# MUSCATINE CITY COUNCIL
# IN-DEPTH MEETING
# Thursday, October 10, 2024

Brad Bark, Mayor

| | |
|---|---|
| Don Lampe, 1st Ward | Angie Lewis, At Large |
| Jeff Osborne, 2nd Ward | Matt Conard, At Large |
| Peggy Gordon, 3rd Ward | Tony Kies, Interim City Administrator |
| Nadine Brockert, 4th Ward | Cinda Hilger, Deputy City Clerk |
| John Jindrich, 5th Ward | Brent Hinders, City Attorney |

City Council meetings are held at 6:00 pm on the 1st and 3rd Thursday of each month, In-depth sessions on the 2nd Thursday of each month. All meetings are available for review on the City of Muscatine YouTube page.

https://us06web.zoom.us/j/82551691259?pwd=NERYdEJOan

**AGENDA**

1. **CALL TO ORDER**

2. **ROLL CALL**

3. **PLEDGE OF ALLEGIANCE**

4. **COUNCIL DISCUSSION ITEMS**
   A. Presentation on Proposed Medical Facility at 200th Street and Mulberry Avenue and Request for Financial Assistance
   B. Request for a Consensus from City Council to Proceed with a Lease with Muscatine Power & Water for a Portion of the Muscatine Municipal Airport Property to Develop a Solar Generating Facility

C. Police Department is seeking City Council guidance in formulating a response to DOT's rejection to the Automated Traffic Enforcement (ATE) applications submitted by the City of Muscatine.

D. Update on Expenditures and Obligations of the City's American Rescue Plan Act (ARPA) Funds

**5. MAYOR AND COUNCIL REPORTS**

**6. ADJOURNMENT**

# City of Muscatine

ITEM NUMBER

DATE: 10/10/2024

## AGENDA ITEM SUMMARY

**STAFF**

Andrew Fangman, Assistant Community Development Director

**SUBJECT**

Presentation on Proposed Medical Facility at 200th Street and Mulberry Avenue and Request for Financial Assistance

**EXECUTIVE SUMMARY**

ORA Orthopedics is proposing to construct a new 15,000 square foot medical clinic at the southwest corner of Mulberry Avenue and 200th Street. They will present a request for a development agreement to receive tax increment financing assistance for public infrastructure and utility extensions needed for the clinic.

**STAFF RECOMMENDATION**

Staff recommends Council agree to support this project and  direct staff to negotiate a development agreement, with the terms outlined in this memo, for future Council approval.

**BACKGROUND/DISCUSSION**

ORA Orthopedics will present a proposal for their plan to build a 15,000 square foot medical clinic on a 5.6-acre lot at the southwest corner of Mulberry Avenue and 200th Street. They anticipate a building investment of approximately $3.5 million, with an additional $1.2 million for furniture, fixtures, and equipment. The project is expected to create 22 new healthcare-related jobs. A concept plan provided by ORA is attached.

While the site is within city limits, it lacks sanitary sewer service. Extending the sewer line under the bypass from approximately the Mulberry Avenue intersection is necessary. Additionally, significant improvements to the gravel portion of 200th Street are required to accommodate the proposed development.

ORA proposes to build and dedicate to the City the necessary public infrastructure improvements. The estimated cost for this work, including design, construction, and financing, is $794,000. ORA is proposing a development agreement that would reimburse them 80% of the increased property tax revenue generated over 10 years, with a total maximum rebate of $800,000.

If the City Council supports the project, staff and legal counsel will negotiate a development agreement with the developer and update the City's urban renewal plan to include this development.

**CITY FINANCIAL IMPACT**

This project will have a positive impact on property tax revenue received by the City.

**ATTACHMENTS**

1. ORA Letter of TIF Request
2. ORA Concept Plan

# MEMO

July 25, 2024

To: Andrew Fangman

From: Ken Brockman, ORA Orthopedics
Kevin Koellner, Focus RE Development

RE: Proposed Development Agreement for a New Medical Facility
200th Street and Mulberry Ave, Muscatine

Thank you for your assistance and allowing us to perform our due diligence on this site for a potential new ORA Orthopedics' clinic.

The project we are considering is a single-story 15,000 SF building that would have approximately 90 parking stalls for staff and patients. The 5.6-acre site allows for practice and service expansion. Per the attached preliminary site plan – we are requesting site access from Mulberry Avenue and 200th Street. We project a building investment of $3.5 million on the site along with an additional $1.2 million for furniture, fixtures and equipment.

We have estimated the cost of public infrastructure and utility extensions at approximately $571,000 plus some additional civil engineering cost. Utilizing a TIF rebate, via a Development Agreement with the City of Muscatine, the debt retirement of the infrastructure expenses, engineering, and interest cost yields a total cost of $794,000. The interest cost was calculated at a 6.5% interest rate over the 10-year term, totaling $223,000. As such, we propose a Minimum Assessment Agreement of $3 million with a 10-year duration beginning on presentation of the Certificate of Occupancy with an 80% reimbursement rate and a cap on funds distributed at $800,000.

Once completed, we expect this project to create 22 new healthcare-related jobs in the Muscatine community.

We respectfully request that you put this matter on the agenda for discussion at your August City Council meeting. If this is acceptable, please let us know the date and time you would like us to attend and any other additional information we should bring with us for that discussion.


hcp architects



BBL Medical Facilities®

# CONCEPTUAL SITE PLAN

ORA ORTHOPEDICS
5.56 ACRE LOT - MUSCATINE,IOWA

Not to scale
7-2-2024

# City of Muscatine

ITEM NUMBER 2024-942

## IN-DEPTH ITEM - CITY COUNCIL

DATE: 10/10/2024

**STAFF**

Andrew Fangman, Assistant Community Development Director

**SUBJECT FOR DISCUSSION**

Request for a Consensus from City Council to Proceed with a Lease with Muscatine Power & Water for a Portion of the Muscatine Municipal Airport Property to Develop a Solar Generating Facility

**EXECUTIVE SUMMARY**

The City has been approached by Muscatine Power and Water about leasing a 155-acre portion of the Muscatine Municipal Airport property for the development of a solar generation facility. This portion of the airport property is currently not used for airport operations and is leased out for agricultural purposes. The current lease is a year-to-year lease that is mutually renewable by either the City and the current tenant. Muscatine Power and Water is offering to pay the City an annual rent of $800 per acre per year, with an annual escalator of 2.5% for the term of the proposed 25-year lease.

**GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED**

Is there consensus among the Council that such a lease on these terms should be pursued? If so, a lease agreement and resolution approving an agreed upon lease will be brought before the City Council for approval at a future meeting.

**BACKGROUND/DISCUSSION**

The proposed solar generating facility would be located within the circled portion of the airport property as shown on the map below. This area is not used for active airport purposes, but rather is part of the airport property in order to prevent land use incompatible with airport operations. Solar generating facilities can be constructed in a manner that is compatible with being located at an airport. The Airport Layout Plan does not call for the development of any airport facilities or structures in this area.

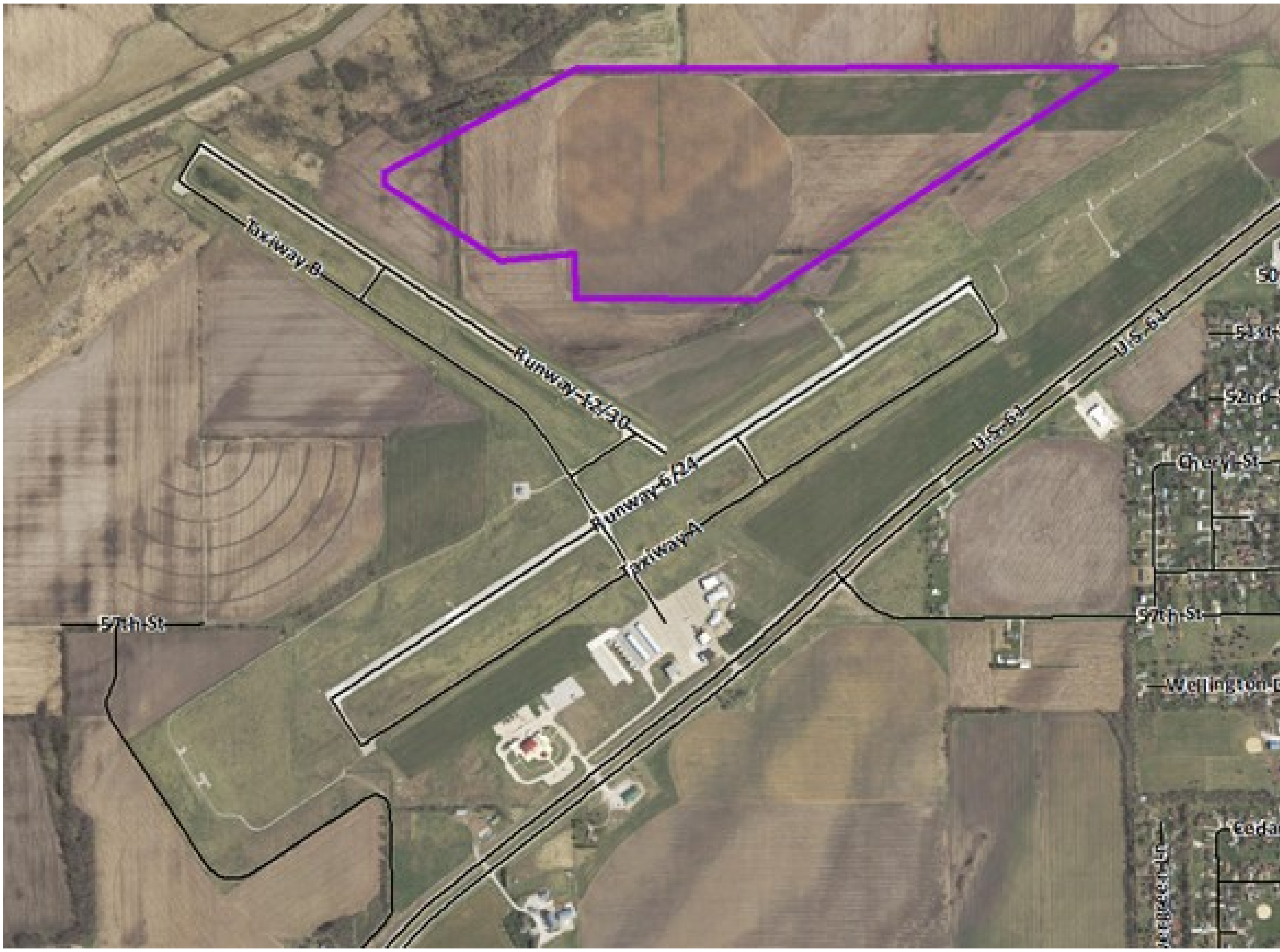
For many years, this area has been leased out for growing crops. The revenue from this lease helps subsidize airport operations. The current lease generates $34,000 annually.

