



COUNTY OF DANE
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
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Madison, WI 53703-3345
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GREG BROCKMEYER
Director of Administration

CHARLES HICKLIN
Controller

DATE: April 24, 2018
TO: All Proposers RFP# 118029 – Photovoltaic Installation at Dane County Airport
FROM: Megan Rogan, Purchasing Agent
SUBJECT: ADDENDUM #9

The following pages contain the revised APPENDIX 2 – Lease Agreement. Please replace the original APPENDIX 2 document with this revised version.

Section 4 – RENT section has been revised to correct the annual rate calculation as a fixed 3% rate increase.

Please acknowledge receipt of this addendum by noting “Addendum #1 Received” on the bottom of the Signature Affidavit when you submit your proposal.

LEASE NO. DCRA _____

DANE COUNTY, WISCONSIN

AND

LAND LEASE

Dane County Regional Airport

Madison, Wisconsin

Lease No. DCRA 2018-__

This Lease No. DCRA 2018-__ (the "Lease") is made and entered into by and between Dane County, Wisconsin ("County"), a quasi-municipal corporation and _____ ("Lessee") a business entity formed under the laws of the State of _____.

WITNESSETH:

WHEREAS County owns a parcel of vacant land (the "Premises") located in Madison, Wisconsin adjacent to the Dane County Regional Airport (the "Airport") and abutting State Highway 51, as fully described below; and

WHEREAS Lessee wishes to lease the Premises from County to be used as a site for the construction and operation of a solar photovoltaic array; and

WHEREAS County is willing and able to lease the Premises to Lessee for the foregoing purposes according to the terms and conditions provided herein;

NOW, THEREFORE, County and Lessee agree as follows.

1. EFFECTIVE DATE

Subsequent to full execution by the representatives of both parties hereto, this Lease shall become effective as of the date said parties enter into a Power Purchase Agreement (the "PPA"), with a term coterminous with the Lease term remaining on the date the PPA is fully executed, setting forth the terms and conditions of availability, consumption, sales, pricing, purchasing, delivery, and other provisions standard in the industry for inclusion in such agreements, regarding the electricity produced by the solar photovoltaic array on the Premises. Each party to this Lease shall negotiate the PPA in good faith and use its best efforts to reach agreement on the terms thereof. If a PPA is not entered into by the parties to this Lease within six months after full execution of the Lease, at County's option, the Lease shall be void.

2. LEASE TERM

The term of this Lease shall be for _____ years, commencing on _____ (hereinafter, the "Commencement Date") and expiring as of 11:59 p.m. on _____.

3. PREMISES

County hereby leases to Lessee the Premises, consisting of a ____ square foot parcel of land, as described and depicted in Exhibit A attached hereto. Lessee accepts the Premises in the condition existing as of the effective date of this Lease. Lessee stipulates that any inspection, environmental assessment, survey or any other examination or study concerning the Premises or use thereof that is material to Lessee's decision to enter into this Lease has been performed prior to Lessee's execution of the Lease.

4. RENT

As consideration for the rights granted hereunder Lessee shall pay to County annual rent of \$200.00 per acre for the first 12 months of the term of this Lease. Thereafter, effective as of each anniversary of the Commencement Date, beginning on _____, rent payable hereunder shall increase by three percent. Rent shall be paid in advance and is due by the first day of each month during the Lease term. Payment of rent shall be by check made payable to Dane County, and shall be paid at the Office of the Airport Director, 4000 International Lane, Madison, Wisconsin 53704, such that it is received on or before the due date. Payments not received when due hereunder shall accrue interest from the due date until paid in full at the rate of one and one half percent per month, payable on a pro rata per diem basis. If the termination of this Lease falls on a date other than the last day of a calendar month, rent applicable for the last month of occupancy as authorized hereunder shall be paid pro-rata according to the number of days in such month prior to Lease termination.

5. IMPROVEMENT AND USE OF PREMISES

Lessee shall have the exclusive right to occupy and use the Premises as a site for the construction, operation, and maintenance of a solar photovoltaic array and related facilities and equipment. The Premises shall be used only for the purposes expressly permitted herein.

