbance Agreement.**

(a) Landlord and Tenant each agree, within ten (10) days after request therefor by the other Party, to execute in recordable form and deliver to the requesting Party a statement, in writing, certifying (if such be the case) (i) that this Lease is in full force and effect, (ii) the date of commencement of the Term, (iii) that Rent is paid currently without any off-set or defense thereto, (iv) the amount of Rent, if any, paid in advance, (v) that there are no uncured defaults by the requesting Party or, if such defaults are claimed, stating the facts giving rise thereto, and (vi) other similar matters as may be requested by the requesting Party or its lenders, mortgagees or prospective mortgagees. Any such certificate may be relied upon by the Party requesting it and any other person, firm or corporation to whom the same may be exhibited or delivered, and the contents of such certificate shall be binding on the Party providing it.

(b) Landlord represents to Tenant that the Premises is not subject to any mortgages, deeds of trust, security instruments, ground leases, easement agreements, trust agreements, covenants, conditions or restrictions (collectively, "Superior Interests") and Landlord covenants that if Landlord desires to subject the Premises to a Superior Interest, Landlord shall notify Tenant in writing and shall obtain a non-disturbance agreement reasonably satisfactory to Tenant from the holder of any such Superior Interest. Such non-disturbance agreement shall provide that, in the event of any proceedings brought for the enforcement of any Superior Interest, Tenant shall, upon demand by the Superior Interest holder but subject to Tenant's rights of non-disturbance, attorn to and recognize such Superior Interest holder as Landlord under this Lease.

**18. Marketing.** Tenant shall have the exclusive right to own and operating the PV System during the Term. In the event that marketing rights are sole to a third party, Tenant reserves the right to view and approve the content of such third party's marketing program related to the PV System, such approval not to be unreasonably withheld. In addition, Tenant reserves the right to market that the Customer is a participant in the "Solar Now" program through a mutually agreeable joint press release. Customer acknowledges that under the standard contract for the Solar Now program, Tenant may use Customer's business name and/or website address in Solar Now promotional materials, and Tenant will provide the Customer with public recognition of Customer's commitment to renewable energy under the Solar Now program.

**19. County Rights of Access and Audit.** The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three

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years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that the Contractor, lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

**2019. Notice.** Any notice, request, demand, instruction or other communication to be given to any Party hereunder shall be in writing and hand delivered or sent by overnight courier or registered or certified mail, return receipt requested, as follows:

To Landlord: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attn: \_\_\_\_\_

To Tenant: Wisconsin Electric Power Company  
 231 West Michigan Street  
 Milwaukee, Wisconsin 53203  
 Attn: \_\_\_\_\_

Either Party may, upon prior notice to the other, specify a different address for the giving of notice. Except as otherwise provided herein, if delivered in person, the notice shall be deemed given when received. If sent by overnight courier, the notice shall be deemed to have been given one (1) day after sending. If mailed, the notice shall be deemed to have been given on the date that is three (3) business days following mailing. Either Party may change its address by giving written notice thereof to the other Party.

**201. Quiet Enjoyment.** If and so long as Tenant pays the Rent reserved by this Lease and performs and observes the covenants and provisions hereof, Landlord covenants and agrees that Tenant shall quietly enjoy the exercise of its rights hereunder without hindrance, disturbance or molestation from Landlord or any person claiming by, through or under Landlord.

**221. Waiver.** Failure or delay on the part of Landlord or Tenant to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

**232. Prior Negotiations.** This Lease constitutes the entire agreement of the Parties with respect to the subject matter hereof and shall supersede all prior offers, negotiations and agreements in connection herewith.

**243. Amendment.** No modification of this Lease shall be valid unless made in writing and signed by an authorized officer of Landlord and an authorized officer of Tenant.

**254. Governing Law and Waiver of Jury.** THIS LEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. THE PARTIES HEREBY IRREVOCABLY SUBMIT TO THE NON EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT IN WISCONSIN WITH RESPECT TO ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS LEASE. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO.