While the lease terms are still being finalized, it will require that any constructed solar generating facility not interfere with airport operations and would at all times comply with any applicable Federal Aviation Administration regulations that are now or hereafter in effect. MPW will be responsible for all permitting, studies, design, or any other action necessary to maintain compatibility.

The proposed lease would establish a five-year period for MPW to design, permit, and construct the proposed solar facility. During this development period, MPW would be paying the City $40 per acre per year. Until construction is actually commenced, the City would be free to continue the agricultural lease on the subject property. At the start of construction, the lease rate would rise to $400 per acre per year. Once the facility begins operation, the 25-year lease would commence at an initial rate of $800 per acre per year. This rate would automatically escalate by 2.5% annually for the remainder of the lease agreement.

At the end of the 25-year term, the lease would be renewable for three consecutive periods of 5 years, for a total of up to 15 additional consecutive years. Upon expiration or termination of the lease, it would be the responsibility of MPW to remove the installed solar facilities.

The Airport Operation was established as an enterprise fund to separate its revenues and expenditures. This was done to generate additional income for the facility. Since airport revenues often fall short of operating costs, an annual General Fund subsidy of approximately $20,000 to $35,000 is typically needed to balance the budget. The proposed lease would bring in an additional $90,000 in the first year of the solar generation facilities operations than the current agricultural lease does, eliminating the need for the General Fund subsidy.




## ATTACHMENTS

1. Dradt Memorandom of City Lease
2. Draft City Solar Lease 9-2024

**Prepared by and Return to:** **Brandy Olson**
**Muscatine Power and Water**
**3205 Cedar St.**
**Muscatine, IA 52761**
**563-263-2631**

**MEMORANDUM OF**
**SOLAR ENERGY FACILITY LEASE**
**AND EASEMENT AGREEMENT**

This Memorandum of Solar Energy Facility Lease and Easement Agreement ("Memorandum") is executed as of the date last signed by the parties hereto, by and between the City of Muscatine, Iowa (collectively, the "Landlord"), and Muscatine Power & Water ("Tenant").

R E C I T A L S:

A. Landlord owns the land legally described on Exhibit A-1, attached hereto (the "Land").

B. Landlord and Tenant have entered into a Solar Energy Facility Lease and Easement Agreement having an effective date of _________________ , 20__ (the "Lease"), pursuant to which Landlord has leased to Tenant and granted Tenant certain other rights in, over, on and to that portion of the Land generally depicted on Exhibit A-2, attached hereto (the "Premises"). Tenant may unilaterally amend this Memorandum to delineate the legal description of the Premises upon obtaining a legal description thereof.

C. Landlord and Tenant now wish to memorialize of record the existence of the Lease and the leasehold, easement and other rights and interests granted by Landlord to Tenant pursuant to the Lease.

The parties hereby agree and acknowledge as follows:

**1.** **Lease Rights**. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the purpose of constructing, installing, operating, and maintaining thereon a solar energy conversion system, including but not limited to any Solar Facilities on the Premises.

**2.** **Exclusivity**. Tenant has the exclusive right to convert all of the solar resources from the Premises, to use the Premises for the conversion of solar energy into electrical energy and collecting and transmitting the electrical energy so converted, and to undertake all development, construction, monitoring, installation, maintenance and operating activities related, incidental or in any way connected thereto, whether accomplished by Tenant or a third party authorized by Tenant, all as may be deemed necessary or desirable by Tenant.

**3.** **Easement Rights**. Lesser grants to Tenant an easement over, across, on and through the Land for the conversion of solar power to electric energy. Landlord shall not interfere with and shall not allow any other party to interfere with the unobstructed access of the Solar Facilities to the light of the sun. Any obstruction to insolation for conversion of solar power to electric energy from the Land is prohibited. Landlord may not place or plant any trees, or build or erect structures or improvements on the Land after the date of the Lease which may, in Tenant's sole judgment, impede or interfere with Tenant's ability to convert solar power to electric energy. Tenant shall have the right to trim and/or remove trees and other vegetation from the Land to the extent reasonably necessary to obtain and preserve full exposure of the Solar Facilities to the sun. The solar easement granted hereunder extends across the Land, 360 degrees horizontally from the Solar Facilities and vertically through all space located above the surface of the Land, that is, 180 degrees or such greater angle as may be necessary to extend on and along a line drawn along the surface of the Land from each point along the exterior boundary of the Land through the Land, to a point on the opposite side of the Land. Landlord grants to Tenant an easement over, across, on and through the Land for ingress and egress to the Solar Facilities, including the right to improve existing roads and lanes or to build new roads, the location and dimension of which on the Premises shall be determined by Tenant in Tenant's sole discretion, and the location and dimensions of which within the Land but outside of the Premises shall be determined by Tenant, but subject to Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed. Landlord grants to Tenant an easement over, across, on and through the Land for the placement and operation of transmission, distribution and/or communication facilities over and across the Land, the location and dimension of which on the Premises shall be determined by Tenant in Tenant's sole discretion, and the location and dimensions of which within the Land but outside of the Premises shall be determined by Tenant, but subject to Landlord's approval, such approval not to be unreasonably withheld, conditioned or delayed.

**4.** **Term**. The term of the Lease and Tenant's rights therein shall be for a period of twenty-five (25) years after the Commercial Operation Date (as defined in the Lease). Tenant has the option to extend the term for three Renewal Periods of five (5) years, with the Renewal Period commencing upon expiration of the Operating Period.

**5.** **Right of First Refusal.** Landlord grants to Tenant a right of first refusal (the "Refusal Right") to purchase Landlord's Interest on the terms and conditions set forth in the Lease. Any purchase of all or part of the Landlord's Interest shall be subject to Tenant's right of first refusal as described in the Lease. As used herein "Landlord's Interest" shall mean (i) Landlord's fee interest in the Premises or such larger tract which includes the Premises; and (ii) if Landlord is a corporation, partnership, limited liability company, trust or other entity, any ownership or beneficial interest in such corporation, partnership, limited liability company, trust or other entity representing the right to receive 50% or more of the profits of such entity.

**6.** **Miscellaneous**. This Memorandum shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns. Except as otherwise indicated herein, capitalized terms used in this Memorandum are as defined in the Lease. In the event of any conflict between the terms and conditions of this Memorandum and the Lease, the terms and conditions of the Lease shall control. This Memorandum may be executed in two or more counterparts and by the parties on separate counterparts, all of which shall be considered one and the same Memorandum and each of which shall be deemed an original.

[signatures on next page]

**Dated:______________**

**LANDLORD**
**City of Muscatine, Iowa**

**_______________________________**
**Brad Bark, Mayor**

**TENANT**
**Muscatine Power & Water**

**__________________________________**
**Gage Huston, General Manager**

**LANDLORD:**

STATE OF IOWA, COUNTY OF MUSCATINE

This record was acknowledged before this ________ day of ____________________, 2024, by Brad Bark, Mayor, City of Muscatine, Iowa.

_________________________
Signature of Notary Public

**TENANT:**

STATE OF IOWA, COUNTY OF MUSCATINE

This record was acknowledged before this ________ day of ____________________, 2024, by Gage Huston, General Manager for Muscatine Power and Water.

__________________________
Signature of Notary Public

**MEMORANDUM OF**
**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Exhibit A-1**

**Legal Description of the Land**

Real property in Muscatine County, State of Iowa, legally described as:

In lieu of an exhaustive legal description of each parcel, the parties agree that the Land is a portion of ground located in Section 24 Township 76 Range 3 West and  Section 19, Township 76 North Range 2 West in Muscatine County, IA composed of approximately 155.4 acres; further defined as the following Muscatine County, IA parcel IDs:

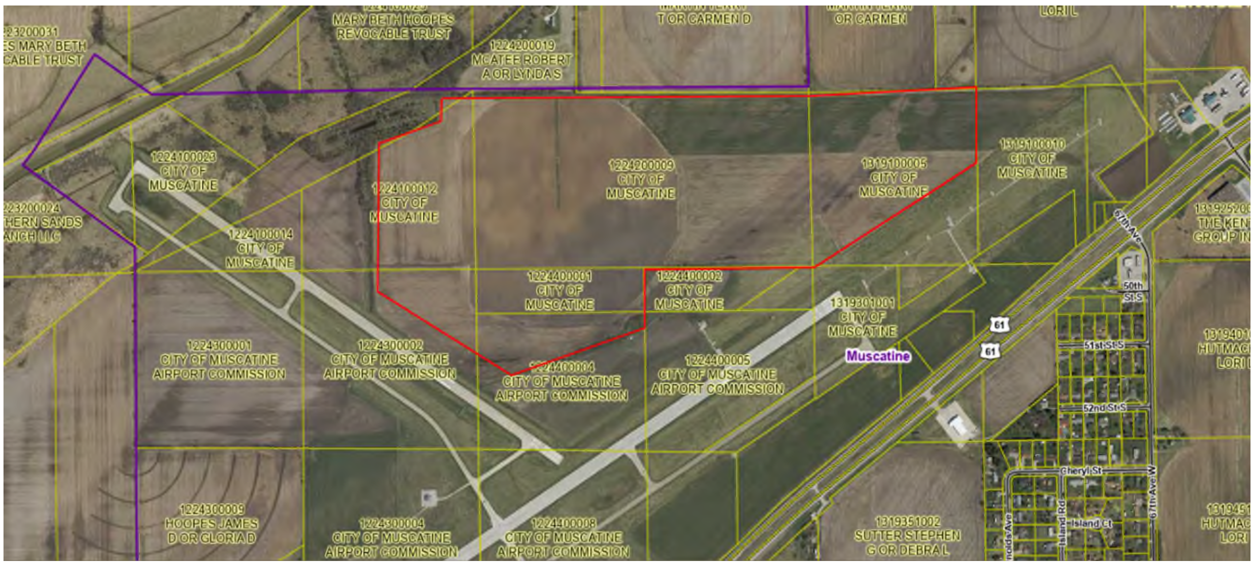
1224200009
1224400001
East 767 ft of 1224100012
Northeast 767 ft of 1224300002
North half 1224400004
Northwest 28 acres of 1319100005

A survey and full legal description will be completed at a later date.

**MEMORANDUM OF**
**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Exhibit A-2**

**General Depiction of the Premises**



**SOLAR ENERGY FACILITY LEASE**
**AND EASEMENT AGREEMENT**

This Solar Energy Facility Lease and Easement Agreement ("Agreement") is dated _______________, 2024 (the "Effective Date") and is between the City of Muscatine, Iowa ("Landlord") and Muscatine Power & Water ("Tenant").