6. UTILITIES FOR AIRPORT OPERATIONS

County shall retain the right to install and maintain in, on or under the Premises, sewer, water, gas, electric and telephone lines, navigation aids, or other installations and equipment, including cable, wire and fiber, necessary or beneficial to Airport operations. To the maximum practicable extent the exercise of rights under this Section 6 shall be accomplished without interference with Lessee’s use of the Premises.

7. HOLDOVER AND CONDITION OF PREMISES UPON TERMINATION OF LEASE

Upon expiration or earlier termination of this Lease, Lessee shall immediately remove all improvements, equipment and other items or materials constructed, installed or placed by Lessee or with Lessee’s permission in, on or under the Premises, and the Premises shall be surrendered to County in the condition existing on the Commencement Date. In the event Lessee fails to surrender the Premises upon expiration or earlier termination of the Lease, Lessee shall indemnify and hold County harmless for such holdover, and shall pay all costs, damages, expenses and fees, including legal fees, incurred by County as a result of continued occupancy of the Premises by Lessee or its property on the Premises after Lease termination, and shall pay rent at 150 percent of the rate applicable on the date the Lease terminated. Acceptance by County of rent after expiration or earlier termination of this Lease shall not result in a renewal or extension of the Lease or the creation of another lease.

8. INSURANCE AND INDEMNIFICATION

A. GENERAL INDEMNIFICATION

Lessee is and shall be deemed to be an independent contractor exclusively responsible for its own acts or omissions. Lessee shall indemnify, hold harmless and defend County,

County's agents, representatives, appointees and employees from and against all claims for losses, costs, attorney fees, expenses and damages arising out of, resulting from or relating to any loss of or damage to any property or business or any injury to or death of any person, where such loss, damage, injury, or death actually or allegedly arises, whether directly or indirectly, wholly or in part, from (i) any action or omission of Lessee, Lessee's employees, agents, contractors, suppliers or invitees while on the Premises; or (ii) the exercise of the rights granted herein by Lessee, Lessee's employees, agents, contractors, suppliers or invitees. Lessee's obligation of indemnification, as set forth herein, shall not apply to damages or liability resulting from the acts or omissions of County. The obligations of Lessee under this paragraph shall survive the expiration or earlier termination of this Lease.

B. ENVIRONMENTAL PROTECTION AND INDEMNIFICATION

Lessee shall ensure that Lessee and Lessee's employees, agents, contractors, suppliers or invitees comply with all present and hereafter enacted or amended Environmental Laws affecting Lessee's activities on the Premises. As used in this Lease, "Environmental Laws" means all laws, rules, regulations, regulatory agency guidance provisions and policies, ordinances, applicable court decisions, and airport guidance documents, directives, policies (whether enacted by any local, state or federal governmental authority, or reasonably issued by the Airport Director) now in effect or hereafter enacted or issued that deal with the regulation or protection of the environment (including, but not limited to, air, water, soil and subsurface elements), or with the generation, handling, storage, disposal or use of chemicals or substances that could be detrimental to health, public welfare, or the environment. Lessee shall indemnify, defend and hold County harmless from and against any and all liability, loss, damage, expense, penalties and costs (including legal fees and all costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work) arising from or related to any proceeding, claim or action for injury, liability, breach of warranty or representation, or damage to persons or property and any and all proceedings, claims or actions brought or asserted by any party or governmental authority of any kind, alleging or arising in connection with (i) contamination of, or adverse effects on the environment (whether known, alleged, potential, or threatened), or (ii) alleged or potential violation of any Environmental Law or other statute, ordinance, rule, regulation, judgment or order of any government or judicial entity which are brought as a result of any activity or operation of Lessee, Lessee's employees, agents, contractors, suppliers or invitees conducted on the Premises or under authority of this Lease. Lessee's obligations and liabilities under this subsection shall continue so long as County may bear any liability or responsibility under Environmental Laws for any activities conducted by Lessee, Lessee's employees, agents, contractors, suppliers or invitees on the Premises or under authority of this Lease. County's right to indemnification hereunder shall not be in limitation or exclusion of any other rights and remedies provided by law. Lessee shall promptly notify County of any action or condition that is contrary to any provision of this section.