**265. No Partnership.** Neither Party, by virtue of this Lease, in any way or for any purpose, shall become a partner of the other Party in the conduct of its business, nor become a joint venturer or a member of a joint enterprise with the other Party, nor become responsible for any of the debts, liabilities or obligations of the other Party.

**276. Headers and Captions.** The Section headings in this Lease are inserted only as a matter of convenience in reference and are not to be given any effect whatsoever in construing any provision of this Lease.

**287. Successors and Assigns.** The covenants and agreements contained in this Lease shall run with the land as to the Property and shall apply to, inure to the benefit of, and be binding upon the Parties hereto and upon their respective permitted successors and assigns, except as expressly otherwise herein provided.

**298. Severability.** If any term, covenant or condition of this Lease or any portion of any term, covenant or condition hereof or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term, covenant or condition or portion thereof to persons, entities and circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant and condition of this Lease and each portion thereof shall be valid and be enforced to the fullest extent permitted by law.

**3029. Construction.** This Lease shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties. Words of any gender in this Lease shall be held to include any other gender and words in the singular number shall be held to include the plural where the sense requires. Unless otherwise specified in this Lease, any reference to "days" shall be construed as a reference to calendar days, and shall include in the counting thereof all Saturdays, Sundays and holidays; provided, however, if the final day of any period specified in "days" falls on a Saturday, Sunday or holiday, the period shall be deemed extended to include the next regular business day occurring thereafter.

**310. Memorandum for Recording.** Upon the request of either Landlord or Tenant, the parties shall record a memorandum of this Lease with the Register of Deeds for the county in which the Property is located.

|        **321. Counterparts.** This Lease may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

*[Signatures appear on the following page.]*



**IN WITNESS WHEREOF**, Landlord and Tenant have executed this instrument as of the day and month first above written.

**LANDLORD:**

\_\_\_\_\_

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

Name/Title: \_\_\_\_\_

Customer Tax ID: \_\_\_\_\_

**TENANT:**

**WISCONSIN ELECTRIC POWER COMPANY**

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

Name/Title: \_\_\_\_\_

**EXHIBIT A**

**Legal Description of Property**

OWNER NAME AND MAILING ADDRESS

PROPERTY ADDRESS

LEGAL DESCRIPTION

**Exhibit B**

**Description of Premises**

[Surveyed map of parcel for PV System]

**EXHIBIT C**

**PV System**

[Include appoximate locations for Interconnection Facilities]

## **EXHIBIT D**

### **Rent**

Annual Rent due and payable under this Lease shall be equal to the value of the Midcontinent Independent System Operator ("MISO") accredited capacity of the PV System multiplied by the value of capacity, as defined below, up to Landlord's firm demand at the time this Lease is executed. Rent shall be paid to Landlord in monthly installments equal to one twelfth (1/12<sup>th</sup>) of the annual amount.

As used herein, "value of capacity" will be determined as of the date this Lease is executed, as determined by MISO's current Business Practice Manual ("BPM"), and will be fixed for the duration of the Lease. The value of capacity is the MISO zone 2 cost of new entry ("CONE") for the MISO Resource Adequacy Planning Year in which this Lease is executed. Customer acknowledges that the capacity accredited by MISO is subject to change annually.

**EXHIBIT E**

**Preliminary Map of Distribution Easement**

[ Distribution Easements are not applicable for this site as Solar PV System will tie into existing secondary distribution facilities.]

OR

[Preliminary Map of Distribution Easements]



**ELECTRIC SERVICE AGREEMENT**

**“SOLAR NOW” SOLAR PV SYSTEM HOSTING PILOT PROGRAM**

**WITHIN THE STATE OF WISCONSIN**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Wisconsin Electric Power Company d/b/a We Energies, hereinafter referred to as the Company, and \_\_\_\_\_, hereinafter referred to as the Customer.