**PART I - SUMMARY OF LEASE TERMS AND DEFINITIONS**

As used in this Agreement, the following terms have the following meanings:

| | |
|---|---|
| Land: | The land owned by Landlord, legally described on <u>Exhibit A-1</u>, and generally depicted on the Site Plan attached as <u>Exhibit B</u>. |
| Premises: | A portion of the Land, anticipated to consist of approximately 140 acres, and generally depicted on the Site Plan attached as <u>Exhibit B</u>. The precise legal description and depiction of the Premises (legal description to be added as <u>Exhibit A-2</u>) will automatically be deemed added to this Agreement upon written notice thereof from Tenant to Landlord, which notice shall include a site plan or survey (the "<u>Survey</u>") showing the final useable acreage volume and location to be occupied by the Solar Facilities. |
| Solar Facilities: | Any and all equipment or other personal property used or useful in connection with the operation of a solar energy conversion system, including but not limited to solar energy conversion panels, supporting structures, frames, pads, footings, electrical transformers, fixtures, underground and overhead electric distribution, collection and transmission lines, communication lines, substations and substation equipment, switchgear, energy storage facilities, power generation facilities, access roads, interconnection facilities and related facilities and equipment. |
| Commercial Operation Date: | The date Tenant begins to produce electric power at the Solar Facilities on a regular basis, not including test power produced in connection with the preliminary testing and final completion of the Solar Facilities. |
| Development Period: | The period beginning on the Effective Date and ending upon commencement of the Operating Period, as described in Section 2 of this Agreement. |
| Development Period Termination Date: | June 30, 2029. |
| Operating Period: | The period beginning on the earlier of (i) the Development Period Termination Date or (ii) the Commercial Operation Date and continuing for a period of twenty-five (25) years thereafter, as described in Section 2 of this Agreement. |
| Renewal Periods: | Three consecutive periods of five (5) years beginning on the expiration of the Operating Period and continuing for a combined period of fifteen (15) years thereafter, as described in Section 2 of this Agreement. |

**SOLAR ENERGY FACILITY LEASE**
**AND EASEMENT AGREEMENT**

**PART II - GENERAL TERMS AND CONDITIONS**

**1. Lease and Easement Rights.**

1.1 Lease of Premises. Landlord leases to Tenant and Tenant leases from Landlord the Premises for the purpose of constructing, installing, operating, enlarging, upgrading, replacing and maintaining thereon a solar energy conversion system, including but not limited to any Solar Facilities on the Premises.

1.2 Access Easement. Landlord grants to Tenant for the Term of this Lease an easement over, across, on and through the Land for ingress and egress to the Solar Facilities, by means of any existing roads or lanes, or by such route or routes as Tenant may construct from time to time. Any road constructed by the Tenant will be included in the Premises. The easement rights granted herein shall include the right to improve existing roads and lanes or to build new roads. The location and dimension of such access roads within the Premises shall be determined by Tenant in Tenant's sole discretion, as long as said access roads are in compliance with Airport and Federal Aviation Administration ("FAA") rules and requirements~~.~~

**Commented [KF1]:** Tenant's sole discretion for road placement and ingress and egress, needs to be in compliance with airport requirements and FAA. Perhaps a point person should be named for MPW Solar Project and the airport Management company to meet and make sure there are no issues before roads are just built.

Or require approval from city prior to any physical changes or encroachments outside of the premises area.

These are the same comments I had on the first draft. Proposed some basic language updates to help hopefully cover this potential issue.

1.3 Transmission Easement. Landlord hereby grants to Tenant for the Term of this Lease an easement over, across, on and through the Premises for the placement and operation of transmission, distribution, and communication equipment (including but not limited to underground or overhead transmission, collection, distribution and communication lines, transformers, substations and other equipment required for the transmission, collection or distribution of electric power and communications to or from the Solar Facilities), over and across the Premises. The location and dimension of such transmission, distribution or communication facilities within the Premises shall be determined by Tenant in Tenant's sole discretion, as long as said access roads are in compliance with Airport and FAA rules and regulations~~.~~

**Commented [KF2]:** Same Comments as last time and above. Added basic language to hopefully address concern.

1.4 Solar Easement. Landlord hereby grants to Tenant for the Term of this Lease an easement over the Land for the conversion of solar power to electric energy. Landlord shall not interfere with and shall not allow any other party to interfere with the unobstructed access of the Solar Facilities to the light of the sun. Any obstruction to insolation for conversion of solar power to electric energy is prohibited throughout the entire area of the Land. Landlord may not place or plant any trees or build or erect structures or improvements on the Land after the date of this Agreement which may, in Tenant's sole judgment, impede or interfere with Tenant's ability to convert solar power to electric energy. Tenant shall have the right to trim and remove trees and other vegetation from the Land to the extent reasonably necessary to obtain and preserve full exposure of the Solar Facilities to the sun. The solar easement granted hereunder shall burden the Land and benefit the Premises. The solar easement granted hereunder extends across the Land, 360 degrees horizontally from the Solar Facilities and vertically through all space located above the surface of the Land, that is, 180 degrees or such greater angle as may be necessary to extend on and along a line drawn along the surface of the Land from each point along the exterior boundary of the Land through the Land, to a point on the opposite side of the Land. Tenant notes and accepts that the Land is an active airport, therefore, aircraft may, from time to time, when airborne, interfere with or impede access of the Solar Facilities to the light of the sun.

1.5 Development Activities. Tenant shall have the exclusive right to use the Premises for the conversion of solar energy into electrical energy and collecting and transmitting the electrical energy so converted, and to undertake all development activities related thereto, together with any and all activities, including but not limited to: (a) determining the feasibility of solar energy conversion on the Premises, including studies of insolation and other meteorological data, constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating weather monitoring equipment, fences and buildings to properly operate, house, protect and otherwise facilitate Tenant's weather monitoring activities; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, Solar Facilities, as well as construction lay-down and staging areas in connection with the same; and (c) undertaking any other activities, whether accomplished by Tenant or a third party authorized by Tenant, that Tenant reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing. Notwithstanding the foregoing, the Tenant agrees to construct the solar energy facility and all support facilities in compliance with applicable building codes, laws, and regulations. Furthermore, the Tenant will work closely with the Landlord during the design phase to ensure compliance with Federal Aviation Administration construction regulations. Tenant agrees to provide Landlord with one (1) copy of preliminary design drawings at the commencement of design. Tenant will also provide Landlord with one (1) copy of construction drawings and specifications when they become available, prior to the commencement of construction. Tenant will provide Landlord with one (1) copy of the "as constructed" plans and specifications within one hundred twenty (120) days after the date on which the Tenant has certified completion and acceptance. Grading, excavation, and construction shall be in accordance with the site drainage and flood control plan approved by Landlord. Any future change in the site drainage and flood control plan shall not be made except upon prior approval of Landlord.

1.6 Landlord's Retained Rights. Throughout the Term, Landlord shall have the right to use any portion of the Land not then occupied by Solar Facilities to the extent Landlord's use is not inconsistent with and does not hinder or impede Tenant's use of the Premises in accordance with this Agreement, as determined by Tenant in its sole discretion. Specifically, the Landlord reserves unto itself, its successors and assigns, for the use and benefits of the public, a right of flight for passage of aircraft in the airspace above the surface of the Premises as improved herein described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter in use, for navigation of or flight in the said airspace, and for use of said airspace for landing or taking off from or operating on the Airport. Throughout the Term, Landlord's Airport Director or other duly authorized representatives or agents of the Landlord, after advance notice, shall have access at all reasonable times to the Premises for the purpose of examining or inspecting same. Throughout the Term, the Landlord may further develop or improve the landing area of the Airport located adjacent to the Premises without interference or hindrance from the Tenant, provided the same does not unreasonably interfere with Tenant's use of the Premises and Tenant is given prior notice and an opportunity to be heard by the Landlord before the Landlord proceeds.

**Commented [KF3]:** Concern about vagueness as to hinder or impeded Tenant's use of premises. Additionally again giving tenant sole discretion to decide that factor is slightly concerning especially given airport proximity, and small chance relationship between parties could sour.

1.7 Farming Tenants. If all or any part of the Land has been or will be leased to a third party for agricultural cultivation purposes during the Development Period, then (1) any rents paid under such leases during the Development Period shall belong to Landlord and (2) all such leases shall be terminated by Landlord and all tenants shall vacate the Land on or before commencement of the Operating Period, unless Tenant agrees in writing to a different arrangement. Landlord shall make such arrangements with the third party during the Development Period as are necessary for Tenant to enter upon the Land as often as Tenant deems necessary to conduct all tests and inspections necessary in Tenant's opinion to further the development of the Land and to exercise all of Tenant's rights set forth in this Agreement. Tenant agrees to use reasonable efforts to minimize the impact on the crops by Tenant's activities. Crop damage caused by Tenant's activities during the Development Period, either in connection with Tenant's due diligence inspection and testing or as the result of any development or construction activities during the growing season, prior to harvest, shall be compensated to the Landlord by Tenant at the rate of $400 per acre, such amount to compensate Landlord for loss of agricultural rental value and to compensate the farming tenant for loss of crop value. Landlord shall be responsible for settling any claims from the farming tenant for such damage, and upon Tenant tendering payment to Landlord for the amount specified herein,

**Commented [KF4]:** Probably will need to advise farming tenants of this as well. Not sure what the lease agreement is with them but need to ensure we are following the requirements of that contract too.

Landlord hereby releases and indemnifies Tenant for all farming tenant claims. On and after commencement of the Operating Period, Tenant shall have no responsibility for any loss of crops caused by Tenant's activities.

1.8 Lay-Down Areas. Landlord hereby grants and conveys to Tenant a limited, exclusive right and license solely during the Development Period, and the first 180 days thereafter during the Operating Period, on, over and across the area or areas on the Land adjacent to the Premises designated by Tenant for the purpose of lay-down area(s), including for the placement, location, and maintenance of equipment and materials in support of the uses permitted pursuant to this Lease, as long as said lay-down area(s) are compliant with Airport and FAA rules and regulations.~~.~~

Commented [KF5]: Added in language to ensure protection of Airport.

**2. Term.**

2.1 Development Period.

(a) The Development Period shall commence on the Effective Date of this Agreement and shall continue until the earlier of (i) commencement of the Operating Period pursuant to Section 2.2, or (ii) the Development Period Termination Date.