C. INSURANCE REQUIREMENTS

Lessee shall, by the effective date of this Lease, obtain Commercial General Liability Insurance, including environmental impairment (pollution) liability endorsement, with coverage of at least \$3,000,000, combined single limits. Lessee may satisfy the coverage requirements set forth herein through separate policies, each providing coverage of at

least \$3,000,000, combined single limits. The insurance required hereunder shall be primary and provide coverage for Lessee's obligations of indemnity as set forth in subsections A and B above. All insurers providing the insurance required herein shall be authorized to do business in the State of Wisconsin and approved by County. All policies shall name County as an additional insured. Lessee shall, prior to commencing activities at the Premises, provide County with a certificate or certificates of insurance evidencing the insurance coverage required under this Lease. Each insurance policy obtained hereunder shall contain a provision that Lessee's insurer shall send to County written notice of cancellation or any material change in said policy at least 10 days in advance of the effective date thereof. Further, if insurance is underwritten on a claims-made basis, the retroactive date shall be prior to or coincide with the effective date of this Lease and the certificate of insurance provided therefore shall state that coverage is claims-made and indicate the retroactive date. Lessee shall maintain all insurance coverage required hereunder for the duration of this Lease and for one year following the expiration or earlier termination hereof. Nothing in this section is intended or shall be construed as a waiver of the limitations of Section 893.80, Wisconsin Statutes.

D. SUBCONTRACTORS

In the event of any subcontract of work performed on the Premises, Lessee shall furnish evidence to County that each subcontractor has in force and effect insurance policies providing coverage identical to that required of Lessee hereunder.

E. WAIVER OF INSURANCE REQUIREMENTS

County, acting at its sole option and through its Risk Manager, may waive any and all insurance requirements contained in this Lease, such waiver to be in writing only. The extent of waiver shall be determined solely by County's Risk Manager taking into account County's liability exposure under this Lease.

9. PERFORMANCE BOND

By no later than the effective date of this Lease, Lessee shall furnish to County a valid performance bond in the principal sum of \$_____. The performance bond required hereunder shall guarantee that, upon expiration or earlier termination of this Lease, Lessee shall immediately remove all improvements, equipment and other items or materials constructed, installed or placed by Lessee or with Lessee's permission in, on or under the Premises, and that the Premises are timely surrendered to County in the condition existing on the Commencement Date. The performance bond shall be issued by a company licensed to do business in the State of Wisconsin and, pursuant to the terms thereof, shall be in force and effect until six months after the expiration or earlier termination of this Lease unless otherwise approved in writing by County. Any payment made to County under a performance bond shall be in addition to and not in lieu of all other rights, remedies or causes of action available to County under this Lease, at law or in equity.

10. TAXES AND CHARGES

Lessee shall pay as they become due any and all taxes, fees, assessments or charges of any type levied by any governmental entity based upon, related to, or resulting from any

improvements, conditions, property, use, activities or operations of any kind on the Premises. Lessee shall have the right at its own cost and expense to contest the amount or validity of any tax, fee, assessment or charge and to bring or defend any actions involving the amount or validity thereof in its own name or, if necessary and approved by County, in the name of County, provided that, if unsuccessful, Lessee shall pay and discharge any such tax, fee, assessment or charge so contested, together with any penalties, fines, interest, costs and expenses, including attorney fees, that may result from any such action by Lessee, and provided that, pending resolution of any proceeding contesting a tax, fee, assessment or charge, Lessee shall take any actions necessary, including conditional payment of the amount in dispute, to prevent the attachment or accrual of any lien or penalty.