**WITNESSETH:**

The parties hereto, each in consideration of the agreement of the other, agree as follows:

**1) NATURE OF SERVICE**

Customer desires to host a company-owned Solar PV System (defined for purposes of this agreement as solar panels, inverter(s), cabling, mounting, trackers (if applicable), and associated controls and interconnection facilities) with up to \_\_\_\_ kW<sub>ac</sub> nameplate capacity on [their rooftop] [ground mount site] located at \_\_\_\_\_, \_\_\_\_\_, Wisconsin (commonly known as \_\_\_\_\_ [if applicable for schools/site clarification]). Customer will receive a monthly lease payment, in accordance with the terms of this Agreement, for hosting the Solar PV system.

**2) SOLAR PV SYSTEM**

Solar PV System will be up to \_\_\_\_ kW<sub>ac</sub> (\_\_\_\_ kW<sub>dc</sub>) nameplate system size. The [rooftop/ground mounted system] will be made up of panels, inverters, [fixed tilt racking/flat roof ballasted arrays/sloped roof attached arrays], and associated controls and interconnection facilities.

**3) RATE**

**A. Calculation of Lease Payment**

Customer will receive a monthly payment for hosting the Solar PV System identified above (the “Lease Payment”). The Lease Payment paid by the Company to Customer shall be the value of the

Midcontinent Independent System Operator (“MISO”) accredited capacity of the Solar PV System multiplied by the value of capacity, as defined below, up to the customer’s firm demand at the time this Agreement is executed. The Lease Payment shall be paid to the customer in monthly installments equal to one twelfth ( $1/12^{\text{th}}$ ) of the annual amount.

**B. Calculation of Value of Capacity**

The value of capacity for the Solar PV System will be determined as of the date this Agreement is executed, as determined by MISO’s current Business Practice Manual (“BPM”), and will be fixed for the duration of this Agreement. The value of capacity is the MISO zone 2 cost of new entry (“CONE”) for the MISO Resource Adequacy Planning Year in which this Agreement is executed. Customer acknowledges that the capacity accredited by MISO is subject to change annually.

**C. Customer to Remain on Underlying Tariff.**

Customer will be responsible for all rates, adjustments and credits specified in Customer’s otherwise-applicable rate schedule(s), including but not limited to facilities charges; energy charges; fuel cost adjustments; on-peak and customer maximum demand charges; and minimum charges, all based on the customer’s actual consumption for the billing period, at the rates under their otherwise-applicable rate schedule(s). Customer may, at its sole discretion, elect to take service under schedule ERER-1, ERER-2, ERER-3 or ERER-4, also known as the Company’s “Energy for Tomorrow” programs.

**4) DELIVERY OF ENERGY**

All energy generated by the Solar PV System will be delivered to the Company’s distribution system.

**5) RENEWABLE RESOURCE CREDITS**

*[Note: Customer must make a binding election whether it will receive RRCs throughout the term of the agreement, or if Company will retain the RRCs through the term. If Customer chooses to receive*

***RRCs, it must also choose whether to have the Company (1) retire the RRCs through M-RET or (2) transfer the RRCs through M-RET.]***

***[Note: The following subsection is for if the Customer elects to receive the RRCs.]***

[Customer elects to receive the Renewable Resource Credits as defined by Wis. Stat. § 196.378(3) generated by the Solar PV System. As a result of Customer's election, the lease payments made to Customer by the Company will be reduced by the value of the Renewable Resource Credits. Each month, the value of the Renewable Resource Credits will be determined by multiplying the Renewable Resource Credit Market Price at the time this Agreement is executed by the quantity of the Renewable Resource Credits generated by the hosted Solar PV System in the prior month. The Renewable Resource Credit Market Price will not be adjusted during the term of this Agreement. Customer's election to receive the Renewable Resource Credits of the Solar PV System is binding for the term of this Agreement.

Customer agrees that the following Renewable Resource Credit Market Price reflects the market price at the time this Agreement is executed and will be in effect for the term of this Agreement:

\_\_\_\_\_.]

***[Choose one of the following, only if customer elects to receive RRCs: ]***

[Customer elects, at its sole discretion, that Company will retire all Renewable Resource Credits of the Dedicated Renewable Energy Resource on Customer's behalf through the M-RETS system. Customer's election is binding for the term of this Agreement.]