(b) During the Development Period, Tenant shall have the right to access the Land to perform such studies, investigations and tests as Tenant deems necessary or desirable to evaluate the potential for development of the Solar Facilities on the Land, and the right to construct and install the Solar Facilities, provided that, upon the Commercial Operation Date, the Development Period shall terminate and the Operating Period shall commence, as provided in Section 2.2 of this Agreement and provided that any studies, investigations or tests will not interfere with the operation of the Airport and are in compliance with all Airport and FAA rules and regulations.~~.~~

(c) Tenant shall have the right, at any time during the Development Period, to terminate this Agreement by delivering written notice of termination to Landlord. If the Commercial Operation Date has not yet occurred prior to the Development Period Termination Date, then Tenant shall give notice to Landlord of waiver of Tenant's right to terminate this Agreement pursuant to this Section 2.1(c) on or before the Development Period Termination Date, provided, however, if such notice shall not have been given by Tenant to Landlord, then Tenant shall not be deemed to have waived its right to terminate hereunder and thereafter this Agreement may terminate upon written notice from either party; provided that if Landlord delivers the notice of termination, Tenant shall have ten (10) business days after receipt of such notice to cancel such termination by delivering to Landlord notice of waiver of Tenant's right to terminate this Agreement pursuant to this Section 2.1(c). Upon any termination of this Agreement pursuant to this Section 2.1(c), this Agreement shall terminate and neither party shall have any further rights or obligations to the other hereunder, provided that upon such termination, Tenant shall remove any Solar Facilities installed and repair any damage to such portion of the Land caused by Tenant during the Development Period.

2.2 Operating Period. Provided this Agreement has not been terminated as provided in Section 2.1(c), the Operating Period shall commence upon the earlier of (i) the Development Period Termination Date or (ii) if earlier, the Commercial Operation Date, and shall extend for a period of twenty-five (25) Lease Years thereafter. As used herein, the term "Lease Year" shall mean the 12-month period commencing on the first day of the Operating Period and each successive 12-month period thereafter.

2.3 Renewal Period. Provided this Agreement is still in effect, Landlord hereby grants to Tenant, and to Tenant's successors and assigns, the right and option to renew this Agreement for three (3) successive periods of five (5) Lease Years each, commencing upon expiration of the Operating Period

("Renewal Period"), and upon the same terms, covenants, and conditions that exist for the Operating Period, except for the Operating Period Rent and any other terms or conditions which, either expressly or by their nature, apply only to the Operating Period. If Tenant elects to exercise the option to renew, Tenant shall deliver written notice to Landlord on or before the date that is one hundred eighty (180) days prior to the last day of the Operating Period, provided, however, that if Tenant is entitled to exercise an option to renew but fails to give Landlord written notice of such exercise at least one hundred eighty (180) days prior to the last day of the Operating Period, then Landlord agrees to give Tenant written notice of such failure (the "Reminder Notice"), and Tenant shall have the right to exercise such option to renew by written notice to Landlord given within ten (10) business days after Landlord's Reminder Notice. Said renewal option may be transferred to any party to whom Tenant's interest in this Lease is transferred.

**Commented [KF6]:** This is slightly concerning. Could transfer to anyone without permission of City and could leave City with a tenant that will not work with them like MPW does.

2.4 Entire Term. The Development Period, together with the Operating Period and the Renewal Period (if exercised by Tenant), are referred to herein as the "Term." The rights and interests granted pursuant to this Agreement extend for the Term.

**3. Rent, Taxes and Utilities.**

3.1 Development Period Payment. During the Development Period, Tenant shall pay to Landlord, as rent, the total amount(s) shown on Schedule 1, attached hereto.

3.2 Operating Period Base Rent. During the Operating Period, Tenant shall pay to Landlord an annual rental payment as shown on Schedule 1, attached hereto (the "Operating Rent"). Annual Operating Rent shall be payable in annual payments within sixty (60) days after the end of each Lease Year.

3.3 Renewal Period Base Rent. During the Renewal Period, Tenant shall pay to Landlord an annual rental payment as shown on Schedule 1, attached hereto (the "Renewal Rent"). Annual Renewal Rent shall be payable in annual payments within sixty (60) days after the end of each Lease Year.

3.4 Landlord Taxes. Landlord shall pay, when due, all real property taxes and assessments levied against the Land and all personal property taxes and assessments levied against any property and improvements owned by Landlord and located on the Premises. If Landlord shall fail to pay any such taxes or assessments when due, Tenant may, at its option, pay those taxes and assessments and any accrued interest and penalties, and deduct the amount of its payment from any rent otherwise due to Landlord from Tenant.

3.5 Tenant Taxes. Tenant shall pay all personal property taxes and assessments levied against the Solar Facilities when due, including any such taxes based on electricity production. If the Premises experiences any increase in the amount of real property taxes assessed as a result of the installation of the Solar Facilities on the Premises, including any reclassification of the Premises, Tenant shall pay or reimburse Landlord an amount equal to the increase no later than ten (10) days prior to the date each year on which the applicable real estate taxes are due to be paid, provided that Landlord provides Tenant with copies of the applicable current and past statements of real estate taxes payable for the Premises and any related information demonstrating the reasons for any increase in real estate taxes.

3.6 Contest. Either party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and the party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

3.7 Utilities. Tenant shall pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Tenant on the Premises.

**4. Tenant's Representations and Covenants.** Tenant represents and warrants to Landlord as follows:

4.1 Liens. Tenant shall keep the Premises free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed on or furnished to Tenant or any Solar Facility on the Premises in connection with Tenant's use of the Premises. Tenant may contest any such lien but shall post a bond or utilize other available means to remove any lien that is created during the contested proceeding. Tenant agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within 60 days of the creation of any such lien or encumbrance.

4.2 Compliance With Laws; Permits. Tenant and its designees shall at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority with respect to Tenant's activities pursuant to this Agreement and shall obtain all permits, licenses and orders required to conduct any and all such activities.

4.3 Tenant's Facilities. All Solar Facilities constructed, installed, or placed on the Premises by Tenant pursuant to this Agreement shall be the sole property of Tenant and Landlord shall have no ownership or other interest in any Solar Facilities on the Premises. The Solar Facilities are and shall remain personal property of the Tenant, notwithstanding any present or future common ownership of the Solar Facilities and the Premises. All Solar Facilities constructed, installed, or placed on the Premises by Tenant pursuant to this Agreement may be moved, replaced, removed, repaired or refurbished by Tenant at any time.

4.4 Hazardous Waste. Tenant shall not use, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Tenant's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Landlord and is in full compliance with all applicable laws.

4.5 Insurance. Tenant shall obtain and maintain in force policies of insurance covering the Solar Facilities and Tenant's activities on the Premises at all times during the Term, including specifically comprehensive general liability insurance with a minimum combined occurrence and annual limitation of $2,000,000, provided that such amount may be provided as part of a blanket policy covering other properties.

4.6 Removal of Solar Facilities. Within 180 days after the expiration or earlier termination of the Term of this Agreement, Tenant shall remove all Solar Facilities from the Premises, provided however that Tenant shall not be required to remove any roads or below-grade improvements or facilities. If Tenant fails to remove any of the Solar Facilities within the required time period, such Solar Facilities shall be considered abandoned by Tenant and Landlord may remove such Solar Facilities from the Premises and dispose of them in its sole discretion without notice or liability to Tenant. Tenant will comply with all applicable laws regarding decommissioning security requirements.

4.7 Fences. Tenant shall have the right to construct fences and gates surrounding any Solar Facilities. Tenant shall maintain in good working order during the Term any such fences or gates constructed by Tenant and shall ensure such fences are in compliance with Airport and FAA rules and regulations.~~.~~

4.8 Access Roads. Landlord shall maintain in good working condition any access roads and driveways in existence as of the date of this Agreement. Tenant shall maintain in good working condition any access roads and drives constructed by Tenant.

4.9 Vegetation. Tenant shall maintain all vegetation on the Premises in a manner that prevents it from becoming habitat for or attracting any wildlife that might interfere with Landlord's Airport operations or create a flight hazard to aircraft.

4.10 Non-Interference with Airport Operations. Tenant shall avoid any use of the Premises which would interfere with or be a hazard to the flight of aircraft over the Premises to and from the Airport, or interfere with navigation and communications facilities presently or in the future serving the Airport. Notwithstanding the foregoing, Landlord acknowledges and agrees that Tenant's primary use of the Premises for the construction and operation of a solar energy collection site will not be considered an interfering use under this Section 4.10, so long as the construction and operation of the solar energy collection site is in compliance with all Airport and FAA rules and regulations.~~.~~

**5. Landlord's Representations and Covenants**. Landlord covenants, represents, and warrants to Tenant as follows:

5.1 Title and Authority. Landlord is the sole owner of the Land in fee simple and each person or entity signing this Agreement on behalf of Landlord has the full and unrestricted authority to execute and deliver this Agreement and to grant the lease and easements rights granted herein. All persons having any ownership interest in the Land (including spouses) are signing this Agreement as Landlord. When signed by Landlord, this Agreement constitutes a valid and binding agreement enforceable against Landlord in accordance with its terms. Landlord represents and warrants that there are no liens, encumbrances, mortgages, deeds of trust, fractional interests, severed mineral interests, options, rights of third parties or any other liens, encumbrances or interest affecting Landlord's title to the Land, except as set forth on Exhibit C, attached hereto. Except as noted on Exhibit C, attached hereto, no party has any right to possession of any portion of the Land.

**Commented [KF7]:** This land is outside the parameters of any agreement with the airport management company correct? It is my understanding they lease some of the land/hangars as part of the agreement with the city.

5.2 Quiet Enjoyment. As long as Tenant is not in default hereunder beyond applicable notice and cure periods, Tenant shall have the quiet use and enjoyment of the Premises in accordance with the terms of this Agreement without any interference of any kind by Landlord or any person claiming through Landlord. Landlord and its activities on the Land and any grant of rights Landlord makes to any other person shall not interfere with any of Tenant's activities pursuant to this Agreement, and Landlord shall not interfere with any of Tenant's activities pursuant to this Agreement, and Landlord shall not interfere or allow interference with the Tenant's ability to convert solar insolation to electric energy or otherwise engage in activities which might impede or decrease the output or efficiency of the Solar Facilities.

5.3 Hazardous Materials. Landlord represents and warrants that the Land does not contain and Landlord shall not use, store, dispose of or release on the Premises or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Landlord's operations, any substance which is defined as a "hazardous substance", "hazardous material", or "solid waste" in any federal, state or local law, statute or ordinance, except in such quantities as may be required in its normal business operations and only if such use is not harmful to Tenant and is in full compliance with all applicable laws. If at any time any such "hazardous substance", "hazardous material", or "solid waste" is determined to be present on the Land, Landlord shall take all steps necessary to promptly remove or otherwise abate or remediate such condition, as may be required pursuant to any applicable law, rule or ordinance. Landlord agrees to indemnify, defend, and hold Tenant and its officers, employees, and agents harmless from any claims or damages which arise during or after the term of this Agreement from or in connection with the presence of hazardous materials on or under the Premises or Land, to the extent that same existed as of the date of this Agreement or arise due to the negligence or willful misconduct of Landlord, its officers, employees or agents.