11. COMPLIANCE WITH RULES, REGULATIONS AND LAWS

Lessee and all persons operating under the rights granted under this Lease shall observe and comply with all federal, state, and local laws and regulations, and all rules, orders or directives promulgated or issued by any governmental body or agency having jurisdiction over the Premises or the facilities and activities thereon, as such laws, regulations, rules, orders and directives are now in effect or as hereafter amended, approved or adopted.

12. DISCRIMINATION PROHIBITED

Lessee, for itself, its representatives, successors and assigns, does hereby covenant and agree that (a) no person on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Premises or any improvement thereon; (b) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person shall be subjected to discrimination on the basis of age, race, ethnicity, religion, color, gender, disability, marital status, sexual orientation, national origin, cultural differences, ancestry, physical appearance, arrest record, conviction record, political beliefs, military participation, or membership in the national guard, state defense force or any other reserve component of the military forces of the United States; (c) that the Lessee shall use the premises in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, as said regulations may be amended; and (d) that Lessee shall provide access to the Premises for the physically disabled as required by all applicable federal, state and local laws and regulations. Breach of the provisions herein prohibiting discrimination shall be material and grounds for immediate termination of this Lease.

13. SUPERIOR RIGHTS

The provisions of this Lease shall be subject and subordinate to any agreement now existing or hereafter entered into between County and the United States or the State of Wisconsin affecting regulation, operation, development, use, or maintenance of the

Airport, provided County's execution or compliance with the terms of such agreement is a condition on acquisition or retention of property for Airport use, or the expenditure or receipt of federal or state funds for the development or maintenance of Airport property or operations. If required by the United States or State of Wisconsin, this Lease shall be amended to reflect the terms of any such agreement.

14. AIRPORT PROTECTION CLAUSE

County reserves and Lessee hereby grants for the benefit of the public, as well as County, the right to pursue all operations of the Airport, including the right of aircraft to fly in the airspace overlying the Premises and to cause such noise and vibration as may be inherent in the operation of aircraft on or in the vicinity of an active airport. Lessee shall not use or permit the use of the Premises in any manner that causes or creates interference with communication between the Airport and aircraft, difficulty in distinguishing Airport lights and markers, interference with visibility between aircraft and the Airport, conditions that attract birds or other wildlife that may pose hazards to aviation, or other hazards to the operation of aircraft at or in the vicinity of the Airport. Lessee shall restrict the height of objects of any kind on the Premises to a height that is in compliance with Title 14, Code of Federal Regulations, Section 77 and does not penetrate the One Engine Inoperative Surface defined using a 62.5:1 slope extending vertically and horizontally from the north end of Airport Runway 3/21. County reserves the right to take any action it considers necessary to protect users of the Airport from any condition that may be hazardous to aviation, and may remove, or prevent Lessee from constructing, keeping or placing, or permitting to be constructed, kept or placed, any object, material, device or equipment on the Premises which County's Airport Director determines would limit the usefulness of the Airport, or constitute a hazard to aviation or violation of Federal Aviation Administration ("FAA") directive or regulation. In the event it is determined by the Airport Director or the FAA that any object or activity on the Premises presents a hazard to aviation safety Lessee shall immediately take and maintain measures, as directed by the Airport Director or FAA, that eliminate the hazard and any reoccurrence thereof.

15. ASSIGNMENT

While not in default of any provision of this Lease, Lessee may assign rights held hereunder upon the payment to County of an assignment fee of \$500 and the prior written approval of County, which approval shall not be unreasonably withheld. Any sale or other transfer, including transfer by consolidation, merger or reorganization, of twenty-five percent or more of the voting stock or membership interests of Lessee in a single transaction or in multiple related transactions, if Lessee is a corporation or limited liability company, or any sale or other transfer of twenty-five percent or more of the partnership interest in Lessee in a single transaction or in multiple related transactions, if Lessee is a partnership, shall be deemed to be an assignment for purposes of this Lease.