[Customer elects, at its sole discretion, that Company will transfer all Renewable Resource Credits of the Dedicated Renewable Energy Resource to Customer through the M-RETS system. Customer's election is binding for the term of this Agreement.]

***[Note: the following subsection is for if the Customer chooses NOT to receive RRCs:]***

[Customer elects not to receive the Renewable Resource Credits as defined by Wis. Stat. § 196.378(3) generated by the Solar PV System. As a result of Customer's election, all rights to Renewable Resource Credits generated by the Solar PV System identified above will be retained by the Company. Customer's election not to receive the Renewable Resource Credits of the Solar PV System is binding for the term of this Agreement.]

**6) CONDITIONS OF DELIVERY**

This Agreement is subject to the following conditions of delivery:

- a) Customer shall be subject to all of the charges as set forth in this Agreement and its otherwise applicable rate schedule(s) without limitation.
- b) This Agreement shall become effective when the Company first furnishes electricity that has been generated by the Solar PV System (excluding electricity generated during commissioning and testing periods) hereunder, and shall continue in force for the term set forth in this section. Customer acknowledges that this Agreement has a term of [20] or [25] or [30] years.
- c) Service under this Agreement is conditioned on the interconnection of the new Wisconsin-based renewable energy resource described in section "2) SOLAR PV SYSTEM" above to the Company's distribution system, as well as a satisfactory environmental review and, as applicable, siting review of structural components supporting the Solar PV System, including but not limited to the location's roof, structural supports, and ground conditions.
- d) The Company and Customer will enter into a separate written lease agreement, which will survive in its entirety if the property on which the Solar PV System described above is placed is sold or transferred during the term of the lease.

- e) Decommissioning of the Solar PV System is described in Section 10 of the Solar [Ground ] [Roof Top] Lease Agreement.
- f) The Company will retain ownership and responsibility for the monitoring, operation and maintenance of the Solar PV System described above.
- g) Customer warrants that it is a single customer, as defined by tax ID for non-governmental entities or a single unit of government (*e.g.*, municipality, county, school district, etc.), and Customer acknowledges that this Agreement is expressly conditioned on the accuracy of this warranty. [The Company and Customer agree that the following eligible accounts will be aggregated for purposes of this Agreement:
  - 1. Account 1:
  - 2. Account 2:]
- h) Company shall remit the lease payments to Customer as follows: rent will be paid on the 15<sup>th</sup> day of each month for rent due from the prior month.
- i) Customer acknowledges that participation in the “Solar Now” Solar PV System Hosting Pilot Program tariff may be limited at the sole discretion of the Company. Additionally, Customer acknowledges that the Company has the right to limit Customer’s participation in the “Solar Now” PV System Hosting Pilot Program tariff based on Customer’s bill payment and collection history, and Company may terminate this Agreement, in its sole discretion, based on Customer’s bill payment and collection history subsequent to execution of this Agreement. Further, participation shall be subject to an assessment of the solar resource and structural and environmental engineering suitability of the identified rooftop or ground mount location.

- j) Customer shall be bound by the following: (i) the rates, terms and conditions of this Agreement and the “Solar Now” PV System Hosting Pilot Program tariff; (ii) the rates, terms and conditions of Customer’s otherwise applicable rate schedule(s); (iii) the Company Rules and Regulations; and (iv) any future modifications of such rates, terms, conditions, and rules and regulations that may be ordered or approved by the PSCW. To the extent that there are conflicts among any of the forgoing, the specific provisions of this Agreement shall govern.
- k) If Customer defaults in any of its obligations contained herein, the Company may suspend delivery of energy. Such suspension, however, shall not interfere with enforcement by the Company of any other legal right or remedy. No delay by the Company in enforcing any of its legal rights hereunder shall be deemed a waiver of any other or subsequent defaults by Customer.
- l) This Agreement shall be binding upon the successors and assigns of the respective parties hereto.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

_____	WISCONSIN ELECTRIC POWER COMPANY
By: _____	By: _____
Print Name: _____	Print Name: _____
Title: _____	Title: _____
Date: _____	Date: _____