5.4 Cooperation. Landlord shall cooperate with Tenant to obtain non-disturbance and subordination agreements from any person or entity with a lien, encumbrance, mortgage, lease or other exception to Landlord's fee title to the Premises to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights granted to Tenant under this Agreement. Landlord shall also cooperate with Tenant to obtain and maintain any permits needed for the Solar Facilities. Landlord shall also provide Tenant with such further assurances and shall execute any estoppel certificates, consents to assignments or additional documents that may be reasonably necessary for recording purposes or requested by Tenant or any of its lenders from time to time.

5.5 Exclusivity. During the Term, the Tenant shall have the sole and exclusive right to install and operate Solar Facilities on the Premises, pursuant to the terms and conditions of this Agreement, and to convert solar energy to electricity. Landlord shall not construct, build or locate, or allow others to construct build or locate any solar energy conversion system or any Solar Facilities on the Land.

5.6 Withholding Requirements. Landlord is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code and is therefore exempt from the withholding requirements of said section. Landlord shall, upon request, provide Tenant an exemption certification regarding Section 1445.

5.7 No Litigation. To Landlord's knowledge, there is no action, litigation, suit, proceeding or investigation pending or threatened by any organization, person, individual or governmental agency, including but not limited to governmental actions under condemnation authority or proceedings similar thereto, which affect the Premises (or any portion thereof) or Landlord, or which could become a cloud on title to the Premises (or any portion thereof) or which questions the validity or enforceability of the transaction contemplated in this Agreement.

5.8 No Violations. Landlord has not received notice of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Land.

**6. Indemnification.** To the extent allowed by law, each party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other party and the other party's officers, directors, employees, representatives, mortgagees, and agents (collectively the "Indemnified Party") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for physical injury to any person, including, without limitation, reasonable attorneys' fees and consequential damages, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises; (ii) any negligent or intentional act or omission on the part of the Indemnifying Party; or (iii) any breach of this Agreement by the Indemnifying Party. This indemnification shall not apply to losses, damages, claims, expenses, and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. This indemnification shall survive the termination of this Agreement.

**7. Assignment; Bifurcation; Encumbrance of Agreement.**

7.1 Assignment.

(a) Tenant shall have the right, without need for Landlord's consent, to do any of the following, conditionally or unconditionally, with respect to all or any portion of the Premises: (i) finance, securitize, utilize as credit support, mortgage or otherwise encumber Tenant's interest in the Premises; (ii) apportion, grant co-leases, subleases, subeasements, co-easements, separate easements, leases, licenses or similar rights (however denominated) to one or more persons with respect to all or any portion of the Premises; or (ii) sell, convey, lease, assign or transfer, in whole or in part, Tenant's interest in and to this Agreement, or any or all right or interest of Tenant in this Agreement, or any or all right or interest of Tenant in the Premises or in all or any part of the Solar Facilities. Tenant will give notice to Landlord of any such assignment (including the address of the assignee thereof for notice purposes); provided, however, that failure to give such notice shall not constitute a default under this Agreement, but rather shall only have the effect of (x) not binding Landlord with respect to such assignment until such notice shall have been given, and (y) not releasing the assignor from liability under this Agreement pursuant to subparagraph (b), until such notice shall have been given. Notwithstanding anything to the contrary herein, any financing, mortgage, or security agreement entered into by Tenant shall not create or be filed as a lien against the Landlord's fee estate.

(b) Any assignee or grantee of all or any part of Tenant's interest hereunder (excepting, for clarity, any Secured Party or Lender) shall be liable to perform obligations under this Agreement commencing on the date of such assignment. Any assignment permitted hereunder shall release the assignor from obligations with respect to the interests assigned accruing after the date that liability is assumed by the assignee.

(c) Notwithstanding anything herein to the contrary, Tenant may collaterally assign this Agreement and the Solar Facilities to any mortgagees or holders of security interests, including their successors or assigns (hereinafter collectively referred to as "Secured Parties"), without the need for consent from Landlord. Upon receipt of notice of the name and address of the Secured Parties, Landlord agrees to deliver any notices of default to the Secured Parties simultaneously with the delivery of such notices of default to Tenant. The Secured Parties will have the right to cure any defaults or breaches by Tenant within the time periods provided hereunder for Tenant plus an additional sixty (60) days in the case of an Event of Default under Section 9, and in order to succeed to the rights and obligations of Tenant under this Agreement shall not be required to cure any defaults by Tenant that by their nature are not capable of being cured by the Secured Parties. Any such notices to Secured Parties shall be sent to the Secured Parties at the address specified in writing to Landlord by Tenant or any Secured Party. Failure by Landlord to give a Secured Party such notice shall not diminish the Secured Party's rights against Tenant, but shall preserve all rights of the Secured Party to cure any default and to remove any property of Tenant located on the Premises. Tenant is required to notify Landlord, in writing, of the name and mailing address for notice to be sent to any Secured Parties, upon the completion of a mortgage or other security interest document. Tenant will notify Landlord of any assignments or successor Secured Parties' names and mailing addresses upon completion of or notice to Tenant that such assignment or succession has occurred.

(d) If Landlord has been notified of the existence of Secured Parties, Landlord will not agree to any amendment, modification or voluntary termination of this Agreement without the prior written consent of the Secured Parties. Landlord agrees that, upon Secured Party's foreclosure (or assignment in lieu of foreclosure) of its leasehold mortgage or security interest in the Solar Facilities, the Secured Party may succeed to the rights and obligations of Tenant under this Agreement. The Secured Party will be responsible for performance of Tenant's obligations after it succeeds to Tenant's interests under this Agreement, but shall have no further liability hereunder after it assigns such interests to a third party.

(e) If this Agreement is rejected or disaffirmed by Tenant pursuant to bankruptcy law or other law affecting creditor's rights and within ninety (90) days after such event any Secured Party shall have arranged to the reasonable satisfaction of Landlord for performance of Tenant's obligations under this Agreement, then Landlord shall execute and deliver to such Secured Party or to a designee of such Secured Party a new lease which (i) shall be for a term equal to the remainder of the Term before giving effect to such rejection or termination; and (ii) shall contain the same covenants, agreements, terms, provisions and limitations as this Agreement. The provisions of this Section 7 shall survive the termination, rejection or disaffirmation of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section 7 were a separate and independent contract made by Landlord, Tenant and each Secured Party. Tenant's Secured Parties shall be express third party beneficiaries of this Section 7.

7.2 Bifurcation. Tenant shall have the right to bifurcate or otherwise split the leasehold and easement rights and interests granted hereunder to accommodate, within the Premises, the development of multiple solar energy conversion projects and/or the staging of a single solar energy conversion project (or for any other reason) by delivering written notice to Landlord. Upon Tenant's request, Landlord shall execute such instruments as may be reasonably requested by Tenant to cause the rights and interest granted hereunder to be so bifurcated or split, including but not limited to separate agreements evidencing separate rights encumbering separate portions of the Premises described herein. Any further instruments executed pursuant this Section 7.2 shall be deemed assignments of and not modifications to the rights and interests granted hereunder and such rights and interests, as so bifurcated or split, shall be deemed to have been originally granted by Landlord as of the Effective Date.

7.3 Right to Encumber.

(a) Tenant may at any time mortgage all or any part of its interest in this Agreement or rights under this Agreement or enter into a collateral assignment of all or any part of its interest in this Agreement or rights under this Agreement to any person or entity ("Lender") without the consent of Landlord. Notwithstanding anything to the contrary herein, any financing, mortgage, or security agreement entered into by Tenant shall not create or be filed as a lien against the Landlord's fee estate. Any Lender shall have no obligations under this Agreement until such time as it exercises its rights to acquire Tenant's interests by foreclosure or otherwise assumes the obligations of Tenant directly. Lender shall have all rights granted to a "Lender" hereunder from and after the date Landlord receives written notice of any mortgage or collateral assignment of all or any part of Tenant's interest hereunder.

(b) Landlord and Tenant agree that, once all or any part of Tenant's interests in the Agreement are mortgaged or assigned to a Lender, they will not modify or terminate this Agreement without the prior written consent of the Lender.

(c) Landlord agrees that any Lender shall have the right to make any payment and to do any other act or thing required to be performed by Tenant under this Agreement, and any such payment, act or thing performed by Lender shall be effective to prevent a default under this Agreement and any forfeiture of any of Tenant's rights under this Agreement as if done by Tenant itself.

(d) During the time all or any part of Tenant's interests in this Agreement are mortgaged or assigned to any Lender, if Tenant defaults under any of its obligations and Landlord is required to give Tenant notice of the default Landlord shall also be required to give Lender notice of the default. If Landlord becomes entitled to terminate this Agreement due to an uncured default by Tenant, Landlord will not terminate this Agreement unless it has first given written notice of the uncured default and of its intent to terminate this Agreement to the Lender and has given the Lender at least sixty (60) days to cure the default to prevent termination of this Agreement. If within such sixty (60) day period the Lender notifies the Landlord that it must foreclose on Tenant's interest or otherwise take possession of Tenant's interest under this Agreement in order to cure the default, Landlord shall not terminate this Agreement and shall permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Tenant's interest under this Agreement and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Tenant. The time within which Lender must foreclose or acquire Tenant's interest shall be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(e) The acquisition of all or any part of Tenant's interests in this Agreement by any Lender through foreclosure or other judicial or nonjudicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, shall not require the consent of Landlord nor constitute a breach or default of this Agreement by Tenant, and upon the completion of the acquisition or conveyance Landlord shall acknowledge and recognize Lender as Tenant's proper successor under this Agreement upon Lender's cure of any existing Tenant defaults and assumption of the obligations of Tenant under this Agreement prospectively.

**Commented [KF8]:** Again could lead to long term contract with someone not intended or with as good of relationship with the City as MPW.

(f) In the event this Agreement is rejected by a trustee or a debtor-in-possession in any bankruptcy or insolvency proceeding Landlord agrees, upon request by any Lender within sixty (60) days after the rejection or termination, to execute and deliver to Tenant or Lender a new lease for the Premises which (i) shall be effective as of the date of the rejection or termination of this Agreement, (ii) shall be for a term equal to the remainder of the term of the Agreement before giving effect to such rejection or termination, and (iii) shall contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Agreement (except for any obligations or requirements which have been fulfilled by Tenant or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Tenant or Lender shall (i) pay Landlord any amounts which are due Landlord from Tenant, (ii) pay Landlord any and all amounts which would have been due under this Agreement but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Tenant under this Agreement to the extent Tenant failed to perform them prior to the execution and delivery of the new lease.

7.4 Continuing Nature of Obligations. The burdens of this Agreement and all rights granted to Tenant hereunder shall run with and be a charge and burden on the Land and shall be binding upon and against Landlord and its successors, assigns, permittees, licensees, tenants, employees and agents. The easement rights granted herein shall be deemed easements "in gross" and such easements rights, together with the leasehold and other rights granted herein shall inure to the benefit of Tenant and its successors, assigns, permittees, licensees and tenants.