16. (RESERVED FOR ANY FAA IMPOSED STANDARDS AND CONDITIONS)

17. DEFAULT BY LESSEE AND COUNTY'S REMEDIES

A. LESSEE IS IN MATERIAL BREACH OF THIS LEASE UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

- (1) The failure of Lessee to pay when due any rent payable pursuant to this Lease, if such failure remains unremedied for a period of 10 days after written notice thereof from County;
- (2) Lessee's default in complying with or performing any covenant or obligation under this Lease or the PPA, other than its obligation to timely pay rent hereunder, and the failure of Lessee to remedy such default for a period of 21 days after receipt of written demand from County to remedy the same. Said demand is not effective unless it specifically describes the default that is the subject of the demand;
- (3) The commencement by or against Lessee, as a debtor, of a proceeding under the Bankruptcy Code or any other bankruptcy, arrangement, reorganization, receivership, custodianship or similar proceeding under any federal, state or foreign law, and such proceeding is not dismissed with prejudice within 60 days of such filing;
- (4) Lessee makes a general assignment for the benefit of creditors or applies for, consents to, or acquiesces in the appointment of a trustee, receiver, or other custodian for Lessee or the property of Lessee or any part thereof, or in the absence of such application, consent, or acquiescence, a trustee, receiver or other custodian is appointed for Lessee or the property of Lessee or any part thereof, and such appointment is not discharged within 60 days;
- (5) The commencement of an action against Lessee to foreclose any lien or mortgage or other rights of Lessee in or to the Premises; or
- (6) The abandonment by Lessee of the Premises, except in connection with its surrender thereof to an approved assignee.

B. COUNTY'S REMEDIES UPON MATERIAL BREACH BY LESSEE

Upon material breach by Lessee as set forth above County may give Lessee written notice of its intention to terminate this Lease, which termination shall be effective on the date set forth in the notice. Upon such termination, all rights conveyed to Lessee under this Lease, including the rights of any sublessee, to possession and use of the Premises shall cease. Any termination under this section must be expressly noticed as set forth herein, and neither notice to pay rent or to deliver up possession of the Premises given pursuant to law, nor any proceeding instituted by County, nor the failure by Lessee for any period of time to pay any of the rent herein reserved, shall of itself operate to terminate this Lease. Lessee shall by the effective date of Lease termination, as set forth in the foregoing notice of termination, remove from the Premises all property of any nature not thereon prior to the effective date of this Lease. All property remaining on the Premises after termination of this Lease shall be deemed abandoned by Lessee and subject to removal by County at Lessee's expense, or by payment under the performance bond required under the terms of this Lease.

18. DEFAULT BY COUNTY AND LESSEE'S REMEDIES

A. COUNTY IS IN MATERIAL BREACH OF THIS LEASE UPON THE OCCURRENCE OF ANY OF THE FOLLOWING:

(1) Lessee is for a period of 30 consecutive days unable to use the Premises because of any law, rule, regulation or other act or failure to act on the part of any governmental authority having jurisdiction over the Premises or the Airport, provided the inability to use the Premises is not due to a failure to comply with the terms and conditions of this Lease or other act or omission of Lessee, its representatives, successors and assigns, and is within the control of County;

(2) County's default in the observation or performance of any covenant or obligation hereunder and the failure of County to remedy such default for a period of 21 days after receipt of written demand from Lessee to remedy the same. Said demand is not effective unless it specifically describes the default that is the subject of the demand.

B. LESSEE'S REMEDIES UPON MATERIAL BREACH BY COUNTY

Upon material breach by County as set forth above, Lessee may give County written notice of its intention to terminate this Lease, which termination shall be effective on the date set forth in the notice. Provided, however, that the notice of intent to terminate shall be of no force or effect if County shall have remedied the breach specified in the notice prior to County's actual receipt of said notice.

19. REMEDIES CUMULATIVE, NO IMPLIED WAIVER

All rights and remedies of County and Lessee contained in this Lease, or based in law or equity shall be construed to be cumulative, and no such right or remedy shall be exclusive of any other unless so stated herein. No waiver of any default or breach of this Lease shall be implied from any acceptance by County of any rent or other payments due hereunder or any omission by County to take any action on account of such default or breach if such default or breach persists or is repeated, and no express waiver shall be effective in a manner other than as expressly specified in said waiver. The consent or approval by County to or of any act by Lessee requiring County's consent or approval shall not be deemed to waive or render unnecessary County's consent or approval to or of any subsequent similar acts by Lessee. No waiver by Lessee of County's default or breach of any of its obligations hereunder shall be construed to be or act as a waiver by Lessee of any subsequent default or breach by County.

20. OWNERSHIP OF RENEWABLE ENERGY CREDITS

Any renewable energy credits, renewable energy certificates, renewable resource credits, carbon credits, and any other similar credits or certificates based on the generation of electricity produced by the solar photovoltaic array located on the Premises and the delivery to and use of such electricity by County shall be the exclusive property of County.

21. ENTRY UPON PREMISES

County may enter upon the Premises at any reasonable time, for any purpose necessary, incidental to or connected with the exercise of its governmental functions, or to inspect the Premises for compliance with all applicable laws, rules, regulations and covenants hereunder or to prevent waste, loss or destruction.

22. SUCCESSORS AND ASSIGNS BOUND

All the terms, covenants and conditions of this Lease shall extend to and bind the successors and assigns of the parties hereto.

23. SEVERABILITY

If any term or condition of this Lease shall be deemed to be invalid or unenforceable, all other terms and conditions shall remain in full force and effect.

24. LAWS, VENUE, AMENDMENT, ENTIRE AGREEMENT

This Lease shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin with venue of any dispute in Dane County Circuit Court. This Lease shall not be construed more strictly as to either party on the basis of which party is more responsible for its preparation. The Airport Director is authorized to approve and execute on behalf of County any other instrument or modification of this Lease necessary to implement the provisions herein. All terms and conditions agreed upon by the undersigned parties with respect to the subject matter of this Lease are contained herein, and each party specifically acknowledges by its execution of this Lease that it has not relied on any verbal promise, representation or warranty made by the other party, its employees or agents with respect to this Lease or any of the matters and rights addressed herein.

25. NOTICES

Except as provided below with respect to emergencies, notice to either party shall be sufficiently served if it is in writing and is physically delivered or delivered by certified mail to the party at its address as set forth below, or to such other address as may be provided by the party in writing from time to time.

County: Airport Director
 Dane County Regional Airport
 4000 International Lane
 Madison, WI 53704-3120

Lessee: _____

Lessee shall provide to County, in writing, the name, address and telephone number(s) of a representative authorized to act on behalf of Lessee with respect to performance under this Lease that County can contact 24 hours per day, seven days a week, in the event of exigent circumstances involving the lease.

26. TIME IS OF THE ESSENCE

Time is of the essence in performance under this Lease.

27. FORCE MAJEURE

Force Majeure shall mean occurrences caused by or resulting from severe weather conditions, war, insurrection, riot, civil commotion, fire or other casualty, strikes, lockouts, inability to obtain labor or materials, or other causes beyond a party's reasonable control. Neither party shall have any liability whatsoever to the other party on account of any event of Force Majeure. If this Lease specifies a time period for performance of an obligation of either party, that time period shall be extended by the period of any delay caused by any event of Force Majeure. However, an event of Force Majeure shall not in any way affect Lessee's obligation to pay rent or other moneys due, nor shall it extend the term of this Lease.

28. PROPERTY RIGHTS RESERVED

All rights granted Lessee under this Lease are subject and subordinate to the terms and conditions of the instruments under which County has acquired and improved the Airport.

29. COUNTERPARTS AND COPIES

The parties may evidence their agreement to be bound by the terms of this Lease upon one or several counterparts of this instrument, which together shall constitute a single instrument. A photocopy, facsimile, or electronic copy of this Lease shall have the same effect for all purposes as an original.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF and with the intent to be bound hereby, the parties have below executed this Lease on the dates indicated.

FOR (LESSEE):

By: _____ Date: _____

FOR DANE COUNTY:

By: _____ Date: _____
Joe Parisi
County Executive

By: _____ Date: _____
Scott McDonell
County Clerk