**8. Condemnation; Force Majeure.**

8.1 Condemnation. If eminent domain proceedings are commenced against all or any portion of the Land or Premises, and the taking and proposed use of such property would prevent or adversely affect Tenant's construction, installation or operation of Solar Facilities on the Premises, or use of the lease or easement rights granted herein, the parties shall either amend this Agreement to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Agreement to Tenant, together with any corresponding payments, or, at Tenant's option, this Agreement shall terminate in which event neither party shall have any further obligations.

8.2 Proceeds. All payments made by a condemnor on account of a taking by eminent domain shall be the property of the Landlord, except that Tenant shall be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such Solar Facilities or the use of the Premises pursuant to the Agreement or any other amount for which Tenant can make a claim under applicable law. Tenant shall have the right to participate in any condemnation proceedings to this extent.

8.3 Force Majeure. Neither Landlord nor Tenant shall be liable to each other, or be permitted to terminate this Agreement, for any failure to perform an obligation of this Agreement to the extent such performance is prevented by a force majeure, which shall mean an event beyond the control of the party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided.

**9. Default.**

9.1 Events of Default. Each of the following shall constitute an event of default hereunder (an "Event of Default"):

(i) any failure by Tenant to pay rent if the failure to pay continues for thirty (30) days after written notice from Landlord; and

(ii) any other material breach of this Agreement by Tenant which continues for thirty (30) days after written notice of default from Landlord or, if the cure will take longer than thirty (30) days, the length of time necessary to effect cure as long as Tenant is making diligent efforts to cure during that time.

9.2 Landlord's Remedies. Upon an Event of Default described in paragraph 9.1(i), above, Landlord shall be entitled, to terminate this Agreement upon thirty (30) days written notice to Tenant and reenter the Premises and take possession thereof (subject, however, to the rights of Secured Parties and Lenders pursuant to Section 7) or, so long as Landlord does not terminate Tenant's right to possession of the Premises, keep this Agreement in full force and effect and collect rent and other charges from Tenant as and when due under this Agreement, with Landlord having the obligation to mitigate damages. If Landlord elects to terminate this Agreement, then all rights and obligations of the parties shall terminate, except that Landlord shall have the right to sue for and collect all rent and other amounts with respect to which Tenant shall then be in default, and all damages to Landlord by reason of such Event of Default, Landlord having the obligation to mitigate damages, and Tenant shall surrender the Premises to Landlord. Upon an Event of Default described in paragraph 9.1(ii), above, Landlord shall not have the right to terminate this Agreement, but shall have the right to sue for and collect damages suffered by Landlord as a result of such Event of Default, Landlord having the obligation to mitigate damages.

9.3 Tenant's Remedies. If Landlord shall be in default of any obligation hereunder and such default shall continue for a period of thirty (30) days after written notice to Landlord, then Tenant shall be entitled to exercise concurrently or successively any one or more of the following rights, in addition to all other remedies provided in this Agreement or available at law or in equity: (a) to bring suit for the collection of any amounts for which Landlord may be in default, or for the performance of any other covenant or agreement of Landlord, without terminating this Agreement; (b) to cure such default for the account of Landlord and offset any costs incurred by Tenant in curing such default and/or any other amounts owed by Landlord to Tenant against all amounts next coming due from Tenant to Landlord; (c) to terminate this Agreement upon thirty (30) days' written notice to Landlord, without waiving Landlord's rights to damages for Landlord's failure to perform its obligations hereunder; and/or (d) seek specific enforcement of this Agreement.

**10. Right of First Refusal.**

(a) Landlord hereby grants to Tenant a right of first refusal (the "Refusal Right"), to purchase Landlord's Interest on the following terms and conditions. As used herein "Landlord's Interest" shall mean (i) Landlord's fee interest in the Premises or such larger tract which includes the Premises; and

(ii) if Landlord is a corporation, partnership, limited liability company, trust or other entity, any ownership or beneficial interest in such corporation, partnership, limited liability company, trust or other entity representing the right to receive 50% or more of the profits of such entity. In the event Landlord has received from a bona fide prospective purchaser a written offer to purchase Landlord's Interest which Landlord has determined to accept (the "Offer"), then Landlord shall notify Tenant in writing prior to such acceptance ("Landlord's Refusal Notice"). Landlord's Refusal Notice shall include a copy of such Offer. Tenant shall have sixty (60) days from the effective date of Landlord's Refusal Notice within which to exercise such Refusal Right by written notice of exercise to Landlord ("Tenant's Refusal Notice").

(b) The failure to provide Tenant's Refusal Notice to Landlord within such sixty (60) day period shall be conclusively deemed to be and constitute a rejection of the offer by Tenant and a waiver of Tenant's Refusal Right as to such Offer. In such event Landlord shall be free thereafter to sell Landlord's Interest on the terms and conditions as set forth in the Offer to the entity making such Offer, provided such sale occurs within one hundred eighty (180) days of the date of the Offer. If Landlord intends to sell Landlord's Interest on terms other than those set forth in the Offer or subsequent to the expiration of one hundred eighty (180) days after the Offer, Landlord shall be required to offer Landlord's Interest to Tenant pursuant to the terms hereof.

(c) If an Offer is validly accepted by Tenant, then Tenant shall purchase Landlord's Interest from Landlord on the terms and conditions set forth in the Offer. To the extent necessary, Landlord and Tenant shall in good faith jointly negotiate the full contractual terms and conditions necessary to implement the Offer in all material respects. The closing of such acquisition shall occur within 180 days of the Offer, but not later than the closing date set forth in the Offer.

(d) This is a continuing right of first refusal which shall apply to all Offers received during the Term.

**11. Miscellaneous.**

11.1 Notices. Any notice or election herein required or permitted to be given or served by any party hereto upon the other will be in writing and delivered in person, sent by United States first class mail, or by certified or registered mail, postage prepaid, return receipt requested, or by email, or deposited with a nationally recognized overnight courier, properly addressed as follows:

To Landlord: City of Muscatine, Iowa
Attn: City Administrator
215 Sycamore St.
Muscatine, IA 52761

To Tenant: Muscatine Power and Water
Attn: Director USD
3205 Cedar Street
Muscatine, Iowa 52761

Any such notice if mailed as provided herein will be deemed to have been given or served on the date on which it is deposited in the mail or delivered in person as provided above. Any notice sent by email shall be effective on the business day on which it is sent so long as it is sent by 5:00 pm Central Standard Time on such day, and shall be effective as of the next business day if sent after 5:00 pm Central Standard Time on such day or sent on a non-business day. Any party may change its address for the service of notice by giving written notice of such change to the other party, in any manner above specified.

11.2 No Third Party Beneficiaries. Except for the rights of Lenders and Secured Parties set forth above, no provision of this Agreement is intended to nor shall it in any way inure to the benefit of any third party so as to constitute any such person a third party beneficiary under this Agreement, or of any one or more of the terms of this Agreement, or otherwise give rise to any cause of action in any person not a party to this Agreement.

11.3 Entire Agreement. It is mutually understood and agreed that this Agreement constitutes the entire agreement between Landlord and Tenant and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Agreement. Except for Tenant's right to unilaterally delineate the Premises as outlined in this Agreement, this Agreement may not be amended except in a writing executed by both parties.

11.4 Governing Law. This Agreement shall be governed by the laws of the State of Iowa.

11.5 Cooperation. Each of the parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Agreement and to fulfill the obligations of the respective parties.

11.6 Waiver. Neither party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such waiver is in writing and signed by the party against whom the waiver would operate. Any waiver at any time by either party of its rights with respect to any rights arising in connection with this Agreement shall not be deemed a waiver with respect to any subsequent or other matter.

11.7 Relationship of Parties. The duties, obligations and liabilities of each of the parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Landlord and Tenant or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either party. Landlord and Tenant shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other party.

11.8 Counterparts. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original.

11.9 Memorandum of Agreement. Contemporaneously with execution of this Agreement, Landlord and Tenant agree to execute a memorandum of this Agreement. Landlord consents to the recordation of a memorandum of this Agreement and further consents to the recordation of an assignment of any interest hereunder. Following receipt of the Survey, Tenant may unilaterally record an amendment to the memorandum delineating the legal description of the Premises and, although not necessary to accomplish the same, upon Tenant's request, Landlord shall promptly execute and acknowledge any such amendment provided by Tenant. Within thirty (30) days of termination or expiration of this Agreement, Tenant shall execute and record a release or quitclaim deed to Landlord of all of Tenant's right, title, and interest in and to the Land and/or Premises.

11.11 Further Assurances. Landlord shall execute such estoppel certificates (certifying as to such factual matters as Tenant may reasonably request, including without limitation that no default then exists under this Agreement, if such be the case) and/or consents to assignment and/or non-disturbance agreements (respecting other property as to which Landlord or its affiliates may have lease, use or other rights) within fifteen (15) days after Tenant or its lenders may reasonably request from time to time. Landlord shall cooperate in reviewing and executing any proposed amendment to this Agreement (for example, an amendment to delineate the legal description comprising the Premises) from time to time to include any provision that may be reasonably requested by Tenant or its lenders for the purpose of implementing the terms and conditions contained in this Agreement or of preserving an assignee's security interest, at no out-of-pocket cost to Landlord.

11.12 Successors and Assigns. Any sale or other transfer of the Land by Landlord shall be subject to this Agreement. This Agreement and the easements granted herein shall burden and run with the Land. This Agreement shall inure to the benefit of and be binding upon Landlord and Tenant and, to the extent provided in any assignment or other transfer, any assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

11.13 Attorneys Fees. If any party brings any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Agreement or for the interpretation of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs in connection with such action or proceeding.

11.14 W-9 Form. Contemporaneously with execution of this Agreement, Landlord agrees to complete, execute and deliver to Tenant an IRS W-9 Form.

The parties are signing this Agreement as of the date written in the introductory paragraph.

| | |
|---|---|
| **LANDLORD** | **TENANT** |
| **City of Muscatine, Iowa** | **Muscatine Power & Water** |
| ______________________________ | ______________________________ |
| Brad Bark, Mayor | Gage Huston, General Manager |

**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Exhibit A-1**

**Legal Description of the Land**

Real property in Muscatine County, State of Iowa, legally described as:

In lieu of an exhaustive legal description of each parcel, the parties agree that the Land is a portion of ground located in Section 24 Township 76 Range 3 West and Section 19, Township 76 North Range 2 West in Muscatine County, IA composed of approximately 155.4 acres; further defined as the following Muscatine County, IA parcel IDs:

1224200009
1224400001
East 767 ft of 1224100012
Northeast 767 ft of 1224300002
North half 1224400004
Northwest 28 acres of 1319100005

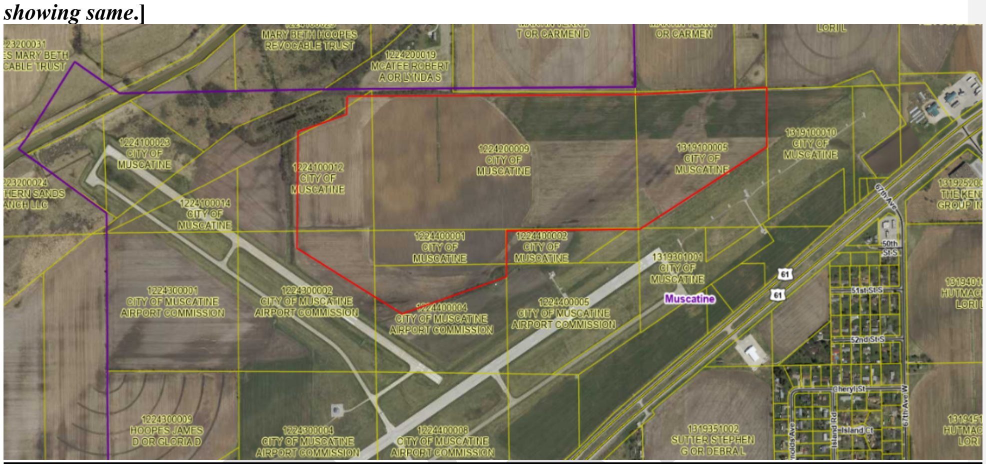
A survey and full legal description will be completed at a later date.

**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Exhibit A-2**

**<u>Legal Description of the Premises</u>**

**[*To be unilaterally added upon written notice from Tenant following Tenant's receipt of Survey showing same.*]**



**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Exhibit B**

**<u>Site Plan</u>**

To be agreed to by the parties as the project develops.

**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Exhibit C**

**Permitted Encumbrances**

**Title Encumbrances:** Please indicate if the following agreements affect the Premises.
Mortgage(s): Yes___ No ___ ***If yes, identify mortgagee(s):_______________________.***

Oil and Gas Lease(s): Yes___ No ___ ***If yes, identify lessee(s):__________________________.***

Pipeline Easement(s): Yes___ No ___ ***If yes, identify easement holder(s) _________________.***

Electric Line Easement(s): Yes___ No ___ ***If yes, identify easement holder(s)______________.***

Private or Public Access Easement(s): Yes___ No ___

Hunting Lease(s): Yes___ No ___ ***If yes, please provide a copy of the lease and all amendments.***

Grazing Lease(s): Yes___ No ___ ***If yes, please provide a copy of the lease and all amendments.***

CRP Acreage: Is any portion of the Premises under contract with or included in the Conservation Reserve Program (CRP) or other related program? Yes ___ No ___
***If yes, please provide a copy of the contract and all amendments.***

Other encumbrances or third party rights:
Yes__ No ___ ***If yes, please list below.***

**SOLAR ENERGY FACILITY**
**LEASE AND EASEMENT AGREEMENT**

**Schedule 1**

**Development Period Payment**

Annual rental payments of forty dollars ($40.00) per acre, due within thirty (30) days of the Effective Date and annually on the anniversary of the Effective Date during the Development Period.

**Construction Period Rent**

Annual rental payments of four hundred dollars ($400.00) per acre, due within thirty days of the date Tenant commences construction of the Solar Facilities and annually thereafter during the Construction Period. Any portion of the Construction Period Rent that is unearned by Landlord because Tenant completes construction of the Solar Facilities before the end of the Construction Period rental year shall be credited by Landlord to the first year of Operating Rent described below.

**Operating Rent**

Annual rental payments of eight hundred dollars ($800.00) per acre, escalating at a rate of 2.5% per year, multiplied by the number of acres on the Premises (see Exhibit A-2 for total acres) occupied by Solar Facilities during the applicable Lease, as more fully described in the table below.

| | |
|---|---|
| Year 1 | $800.00 |
| Year 2 | $820.00 |
| Year 3 | $840.50 |
| Year 4 | $861.51 |
| Year 5 | $883.05 |
| Year 6 | $905.13 |
| Year 7 | $927.75 |
| Year 8 | $950.95 |
| Year 9 | $974.72 |
| Year 10 | $999.09 |
| Year 11 | $1,024.07 |
| Year 12 | $1,049.67 |
| Year 13 | $1,075.91 |
| Year 14 | $1,102.81 |
| Year 15 | $1,130.38 |
| Year 16 | $1,158.64 |
| Year 17 | $1,187.60 |
| Year 18 | $1,217.29 |
| Year 19 | $1,247.73 |
| Year 20 | $1,278.92 |
| Year 21 | $1,310.89 |
| Year 22 | $1,343.67 |
| Year 23 | $1,377.26 |

| | |
|---|---|
| Year 24 | $1,411.69 |
| Year 25 | $1,446.98 |

**Renewal Rent**

Annual rental payments of fourteen hundred eighty-three dollars and sixteen cents ($1,483.16) per acre, multiplied by the number of acres on the Premises occupied by Solar Facilities during the applicable Lease, as more fully described in the table below.

| | |
|---|---|
| Renewal Year 1 | $1,483.16 |
| Renewal Year 2 | $1,520.23 |
| Renewal Year 3 | $1,558.24 |
| Renewal Year 4 | $1,597.20 |
| Renewal Year 5 | $1,637.13 |
| Renewal Year 6 | $1,678.05 |
| Renewal Year 7 | $1,720.01 |
| Renewal Year 8 | $1,763.01 |
| Renewal Year 9 | $1,807.08 |
| Renewal Year 10 | $1,852.26 |
| Renewal Year 11 | $1,898.56 |
| Renewal Year 12 | $1,946.03 |
| Renewal Year 13 | $1,994.68 |
| Renewal Year 14 | $2,044.55 |
| Renewal Year 15 | $2,095.66 |

**Decommissioning Period Rent**

Monthly rental payments of $50 per acre, due in full within thirty days following the end of the Decommissioning Period.

City of Muscatine

ITEM NUMBER 2024-943

# IN-DEPTH ITEM - CITY COUNCIL

DATE: 10/10/2024

## STAFF

Steve Snider, Assistant Police Chief
Anthony Kies, Interim City Administrator

## SUBJECT FOR DISCUSSION

Police Department is seeking City Council guidance in formulating a response to DOT's rejection to the Automated Traffic Enforcement (ATE) applications submitted by the City of Muscatine.

## EXECUTIVE SUMMARY

HF2681 regarding Automated Traffic Enforcement(ATE) was signed into law May 17, 2024. The new state law regulating ATE required the City of Muscatine to submit applications for each ATE site to the Iowa Department of Transportation for approval to continue operations. On September 30, 2024, the City of Muscatine was notified by the Iowa DOT that applications for all fixed locations of ATEs in the City had been denied. The reason given for denial of continued use was "not least restrictive means". Police Department Staff is seeking input from City Council as to how they wish to proceed with any appeal process.

## GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

Does Council want to appeal the DOT's denial of the City of Muscatine's fixed ATE locations?

## BACKGROUND/DISCUSSION

With the new state law regulating the use of ATE taking effect in May, the City of Muscatine followed DOT guidelines by submitting applications for each fixed ATE location. All fixed locations of ATEs in the City have been denied for continued use. In speaking with the City's ATE vendor, GATSO, the recommendation is to begin the appeals process within 20 days of September 30, 2024. This will conform with current DOT rules regarding appeals and keep options open for the City of Muscatine. It is recommended that City Attorney Brent Hinders is involved in the appeals process as it moves forward. Should the DOT uphold its decision upon review of our appeal, our next step would be to appeal the DOT decision to the District Court in Polk County. Should the appeals process reach this level, legal counsel for GATSO is willing to help coordinate the appeal with other cities involved.

## ATTACHMENTS

1. Muscatine ATE denial letter with permit

IOWA | DOT

KIM REYNOLDS, GOVERNOR
ADAM GREGG, LT. GOVERNOR

SCOTT MARLER, IOWA DOT DIRECTOR
TROY JERMAN, IOWA DOT COO

**IOWA DEPARTMENT OF TRANSPORTATION**
**SYSTEMS OPERATIONS DIVISION**
**800 Lincoln Way**
**Ames, IA 50010**
**515-239-1205**
**www.iowadot.gov**

September 30, 2024

Assistant Chief Steve Snider
Muscatine, IA

Dear Assistant Chief Snider:

This letter is to notify you that the city's request to operate an automated or remote system for traffic law enforcement at the following locations has been **denied**:

| **Location** | **Type** | **Reason** |
|---|---|---|
| Park Avenue at Cleveland Street (NB) | Fixed | Not least restrictive means |
| Park Avenue at Cleveland Street (SB) | Fixed | Not least restrictive means |
| Park Avenue at Washington Street (NB) | Fixed | Not least restrictive means |
| Park Avenue at Washington Street (SB) | Fixed | Not least restrictive means |
| Cedar Street at Houser Street (EB) | Fixed | Not least restrictive means |
| Cedar Street at Houser Street (WB) | Fixed | Not least restrictive means |
| US 61 at University Avenue (WB) | Fixed | Not least restrictive means |
| US 61 at Mulberry Avenue (WB) | Fixed | Not least restrictive means |
| 2100 Block Bidwell Road (NB) | Mobile | Not necessary |
| 2100 Block Bidwell Road (SB) | Mobile | Not necessary |

In compliance with Iowa Code section 321P.10 as enacted by 2024 Iowa Acts, House File 2681, the city shall cease using all systems at these locations until the city obtains a permit to operate a system at these locations from the Iowa DOT.

Since the city is being issued a permit (see attached) to operate systems at **other locations**, the city may choose to submit an application to the Iowa DOT to update the permit with new locations or with previously denied locations, in accordance with Iowa Code section 321P.2.

If you have any questions or concerns about this, please feel free to contact me or Chris Poole (chris.poole@iowadot.us).

Sincerely,

Dave Lorenzen
Director, Systems Operations Division
david.lorenzen@iowadot.us

# City of Muscatine

ITEM NUMBER 2024-947

## IN-DEPTH ITEM - CITY COUNCIL

DATE: 10/10/2024

**STAFF**

Nancy Lueck, Finance Director

**SUBJECT FOR DISCUSSION**

Update on Expenditures and Obligations of the City's American Rescue Plan Act (ARPA) Funds

**EXECUTIVE SUMMARY**

The City of Muscatine's American Rescue Plan Act (ARPA) funding allocation totaled $3,533,377. The City Council has allocated these funds for numerous one-time capital purchases or programs in 2021/2022, 2022/2023, 2023/2024 and in the 2024/2025 budget. These funds, with the interest earnings on these funds, are required to be expended or obligated by December 31, 2024.

Finance staff has prepared a PowerPoint presentation to review with City Council at the October 10, 2024 In Depth meeting. This will include ARPA funds received, interest earned on those funds through FY 24, expenditures for ARPA projects through FY 24 and in FY 25 to date, funds obligated to date, and estimated ARPA funds and interest available to be allocated by December 31, 2024.

The following were considerations previously used for evaluation of the uses of ARPA funds:

1. Addressing the City's overall strategic goals
2. Technology improvements
3. Facility upgrades including security-related projects
4. Unlikely to be funded through the regular budget process

At this time, we would add:

5. Able to be obligated by December 31, 2024 (obligated includes contracts entered into or purchase orders executed)

Staff has identified four general categories of expenditures which can be obligated by December 31, 2024. These include (1) Cemetery chapel roof and gutters, to complement the tuck-pointing recently completed, (2) Springbrook financial software enhancements for time-sheets and employee self-service, (3) costs to relocate the Public Safety employee workout area to the former Kum n Go location at 501 Cedar, and (4) a portion of the costs to equip the new Sports Dome and place it into service.

## GENERAL DIRECTION SOUGHT AND SPECIFIC QUESTIONS TO BE ANSWERED

This update is informational. City Council discussion and feedback on proposed uses of the remaining ARPA balance and interest is requested.

## BACKGROUND/DISCUSSION

The American Rescue Plan Act (ARPA) was signed into law on March 11, 2021. This Act provided $1.9 trillion dollars of funding for families, governments, businesses, schools, non-profits, and others impacted by the COVID-19 public health crisis. The allocation for State and local governments totaled $350 billion. The allocation for cities with populations less than 50,000 totaled $19.5 billion. The City of Muscatine's allocation totaled $3,533,377 with half of these funds ($1,766,688) received in the 2021/2022 fiscal year and the balance ($1,766,689) received in 2022/2023. These funds, with the interest earnings on these funds, are required to be expended or obligated by December 31, 2024.

The City Council has allocated the City's ARPA funds for numerous one-time capital purchases or programs in 2021/2022, 2022/2023, 2023/2024 and in the 2024/2025 budget. Since the 2024/2025 budget was adopted, and based on bids for the project, City Council adopted a Resolution allocating $1,303,500 towards construction costs for the new Sports Dome.

Finance staff has prepared a PowerPoint presentation to review with the City Council at the October 10, 2024, In Depth meeting. This will include ARPA funds received, interest earned on those funds through FY 24, expenditures for ARPA projects through FY 24 and in FY 25 to date, funds obligated to date, and estimated ARPA funds and interest available to be allocated by December 31, 2024. This report is attached to this Agenda Item Summary.

Staff has identified four general categories of expenditures which can be obligated by December 31, 2024. These include (1) Cemetery chapel roof and gutters, to complement the tuckpointing recently completed, (2) Springbrook financial software enhancements for timesheets and employee self-service, (3) costs to relocate the Public Safety employee workout area to the former Kum n Go location at 501 Cedar, and (4) a portion of the costs to equip the new Sport Dome and place it into service.

The costs shown for the additional items exceed the funding expected to be available <u>by design</u>. This will allow all funds to be committed by December 31, 2024, in the event that (1) any project(s) come in under the estimates, (2) interest earnings exceed the preliminary estimate, or (3) a project cannot be obligated by the deadline. If City Council is interested in all of the proposals up to the amount available, they can be prioritized and staff will monitor the costs of the projects as the purchase orders or contracts are approved.

## ATTACHMENTS

1. ARPA Funding Status and Potential New Uses.October In Depth

# City of Muscatine
# American Rescue Plan Act (ARPA) –
# Expenditures to Date, Obligations to Date, and
# Estimated Balance to Obligate by December 31, 2024
# October 10, 2024 In Depth

NANCY LUECK

MUSCATINE

# Direction Sought

1. This presentation is informational and will provide an overview of ARPA funds received, interest earned on those funds through FY 24, expenditures for ARPA projects through FY 24 and in FY 25 to date, funds obligated to date, and estimated ARPA funds and interest available to be allocated by December 31, 2024. The remaining ARPA funds and interest earned on those funds is required to be expended or obligated no later than December 31, 2024.

2. This presentation includes an estimate of the remaining funds and interest earned on those funds.

3. Four general areas of possible use of these funds have been identified by staff; these are included in a later slide.

4. Discussion and feedback from the City Council on the proposed uses of the remaining funds.

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# ARPA Funding Received, Interest Earned on ARPA Funds, and Expenditures to Date

| | | | | | | |
|---|---|---|---|---|---|---|
| **ARPA Funds Received:** | | | | | | |
| Payment #1 August and November 2021 | $ | 1,766,688.35 | | | | |
| Payment #2 August2022 | | 1,766,688.34 | | | | |
| Total ARPA Funds Received | | | $ | 3,533,376.69 | | |
| | | | | | | |
| **Interest Earned to Date on ARPA Funds:** | | | | | | |
| FY 22 | $ | 1,687.73 | | | | |
| FY 23 | | 86,693.47 | | | | |
| FY 24 | | 103,470.80 | | 191,852.00 | | |
| | | | | | | |
| **Total ARPA Funding and Interest thru FY 24** | | | | | **$** | **3,725,228.69** |
| | | | | | | |
| **ARPA Funds Expended thru FY 24:** | | | | | | |
| FY 22 | $ | 12,852.76 | | | | |
| FY 23 | | 813,532.25 | | | | |
| FY 24 | | 898,544.88 | $ | 1,724,929.89 | | |
| | | | | | | |
| **ARPA Funds Expended to Date in FY 25:** | | | | | | |
| Office Chairs (additional since 1st order) | $ | 1,938.52 | | | | |
| Comprehensive Plan (Progress Payments) | | 8,500.00 | | 1,938.52 | | |

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# Additional ARPA Funds Obligated to Date but not yet Expended

| | | | |
|---|---|---|---|
| **ARPA Funds Obligated but not Expended as of 10/1/24:** | | | |
| Balance of Comprehensive Plan (Contrract) | $ 74,800.00 | | |
| Balance of Cemetery Chapel (inc. Change Order) | 62,153.99 | | |
| Asset Management Software (Agreement approved by City Council at the 9/19/24 meeting) | 59,897.65 | | |
| Security Cameras - Balance of Project Costs | 22,618.73 | | |
| Library Flagpole | 8,500.00 | | |
| Clark House Elevators (City Allocation) (Contract executed for total project) | 300,000.00 | | |
| Sports Dome (City Allocation) - Contract/Resolution | 1,303,500.00 | | |
| Purchase Order for Fire Dept Kitchen Table and Chairs | 4,191.48 | | |
| | | 1,835,661.85 | |
| **Total Expended and Obligated to Date** | | | **$ 3,562,530.26** |
| **Estimated Balance not yet Obligated** | | | **$ 162,698.43** |

# Designated ARPA Funds not yet Obligated

| | | |
|---|---|---|
| **Designated Funds not yet Obligated:** | | |
| Neighborhood/Housing Initiatives | $ 100,000.00 | |
| (Reallocated since will not be able to obligate by 12/31/24) | (100,000.00) | |
| Economic Recovery/Development Initiatives | | |
| (Housing pattern book and/or the developer cohort) | 64,212.41 | 64,212.41 |
| | | |
| Estimated Balance Before Estimated Additional Interest | | $ 98,486.02 |
| | | |
| Estimated Additional Interest expected to be earned by 12-31-24 | | |
| ($1,800,000 x 4% estimated for 6 months) | | 36,000.00 |
| | | |
| **Estimated Additional Funding Available to Obligate** | | **$ 134,486.02** |

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# Possible Other Projects that can be Obligated by 12/31/24

| | | |
|---|---|---|
| **Cemetery Chapel Roof/Gutters:** | | |
| Cemetery Chapel Roof - Excludes gutters | $ 28,500.00 | |
| Cemetery Chapel - Gutters (need to fit in with historic requirements) | 12,500.00 | $ 41,000.00 |
| **(If approved, department can enter into contract(s) by 12/31/24** | | |
| | | |
| **Springbrook Software Enhancements:** | | |
| Professional services for Time-Sheet setup (Software Vendor) | $ 3,840.00 | |
| (no ongoing fees for TimeSheets since already included in Springbook fees) | | |
| Professional services for Employee Self-Service (Software Vendor) | 7,680.00 | |
| First year subscription for Employee Self-Service (Software Vendor | 3,630.00 | $ 15,150.00 |
| **(If approved, can be obligated by 12/31/24; vendor needs 8-12 weeks notice to schedule implementation which would be done after budget work by Finance)** | | |
| | | |
| **Former Kum n Go Remodeling for Public Safety Workout Area Relocation:** | | |
| Estimate of costs not covered by Public Safety water damage insurance recovery | $ 15,000.00 | $ 15,000.00 |
| **(If approved, department can enter into purchase order(s) by 12/31/24)** | | |

# Possible Other Projects that can be Obligated by 12/31/24 (Continued)

| | | |
|---|---|---|
| **Sports Dome - Estimated Costs to Place in Service:** | | |
| Soccer - Goals (Small, Medium, and Large); Benches, Soccer Corner Flags | $ 28,840 | |
| Baseball/Softball - Outfield Fence; Base Pegs; Portable Mounds; Batter Box Carpet; Softball Pitchers Rugs; Home Plate Pegs; Base Sets | 61,800 | |
| Football - Numbers and End Zone Markers | 600 | |
| Pickleball - Heavy Duty Nets (6) | 18,000 | |
| Additional Items - Sterile Drag; Trash/Recycling Combo Cans; Security Cameras; Facility Signage (Interior and Exterior); Electronic Message Board | 79,700 | |
| Total Identified Needs of Placing Sports Dome in Operation | | $ 188,940 |
| Reduction in Sports Dome or Other Projects to Estimated Amount Available (May Change) | | $ (125,604) |

**(If approved, department can enter into purchase order(s) by 12/31/24 with delivery scheduled when the Dome is near completion)**

| | |
|---|---|
| **Total Possible Other Projects that can be Obligated by 12/31/24 (Net of Reduction to Estimated Amount Available)** | **$ 134,486.02** |
| | May be higher |

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# Summary and Direction Sought

The costs shown for the additional items exceed the funding expected to be available by design. This will allow all funds to be committed by December 31, 2024 in the event that (1) any project(s) come in under the estimates, (2) interest earnings exceed the preliminary estimate, or (3) a project cannot be obligated by the deadline. If City Council is interested in all of the proposals, the projects can be prioritized and staff will monitor the costs of the projects as the purchase orders or contracts are approved.

1. Does City Council have questions on the information presented?

2. Is any additional information needed?

3. Discussion and feedback on proposed uses of remaining ARPA funds and interest earnings on ARPA funds.

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